

UAE Courts on the Signing of Arbitral Awards

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The courts have highlighted this attribute in holding that arbitrators are not bound to follow all the procedural rules applicable to judges apart from the basic rules of affording the parties a fair opportunity to present evidence and arguments in their cases and compliance with certain mandatory rules and public policy.

Despite the great strides that have been made and continue to be made over the last two decades in the region to accommodate international arbitration, in terms of the regional courts' support of the flexibility of arbitrations the wheels of progress continue to turn slowly. This is due in part to a lack of modern legislation that can keep pace with the latest changes in international arbitration systems, and to the hindrance posed by judicial systems which sometime issue rulings on matters of international arbitration that often raise more questions than they resolve.

In this article we will examine two contentious issues that currently arise in arbitrations conducted in the UAE and that are subject to the UAE Civil Procedure Law. One of those issues is the place where the tribunal signs an arbitral award and the consequences of failing to sign a domestic arbitral award in the UAE, and the other relates to the failure to sign all the pages of an arbitration award.

1. Place of Signature of Domestic Arbitral Awards:

Article 212(4) of the Federal Civil Procedure Law states:

“The arbitral award shall be issued in the UAE; otherwise the rules pertaining to foreign arbitral awards shall apply.”

The objective of the law is clear: to make a distinction between the rules which apply to domestic awards and those which apply to foreign awards, particularly at the stage of executing the award. While Article 212 affords parties the freedom to agree on the procedure to be followed by the arbitrator, the prospect of a court applying a different set of rules simply because of where the Tribunal signed the award at the end of the process can cause concern.

What if an arbitrator or arbitral tribunal or any of its members signed a domestic arbitral award outside the UAE? Given the lack of explicit precedent on this point, there are two possibilities:

First Possibility: An Invalid Arbitral Award

It can be argued that signing an award outside of the UAE in circumstances where the parties have agreed to the UAE being the legal seat, will invalidate the award. This is because by signing the award outside of the UAE the tribunal has essentially moved the legal place outside of the UAE, in contravention of the parties' agreement. The parties wanted a UAE award, but now they have a foreign award.

This is not just a theoretical problem. The legal place of the arbitration is also the only jurisdiction that can annul the award. By agreeing to the UAE as the seat, the parties are agreeing to the UAE Courts having the

power to annul the award. This will be frustrated if the award is signed outside of the jurisdiction because the UAE courts may no longer treat the award as a domestic award, and would refuse any application to annul. The result is an award which cannot be annulled in any jurisdiction.

Second Possibility: A Valid Domestic Arbitral Award Signed Outside the Jurisdiction

It can be argued that the agreement between the parties should take precedence, so that even if the award was signed outside of the UAE, it should still be considered a domestic award under UAE, notwithstanding article 212(4). Furthermore, the law only applies if the award is 'issued' abroad, it does not use the word 'signed', so it can be argued that where it is signed is immaterial.

Third Possibility: A foreign award

Article 212(4) states that if an award is signed outside of the UAE, 'the rules pertaining to foreign arbitral awards shall apply'. The recognition and enforcement of foreign arbitral awards in the UAE is governed by the New York Convention, whose rules are arguably easier to comply with than those that apply to domestic arbitral awards.

This third possibility would seem to be the most likely result given the way article 212(4) is drafted. Even though it would result in the New York Convention being applied (which in some ways is preferable), the advice remains that in order to avoid any risks parties should ensure that domestic awards are signed in the UAE, even if that means the arbitrator or chairman must travel to specifically for this purpose.

2. The Signing of Arbitral Awards by Arbitrators

Article 212(5) of the Federal Civil Procedure Law states:

"The arbitral award shall be made by a majority and shall be given in writing along with any dissenting opinion and shall, in particular, include a copy of the arbitration agreement, a summary of the arguments and documents presented by the parties, the grounds and context of the award, the date and place of issue of the award and the signatures of the arbitrators. Should one or more arbitrators refuse to sign the award, this must be noted in the award; the award shall be valid if signed by a majority of the arbitrators."

A procedural issue that often arises in connection with this provision is whether arbitrators must sign all pages or only the last page of the arbitral award for it to be valid.

Although Article 212(5) is generally worded and prescribes no specific rules as to the form or place of signatures on arbitral awards and, moreover, there is no requirement under the rules of arbitration institutions in the UAE that all pages of an arbitral award be signed, varied views have been propounded on the matter by the UAE Courts of Cassation. The Dubai Court of Cassation has held, in Commercial Appeal No.156/2009 (dated 27 October 2009) that an arbitrator's signature does not have to be on all the pages of the award as long as it appears on the page that contains the decision and part of the reasoning:

"It is well settled in line with Article 212(5) of the Civil Procedures Law that one of the essential requirements of an arbitral award is the signature, on the award, of the arbitrators who considered the arbitration matter given that, from a legal point of view, such signature is the only evidence of the existence of such award, without which it cannot be attributed to the arbitrators. An arbitral award covers both the reasoning and decision of the award. Therefore, the arbitrators should sign both the reasoning and decision of the award, failing which the award is invalid. However, an exception to the above rule is when the reasoning of the award, or parts thereof, is continued on the page where the decision and the signatures of the arbitrators appear in which case the signature shall be deemed to cover the reasoning of the award, thereby fulfilling the legislator's objective of requiring the arbitrators' signatures on the arbitral award. On the other hand, if the reasoning of the award appears on pages separate from the page on which the decision appears, all pages of the award, including the last page where the decision appears, should be signed by the arbitrators who issued the award; otherwise the award is invalid as a matter of

public policy and may be contested as such for the first time before this Court.”

The Abu Dhabi Court of Cassation however only requires arbitrators to sign the last page, irrespective of whether it contains the decision and part of the reasoning or only the decision. In Abu Dhabi Court of Cassation, Commercial Appeal No. 834/2010 (dated 30 December 2010, it was held that:

“It is well settled and held by the Court of Cassation, that according to Article 212 of the Civil Procedures Law, an arbitrator is not bound by civil procedure followed in court cases and must follow the procedures set out in the part dealing with arbitration and any specific procedures that are agreed upon by the parties. The arbitrator must also respect rights of due process by allowing each side to present his requests and arguments, prove his claims, refute the other side’s claims, and bring proceedings against adversaries. The test for setting aside an arbitral award for breach of the rules of civil procedure is deviation from the basic rules of litigation procedure that uphold the principle of equality of arms, including the fundamental right to adversarial proceedings, and contravention of the procedure agreed upon by the parties in this regard. These procedures do not include a requirement to sign all pages of the arbitral award for the rules of civil procedure themselves only require the signature of the head of the circuit on the last page of the award and Article 131 of the Civil Procedure Law is devoid of any requirement that all pages have to be signed.”

Conclusion

With different viewpoints existing on the issue of signing arbitral awards and the place of signature in relation to domestic arbitration, several considerations need to be taken into account to avoid arbitral awards being set aside for the procedural reasons described earlier, regardless of whether the arbitration in question is institutional or ad hoc. At the end of this brief analysis we recommend the following:

- Parties should ensure that domestic arbitral awards are signed in the UAE to avoid having them set aside for being signed outside the jurisdiction;
- All pages of an arbitral award should be signed to safeguard against unexpected and inconsistent court rulings requiring signature on all pages or on pages where the reasoning or part of it appears.