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Question 1

As per the arbitration law in force within the territorial jurisdiction of the United Arab Emirates comprises of Federal Law No. (6) of 2018 on Arbitration and as far as arbitrations held in the jurisdiction of DIFC is concerned it is governed and regulated by DIFC LAW No. 1 of 2008. In case of annulment or setting aside of an arbitral award, as well as the refusal of recognition or enforcement of an award before the DIFC rules they would be governed by the provisions of Article 41 and 44 of the DIFC LAW No. 1 of 2008. In such a case it is pertinent to mention here that the only recourse to an arbitral award issued against a particular party is an application for setting aside the same in accordance with the provisions of Article 41 which envisages that an award where the arbitrator has adjudicated on issues beyond the scope of the arbitration then the award is liable to be annulled or set aside. This is prescribed in the provisions of Article 41 (2) (iii) which states that if the award goes beyond the submissions made in the proceedings it would be liable to be set aside[1]. A similar requirement for the same is encompassed in the provisions of Article 44 (1) (a) (iii). The award in the present scenario awards the full reimbursement to CREDIT PARIS from MORHEALTH but also compensation for moral damages. In the statement of claim filed in the proceedings by CREDIT PARIS only the full reimbursement was claimed. Therefore, the award went beyond the submissions made in the arbitration proceedings and it would be liable to be set aside. Additionally, the provisions of Article 44 would also make the recognition of such an award liable to be refused. Therefore, the award would not be enforced. This would also adhere to the judgment of the court in *Edward Dubai Llc V Eevi Real Estate Partners Limited*[2]. Thus, when making an arbitration award the arbitral tribunal must ensure that the award is restricted to the scope of the arbitration and the submissions made before it. This would also be in adherence to Article 216 (1) (a) of

[1] AL, ANI, and ABDULLAH RIYADH RABEE. *Annulment of Arbitral Awards under the Federal UAE Arbitration Law*. Diss. The British University in Dubai (BUiD), 2019.
[2] [2015] DIFC ARB 002.

the UAE Civil Procedure Code, Federal Law No. (11) of 1992. This has also been reiterated by the court in *Chenshan Liu vs Dubai Waterfront*[3].

Question 2

Considering the set of facts and circumstances at hand it would be evident that due to the refusal to honour the guarantee between CREDIT PARIS and HOLDINGLOUIS. This invoked the initiation of a second arbitral proceeding where MORHEALTH was allowed to choose the arbitrator. As per the provisions of Article 14 of the Federal Law No. (6) of 2018 on Arbitration as well as Article 18 of the DIFC LAW No. 1 of 2008 the appointment of an arbitrator can be challenged if the impartiality of the individual is in question[4]. It would also entail a failure to make disclosures of the relationship with the parties by the arbitrator or any other ground that may bring his impartiality into question. In the present scenario, an arbitral award exists that awards damages to CREDIT PARIS which must be paid by MORHEALTH. The guarantee invoked is due to MORHEALTH's inability to pay the amount stipulated in the award. Therefore, MORHEALTH appointing the arbitrator for the adjudication on the validity of the guarantee agreement between CREDIT PARIS and HOLDINGLOUIS would raise questions on the impartiality of the arbitrator. In such a case MORHEALTH would have a vested interest in ensuring that the arbitral award is in favour of a scenario where their debts are absolved or are taken over by another entity such as HOLDINGLOUIS. This would raise doubts on the impartiality of the arbitrator and an application under Article `19 of the DIFC LAW No. 1 of 2008 could be filed challenging such appointment. This has also been reiterated in the judgment of the court in *Gaetan Inc v Geneva Investment Group LLC*[5]. Therefore, it would be prudent to ensure that when an arbitrator is appointed absolute impartiality is maintained as a means to

[3] [2016] DIFC ARB 004.
[4] Kovtun, Anastasiia. "New Arbitration Law in the United Arab Emirates (UAE): An Overview." *Access to Just. E. Eur.* (2018): 85.
[5] [2015] ARB 010.

ensure the sanctity of the arbitral proceedings. These would therefore be the grounds of challenge in the present scenario as mandated by the facts.

Question 3

In case of an arbitral of an arbitral award that is in existence the DIFC court would be compelled to enforce and recognize it. This is in accordance with the provisions of Article 43 (1) of the DIFC LAW No. 1 of 2008[6]. If such an award exists and an application is made for the enforcement or recognition of the same, then the only grounds for refusal of the same is enshrined in the provisions of Article 44. Therefore, if the first arbitral award in question was annulled by the court, then as far the proceedings between CREDIT PARIS and HOLDINGLOUIS is concerned the proceedings would not face any hindrances and would be able to continue. In case such an award was not annulled an application for enforcement of the same could be made and this would sufficiently stay the proceedings between CREDIT PARIS and HOLDINGLOUIS as an existing award on the subject matter of the dispute would be liable to be enforced. Therefore, an annulment of the award is the only mode through which the proceedings between CREDIT PARIS and HOLDINGLOUIS could continue devoid of any encumbrances. This has also been reiterated by the court in the judgement in *Edward Dubai Llc V Eevi Real Estate Partners Limited*[7].

Question 4

In the scenario at hand, we see that the HOLDINGLOUIS was the guarantor in the loan agreement between CREDIT PARIS and MORHEALTH. However, this guarantee was agreed upon in a separate agreement and therefore the same contained a separate arbitration clause.

[6] Blanke, Gordon. "Free zone arbitration in the DIFC and the ADGM." *Arbitration International* 35.1 (2019): 95-116.
[7] [2015] DIFC ARB 002.

MORHEALTH was in breach of their financial obligations in the agreement and therefore an arbitration was invoked by CREDIT PARIS. Subsequently, when despite an award being passed against them, MORHEALTH decided to not reimburse CREDIT PARIS the guarantee was invoked. HOLDINGLOUIS refused to honour the guarantee and subsequently an arbitration proceeding was invoked where HOLDINGLOUIS contended that the guarantee agreement was void. Their contention in this aspect was that as per the French Consumer Code a contract of guarantee would require a handwritten note which specifies the amount which was not valid under French law. In their statement of defence CREDIT PARIS contended that the French Consumer Code was only applicable if the other party also had its domicile in France. This however, would have an adverse effect on the case made out by CREDIT PARIS. As per the provisions of Article 65 of the REGULATORY LAW DIFC LAW No.1 of 2004 states that in case of financial promotional services if the same is unenforceable an application can be made before the court to recover the amounts due as per the provisions of Article 65 (2) (a) and (c). Therefore, if HOLDINGLOUIS contends that the guarantee agreement is unenforceable it would be in the best interests of CREDIT PARIS to concede to the agreement being unenforceable and additionally ensure that the amounts due are recovered in accordance with the provisions of Article 65 of the REGULATORY LAW DIFC LAW No.1 of 2004[8]. Therefore, the stance that ought to be taken by CREDIT PARIS is to agree to the unenforceability of the agreement and seek to enforce the provisions of Article 65 of the same. This position has been further clarified by the court in the judgment in *Gauge Investments Limited v Ganelle Capital Limited*[9]. It may also be an option to argue that the applicable law is United Arab Emirates and DIFC law as these have been in consideration for the arbitration proceedings and the applicable law as per the agreement between the parties.

[8] Yeşilırmak, Ali. "Evaluation of UAE'new law on arbitration on interim measures of protection." *Emergency Proceedings and Interim Measures in International Arbitration* (2019).
[9] [2016] DIFC ARB 003/006.

Question 5

In the given set of facts and circumstances it may be inferred that HOLDINGLOUIS has initiated a civil suit for a declaration that the guarantee agreement between them and CREDIT PARIS is void. This is evident from their pleadings to have the agreement annulled. The pith and substance of their claim is that the guarantee agreement is not valid as considering French consumer law such an agreement would have to contain a handwritten note which specifies the amount to be reimbursed. However, in this case no such handwritten note exists. However, when considering this claim the court would have to abide by the concept of independence or autonomy of the arbitration clause. As per the prescriptions of Article 6 (1) of the Federal Law No. (6) of 2018 on Arbitration an arbitration clause is a sperate agreement from the agreement in which it has been incorporated[10]. Therefore, the validity or unenforceability of the parent agreement would not affect the arbitration agreement. Resultantly, as per the provisions of Article 6 if an arbitration clause exists devoid of the existence of the parent agreement then even if the parent agreement is unenforceable, the disputes arising from the same would have to be referred to arbitration as per the provisions of Article 7 of the DIFC LAW No. 1 of 2008 it would be the jurisdiction of the arbitrator to decide upon the disputes which would include the validity and enforceability of the parent agreement. Therefore, the appropriate stand to be taken by CREDIT PARIS is that the court would not have the jurisdiction to decide on the validity of the guarantee agreement as the same will be decided by the appointed arbitrator. This is because the arbitral tribunal would be appropriate authority to adjudicate on any and all disputes arising from the parent agreement. This has also been reiterated by the court in *Loralia*

[10] Blanke, Gordon. "Free zone arbitration in the United Arab Emirates: DIFC v. ADGM:(Part I)." *Journal of International Arbitration* 35.5 (2018).

Group LLC v Landen Saudi Company[11]. This would be the most effective defence in the suit filed against CREDIT PARIS.

[11] [2018] DIFC ARB 004.

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b. *Edward Dubai Llc V Eevi Real Estate Partners Limited* [2015] DIFC ARB 002.

c. *Gaetan Inc v Geneva Investment Group LLC* [2015] ARB 010.

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