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PROCEDURAL DEFECTS DURING THE ARBITRATION:

Clubbing actions together to save on costs can lead to an unenforceable award

It is tempting for aspiring claimants to attempt joining of **multiple causes of action into a single arbitration process** before the same tribunal. Whether the purpose is to save costs or ensure expedience or convenience, the fact is that such an initiative may result in the unenforceability of the arbitral award issued. This is so, particularly if it is in the absence of an express agreement by the respondent - but sometimes even in the presence of this.

In layman's terms, two disputes against the same entity may be very similar and thus if costs are to be saved by joining them into one action, then this would seem to be the sensible thing to do.

Two claims under two subcontracts for two identical towers for example. Why not just being one arbitration process for both? In another instance there could be two separate but very similar time extension claims under two main contracts with two different employers who are similarly named subsidiaries of the same parent entity or even two identically named companies. Why not just issue proceedings under one arbitration and hope that the respondents, who have appointed the same lawyer, will tacitly accept this approach as it will save them costs too.

Would simplifying matters with a single arbitration process in any of the above examples result in an unassailable award? Would the respondent's prior consent be necessary? And if given, would it be enough?

The answers to these questions depend on the facts at hand. The general categories that may be encountered can be set out in two broad categories:

- Multiple causes of action being brought in one arbitration but against **the same** respondent; or
- Multiple causes of action being brought in one arbitration but against **different** respondents that are wholly owned by the same entity or bear identical corporate styles/names.

Let us look at each category separately, from the point of whether consent is required and if so, to what extent would this afford protection to a claimant wishing to ensure that its attempt to save on costs does not backfire in the form of an award being nullified.

Multiple causes of action against the same respondent

It is commonplace to find multiple agreements between the same parties, all of which have been subject to the same breach. For example, a main contractor and sub-contractor enter into three agreements for MEP works to be carried out on three identical buildings. The main contractor later defaults on his payment obligations under each agreement.

The terms and conditions of these agreements will generally be consistent if not identical throughout, inclusive of the arbitration clause, varying only on the name of the projects themselves. A Claimant may therefore be particularly tempted to file just one arbitration case against the same respondent and for all defaulted, and virtually identical, contracts. This would ensure not only a saving on arbitral fees and costs but also an advantage in the same tribunal reviewing virtually identical causes of action.

However, the fact is that different causes of actions under separate contracts – no matter how similar in nature – should follow separate processes of dispute resolution, i.e. separate and distinct arbitration cases being filed.

The approach of clubbing many actions into one may be allowed by some arbitration bodies permitting multiple causes of action to proceed under one arbitration case and thus leaving claimants with a false sense of security that their matter will be heard in a cost

and time effective manner. During the ratification and enforcement stage by the UAE Courts, any prior consent from an arbitral body – or even by the tribunal - is irrelevant and the Courts are unlikely to allow ratification of any single award issued in relation to multiple causes of action brought under one arbitration process. The losing respondent will almost certainly bring this inconsistency to the Court's attention. Nevertheless, UAE Courts are likely to permit multiple causes of action being filed under one arbitration process should there first be clear evidence of prior consent from the respondent to this effect. Failure to obtain this consent, risks a claimant receiving an unenforceable award.

Multiple Respondents

A further restriction placed on claimants commencing arbitration within the UAE is the inability to issue proceedings against multiple respondents, even if they are wholly owned by the same entity or appear to have identical corporate styles.

Unlike multiple causes of action against the same respondent, consent is **irrelevant** with regards to multiple respondents. Whether consent is obtained from all respondents and / or the arbitral body, this will not later rectify the defects of a subsequent award nor overcome the problems that will almost certainly be encountered with regard to its enforceability. The rationale behind this restriction is simple: if it is not permissible to join several actions against multiple parties into one in litigation, it can also not be permitted in arbitration.

In short, claimants must be particularly cautious and confirm that multiple agreements were actually concluded by the same legal entity before attempting to file one arbitration case. This is particularly applicable in instances where identical names are used for essentially distinct corporate entities – a practice very common in the UAE where there is no federal company registrar to prevent nationwide registration of similar names nor a conflict search process on company names registered in free zones.

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