

My Space



KARTEEKKA TYAGGI is a Dubai based corporate and commercial lawyer with international experience of having worked in jurisdictions around the globe. Karteekka has worked with leading law firms in India before moving to UAE, where she worked with various corporate houses. She advises clients on International business and risk strategy, claims management, cross-border investments, acquisitions, joint ventures and commercial & regulatory issues.

Arbitration Agreements in UAE: The Courts View

It is seen commonly that contracting parties often agree upon and include dual and conflicting jurisdictional clauses, where the contract contains an arbitration clause as well as a clause, which allows the contracting parties to seek redressal of disputes from the courts.

The Courts of UAE have ruled on several occasions on such issues, where they have clearly established the following principles:

1) Article 203 (1) of the UAE Civil Procedure Law (the "Law") provides that the parties to a contract may stipulate either in the basic contract or by a supplementary agreement that any dispute arising between them shall be referred to arbitration. Part 5 of the same Article provides that if the contracting parties have agreed to arbitrate, none of the parties shall be allowed to refer any disputes to the courts, but nevertheless, if one of the parties takes recourse to litigation and the other party does not object at the first hearing, the action must be tried by the courts and the arbitration clause shall be deemed to be cancelled.

In view of the above, the courts have specifically laid down on several occasions that in such cases, it is extremely important to raise an objection to the courts' jurisdiction in the very first hearing, failing which, the courts will assume that the other party has waived its right to submit the matter in dispute to arbitration and has accepted the courts' jurisdiction. It also has been ruled by the courts that where the



contracts provide for dual clauses of arbitration and courts' jurisdiction, the courts must give more consideration and weightage to the clause which is more detailed and clearer and defines the procedure, the subject of dispute and other considerations in more detail.

2) Part (2) of Article 203 goes on to provide that "No agreement for arbitration shall be valid unless evidenced in writing." This means that the courts will not accept any objection based on a verbal agreement to arbitrate or going further based on an unsigned annexure/enclosure providing for arbitration, which forms part of a signed agreement.

For instance, in a recent judgment, where the contract in question contained two parts-Parts 1, containing basic clauses and conditions, which referred to Part 2, deeming it as an integral and inseparable part of the entire agreement. Both the parties signed this Part, while the parties did not deem it necessary to sign the Part 2, since Part 1 already had a reference to it and the agreement could not be executed in the absence of Part 2. Since Part 2, which contained the actual arbitration clause, was

not signed by the parties, the courts rejected the objection to arbitration filed by one of the parties and went on to decide the matter.

Therefore, an arbitration agreement must be signed and the parties must ensure that each part, page, annexure and enclosure of the agreement is signed or initialed.

3) Part (4) of Article 203 provides that an arbitration agreement may be made only by the parties who are legally entitled to dispose of the disputed right.

While applying this part of the said Article, the courts have formed the view that an arbitration agreement cannot be resorted to by any of the parties who does not have a legal capacity or entitlement to dispose of the disputed right. The courts are of the opinion that agreeing to arbitration means waiving the right to file the claim before the national courts, which requires a special power of attorney. A simple delegation of authority without a special power of attorney will not suffice. Therefore, arbitration agreements signed by company employees and senior officials, not holding any special power of attorney, could be rendered null and void by the courts.