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## Case Study

### Is Oath-taking a mandatory requirement for facts and experts witnesses before an Arbitral Tribunal?

#### Overview

The skepticism about the requirement for witnesses to take oath before an arbitral tribunal has been extinguished after Dubai Court of Cassation's issuance of the recent judgment No. 78 on 02/06/2022. Considering the critical importance of witness testimony for the arbitral tribunal as it constitutes a key source of evidence supporting the conduct of its assigned mission, the ruling under study is perspicacious and auspicious vesting the arbitration with an additional degree of seriousness and confirming its alignment with the course adopted by the UAE laws regarding the oath-taking formalities.

#### Legal background

Under the old UAE Arbitration Chapter, Article 211 of the Federal Law No. 11 of 1992 Concerning the Civil Procedures Code stipulated that: "the arbitrators must administer the oath to the witnesses and any person who gives false testimony before the arbitrators shall be treated as being guilty of the offence of perjury", expressly setting an explicit oath-taking exigency to the arbitrators. Subsequently to the enactment of the UAE Federal Arbitration Law (FAL) of Law No. 6 of 2018, the aforementioned Chapter was abrogated. Pursuant Law No. 6/2018, the former explicit requirement for taking witness testimony on oath in UAE-seated arbitrations appeared to become more lenient. Indicatively, the Article 33/7 states that: "unless otherwise agreed by the parties, hearing the statements of the witnesses, including the experts, shall be carried out as per the effective laws of the State", tacitly suggesting that the oath-taking requirement is no longer mandatory for witnesses.

## Decision of The Dubai Court of Cassation

In effect to an Arbitral Tribunal's abstention to abide by the oath-taking procedures to witnesses, the Court of Cassation has issued a judgment pursuant which it has ruled that it is a mandatory requirement to take witnesses' testimony on oath; hence, putting end to any confusing speculations stating otherwise. In the ruling under study, the Court affirmed that the oath-taking obligation persisted under the Federal Arbitration Law. The case was presented before the Courts requesting the enforcement of an arbitral award issued in accordance with the old Dubai International Arbitration Centre (DIAC)'s Arbitration Rules of 2007 and rendered upon unworn witness testimony. By issuing this ruling, the Dubai Court of Cassation has underlined its alignment with the current position of the UAE laws regarding the oath-taking for witnesses whether factual or expert witnesses.

The Court reasoned that the DIAC Rules of 2007 comprised a mandatory obligation requiring the witness to swear an oath before the tribunal prior to giving evidence in accordance with any mandatory provisions of the applicable procedural law. Moreover, the Court further based its decision on provisions of the UAE Federal Evidence Law No.10 of 1992 particularly its articles 41, 43 and 46 binding the witness to take oath, in accordance with his religious beliefs, prior to making any statement, as well as imposing penalty in the event that a witness abstains from taking oath without a lawful excuse. Along the same lines, through this judgment the Court has further reflected that taking oath upon making the statement is a violation leading to the voidness of the arbitral procedures and subsequently to the setting aside of the arbitral award in the event it has been rendered based on witnesses' statements made without the pre-fulfilment of the oath-taking requirement.

In similar direction, the mandatory legal obligation stipulated by article 211 of the Civil Procedure Code for arbitrators to administer the oath-taking by witnesses prior to making any testimony has been highlighted by the Court of Cassation. As a consequence, arbitrators shall in no case administer reluctance to abide by the aforementioned requirement, since failing to do so is a non-waivable irregularity which potentially taints the proper conduct of arbitral proceedings and which could consequently render the arbitral award null and void.

It became apparent to the Court, based on the witness's statement minutes of hearing, that the oath-taking requirement was fulfilled prior to giving any testimony by the witnesses nor that the arbitrators have administered these procedures. Considering that the arbitral award was rendered based on the statements made by the witnesses, the Court has decided to revoke the award and declared it to be null and void for breach of provisions of law.



Conclusion