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Enforcement of Foreign Awards in the UAE: Significant Progress Achieved

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Amongst the strides taken by the United Arab Emirates (“UAE”) in recent years, there is the improvement made to the enforcement process of foreign awards in the UAE courts. This post examines the legislative changes made in this area, how the UAE courts have approached applications for the enforcement of foreign awards and the grounds for refusing enforcement.

The Law: Enforcement Procedures and Conditions

A key change was introduced to the procedure for the enforcement of foreign awards in 2018. Previously, an application for the enforcement of a foreign award had to be submitted to the Court of First Instance in the manner prescribed for filing normal proceedings as per the [Federal Civil Procedures Law No. 11/1992](#) (“**Old CPL**”). In December 2018, the [Implementing Regulations of the Old CPL were issued through Ministerial Cabinet Resolution No. 57/2018](#) (“**Regulations**”) introducing new procedures. Under the Regulations, the enforcement of foreign awards is sought through an application to the execution judge, who is required to render its decision within three days.

In 2022, the Old CPL was repealed through [Federal Civil Procedures Law No. 42/2022](#) (“**New CPL**”). The Regulations were no longer in force but the enforcement procedure remained the same as reflected in the New CPL.¹⁾ As per Article 222.2, an application for enforcement of a foreign award is to be made to the execution judge, who is required to render its decision within five days from the date of the application. This decision is subject to appeal within 30 days. Article 223 sets out two requirements for the enforcement of a foreign award:

1. the dispute should be arbitrable according to the laws of the UAE; and
2. the award should be enforceable in the country of the seat.

The conditions set out in Article 223 are not in contradiction with the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#) (“**New York Convention**”), which the UAE became a member of in 2006.

The requirement for the dispute to be arbitrable is covered in Article V.2(a) of the New York Convention as it allows the competent courts to refuse recognition and enforcement if “*the subject*

matter of the difference is not capable of settlement by arbitration under the law of that country." The requirement that the award be enforceable in the country of the seat is provided under Article V.1(e) which allows refusing the recognition and enforcement of the award if "*The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.*" The difference however is that under the New York Convention the enforcement may be refused "[at the request of the party against whom it is invoked](#)", while Article 223 of the New CPL imposes the said condition irrespective of whether it is raised by a party. Accordingly, it appears that the UAE courts have the power to raise this ground on their own motion.

This raises the question of any violation of the New York Convention given that the courts are allowed under Article V.2 of the New York Convention to raise only two specific grounds on their own motion:

1. the arbitrability of the subject matter; and
2. enforcement being contrary to public policy.

Through Article 223 of the New CPL, the UAE courts have an additional ground to refuse enforcement, which was not envisaged by the New York Convention. This conflict should be resolved in favor of applying the New York Convention as it takes precedence over the enforcement related provisions of the New CPL. As per Article 225 of the New CPL, international treaties of which the UAE is member take precedence over the enforcement related provisions examined here.

Grounds to Refuse Enforcement

Since its adoption, the New York Convention has been consistently applied by the UAE courts. Many decisions of the Dubai Court of Cassation reiterate that enforcement of foreign awards should be in line with the New York Convention and that enforcement can only be refused when one of the grounds set out in Article V is met. The UAE courts reject applications to set aside the enforcement of awards if those challenges do not strictly fall within the scope of Article V of the New York Convention. We can see such approach in various decisions such as in [Dubai Court of Cassation No. 403/2020 \(Civil\)](#), [Dubai Court of Cassation No. 5/2020 \(Commercial\)](#), and [Dubai Court of Cassation No. 1016/2020 \(Commercial\)](#).

The UAE also does not apply the reciprocity requirement which allows any member state of the New York Convention to refuse enforcing a foreign award when the country where the award has been rendered is not a member of the New York Convention. The UAE has not entered such reservation when becoming a member of the New York Convention although certain court decisions include language indicating such requirement.²⁾

On a couple of rare instances, the UAE courts have declared that they do not have jurisdiction to enforce a foreign award when the award debtor is not domiciled in the UAE and the contract subject of the dispute has no link to the UAE as commented on in a previous [blog post](#).³⁾

These cases are however the exception, and it is safe to say that there are generally no unpleasant surprises when applying for the enforcement of awards in the UAE. There are only a couple of

grounds of refusal which are consistently raised and should be noted carefully. These relate to the signing of the award and to the powers of the representative of a judicial person, as discussed further below.

Signing of the Award

Article V.2(b) of the New York Convention stipulates public policy as a ground for refusing the recognition and enforcement of an award. The requirement of signing the award is found in Article 41(3) of the [Federal Arbitration Law No. 6 of 2018](#) (“**Arbitration Law**”), which states that the arbitrators should sign the award. A simple reading of the said article reveals that arbitrators should sign the last page of the award which is where the signature is usually placed. However, court decisions over the years have required signing the reasoning and the dispositive sections of the award and considered it a public policy requirement. Consequently, awards that do not carry signature on these sections cannot be enforced. For example, in [Dubai Court of Cassation No. 403 of 2020 \(Civil\)](#), enforcement of the foreign award was refused because the award was signed only on the last page.

It is worth mentioning the relatively recent decision issued in [Abu Dhabi Court of Cassation No. 411 of 2022 \(Commercial\)](#), in which the award debtor argued that the award was not signed on all pages. The Court of Cassation, however, did not engage in an analysis about the absence of signature or the consequences thereof and instead concluded that there was no violation to public policy. The award was thus enforced.

Authority of the Representative of the Judicial Person

On the basis of a number of UAE legal provisions as well as numerous court decisions, the representative of a judicial person should be authorised to agree to arbitration, otherwise, the agreement is not valid (an analysis of this requirement has been provided in a previous [blog post](#)). This requirement can come into play in the context of ratification and enforcement of a foreign award on the basis of Article V.1(a) of the New York Convention, which allows enforcement of the award to be refused if the parties to the arbitration agreement “*were, under the law applicable to them, under some incapacity.*” Although capacity and authority are two different issues⁴⁾ and the absence of authority is not *per se* a question of capacity, there is largely a consensus that [Article V.1\(a\)](#) includes the powers of a representative of a judicial person and courts in other countries have endorsed this approach.

This has also been the position in the UAE. For example, in [Dubai Court of Cassation No. 400 of 2014 \(Commercial\)](#), enforcement was refused because the award debtor proved that its representative lacked the necessary authority. Similarly, enforcement was denied in [Dubai Court of Cassation No. 613 of 2015 \(Commercial\)](#).

In the interest of completeness, there are two points that need to be noted here:

1. Dubai courts are becoming more lenient in the application of the requirement of authority in recent years and have established presumptions to the effect that the representative was authorised to agree to arbitration as commented on in a previous [blog post](#).
2. Abu Dhabi courts have in recent decisions rejected challenges raised by the award debtor that its representative was not authorised to agree on the arbitration clause. In [Abu Dhabi Court of Cassation No. 248 of 2022 \(Commercial\)](#), the award debtor raised, amongst others, the argument

that its representative was not authorised to agree on arbitration. The Court of Cassation dismissed the challenge explaining that the requirements for enforcing the award had been met and that any challenge to the award was not within the jurisdiction of the Abu Dhabi courts. In [Abu Dhabi Court of Cassation No. 411 of 2022 \(Commercial\)](#), the award debtor similarly argued, amongst other grounds, that its representative was not authorised but the Court of Cassation did not engage into an analysis about the absence of authority and dismissed the challenge.

Concluding Remarks

Ratification and enforcement of foreign awards in the UAE is now a guaranteed process and no longer a road fraught with uncertainties. A number of factors have influenced this shift. The most important element has been the UAE's legislative framework. Becoming a member of the New York Convention in 2006 was a turning point with respect to the enforcement of foreign awards in the UAE. Since 2018, further legislative steps were taken. The process of enforcement was rendered swifter with the amendment to the procedural laws as explained above and this coincided with the promulgation of the Arbitration Law. Although the latter does not have a direct bearing on the enforcement of foreign awards, issuing a comprehensive law on arbitration has made clear the UAE's intention to become a leading arbitration jurisdiction and has sent a strong message to the judiciary. The role of the judiciary is key in the transformation of any jurisdiction into an arbitration friendly one and the UAE judiciary changed its stance towards arbitration. Rather than looking for reasons to refuse enforcement, it started looking for reasons to uphold arbitral awards.

For anyone monitoring the arbitration landscape of the UAE in recent years, the progress is not only palpable but also steady and consistent. There is clearly a will to become an arbitration hub and it is the author's view that the improvements are here to stay and that with time, the existing grounds on refusing enforcement will gradually have less of an impact. The only piece of advice one can give to practitioners who do not regularly practice in the UAE is to keep an eye on developments as the UAE continues to make headway in the field of international arbitration.

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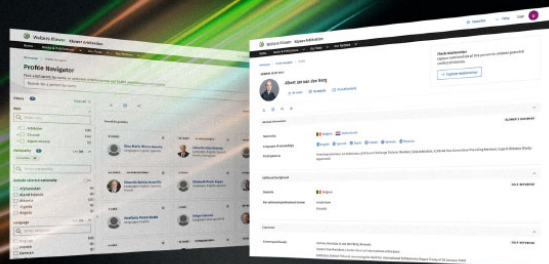
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References

- ?1 Article 222 of the New CPL, which by virtue of Article 223 applies to foreign awards, sets out the procedure for enforcing foreign judgments.
- ?2 See Gordon Blanke, *Blanke on UAE Arbitration Legislation and Rules* (2021) p.268
- ?3 See Gordon Blanke, *Blanke on UAE Arbitration Legislation and Rules* (2021) p.26
- ?4 See Fouchard Gaillard Goldman on International Commercial Arbitration, Edited by Emmanuel Gaillard and John Savage Published by Kluwer Law International 1999, pp. 250-251.

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