



UAE: Recent Dubai Cassation Court judgment on reference to the arbitration clause in a FIDIC contract

The Dubai Court of Cassation has recently issued a judgment that tackles the effect of incorporating arbitration clauses by means of referring to the general conditions of a FIDIC (or the International Federation of Consulting Engineers) contract including the arbitration clause therein.

In the case in question, the parties had agreed that the 1987 FIDIC Red Book General Conditions of Contract would govern the transaction. Clause 67 of the 1987 FIDIC Red Book General Conditions contained a multi-tiered dispute resolution clause which required all disputes to be referred to the engineer in the first instance for a decision and then subsequently to arbitration under ICC rules.

The Dubai Court of Appeal found that incorporating an arbitration clause by general reference to the entirety of the 1987 FIDIC Red Book General Conditions was sufficient to bind the parties to the arbitration clause contained in the General Conditions on the basis of Article 7(2)(b) of Federal Law No. 6 of 2018, which allows arbitration clauses to be incorporated by reference.

The Court of Cassation overturned the Court of Appeal judgment on the basis that the arbitration clause was not enforceable and the Dubai Courts had jurisdiction to adjudicate the dispute. The Court had held that if the referral to the FIDIC general conditions was merely a referral in general for the texts of this document without specifying the arbitration clause in particular which established the parties' knowledge of its existence in the general conditions, the referral did not extend to the arbitration clause. Therefore, arbitration was not considered to be agreed on between the parties to the contract.

The significance of this judgment is that it establishes that a referral to an arbitration clause must be specific to a clause stipulated in another document. Given the risks associated with the application of arbitration clauses in the UAE, and in case the parties wish to refer to terms drafted in another document and these terms include the arbitration clause, we highly recommend to explicitly refer to the arbitration clause enclosed in a document to avoid any potential challenges as regards the jurisdiction at the time a dispute arises.

To speak to us in relation to the recent judgment, any Construction or Arbitration matters, or issues generally, please feel free to contact [Sally Kotb](#) or [Marina Gaballah](#) at the first instance.

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