THE DUBAI COURT OF CASSATION RESTORES ABILITY TO AWARD LEGAL COSTS IN ICC ARBITRATIONS

Date: 3 December 2024

UAE Litigation and Dispute Resolution Alert

By: Jennifer Paterson, Mohammad Rwashdeh, Jonathan H. Sutcliffe

BACKGROUND

In February 2024, the Dubai Court of Cassation (Court of Cassation) issued a surprising decision in Case No. 821 of 2023 (Commercial), in which it upheld the Dubai Court of Appeal's (Court of Appeal) partial annulment of an International Chamber of Commerce (ICC) arbitration award, quashing the arbitral tribunal's award of legal costs. In its decision, the Court of Cassation found that Article 38(1) of the ICC Rules of Arbitration (ICC Rules) on which the arbitrator relied (*The costs of the arbitration shall include… the reasonable legal and other costs incurred by the parties for the arbitration*)—which language is the same in both the 2017 Rules and the 2021 Rules—did not explicitly empower the arbitral tribunal to award costs paid by the parties to their legal representatives. Our previous alert on this judgment can be viewed here.

RULING OF THE COURT OF CASSATION IN CASE NO. 756 OF 2024 (COMMERCIAL)

In a recent appeal in another case, the Court of Cassation in Case No. 756 of 2024 (Commercial) was again required to consider the validity of the Court of Appeal's partial annulment of an ICC arbitration award on the basis that the arbitral tribunal's cost award obliged the respondent in the arbitration to pay a portion of the fees paid by the claimant to its legal representatives.

In its decision dated 19 November 2024, the Court of Cassation departed from its prior position and confirmed that the ICC Rules entitle the arbitral tribunal to award legal costs, including costs paid by a party to its legal representatives. In reaching this decision, the Court of Cassation confirmed that where the wording of a law (or, in this case, a rule) is clear and unambiguous, it must be regarded as a true expression of the legislator's intent and cannot be interpreted in a way that alters its meaning. The Court of Cassation held that the language of Article 38(1) of the ICC Rules is clear. The use of the word “include” indicates that Article 38(1) of the ICC Rules is not intended to contain an exhaustive list of arbitration costs. Further, the phrase “the reasonable legal and other costs” indicates that the arbitral tribunal can award any reasonable costs, including legal costs, such as attorneys' fees. Accordingly, the Court of Cassation vacated the Court of Appeal's partial annulment of the arbitral award.

©2005-2026 K&L Gates LLP. All Rights Reserved.

CONCLUSION

This decision will be welcomed by arbitration practitioners and their clients. It reduces the uncertainty and risk introduced by the Court of Cassation in Case No. 821 of 2023 (Commercial) that the onshore United Arab Emirates (UAE) courts will annul the cost element of an arbitral award where contracting parties have not expressly agreed in their arbitration agreement that the arbitral tribunal has the authority to award and apportion party legal costs.

ABOUT THE FIRM

Our Litigation and Dispute Resolution practice group has a long history of acting as counsel on high-stakes international arbitration and litigation mandates. Our lawyers in Dubai have extensive experience advising on litigation and arbitration with respect to complex, high-value disputes in the UAE and wider Middle East region.

KEY CONTACTS



JENNIFER PATERSON
PARTNER

DUBAI
+971.4.427.2728
JENNIFER.PATERSON@KLGATES.COM



MOHAMMAD RWASHDEH
SPECIAL COUNSEL

DUBAI
+971.4.427.2742
MOHAMMAD.RWASHDEH@KLGATES.COM



JONATHAN H. SUTCLIFFE
PARTNER

DUBAI
+971.4.427.2747
JONATHAN.SUTCLIFFE@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.