



Client Alert

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Recent Developments on Enforcement of Arbitration Awards in the UAE

Since the UAE Federal Arbitration Law No. 6 of 2018 (**Federal Arbitration Law**) came into force on 15 June 2018, a number of procedural developments have been introduced in relation to both the conduct of arbitration proceedings and the enforcement of arbitration awards before the local UAE courts. The Federal Arbitration Law has repealed the Arbitration Chapter of the UAE Civil Procedures Code No. 11 of 1992 (**Civil Procedures Code**) and has addressed the common pitfalls that existed under the old arbitration regime.

This has been a welcome development for the international arbitration community and has reinforced the UAE's drive to become a leading international arbitration hub. Businesses operating and doing deals in the UAE now have access to a more flexible and efficient arbitration process, particularly in relation to the enforcement of arbitration awards.

Scope of application of the Federal Arbitration Law

The scope of application of the Federal Arbitration Law is quite broad in the sense that it applies to existing and future arbitration proceedings, unless the parties have agreed to contract out of it¹.

The Federal Arbitration Law also specifically distinguishes domestic and international arbitrations, whereby it would qualify as international if:

1. the parties' headquarters are located in two or more countries at the time of conclusion of the agreement; or

¹ Article 2 of the Federal Arbitration Law.



2. the place/seat of arbitration or the place of the subject-matter of the dispute is located outside the UAE.²

This distinction also has an impact on the procedure for the enforceability of arbitration awards arising from domestic arbitrations and for those issued from international arbitrations.

Procedure for the enforcement of arbitration awards

New procedural developments

One of the main developments introduced under the Federal Arbitration Law is the expedited procedure for the enforcement of arbitration awards.

Under the Federal Arbitration Law, any enforcement application for the enforcement of an arbitration award can now be brought directly before the UAE Court of Appeal, which shall in turn issue its enforcement order within 60 days from the date of filing of the application. This is not without exception particularly when a party can demonstrate that one of the nullification grounds set out in Article 53 of the Federal Arbitration Law has been satisfied³.

The new procedural developments also set a 30-day time limit for a party to challenge the validity of a final award before the relevant UAE Court of Appeal. A challenge to the validity of the final award may also be made in defense to an enforcement application filed by an award creditor outside the 30-day time-limit⁴.

One of the major controversies that has arisen following the promulgation of the Federal Arbitration Law was whether the scope of the procedure for the enforcement of arbitration awards extended to the enforcement of foreign arbitration awards in the UAE. The consensus at that time was that applications for recognition and enforcement of foreign arbitration awards fell within the scope of the Federal Arbitration Law and should directly be filed before the Court of Appeal. The distinction made between domestic and international arbitrations led to an assumption that foreign awards issued from international arbitrations were also recognized for enforcement purposes under the Federal Arbitration Law.

² Article 3 of the Federal Arbitration Law.

³ Article 53 of the Federal Arbitration Law.

⁴ Article 54 of the Federal Arbitration Law.



Enforcement of foreign arbitration awards

Under the old arbitration regime, enforcement of foreign arbitration awards were made in accordance with the procedure set forth in the Civil Procedures Code by filing an application for recognition and enforcement through the customary channels of filing a court claim before the local UAE courts. This meant that an enforcement application had to be filed before the UAE Court of First Instance and any decisions rendered therefrom were subject to two levels of appeal, i.e. before the Court of Appeal and Court of Cassation⁵. The overall timeframe for enforcing a foreign arbitration award usually took between 1 to 1.5 years, depending on the complexity of the challenges raised by an award debtor in its defense to nullify an award.

Based on the UAE courts' treatment of recent enforcement cases for both domestic and foreign arbitration awards, it is important to note that the rules for enforcement of arbitration awards under the Federal Arbitration Law do not extend to the enforcement of foreign arbitration awards under the New York Convention. Applications for recognition and enforcement of foreign arbitration awards should be made in accordance with the recently amended procedures of the Civil Procedures Code.

Amendments to the Civil Procedures Code

The recently issued Executive Regulations of the Civil Procedures Code under Cabinet Decision No. 57 of 2018 (**Executive Regulations**) have introduced a number of amendments to the Civil Procedures Code which are intended to facilitate and expedite the process of ratification and enforcement of foreign arbitration awards. The Executive Regulations were published in the UAE gazettes on 16 December 2018 and came into force on 17 February 2019.

Direct ratification by way of a petition

Under the Executive Regulations, the application for recognition and enforcement of a foreign award is submitted by way of a petition to the enforcement judge, instead of the previous process of filing a ratification case before the competent Court of First Instance. Moreover, the enforcement judge is now required to issue its order on the petition within

⁵ Article 235 of the Civil Procedures Code.



three days from the submission date. This procedure is reflected in Article 85 of the Executive Regulations, which reads as follows:

“Judgements and orders issued in a foreign country may be ordered to be enforced in the UAE on the same conditions prescribed in the laws of that country for the enforcement of similar judgments and orders issued in the UAE.”

“An enforcement order shall be applied for under a petition submitted by a concerned party to the Execution Judge who should issue his order within a maximum of 3 days from the date of filing of the petition.”

While an enforcement order may still be challenged in the same manner in which a judgement rendered by the Court of First Instance would be appealed⁶, the former is immediately enforceable. Any appeal will not block the enforcement process unless the court considers that the immediate enforcement will result in irreparable damage.

These amendments have certainly been a positive development, with several foreign arbitration awards recently being enforced under the Executive Regulations.

Conclusion

The Federal Arbitration Law aims to align with international standards and address the common pitfalls of the old arbitration regime, with the introduction of an efficient and expedited procedure for the enforcement of arbitration awards. The Executive Regulations have also facilitated the process of enforcing foreign awards issued from international arbitrations, which have been successfully applied in practice.

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To speak to us in relation to any arbitration issues in the UAE, please feel free to contact one of the lawyers below, or your usual Baker McKenzie contact.

⁶ Article 85(2) of the Executive Regulations.



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