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Guide to monetising arbitration awards against assets in the United Arab Emirates



In this July edition of Arbitration insights from Singapore, we examine the framework for monetising international arbitration awards against assets in the United Arab Emirates (the "**UAE**").

In the Middle East, the UAE is a federation of seven emirates including Abu Dhabi (the capital) and Dubai (the international business hub). It shares borders with Sultanate of Oman and Kingdom of Saudi Arabia, and maritime borders with the State of Qatar and Islamic Republic of Iran. It also forms part of the Gulf Cooperation Council (the "**GCC**") which comprises Kingdom of Bahrain, State of Kuwait, Sultanate of Oman, the State of Qatar, Kingdom of Saudi Arabia, and the UAE. The UAE economy is heavily reliant on revenues from petroleum and natural gas and in particular oil exports, but there has been economic diversification in recent years including infrastructure construction, manufacturing, services and tourism, and the country's free trade zones are attracting foreign investors. Amongst its significant export partners, People's Republic of China, the Republic of India, Japan, and Republic of Korea traditionally feature alongside Kingdom of Saudi Arabia and the Republic of Iraq.

International arbitration in the UAE has developed significantly in recent years, with both domestic and international parties increasingly drawn to many of its advantages over local court litigation. In particular, there have been a series of developments which strengthen the framework for 'onshore' arbitration in the UAE to complement the 'offshore' regimes which have been in place in the Dubai International Financial Centre ("**DIFC**") and Abu Dhabi Global Markets ("**ADGM**"). We address these in brief in the opening section of this edition.

The focus of this edition is, however, the framework for monetising international arbitration awards against assets in the UAE. Below we set out the framework and key steps and considerations parties should have to mind when seeking to proceed with the recognition and enforcement of either 'onshore' or 'offshore' UAE arbitral awards or foreign seated arbitral awards.

With the continuing rapid development of the arbitration regime in the UAE and wider Gulf region, the strong recommendation is to seek specialist arbitration advice when formulating enforcement strategy in the UAE.

Recent international arbitration developments in the UAE

Dubai Decree No. 19 of 2016

The UAE has a well-established Arabic language, civil law, 'onshore' court system; as well as two English language, common law, 'offshore' court systems based in the DIFC and the ADGM respectively.

The DIFC and the ADGM are financial free zones within the UAE with their own civil and commercial laws. By way of example, the DIFC has its own Arbitration Law (DIFC Law No. 1 of 2008) (the "**DIFC Arbitration Law**") which governs arbitrations seated in the DIFC and is entirely separate from the UAE Arbitration Law (Federal Law No. 6 of 2018) (the "**UAE Arbitration Law**") which governs, amongst others, arbitrations seated in 'onshore' UAE (see further below).



In June 2016, the Dubai Decree No. 19 of 2016 (the "**2016 Decree**") established a Joint Judicial Committee for the Dubai 'onshore' local courts and the DIFC 'offshore' courts (the "**JJC**"). At least in part, the background to the Decree is that there had been an increasing number of cases in which foreign seated arbitral award creditors – in disputes which had no connection to the DIFC – attempted to use the DIFC as a 'conduit jurisdiction' to enforce 'onshore' in the UAE by seeking recognition of the foreign seated arbitral award in the DIFC courts and then taking advantage of the procedure for the enforcement of DIFC 'offshore' court judgments in the Dubai 'onshore' courts.

There is a reciprocal protocol of enforcement between the courts of the DIFC and 'onshore' Dubai contained in Dubai Law No. 12 of 2004 (as amended by Dubai Law No. 16 of 2011) (the "**2004 Dubai Law**") which sets out the procedure for enforcing 'offshore' arbitral awards seated in the DIFC by the Dubai 'onshore' courts (and vice versa). Article 7 of the 2004 Dubai Law provides that any ratified awards will be enforceable without any further review, subject to certain procedural formalities.

However, since the establishment of the JJC, in situations where there is a conflict in jurisdiction between the DIFC 'offshore' and the Dubai 'onshore' courts, the JJC considers that the Dubai 'onshore' courts have "*general jurisdiction under general principles of law embodied in procedural laws*".

With the Decree, at the very least, the role of DIFC 'offshore' courts as a 'conduit jurisdiction' for 'onshore' enforcement of foreign seated arbitral awards in the UAE has been narrowed.

UAE Arbitration Law (Federal Law No. 6 of 2018) and Cabinet Decision No. 57 of 2018

On 3 May 2018, the UAE Arbitration Law was enacted and represented a significant development in the framework for 'onshore' arbitration in the UAE.

The Arbitration Law governs, amongst others, the recognition and enforcement of arbitral awards seated in 'onshore' UAE and provides that an arbitral award rendered in accordance with its provisions has the same binding force and enforceability on the parties as a court ruling.

As opposed to the previous UAE arbitration law governing 'onshore' arbitrations that was set out in Articles 203 to 218 of UAE Civil Procedure Code (the "**UAE CPC**"), the UAE Arbitration Law streamlined the process by which a party can apply for the recognition and enforcement of a domestic 'onshore' arbitral award in the UAE, and a successful party may do so directly before the UAE Federal or local Courts of Appeal.

The UAE Arbitration Law did not, however, repeal the provisions dealing with the execution of foreign awards that was set out in Articles 235 to 238 of the UAE CPC. To remedy this, on 16 February 2019, Cabinet Decision No. 57 of 2018 Concerning the UAE Civil Procedure Law (the "**2019 Cabinet Decision**") came into force, repealed Articles 235 to 238 of the UAE CPC and the enforcement of foreign seated awards is now governed by Articles 85 and 86 of the 2019 Cabinet Decision (see further below).

DIFC-LCIA Arbitration Centre abolished and the joint DIAC/LCIA press release

In a move which caught the arbitration community by surprise, on 20 September 2021, both the DIFC-LCIA Arbitration Centre and the Emirates Maritime Arbitration Centre ("**EMAC**") were abolished pursuant to Decree No. 34 of 2021 (the "**2021 Decree**"). The operations and assets of both arbitration centres were merged into the Dubai International Arbitration Centre ("**DIAC**"). A degree of certainty has been achieved by

the joint press release which was issued by the DIAC and the LCIA on the 28 March 2022 (the "**2022 Press Release**").

The 2022 Press Release announced that the LCIA from London will administer under the DIFC-LCIA Rules all cases commenced and registered by the DIFC-LCIA under a designated case number on or before 20 March 2022. Those not registered by the DIFC-LCIA under a designated case number on or before 20 March 2022 shall be registered by DIAC and administered directly by its administrative body in accordance with the 2022 Rules (see further below).

The 2022 DIAC Rules



On 21 March 2022, the new rules of the DIAC (the "**2022 Rules**") came into effect. The 2022 Rules are an update to the DIAC 2007 Rules ("**2007 Rules**"). The 2022 Rules address, amongst others, consolidation, and joinder, expedited and emergency proceedings, interim measures, legal costs, the disclosure of third-party funding and the creation of a new DIAC arbitration court. The 2022 Rules can be accessed [here](#).

Of particular note, the 2022 Rules provide that absent agreement by the parties, the default seat of the arbitration will be DIFC. This is a welcome development as the DIFC is viewed by the arbitral community and practitioners as an efficient and arbitration-friendly seat.

Modernisation and development of the 'onshore' and 'offshore' arbitration regimes in the UAE

As set out above, there has been significant modernisation and development of the 'onshore' and 'offshore' arbitration regimes in the UAE through the 2016 Decree and the creation of the JJC, the 2018 UAE Arbitration Law, the 2019 Cabinet Decision, the 2021 Decree, the 2022 Press Release and the DIAC 2022 Rules and the creation of a new DIAC arbitration court.

These initiatives mark the UAE as a fast developing and pro-arbitration jurisdiction. The need for these initiatives to be tested in practice and also the possibility of further change means that for those

considering arbitration in the UAE – whether drafting a contractual arbitration clause or commencing arbitration proceedings – it is clear specialist legal advice should be sought to ensure that the latest developments are factored into decisions on how best to formulate arbitration strategy in the UAE.

Enforcement of 'onshore' and 'offshore' arbitral awards in the UAE



A critical factor in the UAE's jurisdictional development as a credible hub for international arbitration is the introduction of a streamlined and efficient enforcement regime for both domestic and foreign arbitral awards.

Enforcement of domestic 'onshore' awards in 'onshore' UAE

The UAE Arbitration Law governs the recognition and enforcement of domestic arbitral awards seated in 'onshore' UAE and provides that an arbitral award rendered in accordance with its provisions has the same binding force and enforceability on the parties as a court ruling.

The UAE Arbitration Law has streamlined the process by which a party can apply for the recognition and enforcement of a domestic 'onshore' arbitral award in 'onshore' UAE, and a successful party may do so directly before the UAE Federal or local Courts of Appeal rather than having to apply to the Court of First Instance for ratification, provided that it submits:

- the original award or a duly certified copy;
- a copy of the Arbitration Agreement;
- an Arabic translation of the arbitral award certified by a duly recognised entity if the award is rendered in another language; and
- an Arabic translation of the Arbitration Agreement, if the agreement is issued in another language.

The UAE court will then order the recognition of the arbitral award and its enforcement within 60 days from the filing date of the request for recognition and enforcement.

The decision issued on the recognition and enforcement of the arbitral award, or the decision to reject such recognition and enforcement, can be challenged within 30 days of service of the issued decision.

Right of challenge

Article 53(1) of the UAE Arbitration Law sets out eight grounds for challenging a domestic arbitral award. The unsuccessful party seeking to set aside the arbitral award must establish one of the following circumstances:

- that no Arbitration Agreement exists or such agreement is void or has lapsed under the law to which the Parties have subjected it;
- that a party, at the time of conclusion of the Arbitration Agreement, was incompetent or under some incapacity under the law governing their capacity;
- that a person does not have the legal capacity to dispose of the disputed right under the law governing their capacity;
- that a party to the arbitration fails to present its case because it was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or because the Arbitral Tribunal breached due process or for any other reason beyond their control;
- that the arbitral award excludes the application of the Parties' choice of law for the dispute;
- that the composition of the Arbitral Tribunal or appointment of any Arbitrator was not in accordance with the Arbitration Law or the agreement of the Parties;
- that the arbitral proceedings were marred by irregularities that affected the award or the arbitral award was not issued within the specified time frame; and/or
- that the award contains decisions on matters not falling within the terms of the submission to the arbitration or was beyond its scope, provided that, if the decisions on matters submitted to the arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to the arbitration may be set aside.

An arbitral award may be challenged within 30 days of the party requesting the challenge being served with the arbitral award.

A court will not automatically pause a ratification and enforcement proceedings if a party decides to file an application to challenge the arbitral award. A pause can only be ordered if requested by one of the parties if they have serious grounds to justify such action.

Enforcement of 'offshore' awards in 'offshore' UAE (DIFC and ADGM)

We highlight below the steps for the recognition and enforcement of 'offshore' DIFC and ADGM arbitral awards in the DIFC and ADGM respectively below:

- **DIFC:** For the purposes of enforcing an arbitral award in the DIFC, the successful party must make an application to the DIFC courts pursuant to Article 42(1) of the DIFC Arbitration Law. A party can make such an application for enforcement either with or without notice to the other party. Provided the DIFC court decides to recognise the award, it will issue an order in both English and Arabic. The award creditor must then serve the DIFC court order on the award debtor.
- **ADGM:** The ADGM follows a similar procedure to the DIFC, which is set out in Part 4 of the ADGM Arbitration Regulations 2015 and provides that upon the application of a party for the recognition or enforcement of an arbitral award, the ADGM courts decide that if an award shall be recognised or enforced, it shall issue an order to that effect. The party seeking the recognition or enforcement of an award would need to provide to the ADGM court:
 - the original or a duly certified copy of the arbitral award; and
 - a copy of the arbitration agreement pursuant to which that arbitral award was rendered.

If the award or the agreement is not in English, the ADGM court may order for the provision of a translation.

Right of challenge

The right to challenge an arbitral award in the courts of the DIFC or the ADGM complies with the requirements of the New York Convention.

However, the courts may refuse enforcement if the subject-matter of the dispute is not capable of settlement by arbitration under the relevant laws of either the DIFC or ADGM, or if the enforcement of the award would be contrary to public policy in the UAE.

Enforcement of foreign arbitral awards in the UAE



The UAE is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 which aims to ensure the enforcement of foreign arbitral awards worldwide.

The UAE is also party to the Riyadh Arab Agreement for Judicial Co-operation 1983 ("**Riyadh Convention**") and the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications 1996 ("**GCC Convention**").

Enforcement of foreign awards in 'onshore' UAE

As set out above, it is important to note that the UAE Arbitration Law does not apply to the recognition and enforcement of foreign arbitral awards in 'onshore' UAE. The substantive law and procedure for the recognition and enforcement of foreign arbitral awards in 'onshore' UAE is set out in Articles 85 and 86 of the 2019 Cabinet Decision.

A party seeking the enforcement of a foreign arbitral award in 'onshore' UAE will need to submit either an application for enforcement of the foreign arbitral award being an ex-parte petition filed directly with the execution court following which, the execution judge will render an order theoretically within five days.

Right of challenge

However, for a foreign arbitral award to be enforced in the UAE, the conditions set out in Articles 85 (2) and 86 of the 2019 Cabinet Decision must be satisfied as these conditions can form the basis of any challenge. The conditions in Articles 85 (2) and 86 are as follows:

- the UAE courts do not have exclusive jurisdiction on the subject matter of the judgment;
- the judgment has been issued by a court having jurisdiction under the law of the country in which it was issued and was duly attested;

- the opposing parties in the case have been summoned to appear and were represented before the court or tribunal;
- the judgment or order acquired the force of *res judicata* under the law of the court where it was issued (proof may be required through a certificate or the judgment itself might prove such);
- the judgment does not contradict with the public order or morals of the UAE;
- that the arbitral award was issued in a matter that can be subject to arbitration pursuant to the UAE law; and
- that the arbitral award is enforceable in the country of origin.

Therefore, it is important for parties to ensure that the above conditions are met prior to submitting an application for enforcement as failure to do so may lead the application to be rejected.

Enforcement of foreign awards in 'offshore' Dubai (DIFC and ADGM)

The process for the recognition and enforcement of foreign arbitral award in the 'offshore' DIFC and ADGM is the same as the process in respect of the recognition and enforcement of arbitral awards seated in the free zones as set out above.

Right of challenge

The right to challenge a foreign arbitral award in the DIFC and the ADGM complies with the requirements of the New York Convention.

However, the courts may refuse enforcement if the subject-matter of the dispute is not capable of settlement by arbitration under the relevant laws of either the DIFC or the ADGM, or if the enforcement of the award would be contrary to public policy in the UAE.

Conclusion

The ability to enforce a favourable arbitral award is of fundamental importance. A successful party should therefore think carefully about its enforcement strategy in order to maximise the prospects of getting "*cash in the bank*". This is particularly crucial in the fast developing UAE and applies equally to 'onshore', 'offshore' and foreign arbitrations.

For example, in problematic cases, successful parties may incur significant costs when proceeding with enforcement and it can take up to two years or more to

have an arbitral award recognised. Only at this stage will a successful party be able to proceed to execution of an award which, depending on the nature of the losing party's assets can, in our experience, take an additional six to twelve months.

It is notable to note that an 'offshore' award can be enforced in the Middle East through the conventions we address above in the same way as an 'onshore' award. By way of example, a DIFC award can be recognised and enforced directly through various regional treaties

and conventions, in the same way as a Dubai-seated award.

Despite the fact enforcement remains a complex issue in the UAE, as set out above, the enforcement landscape is changing for the better. Stephenson Harwood LLP has successfully represented many clients on the recognition and enforcement of 'onshore', 'offshore' and foreign arbitral awards in the UAE and wider Gulf region.

Authors



Nicholas Sharratt
Partner
T: +971 4 407 3908
E: nicholas.sharratt@shlegal.com



Christopher Bailey
Partner
T: +65 6622 9685
E: christopher.bailey@shlegal.com



Ranna Musa
Associate
T: +971 4407 3933
E: ranna.musa@shlegal.com



Sophie Fengaras
Associate
T: +971 4 407 3959
E: sophie.fengaras@shlegal.com



Nancy Kapoor
Associate
T: +971 4 407 3964
E: nancy.kapoor@shlegal.com

Key contacts in Asia

Singapore

Chris Bailey

Partner
T: +65 6622 9685
E: christopher.bailey@shlegal.com

John Simpson

Partner
T: +65 6622 9565
E: john.simpson@shlegal.com

Michelle Yong

Partner
T: +65 6622 9691
E: michelle.yong@shlegal.com

Justin Gan

Partner
T: +65 6622 9640
E: justin.gan@shlegal.com

Daryll Ng

Partner, Virtus Law
T: +65 6835 8656
E: daryll.ng@shlegalworld.com

Lauren Tang

Partner, Virtus Law
T: +65 6835 8664
E: lauren.tang@shlegalworld.com

Greater China

Andrew Rigden Green

Partner, Hong Kong
T: +852 2533 2761
E: andrew.rigden@shlegal.com

Alexander Tang

Partner, Hong Kong
T: +852 2533 2881
E: alexander.tang@shlegal.com

Elizabeth Sloane

Partner, Hong Kong
T: +852 3166 6926
E: elizabeth.sloane@shlegal.com

Evangeline Quek

Partner, Shanghai
T: +86 21 5385 2195
E: evangeline.quek@shlegal.com

Henry Zhu

Partner, Guangzhou, Wei Tu
T: +86 20 8388 0590
E: henry.zhu@shlegalworld.com

Seoul

Michael Kim

Partner
T: +82 2 6138 4888
E: michael.kim@shlegal.com

Stuart Burrell

Partner
T: +82 2 6138 4877
E: stuart.burrell@shlegal.com

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90+
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