

Dubai Court Judgment on Public Policy as a Basis for Reviewing the Substance of an Arbitral Award

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These might be, for example, where the Tribunal has ruled on matters that fall outside what is covered by the arbitral agreement, or where one of the parties was not informed of the process. A party cannot simply argue that the Tribunal got the decision wrong or misunderstood the law.

The exception is public policy. If it is alleged that an award breaches the rules of public policy, the Court must examine the substantive aspects of the award or the extent of its conformity with the law. Conformity with public policy is one of the most fundamental requirements of all legal acts and rulings, whether judicial or arbitral.

Public policy has no conclusive definition in UAE law, but it essentially relates to those rules and norms that are deemed so essential that a failure to comply would do damage to the public good or the state's sovereignty. Any contract or award that breaches public policy is to be set aside or voided.

The question whether an award was deemed to be against public policy was recently considered by the Dubai Court of Cassation in Civil Appeal For Cassation No. 275 of 2014. The Court concluded that certain issues relating to the ownership of real estate property in the UAE were an issue of public importance which must be adjudicated by the local courts rather than adjudicated on arbitrators or made subject to a private settlement agreement. Therefore, the Court intervened to review the merits of the case and the grounds on which the arbitration award was issued, but ultimately found that the award had not breached public policy and would be recognized and enforced.

Summary of case

In 2007, the Claimant (who is not a GCC citizen) entered into a share sale and purchase agreement ("SPA") with the Respondent (a citizen of Saudi Arabia) pursuant to which the Claimant sold the Respondent 25% of his shares in a real estate company resulting in the Respondent thereafter holding 75% of the shares and the Claimant holding the remaining 25%. A dispute arose between the parties over the performance of the obligations under the SPA and, in accordance with the dispute resolution provisions of the SPA, the Claimant filed a claim with the Dubai International Arbitration Centre (DIAC) to resolve the dispute and to nullify the SPA.

The arbitrators determined that the SPA was valid and ordered the Claimant to pay the Respondent compensation in accordance with the Respondent's counterclaims.

The Claimant then filed a case with the First Instance in Dubai to nullify the award.

Court of First Instance and Court of Appeal

The Court of First Instance in Dubai ruled that the award had been issued pursuant to a valid arbitral procedure and was valid.

The Claimant appealed, but the Court of Appeal in Dubai upheld the judgment of the Court of First Instance.

Court of Cassation

The Claimant appealed to the Court of Cassation on the grounds that the arbitration tribunal exceeded its authority by deciding matters relating to public policy. It argued that:

- the ownership of the shareholdings in the company were contrary to the UAE Federal Law concerning Commercial Companies which requires a company in the UAE to have one or more UAE national partners whose share in the company's capital is not less than 51%.
- the SPA included a transfer to the company of the ownership of land plots and properties located in areas of Dubai which were not designated freehold areas, and so were areas where ownership is restricted to UAE & GCC citizens (under Article 4 of the Law No. (7) of 2006 regarding property registration). The company was not wholly owned by a UAE or a GCC national.
- the land plots and properties were sold without being registered in the Real Estate Register which means that the relevant contracts of sale were void and, in turn, that the SPA was void.

The Court of Cassation rejected the appeal and upheld the award.

The Court explained that the Unified Economic Agreement between the Countries of the Gulf Cooperation Council (ratified by the UAE by Decree No. 55 of 2002) granted all GCC natural and legal citizens the same treatment as UAE citizens including all economic activities, especially the engagement in all economic, investment and service activities, stock ownership and company formation. Law No. 7 of 2006 concerning property registration in Dubai provides that the right to own property in the Emirate of Dubai shall be restricted to UAE and GCC nationals and to companies incorporated properly in the UAE. However the Court found that the company was in fact properly set up in the UAE with one of its shareholders being a GCC national holding a minimum of 51% of the share capital. It was not restricted from owning property in Dubai or trading or buying shares and setting up companies.

As regards the failure to register the properties, the Claimant initiated the arbitration to claim for compensation for alleged damages, loss of profit or loss of opportunity and neither party pleaded at that time that the agreements were void for not being registered on the Interim Real Estate Register. Accordingly, the arbitration tribunal only reviewed and determined the issues before it and did not consider the issues of the validity of the agreements or expatriating property and only concluded the factual findings that since 51% of the company's shares were owned by a GCC citizen then it would not contravene the Companies Law.

The Court of Cassation therefore concluded that the award did not contravene Public Policy and found that the Claimant's argument in this regard were baseless and to be dismissed.

This judgment is a timely reminder that the UAE Courts, in common with all national courts, have a duty to consider any allegations made that an award contravenes public policy. Such allegations may then necessitate a review of the merits of the award that ordinarily the court would not do. This does not however mean that the Court will abuse this power to find ways to negate the award, as is sometimes feared. As can be seen in this case, the Court considered and rejected the allegations, and upheld the award.