DUBAI COURTS REFUSE ENFORCEMENT OF AN ARBITRAL AWARD AGAINST A FOREIGN PARTY

Date: 19 December 2022

Litigation and Dispute Resolution Alert

By: Jonathan H. Sutcliffe, Mohammad Rwashdeh

A recent judgment of the Dubai Court of Cassation refused to enforce a foreign arbitral award against a party (the award debtor) with assets in the United Arab Emirates (UAE), on the basis that the award debtor itself was not domiciled in the UAE. This creates significant potential hurdles to enforcement against assets in the UAE and a divergent interpretation of the Convention on the Recognition of Foreign Arbitral Awards of 1958 (New York Convention).

BACKGROUND

The case concerned an arbitral award issued under the arbitration rules of the London Court of International Arbitration (LCIA), which the award creditor sought to enforce in the onshore Dubai courts. The award debtor was a foreign entity with no domicile in the UAE - however, it did own shares in two companies registered and domiciled in the UAE. The arbitral award related to a dispute arising out of the sale and purchase of shares in those companies.

When the award creditor applied for enforcement of the award in Dubai, the enforcement judge refused enforcement, on the ground that the Dubai courts do not have jurisdiction to enforce an arbitral award against a party not domiciled in Dubai. The award creditor appealed the judgment through the courts, ultimately bringing a challenge before Dubai's highest judicial authority, the Court of Cassation. The award creditor relied on Article III of the New York Convention, which requires contracting states to recognize and enforce foreign arbitral awards in accordance with their procedural rules and not to make the enforcement of a foreign award substantially more difficult than the enforcement of a domestic one; and Article 21 of the Civil Procedures Law (Federal Law No. 11/1992), concerning the Court's jurisdiction against non-domiciled parties. It also argued that the award debtor's lack of domicile in the UAE should not be an impediment to enforcement, since Article 20 of the Federal Commercial Companies Law (UAE Federal Decree-Law No. 32/2021) permits the creditors of a shareholder to enforce against that shareholder's share in a company's profits (and against its share of corporate assets in the event of liquidation).

THE DECISION

The Court of Cassation upheld the lower courts' judgment and rejected the application to enforce the award.

The Court of Cassation referred to the New York Convention in its judgment. The Court's reasoning emphasized that, while Article III provides that an award should be enforced *"in accordance with the rules of procedures applicable in the territory of enforcement with the adoption of the easiest procedures, and the exclusion of the*

©2005-2026 K&L Gates LLP. All Rights Reserved.

more onerous procedures," all of the relevant procedural rules of the court where enforcement is sought still apply. In particular, the Court stated that it is established that matters of jurisdiction are considered matters of public policy and cannot be overlooked. The Court held that under the applicable procedural rules it did not have jurisdiction, since (i) the award debtor was not domiciled in Dubai, and (ii) the Dubai-domiciled companies in which the award debtor held shares were not parties to the arbitration.

As to Article 20 of the Federal Commercial Companies Law, the Court found that this did not assist the award creditor, because the companies in which the award debtor held shares were not parties to the award and no order was issued against them. A potentially relevant consideration, which did not feature in the published judgment, is that Article 20 permits enforcement against a shareholder's share in the profits of a company, or the proceeds of liquidation, but it does not permit enforcement against the shares themselves - i.e., the remedy which the award creditor sought in this instance.

CONCLUSION

The judgment may substantially complicate enforcement of foreign arbitral awards in the UAE in future. Successful claimants who have obtained an arbitral award against a respondent with assets in the UAE may be unable to enforce against those assets, if the respondent itself is not domiciled in the UAE and if no order is made in relation to those assets.

KEY CONTACTS



JONATHAN H. SUTCLIFFE
PARTNER

DUBAI
+971.4.427.2747
JONATHAN.SUTCLIFFE@KLGATES.COM



MOHAMMAD RWASHDEH
SPECIAL COUNSEL

DUBAI
+971.4.427.2742
MOHAMMAD.RWASHDEH@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.