

Is there any legal requirement set out in the UAE Civil Procedure Law to include a summary of the Terms of Reference in Arbitration Awards?

Ahmad Ghoneim - Partner - Litigation / Construction and Infrastructure
a.ghoneim@tamimi.com - Abu Dhabi

May 2014

According to Article 212(1), an arbitrator operating under the CPL shall issue his award without being bound by the CPL, save as is provided in Chapter Three. Article 212(5) states that arbitral awards shall, in particular, include a copy of the arbitration agreement. The purpose of including this information in the arbitral award is to ensure that the arbitrators have observed their limits under the arbitration agreement. Inclusion of the arbitration agreement is therefore necessary for the validity of the arbitral award and its omission would render an award void.

An important factor that comes into play when considering how Article 212(5) might apply is the difference between an arbitration agreement in the form of an arbitration clause, where the parties have chosen to arbitrate their claims in their contract, and a post-contract submission agreement.

The Dubai Court of Cassation held, in Appeal No. 277-2002, that the arbitration agreement mentioned in Article 212(5) may take the form of either an arbitration clause in the parties' contract or a submission agreement, in cases where a dispute already exists between them when they agree to arbitrate. The Cassation Court thus confirmed in that appeal that an arbitral award that includes the arbitration clause in the parties' contract as the arbitration agreement would satisfy the requirements of Article 212(5) as far as including a copy of the arbitration agreement.

The Federal Supreme Court has held that the arbitration agreement mentioned in Article 212(5) may take the form either of an arbitration clause in the parties' contract or a submission agreement drawn up after a dispute has arisen between them, and that each of these two forms represents an arbitration agreement for the purpose of Article 212(5).

In view of these decisions, it is clear that the CPL does not require that arbitral awards include a summary of the terms of reference drawn up during the arbitration. The terms of reference normally include the suite of procedural rules applicable to the arbitration and the language and place of arbitration. The CPL only requires that the terms of reference be enclosed with the arbitral award in the event that an application is made to nullify the arbitral award under Article 216. Article 216(1) provides that an arbitral award may be nullified (at the stage when the court considers the award for ratification) in the following circumstances:

1. If the award was issued otherwise than with an arbitration instrument or on the basis of an instrument which is invalid or has lapsed by effluxion of time, or if the arbitrator acted outside the scope of the instrument;
2. If the award was... issued on the basis of an arbitration instrument that does not specify the subject matter of the dispute...;

In summary, whether the arbitration agreement takes the form of an arbitration clause or a submission agreement, the CPL requires that the arbitral award includes, under risk of nullity, the arbitration agreement in its entirety or in summary format.