

UAE LAW ON THE SIGNING OF ARBITRAL AWARDS

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UAE Litigation and Dispute Resolution Alert

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SUMMARY

On 21 April 2022, the Dubai Court of Cassation (Court of Cassation) issued its judgment in Case No. 109/2022, in which it confirmed that the United Arab Emirates (UAE) procedural law of arbitration, set forth in Federal Law No. 6 of 2018 (UAE Arbitration Law), requires the arbitral tribunal—whether a sole arbitrator or a panel of arbitrators—to sign the pages of the arbitral award containing the dispositive section and the reasoning for the award; otherwise, there is a risk that the award will not be enforced by the onshore UAE courts.

RULES APPLICABLE TO UAE-SEATED ARBITRAL AWARDS

Historically, there has always been a risk that arbitral awards rendered in onshore UAE-seated arbitrations may be deemed to be unenforceable by the UAE courts if the arbitral tribunal does not sign every page of the award.

Prior to the enactment of the UAE Arbitration Law, the signature of the arbitral award was subject to Article 212(5) of Federal Law No. 11 of 1992 (UAE Civil Procedure Law), which required:

The arbitrators' decision shall be delivered with a majority of opinions and it should be written together with the contradictory opinion, and it should particularly include a copy of the arbitration agreement and a resume of the litigant parties' statements, their documents, the decision's reason and its pronunciation, its delivery date, its delivery place, the arbitrators' signatures, and if one or more of the arbitrators has refused to sign the decision that should be mentioned therein, and the decision shall be valid if the majority of the arbitrators have signed it.

Although this article did not expressly require a signature on all pages of the arbitral award, the Court of Cassation repeatedly held that the arbitral tribunal should sign both the dispositive section and the reasoning in support of the award and that a failure to do so would render the award invalid. However, the Court of Cassation, in Case Nos. 156/2009 Commercial (dated 27 October 2009) and 251/2010 Commercial (dated 18 May 2011), considered the enforcement of two UAE-seated arbitral awards and held that the signature of the arbitral tribunal did not have to be on every page of the award. In those cases, the Court of Cassation considered that it was sufficient that the arbitral tribunal had signed the dispositive section of the award, which also included, on the same page, part of the tribunal's reasoning.

In June 2018, Article 212(5) of the UAE Civil Procedure Law was replaced by Article 41(3) of the UAE Arbitration Law, which states:

The award shall be signed by the arbitrators and in arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the Arbitral Tribunal shall suffice, provided that the reason for any omitted signature is stated.

Similar to Article 212(5) of the Civil Procedure Law, Article 41(3) of the UAE Arbitration Law does not expressly require the arbitral tribunal's signature on every page of the award, or on the pages containing the dispositive section and reasoning for the award. However, based on the similar language of the laws and considering the decisions issued under the “old” law, the Court of Cassation has maintained the established position that both the dispositive section and the reasoning must be signed, and it has only agreed to enforce arbitral awards, which are not signed on every page, in limited circumstances.

In Case No. 1083/2019 Commercial, the Court of Cassation considered the enforcement of a UAE-seated arbitral award under the UAE Arbitration Law. Consistent with the earlier decisions rendered under Article 212(5) of the UAE Civil Procedure Law, the Court of Cassation held that, if the award is issued as a single document containing both the dispositive section and reasoning for the award, it is sufficient that the arbitral tribunal only signs the dispositive section, provided that the dispositive section contains part of the reasoning. However, the Court of Cassation also held that if the dispositive section and reasoning are contained in separate documents, the dispositive section, and all of the pages of the reasoning, must be signed by the arbitral tribunal.

It is unclear why the Court of Cassation differentiated between an award rendered in a single document and in separate documents in this manner; nonetheless, the Court of Cassation confirmed that it may be sufficient that an award is not signed on every page provided that the tribunal signs the page containing the dispositive section of the award and that page also contains part of the reasoning.

APPLICATION OF UAE LAW TO THE ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

In Case No. 403/2020 (dated 15 April 2020), the Court of Cassation refused to enforce an award rendered in a foreign-seated arbitration, which contained the signature of the arbitrator on the last page only and not on the pages containing the reasoning of the award.

In reaching this decision, the Court of Cassation referred to Article III of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention)—which provides for enforcement in line with the “rules of procedure in the territory where the award is relied upon”—and held that the applicable rules of procedure in the UAE included the provisions of the UAE Arbitration Law. For the purposes of Article 41(3) of the UAE Arbitration Law, the court held that signing the award means signing the dispositive and reasoning sections of the award and, if both sections have not been signed, the award is deemed invalid and enforcement would be contrary to UAE public policy. The court then relied upon Article V(2)(b) of the New York Convention—which

provides that enforcement may be refused where the recognition or enforcement of the award would be contrary to the public policy of that country—as a basis for refusing to enforce the award.

In its recent decision in Case No. 109/2022, the Court of Cassation confirmed the position previously taken by the Court of Cassation in Case No. 403/2020. In Case No. 109/2022, the Court of Cassation considered the recognition and enforcement of an arbitral award issued in a foreign-seated arbitration, where the arbitrator had only signed the last page of the award. The Court of Cassation found that the arbitrator's signature on the last page, which contained the dispositive section but not any part of the arbitrator's reasoning, did not satisfy the requirements of Article 41(3) of the UAE Arbitration Law. Thus, the award was void and unenforceable as a matter of UAE public policy.

ANALYSIS

The judgment of the Court of Cassation in Case No. 109/2022 reaffirms that, under UAE law, the arbitral tribunal must sign both the dispositive section and the reasoning of the arbitral award. In certain circumstances, the UAE courts may accept a signature on the dispositive section of the award, provided that the signed dispositive section contains part of the reasoning. However, the safest approach is for the tribunal to sign every page of the award in order to avoid the risk of a challenge to enforcement based on whether all of the required pages have been signed.

This case also serves to remind parties that the UAE procedural rules not only apply to arbitrations seated in onshore UAE, but they may also be relevant whenever a party seeks to enforce an arbitral award in the UAE through the onshore UAE courts. This includes foreign-seated arbitrations and arbitrations seated offshore in the UAE, such as the Dubai International Financial Centre or Abu Dhabi Global Market, notwithstanding that the arbitration laws applicable in those jurisdictions may not include the same signatory requirements.

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