

inBrief

**Consistent messaging from the Dubai Courts: Arbitration clauses are to be construed as narrowly as possible**

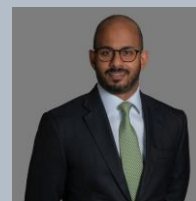
By Chatura Randeniya and Mamoun Osman | 12 September 2021

In a decision issued in July 2021, the Dubai Court of Appeal held that an arbitration clause should be construed narrowly, and emphasized that *everything that may be waived or prevents its* [i.e., the arbitration clause's] *application must be sought*.

In finding that the Dubai Courts have jurisdiction over the dispute, the Dubai Court of Appeal referred to judgments of the Dubai Court of Cassation characterizing arbitration as an exceptional means of dispute resolution and, being a departure from the general rule that the courts have jurisdiction over disputes, arbitration clauses must be interpreted narrowly, *and everything that may be waived or prevents its application must be sought*. The latter phrase in particular is of interest, as it suggests that the Court will need to be satisfied that there exists no issue that might affect the applicability of an arbitration clause.

The dispute resolution clause in question, while containing the provisions regarding the number of arbitrators, the seat and the language of the arbitration, included language stating that any referral to arbitration will be 'without prejudice' to the jurisdiction of the UAE Courts and 'subject to agreement between the parties'. The Court of Appeal recognized that parties may agree to arbitration as a method of dispute resolution, provided that it does not conflict with public order. However, in this case the Court of Appeal found that there was no evidence that an agreement was reached between the parties to resolve disputes through arbitration as set out in the dispute resolution clause, and that consequently the forum for dispute resolution is the Dubai Court.

This judgment highlights the need to have a carefully drafted dispute resolution clause, particularly where the parties wish to have disputes resolved through arbitration.

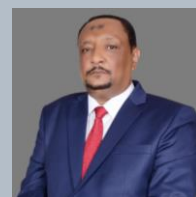
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Chatura's practice focuses primarily on dispute resolution. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, ICC and ad hoc arbitrations. He also works with local advocates on matters before the UAE Federal courts. Chatura regularly advises clients in high value construction, and maritime and shipping disputes. He is admitted as Attorney-at-Law of the Supreme Court of Sri Lanka. He is a recommended practitioner by Chambers and Partners and Legal 500.

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Mamoun's practice focuses on court litigation and commercial law and his experience includes conducting legal research, drafting all types of memoranda, pleadings and applications to all levels of local UAE courts. He has over fifteen years of experience representing clients before courts of jurisdiction, arbitration panels and other tribunals in all types of disputes.

The principle that arbitration clauses must be interpreted narrowly is a well-established one, and the language that *everything that may be waived or prevents its* [i.e., the arbitration clause's] *application must be sought* appears to have been used by the Dubai Court of Cassation as far back as in Petition No. 192 of 2007. This principle and precedent was part of a strategy successfully deployed by Afridi & Angell in a recent case before the Dubai Court of First Instance to argue that the Dubai Courts had jurisdiction over a dispute in which the plaintiff and one of the defendants had an arbitration agreement. The dispute in question arose from a real estate contract containing an arbitration clause. The developer at the time the contract was entered into had been replaced by the time the dispute arose, and the new developers were added as defendants to the court proceeding by the purchaser (our client). The court found that as the added parties did not have an arbitration agreement with the plaintiff, the court had jurisdiction over all of the defendants, notwithstanding that the plaintiff and the initial defendant had an agreement to resolve disputes through arbitration. ■

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