

The Abu Dhabi court of Cassation establishes new principles in harmony with the New York Convention

Hassan Arab - Partner, Regional Head of Dispute Resolution - Litigation / Arbitration
h.arab@tamimi.com - Dubai International Financial Centre

October 2013

This judgment supports international commercial arbitration and reiterates the UAE's commitment to international conventions and agreements entered into by the UAE, particularly when they conflict with domestic laws that were passed before the international conventions/agreements were ratified by the UAE.

In Commercial Appeal No. 679-2010 (issued on 16.06.11), the Abu Dhabi Court of Cassation overturned and remanded the Abu Dhabi Court of Appeal decision which refused to recognize and enforce a foreign arbitral award issued pursuant to the ICC Rules on the basis that the award conflicts with a criminal verdict issued in the UAE (in which the Appellant was ordered to pay a fine). The Abu Dhabi Court of Appeal ruled that the conflict was within the meaning of paragraph 2(e) of Article 235 of the Civil Procedure Law (Law No. 11 of 1992 as amended by Law No. 30 of 2005) which provides:

"2) An enforcement order shall be applied for in the normal manner of filing proceedings to the Court of First Instance within whose jurisdiction the enforcement is required. Enforcement may not be ordered until the following has been verified:

e) that it does not conflict with a decision or order previously issued by a court in the UAE and contains nothing in breach of public morals or order in the UAE."

The Court of Cassation, however, accepted the Appellant's argument that the Court of Appeal failed to apply the rules of Article III of the New York Convention on the Recognition and Enforcement of Arbitral Awards 1958 and cited 235, 236 and 238 of the Civil Procedure Law. A detailed summary of the case is set out below:

Background

The Appellant brought Abu Dhabi Commercial Case No. 410-2008 against the Respondent to enforce the arbitral award issued in Action No. 13534 as a domestic award in the UAE.

A final arbitral award was issued in the Appellant's favor by the ICC International Court of Arbitration in Paris. The award was issued by a court of jurisdiction and had the authority of res judicata when it was notified to the Respondent.

The Respondent argued that the arbitral award ruled contrary to a criminal verdict issued by a domestic court in AD Misdemeanors Case No. 3257-2005 in which the Appellant was ordered to pay a fine of AED 5,000 for committing contract fraud.

Summary of Case

The Court of Cassation dismissed the Respondent's argument that the arbitral award issued in the Appellant's favor was in conflict with a local criminal verdict issued in absentia against the Appellant (on

the basis of paragraph 2(e) of Article 235 of the Civil Procedure Law). The Court of Cassation held that the argument was inconsistent with the provisions of the New York Convention 1958 (the UAE is a party pursuant to Federal Decree No. 43 of 2006), particularly Article III of the Convention which mandates that a foreign award must be enforceable without unnecessary inconvenience or excessive fees, and the conditions must not be more onerous than those for domestic awards. The Court of Cassation further cited Articles 235, 236 and 238 of the Civil Procedure Law which provides that the provisions of international conventions between the UAE and foreign countries or international agreements to which the UAE is party shall apply to the enforcement of foreign judgments and arbitral awards notwithstanding the conditions of Article 235 of the Civil Procedure Law which would apply only if the UAE is not party to a bilateral convention or international agreement. Having acceded to the New York Convention, the UAE must implement it as domestic law notwithstanding any principles of conflicts of law. By becoming party to the New York Convention, the UAE has agreed to recognize foreign arbitral awards as binding and enforce them in accordance with the procedural rules applicable in the UAE and the requirements of Article V of the Convention. The New York Convention has simplified the enforcement of foreign awards and harmonized the national rules for the enforcement of foreign awards in the UAE.

In summary, the importance of this decision is that it reinforces the UAE's commitment to comply with international conventions and agreements, especially those concerned with the enforcement of foreign arbitral awards. The other important aspect is that the decision above makes a distinction between domestic arbitration and international arbitration in the UAE. The purpose of this distinction is to clarify that the arbitration provisions of the Civil Procedure Law, particularly those relating to enforcement, apply only to domestic arbitral awards while the provisions of the New York Convention apply to foreign arbitral awards, notwithstanding any conflict they may arise in respect of previously enacted domestic legislation.

In light of these important principles, I feel that it is now time for the UAE legislature to introduce an independent arbitration law to ensure there is no ambiguity with respect to the enforcement of foreign arbitral awards. There should be no confusion as to which provisions the courts should apply when faced with a particular arbitration situation. The provisions of the New York Convention appear much easier to apply than the applicable arbitration provisions in the Civil Procedure Law. This is because the relevant provisions of the Civil Procedure Law are outdated and insufficient. In view of the accelerated pace at which arbitration has evolved over the last two decades, there is therefore a pressing need for a new comprehensive modern law.