

# Focus on Middle East Arbitration: Arbitral Awards

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Recent court decisions highlight a few of the challenges parties may face in relation to the enforcement of arbitral awards in the onshore UAE courts. A summary of those decisions is set out in this article.

These developments will be of considerable interest to those clients wishing to enforce domestic or foreign arbitral awards in the UAE.

## 1. Fluor v. Petrixo Oil & Gas

In a judgment dated 30 March 2016, the Dubai Court of Appeal refused to enforce a foreign ICC award (seated in London) on the grounds that the claimant had failed to adduce evidence showing that the UK had signed and ratified the New York Convention (Convention).

In the absence of such evidence, the Dubai Court of Appeal determined that evidence was required to prove that the English courts would enforce an award issued in the UAE (e.g. reciprocity). In reaching its decision, the Dubai Court of Appeal relied upon Articles 235 and 236 of the UAE Civil Transactions Code (see UAE Federal Law No. 11 of 1992, as amended), which provides that foreign awards originating from countries which are not signatories to the Convention must demonstrate that their domestic courts would enforce an award issued in the UAE. Given that there was no English court precedent which enforced a UAE award, the Dubai Court of Appeal declined the application for enforcement.

The Convention does permit signatories to incorporate reservations as a condition of their ratification. Those reservations include the following: (1) the state will only apply the Convention in respect of awards from other contracting states and (2) in relation to non-contracting states, the state will only apply the Convention to the extent that those states grant reciprocal treatment. The UAE has not opted to incorporate either of those reservations.

The decision has been appealed to the Dubai Court of Cassation (Dubai's highest court). It is hoped that the Dubai Court of Cassation will clarify the evidentiary requirements necessary to enforce arbitral awards successfully in the UAE.

## 2. Dubai Court of Cassation (Case No. 75 of 2008)

In a recent judgment, the Dubai Court of Cassation held that Article 216 of the Civil Procedure Law (CPL) of the UAE permitted the nullification of an arbitral award if there is an error in the award or if an irregularity exists in the procedure resulting in the issuance of the award.

In this case, the claimant commenced enforced proceedings before the Dubai Commercial Court to ratify an arbitral award issued pursuant to the DIAC Rules (Rules). The Dubai Commercial Court proceeded to ratify the award. In turn, the respondent commenced fresh proceedings to challenge the award in the Court of First Instance on the

grounds that the respondent had filed a civil case before the courts during the arbitration. The civil case was dismissed previously but was then under appeal. On that basis, the respondent contended that the arbitrator should not have issued the award until and unless the civil case was dismissed at the appellate level, pursuant to Article 216 of the Civil Procedure Law.

The Court of First Instance found in favour of the respondent and the decision was subsequently upheld by the Court of Appeal. The matter was then appealed to the Dubai Court of Cassation.

The Dubai Court of Cassation reasoned that arbitral proceedings shall be suspended in the event of a challenge on the basis of Article 39 of Decree No.2 of 1994. Further, it was held that a party may challenge an award based on the general laws of the UAE even if they are not enumerated specifically in the Rules. Arguably, the practical effect of this is that a respondent in an arbitration may attempt to frustrate or delay arbitral proceedings by initiating court proceedings to challenge an arbitral award or the procedure which resulted in the award, pursuant to Article 216 of the CPL.

The enforcement of arbitral awards in the UAE can be an unpredictable and protracted process. We will continue to post further updates in respect of recent enforcement decisions as and when they become available.

If you would like to know more about this or any other legal development, please speak to your usual Dentons contacts.