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Legal Glimpse – By MAS Advocates on

**The Jurisdiction of a Court over an Arbitration Agreement.**



The UAE has witnessed a rapid and organic growth in arbitration proceedings in the past decade and is becoming a preferred seat for arbitration due to the varied options and jurisdictions available to choose viz. ADCAAC, DIFC/LCIA, DIAC, Dubai onshore arbitration, *ad hoc* arbitration.

As arbitration is considered an alternative means of disputes resolution, the law lays a great emphasis on person's capacity to execute an arbitration agreement. Article (4) of UAE Federal Law No. 6 of 2018 states the following:

*“an Arbitration Agreement may only be concluded by a physical person who has the legal capacity to act or by the representative of the juristic person authorised to conclude the Arbitration Agreement, or otherwise the Agreement shall be null and void”.*

The aforesaid Article covers two capacities of parties executing the arbitration, one being by a physical person and the other executed by a juristic person. The grounds for the physical / natural person is that such person should have a clear and direct legal capacity and right to execute an agreement.



As for the juridical person, a legal authorization to execute an arbitration agreement is required in the form of a power of attorney, board resolution, general assembly resolution authorizing an individual to execute the arbitration agreement.

A Dubai cassation court's decision where a case involving execution of an arbitration agreement by a CEO of a limited liability company (who was not the Manager) held that:

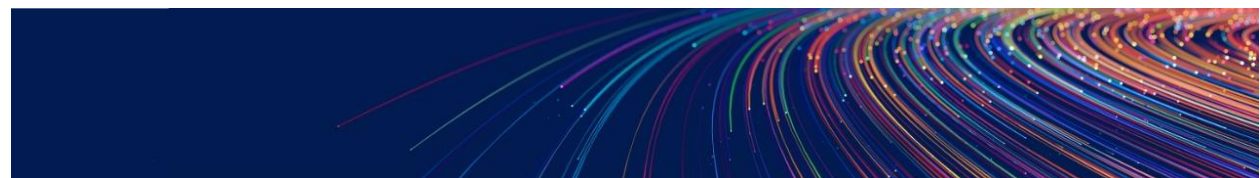
*“an agreement to arbitrate shall not be valid unless made by persons having the legal capacity to make a disposition over the right, subject matter of the dispute and that the manager of a limited liability company has full powers to manage the company and the legal capacity to make dispositions over the rights relating to its activities, including an agreement to arbitrate in contracts made between the limited liability company and third parties, unless the manager has delegated his authority to arbitrate under a special power of attorney.”<sup>1</sup>*

In the above case, the manager did not delegate his authority to arbitrate on behalf of the LLC in favour of the CEO and therefore, in absence of such power of attorney, the Court held that the CEO did not have the legal capacity to execute such arbitration agreement.

However, there have been instances where the Federal Courts have not been consistent in upholding the aforesaid requirement of a valid power of attorney.

In another recent decision issued by Abu Dhabi Courts, a representative of a sub-contractor pursuant to a power of attorney issued in year 2012 (*which did not include the right to execute arbitration agreement on behalf of the sub-contractor*) executed a contract with the contractor which included an arbitration agreement as the dispute resolution mean of settling disputes. The work under the contract was completed in the 2017 and the sub-contractor was not duly paid in 2019 pursuant to which the sub-contractor filed proceedings before the federal courts. A new power of attorney was executed in year 2018 after completion of works authorizing the representative to execute arbitration agreement.

The proceedings instituted in 2019 were challenged and dismissed before the Court of First Instance and the Court of Appeal on the ground that the contract was subject to an arbitration and the representative of the sub-contractor had the authority to arbitrate under the power of attorney dated 2018.



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<sup>1</sup> Court of Cassation in Case no. DCC946/2018



The Abu Dhabi Court of Cassation rejected the conclusion of the Court of First Instance and Court of Appeal and held that the power of attorney giving authority to arbitrate was issued in 2018 i.e., after the execution of the contract. Therefore, at the time of execution of the contract containing the arbitration agreement, the representative did not have the authority to bind the sub-contractor to such arbitration agreement.

UAE courts considers an arbitration agreement an exception to the normal litigation practice before the courts. Therefore, there is a general consonance that granting the authority to bind a company to arbitration proceedings that such authority must be clear, explicit and direct. Abu Dhabi's court decision matched such consonance as the lack individual's authority to sign on an arbitration will constitute an invalid arbitration clause. And the Abu Dhabi's Cassation decision followed the exact applicable legal approach towards enforcing of an arbitration agreement.

Also, it is worth to mention that if there is a valid arbitration agreement in a contract and should either party refer to the UAE courts instead of commencing of arbitration proceedings and the counter party fail to challenge the court's jurisdiction, as per Article (8) of Law No.(6) of 2018 on Arbitration, prior to submitting any request or plea the court, the arbitration clause shall then be considered invalid and UAE courts will be intitled to look into the merits of the dispute.

We do not find the Abu Dhabi Court's decision should be subject to any criticism as the decision followed the common practices of how the arbitration agreement should be executed.

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