

Where should you go to enforce Arbitration Awards issued in UAE?

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Introduction

The UAE legislator provides in the UAE Civil Procedures Code (“CPC”) that arbitration awards issued in UAE (i.e. domestic arbitration awards) are not enforceable until the Court ratifies the award. However, the CPC does not specify which local Court has jurisdiction to enforce domestic arbitration awards.

This lacuna in the law raises a number of questions, which this article will consider in the context of a recent case. For example, does the location of the relevant arbitration centre play a part in determining the Court that has the jurisdiction to enforce the award or do the general rules on judicial jurisdiction laid down in the CPC determine this issue?

A recent Dubai Court of First Instance (“Dubai CFI”) determined a ratification request in respect of an arbitration award issued by Dubai International Arbitration Centre (“DIAC”). The final judgment highlighted the basis upon which to determine the competent Court to enforce domestic arbitration awards issued in UAE.

Background of case

A bank (the “Respondent”) entered into an agreement with the opponent (the “Claimant”) to sell certain properties with commission being paid to the Claimant. The agreement contained an arbitration clause, which stated that any dispute between the parties should be referred to DIAC with DIAC’s rules applying.

A dispute ensued and the matter was referred to DIAC with the Claimant being the successful party. The Claimant filed a case before the Dubai CFI to ratify the arbitration award.

The Respondent’s defence including the argument that the Dubai CFI should not ratify the award due to lack of jurisdiction, asserting that the matter should be heard before the Abu Dhabi Court of First Instance (“AD CFI”) rather than Dubai CFI.

The Respondent took the position that the general rules related to the UAE Courts’ jurisdiction, as laid down in the CPC, should be followed in order to determine the competent Court for the purposes of reviewing the ratification request.

The Respondent argued that the subject matter of the arbitration award is a commercial dispute, and thus Article 31/3 of the CPC, which determines the applicable Court that has jurisdiction to review the commercial disputes, should apply. Article 31/3 provides that “in the commercial matters jurisdiction shall be vested in the court in whose area the defendant has his domicile or the court in whose area the agreement was made or was performed in whole or in part or in the court in whose area the contract should have been performed.”

The Respondent submitted to CFI that if it applied Article 31/3 to this ratification case, it would reach the following conclusion:

- (i) The Respondent was domiciled in Abu Dhabi; and
- (ii) The contract was made and performed in Abu Dhabi.

The Claimant argued that the Respondent has a branch in Dubai, and thus the 'area' of the Respondent should be Dubai with the CFI having jurisdiction to review the ratification case. In response, the Respondent asserted that its main branch, which contracted with the Claimant, is located in Abu Dhabi and a decision that the Dubai CFI had jurisdiction would be contrary to public policy considerations.

Court's Judgment:

The CFI accepted the Respondent's defence and rejected the Claimant's ratification case due to lack of jurisdiction holding that the Abu Dhabi Court is the competent Court with jurisdiction to review the ratification case.

The Claimant challenged the judgment issued by the Dubai CFI before the Dubai Court of Appeal. The Court of Appeal issued a judgment (No. 272/2013), in which it upheld the Dubai CFI decision.

The Dubai Court of Appeal stated that Article 31/3 of the CPC should be applied, which determines the Court's jurisdiction for commercial disputes. The Dubai Court of Appeal confirmed the Dubai CFI decision, namely; that the domicile of the Respondent, the performance of the disputed contract and the place in which the contract was made, was the Emirate of Abu Dhabi. Accordingly, the Court of Appeal held that the competent Court to review the ratification case related to the arbitration award was the AD CFI, and not its Dubai equivalent. The Claimant did not challenge the judgment issued by Dubai Court of Appeal and thus the judgment became final and binding.

Conclusion

It is clear from this case that matters such as the place of the arbitration centre have no relevance in determining which UAE Court has jurisdiction to review ratification and/or the nullification requests related arbitration awards issued in UAE. Further, the Court that has jurisdiction to review ratification and/or nullification requests regarding arbitration awards issued in UAE is the Court that would otherwise have jurisdiction to review the subject matter of the arbitration award (had the dispute not been referred to arbitration). In summary, the general rules on judicial jurisdiction laid down in the CPC are determinative.