

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

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Introduction

In an article entitled, “Enforcement of Foreign Arbitral Awards in the UAE: Paving the Way for a New Enforcement Regime”, published in the December 2018/January 2019 issue of Law Update, we suggested that Cabinet Decision 57 of 2018 regarding the Executive Regulation of the UAE Civil Procedure Law (**‘Cabinet Decision’**) would have a significant impact on the procedure regarding the enforcement of foreign arbitral awards. The Cabinet Decision has now entered into force as of 16 February 2019, following its publication in the Official Gazette dated 16 December 2018.

This article will discuss the new enforcement regime in light of this Cabinet Decision, as well as briefly discuss recent case in which Al Tamimi & Company acted for one of the parties that made an application to an Execution Judge regarding the enforcement of a foreign arbitral award. This was one of the first orders issued following the Cabinet Decision.

Background

The UAE issued Federal Arbitration Law no. 6 of 2018 on the 15 May 2018 (**‘UAE Arbitration Law’**), which introduced substantial improvements to the procedure for enforcing arbitral awards. As mentioned in previous articles commenting on the UAE Arbitration Law, one of the improvements includes the power to enforce arbitral awards through an expedited regime. This is done by filing a petition with the Chief Justice of the Court of Appeal who issues his order on the ratification petition within 60 days of the filing date according to Article 55 of the UAE Arbitration Law. The ratification/enforcement order, once issued by the Chief Justice or to whomever he/she delegates, is enforceable with immediate effect and will enable the award creditor to get the award stamped in accordance with the execution formula and take all execution procedures against the award debtor. This is because the ratification order is deemed an ‘Order on Petition’ which is immediately enforceable by operation of law.

While the UAE Arbitration Law repealed the arbitration chapter found in Chapter III of the UAE Civil Procedure Law (Federal Law 11 of 1992 as amended) (Articles 203-218), it did not repeal Chapter IV on the Execution of Foreign Judgments, Awards and Instruments (Articles 235-238) of the UAE Civil Procedure Law.

Federal Decree no. 10 of 2017 issued on 28 September 2017 (which amended the UAE Civil Procedure Law in several respects), provided 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 would remain in force until repealed by the issuance of a Cabinet Decision which would regulate those areas of the Civil Procedure Law.

The Cabinet Decision now provides a new set of rules that regulate the enforcement of foreign arbitral awards. It repeals and replaces the rules set out under Articles 235 to 238 of the UAE Civil

Procedure Law. As we discussed in our previous article, the Cabinet Decision has significantly improved the enforcement regime of foreign arbitral awards by ensuring the process is expedited and less costly:

1. an application for the enforcement of a foreign arbitral award will involve filing a petition directly with the Execution Judge who will issue his/her order within a maximum of three days; and
2. the order of the Execution Judge will be enforceable with immediate effect because it is to be considered as an 'Order on Petition' which is immediately enforceable by operation of law according to Article 78 of the Cabinet Decision.

It is worth noting that whilst the Cabinet Decision provides for the procedural rules for the enforcement of foreign arbitral awards as set out above, the substantive conditions of enforcement of foreign arbitral awards will still continue to be governed by the New York Convention, particularly Article IV of the New York Convention, which will have supremacy over the Cabinet Decision (as confirmed in Article 88 of the Cabinet Decision).

Recent Decision Enforcing a Foreign Arbitral Award Pursuant to the New Cabinet Decision

In one of the first cases initiated to enforce a foreign arbitral award, Al Tamimi & Company acted for a party in applying to enforce a London seated-arbitral award in the UAE against an entity based in Sharjah.

In this case, a petition was filed with the Execution Judge of the Sharjah Federal Court, to enforce the foreign arbitral award pursuant to the procedural rules set out under Articles 85 and 86 of the Cabinet Decision and the conditions set out under Article IV of the New York Convention.

Once the petition was filed with the Execution Judge, an execution file was created and a decision was issued by the Execution Judge notifying the award debtor to pay the claimed amount set out in the arbitral award within 15 days of service upon the award debtor. At the time of writing this article, the outcome of the process remains to be seen. In the event the debtor fails to abide by the Execution Judge's decision, it is expected that the Execution Judge will commence execution against the debtor pursuant to the procedures set out under the Civil Procedure Law and the Cabinet Decision, i.e. freezing assets and funds as well as taking the necessary action to auction off such assets in order to recover the amount as set out in the award.

Conclusion

The Cabinet Decision has significantly improved the UAE regime regarding the enforcement of foreign arbitral awards by expediting the process to obtain an order, and it is already having an impact in practice. This represents another positive development for arbitration in the UAE.

Al Tamimi & Company's [litigation](#) and [arbitration](#) teams regularly advise on the enforcement of arbitration awards and judgments. For further information please contact [Mosaab Aly](#) (m.aly@tamimi.com).