

The New Enforcement Regime: a further step in the right direction

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The United Arab Emirates has introduced further reforms regulating the enforcement of foreign arbitral awards.

In the last year, the UAE has taken a significant step towards aligning the UAE's arbitration laws with international best practice with the introduction of Federal Law No. 6 of 2018 ("**UAE Arbitration Law**"), ratified on 13 May 2018. The UAE Arbitration Law set out the procedure for the enforcement of arbitration awards including foreign awards; however, it did not repeal the provisions dealing with the execution of foreign judgments (and awards) set out in Articles 235 to 238 of the UAE Civil Procedure Code ("**CPC**"). The discrepancies between the two separate regimes led to some uncertainty regarding the applicable law governing enforcement of foreign arbitral awards.

On 16 December 2018, Cabinet Decision No. 57 of 2018 ("**Cabinet Decision**") was published in the Official Gazette and came into force two months after its publication date. The effect of this Cabinet Decision was to repeal Articles 235 to 238 of the CPC and bring much-needed clarity regarding the applicable enforcement regime.

The Previous Enforcement Regime: the CPC

Prior to the enactment of UAE Arbitration Law and Cabinet Decision, Articles 235 to 238 of the CPC governed the enforcement of foreign arbitral awards.

Pursuant to Article 236 of the CPC, the following is an unofficial translation of the procedure set out at Article 235 of the CPC for the enforcement of foreign judgments, also applied to the enforcement of foreign awards:

1. *Judgments and orders passed in a foreign country may be ordered for execution and implementation within UAE under the same conditions provided for in the law of foreign state for the execution of judgments and orders passed in the state.*
2. *Petition for execution order shall be filed before the Court of First Instance under which jurisdiction execution is sought under lawsuit filing standard procedures. Execution may not be ordered unless the following was verified:*
 - (a) *State courts have no jurisdiction over the dispute on which the judgment or the order was passed and that the issuing foreign courts have such jurisdiction in accordance with the International Judicial Jurisdiction Rules decided in its applicable law.*
 - (b) *Judgment or order was passed by the competent court according to the law of the country in which it was passed.*
 - (c) *Adversaries in the lawsuit on which the foreign judgment was passed were summoned and duly represented.*
 - (d) *Judgment or order had obtained the absolute degree in accordance with law of the issuing court.*

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- (e) *It does not conflict or contradict with a judgment or order previously passed by another court in the State and does not include any violation of moral code or public order.*

Article 238 of the CPC provided that the enforcement rules set out in Articles 235 to 237 of the CPC were without prejudice to the rules and regulations in conventions signed between the UAE and other countries, including, for example, the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The old enforcement regime set out in Article 236 of the CPC, therefore required parties seeking to enforce an arbitral award to commence proceedings in the Court of First Instance. This not only resulted in enforcement proceedings being subject to the usual litigation procedures and timeframes, but also meant that enforcement proceedings were subject to two appeal stages: the Court of Appeal and the Court of Cassation, resulting in delays and uncertainties.

The New Enforcement Regime: the Cabinet Decision

The UAE Arbitration Law did not repeal Articles 235 to 238 of the CPC, but instead introduced a new expedited regime for the enforcement of arbitral awards, creating ambiguity regarding the applicable procedure for enforcement.

Article 55 of the UAE Arbitration Law provides that the chief justice or a judge authorised by the chief justice shall order the authentication and approval of the arbitration award, along with its execution within sixty days from the date of filing date.

The uncertainty that arose following the enactment of the UAE Arbitration Law, which conflicted with the enforcement regime in the CPC, was recently resolved with the introduction of the Cabinet Decision.

The Cabinet Resolution repealed Articles 235 to 238 of the CPC and put in place clear enforcement rules compatible with the UAE Arbitration Law, and which encourage an expedited procedure for the enforcement of foreign arbitration awards in the UAE. The main changes include:

1. The application for an order for enforcement is no longer required to be filed before the Court of First Instance, and instead a petition for enforcement of a foreign arbitration award must be brought directly to the competent execution judge in the UAE.
2. The execution judge must issue an order within a maximum of three days from the date of filing.
3. The order of the execution judge is subject to the usual channels of judicial appeal.

The New York Convention conditions for enforcement of foreign arbitration awards will still take precedence in enforcement matters, pursuant to Article 88 of the Cabinet Decision, which provides that:

“The rules set out in this Chapter shall not prejudice the provisions of treaties and agreements between the State and other States on the enforcement of foreign judgments, orders and instruments.” (unofficial translation)

The Future

The Cabinet Decision is a further positive move by the UAE towards making commercial arbitration a more appealing dispute resolution mechanism in the UAE.

The old enforcement regime resulted in a process that was exposed to delay and other obstacles, given the various stages of appeal that a petition for enforcement was subject to prior to being capable of enforcement by the execution judge.

The outlook is that the enactment of the Cabinet Decision will expedite the procedures for enforcing foreign arbitral awards, and increase confidence in the enforceability of awards in the UAE. It is, of course, yet to be seen how the UAE Courts will apply the Cabinet Resolution, and whether the procedure contemplated by the Cabinet Resolution, will in fact result in a more expedited enforcement regime.

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