



UAE courts permit enforcement of a London arbitration award

It has sometimes proved difficult to enforce foreign arbitration awards in the UAE. However, in May 2015, the UAE Court of Appeal recognised a London arbitration award for enforcement even though the underlying charterparty was unsigned.

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A brief history of the enforcement of foreign arbitration awards in the UAE

Before 2006, foreign arbitration awards were dealt with by the UAE courts as if they were judgments of foreign courts. UAE courts would often set aside arbitration awards and not allow enforcement. A frequent ground was that there was no reciprocity of enforcement between the UAE and the country where the award was made.

In 2006, the UAE ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The UAE courts should therefore recognise and enforce foreign arbitration awards that satisfy the New York Convention requirements, unless one of the limited grounds for refusal apply.

In 2010, the Fujairah Court of First Instance allowed a London Maritime Arbitrators Association award to be enforced in the UAE under the New York Convention. However, this was a default judgment so there was no real challenge to the proceedings and the application of the New York Convention was not fully tested.

In 2011, the Dubai Court of First Instance permitted the enforcement of two London arbitration awards issued under the DIFC-LCIA Arbitral Rules. The case was challenged by the defendant, but the court decided that its primary role was simply to ensure that the procedural and substantive requirements were met.

This approach was followed in 2012, when the Dubai Cassation Court permitted enforcement of a foreign arbitration award, holding that it had no jurisdiction to set aside the foreign award.

Following this generally positive trend, in 2013 there was an indication of a possible change of approach. The Dubai Cassation Court upheld a lower court's decision to refuse enforcement of a French award obtained by a French company against the Sudan Government. The Court reviewed the New York Convention but decided it had no jurisdiction to enforce the award because the defendant was a foreign party not resident in the UAE. This is not a requirement under the New York Convention.

Background to the recent decision

The claimant was a Hong Kong company, acting as disponent owner of a vessel that had been time-chartered to the defendant, a Dubai-based company. The charterparty was governed by English law and London arbitration. The charterparty was recorded in email only, so there was no signed physical copy of the charterparty and no signed arbitration agreement.

Disputes arose which were referred to arbitration in London and the claimant obtained awards in its favour. The claimant then asked the Dubai Court of First Instance to recognise and enforce one of the London awards pursuant to the New York Convention. The Dubai enforcement proceedings were fully defended by the defendant.

The Dubai Court of First Instance Decision

In March 2014, the Dubai Court of First Instance rejected the application to recognise and enforce the London award. The Dubai court considered the validity of the underlying arbitration agreement and, instead of analysing it from an English law perspective, applied UAE civil law, despite the New York Convention being applicable. The court's conclusion was that, under UAE law, there was no valid arbitration agreement between the claimant and the defendant and so the award could not be recognised and enforced.

The Dubai Court of Appeal Judgment May 2015

The matter was taken to the Dubai Court of Appeal, and in May 2015 the first instance decision was overturned. The Court of Appeal applied the New York Convention, accepting that the

charterparty had to be analysed from the perspective of its governing law – i.e. English law. It concluded by ordering recognition and enforcement of the London arbitration award.

This judgment is significant because it confirms that when considering enforcement of foreign arbitration awards, the UAE courts should consider the validity of the underlying arbitration agreement under the terms of the New York Convention and the law that the parties chose to govern the contract. It also appears that this is the first time the UAE courts have ordered recognition and enforcement when the underlying charterparty has not been signed.

The Court of Appeal judgment is currently under appeal to the Supreme Court, and a final answer is not expected for some time.

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