

# Some Commercial and Civil Disputes That May Not Be Settled by Arbitration In the UAE

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## Introduction

Generally, UAE law allows parties to arbitrate their disputes provided such disputes are capable of amicable settlement. This means that if the dispute cannot be amicably settled, then, the dispute cannot be arbitrated. Hence, disputes related to public policy, criminal acts, or certain issues of family law may not be settled by arbitration. However, this list is not exhaustive; some commercial and civil disputes that might be expected to be arbitrable are not. I will highlight in this article five types of disputes that cannot be arbitrated under UAE law. Any arbitration agreement relating to these types of disputes will be null and void, and if an arbitration award is issued, the competent court may be expected to nullify it.

## Disputes Cannot Be Arbitrated In UAE

### 1. Rental Disputes In Abu Dhabi:

The Abu Dhabi Lease Law No.: (20) of 2006, as amended by Law No.: (6) of (2009) ("**Abu Dhabi Lease Law**"), provides that rental disputes must be referred to the Rental Disputes Committee, which is established by the law. However, article (2) stipulates that it applies to all types of property that are rented for a commercial, industrial, or any professional activities, except the following activities, which are not governed by the Abu Dhabi Lease Law:

1. Agricultural lands and its related buildings.
2. All properties owned by the government, which are rented for residential purposes.
3. All properties related to ADNOC, which are rented for manufacture purposes for the petroleum services.
4. Properties rented for hotel and tourist purposes, including furnished apartments.
5. Certain residential properties.

Based on the above, the cassation precedents issued by Abu Dhabi Cassation Court and the Federal Supreme Court confirm that where the Abu Dhabi Lease Law is applicable to a given rental dispute, the dispute may not be arbitrated and must be referred to the Rental Disputes Committee.

For example, in a dispute that arose between a tenant and a landlord regarding a lease agreement related to a hotel and tourist properties, the tenant filed an arbitration case against the landlord based on an arbitration clause set out in the lease agreement. The tenant obtained an arbitration award on its favor. The tenant filed a case before Abu Dhabi Court of First Instance to ratify the arbitration award. The Court of First Instance and the Appeal Court ratified the arbitration award, and thus the landlord escalated the dispute to the Cassation Court, and requested it to nullify the arbitration award on the premise that one may not be allowed to arbitrate the rental disputes according to the Abu Dhabi Lease Law.

The Abu Dhabi Cassation Court issued its judgment No.: (873) of 2009, in which it confirmed that the Abu Dhabi Lease Law provides that disputes between the tenants and landlords which resulted from the lease agreements, must be referred to the Rental Disputes Committee which is established by the Abu Dhabi Lease Law. The Cassation Court highlighted that the parties to the lease agreements cannot refer their

disputes to arbitration, as the jurisdiction of the Committee is related to public policy. Nevertheless, the Cassation Court pointed out that if the Abu Dhabi Lease Law does not govern the rental dispute, such as the rental disputes related to the properties rented for hotel and tourist purposes, then the parties are allowed to arbitrate their rental disputes. Therefore, the Cassation Court upheld the Appeal judgment, which ratified the arbitration award.

In another case, Al Tamimi & Co successfully represented a landlord in a rental dispute before the Rental Disputes Committee against the tenant. The latter requested the said Committee to appoint an arbitrator as the lease agreement contained an arbitration clause. Al Tamimi highlighted to the Committee that the Abu Dhabi Lease Law was applicable to the dispute, and thus the arbitration clause was null and void as the Rental Disputes Committee had exclusive jurisdiction to review the rental disputes as long as the Abu Dhabi Lease Law was applicable on the dispute. The dispute was escalated to the Federal Supreme Court, which issued its judgment number (17/2017). The Court confirmed that the arbitration clause set out in the lease agreement was null and void as the rental disputes were governed by the Abu Dhabi Lease Law and thus could not be arbitrated.

## **2. Civil Disputes Related to Insurance:**

The UAE Civil Transactions Code ("**CTC**") provides in article (1028) that an arbitration clause may not be included in an insurance policy, unless the arbitration clause is contained in a special agreement separate from the general printed conditions of the insurance policy.

In a dispute between an insurance company and the insurer, the latter filed a case before the Federal Court of First Instance and requested the Court to appoint an arbitrator on the basis that the general printed conditions of the insurance policy contained an arbitration clause. The insurance company objected to the insurer's request, and highlighted that the arbitration clause was null and void based on article (1028) of the UAE CTC, as it was not set out in a special agreement separate from the general printed conditions of the insurance policy. The Federal Court of First Instance, and the Appeal Federal Court rejected the insurance company's defense, and accordingly the insurer's request to appoint an arbitrator was accepted.

The above dispute was escalated to the Federal Supreme Court, which issued its judgment number (278 of 15 judicial year), in which it confirmed that any arbitration clause contained in the general printed conditions of the policy of insurance will be null and void where the UAE CTC applies to the dispute. However, if the dispute that arose from the insurance contract was not governed by the UAE CTC, but governed by the UAE Commercial Transaction Code, then, the arbitration clause set forth in the policy of insurance would be valid, even it was not contained in a special agreement separate from the general printed conditions of the policy of insurance.

## **3. Disputes Related to Registered Commercial Agencies:**

Article number (1) of the UAE Commercial Agency Law No.: (18) of 1981, and its amendments ("**CAL**") defines a commercial agency ("**Commercial Agency**") as *"Representing the principal by an agent to distribute, sell, present, and/or provide a commodity or service inside the UAE against a commission or profit"*.

Pursuant to articles numbers (27 & 28) of the UAE CAL a special committee enjoys exclusive jurisdiction to review and decide on disputes relating to the Commercial Agencies. Article number (6) of the UAE CAL law grants the UAE local courts an exclusive jurisdiction to review any dispute resulting from certain (but not all) Commercial Agency contract, and any agreement in contrary shall be null and void. Thus, it is clear that the UAE legislator opted not to allow the parties of a Commercial Agency contract to arbitrate their

disputes.

In a dispute arose between the commercial agent in UAE and the principal, the commercial agent resorted to the arbitration according to an arbitration clause set forth in the Commercial Agency contract. The latter obtained an arbitration award on its favor against the principal, whereas the commercial agent was awarded around AED 329 million. The commercial agent filed a case before the Federal Court of First Instance to ratify the arbitration award. The principal requested the Court to nullify the arbitration award as the disputes related to the Commercial Agencies cannot be arbitrated, and consequently the arbitration agreement and the arbitration award ought to be set aside. The Federal Court of First Instance and the Appeal Federal Court rejected the principal's request to nullify the arbitration award, and thus both Courts ratified the arbitration award.

The principal challenged the judgment issued by the Federal Appeal Court before the Federal Supreme Court, which issued its judgment number (814) of 2011. The Court found that any dispute related to a Commercial Agency cannot be arbitrated as long as the said agency is registered in the commercial agency register. Hence, the arbitration award was nullified.

#### **4. Disputes Related To Public Policy:**

There is a well established legal principle in UAE provides that any dispute in relation with a mandatory rule related to the public policy, cannot be amicable settled and thus shall not be arbitrated. Accordingly, the arbitrators in UAE are not allowed to review and decide on any dispute that is related to any mandatory rule related to the public policy. This principle is known in the international community as "arbitrability". Therefore, we will shed light on two types of disputes that cannot be arbitrated as they relate to mandatory rules that are connected to the public policy.

##### **(a) Certain Disputes Related to Companies:**

In a dispute that arose between the partners of a limited liability company located in UAE, one of the partners filed an arbitration case against the other partners, in their personal capacity, without involving the company ("**Company**"). The claimant relied on the arbitration clause set forth in the company's article of association. The claimant requested the arbitrators to order his withdrawal from the company, and order the remaining partners, in their personal capacity, to pay the value of his shares and outstanding amounts that included profits, market value of the company's reputation, etc. During the arbitration proceedings, the respondents argued that the arbitral tribunal lacked jurisdiction to review the dispute since the related governing articles of the UAE Companies Law are mandatory rules related to the public policy. The arbitral tribunal rejected the respondents' defence. The claimant obtained an arbitration award in its favour, and the claimant thus filed a case before the Dubai Court of First Instance to ratify the arbitration award. The respondents filed a counterclaim to nullify the arbitration award.. The Court of First Instance and the Appeal Court ratified the arbitration award. The dispute relating to the ratification of the arbitration award was escalated to the Dubai Cassation Court.

The Cassation Court issued its judgment number (150) of 2014. The Court asserted that the provisions laid down in the UAE Companies Law in articles numbers (218, 222, and 322) are mandatory rules related to the public policy. These articles provide that (i) the company has an independent artificial capacity and owns all its shares and money (ii) the partners' liability in limited liability companies is limited to their shares in the company, unless there is evidence of a grave error or fraud. The Cassation Court pointed out that the claimant's claim was not addressed to the partners in their personal capacity, as the claim was directed to the Company, nevertheless the claimant did not involve the Company. The Cassation Court further highlighted that the partners' liability was limited to their shares in the Company, unless they committed a fraud or grave error, and these are mandatory rules connected to the public policy, and thus these provisions could not be the subject of an amicable settlement nor arbitrated. Consequently, the Cassation Court decided to overturn the Appeal judgment, and accordingly decided to nullify the

arbitration award, as the arbitrators did not have the jurisdiction to review and decide on the dispute as it was governed by mandatory rules related to public policy.

## **5. Certain Disputes Related To Real Estate:**

Article (3) of Dubai Law, which organizes the real estate preliminary register, provides that all the sold off plan properties must be registered in the said preliminary register. If this procedure is not followed, then, the sale and purchase agreement for the off plan property will be null and void. This rule is a mandatory rule that is related to the public policy, and accordingly any agreement between the parties in contrary to Article 3 will be null and void.

Therefore, if the subject of any arbitration case is related to the nullification of a sale and purchase agreement based on a failure to register the off plan property, then, the arbitration award ought to be nullified because the dispute cannot be amicably settled as it relates to a mandatory rule of the public policy.

In a dispute between a purchaser and a developer regarding a sale and purchase agreement related to an off plan property in Dubai, the purchaser filed an arbitration case against the developer; the purchaser requested the arbitral tribunal to nullify the agreement because the respondent failed to register the off plan property on the real estate preliminary register. The arbitration award issued in favor of the purchaser and did nullify the sale and purchase agreement for the aforesaid reason. Thereafter, the purchaser filed a case before Dubai Court to ratify the arbitration award. The developer requested the Court not to ratify the arbitration award as the subject of the arbitration case related to a mandatory rule of the public policy. The Dubai Court of First Instance and the Appeal Court ratified the arbitration award.

The Dubai Cassation Court issued its judgment number (180/2011), in which it highlighted that disputes which could be arbitrated are those which could be amicably settled according to article number (203/4) of the UAE CTC. Accordingly, as long as the dispute is related to a mandatory rule of the public policy, such as the law provision related to registering off plan properties, then, the dispute could not be arbitrated because it could not be amicably settled. Consequently, the Dubai Cassation Court overturned the Appeal judgment, and decided to nullify the arbitration award.

## **Conclusion**

There are certain disputes that cannot be arbitrated under UAE law, such as:

1. Rental disputes in Abu Dhabi, unless they are related to:
  - Agricultural lands and its related buildings.
  - All properties owned by the government, which are rented for residential purposes.
  - All properties related to ADNOC, which are rented for manufacture purposes for the petroleum services.
  - Properties rented for hotel and tourist purposes, including furnished apartments.
  - Certain residential properties.
2. Civil disputes related to the insurance policy, when the arbitration clause is set out in the policy of insurance, unless the arbitration clause is contained in a special agreement separate from the general printed conditions of the policy of insurance (or where the insurance policy is governed by the Civil Transactions Code).
3. Disputes related to Commercial Agency contracts where the relevant agency is registered in the commercial agency register.
4. Disputes related to certain mandatory provisions in the UAE Companies Law, such as those set forth in articles numbers (218, 222, and 322).

5. Real estate disputes in Dubai related to the registration of the sold off plan properties in the real estate preliminary register.