

# Dubai Court of Cassation confirms enforcement of foreign awards under New York Convention: The end of a beginning - Inshallah!

## **Kluwer Arbitration Blog**

November 21, 2012

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*Please refer to this post as: Gordon Blanke, 'Dubai Court of Cassation confirms enforcement of foreign awards under New York Convention: The end of a beginning - Inshallah!', Kluwer Arbitration Blog, November 21 2012,*

*<http://arbitrationblog.kluwerarbitration.com/2012/11/21/dubai-court-of-cassation-confirms-enforcement-of-foreign-awards-under-new-york-convention-the-end-of-a-beginning-inshallah/>*

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In a recent ruling of 18 October 2012, the Dubai Court of Cassation, the highest court in the Emirate of Dubai, against whose judgments lies no further appeal, confirmed the enforcement of a trilogy of DIFC-LCIA awards – one on liability and two on costs (all forming part of the same reference) – rendered by a Sole Arbitrator in London under the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards (see Appeal for Cassation No. 132/2012 Commercial – *Airmec Dubai, LLC v. Maxtel International, LLC*). As a result, Airmec Dubai's attempts at setting aside the awards in its capacity as award debtor before the Dubai Court of Appeal finally failed. As I reported in a previous [post](#) on the Blog, “despite the positive outlook provided by more recent UAE supervisory court case law, there remains some measure of uncertainty in the UAE judiciary's proper commitment to the terms of the New York Convention” in the enforcement of foreign awards. The Dubai Courts' take on the *Maxtel* cases at first instance (see Action No. 268/2010 Commercial Full Jurisdiction, ruling of the Dubai Court of First Instance of 12 January 2011) and on appeal to the Court of Cassation (see Appeal No. 126/2011 Commercial, ruling of the Dubai Court of Cassation of 22<sup>nd</sup> February 2012) in the wake of the Fujairah Court of First Instance's ruling of 27 April 2010 (see Case No. 35/2010, ruling of the Fujairah Federal Court of First Instance), the first UAE court judgment ever to enforce a New York Convention award by reference to the Convention, inspired a modicum of hope that the UAE courts and in particular the Dubai judiciary would at long last own up to their enforcement obligations under the New York Convention, of which the UAE has been a member since 2006 (see Federal Decree No. 43 of 13 June 2006), and discard antiquated practices of enforcement of foreign awards by reference to the formalistic requirements of Article 235 read together with Article 236 of the UAE Civil Procedures Code.

In brief, in its ruling, the Dubai Court of Cassation found that the various reasons adduced by Airmec Dubai as grounds for the nullification of the awards – including in particular a combination of grounds based on Article 216 of the UAE Civil Procedures Code, as detailed in my previous blog – were of no avail given that Airmec Dubai had failed to meet the requisite burden of proof under the prevailing provisions of UAE law and the New York Convention itself. Instead, the Court of Cassation confirmed that it had no reason to doubt the findings of the previous courts on the subject-matter, no new evidence having been presented for consideration before it. More importantly for present purposes,

the Dubai Court of Cassation was explicit in rejecting the application of the domestic ratification process in the terms of Article 215 of the UAE Civil Procedures Code and made express reference to Article 212(4) of the Code, according to which an arbitral award issued outside the UAE “*shall be subject to the rules applicable to awards issued in a foreign country*”. The Court of Cassation continued its reasoning in the following terms:

*‘... it is ... established pursuant to Article 238 of the UAE Civil Procedures Code that the international conventions that come into full force and effect in the United Arab Emirates by ratification shall be construed as internal law applicable in the State and as such, the judge shall be required to apply the provisions thereof to the disputes brought before him concerning the execution of judgments made by foreign courts and foreign arbitral awards. As it is established in Federal Decree No. 43 of 2006 ... that the [UAE] approved to accede to the New York Convention ..., thus its provisions shall be applicable to the dispute.’* (author’s translation)

Following explicit reference to Articles I through to V of the New York Convention, which are set out in full text in their corresponding counterparts in Federal Decree No. 43 of 2006, the Dubai Court of Cassation quoted with approval the following passages of the ruling of the Dubai Court of Appeal under scrutiny *in toto*:

*‘... whereas on the subject-matter of the original action, the arbitral awards which have been issued by the Sole Arbitrator are required to be recognized and enforced ... are two foreign awards issued outside the [UAE] ... in London, pursuant New York Convention ... , which was ratified by the [UAE] by virtue of Federal Decree No. 43 of 2006 ... whereas the court’s jurisdiction over the foreign arbitral awards shall, upon considering the request to recognize and enforce the same, be limited to ensure that such award does not involve breach of the Federal Decree under which the State had acceded to the New York Convention ..., through complying with the award’s legal requirements in terms of form and subject-matter as dictated by Articles 4 and 5 of the said Decree [equivalent to Articles IV and V of the New York Convention]. Whereas the arbitral awards - subject-matter of this action - are duly authenticated, and since the original defendant (petitioner) failed to submit to the court evidence that contradicts and precludes the recognition of the arbitral awards - subject-matter of this action - as per the cases set forth in Article 5 of the aforesaid Decree ... the arbitral awards - subject-matter of this action - have fulfilled the conditions set forth in the Decree and may not be undermined by the argument raised by the original plaintiff to invalidate the same, since it is established in law that the arbitration proceedings are deemed to have been observed, and any party alleging that the same are violated shall be required to provide evidence that what it is alleging is true, while due regard shall be given, in such a case, to the information recorded in the arbitral award. As such, the court hereby rules in favour of the plaintiff in the original action (respondent) to recognize the arbitral awards subject-matter of this action. ... ’* (author’s translation)

The Dubai Court of Cassation’s ruling now clearly marks the end of a beginning of Dubai supervisory courts’ previously fledgling and uncertain enforcement practice of foreign awards under the New York Convention. Even though the Dubai Court of Cassation’s ruling in *Airmec* does not form binding precedent (remember that the UAE is a civil law jurisdiction, to which rules of *stare decisis* are alien), it will have persuasive force in the lower courts, in particular the Dubai courts of first instance and the

courts of appeal. It can be expected that award creditors in other Emirates will also seek to rely on the Dubai Court's precedents to convince the supervisory courts there to follow suit (in particular in light of corresponding enforcement obligations of supervisory courts in other Emirates in their capacity as emanations of the UAE under the New York Convention). It will be interesting to see how the case law on enforcement of foreign awards under the New York Convention will further develop at the hands of the UAE courts in the near future: Inshallah!