

Which UAE Court is competent to enforce a foreign arbitration Award: a recent Cassation Judgment

Nasser Yahia - Senior Counsel - Litigation

ny.yahia@tamimi.com - Sharjah

Sara Omer Ali - Associate - Litigation

- Sharjah

Introduction

In this judgment (Dubai Court of Cassation 3 of 2020 dated 16 February 2020), the court considers the procedure for recognising and confirming foreign arbitral awards that are to be enforced in the UAE and the jurisdiction of the Execution judge.

Applicable legislative provisions

In some instances, a foreign arbitration award may be ratified in the UAE in accordance with Federal Arbitration Law no. 6 of 2018 ('Arbitration Law'), as provided for in article 2:

"The provisions of this Law shall apply to:

...

2. Any International Commercial Arbitration conducted abroad, the parties to which agree to submit it to the provisions of this Law; and

3. Any Arbitration arising out of a dispute concerning a legal relationship of a contractual or non-contractual nature, regulated by the laws in force in the State, except as expressly excluded by a special provision."

The Arbitration Law therefore applies when the parties to a foreign arbitration agree to submit to the Arbitration Law or where a foreign arbitration arises out of a legal relationship which is regulated by the laws of the UAE, unless expressly excluded. If foreign arbitration proceedings fall within the scope of the Arbitration Law as a result of Article 2 thereof, it should follow that any resulting foreign arbitral award may be ratified in accordance with article 55 of the Arbitration Law, according to which a request for ratification of the award may be filed with the Chief Justice of the relevant Court of Appeal, following which the ratified award may be submitted to an Enforcement Judge (Execution Court) for execution.

A foreign arbitration award that does not fall within the scope of the Arbitration Law may be ratified in accordance with Cabinet Resolution no. 57 of 2018, concerning the Civil Procedure Law. In order to ratify an arbitration award in accordance with the Cabinet Resolution a petition needs to be filed before the Enforcement Judge (Execution Court) requesting the ratification of a foreign arbitration award (article 85(2)):

"The order for enforcement shall be applied for by a Petition to be submitted by the party concerned, ... to the Enforcement Judge, ..."

It is important to apply for ratification or enforcement of a foreign award, as the case may be, to a court of competent jurisdiction, otherwise the case may be dismissed for lack of jurisdiction.

Cassation No. 15 and 16 of 2019

Background

The Claimant initiated a case to ratify a foreign arbitration issued by the Sugar Association of London in its favour by way of an order on petition before the Dubai Court of Appeal (Order on Petition No. 30 of 2019). The foreign arbitration proceedings did not fall within the scope of the Arbitration Law.

The Claimant's petition was accepted by the Court of Appeal on 14 March 2019 which ratified the foreign arbitration award (in the same way as a domestic award). However, the Respondent filed a case before the Court of Appeal to nullify the arbitration award (Appeal no. 16 of 2019) and also filed a grievance against the decision issued in Order on Petition No. 30 of 2019 ratifying the award (under Grievance No. 15 of 2019). The Court of Appeal joined the Appeal and the Grievance and issued a decision to reject both.

The Respondent filed a Cassation Appeal against the Court of Appeal judgment decision on a number of grounds, the principal ground being that the Court of Appeal was not the competent court to ratify the arbitration award (according to Articles 85 and 86 of the Cabinet Resolution, which states that foreign arbitration awards are to be ratified by the Execution Court).

According to Articles 85, 86 of the executive regulations (Cabinet Resolution No. 57 of 2018) of the Civil Procedure Law, which took effect on 17 February 2019 and regulate the enforcement of foreign arbitral awards in the UAE, foreign seated arbitral awards can be enforced in the UAE under the same conditions for the enforcement of judgments and orders that apply to the law of the jurisdiction that issued the judgment or order. The concerned party shall make an application to enforce the foreign award to an execution judge, containing the particulars set forth in Article 16 of the executive regulations. The judge shall then have three days from the date of the application to make his decision, which may be appealed in accordance with the rules and procedures for appealing rulings.

In other words, the procedure for recognising and confirming foreign arbitral awards that are to be enforced in the UAE requires that the concerned party file an application with an execution judge that includes the particulars of claim set forth in Article 16 of the executive regulations. It is settled in the Court of Cassation that jurisdiction, as part of public policy, is an issue automatically brought up before the trial court which may raise it on its own motion, even if not pleaded by any of the parties.

The Court of Appeal's recognition and confirmation of the foreign arbitral award was cancelled for lack of jurisdiction of the Chief Justice to ratify the Arbitration Award.

Conclusion

There are two courts in the UAE to which a party may apply in order to enforce a foreign arbitration award in the UAE. The two courts are the relevant Court of Appeal if the foreign award falls within the scope of the Arbitration Law or the Execution Court in all other cases as set out in the Cabinet Resolution.

It is vital for a party wanting to enforce and recognise a foreign arbitration award to know with which court it must file its application for enforcement.

If the party fails to apply to the competent court, it faces the risk of its case being dismissed with the

associated waste of resources and expenditure on court and legal fees.

For further information, please contact [Nasser Yahia \(ny.yahia@tamimi.com\)](mailto:ny.yahia@tamimi.com) or [Sara Omer Ali \(s.omerali@tamimi.com\)](mailto:s.omerali@tamimi.com).