

Enforcement of Foreign Awards in the UAE: Back on Track?

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In recent years, arbitration in the UAE has experienced significant growth among domestic and international users. While there is undoubtedly a positive trend in the use of arbitration as a mechanism to resolve disputes in the UAE, one of the main criticisms is the uncertainty around enforcement of both domestic and international awards, despite the UAE's accession to the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in 2006. In fact, any arbitration practitioner with experience in the UAE will be familiar with the local enforcement battles, as demonstrated by the case of *International Bechtel Co. Ltd v. Department of Civil Aviation of the Government of Dubai*, as well as a recent Court of Appeal decision which questioned whether the UK was a signatory to the New York Convention. However, in the recent Dubai Court of Cassation Commercial Appeal No. 693 of 2015, it could be argued that the feelings of distrust and uncertainty may be put at bay, at least for the time being particularly when it comes to enforcement of foreign awards.

The case concerned a charter-party agreement dated 2 May 2007. A dispute arose between the Claimant and the Respondent and the former commenced arbitration proceedings in London pursuant to the agreement.

The arbitral tribunal issued two awards in the Claimant's favour, one on the merits and one on costs, the last being issued on 20 March 2014.

The two awards became final when the Respondent did not challenge them after having been duly notified in accordance with English law.

The Claimant commenced proceedings in Dubai for the recognition and enforcement of the two awards. The Dubai Court of First Instance ordered the recognition of both awards and their enforcement in accordance with the enforcement procedure outlined in the UAE Civil Procedure Law.

The Respondent appealed and on 15 July 2015, the Court of Appeal upheld the decision of the Court of First Instance. On 13 September 2015 the Respondent appealed this decision to the Court of Cassation.

In that action, the Respondent raised two heads of challenge. First, it argued that the Court of Appeal was wrong to have rejected its plea that the Respondent was not served with the arbitration notice, and as such was unable to present its case before the arbitral tribunal. This was because a commercial agent, rather than the Respondent itself, had received the arbitration notice. The

Respondent argued that as an Emirati company it should be served with the arbitration notice in accordance with the Agreement on Judicial Assistance between the UAE and the UK, ratified by Federal Decree No. (38) of 2007.

Secondly, the Respondent argued that a person not authorized to bind the Respondent to arbitration signed the agreement containing the arbitration clause. The Court of Appeal had held that the Respondent failed to prove this in accordance with the law of the country where the arbitral award was issued, being London, England.

The Court of Cassation dismissed the argument, stating that according to Article 238 of the UAE Civil Procedure Law, international conventions, by virtue of ratification, shall apply as though they were domestic law in the UAE to disputes concerning the enforcement of foreign court decisions and arbitral awards.

The Court of Cassation explained further that by Federal Decree No. 43 of 2006, which was published in the Official Gazette on 28 June 2006, the UAE acceded to the New York Convention. Therefore, its provisions applied to the present dispute.

The New York Convention provides that, as a general principle, and subject to any permissible reservations that it has entered into, each contracting state shall recognize arbitral agreements as binding, as long as there is an agreement on arbitration in writing (whether in a contract, a standalone agreement, or in an exchange of letters or telegrams).

Article V states that: "1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity....., under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings; or (c), (d), (e)."

In other words, the party against whom the arbitral award was issued may plead that the award should not be recognized under any of the conditions listed in Article V, including (a) and (b), provided that it furnishes to the court where the recognition is sought, proof that it was under some incapacity under the law of the country where the award was made or was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings and was unable to present its case.

The Court of Cassation found that the Respondent had not produced any evidence before the trial court that it lacked capacity to sign the contract in accordance with the law of the country where the arbitral award was issued. As regards notice, the fact that the Respondent had attended the arbitration hearings was evidence that it had received sufficient notice. The entire appeal was therefore dismissed.

In conclusion, the Dubai Court of Cassation in this case has clearly adopted a pro-enforcement attitude towards foreign arbitration awards and recognised the primacy of the New York Convention. The Court of Cassation held that, pursuant to Article V(1)(a) of the New York Convention, the issue of the capacity of the person signing the arbitration clause is to be assessed using the law of the country where the award was issued (the law of the seat), regardless of the parties' nationality or the domestic law under which the party acquired its legal status. This is particularly encouraging, because technical points regarding the authority of a signatory to bind a company to arbitration are often raised to resist enforcement of awards in the UAE. This decision will go some way in comforting

applicants that such points may no longer be sustainable where the enforcement relates to a foreign award.