

Dubai: The Position of the UAE Courts following Accession to the New York Convention

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The overall outlook is positive and encouraging, a sure sign that the UAE Courts are honoring the intention of the parties and allowing them to choose the ideal process for all their disputes, be it court litigation or arbitration. In recent rulings, the UAE Courts have laid down principles in support of international arbitration and the UAE's commitment to respecting the provisions of the New York Convention those rulings include:

a) Fujairah Federal Court of First Instance:

In a recent case before the Fujairah Federal Court of First Instance (No. 35/2010 [27.04.1020]) the Fujairah Court recognized a foreign arbitral award which had been issued in London and confirmed several important principles including the following:

- 1- The substantive merits of the arbitral award should not be reviewed when considering the ratification and enforcement of an arbitral award; and
- 2- Ratified treaties and conventions between the UAE and other countries such as the New York Convention should be treated as "internal legislation" with respect to the recognition and enforcement of foreign arbitral awards.

Facts of the Case:

The matter concerned a dispute over a charterparty. US\$235,735.76 was claimed together with interest and costs. The matter was presided over by the London Maritime Arbitrators Association and an award was rendered in the Claimant's favour.

The Claimant sought to have the award recognized and enforced in Fujairah, UAE due to the fact that the opponent's assets were located in Fujairah and due to the fact that both the UK and the UAE are signatories to the New York Convention.

In the recitals, the Court held:

"According to Article 212(4) of the Civil Procedure Law, the arbitral award shall be issued in the UAE; otherwise the rules pertaining to foreign arbitral awards shall apply."

"Article 215(1) of the aforementioned Law states that the arbitral award shall not be enforced except after being recognized by the court with whose office of the clerks it was filed; and that after reviewing the award and the terms of reference and ascertaining that there is no impediment to enforcement."

"It is a well settled principle of judicial construction that the court would not review the substantive merits of the arbitral award when hearing an action to recognize it (Appeal No. 556-24, 19.04.05 Hearing) and that ratified treaties and conventions between the UAE and other states are applicable as internal

legislation with respect to the enforcement of foreign arbitral awards subject to national courts verifying that the necessary criteria are met before confirming any award (Appeal No. 764-24 – 07.04.05 Hearing).”

The court in its reasoning concluded that whenever an Arbitral Award has been issued in conformity with the domestic laws of the foreign country, it is afforded recognition in the UAE.

“Having reviewed the mandatory arbitration clause and the two awards to be recognized, the Court sees no legal impediment to confirming the awards”.

b) Dubai Court of Appeal – Civil Appeal No. 531/2011 [06.10.11]:

The facts of the case are that the claimant commenced proceedings before the Dubai Court of First Instance (Civil Action No. 274/2011 – Full Bench) against the defendant seeking to have SIAC arbitral award no. 128/2009 recognized, enforced and vested with an executory formula.

On 22.06.07, the claimant and the defendant entered into an agreement whereby the latter was granted broadcasting rights for 6 one day cricket matches in the Middle East for a license fee payable by the defendant to the claimant. Clause 16 of the agreement provided that any dispute arising under the agreement would be submitted to mandatory arbitration in Singapore under SIAC Rules.

In the course of performance of the agreement a dispute arose between the claimant and the defendant and the matter was referred to SIAC, the arbitral award in question was issued on 28.09.2010 on the following terms: the defendant was ordered to pay the claimant the sum of USD 267,000 and 7.08% interest per annum from 1.11.07 until the date of the award along with arbitration costs.

In order to enforce the award, the claimant filed the above mentioned action before Dubai Court to have the award recognized pursuant to the New York Convention. On 18.05.2011, a default ruling was made dismissing the action with fees and costs.

The claimant appealed in Civil Appeal no. 531/2011 seeking an order challenging the lower court’s ruling and seeking recognition of the SIAC arbitral award no. 128/2009 dated 18.09.10 and directing that it be enforced and vested with an executory formula.

In the recitals the court held:

“Whereas both UAE and Singapore are signatories of the New York Convention, and Article 3 of the said convention stipulates that that ‘Each state party shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon’

And whereas the Dubai Appeal Court reviewed the fulfillment of all the conditions required according to the New York Convention, it ruled that the lower Court’s ruling dismissing the action is incorrect and is undermined by grounds of appeal, the ruling will thus be challenged and therefore the court rendered its judgment recognizing and enforcing the arbitral award no. 128/2009 issued by SIAC arbitrator on 28.09.10, the Respondent is to pay fees and costs.”