ABU DHABI COURT OF CASSATION EXTENDS ARBITRATION AGREEMENT IN MAIN CONTRACT TO PARTIES TO RELATED CONTRACTS ARISING OUT OF THE SAME CONSTRUCTION PROJECT

Date: 8 December 2025

UAE Litigation and Dispute Resolution Alert

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INTRODUCTION

In a recent decision issued on 16 October 2025 in appeal No. 980 of 2025, the Abu Dhabi Court of Cassation (Court of Cassation) held that an arbitration agreement contained in a main contract (Main Contract) between the employer (Employer) and main contractor (Main Contractor) extended to the parties to related contracts, notwithstanding that those contracts did not contain an arbitration agreement and did not expressly incorporate by reference the arbitration agreement in the Main Contract, as required by Article 7(b) of United Arab Emirates (UAE) Federal Law No. 6 of 2018 on Arbitration (UAE Arbitration Law).

Article 7(b) of the UAE Arbitration Law provides that contracting parties can incorporate by reference an arbitration agreement in another document provided such reference is clear so as to make the arbitration agreement part of the parties' contract. This has been interpreted by the UAE courts to require contracting parties to expressly refer to, and incorporate, the arbitration agreement itself. A general reference to the document in which the arbitration agreement is located is not sufficient.

BACKGROUND FACTS

The Employer and Main Contractor entered into the Main Contract (which contained an arbitration agreement) for construction works. Subsequently, the Employer and Main Contractor executed a series of tripartite addendums to the Main Contract with subcontractors—who were not parties to the Main Contract—for additional works. Those tripartite addendums referred to the terms and conditions of the Main Contract and stated that they shall remain in full force and effect. However, the addendums did not explicitly incorporate by reference the arbitration agreement in the Main Contract.

A dispute arose between the parties, which led to the Main Contractor filing proceedings before the Abu Dhabi Court of First Instance against the Employer, various subcontractors and the project consultant (Project Consultant)—who was not a party to any contract—for payment of amounts due. The Main Contractor's claims arose out of both the Main Contract and the tripartite addendums to the Main Contract. The Employer and two subcontractors submitted that the claims should be dismissed on jurisdictional grounds due to the arbitration agreement in the Main Contract. The other subcontractors argued that the claims should be dismissed on the

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merits, and the Project Consultant took the position that it did not have standing to be joined as a defendant as it was only the Employer's representative on the project. The Abu Dhabi Court of First Instance dismissed the claims and upheld the jurisdictional objection. That finding was upheld by the Abu Dhabi Court of Appeal (Court of Appeal).

The Main Contractor appealed the decision of the Court of Appeal to the Court of Cassation. On the issue of jurisdiction, the Main Contractor argued that the subcontractors were not signatories to the Main Contract, and the tripartite addendums concluded with the subcontractors had not incorporated by reference the arbitration agreement in the Main Contract. Therefore, the Main Contractor was entitled to bring its claims against them in court. With regard to the Employer, the Main Contractor took the position that it was entitled to have its claims against all parties heard together in the courts, rather than having the dispute divided between different forums.

JUDGMENT OF THE COURT OF CASSATION

The Court of Cassation dismissed the appeal, with the effect that all the claims had to be determined in arbitration. In dismissing the appeal, the Court of Cassation held that claims asserted against multiple defendants can be so connected—whether because of the subject matter of the dispute or the cause of action—as to justify joining the claims in a single case and avoiding conflicting judgments. In this case, the Court of Cassation relied upon the fact that the claims arose out of both the Main Contract and the addendums thereto, that the Main Contractor had a key role in all of the contracts and that the addendums all referred to and generally incorporated the terms and conditions of the Main Contract to find that the arbitration agreement in the Main Contract applied to all parties, notwithstanding that there was no express incorporation by reference of the arbitration agreement in the Main Contract, as required by the UAE Arbitration Law.

ANALYSIS

The onshore UAE courts have historically adopted a very strict approach to the validity of arbitration agreements. In previous cases, the onshore UAE courts have held that the interests of justice may require disputes arising out of separate but related contracts (not all of which contain arbitration agreements) to be determined together by the onshore courts, thereby rendering nonbinding an otherwise valid and enforceable arbitration agreement. See, for example, our prior alert on Dubai Court of Cassation Case No. 290/2021 here.

In appeal No. 980 of 2025, the Court of Cassation took a different approach and held the arbitration agreement in the Main Contract extended to parties to related contracts. Although the Court of Cassation's decision turned on a specific set of facts, it highlights the importance of drafting construction contracts in light of the terms of any other related contracts to ensure certainty and consistency regarding the dispute-resolution forum.

ABOUT THE FIRM

Our Litigation and Dispute Resolution practice 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.

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