# ABU DHABI COURT OF CASSATION REITERATES THE EXCEPTIONAL NATURE OF ARBITRATION AGREEMENTS

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**UAE Litigation and Dispute Resolution Alert**

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## INTRODUCTION

A recent judgment from the Abu Dhabi Court of Cassation (Court of Cassation) in Case No. 902 of 2024 (issued on 23 December 2024) reiterates the importance of ensuring that a signatory to a contract containing an arbitration agreement has specific authority to bind the company to arbitration.

## BACKGROUND

An award debtor filed proceedings in the Abu Dhabi Court of Appeal (Court of Appeal) seeking to set aside an arbitral award issued in an arbitration under the rules of the Abu Dhabi Commercial and Conciliation Centre (an institution that has since been reorganized and renamed as the Abu Dhabi International Arbitration Centre) on the basis that the signatory to the agreement, the award debtor's chief executive officer (CEO), was not authorised to bind the company to arbitration. The award debtor argued that, as it is a public joint stock company (PJSC), only an authorized signatory can bind the company to arbitration. The company's Articles of Association authorized the Chairman of the Board of Directors to enter into arbitration agreements on behalf of the company. However, there was no express delegation of those powers to the CEO. The Court of Appeal dismissed the claim and upheld the validity of the arbitral award. The award debtor appealed this decision to the Court of Cassation.

## JUDGMENT OF THE COURT OF CASSATION

The Court of Cassation accepted the appeal and set aside the arbitration award on the basis that the arbitration agreement was void. The Court of Cassation held that it was a matter of public order (which can be invoked by a party at any time or by the court on its own volition) that an arbitration agreement shall only be valid if it fulfils the mandatory requirements set by the legislature. In addition to the requirement for the arbitration agreement to be in writing (Article 7(1) of UAE Federal Law No. 6 of 2018 (UAE Arbitration Law)), the Court of Cassation emphasised that signatories to an arbitration agreement must have the necessary legal capacity to bind the respective party to arbitration. This requirement is reflected in Article 4 of the UAE Arbitration Law, which provides that an arbitration agreement may only be entered into by a representative of a corporate entity who is authorized to conclude the arbitration agreement, or, otherwise, the arbitration agreement shall be null and void. The Court of Cassation also noted that a deficiency in the signatory's authorisation could not be remedied by demonstrating that an authorised

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representative of the corporate entity had participated in the arbitration, as the requirement in Article 4 relates to execution of the arbitration agreement and not what occurred thereafter. Similarly, general rules (such as those relating to a principal's subsequent ratification of an act performed by an agent outside of the agent's scope) do not apply as this is a special rule that is specific to arbitration agreements.

## ANALYSIS

This judgment confirms that a representative of a PJSC must have clear and specific authority to enter into an arbitration agreement on behalf of the company. It also serves as a reminder of the importance of ensuring, upon execution of a contract, that the parties' signatories have authority to bind the company to arbitration and not simply authority to enter into the contract.

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