

# Kluwer Arbitration Blog

## The New York Convention in the United Arab Emirates: Fifteen Years On

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The United Arab Emirates (“UAE”) adhered to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the [New York Convention](#) (“New York Convention”) in 2006. Joining the New York Convention was done through [Federal Decree No. 43 of 2006](#). This post examines how the New York Convention has been implemented by the Dubai courts fifteen years on.

### **Refusal to Recognize the Foreign Award**

In [Dubai Court of Cassation No. 403/2020 \(Civil\)](#), the Dubai Court of Cassation (“Court”) refused the enforcement of an award issued in China on the grounds of public policy. The Court explained that the New York Convention has become part of the country’s legislation and that foreign arbitral awards should be enforced unless one of five instances set out in Article V of the New York Convention is triggered.<sup>1)</sup>

One such ground is where the award violates the public policy of that country. The Court then cited Article III of the New York Convention which provides for enforcement in line “*with the rules of procedure of the territory where the award is relied upon*”. In this regard, the Court found that “*the rules of procedure*” refers to any law which governs proceedings and is not limited to the Federal Civil Procedures Law. It was the Court’s view that the [Federal Arbitration Law No. 6 of 2018](#) (“Arbitration Law”) is a procedural law given that it contains the procedural rules of arbitration and is therefore part of “*the rules of procedure*” envisaged in Article III of the New York Convention. Article 41.3 of the Arbitration Law stipulates that the arbitrators shall sign the award. The Court was of the opinion that signing an award means signing both the dispositive and the reasoning sections of the award. If the signature has not been placed in both of the sections of the award, the award is deemed to be invalid and this invalidity is one of the reasons to refuse the recognition and enforcement of the award as part of UAE’s public policy. The award in this case contained the signature of the arbitrator on the last page only and not on any parts of the reasoning or the dispositive sections of the award and as such, the Court concluded that the award could not be enforced. The requirement to sign the reasoning and the dispositive has been [consistently applied](#) by Dubai courts.

As previously discussed on the Blog [here](#) and [here](#), the UAE courts have a rather conservative approach on the issue of a representative's authority to conclude an arbitration agreement. For example, in [Dubai Court of Cassation No. 400/2014 \(Commercial\)](#), the Court refused the enforcement of an award that was rendered in London on the basis that the signatory of the arbitration agreement was not authorized to agree to arbitration. The Court held that the New York Convention should apply to the recognition and enforcement of the award and found that the award debtor provided evidence demonstrating the lack of capacity of the signatory. Accordingly, the Court relied on Article V(1)(a) of the New York Convention to refuse its recognition and enforcement.

### **Recognition of a Foreign Award**

In [Dubai Court of Cassation No. 5/2020 \(Commercial\)](#), the Court reversed the decision of the lower court which had refused enforcement on the basis that the award had not become final in the country of the seat of the arbitration. The lower court had relied on [Article 85.2\(d\) of the Implementing Regulations of the Civil Procedures Law](#) ("Implementing Regulations"), which requires finality of the judgment in order to enforce a foreign judgment, in its decision refusing enforcement of the award. In particular, the lower court reached this conclusion on the basis of a certificate issued from the Court of Appeal in Beirut demonstrating that the case is still being heard. The lower court concluded that the award is being appealed. The Court clarified that this was an error as the award is not subject to appeal. It appears that the award debtor had filed an action for annulment. One can conclude from the reasoning of the Court that ratification and enforcement would not have been granted if the award was subject to appeal. This is in line with Article V.1(e), which states as one of the grounds for refusing ratification and enforcement, the instance where "*The award has not yet become binding on the parties.*" When the case was heard before the Court, the award debtor argued that the award was not enforced in the country of the seat, in Lebanon. The Court explained that enforcement in the country of the seat was not a prerequisite and only one of the five instances set out in Article V of the New York Convention can prevent enforcement. The Court explained that the provisions of the international treaties concluded by the UAE take precedence over local legislation. As such, the lower court should have decided the application to enforce the award in line with the New York Convention and not the Implementing Regulations.

In [Dubai Court of Cassation No. 693/2015 \(Commercial\)](#), the award debtor had argued that the arbitration agreement was signed by a person who was not authorized to sign the contract, that the award debtor was not given proper notice of the arbitral proceedings and was unable to present its case. The award debtor argued that the arbitral tribunal had served notice of the proceedings on a commercial agent who was not related to the award debtor and that the latter is an Emirati company, which should be served as per the convention on judicial cooperation concluded between the UK and the UAE. Accordingly, the award debtor argued that the award should not be recognized and enforced on the basis of Articles V.1(a) and (b) of the New York Convention. The Court found that there was no evidence on the incapacity of the signatory under the laws of the award debtor and that it was clear that the debtor had

participated in the proceedings. Accordingly, the Court ordered the enforcement of the award under the New York Convention.

In Dubai Court of Cassation No. 384/2016 (Commercial), the Court ordered enforcement of the award in a case that was extensively reported and criticized in the arbitration community (See prior discussion on the Blog [here](#)). This case related to an ICC award, which the lower courts refused to recognize on the basis that the UAE and the country of the seat of the arbitration, the United Kingdom, should be members of the New York Convention and that there was no evidence in the casefile that the United Kingdom was a member of the New York Convention. The decision was [subsequently reversed](#) by the Court as the Court explained that the United Kingdom had become a member of the New York Convention on 24 September 1975. It is noteworthy in this decision that the Court highlighted the importance of respecting the international conventions entered into by the UAE with respect to the enforcement of foreign court judgments and arbitral awards amongst which the New York Convention. In this context, the Court reiterated the requirement that a country member to the New York Convention should not impose more burdensome requirements on the enforcement of foreign awards.

In [Dubai Court of Cassation No. 132/2012 \(Commercial\)](#), the award creditor had filed an application for the recognition and enforcement of two awards issued in London while the award debtor filed for the nullification of the awards on multiple grounds such as the incapacity of the signatory of the arbitration agreement, irregularities in the formation of the arbitral tribunal, etc. The Court granted the enforcement of both the awards dismissing the objections raised by the award debtor. The Court explained that as the UAE was a signatory of the New York Convention, ratification of foreign awards should be in line with the New York Convention. As such, a court may only refuse the recognition of an award if one of the grounds set out in Article V are met and the award debtor in this case had not been able to demonstrate any of the grounds contained in Article V. The Court further explained that there is an assumption that the requirements of arbitral proceedings have been observed and whoever alleges the contrary should provide evidence of such allegations. The Court then dealt with the challenges raised by the respondent and found that these allegations were not proven.

In [Dubai Court of Cassation No. 434/2013 \(Commercial\)](#), the Court rejected the various objections raised by the award debtor and enforced the award issued in Germany on the basis that foreign awards should be enforced in line with the New York Convention, which the UAE was a member of, and that the enforcement of an award could only be rejected if one of the instances set out in Article V has been met. The decision is discussed in more detail in a [prior post](#). It is worth noting here that the Court mentioned that the award is issued in Germany, which is a country member to the New York Convention and that as such, the requirements of implementing the New York Convention have been met. This indicates that the Court considers it a requirement that the country of the seat be a member of the New York Convention.

## **Final Remarks**

It is clear from the reviewed decisions that the courts have a very clear understanding of the application of the New York Convention and that they are consistently implementing its provisions. There seems to be only one issue that the courts are unclear on; It appears from the decisions rendered in Dubai Court of Cassation No. 384/2016 (Commercial) and Dubai Court of Cassation No. 434/2013 (Commercial) that the courts require that the country of the seat be a member of the New York Convention in order to grant ratification and enforcement of the foreign arbitral award. However, the UAE has not entered such a reservation and therefore such a requirement does not apply. Having said that, 169 countries are currently member to the New York Convention. Therefore, the chances of there being an award issued from a country that is not a member and consequently refusing ratification are very low.

It is commendable how strictly the Dubai courts are applying the New York Convention and how errors of lower courts are being rectified at the Cassation level. It is also noteworthy that the courts generally presume that the arbitral proceedings have been conducted correctly unless a party can prove otherwise and they implement Article V in the narrowest way possible. All of this is praiseworthy and demonstrates that the UAE has taken steps in the right direction.

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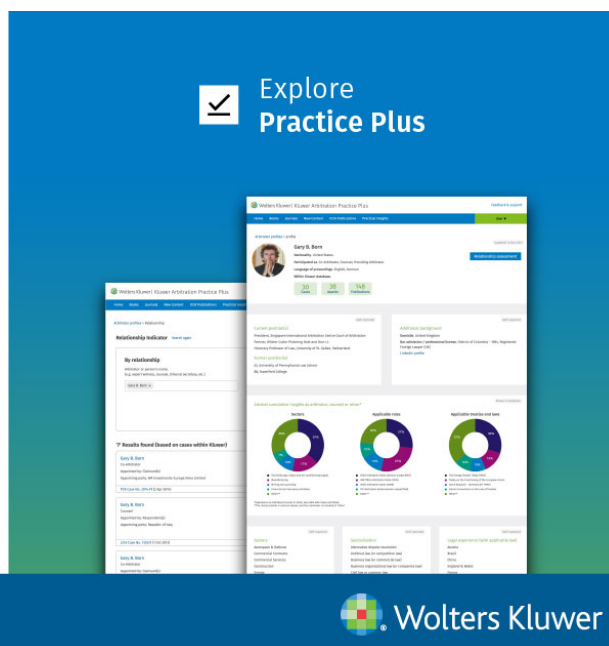
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### References

- ↑ **1** Article V contains the grounds for which the recognition and enforcement of the award may be refused.

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