

# Civil Liability of Arbitrators in the UAE – An Update

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The Dubai Court of Cassation in its recent decision in Case 484/2017 has set a new threshold for establishing the liability of arbitrators in civil matters, thereby providing some much needed clarity on this important issue.

Arbitration in the UAE, especially Dubai, has developed considerably in the past 20 years with the UAE establishing itself as a major hub for arbitration within the GCC. However, the amendment to the UAE Penal Code in 2016, which established criminal liability for arbitrators seen to breach the duty of neutrality and integrity, threatened to undermine the arbitration landscape in the UAE. The Dubai Court of Cassation's recent decision in Case 484/2017 has provided some guidance on arbitrators' liability in civil cases, thereby bringing the standard of civil liability under UAE law more in line with offshore jurisdictions in the UAE and other countries in the region.

## Civil Liability of Arbitrators in the UAE: An Overview

There is no standalone arbitration law in the UAE, however we understand that the draft federal Arbitration Law has recently been approved by the Federal National Council. It is not known how the new law will deal with the civil liability of arbitrators; however the current provisions governing arbitration are set out in Articles 203-218 of the UAE Civil Procedure Law (Federal Law No 11 of 1992, as amended). In these articles, there are no express provisions concerning arbitrators' liability other than Article 207(2), which establishes a cause of action for damages in circumstances of unjustifiable resignation, stating:

**“If an arbitrator, after having accepted his appointment, **withdraws without good reason**, he may be held **liable for compensation**.”**  
[Emphasis added]

Article 207(2) of the UAE Civil Procedure Law is not applicable where the seat of arbitration is an offshore UAE jurisdiction, such as the Dubai International Financial Centre (DIFC). In these circumstances, the arbitrator will be subject to Article 22 of DIFC Law No.1 of 2008 (as amended), which provides that:

**“No arbitrator, employee or agent of an arbitrator, arbitral institution, officer of an arbitral institution or appointing authority shall be liable to any person for any act or omission in connection with an Arbitration, **unless they are shown to have caused damage by conscious and deliberate wrongdoing**..”** [Emphasis added]

This position is echoed in Article 23 of the Abu Dhabi Global Market (ADGM) Arbitration Regulations 2015.

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## Civil liability of Arbitrators across the GCC: A Snapshot

In Kuwait, Article 178 of Law No. 11 of 1995 Concerning Judicial Arbitration in the Civil and Commercial Matters adopts the same position on arbitral liability as the UAE Civil Procedure Law, stating:

**“If the arbitrator *withdraws-without a serious reason*-from performing his work after accepting the arbitration, he may be *adjudged to pay compensation*.” [Emphasis added]**

In Qatar however, Article 11(11) of the recently issued Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law provides that:

**“An arbitrator shall not be liable for exercising their tasks as arbitrator *unless exercising their tasks is based on bad faith, collusion or gross negligence*.” [Emphasis added]**

A similar position is adopted in Bahrain under Article 7 of the Arbitration Law No. 9 of 2015, which provides that:

**“Any arbitrator appointed on the basis of the provisions of the attached law shall not be held accountable for any act or omission when carrying out his duties *unless it was done in bad faith or was the result of a serious error*; and this provision applies to employees of the arbitrator or authorized by him to undertake some of the work associated with the tasks entrusted to him without prejudice to the responsibility if the arbitrator steps down without serious reason or at the wrong time.” [Emphasis added]**

Broadly speaking, therefore, the other members of the GCC impose liability on an arbitrator only in circumstances of bad faith or gross negligence, where there is fault on the part of the arbitrator.

## Dubai Court of Cassation Case 484/2017: A Clarification on the Threshold for Civil Liability of Arbitrators in the UAE

In December 2017, the Dubai Court of Cassation issued its decision in Case 484/2017. The case concerned a party who had been awarded AED 42,705,955 (over US\$11.5 million) in a DIAC dispute in relation to a real estate transaction in Dubai. The facts of this case were as follows:

1. The First Respondent had purchased 149 units in a tower in Dubai Marina. Post completion, the First Respondent alleged that unit areas were not in conformity with the sale and purchase agreements and therefore filed a claim against the Petitioner before DIAC.
2. The Second Respondent was appointed as the sole arbitrator by DIAC; however, after issuing a summary award concerning preliminary jurisdictional issues, he resigned.
3. Following the resignation of the Second Respondent, the Third Respondent was appointed as the sole arbitrator. The Third Respondent rendered a final award that required the Petitioner to pay the First Respondent AED 46,522,337 plus interest and costs and a supplemental award to correct accounting calculation errors in the award.

The Petitioner, unhappy with the decision, filed a claim in the Dubai Court of First Instance alleging that, in their capacity as arbitrators, the Second and Third Respondents committed material errors, including, changing the terms of the sale and purchase agreements, misrepresenting the data relating to the area of the units, disregarding relevant Land Department documents and lacking jurisdiction to hear the dispute. The

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Court of First Instance dismissed the claim, and this judgment was upheld by the Court of Appeal. The Petitioner then appealed the Court of Appeal's decision to the Court of Cassation.

The Court of Cassation dismissed the appeal and noted that for an arbitrator to be liable to a party in a civil matter there must be: (i) an act or omission by the arbitrator; (ii) harm incurred by a party; and (iii) causation between the act / omission and the harm caused. Critically, the Court of Cassation confirmed that there would need to be a "serious mistake tainted by deceit, fraud, collusion with the opponent or refraining from arbitrating without acceptable justification" in order to establish liability by an arbitrator. "[An] ordinary mistake or negligence is not sufficient to hold the arbitrator liable unless it is a serious mistake or fraud."

## **Dubai Court of Cassation Case 484/2017: A Commentary**

As noted above, in contrast with other GCC countries, the UAE Civil Procedure Law does not contain any general provisions dealing with arbitrator liability or immunity from suit. The Dubai Court of Cassation's approach in Case 484/2017 however, delineates this general approach by establishing a threshold for liability in civil matters. From an arbitrator's point of view, the Court of Cassation's decision likely gives little comfort; an "ordinary mistake" is insufficient to render an arbitrator liable, but a "serious mistake" will be sufficient. Whilst it may be the case that a "serious mistake" is on par with "gross negligence" (as per the Qatari law) or "serious error" (as per the Bahraini law), the bar on civil liability has still been set relatively low.

Whilst Dubai Court of Cassation Case 484/2017 has provided much needed clarification on the issue of civil liability of arbitrators in the UAE and is undoubtedly a step in the right direction, we continue to await specific clarification from the courts on the criminal liability of arbitrators under Article 257 of the UAE Penal Code, and further guidance from the UAE Cabinet of Ministers on the future of Article 257.

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