

The Power of Power of Attorneys in Abu Dhabi

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The range of powers being delegated can be wide and will depend on the purpose of making the delegation. Where the delegated powers are for general unspecified matters, this can be delegated using a General Power of Attorney. If the delegation is for a specific matter or for a court case, a Specific Power of Attorney will be needed.

Whilst the wording in a General Power of Attorney will imply that it covers all legal actions that could be taken by the principal, there are specific powers that need to be explicitly provided for if they are to be delegated, such as the power to settle a dispute.

The need for an explicit power to settle a dispute, or waiver of a judgment or any avenue of appeal against it, is found in articles 58 (2) of the Civil Procedures Law. Article 58(2) states:

“2 - No admission or waiver of a right alleged or settlement or submission to arbitration or acceptance of or requisition for the oath or refusal thereof or abandonment of the proceedings or waiver of the judgment in whole or in part or of any avenue of appeal against it or the lifting of an attachment or abandonment of securities while a debt remains unpaid or allegation of forgery or recusal or acceptance of a judge or expert or true tender or any other disposition in respect of which the law requires special authorisation may be made without special authority”

The Abu Dhabi Courts of First Instance and Appeal may accept the Power or Attorney issued by the concerned party to its attorney, without requiring further documentation. However, the Abu Dhabi Court of Cassation will look more extensively into this issue and will require submission of evidence showing the delegation of powers as required on a case by case basis. This is due to the requirement to have explicit powers in certain matters, as noted above. This is also due to Article 177 of the Civil Procedures Law, the relevant parts of which state:

“1 - A challenge by way of cassation shall be brought by a notice lodged with the office of the court, signed by an attorney licensed to appear before it, and accompanied by proof of payment of the fee in full, together with the security, and the appeal shall be entered immediately in the register kept for that purpose.

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3 - The appellant must, before the appeal is reserved for judgment, lodge the power of attorney of the advocate instructed in the appeal.

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5 - If the challenge by way of cassation is not made in the foregoing manner, it shall be disallowed and the

court shall rule of its own motion that it is disallowed.”

Although powers of attorney are often viewed by the layman as a formalistic issue, they are vital documents and if incorrectly issued (or not issued at all) they may result in a contract or act being declared void. The repercussions may also extend to the dismissal of a given case. To emphasize the importance of the above articles of the Civil Procedure Law, we now summarize three judgments. In the first, a person’s power to resolve a dispute was challenged, whereas in the second and third the capacity to file an appeal before the Court of Cassation was challenged.

Case Study 1:

In Abu Dhabi Court of Cassation (Commercial) Case 368/2012 (dated 21 October 2013, Al Tamimi did not appear in the case) a partner in two separate limited liability companies signed a contract to waive the rights of the two companies towards another third party they had contracted with. The capacity of the partner was never contested at the time the contract was signed, as he was considered to be the apparent authorized person to act on behalf of the companies (being a partner and the owner of 76% of the shares) (“the first partner”).

The second partner of the two companies was appointed as a Manager for both of them (“Manager”). He had never signed or approved the above contract. He contested its validity and filed a case requesting the Abu Dhabi Court to declare the contract null and void.

The Court of First Instance deemed the capacity of the First Partner, based on the apparent authority that he holds, sufficient to consider the contract as valid. It thus rejected the Manager’s case.

The Court of Appeal overturned the Court of First Instance judgment and upheld the Manager’s case. This judgment was challenged before the Court of Cassation.

The Court of Cassation ruled that the authorized representative of the Company is the Manager as he is the only one who has the legal capacity to enter into dispositions. The Court held that the signature of the First Partner was not sufficient to bind the two companies nor does it bind him personally, as he signed in his capacity as an agent (albeit without the necessary authority).

The Court of Cassation commented that the size of the first partner’s shareholding has nothing to do with the management of the company, which is done by a manager appointed to do so (whether the manager is one of the partners themselves or a third party).

The wording of the judgment was broad, no doubt to express the general principle that only the manager of a limited liability company has the authority to sign all types of contracts on behalf of the company. We believe the reasoning behind this is that the shareholders of a limited liability company are legally protected, as the law prevents creditors taking legal actions against the funds and assets personally owned by the shareholders themselves. The law however puts obligations and duties on the manager of a limited liability company and exposes the manager to liability if they are breached. Managers can be held accountable, whether through civil or a criminal litigation, in respect of a breach of management obligations.

This case is authority for the fact that settlement agreements can be deemed null and void by the Abu Dhabi Courts if the General Manager of the limited liability company did not sign it, even if it was signed by the partners of the Company.

Case Study 2:

In Abu Dhabi Court of Cassation (Labour) Case 96/2015 (dated 30 September 2015) an employee filed a labour claim for outstanding dues from its employer company.

The Company issued a Power of Attorney to a lawyer to represent it before the Abu Dhabi Courts and defend the case. The Power of Attorney was accepted by the Court of First Instance and a judgment was issued by that court obliging the Company to pay a certain sum to the employee to compensate her for damages sustained.

The Company appealed the judgment using the same Power of Attorney, which was accepted by the Court of Appeal. The Court of Appeal ruled against the Company and upheld the judgment of the Court of First Instance.

The Company challenged the judgment before the Court of Cassation. The Court of Cassation did not look into the merits of the challenge filed by the Company, it rather focused on the authority of the lawyer to file the appeal. The Court stated that "Proof showing the capacity to challenge judgments before the Court of Cassation is an issue pertaining to public order". The Court therefore had to look into the issue even though it was not raised by the parties.

The person who issued the Power of Attorney to the lawyer on behalf of the Company did so pursuant to a Power of Attorney issued to him from the official representative of the Company. The lawyer's Power of Attorney noted that the powers of the latter representative were referenced in the Articles of Incorporation of the Company. However, the Articles of Incorporation themselves were not filed along with the Power of Attorney, nor were there any other documents showing the current capacity and powers of the official representative or their limits. The Court dismissed the case for lack of such documents. The merits were not decided upon since the challenge itself was dismissed due to the problem with the Power of Attorney.

The Court noted that the right to challenge judgments before the Court of Cassation is a personal right for the party who has a judgment issued against it and that party can exercise this right or abandon it. Without its consent, no one has the right to act on its behalf in this regard. If the party is a juridical one (such as a company), the capacity of its representative must be evidenced in a clear manner. In reliance of Article 177 of the Civil Procedures Law, the Court has the right to dismiss the case if no proof is presented to show the capacity and powers allowing for challenging judgments before the Court of Cassation.

Al Tamimi represented the Company before the Court of First Instance, but not the Court of Appeal or the Court of Cassation.

Case Study 3:

In a recent challenge filed before the Cassation Court (Labour) Case No. 110 and 126 of 2016 (issued on 25 January 2016) (which was not handled by Al Tamimi), the Court of Cassation also dismissed a challenge for lack of proof supporting the Power of Attorney lodged by the appellant's lawyer (citing Article 177 of the Civil Procedures Law).

As in Case Study 2, the Court noted that this requirement is essential to verify the validity of the Power of Attorney in terms of the capacity of its issuer, the powers of the person who appointed the lawyer, and whether such powers include the right to challenge a judgment before the Cassation Court. This right is a personal one for the party who had a judgment issued against it and it is the only party that can decide to pursue or abandon it. No one can act on behalf of this party in this regard without its approval.

The Court realized from the Trade License submitted by the appellant that the appellant company was a limited liability one and that according to Article 83 of the Companies Law there has to be a manager who handles its business affairs and can represent it before Courts. The Power of Attorney in this case was issued by a person in her capacity as the manager and legal representative of the Company. However, the license showed that this person was only one of the partners in the Company and was silent as to her capacity as a manager or a representative. The Court also noted that there was no proof submitted to support the managerial capacity, such as the Articles of Association or any similar official document.

The Court thus concluded that it could not confirm that the lawyer attending before it was in fact duly

appointed by the actual authorized person who has the necessary powers. Accordingly, it dismissed the case for that reason.

Conclusion

As these cases demonstrate, Powers of Attorney are important documents and getting them wrong can cause serious problems. However, these problems can be avoided. Parties need to seek legal advice before entering into a settlement agreement to confirm that the relevant parties hold the necessary powers and that all required delegations of powers are present. This is the only way to avoid the prospect of having the agreement annulled. A proper legal review of the Power of Attorney and its supporting documents is also necessary to confirm that the Court of Cassation will not dismiss the case because of an invalid authority or lack of proof confirming such authority.

Although Powers of Attorney may seem unnecessarily formalistic, they in fact touch upon public order and are essential.