

## Enforcing foreign arbitral awards in the UAE



by **Richard Bell**

### Introduction

Is a foreign arbitral award enforceable in the UAE? The answer to this question depends very much on where the foreign award was issued. In this article we look at enforcing foreign arbitral awards under the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, bi-lateral treaties between the UAE and foreign states and under the *UAE Civil Procedure Code*.

### Enforcement under the New York Convention

In 2006, the UAE became a signatory to the New York Convention, whose signatory states must recognise and enforce arbitral awards issued in other signatory states.

Since the UAE became a signatory, there has been some doubt within the legal community as to whether the courts would actually enforce a New York Convention award. Two recent decisions have, however, indicated that the UAE courts will uphold the New York Convention. In 2010, the Court of First Instance in Fujairah held that a foreign arbitral award was enforceable in the UAE under the New York Convention. While that case was uncontested by the respondent, the decision was widely regarded as a step in the right direction.

More recently, the Dubai Court of First Instance upheld a London arbitral award under the New York Convention, notwithstanding the fact that the award had been challenged by the other party. While the decision of the Court of First Instance has been appealed, again, the signs are encouraging that the UAE Courts will uphold the New York Convention.

### Enforcement under Reciprocal Enforcement Treaties

Foreign arbitral awards can be enforced in the UAE if they are issued in a country which is a signatory to a bi-lateral treaty with the UAE. The most well known treaty is the Riyadh Judicial Co-operation Agreement (the Riyadh Agreement) which was ratified by the UAE in 1999. Under the Riyadh Agreement, both

arbitral awards and court judgments are enforceable in the signatory states which include most of the Arab states in the Middle East and North Africa. In addition to the Riyadh Agreement, the UAE is a party to a number of bi-lateral investment treaties with individual states which provide for the enforcement of arbitral awards.

### Enforcement where no treaty is in place

If the foreign arbitral award is issued in a country which is not a party to the New York Convention or a bi-lateral treaty with the UAE, it is still possible for that award to be enforced in the UAE, but only if it meets the conditions for the enforcement set out in the *UAE Civil Procedure Code*.

One of the conditions imposed by the *Civil Procedure Code* is that the UAE courts do not have jurisdiction over the original dispute. This condition is often a stumbling block to enforcing a foreign arbitral award in the UAE because the UAE courts will usually assume jurisdiction over the underlying dispute if the dispute has any connection to the UAE. Accordingly, it is difficult to enforce a foreign award that has been issued in a state that is not a signatory to the New York Convention or a bi-lateral treaty.

### Conclusion

Although the recent decisions of the UAE courts upholding the New York Convention are encouraging, it is fair to say that the UAE is not the easiest country to enforce a foreign arbitral award. This is particularly true in circumstances where the arbitral award has been issued by a country that is not either a party to the New York Convention or a bi-lateral treaty with the UAE.

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