



# General Assembly of the Dubai Court of Cassation has provided needed clarity regarding the validity of arbitration agreements



Written by NICK OURY

The General Assembly of the Dubai Court of Cassation has recently issued a judgment in its Decision No. 10 of 2023 (the "**2023 Decision**"), in which it considered the legal principles regarding the validity of arbitration agreements. The General Assembly has directed that the principle established by the Dubai Court of Cassation in Contestation No. 379 of 2013 (the "**2013 Decision**") – that an arbitration agreement should be deemed abandoned upon closure of the arbitration file by an arbitration centre for the parties' non-payment of advance costs – should be disregarded. In the 2023 Decision, the General Assembly also reiterated the principles set out in Federal Law No. 6 of 2018 on Arbitration (the "**UAE Arbitration Law**") regarding the validity of arbitration agreements.

## Background

The General Assembly of the Dubai Court of Arbitration is a body established under Dubai Law No. 13 of 2016 on the Judicial Authority in the Emirate of Dubai (the "**Dubai Judicial Authority Law**"), with authority to consider and settle, inter alia, "*issues concerning a... complex*

*point of law*” and conflicts present in Dubai Court of Cassation judgments (Article 20). The General Assembly’s judgments are binding on all courts in Dubai.

The General Assembly received a reference from the Technical Office, another body within the Dubai Court of Cassation established under the Dubai Judicial Authority Law, requesting that the General Assembly disregard the 2013 Decision and adopt a principle that arbitration agreements are not nullified by non-payment of advance costs due to an arbitration centre.

The 2013 Decision was made following a party’s filing of its claim before the state courts of Dubai. The underlying contract

contained an agreement to settle disputes through arbitration. The claimant filed a claim with the Dubai International Arbitration Centre (“**DIAC**”) and paid its share of the advance on costs. The respondent refused to pay its share of the advance on costs, following which DIAC cancelled the proceedings. The claimant then filed a claim in the Dubai court and the respondent invoked the arbitration agreement in response.

The Dubai Court of Cassation in the 2013 Decision found that the arbitration agreement in the underlying contract had been abandoned by the respondent. The court’s decision was based on the respondent’s refusal to pay the

advance on costs owed to DIAC and the subsequent closure of the arbitration file. The court stated that the respondent could not rely on an arbitration agreement it had abandoned, and that the claimant was entitled to recourse to the courts.

The principle contained in the controversial 2013 Decision was inconsistently applied by the Dubai courts in subsequent decisions. Some courts, including the Dubai Court of Cassation, followed the principle in the 2013 Decision – see the Dubai Court of Cassation Case No. 210 of 2016, the Dubai Court of Cassation Case No. 403 of 2016, and the Dubai Court of Appeal decision in Appeal No. 13 of 2022.

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At other times, the Dubai courts have derogated from the principle set out in the 2013 Decision – see the Dubai Court of Cassation decision in Case No. 1514 of 2022.

## Judgment

In its 2023 Decision, the General Assembly ruled that the principle set out in the 2013 Decision be disregarded and that an arbitration agreement remained valid even after the closure of an arbitration file for a party's failure to pay the advance on costs owed to an arbitration centre.

The General Assembly's judgment referred to the principles set out in the UAE Arbitration Law. In particular:

- Article 45(1), which states that *"arbitration proceedings shall be terminated by the issuance of the award terminating the dispute by the Arbitral Tribunal"*; and
- Article 54(4), which provides that *"Unless otherwise agreed by the Parties, the Arbitration Agreement shall remain effective according to the provisions of the present Law after the nullification of the arbitral award, unless such nullification is based on that the agreement itself does not exist, or upon the forfeiture of its term, or its nullity, that it is incapable of being performed."*

Given the above Articles, the General Assembly reasoned that an arbitration centre's closing of an arbitration file for non-payment of advance costs would not invalidate the arbitration agreement and would not grant the courts jurisdiction to hear the dispute.

The General Assembly also reiterated other principles contained in the UAE Arbitration Law, including



that validly concluded arbitration agreements preclude the court's jurisdiction and that arbitration agreements remain valid in most cases even after an arbitral award is set aside.

## Analysis

The General Assembly's 2023 Decision provides clarity regarding the validity of arbitration agreements and the exclusive jurisdiction of arbitral tribunals granted therein. The 2023 Decision is especially welcome given the conflicting decisions in the Dubai courts following the 2013 Decision.

The 2023 Decision is binding on all Dubai courts, including the Dubai Court of Cassation. Parties can now take comfort that a validly concluded arbitration agreement will stand regardless of whether or not the relevant institution dismisses proceedings for lack of payment, and that it will not be invalidated by the setting aside of an award.

For further information, please contact [Nick Oury](#), Partner, or your usual Herbert Smith Freehills contact. *The author would like to thank Anant Rangan for his assistance in drafting this post.*

## About the author

**Nick Oury** is a partner at Herbert Smith Freehills, a global leading international law firm. He is a graduate of Oxford University and a solicitor advocate of England and Wales. Nick joined the London office of HSF 15 years ago, but has been based in Dubai for the last six years and leads HSF's Middle East construction and infrastructure disputes practice. Recognised as a leading individual for construction arbitration in the GCC and wider Middle East, Nick represents owners and contractors across a broad range of sectors, in particular energy, oil & gas and transport infrastructure.