Dubai Judicial Authority orders DIFC Courts as courts of original jurisdiction under the NY Convention

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Brief

In a recent judgment by the Joint Judicial Tribunal in March 2021, the Tribunal ordered that:

"…the United Arab Emirates is a party to the New York Convention for the recognition of foreign arbitration decisions and their implementation by Decree No. 43 of 2006, which states to accept the procedure in any jurisdiction in the country and the DIFC Courts is one of such jurisdictions."

Cassation No. 8/2020 (Judicial Tribunal)

For clarity; the parties to the arbitration award had no connection with the Dubai International Financial Centre.

For background; the Joint Judicial Tribunal (or Committee) was established on 9 June 2016 by H.H. The Ruler of Dubai via Decree 19/2016 for the purpose of resolving conflicts of jurisdiction between the Dubai International Financial Centre Courts and the Dubai Courts. The Tribunal comprises three DIFC Court judges, and three Dubai Court judges, and the President of the Dubai Courts.

Prior position of the Tribunal

In the 2017 case of *Gulf Navigation Holding P.S.C. v Jinhai*

Heavy Industry Co. an arbitration award was issued in favor of Jinhai against Gulf Navigation in a London-seated arbitration.

In considering whether the DIFC Courts or the Dubai Courts have jurisdiction, the majority of the Tribunal ordered that "…this case is not similar to cases in which the Courts apply the provisions of the New York Convention 1958 because the two courts are in one Emirate, viz, Dubai Emirate."

Three judges on the Tribunal dissented, in the operative part of the dissent stating as follows:

"It follows that the award in an arbitral award within the meaning of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("The New York Convention") to which the UAE is a party, Article III of the Convention imposes an obligation on each contracting state to recognize and enforce any such award. As regards the DIFC this obligation is reflected in Article 42 of DIFC Arbitration Law No. 1 of 2008.

…

The decision is based on the "*general principles of law embodied in the procedural laws and since Dubai Courts have the general jurisdiction then they are the competent courts to entertain its case.*" This implies that, whenever there is a conflict (or apparent conflict) between Dubai Courts and DIFCC, DIFCC must give precedence to Dubai Courts. There is no such principle in Dubai law. Indeed, the contrary is the case.

…

The New York Convention can be enforced in different parts of the counties e.g. in different states of the USA and in other Federal jurisdictions such as Australia and Canada. Furthermore, under Article 42 of DIFC Arbitration Law of 2008, DIFCC is given the express power (and duty) to enforce Awards "irrespective of the State or jurisdiction in which it was

made". If DIFCC were to be prevented from enforcing this foreign Award, this would place the UAE in breach of its obligations under Article III of the NYC, which requires all States which have acceded to the Convention to enforce foreign awards."

The new position of the Tribunal

The prior position of the Tribunal was that the Dubai Courts have original jurisdiction in the Emirate of Dubai to enforce foreign arbitration awards vis-a-vis the DIFC Courts.

The judgment in *Cassation No. 8/2020 (Judicial Tribunal)* issued in early 2021 by the Tribunal creates a new trajectory in the confirmation of the DIFC Courts as courts of jurisdiction for the purposes of recognition and enforcement of foreign arbitral awards under the New York Convention.

The Tribunal explicitly ordered that the United Arab Emirates is a party to the New York Convention for the recognition of foreign arbitration decisions and their implementation by Decree No. 43 of 2006, which states to accept recognition and enforcement procedures in any jurisdiction in the country and that the Courts of the DIFC Courts are of such jurisdictions.

It is important to note that neither party to the arbitration award had any connection with the DIFC.

And that the prior ruling in *Gulf Navigation Holding P.S.C. v Jinhai Heavy Industry Co.* was issued prior to the new UAE Arbitration Law No. 6/2018.

Significance

The DIFC Courts have often been referred to as a 'conduit' jurisdiction for the enforcement of foreign arbitral awards. The concept was developed to refer to the DIFC Courts as non-original jurisdiction court but rather a conduit option for recognition and enforcement of foreign arbitral awards.

Subsequent to which a judgment by the DIFC Courts on recognition and enforcement would be enforced before the Enforcement Circuit of the Dubai Primary Court through a special DIFC Courts / Dubai Courts expedited enforcement system, and further through the rest of the Emirates through judicial cooperation systems between the different judicial authorities in the UAE.

The term ‘conduit’ jurisdiction connotates that the DIFC Court acts as an extraordinary channel for the enforcement of foreign awards, as opposed to a Court of original jurisdiction in the UAE.

And such jurisdiction has been curtailed in the past, such as in the case of *Gulf Navigation Holding P.S.C. v Jinhai Heavy Industry Co.*

The Tribunal’s new position in *Cassation No. 8/2020 (Judicial Tribunal)* disperses from the consideration that the DIFC Courts are a ‘conduit’ jurisdiction and instead enforces that the DIFC Courts are UAE Courts of original jurisdiction for the purposes of foreign arbitral award recognition under the New York Convention.

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