# Compensating the Void: UAE Tortious Liability for Unauthorized Arbitration Agreements and the Revival of Set-Aside Awards

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The annulment of an arbitral award due to a strict procedural defect is often a frustrating experience for a prevailing party. A common scenario arises when a counterparty successfully sets aside an unfavorable award by arguing that their legal representative lacked the explicit authority to agree to arbitration or its specific terms. However, a profound judgment by the Dubai Court of Cassation (Challenge Nos. 1262 and 1282 of 2016 Civil) has established a robust remedy. The overriding theme of this ruling is the absolute right to claim compensation for an unauthorized agreement to an arbitration clause in cases where an award has been set aside, partly or fully.

**The Factual Matrix and the Court's Pronouncements** In the dispute before the Court, the claimant secured a commercial arbitration award that included a substantial sum for legal costs. The respondent company subsequently applied to the courts to partially set aside the award concerning those legal costs. The company argued that its legal agents signed the Terms of Reference, granting the tribunal the power to allocate costs, without possessing the explicit, special authorization required under UAE law.

Refusing to accept this loss, the original claimant filed a civil lawsuit against the respondent company and its legal agents, seeking tortious compensation equal to the exact

amount of the nullified legal costs. The Dubai Court of Cassation firmly upheld the lower courts' rulings in favor of the claimant.
The Court laid down the foundational principle of this liability, stating:

> *"Arbitration is a mutual agreement between contracting parties, i.e., an agreement on mutual obligations to submit to the judgment of arbitrators, and the nullity of agreements is a relative nullity."*

Crucially, the Court determined that the nullification of an award does not absolve the at-fault party from the financial consequences of their bad faith, establishing that:

> *"Once nullity is established, it is permissible, according to general rules, to seek compensation from the party in the contract who caused the nullity, provided its cause came from their side and as a result of a fault attributed to them, while the other party believed in the validity of the contract and built their dealings on the basis of this belief. The basis for compensation in this case is the fault of the responsible party to whom the nullity is attributed and resulting from a cause coming from their side."*

The Court found that the respondent company had acted with deliberate bad faith to exploit the procedural defect. The judgment affirmed:

> *"the establishment of the Appellant's fault by intentionally concealing the issue of its authorization to the Second and Third Respondents regarding the signing by the Second Respondent of the Terms of Reference for arbitration in her capacity as a legal agent for the Appellant and authorizing the arbitral tribunal to adjudicate the legal costs… and the Appellant's silence in objecting to that until the issuance of the arbitral tribunal's decision based on these Terms of*

*Reference."*

The Court emphasized that *"good faith dictates that it should inform the First Respondent of its non-approval of this condition and that it does not bind it, in a manner contrary to what it clung to in the lawsuit for the nullification of the arbitration award."* This wrongful conduct caused harm *"represented in the loss of opportunity to collect the legal costs in the adjudicated amount, which is the basis of the Appellant company's liability requiring it to pay appropriate compensation to redress the damage."*

**Allocating Liability: Shielding the Agent, Penalizing the Principal** When addressing whether the legal representatives themselves should be jointly liable for acting without authority, the Court protected agents acting within the apparent scope of their relationship unless personal wrongdoing is proven. The Court ruled that *"if the agent or representative concludes, within the limits of his agency, a contract or transaction in the name of the principal, its provisions and the rights and obligations arising from it are added to the principal."*

Dismissing the claims against the agents, the Court noted that *"The agent is not liable if the transaction they concluded with a third party in the name of the principal is void or voidable, unless a personal fault is proven on their part. Thus, the agent is not liable towards third parties unless they commit a fault warranting their liability; if they do not commit a fault, they are not liable even if a third party suffers damage from the execution of the agency."* Because the company permitted the agents to proceed and intentionally concealed the authorization defect internally, liability fell squarely on the corporate principal.

**Global Perspectives on Procedural Bad Faith** It is worth noting in passing that the posture adopted by the UAE courts shares conceptual DNA with legal mechanisms in other global jurisdictions designed to combat bad faith in proceedings. In common law jurisdictions, such as the United States, the United Kingdom, Hong Kong or Australia, courts frequently address unauthorized representation through the doctrine of breach of warranty of authority, allowing an injured party to claim wasted costs from an agent who acted without proper backing, or from a principal whose deceitful conduct caused the reliance under principles of ostensible authority. Meanwhile, in civil law systems like Germany and France, courts regularly utilize the doctrine of *culpa in contrahendo* (fault in contracting) to award damages against parties who negotiate or participate in agreements in bad faith while knowing they lack the legal capacity to be bound.

**A New Recourse to Revive Set-Aside Awards Under UAE Law** This judgment answers a critical question for practitioners and businesses: Does this ruling grant parties who have previously had awards set aside a new avenue of recourse against companies or agents to effectively "revive" the values of those nullified awards?

The general answer is yes; through the mechanism of tortious liability rather than contractual enforcement. Historically, the annulment of an arbitral award due to a lack of signatory capacity left prevailing parties assuming their financial victory was permanently extinguished. However, this Cassation judgment confirms that the procedural death of an award does not extinguish the underlying economic entitlement if the annulment stems from the opposing party's fault.

The Court explicitly endorsed this bypass, clarifying that the prior annulment judgment *"does not preclude the First Respondent from filing the current lawsuit requesting compensation for the very same legal costs of the arbitration against the Appellant based on its causation of this nullity, and that judgment does not hold any res judicata that precludes the First Respondent from requesting compensation for the fault committed by the Appellant which caused the First Respondent not to obtain the legal costs of the arbitration."*

The Court noted a clear distinction: *"this nullity adjudicated* *in the lawsuit for the nullification of the arbitration award relates to the agency relationship between the principal and its agent and the limits of that agency, whereas the current lawsuit is about the First Respondent's request for compensation for the legal costs of the arbitration for which the issued arbitration award was ruled null."*

Therefore, aggrieved parties can now pivot to file a tort claim under UAE law, successfully arguing that a company's intentional concealment or strategic silence regarding its agent's authority constitutes an actionable harm (and equally, against the agents themselves if personal fraud or deceit can be proven). Through this, a party can claim the exact financial value of the annulled award as compensation.

One procedural caveat remains regarding delay interest. Because this revived value is awarded as tortious damages rather than a fixed contractual debt, the Court noted that *"this adjudicated amount was not of a known amount in the court's estimation and was subject to its estimation even if it matches the value of the legal costs in the arbitration case which was ruled nullified… so this similarity does not make it of a known amount."* Consequently, *"if the judge has discretion in estimating it, the interest is not due except from the date the judgment issued for the adjudicated amount becomes final."*

Ultimately, this judgment acts as a formidable deterrent against guerrilla arbitration tactics. It ensures that the strict structural rules of arbitration cannot be exploited to evade financial liability, providing a robust pathway to fully resurrect the value of an annulled award through civil compensation.

*Wasel & Wasel advises on complex commercial disputes, UAE domestic and international arbitration, and cross-border enforcement litigation within the UAE courts and the broader GCC. The firm advises financial institutions, investors, technology companies, and commercial entities in high-stakes proceedings before the UAE Federal and Emirate-level Courts. Our practice includes navigating complex set-aside* *applications, managing multi-jurisdictional arbitral disputes, and enforcing arbitral awards and alternative legal remedies, such as tortious claims regarding arbitration awards, to safeguard our clients' rights.*

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