Abu Dhabi Cassation Court acknowledges verbal, implied, or apparent authority to bind principal to an arbitration agreement

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Novelty

In a landmark judgment by the Abu Dhabi Cassation Court in October 2021, the Court confirmed that an agent/representative may bind a principal to an arbitration agreement if they have:

- Explicit written authority.
- Explicit verbal authority.
- Implied authority.
- Apparent authority.

It was recently the case that the Dubai Courts acknowledged apparent or implied authority to bind a party to an arbitration clause/agreement whilst the Abu Dhabi Courts generally required evidence of explicit written authority to do so.

As a general matter, explicit authority as construed by the Abu Dhabi Courts had high thresholds such as maintaining an attested and valid power of attorney.

This novel judgment by the Abu Dhabi Cassation Court establishes substantial precedent in expanding the validity of explicit authority to include verbal authorization.

But more so, creates a new dynamic in acknowledging implied authority of an agent/representative to bind a party to an arbitration agreement.

And furthermore, the position by the Abu Dhabi Cassation Court falls in line with global jurisprudence and practice in accepting the general principle of apparent authority (sometimes referred to as 'ostensible authority') which is a central principle of the doctrine of agency.

Petition to invalidate the award

Two subcontract agreements were entered into by the disputing parties containing an arbitration clause/agreement.

The dispute was adjudicated, and an arbitration award was issued, under the rules of the Abu Dhabi Commercial Conciliation and Arbitration Centre.

The net-loser of the arbitration procedures challenged the award before the Abu Dhabi Appeals Court on the basis that the signing representative was not an authorized signatory per the petitioner's corporate bylaws and commercial registration records, nor did the representative have explicit authority to agree to an arbitration clause/agreement.

The petitioner relied on Article 58/2 of the Federal Civil Procedures Law which states:

"It is not valid, without a special authorization, to declare a right of the defendant, disclaim it, reconcile or arbitrate therein, approve the oath, or direct or challenge it, abandon the litigation, renouncing the judgment entirely or partially , relinquishing one of the channels of appeal therein, releasing the attachment (seizure), relinquishing the insurances with the continuation of the debt, claiming the falsification, recusing the judge or the expert or the real petition, or accepting it, or any other disposition that the law requires therein a special authorization."

Appeals Court finding

The Abu Dhabi Appeals Court reasoned that the contracts, subject of the arbitration award, were signed by a representative who had previously been issued a duly notarized power of attorney, and that the contracts were signed within the year 2016 whilst the power of attorney was valid, notwithstanding lack of explicit authority in the power of attorney documents to bind the principal to an arbitration agreement.

The Court continued to reason that the representative had indeed signed the contracts between the two parties in his capacity as a representative, and hence the petitioner (principal) is bound by all the clauses in those contracts, including the agreement on arbitration in the event of a dispute between the two parties.

The court also factored in that it was proven during the arbitration proceedings that the petitioner paid some of the payments owed to the net-winner of the arbitration award and that the dealings regarding the contract transactions were conducted with the representative signatory of the contracts subject of the arbitration award.

The Appeals Court concluded that these elements suffice to establish the validity of the arbitration agreement between the parties, and no basis is available to invalidate the arbitration agreement pursuant to the grounds available in Article 53 of the Federal Arbitration Law which governs possible objections to an arbitral award.

Cassation Court decision

The Abu Dhabi Cassation Court upheld the finding of the Appeals Court and further elaborated that:

"…the authority of the agent may be explicit, implicit or apparent, and the authorization is explicit if it is verbal or

written, and the authorization is implicit if it is inferred from the reality of the situation, and everything that was said or written, or the normal method of dealing may be considered…"

The Cassation Court rejected the petition and upheld the validity of the arbitration agreement.

Apparent or implied authority test

In recent years the UAE courts have identified certain elements that test whether apparent or implied authority binds a principal to an arbitration agreement signed by an agent/representative lacking explicit authority. The courts consider any or all of the following elements if evidenced.

- The contract states the name of the signatory in the preamble.
- The contract states the name of the signatory in the signature page.
- The contract is stamped with the corporate seal/stamp.
- The contract is signed/initialed on every page.
- The contract is on the company's letterhead.
- The contract was operated by the company.
- The contract was overseen by the signing agent/representative.
- The signing agent/representative communicated to the effect of enacting the transaction/contract.

The courts do not necessarily require all these elements to be evidenced, but use their application to weigh and test whether implied or apparent authority manifests.

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