

Challenging an Arbitral Jurisdiction and Anti-Suit Injunctions

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Overview

The UAE onshore courts permit parties to raise jurisdictional objections and will dismiss or stay proceedings where the requirements for these objections are satisfied. Other means of challenging jurisdiction are limited in the UAE onshore courts, since they neither grant anti-suit injunctions nor automatically enforce anti-suit injunctions issued by foreign courts, unlike the DIFC Courts.

In respect of jurisdictional matters, article 19 of Federal Law No. 6/2018 On Arbitration grants an arbitral tribunal the authority to rule on its own jurisdiction.

Practical Guidance

Challenging arbitral jurisdiction under the UAE Arbitration Law

UAE courts generally respect the parties' right to select arbitration as a dispute resolution mechanism. Article 8 of Federal Law No. 6/2018 provides that the court shall decline to entertain any action brought that is subject to an arbitration agreement, provided that the existence of the arbitration agreement is pleaded before the submission of any other motion or plea on the merits of the dispute and that the court is satisfied as to the validity of the arbitration agreement.

Under article 19(1) of Federal Law No. 6/2018, an arbitral tribunal can rule on its own jurisdiction (*kompetenz-kompetenz*), including any objections with respect to the existence or validity of an arbitration agreement, either as a preliminary issue or as part of a final award on the merits. Any challenge to a tribunal's award on its own jurisdiction must be brought before the federal or local Court of Appeal within 15 days of the notification of the tribunal's decision, following which the court must provide its un-appealable decision within 30 days (article 19(2) of Federal Law No. 6/2018). A challenge to the tribunal's jurisdiction before the court will result in the arbitration proceedings being stayed, unless the tribunal decides that they should continue, on the request of either party.

Article 20(1) of Federal Law No. 6/2018 requires parties to raise jurisdictional objections in the arbitral proceedings no later than the submission of the respondent's statement of defence. Furthermore, if a party wishes to raise an objection that a claim is outside of the scope of the arbitration agreement, it must be raised immediately following the claim being advanced. In both cases, article 20(1) permits an arbitral tribunal to waive the time limits if there is a reasonable justification for a party's delay in raising its objection. Article 20(2) of Federal Law No. 6/2018 confirms that a party does not preclude its right to raise jurisdictional objections by appointing an arbitrator or participating in the appointment of an arbitrator.

Anti-suit injunctions

UAE courts may generally not recognise anti-suit orders issued by foreign courts. For an order of a foreign court to be enforceable in the UAE, it must meet the criteria stipulated in article 222 of Federal Decree-Law No. 42/2022 On the Promulgation of the Civil Procedure Law. One of the requirements is that the order relates to a dispute over which the UAE courts have no exclusive jurisdiction. If the UAE courts determine that they do have exclusive jurisdiction to hear a dispute (for instance, where an action is against a UAE national or UAE-domiciled person or relates to a contractual obligation executed or performed or due to be performed in the UAE, see articles 19-23 of Federal Decree-Law No. 42/2022), a foreign order or judgment relating to that dispute may not be enforced in the UAE courts. It is, therefore, difficult to envisage a situation where a foreign anti-suit order would be beneficial, since the UAE courts would always consider the jurisdictional question and make their own determination as to whether the dispute should be heard by the UAE courts.

Anti-arbitration injunctions

UAE law has not recognised the concept of anti-arbitration injunctions (i.e., injunctions issued to restrain arbitration proceedings commenced by a counterparty in breach of an agreed dispute resolution process, for example, by commencing the arbitration in the wrong seat, or in a jurisdiction or court contrary to the parties' agreement). Instead, UAE courts tend to be deferential towards pending arbitrations, addressing issues regarding the tribunal's jurisdiction at the subsequent enforcement stage.

In respect to precautionary and interim measures, article 18(2) of Federal Law No. 6/2018 empowers the UAE courts, at the request of a party, to order such interim or conservatory measures as considered necessary to be taken in respect of existing or potential arbitration proceedings. However, it remains to be seen how the UAE courts will interpret or utilise this power, and whether it may open up any avenue for the consideration of injunctive relief in respect of the commencement of arbitral or other proceedings.

Challenging jurisdiction at the point of enforcement of an award

A further approach to challenging arbitral jurisdiction is to seek the setting aside of any award founded upon defective jurisdiction. Article 53(1) of Federal Law No. 6/2018 sets forth the circumstances under which parties may apply to the court for an award to be set aside, including the following circumstances relating to jurisdiction:

- that no arbitration agreement exists or such agreement is void or has lapsed (article 53(1)(a) of Federal Law No. 6/2018);
- that the composition of the arbitral tribunal or appointment of any arbitration was not in accordance with the law or the agreement of the parties (article 53(1)(f) of Federal Law No. 6/2018);

- that the arbitral proceedings were void in a manner which affected the award, or the arbitral award was not issued with the specified time frame (article 53(1)(g) of Federal Law No. 6/2018).

The third circumstance listed, which echoes the previous provision in article 216 of Federal Law No. 11/1992 (now abrogated) regarding "nullities" in awards, or in proceedings having an effect on the award, appears to give the courts wide discretion to set aside an arbitral award. However, Federal Law No. 6/2018 does not provide any guidance as to the nature of irregularities which might render proceedings void in this context. A recent example can be found in DCC 78/2022 and 96/2022, where a UAE-seated arbitration award was invalidated since it relied on witness testimony, which was not given under oath, contrary to the then-applicable Federal Law No. 10/1992 On Evidence in Civil and Commercial Transactions notwithstanding that Federal Law No. 6/2018, unlike its precursor, does not contain an express requirement for witness evidence to be given under oath.

However, it is worth noting that under article 25 of Federal Law No. 6/2018, a party to arbitral proceedings waives its right to object to any violation of Federal Law No. 6/2018 or an arbitration agreement if it does not raise its objection within seven days from the date on which it becomes aware of the violation (or within the period of time otherwise agreed to by the parties). Accordingly, the opportunities for parties to rely on technical or procedural objections, which have not been raised contemporaneously in order to set aside an award should be limited.

Other grounds on which an award may be nullified

UAE law has historically contained several additional potential pitfalls, non-compliance with which may permit the courts to set aside an arbitral award. These risks should now be reduced under Federal Law No. 6/2018, but compliance with mandatory conditions to arbitration remains important. For instance, it is important to ensure that the signatory to the arbitration agreement has the legal capacity and specific authorisation to bind the entity to arbitration (article 4(1) of Federal Law No. 6/2018), as a lack of legal capacity is a ground for setting aside an award (article 53(1)(c) of Federal Law No. 6/2018). In order to guarantee that the arbitration agreement is not voidable on this ground, it is advisable to ensure that the arbitration agreement is signed by someone with specific authority to agree to arbitration. A general power of attorney to bind the company has been held to be insufficient, as reinforced by article 61(2) of Federal Decree-Law No. 42/2022, which states that submission to arbitration requires "special authority". The UAE courts have defined the requirement in the following terms: "agreeing to arbitration means waiving the right to file the claim before the national courts, which requires a special power of attorney" (DCC 577/2003).

A further procedural requirement is that the arbitration agreement must be in writing, although Federal Law No. 6/2018 now expressly permits arbitration agreements to be made by exchange of communications (including in the form of an electronic messages) and also where a written contract includes by reference an arbitration agreement contained in another document, including in a model contract (i.e., standard form terms and conditions) (articles 5, 7(1), 7(2) of Federal Law No. 6/2018).

There is an additional requirement that applies only to insurance contracts. Article 1028(1)(d) of Federal Law No. 5/1985 On the Civil Transactions Law of the United Arab Emirates State states that an arbitration clause in an insurance contract will be void unless it is "contained in a special agreement separate from the general printed conditions in the policy of insurance". Accordingly, the arbitration clause must appear on a separate signed page attached to the insurance policy. It may not be buried within the terms of the policy.

Related Content

Legislation

- Federal Law No. 5/1985, UAE Civil Code
- Federal Law No. 6/2018, Arbitration Law
- Federal Decree-Law No. 42/2022 On the Promulgation of the Civil Procedure Law

Case decisions

- DCC 577/2003
- DCC 78/2022
- DCC 96/2022

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Biography

- Nazanin Aleyaseen is a senior member of the International Arbitration team. She regularly advises and represents international and UAE-based companies in DIAC, DIFC-LCIA, ADCACC and ICC administered arbitration proceedings as well as ad hoc proceedings. She has full advocacy rights, and advises and represents clients, in disputes before the Dubai International Financial Centre Courts.
- Ms. Aleyaseen is also a partner in the Dubai office's Labour, Employment and Workplace Safety practice which is recognized and ranked by Chambers Global in 2014 and 2015. She acts as exclusive employment counsel to multinational corporations with operations in the MENA and GCC region.
- Before settling in Dubai in 2008, she practised in Toronto, Canada and has published several articles relating to litigation and arbitration as well as employment and labour law.



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Biography

Jennifer Paterson is a partner in the International Arbitration and Litigation and Dispute Resolution teams of the firm's Dubai office, based in the Dubai International Financial Centre (DIFC). Jennifer regularly advises and represents both regional and international clients in a wide range of commercial disputes. She has experience representing clients in local

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[Read Jennifer Paterson's full biography](#)^[1 p.6] to learn more.



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Biography

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[Read Thomas Parkin's full biography](#)^[2 p.6] to learn more.

Notes

1. ^{^ [p.5]} <https://www.klgates.com/Jennifer-Paterson>
2. ^{^ [p.5]} <https://www.klgates.com/Thomas-Parkin>