

Enforcement of Foreign Arbitral Awards in the UAE: Paving the way for a New Enforcement Regime

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Background

The UAE issued Federal Arbitration Law no. 6 of 2018 on the 15 May 2018 (the 'UAE Arbitration Law'). The Law has introduced substantial improvements to the procedure for enforcing arbitral awards.

As mentioned in a previous Al Tamimi article "[Commentary on UAE's new Arbitration Law](#)", the UAE Arbitration Law repeals the arbitration chapter found in Chapter III of the UAE Civil Procedures Law (Federal Law 11 of 1992 as amended) (Articles 203-218). The provisions set out in Chapter IV on the Execution of Foreign Judgments and Chapter V on Execution Procedures (Articles 235-238) of the UAE Civil Procedure Law, however, are still in force.

It is important to note that Federal Decree no. 10 of 2017 issued on 28 September 2017 (which amended the UAE Civil Procedure Law in several respects), provides that Articles 5 to 19, 42 to 54, 70 to 83, 125 to 136, 140 to 149 and 219 to 331 of the UAE Civil Procedure Law will remain in force until repealed by the issuance of a Cabinet Decision which will regulate those areas of the Civil Procedure Law.

On 9 December 2018, Cabinet Decision no. 57 of 2018, which concerns the Executive Regulation of the UAE Civil Procedure Law ('Cabinet Decision'), was issued. It is not yet published in the Official Gazette (as at the time of writing this article). Pursuant to this Cabinet Decision, a new set of rules will regulate the enforcement of foreign arbitral awards and accordingly replace those rules set out under Articles 235 to 238 of the UAE Civil Procedure Law. This Cabinet Decision shall come into force two months from its publication in the UAE Official Gazette.

This article discusses the enforcement of foreign arbitral awards in light of the UAE Arbitration Law and the Cabinet Decision. We will also look at the legal framework for the enforcement of foreign arbitral awards in Egypt due to its similarity to the UAE framework (both countries have adopted the UNCITRAL Model Law and have similar civil procedure laws), and draw some lessons for the enforcement of New York Convention awards, which will also likely benefit from the new rules introduced by the Cabinet Decision.

The conditions for the enforcement of foreign awards

To date, the UAE has two different regimes for the enforcement of arbitration awards as follows:

First Regime: The UAE Arbitration Law:

Article 55 of the UAE Arbitration Law sets out the procedure for the enforcement of the arbitration awards that are within its scope according to Article 2 thereof. According to Article 55 of the UAE Arbitration Law, a request to ratify and enforce an award must be filed with the Chief Justice of the Court of Appeal, together with the following documents:

1. the original award or a certified copy thereof;
2. a copy of the Arbitration Agreement;
3. an Arabic translation of the arbitral award, attested by a competent authority, if the award is not issued in Arabic; and
4. a copy of the minutes of deposit of the award in court.

Article 55(2) also provides that:

"the chief justice of the Court or whoever he delegates from among its judges shall order the arbitral award ratified and enforced within sixty days of submission of the request for its confirmation and enforcement, unless it finds one or more grounds for setting aside the award under section 1 of Article 53 of this Law."

Accordingly, it is clear that the UAE Arbitration Law has adopted an expedited regime for the enforcement of arbitration awards by way of filing a petition to the Chief Justice of the Court of Appeal, or to whomever he delegates to perform that function. This petition should be disposed of within 60 days from the filing date.

Since the publication of the UAE Arbitration Law, we have worked on the enforcement of several arbitration awards according to the expedited regime of the UAE Arbitration Law before the Dubai courts:

1. the ratification claim is to be registered as 'Order on Petition – Arbitration' and is tried by a circuit composed of one judge called 'the circuit of the chief justice of the court of appeal';

2. the court fees for the ratification claim are minimal (AED 320);
3. once a claim is filed with the Chief Justice of the Court of Appeal, the Court will serve the petition on the defendant and request the defendant to submit its response to the enforcement application within a week. Pursuant to Article 53 of the UAE Arbitration Law, the defendant can challenge the award by an action to set aside the award before the Court of Appeal or during the pendency of an application to confirm the award if any of the grounds listed in Article 53 are established;
4. at the time of writing this article and in view of the UAE Arbitration Law still being relatively new, no process or deposit rules have been put in place with respect to the requirement set out in Article 55(2) of the UAE Arbitration Law. In the interim, an applicant seeking to enforce an award must attach the original award to the ratification claim;
5. the ratification/enforcement order is typically issued within a period of three to four weeks from the date of official filing;
6. based on practice, we are able to say that the UAE Courts are predisposed to ratifying and enforcing arbitration awards pursuant to the UAE Arbitration Law, unless a serious challenge is raised by the award debtor; and
7. the ratification/enforcement order, once issued by the Chief Justice or whomever he/she delegates, is enforceable with immediate effect and shall enable the award creditor to get the award stamped by the execution formula and take all execution procedures against the award debtor. This is because the ratification order is legally deemed an 'Order on Petition' which is immediately enforceable by operation of law according to Article 228 of the UAE Civil Procedures Law.

In view of the above, it is clear that the UAE Arbitration Law has provided the arbitration community with an efficient and expedited regime for the enforcement of arbitration awards.

Second Regime: The UAE Civil Procedure Law

As mentioned above, the provisions set out in the UAE Civil Procedure Law relating to the execution of foreign judgments and arbitral awards are still in force, and will apply to the enforcement of foreign awards until the expiry of two months after the Cabinet Decision 57 of 2018 is published in the Official Gazette. The conditions for the enforcement of foreign judgments in the UAE are set out in Article 235 of the UAE Civil Procedure Law (the following is an unofficial English translation):

1. Judgments and orders issued in a foreign country may be ordered to be enforced in the UAE on the same conditions as prescribed in the laws of that country for the enforcement of similar judgments and orders issued in the UAE.
2. An enforcement order shall be applied for under the normal litigation procedures in the court of first instance within whose jurisdiction the enforcement is required. Enforcement may not be ordered until the following has been verified:
3. That the UAE courts do not have jurisdiction in the dispute in which the judgment has been given or the order made, and that the foreign courts which issued it have jurisdiction therein under the international rules for legal jurisdiction prescribed in their laws.
 - That the judgment or order has been issued by a court having jurisdiction under the law of the country in which it was issued.
 - That the opposing parties in the case in which the judgment was given were summoned to appear and duly appeared.
 - That the judgment or order has acquired the force of a *fait accompli* under the law of the court which issued it.
 - That it does not conflict with a judgment or order previously issued by a court in the UAE and contains nothing in breach of public morals or order in the UAE.

Article 236 provides that Article 235 is to apply to 'arbitration awards issued in a foreign country' and adds that such awards must be issued in an arbitrable matter according to the UAE Laws and must be enforceable in the country in which it was issued.

It is essential to note that Article 238 also provides that 'The rules laid down in the foregoing articles, including Articles 235 and 236, shall be without prejudice to the provisions of conventions between the UAE and other countries in this regard.

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As a result of the foregoing, application for the enforcement of foreign awards, which are described under Article 263 as those which are 'issued in a foreign country', shall be filed with the Court of First Instance following the usual litigation procedures. This procedure will usually take months, if not a year, to obtain a first instance judgment which will not be immediately enforceable, if appealed to the Court of Appeal. Further, the court fees to obtain such judgment (AED 40,000 in the case of the Dubai Courts), are substantially higher than those fees applicable for the enforcement regime for domestic awards adopted by the UAE Arbitration Law (approximately AED 320 in the case of the Dubai Courts).

In light of the foregoing, it is clear that there is a difference between the two regimes. The UAE Arbitration Law affords awards, falling within its scope, an efficient and expedited regime that enables a successful award creditor to enforce an award within a few weeks with minimal court fees. On the other hand, the procedure under the UAE Civil Procedures Law, can take anywhere up to one or two years in order to obtain an enforceable judgment to recognise a foreign arbitration award with substantially higher fees involved.

So which of these regimes should govern the enforcement of awards falling within the scope of the New York Convention, i.e., New York Convention awards?

Egyptian Court of Cassation Judgment: Appeal 966, JY 73 2005

The New York Convention (and an Egyptian Court of Cassation judgment dated 10 January 2005), can provide guidance on the issue pertaining to which law should apply to the enforcement of foreign arbitral awards in the UAE. In an Egyptian Court of Cassation judgment (Appeal 966, J.Y. 73 (2005) dated 10 January 2005), the court held that a foreign arbitral award should be enforced in the same way as a domestic arbitral award by filing a petition to the Chief Justice of the Court of Appeal in accordance with the Egyptian Arbitration Law, which is quite similar to the UAE Arbitration Law. The court held that, since the enforcement mechanism for awards prescribed under Egyptian Arbitration Law is less onerous than that contemplated by the Egyptian Code of Civil Procedure, the provisions of the Egyptian Arbitration Law should govern the enforcement of foreign awards.

In its decision, the court highlighted the principle of Egyptian law that international treaties have precedence over national laws. Article 23 of the Egyptian Civil Code, which is similar to Article 22 of the UAE Civil Code, and Article 301 of the Egyptian Civil Procedures Code, which is also similar to Article 238 of the UAE Civil Procedures Law were the basis of the Egyptian Law principle which is also seen as similar to the principle of the UAE Laws. In this respect, it should be recalled that Article 238 of the UAE Civil Procedures Law provides 'The rules laid down in the foregoing articles shall be without prejudice to the provisions of conventions between the UAE and other countries in this regard.'

Article III of the New York Convention, which informed the ruling of the Egyptian Court of Cassation, provides that

“Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards”

Pursuant to Article III, the court concluded that

“to the extent that the Egyptian Arbitration Law imposes rules of procedure less onerous, given the broad term of the Convention, as to the jurisdiction or the conditions for enforcement than are imposed by the Law of Civil Procedures, the Egyptian Arbitration Law is applicable pursuant to the New York Convention, being part of domestic law, without the need for any agreement of the parties.”

In view of the foregoing, it is likely the UAE courts may consider the above ruling when enforcing foreign arbitral awards and afford those awards, which do not fall under the UAE Arbitration Law, the same expedited regime adopted by the UAE Arbitration Law according to Article III of the New York Convention. This will ensure that more onerous conditions or higher fees are not imposed on the recognition or enforcement of foreign arbitral awards.

However, that is not the end of the story.

Articles 85, 86 and 88 of the Cabinet Decision will replace Articles 235, 236 and 238 of the UAE Civil Procedures Law. These articles are set out below (the following is an unofficial translation):

“Article 85

1. Judgments and orders issued in a foreign country may be ordered to be enforced in the UAE on the same conditions as prescribed in the laws of that country for the enforcement of similar judgments and orders issued in the UAE;
2. An enforcement order shall be applied for under a petition submitted by a concerned party to the Execution Judge who should issue his order within maximum three days from the date of filing of the petition. Such order may be appealed pursuant to the same rules and procedures as filing an appeal from judgments. Enforcement may not be ordered until the following has been verified:
 - That the UAE courts do not have exclusive jurisdiction in the dispute in which the judgment has been given or the order made, and that the foreign courts which issued it have jurisdiction therein under the international rules for legal jurisdiction prescribed in their laws;
 - That the judgment or order has been issued by a court having jurisdiction under the law of the country in which it was issued, and is duly attested;
 - That the opposing parties in the case in which the judgment was given were summoned to appear and duly appeared;
 - That the judgment or order has acquired the force of a res judicata under the law of the court which issued it, and to submit a certificate stating that the judgment has acquired the force of a res judicata or the judgment itself provides for the same;
 - That it does not conflict with a judgment or order previously issued by a court in the UAE and contains nothing in breach of public morals or order in the UAE.

- The Execution Judge is entitled to request the supportive documents to the petition before issuance of his decision.

Article 86

Article 85 of the Decision to apply to the arbitration awards issued in a foreign country and such awards must be issued in an arbitrable matter according to the UAE Laws and be enforceable in the country where it was issued.

Article 88

The rules laid down in the foregoing articles, including Articles 85 and 86, shall be without prejudice to the provisions of conventions between the UAE and other countries in relation to enforcement of foreign judgment, orders and deeds.”

It is expected that these new provisions will exert a substantial impact on the procedures of enforcement of foreign arbitration awards in the following ways:

1. the main procedure for the enforcement of foreign arbitration awards will involve filing a petition directly to the Execution Judge who will issue his/her order within a maximum of three days;
2. The order of the Execution Judge will be enforceable with immediate effect because it should be considered as an ‘Order on Petition’ which is immediately enforceable by operation of law according to Article 78 of Cabinet Decision 57 of 2018;
3. other substantive conditions for enforcement of foreign arbitration awards will still be governed by the New York Convention, and that shall take supremacy over the Cabinet Decision (in accordance with Article 88 of the Cabinet Decision); and
4. articles 85 and 86 of the Cabinet Decision may be seen, in some areas, as providing more flexible conditions for enforcement of foreign arbitration awards than those set out in the New York Convention. An interested party can benefit from these better conditions according to Article 7 of the New York Convention.

Conclusion

It is clear from the above that the UAE Arbitration Law has significantly improved the enforcement regime of the arbitration awards falling within its scope in the UAE, including, we believe, the New York Convention. It is our view that the UAE courts will likely take the approach of the Egyptian court of cassation mentioned above and afford those foreign awards, the expedited regime afforded by the UAE Arbitration Law instead of the enforcement procedure set out in Articles 235 and 236 of the current UAE Civil Procedure law.

Indeed, we have seen the foregoing borne out in practice so far. Since the enactment of the UAE Arbitration Law, orders have been issued by the circuit of the Chief Justice of the Dubai Court of Appeal granting enforcement of several foreign arbitral awards based on the same expedited regime adopted by the UAE Arbitration Law despite the fact that these awards do not appear to fall within the scope of the UAE Arbitration Law. This is a positive development for the arbitration community

The Cabinet Decision will also provide a more efficient and expedited regime for the enforcement of foreign arbitral awards.

Once Cabinet Decision comes into force, there will be no requirement to apply the regime set out under the UAE Arbitration Law to the enforcement of foreign arbitration awards on the basis of Article 3 of the New York Convention. Instead, the enforcement of foreign arbitral awards will be governed by the expedited regime set out in the Cabinet Decision to the extent it does not contradict with the New York Convention.

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