

Enforcing foreign Arbitral awards in the UAE

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The 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards has helped standardize the enforcement criteria in a large number of states. The UAE acceded the New York Convention in 2006 without reservation.

It took four years before the first judgment applying the New York Convention was rendered.

In 2010 Fujairah Federal Court of First Instance ruled [\[1\]](#) to enforce a London award issued under the London Maritime Arbitrators Association (LMAA) rules. The judgment expressly recognised that conventions and treaties entered into by the UAE have the force of local legislation.[\[2\]](#) However, the case was not contested by the party against whom enforcement was sought and, although encouraging, was therefore treated with some caution.

In 2011, the Dubai Court of First Instance[\[3\]](#) was faced with an application to enforce two London arbitral awards issued under the DIFC-LCIA Arbitral Rules involving two Dubai based companies. The defendant objected to the enforcement of the awards and sought nullification based on a number of procedural grounds. The court recognised that the awards were “undoubtedly foreign awards, both issued outside the UAE in London in accordance with the New York Convention” and held:

“The Court’s supervisory role when looking to recognize and enforce a foreign arbitral award is strictly to ensure that it does not conflict with the Federal Decree under which the UAE acceded to the New York Convention on the recognition and enforcement of foreign arbitral awards and satisfies the applicable procedural and substantive requirements of Articles 4 & 5 of the Decree in terms of being duly authenticated.”

A further positive step came in 2012 when the Dubai Court of Cassation upheld the lower courts’ decision enforcing a foreign arbitral award in *Airmech v Maxtell* (Commercial Appeal No. 132 of 2012). The Court held, among other things, that:

“In ruling that the UAE Courts have no jurisdiction to set aside foreign arbitral awards, the Court of Appeal reached the right conclusion as a matter of law and cannot be faulted for finding that jurisdiction belongs to the arbitrator that issued the award. As settled in the Court, the Court of Cassation can make up for incomplete reasoning and rectify error without having to reverse the decision. The effect of Federal Decree No. 43 of 2006 (under which the UAE acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) is that all UAE Courts shall recognize and enforce such awards in the territory where the award is relied upon.”

Despite the encouraging approach above, the UAE Courts had a setback in 2013 when the Dubai Cassation Court upheld the appeal court’s decision in rejecting an enforcement application in Civil Case No. 165 of 2013. The award creditor had applied for enforcement of a French award against a foreign government

with assets in the UAE. The Dubai Cassation Court, after reciting the full text of Articles 3 and 4 of the New York Convention as well as Article 15 of the UAE's Judicial Cooperation Agreement with France, stated that: "The procedure for obtaining enforcement of a judicial decision shall be governed by the law of the State of which the request is made". On that basis the court applied the UAE Civil Code and found that the court had no jurisdiction to enforce the award because the defendant was not resident in the UAE, even though that is not a requirement for the enforcement of awards under the New York Convention.

Not long after, the Dubai Court of Appeal issued a decision (Commercial Appeal No. 1 of 2013, issued on 9 July 2013) which proved that the above Cassation Court's decision was an exception, and that the UAE is committed to its international obligations. The Appeal Court held.

Although errant judgments do arise periodically, the above shows that the UAE courts' general approach towards arbitration has recently been positive, it is hoped that it will remain so.

Footnotes:

[1] Abdul Hameed Ahdab, *Resource of International Arbitration*, First Addition, Nofal Library, Beirut, Lebanon, 1990, p. 206. (Arabic).

[2] *Ibid.*

[3] Case No.35 of 2010.

[4] *Ibid.*

[5] *Maxtel International FZE v Airmec Dubai LLC*, Court of First Instance Commercial Action No.268, January 12, 2011.