

# Who has the power to bind a public joint stock company to arbitration?

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One of these formalities is a specific authorization granted by the parties to their representatives who are signing the arbitration agreement on their behalf. Such authorization must explicitly vest the representatives with the power to agree to arbitrate.

When one of the parties to the arbitration agreement is a company, the legal form of the company determines the formalities required to allow the company's representative to bind the company to an arbitration clause.

In the following judgment, Abu Dhabi Court of Cassation commercial appeal no. 351 of 2014 issued on 26 June 2014, Al Tamimi and Company was successful in obtaining a decision from the Abu Dhabi Court of Cassation in which the court confirmed the formalities required to bind a public joint stock company to an arbitration agreement.

## **Summary of the facts**

The Claimant, the owner of a hotel, initiated proceedings before the Abu Dhabi Court of First Instance for the ratification of an arbitral award issued by the Abu Dhabi Centre for Conciliation and Commercial Arbitration. The dispute had arisen from a concession agreement entered into with the Respondent hotel management company (a Public Joint Stock Company).

The Respondent, represented by Al Tamimi & Co., filed a counterclaim before the Abu Dhabi Court of First Instance seeking to set aside the arbitral award.

The Court of First Instance decided to dismiss both the main and the counter claim for procedural reasons. The Claimant and the Respondent appealed before the Abu Dhabi Court of Appeal which cancelled the appealed decision and returned the case back to the lower court to render a decision.

In the second round, the First Instance Court ratified the arbitral award and dismissed the counterclaim.

The Respondent appealed to the Court of Appeal, which upheld the First Instance Court's decision.

The Respondent consequently filed an appeal to the Abu Dhabi Court of Cassation, which quashed the Court of Appeal decision and referred the case back to the Appeal Court. The Appeal Court then dismissed the main claim and upheld the counterclaim, setting aside the arbitral award.

The Court of Appeal held that the manager who signed the concession agreement on behalf of the Respondent did not have a specific authority to bind the Respondent to an arbitration agreement.

The Claimant challenged the decision before the Court of Cassation.

## **The Court of Cassation:**

The Claimant argued that the Appeal Court had decided the matter wrongly because the Respondent was a Limited Liability company and as such the signature of the general manager was sufficient to bind the company to arbitration without the need of a special authorization.

The Court however found as follows:

1. Article 58 of the Civil Procedures Law provides that a specific authorization is required to enter into an agreement to arbitrate. Article 216 of the same law sets out the conditions on which arbitration award can be set aside, among which is if the arbitration agreement was concluded by a signatory who does not hold a specific authorization to agree on arbitration on behalf of one of the parties.
2. Furthermore, Articles 203 of the Civil Procedures Law and Articles 95, 103 and 104 of the Commercial Companies Law together indicate that an agreement to arbitrate is only valid when the signatories to such agreement have the capacity to dispose of the right subject of the dispute.
3. The effect of these legal provisions is that in respect of a Public Joint Stock Company only the board of directors has the authority required to perform the activities of the company, acting in accordance to its articles of association and the law. However, the board of directors does not have the authority to enter into an arbitration agreement on behalf of the company unless it is permitted by the company's articles of association; falls within the objectives of the company's business (i.e. the company's trade license explicitly refers to arbitration); or the company's General Assembly has given specific approval.
4. It is established from the case documents that the Respondent is a Public Joint Stock Company and its Articles of Association entitles the Board of Directors to agree to arbitration as an exception to Article 103 of the Commercial Companies Law. The Respondent's Articles of Association also entitled the Chairman of the Board or his deputy (or a delegated board member or any other member delegated by the Board) to separately sign on behalf of the Respondent.
5. However the concession agreement (and the arbitration agreement it contained) was signed by the manager of the Respondent without furnishing evidence that he was acting on behalf of the Board Chairman or his delegate or deputy, or that he had delegated authority from the Board to enter into the agreement.
6. Therefore the manager, who signed the concession agreement on behalf of the Respondent, did not have the legal capacity to bind the Respondent to an arbitration agreement. The arbitral award is therefore to be annulled.

## **Practice note:**

This case is a sharp reminder that it is imperative for both parties to ensure that the signing representatives are entitled to bind their respective companies to arbitration. Otherwise any final award may be annulled

If the parties have doubts about the authority of the other party's representative, they should request that the agreement be signed before a public notary, part of whose role is to check and confirm the authority of the signatories.

If before filing an arbitral claim a claimant has concerns about the validity of the arbitration agreement, then they should first consider filing the claim before the local court. If the opposing party relies on the arbitration clause the Court will refer the dispute to arbitration, thereby confirming that the clause is valid. This does however incur some costs, and creates a risk that the opposing party will choose not to rely on the arbitration clause, which would result in the dispute being dealt with by the court rather than arbitration as originally agreed.

For more details on these issues and the reported case, please contact Mohammed Al Marzouqi.