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Expedited Enforcement of Foreign Awards: A New Favourable Regime for the Enforcement of Foreign Awards in the UAE?

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Introduction

On 9 December 2018, the UAE adopted Cabinet Resolution No. 57 of 2018, which entered into force on 16 February 2019 (the “**Cabinet Resolution**“). The Cabinet Resolution introduces significant amendments to the UAE Civil Procedure Code (**Federal Law No. 11 of 1992**), which considerably enhance a wide array of procedures before the UAE onshore Courts.

The enforcement of awards, whether domestic or foreign, has become an increasingly hot topic in the UAE over the past decade (see [our previous discussion here](#)). The entry into force of the Cabinet Resolution brings clarity to the regime applicable to the enforcement of foreign awards.

Competing Legal Regimes Applicable to Enforcement of Foreign Arbitral Awards

This blog post considers the options for enforcement under the former regime and identifies the benefits of the Cabinet Resolution, including in relation to the enforcement of foreign judgments and awards.

As reported in a [previous blog](#), in June 2018, the long awaited **UAE Federal Arbitration Law** (Law No. 6 of 2018) (the “**Federal Arbitration Law**“), largely based on the UNCITRAL Model Law, entered into force repealing the arbitration specific provisions, i.e. Articles 203 to 218, contained in the UAE Civil Procedure Code (“**UAE CPC**“). The Federal Arbitration Law intended to provide a modern legislative framework for arbitration in the UAE but did not repeal Articles 235 to 238 of the UAE CPC applicable to the enforcement of foreign judgments and awards.

1. UAE Civil Procedure Code

Prior to the entry into force of the Federal Arbitration Law, the so-called ratification process under the UAE CPC involved the filing of a standard full claim before the Court of First Instance at substantial cost to the filing party, with an automatic right of appeal available to either party of that decision to the Court of Appeal, followed by the possibility of a further appeal before the Court of Cassation. Only then, i.e., after spending a considerable amount of time and cost embroiled in litigation before the onshore Courts, was an award (either domestic or foreign) capable of enforcement by an execution judge.

2. Federal Arbitration Law

The Federal Arbitration Law, amongst other novelties (such as e.g. the provisions on joinder of third parties or the recognition of partial and interim awards), introduced a streamlined process under Article 55 for the enforcement of domestic awards before the UAE onshore courts.

(a) Enforcement of Domestic Awards

In essence, a party seeking to enforce a domestic award is now able to submit, at a nominal cost, an application directly before the Chief Justice of the Court of Appeal who is required to issue an order for ratification and enforcement of the award within 60 days from filing of the application unless the Court finds a reason to set aside the award upon any of the limited grounds listed under Article 53(1). A party may challenge the decision of the Chief Justice by filing a grievance before the Court of Appeal within 30 days. The Federal Arbitration Law is silent on whether a decision by the competent Court of Appeal is final or if the aggrieved party may file a further appeal before the Court of Cassation. The majority view is that the Court of Appeal's decision on the grievance is very likely to be considered final. Otherwise, this would result in delays in the enforcement process, which defeats a main objective of the Federal Arbitration Law, namely to achieve an efficient and expedited enforcement regime.

(b) Enforcement of Foreign Awards

As indicated above, the Federal Arbitration Law did not expressly repeal Articles 235 to 238 of the UAE CPC, which are applicable to the enforcement of foreign judgments and awards. This caused [debate](#) amongst the local arbitration community as to whether the streamlined provision provided under Article 55 of the Federal Arbitration Law were applicable to foreign arbitral awards, or whether Article 55 only applied to the enforcement of domestic arbitral awards. There were uncertainties as to the proper regime applicable to the enforcement of foreign awards, including on the basis of the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958). Some argued that Article 55 only applied to the enforcement of domestic arbitral awards, and that Articles 235 to 238 of the UAE CPC remained applicable to the enforcement of foreign arbitral awards.

3. Impact of the New Cabinet Resolution

The new Cabinet Resolution has clarified the position regarding enforcement of foreign awards, as it contains new provisions in Chapter IV at Articles 85 to 88 on the “*Enforcement of foreign judgments, orders and instruments*“, which are intended to replace Articles 235 to 238 of the UAE CPC. Articles 85 to 88 of the Cabinet Resolution essentially provide that the relevant provisions of the Cabinet Resolution concerning the enforcement of foreign judgments and orders shall also apply to foreign arbitration awards provided that (i) the subject-matter of the award is arbitrable under UAE law and (ii) the award is enforceable in the country of origin. Importantly, Article 85.2 provides that an application for enforcement of a foreign judgment or arbitration award in the UAE should be brought directly before the competent Enforcement (or Execution) Judge who is required to issue its order within three days from the date of filing. Even though the Execution Judge's order remains subject to the usual channels of appeal, i.e., before the Court of Appeal and the Court of Cassation, the regime put in place by the Cabinet Resolution represents a welcome improvement to the enforcement process, and provides clarity as to the enforcement regime applicable to foreign awards. It remains to be seen how the new provisions will be applied by the UAE courts and whether the intended efficiency through shortened procedures and stringent time-limits will be achieved in practice.

Concluding Remarks

During the period of uncertainty (between the enactment of the Federal Arbitration Law and the Cabinet Resolution), in my view, the preferred approach within the community was that foreign arbitral awards which fell under the New York Convention should benefit from the streamlined process introduced by the Federal Arbitration Law. This view is supported by the non-discrimination clause under [Article III of the Convention](#), which requires contracting states to ensure non-discrimination between foreign and domestic awards, such that these awards are recognized and generally capable of enforcement in the same way as domestic awards. Some [commentators](#) actually reported decisions by the Chief Justice of the Dubai Court of Appeal granting enforcement of a number of foreign awards on the basis of the expedited process introduced by the Federal Arbitration Law.

However, the position has now been clarified with the entry into force of the Cabinet Resolution. As such, two separate sets of rules now apply to the recognition and enforcement of awards in the UAE: Article 55 of the Federal Arbitration Law provides for enforcement of domestic arbitral awards, whereas the Cabinet Resolution (together with the New York Convention) provides for enforcement of foreign arbitral awards. Time will tell whether the expedited enforcement regime of foreign awards introduced by the Cabinet Resolution will reveal itself as more favourable than the regime applicable to domestic awards under the Federal Arbitration Law.

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