

# Pathological Arbitration Clauses: Common Pitfalls and Judicial Responses in the UAE

Legal Briefing, 22.07.2025

## Introduction

Given the UAE's rapidly expanding commercial and construction sectors, arbitration has become not only the preferred mechanism for dispute resolution but, in many cases, the default provision inserted into contracts—often as a matter of convention or expediency.

However, the enforceability of an arbitration agreement, and the efficiency of the arbitration process itself, fundamentally depend on the clarity, precision, and legal coherence of the arbitration clause.

This brings into focus the concept of the **“pathological arbitration clause”**—a term coined by Frédéric Eisemann to describe arbitration clauses that are ambiguous, internally inconsistent, or procedurally deficient to the extent that they risk undermining the dispute resolution process they were intended to facilitate. Despite significant advancements in the UAE's arbitration framework, including the adoption of Federal Law No. 6 of 2018 as amended in 2023 **“UAE Arbitration Law”**, such flawed clauses continue to result in procedural delays and jurisdictional challenges—particularly in bilingual or cross-border contractual contexts.

This article examines four recurring types of pathological arbitration clauses frequently encountered in UAE commercial practice and analyses how they are treated under UAE law and judicial interpretation.

## 1. Incomplete or Non-Exclusive Arbitration Procedure

In the UAE, for an arbitration clause to be enforceable, it must be clear, explicit, and unambiguous. If an arbitration clause lacks specificity regarding the arbitration procedure—such as the rules to be applied, notice procedures, and procedures for amicable settlement – it may be deemed unenforceable.

For instance, a contract containing the following clause — *“Any dispute arising out of or in connection with this contract may be resolved through arbitration”* — is flawed and may be deemed unenforceable for several reasons. Firstly, the use of the word **“may”** instead of **“shall”** creates ambiguity, as it does not establish a binding obligation to arbitrate - leaving room for litigation. Secondly, the clause fails to specify essential details such as the **arbitration rules**, the **institution administering the arbitration**, or the **procedure to be followed**. Lastly, it lacks reference to the **seat of arbitration** or the **language** in which proceedings are to be conducted, both of which are critical for enforceability under UAE arbitration law.

Another pertinent example is **Dubai Court of Cassation's** ruling in **Case No. 208 of 2024** which illustrates the risks of vague or ambiguous arbitration clauses. In this case, the contract's arbitration provision referred generally to arbitration under **“Dubai courts' rules”** but also allowed parties to resort to courts if amicable settlement failed. The Court held that this language did not establish

an exclusive and mandatory arbitration mechanism but rather created an elective system where parties could choose between arbitration and litigation.

As a result, the Court rejected the defendant's plea to dismiss the case on the grounds of arbitration and affirmed the court's jurisdiction to hear the dispute. This judgment underscores the judiciary's approach in interpreting unclear arbitration clauses: if the clause fails to unequivocally mandate arbitration as the sole dispute resolution method, courts may assert jurisdiction. Thus, ambiguity or conditional language that permits resort to courts can lead to courts overriding arbitration agreements and potentially fragmenting dispute resolution efforts.

## 2. Bilingual Discrepancies: Arabic v. English Clauses

In UAE commercial contracts, arbitration clauses are often drafted bilingually in Arabic and English. Discrepancies between the two texts can create significant interpretative challenges and litigation risks.

A recent, highly instructive example is the **Dubai Court of Cassation's ruling in Case No. 296 of 2024** involving a Master Services Agreement with a bilingual arbitration clause. The **English version** of the clause clearly provided for arbitration under the LCIA Rules, while allowing parties to approach competent courts solely for **interim or precautionary relief** related to the dispute.

However, the **Arabic translation was inaccurately construed**, leading the Dubai Court of Appeal to interpret the clause to allow the parties to bring substantive disputes before the Dubai courts, effectively bypassing the arbitration agreement. Based on this ambiguous translation, the appellate court rejected the appellant's jurisdictional objection and ruled in favour of the courts hearing the full claim.

On cassation, the Supreme Court **overturned the appellate ruling**, emphasizing:

- The original English clause is the true reflection of the parties' agreement and should be interpreted accordingly.
- The right to seek interim or injunctive relief in courts **does not amount to a waiver** of the arbitration agreement in its entirety, the position that is consistent with **Article 18 of the UAE Arbitration Law No. 6 of 2018**.
- The appellate court's reliance on literal Arabic translation distorted the meaning and resulted in the extension of the court's jurisdiction beyond interim relief.
- The UAE Arbitration Law puts parties' intention to contract as of a paramount importance. In interpreting bilingual contracts, the court must carefully consider the legal and linguistic context, ensuring the parties' intent is preserved in good faith and according to contract terms (Article 246 UAE Civil Transactions Law).

This case illustrates that courts will look beyond mere translation inconsistencies to uphold arbitration where the parties' intent is clear. However, this ruling is **fact-specific** and notably involved a scenario where the arbitration provision was clear in one language and only the scope of court intervention differed. Thus, the risk remains that inaccurate or ambiguous bilingual drafting can lead to jurisdictional disputes, costly litigation, and delay.

## 3. Misnaming or Misidentifying Arbitration Institutions

One common drafting error in UAE arbitration agreements involves misnaming or referencing an outdated arbitral institution. Even when not initially erroneous, disputes often arise years after the contract's

execution—by which time arbitration centers or institutions may have been abolished, merged, or replaced. Historically, UAE courts have been strict in dealing with such flaws, sometimes invalidating the entire arbitration clause if the referenced institution was deemed non-existent or the clause was considered incapable of performance.

For instance, in **Case No. 1042 of 2017**, the **Dubai Court of Cassation** considered an arbitration clause referring to the “**Centre for Commercial Conciliation and Arbitration of Dubai Chamber of Commerce and Industry**”. This institution had ceased to exist following the establishment of DIAC under **Decree No. 10 of 2004**. No fallback mechanism or updated institutional reference was provided in the contract.

The court ruled that the arbitration agreement was **null and void**, as it referenced an **abolished body** and was therefore **incapable of being performed**. The clause failed to meet the enforceability standards under UAE law, which require that the arbitration agreement be certain and operative.

#### Key Legal Reasoning:

- An arbitration clause must be capable of being performed.
- The lack of a valid institution or fallback option rendered the clause legally defective.
- This case set a precedent that misnaming or referencing a defunct arbitration centre—without identifying a valid successor—could **completely nullify** a party’s right to arbitrate.

However, recent UAE jurisprudence shows greater judicial support for arbitration, even when the named institution has ceased to exist, provided the parties’ intent to arbitrate is clear.

**Abu Dhabi Court of Appeal Case No. 449 of 2024** upheld an arbitration clause referencing the now-defunct DIFC-LCIA, ruling that institutional abolishment does not

automatically invalidate arbitration agreements. The court emphasized that courts can infer reasonable substitutes like DIAC to preserve arbitration.

Similarly, in **DIFC Court’s *Narciso v Nash (ARB 009/2024)***, the court enforced an arbitration agreement under DIFC-LCIA rules despite the institution’s abolition, granting an anti-suit injunction to prevent parallel court proceedings. The ruling confirmed the seat’s supervisory role and party autonomy, allowing substitution by other competent institutions.

This above case laws thus indicate that although UAE courts have generally adopted a pragmatic stance following the abolishment of the DIFC-LCIA, its mention in arbitration clauses had prompted challenges.

#### 4. Conflict Between Arbitration and Jurisdiction Clauses

Another common drafting challenge in UAE commercial contracts arises when arbitration clauses coexist with provisions granting jurisdiction to local courts, often resulting in internal contradictions and confusion over the proper dispute resolution forum.

As illustrated by the **Dubai Court of Cassation’s 2024 ruling in Case No. 296 of 2024**, where the arbitration clause included both reference to arbitration under LCIA Rules and the parties’ ability to seek interim relief from courts, UAE courts generally respect arbitration as the exclusive forum for substantive disputes while allowing courts to grant interim or precautionary relief.

Thus, if parties intend for arbitration to be the **sole** dispute resolution mechanism, it is best **not to include any provision that appears to grant substantive jurisdiction to courts**. Including such language may create ambiguity, potentially undermining the enforceability of the arbitration agreement.

## Conclusion

The UAE's dynamic commercial landscape and evolving arbitration framework have cemented arbitration as a preferred and effective mechanism for dispute resolution. However, the enforceability and efficiency of arbitration agreements hinge critically on the clarity, precision, and legal coherence of the arbitration clauses themselves.

As this article demonstrates, pathological arbitration clauses—whether due to bilingual discrepancies, outdated or misnamed institutions, conflicting jurisdictional provisions, or vague procedural language—pose significant risks that can derail the arbitration process and lead to costly litigation and uncertainty.

Recent judicial trends, particularly from the Dubai Court of Cassation and Abu Dhabi courts, show a growing willingness to uphold arbitration agreements where the parties' intent to arbitrate is evident, even in the face of certain technical or institutional flaws. Nonetheless, courts remain vigilant in protecting procedural certainty and contract sanctity, especially when ambiguity or conflicting clauses cast doubt on the parties' true intentions.

To safeguard the enforceability of arbitration clauses and avoid jurisdictional pitfalls, practitioners must prioritize meticulous drafting—ensuring bilingual texts align, clearly identifying valid and current arbitral institutions (with explicit fallback options), avoiding contradictory jurisdictional language, and specifying unambiguous, exclusive arbitration procedures.

In sum, while UAE courts are increasingly arbitration-friendly, the best assurance for parties lies in drafting arbitration clauses that are unequivocal, comprehensive, and tailored to the specific contractual and jurisdictional context. Doing so preserves party autonomy, minimizes disputes over jurisdiction, and fosters efficient, predictable dispute resolution in the UAE's vibrant legal environment.

Despite the availability of model clauses from various arbitral institutions, parties are strongly advised to seek qualified legal counsel to ensure that the clause is appropriately adapted to their specific needs and compliant with UAE law.

-----  
*Our dedicated arbitration and dispute resolution team—comprising mainland litigation lawyers, DIFC-registered practitioners, and arbitration specialists—is well positioned to assist in drafting bespoke arbitration clauses tailored to your commercial needs. We also offer robust representation in arbitral proceedings across leading institutions and sectors, ensuring strategic and effective advocacy at every stage.*

### SCHLÜTER GRAF Legal Consultants LLC

ONE by Omniyat, Office P501, Business Bay, P.O. Box 29337

Dubai / United Arab Emirates

Tel: +971 / 4 / 431 3060

Fax: +971 / 4 / 431 3050

Usama Munir, Associate, DIFC Registered Practitioner (Part II) ([usama.munir@schlueter-graf.com](mailto:usama.munir@schlueter-graf.com))

Thishani Fernando, Trainee Lawyer ([thishani.fernando@schlueter-graf.com](mailto:thishani.fernando@schlueter-graf.com))