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Recent ruling of Dubai Court of Appeal affirms UAE Courts' practice to abide by the terms of the New York Convention

Gordon Blanke (Blanke Arbitration LLC) · Sunday, October 27th, 2013

A recent ruling of the Dubai Court of Appeal (see Case No. 1/2013 - Commercial Appeal, ruling of the Dubai Court of Appeal of 9 July 2013) gives new hope that despite the Dubai Court of Cassation's disappointing approach in Case No. 156/2013 (see my [blog of 21st October 2013](#)), the UAE courts are, in principle, firmly committed to and will - bar very minor, politically-motivated exceptions - enforce foreign arbitral awards (at least provided they have been issued in another Convention country) in the terms of the New York Convention (see Convention on the recognition and enforcement of foreign arbitral awards, done in New York on 10 June 1958, as ratified and hence implemented in UAE law by UAE Federal Decree No. 43 of 2006). In its ruling, the Dubai Court of Appeal showed itself unimpressed with a number of grounds of appeal adduced by the award debtor to thwart enforcement of an award rendered by a sole arbitrator under the auspices of the Rules of Arbitration of the International Chamber of Commerce (ICC) International Court of Arbitration (the ICC Rules) in Stuttgart, Germany (see ICC Award No. 15977/JHN, dated 20 July 2011).

Given the German origin of the award, the Court of Appeal had little doubt that enforcement had to be effected by reference to the terms of the New York Convention, Germany being a Convention country, in compliance with Article 238 of the UAE Civil Procedures Code, which exempts the statutory regime of enforcement laid down in Articles 217 and 218 of that Code from application in the context of international conventions, including for present purposes the New York Convention. In the Court's own words:

"[...] it is established [...] under the provisions of Article 238 of the Civil Procedures Law that international agreements that have become applicable legislation in the UAE after ratification of the same shall be deemed as internal legislation enforceable in the country. The judge is required to apply its provisions to the disputes over the enforcement of [...] arbitral awards. It is also established by Federal Decree No. 43 of 2006 published in the Official Gazette on 08/06/2006 that the UAE acceded to the New York Convention 1958 on the recognition and

enforcement of the foreign arbitral awards; therefore, the provisions [of the Convention] shall be applicable to the dispute at issue.” (my translation)

Following full citation of Articles 1 to 5 of UAE Federal Decree No. 43 of 2006, which correspond to Articles I to V of the New York Convention, and making express reference to the Dubai Court of Cassation’s ruling in *Maxtel* (see Appeal for Cassation No. 132/2012 Commercial - *Airmec Dubai, LLC v. Maxtel International, LLC*, ruling of the Dubai Court of Cassation of 18 September 2012; [see also my blog of 21st November 2012](#)), the Dubai Court of Cassation continued in the following self-explanatory terms:

“Whereas in light of the foregoing and whereas it is established that the arbitrator’s award which requires the Court’s recognition is a foreign award issued outside the UAE in Stuttgart, Germany, in accordance with New York Convention on the recognition and enforcement of foreign arbitral awards, which the UAE has ratified as per the Federal Decree No. 43 of 2006 concerning the accession of the UAE to New York Convention on the recognition and enforcement of foreign arbitral awards. Whereas the Appellee [i.e. the award creditor] has submitted a copy of the arbitral award that is duly certified and ratified together with the original distribution agreement which contains the agreement on arbitration that was duly certified and attested, enclosed with the legal translation. Accordingly, the requirements of Article 4 of the said Law are met.

Whereas the judicial supervision of this Court over the arbitrator’s foreign award when considering the request for the recognition and enforcement of foreign awards is limited to verifying the absence of any violation against the above-mentioned Federal Decree. The Court examines whether the request fulfills the formal and substantive elements required under Articles 4 and 5 thereof. Whereas the arbitral award subject matter of the case is duly certified and authenticated where this Court did not find that the dispute subject matter of the arbitral award is one of the matters that may not be conciliated. Further, the Court did not find any violation of the public order, especially since the Appellant did not submit to this court any evidence confirming the existence of one of the cases set out in Article 5 of the said Decree. The Appellant did not prove any case of lack of competence or that the agreement was invalid or that it was not duly notified about the appointment of arbitrator or the arbitration procedures or that it was unable to present its defense before the arbitrator or that the arbitrator’s award contained a violation of the arbitration clause set out in the agreement made with the Appellee, or that the formation of the arbitration tribunal or its proceedings did not comply with the said agreement, or that the arbitrator’s award did not become binding upon the two parties or that the award was reversed or suspended by the competent authorities in the Federal Republic of Germany, where the award was issued.

Whereas the arbitration award subject matter of this case has fulfilled the conditions set out in the above-mentioned [Federal] Decree, the Court shall, by virtue of the above-mentioned grounds that are consistent with the law, recognize the arbitral award issued on 20/07/2011 by the sole arbitrator in Stuttgart, Germany, in the arbitration case no. 15977 - JHN 15977 in accordance with the arbitration rules applicable at the International Chamber of Commerce and shall enforce the same in accordance with the rules of the New York Convention on the recognition and enforcement of foreign arbitral awards.” (my translation)

Taking account of the history of enforcement by reference to international enforcement instruments to date, the wording of the Dubai Court of Appeal leaves little doubt that enforcement of a New York Convention award in the terms of the Convention is gradually becoming standard practice in the UAE. On this occasion, the Dubai Court of Appeal has to be congratulated on the clarity of its wording, which promotes recourse to the New York Convention as an international enforcement instrument in support of arbitration. The Dubai Court of Appeal’s approach exudes an arbitration-friendly attitude that essentially resembles Western enforcement practice. The Dubai Court is categorical in its rejection of any procedural challenges that do not fall within the strict scope of Article 5 of UAE Federal Decree No. 43 of 2006, which corresponds to Article V of the New York Convention, including in particular (i) the conduct of the arbitral proceedings in Paris, France, rather than at the seat of arbitration, i.e. Stuttgart, Germany, for reasons of convenience and (ii) the award debtor’s purported failure to sign terms of reference.

By way of conclusion, the Dubai Court of Appeal sets a strong signal that the UAE Courts will no longer entertain pro forma procedural challenges advanced by award debtors that seek to circumvent the application of the terms of international enforcement instruments, including the New York Convention. It is to be hoped that the Dubai Court of Cassation, whose ruling on appeal is expected in short order, will affirm the terms of the Dubai Court of Appeal’s ruling in pertinent part and consolidate the UAE Courts’ overall trend of enforcement *in favorem arbitrandi*.

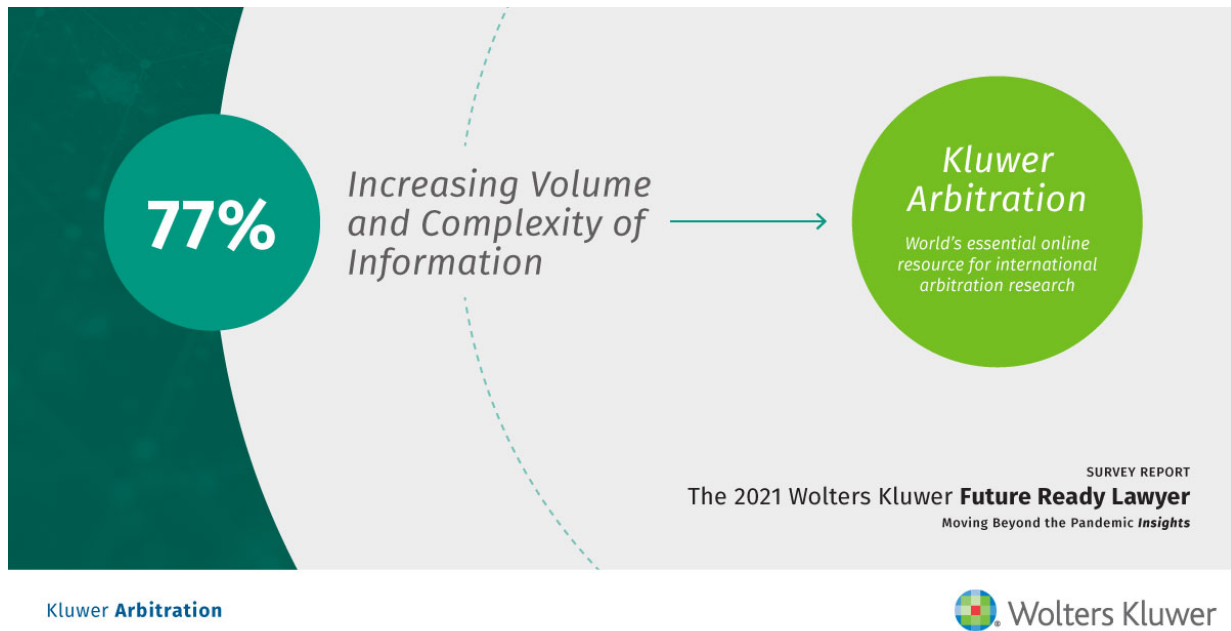
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