# Dubai Cassation Court accepts arbitration jurisdictional challenge even when not filed at Primary and Appeals Courts

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**Novelty**

It has generally been the case that a jurisdictional challenge against the courts to hear a dispute where an arbitration agreement exists must be made at the first hearing that takes place, at the first level of the overseeing trial court.

(To clarify – the 'first hearing' is in reality usually the first case management session where a party is ordered to file their pleading. It does not necessarily refer to be a trial hearing before the supervising or trial judge.)

Long-standing case law authority has been that where a party does not challenge the courts' jurisdiction on the grounds that an arbitration agreement exists between the parties, it would be deemed as implicit consent to the courts' jurisdiction.

In a landmark judgment passed by the Dubai Cassation Court in October 2021, the Court found that:

- The court may of its own accord reject jurisdiction where an arbitration agreement exists.

And (more significantly):

- That a party can file its jurisdictional challenge for

the first time at the appellate or cassation courts – even if not presented at the primary or the appeals courts.

**Case**

The dispute revolved around a private corporate share acquisition where the share transfer agreement was subject to an arbitration agreement as the dispute resolution forum.

The buyers filed their claim before the Dubai Primary Court seeking claw-back of the share sale with an order on the seller to re-acquire the shares.

The seller did not defend before the Dubai Primary Court, nor before the Dubai Appeals Court, only filing their defense and rejection of the courts' jurisdiction before the Cassation Court.

**Rulings**

The Dubai Primary Court rejected its jurisdiction to hear the dispute by its own accord, citing that the parties had agreed to resort to arbitration – even though the seller/defendant had not appeared nor filed any statements before the Court.

The buyers appealed before the Dubai Appeals Court.

The Dubai Appeals Court overturned the Dubai Primary Court judgment and ruled on the substance of the dispute. The seller/defendant had not appeared nor filed any statements before the Appeals Court either.

The seller/defendant petitioned the Dubai Cassation Court to review and overturn the Dubai Appeals Court judgment.

The Cassation Court ruled that:

"…and it was proven in the evidence that the appellant [seller] did not appear before the Primary Court or before the

Appeals Court, whose judgment is being contested, and he [the seller] did not submit any memorandum of his defense in the case, proving that he had not made any request or any defense or argument on the subject matter of the case in the two stages of litigation and that he had done so for the first time – arguing against the jurisdiction of the court due to the existence of the arbitration agreement – before this [Cassation] Court before making any request or any defense in the subject matter of the case…so the appellant's argument that the Dubai Courts have no jurisdiction over the dispute in question due to the presence of the arbitration agreement is valid, and since the judgment of the Appeals Court has contradicted this consideration and decided on the merits of the case, it is thus defective, which requires its revocation."

The Cassation Court overturned the Appeals Court judgment and ordered that the Dubai Courts lack jurisdiction in view of the arbitration agreement.

As noted, the position by the courts has generally been that a party must iterate and voice their challenge to the jurisdiction of the courts at the first hearing/case management session.

This judgment and position taken by the Dubai Cassation Court expand the temporal and procedural spectrum of challenging the courts' jurisdiction where an arbitration agreement exists between the litigants – granting litigants avenue to trigger jurisdictional arguments at latter court stages.

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