Landmark Arbitration Victory: Dubai Court Affirms Recoverability of Legal Costs Under ICC Rules

November 19, 2024

In a monumental decision, the Dubai Court of Cassation has issued a groundbreaking judgment in Case No. 756/2024, reshaping the arbitration landscape in the country. This judgment confirms that arbitral tribunals operating under the **ICC Rules** have the authority to award legal fees to parties, even if not explicitly stated in the arbitration agreement. This marks a significant departure from previous rulings that limited such recoverability.

At **Wasel & Wasel**, we had the honor of representing the successful party in this landmark case. We presented arguments emphasizing that **Article 38(1) of the ICC Rules** inherently empowers arbitral tribunals to award legal fees, as they form an integral part of the costs incurred by parties during arbitration. We referenced authoritative sources and interpretations by the ICC, which clarify that arbitration costs include not only the fees and expenses of the arbitrators and administrative expenses but also the legal fees and expenses of the parties.

Reversing Previous Limitations

Historically, the courts in Dubai held a narrow view on the recoverability of legal fees in arbitration. In prior cases over the years, the Dubai courts had determined that unless the arbitration agreement or the arbitration rules explicitly

granted the tribunal the power to award legal fees, such costs could not be recovered. This interpretation posed challenges for parties seeking to fully recover their arbitration expenses.

The Court's Reasoning

In this recent judgment, the court examined **Article 38(1) of the ICC Rules**, which states:

"The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration."

The court emphasized that when the wording of a legal provision is clear and unambiguous, it should be applied as written without resorting to interpretation that alters its meaning. The use of the word "include" indicates that the list of costs is not exhaustive, thereby encompassing legal fees incurred by the parties.

The court further noted that the phrase "and other reasonable costs incurred by the parties for the arbitration" is broad and unrestricted, covering various costs without limitation. This interpretation aligns with common practices in international arbitration, recognizing that legal fees are a significant component of the costs parties incur.

The court reasoned as follows [translated]:

"And the legal costs, which include lawyers' fees paid by the parties to the legal representatives who represent them in arbitration proceedings, are considered reasonable costs incurred by the parties in arbitration. Therefore, they are deemed arbitration expenses that are estimated and awarded by

the arbitral tribunal according to the text of the first paragraph of Article 38 of the aforementioned rules. This is not altered by the argument that the absence of an explicit mention of legal representatives' fees—as is explicitly stated in the first paragraph of Article 36 of the 2022 Rules of Arbitration of the Dubai International Arbitration Centre—would mean they are not considered arbitration expenses. This is because such an absence does not imply that the drafter of the ICC Rules intended to exclude the arbitral tribunal's jurisdiction to award lawyers' fees after including the phrase 'and other reasonable expenses incurred by the parties in arbitration,' which encompasses all reasonable costs incurred by the parties, including legal costs like lawyers' fees.

Furthermore, asserting otherwise contradicts the consistent practice of the ICC Rules, where Article 37(1) of its rules effective since 2012 includes the phrase 'reasonable legal costs and other expenses incurred by the parties in arbitration.' According to the ICC Guide, which provides commentary on these rules, the arbitral tribunal considers the following categories of recoverable costs: (a) fees and expenses of the parties' lawyers. This same text appears in Article 38(1) of its rules effective since 2017. Moreover, international arbitration practices applying these rules have established that lawyers' fees are included among the reasonable costs incurred by the parties in arbitration, which are estimated and awarded by the arbitral tribunal."

Implications for Arbitration in Dubai

This judgment has practical implications for arbitration proceedings in Dubai. The court's decision brings Dubai's arbitration practices closer to international standards, which commonly allow for the recovery of legal fees as part of arbitration costs. This alignment enhances the jurisdiction's appeal to parties seeking arbitration consistent with global practices.

Parties can now approach arbitration in Dubai with increased confidence that they can recover reasonable legal fees, which may influence their decision to arbitrate disputes in this jurisdiction. This greater certainty reduces the financial risk associated with arbitration and ensures that parties are more likely to be fully compensated for their legal expenses if successful.

Moreover, arbitral tribunals operating under the ICC Rules now have clear authority to award legal costs. This clarification contributes to more predictable and fair outcomes in arbitration proceedings, as tribunals can ensure that successful parties are not unduly burdened by their legal expenses.

Our involvement in this case reflects our commitment to contributing to the development of arbitration law in the region. By advocating for a practical interpretation of the ICC Rules that recognizes the full scope of recoverable costs, we aim to support efficient and equitable dispute resolution processes.

We believe that this decision will positively impact parties considering arbitration in Dubai, offering a clearer understanding of the potential costs and recoveries involved.

Conclusion

The Dubai Court of Cassation’s judgment in Case No. 756/2024 provides important clarification on the recoverability of legal fees under the ICC Rules. By affirming that legal fees are included in the costs of arbitration, the court has enhanced the predictability and fairness of arbitration proceedings in Dubai.

At **Wasel & Wasel**, we are pleased to have led litigation to this outcome. Our focus on practical solutions and thorough legal analysis was instrumental in achieving a result that benefits not only our client but also the broader arbitration

community in Dubai.

This decision offers greater clarity for parties engaging in arbitration and supports the use of arbitration as an effective method for resolving disputes.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com