

Kluwer Arbitration Blog

Back on track: Dubai Court of Cassation affirms enforceability of UK award under NYC

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To investors' relief, in a recent ruling (see Case No. 384/2016, ruling of the Dubai Court of Cassation of 19 June 2016), the Dubai Court of Cassation reversed the lower court's refusal to enforce an award rendered under the Rules of Arbitration of the International Chamber of Commerce (ICC) in London, England, on the basis that the UK had not been proven to be a member of the 1958 New York Convention (on the recognition and enforcement of foreign arbitral awards) (the "NYC" or simply the "Convention") (see Case No. 52/2016, ruling of the Dubai Court of Appeal of 30 March 2016 and my previous reporting [here](#)). In doing so, the Dubai Court of Cassation gave short shrift to the dicta of the Dubai Court of Appeal and recorded – for posterity, one may add – the UK's membership of the NYC.

In essence, the Dubai Court of Cassation found that the Dubai Court of Appeal's ruling was in violation of the prevailing legal position in the UAE. More specifically, the Court confirmed as established that by virtue of Article 238 of the UAE Civil Procedures Code, in the enforcement of foreign arbitral awards, the UAE courts were bound by international enforcement instruments to which the UAE were a party, including the NYC, which had been adopted by the UAE by Federal Decree No. 43 of 2006. Following express reference to a Convention country's obligations to recognise and enforce under Articles I and III of the NYC and quoting Article 238 of the UAE Civil Procedures Code in full, the Dubai Court of Cassation stated verbatim as follows:

“Whereas it is evident from a review of the New York Convention on the recognition and enforcement of foreign arbitral awards that the UK joined the Convention on 24 September 1974, which in turn means that the country where the arbitration award is issued and the country where the enforcement of the award is being sought are both members to the New York Convention, the Convention finds application for present purposes. Whereas the challenged ruling [i.e. the ruling of the Dubai Court of Appeal] deviated from this rule and ordered to dismiss the Appellant's request stating that: ‘To enforce the arbitration award rendered in a foreign country without filing an ordinary case in the country where the award is requested to be enforced – in case either country has not signed an arbitration treaty or convention – it is required that both countries are members of New York Convention on the recognition and enforcement of foreign arbitral awards of 1958 [...], and that the UAE have signed the New York Convention by virtue of the Federal Decree No. 43 of 2006; however, the documents submitted in evidence do not refer to Britain as

“the country where the arbitration award is issued”.’ Considering that the UAE is a Convention country and that the UK signed the NYC in 1975, the challenged ruling misapplies and hence violates the law, inviting its reversal.” (my translation)

If a criticism can be made of the Dubai Court of Cassation’s ruling, it is that it does not give full force to the wide enforcement obligations imposed on the UAE and its courts by the fact that the UAE did not enter into a reservation of reciprocity under the NYC and are therefore obliged to recognise and enforce within the terms of the NYC any foreign award irrespective of its country of origin, whether Convention or non-Convention. The wording of the Dubai Court of Cassation appears to make recognition and enforcement under the Convention conditional upon Convention membership of the country of origin of the award whose enforcement is being sought. Strictly speaking, this is incorrect for the reasons stated above. This being said, to date, this particular issue has not arisen for determination before the UAE courts and will have to wait for a future opportunity to be resolved.

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This entry was posted on Monday, August 1st, 2016 at 8:08 pm and is filed under [Enforcement](#), [Foreign arbitral awards](#), [MENA](#), [New York Convention](#), [UAE](#), [UK](#)

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