



17th century fort close to the centre of Fujairah

UAE takes baby steps over enforcement

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Enforcement of foreign arbitral awards under the New York Convention has become a reality in the United Arab Emirates, thanks to the Fujairah Court of First Instance – but practitioners warn against celebrating too soon.

The court enforced two London Maritime Arbitration Association awards issued by sole arbitrator Clive Aston in London in 2007 in a dispute over a chartered vessel that was returned late to its owners. Counsel were not involved in the arbitration as the award was decided on documents alone. The UAE judge ordered the charterers in absentia to pay a damages award of more than US\$235,000 plus interest in addition to costs for the arbitration, and a costs award of nearly £9,400 plus interest.

The vessel owners – whose identity does not appear in the award and who have yet to be identified - had instructed a team from Dubai law firm Fichte & Co to seek enforcement of the award in Fujairah, where it is believed the charterers are domiciled and have assets. The court's judgment was issued on 27 April, but has only recently come to light.

Practitioners have welcomed the first successful enforcement action that has been initiated before the UAE courts since the UAE ratified the New York Convention in 2006. **Jasamin Fichte**, who led the team for Fichte & Co, tells *GAR* that this judgment could set a precedent for courts in other emirates and is likely to encourage investors to go to arbitration against counterparts with assets in the UAE. SNR Denton's Dubai partner **Paul Stothard** says that, given the risk of non-enforcement is the most serious concern of any party arbitrating in the Gulf, this is an 'enormous leap forward'.



Optimistic: Mainwaring-Taylor, Mohtashami, Stothard and Basit

But lawyers warn against relying on it as a test case. 'So far so good, but let us not get too excited and start running before learning to walk,' says **Kaashif Basit**, a partner at KBH Kaanuun in Dubai. He says that had the enforcement hearing been contested on public policy grounds the decision could easily

have gone the other way – for example the award debtor might have argued that the interest of 2 per cent per month (24 per cent per annum) imposed on the losing party exceeds the 12 per cent per annum allowed by the UAE commercial transactions law.

Reza Mohtashami, a partner at Freshfields Bruckhaus Deringer in Dubai, describes the judgment as 'important, but not a game changer', noting that we need 'a judgment from one of the two commercially important emirates, Dubai or Abu Dhabi, in a contested action that expressly addresses the contradictions in the current state of the UAE law on enforcement' to have real cause for celebration.

Mohtashami, who has recently been trying to enforce an ICC award rendered in Sweden before the Dubai courts, explains that the UAE courts' procedure for enforcement of awards has not been amended to take into

account the ratification of the New York Convention, and that there is a strong need for a new federal law that harmonises and integrates the Convention.

Christopher Mainwaring-Taylor, counsel at Allen & Overy in Dubai, echoes Mohtashami's comments and says that: 'The approach of the UAE courts to enforcement under the New York Convention remains uncertain and there is anecdotal evidence of decisions which run counter to that of the Fujairah court'. As a result, Mainwaring-Taylor says that "for international clients dealing with UAE counterparties, Paris retains an edge as a seat of arbitration, because of the bilateral judicial cooperation treaty between France and the UAE, which provides an additional and tested route to enforcement".

Stothard adds his voice to the calls for 'urgent' reform. 'The most egregious inadequacy in the current law is the requirement for awards made in proceedings seated in the UAE to be ratified by the courts before they are enforceable,' he explains. 'It is an open invitation to the losing party to challenge the award, on any procedural ground, no matter how trivial or spurious, through all three tiers of the courts. The courts are too willing to entertain such challenges.' He suggests that the UAE should direct arbitration claims to an experienced commercial court, which is the approach similar to that adopted in Oman.

A new federal arbitration law is planned for the UAE but, says Mainwaring-Taylor, 'Unfortunately, the latest draft of the new federal arbitration law is not the model of clarity everyone had hoped for, and has arguably gone backwards from the previous draft which was more clearly aligned to the UNCITRAL Model Law.'

GAR is attempting to find out the identity of the beneficiary of the award, whose vessel was chartered to transport a cargo to Mesaieed, in Qatar, in May 2006.

Fujairah enforcement proceedings

Counsel for Claimants

- Fichte & Co

Legal consultant **Chehade El Kahi** in Dubai

Counsel for Defendants

- Uncontested

London arbitration

Tribunal

- **Clive Aston** (sole arbitrator) (England)