

UAE Practice of enforcement of Foreign Arbitral award in light of New York Convention 1958

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International treaties are binding contracts between states. Treaties can be either bilateral treaties (for example, between two states) or multinational treaties (i.e. between many states) Treaties may be established for a region of group of states i.e. NAFTA or GCC states. Treaties are binding to the signatory states by joining and/or ratifying the treaty through their congressional bodies, where ratification comes upon signing of the treaty by the executive authorities of each state. If permissible by the treaty, state(s) can make reservation(s) on specific provision(s) which enable such state to opt out from certain stipulation(s).

There are two different categories of treaties for implementation purposes. A treaty can be either "Self Executing Treaty" or a "Non Self Executing Treaty". The former can be implemented directly as part of the domestic legislation without the need for additional intervention of any authorities upon ratification. However, the latter requires intervention by congressional bodies in each state in order to adopt the principle of the treaties in either a separate legislation or amendment to existing legislation(s) in order to be the law of the land, this is the norm in dualistic states.

The New York Convention on Recognition and Enforcement of Foreign Arbitral Award ("NYC") is an international treaty with 145 signatory and ratified states. The NYC is considered to be a Non-Self Executing treaty that requires adoptive legislation compatible with the principles laid down in the said treaty. The United Nations Commission on International Trade Law ("UNICTRAL") has issued an arbitration Model Law ("ML") part of which is intended to simplify the process for ratified state(s) in implementing NYC into their municipal legislation system.

The UAE ratified the NYC on 19 November 2006 without any reservation. The benefit in recognizing and ratifying the NYC is to facilitate the process for solving disputes amongst international businesses within the global market as an effective vehicle, which ultimately encourages and attracts investments into UAE.

Since UAE ratified the treaty under a Federal Decree there has been a debate as to how the implementation and enforcement of foreign arbitral awards can be implemented. It has not been tested under the current UAE legislation system as to its compatibility or whether it needs further action (enactment of arbitration law).

Many states adopted the ML after ratification of the Treaty with minor amendments reflecting the unique requirements of both trade and business. For example, Egypt enacted its arbitration law (Law no. 27/1994) using such ML. Currently, the UAE Legislator is deliberating on the final Bill to pass a domestic law for arbitration derived from ML which will reflect the UAE's trade and business practice requirements.

Recently in the UAE, the effectiveness of domestic legislation and procedures in recognizing and

enforcing the principles of the NYC were triggered by two judgments – the first from Fujeirah Court, and the Recent Verdict (“RV”) by the Dubai Court of First Instance (“DC”) rendered on 12 January 2011 ratifying a final arbitration award (AW) with its seat in London.

The publication of the RV of First Instance, granting ratification to the said AW, caused a major debate amongst the legal community. The potential impact for establishing standard procedures for ratifying a foreign arbitral award in the UAE may have started since RV has been rendered.

This article will provide an in-depth analysis of the implementation of the NYC on the AW, the RV grounds for ratifying AW, and whether the DC applied the Convention’s principles or not.

In order to examine each segment, the following three issues will be analyzed

1) Whether DC construed the final AW as a foreign or local award; given the following facts; ¹

- Both parties are domiciled in Dubai, UAE;
- Arbitration clause was drafted and contract signed between parties in Dubai, UAE;
- Transaction triggering the dispute between parties was in UAE;
- The dispute arose in UAE;
- The rules administrating the said arbitration were DIFC-LCIA located in Dubai, UAE;
- The arbitration seat was London, hence, the applicable arbitral law was “English Law”- The Arbitration Act 1996; ²

2) Did DC ratify the AW using similar procedures to those applied in ratifying and enforcing domestic arbitral awards without requiring Claimant to comply with the provisions of articles 235 and 236 of the Civil Procedure Law (“CPL”) or not?

The said CPL provisions state clearly that no order shall be rendered to execute the foreign arbitral award unless the Court examines the following evidences:

- Evidence from the successful party that the local court has no subject matter jurisdiction on the case adjudicated before the foreign Tribunal. And, the Tribunal (English forum) rendering the AW has jurisdiction in accordance with the rules in that foreign country (England); and complies with their international jurisdiction regulations (art. 235 (2) (a)).
- Evidence that the AW was rendered by a competent forum having jurisdiction in accordance with the foreign state laws where it was rendered (England) (art. 235(2) (b)).
- Evidence that the parties to the AW were properly and duly summoned and were legally represented (due process was observed in the foreign award) – (Article 235(2) (c)).
- Evidence demonstrating that AW is a final and binding award in accordance with the laws where it was rendered (submission of English Law and/or the DIFC – LCIA rules) and the AW possesses the power to stand as a valid res judicata plea against any similar proceeding between the same parties and subject matter (certificate from London Courts) – (Article 235(2) (d));
- Evidence (court certificate) demonstrating that the AW is not contradictory or in violation of any other judgment or order previously rendered in UAE courts, and does not violate moral and public orders (Article 235/2 (e)).
- In accordance with Article 236 of the CPL, evidence demonstrating that the dispute between the parties was arbitrable and enforceable matter under the laws of the state where it was rendered (London).

3) Did the Claimant in the RV submit evidence in compliance with articles 235 and 236 of the CPL? Whatever, the position, the DC granted ratification.

In light of the above facts/issues, two opposite arguments arise for discussion, which will be concluded by comment on the said RV in the next article.

The above arguments setting out the nature of the AW will be addressed in the next edition of Law Update.

To be continued ...

¹ Analyzed from the RV

² See Arbitrator that “the Tribunal also ruled that the seat of the arbitration is England and the procedural law is English law, including the Arbitration Act 1996”.