DUBAI COURT OF CASSATION UPHOLDS CIVIL LIABILITY DESPITE PRIOR PARTIAL ANNULMENT OF AN ARBITRAL AWARD

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UAE Litigation and Dispute Resolution Alert

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The Dubai Court of Cassation (Court of Cassation), in Judgment No. 1262 of 2026 issued on 3 September 2026, has upheld a decision imposing civil liability and awarding AED5.64 million in compensation arising from a party's conduct in a Dubai-seated Dubai International Arbitration Centre (DIAC) arbitration following partial annulment of the final award.

BACKGROUND

DIAC Arbitration No. 66 of 2020 (the Arbitration) proceeded under the previous 2007 DIAC Rules, which did not expressly empower tribunals to award parties' legal costs. The onshore Dubai courts' position was that tribunals could therefore award legal costs only with the parties' express consent and the onshore courts consequently annulled costs awards where no such consent had been given.

In the Arbitration, the respondent's legal representative signed the terms of reference, which authorized the tribunal to award legal costs. The respondent subsequently successfully annulled the costs element of the final award (which had awarded costs against the respondent), in proceedings before the onshore Dubai courts, on the basis that the respondent's power of attorney issued to its legal representative did not confer the specific authority on them to authorize the tribunal to award legal costs and therefore they were acting without authority.

Following the annulment of the costs award by the Dubai Court of Appeal, which was upheld by the Court of Cassation, the claimant sought compensation in civil proceedings for the resulting loss, relying on the respondent's failure to object to the tribunal's authority to award legal costs before the award was rendered. The Court of First Instance awarded AED5.64 million (approximately US$1.5 million at current rates of exchange), which the Court of Appeal upheld. The respondent appealed to the Court of Cassation, arguing that it had committed no fault giving rise to civil liability and had merely exercised its right to challenge the award.

JUDGMENT OF THE COURT OF CASSATION

The Court of Cassation dismissed the appeal, holding that civil liability for compensation may arise where one party's fault causes an agreement to be invalid, provided the other party believed it to be valid and acted on that basis. Here, the invalid agreement was the provision in the terms of reference authorizing the tribunal to award legal costs.

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The Court of Cassation upheld the lower courts' findings that the respondent knew legal costs were claimed and the terms of reference authorized the tribunal to award them but deliberately concealed its representative's lack of authority and did not object before the award was rendered. Good faith required the respondent to disclose that it did not consent to, or consider itself bound by, that agreement rather than remain silent.

The Court of Cassation also held that partial annulment of the final award did not preclude the compensation claim, as annulment concerned the representative's lack of authority and the resulting partial invalidity of the award, whereas the civil claim concerned the respondent's fault in causing the invalidity of the provision in the terms of reference authorizing the tribunal to award legal costs, and the resulting loss. This distinction indicates that civil liability before the onshore courts may arise irrespective of the arbitral seat, provided that the jurisdictional requirements under Federal Decree-Law No. 42 of 2022 Promulgating the Civil Procedure Code are met.

ANALYSIS

Although fact-specific, this judgment demonstrates that a party's conduct during an arbitration may give rise to separate civil liability before the onshore UAE courts for the resulting loss, even where that party successfully challenges the award, and regardless of the seat of the arbitration.

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 United Arab Emirates and wider Middle East region.

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