UAE Federal Supreme Court Rules on Double-Exequatur Requirement for Arbitral Awards

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In January 2019, the Federal Supreme Court (FSC) ruled on whether a double-exequatur requirement was necessary for the enforcement of an arbitral award issued under the Rules of the London Court of International Arbitration (LCIA), seated in London.

The declaration sought from the FSC was whether an arbitral award issued under LCIA rules and seated in London could (or not) be recognized and enforced as it had not been granted exequatur by the English Courts before a petition to confirm and enforce the award had been lodged in the United Arab Emirates.

The appeal to the FSC was in challenge to a rejection by the Khor Fakkan Federal Appeal Court (KFFAC) to submit a petition to confirm and subsequently enforce the award. The KFFAC rejected the petition on the basis that it has not been granted exequatur by the English Court prior to enforcement in the UAE. Essentially, the KFFAC's judgement was that the party looking to confirm the award for enforcement must obtain a double-exequatur; a requirement under the Geneva Convention of 1927 where the award must be "final" in the country of origin as.

The necessity for a double-exequatur was abolished by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the Convention), which was adopted by

the UAE pursuant to Federal Decree No. 43 of 2006. The Convention replaced the word “final” with “binding” so that no leave for enforcement (or exequatur) would be required from the country of origin.

Overturning the ruling of the KFFAC, the FSC found that the court’s refusal to recognize and enforce the award was due to misinterpretation of the term “authenticated” under in Article IV(1)(a) of the New York Convention which requires that a duly authenticated original award (or a duly certified copy) must be presented by a party looking to confirm and enforce an arbitral award.

The FSC found that the KFFAC had misinterpreted the meaning of the term “authenticated” with the meaning of enforceability or exequatur. The interpretation by KFFAC was due to the Ground e of Article V(1) of the Geneva Protocol on Arbitration Clauses (1923) and the Geneva Convention on the Execution of Foreign Arbitral Awards (1927). Ground e of Article V(1) provided that the enforcement of an award may be refused if the party against whom the award is to be enforced evidences that the award is not “binding”. Succeeding the 1923 Geneva Protocol, the 1927 Geneva Convention amended the requirement from “binding” to “final” which was ultimately interpreted by courts as a requirement to obtain grant of an exequatur from the court of the country of origin; hence the coming into practice of the double-exequatur system until the 1958 New York Convention.

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