War Series: Arbitration Enforcement Amidst Sovereign Capital Controls

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In the framework of international dispute resolution, the enforcement of arbitral awards often intersects with the sovereign economic policies of the states involved. A particularly complex issue arises when a party seeks to satisfy a monetary award within a jurisdiction where stringent capital controls are in effect, rendering the transfer of funds across borders difficult or impossible. The case of *Iraq Telecom Limited v. IBL Bank S.A.L.*, decided by the United States District Court for the Southern District of New York, provides a significant legal analysis of this very problem, examining how courts in an enforcement jurisdiction weigh the practical impact of such controls when considering a stay of proceedings.

The dispute originated from financing arrangements for Korek Telecom, an Iraqi telecommunications operator. The petitioner, Iraq Telecom, held a subordinated loan position relative to the respondent, IBL Bank of Lebanon. Following the discovery of a previously undisclosed cash collateral arrangement securing IBL's loan, Iraq Telecom initiated arbitration in Beirut, Lebanon, pursuant to their Subordination Agreement. An arbitral tribunal ultimately found in favor of Iraq Telecom, concluding that it had been fraudulently induced to enter the agreement. The tribunal issued an award for approximately $3 million in costs and fees and declared the Subordination Agreement to be null and void.

Subsequently, the parties pursued legal action in two

different countries. Iraq Telecom petitioned the court in New York to confirm and enforce the award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), seeking to attach IBL's assets in U.S. correspondent bank accounts. Concurrently, IBL initiated an action in Lebanon, the primary jurisdiction, to have the arbitral award annulled. Before the New York court, IBL requested that the confirmation proceedings be stayed pending the outcome of its annulment action in Lebanon.

The central issue for the U.S. court was how to treat IBL's attempt to settle the award within Lebanon's financial system. IBL utilized a "tender and deposit" procedure under Lebanese law, depositing a banker's check for the award amount with a notary public in Beirut. This action's practical effect was conditioned by the severe economic crisis and capital controls operative in Lebanon at the time. The court took note of this context, observing that "under the extraordinary circumstances that currently prevail in Lebanon, banker's checks denominated in foreign currency cannot be readily liquidated into cash at face value by the recipient." Citing the inability to move funds out of the country, Iraq Telecom declined to accept the deposited check as satisfaction of the award.

In deciding whether to grant IBL's request for a stay, the court applied a multi-factor analysis designed to balance the goals of the New York Convention with principles of international comity. The court considered the objective of arbitration as an "expeditious resolution of disputes" and noted the timing of IBL's annulment filing in Lebanon. A critical component of the court's decision was its assessment of the balance of hardships. It found that Iraq Telecom faced a significant challenge, as the capital controls meant it would "have difficulty obtaining effective payment of the Award within Lebanon and must rely on the Convention's procedures for confirmation and enforcement outside Lebanon." The court also considered the financial condition of IBL in

its analysis. By contrast, IBL did not demonstrate a comparable hardship that would result from the immediate confirmation of the award in the United States.

Ultimately, the court denied the stay and proceeded to confirm the award. The decision did not turn on the merits of the Lebanese annulment action but rather on the practical consequences of deferring enforcement. It determined that the goals of the New York Convention, to ensure the effective and prompt enforcement of arbitral awards, would be impeded if a party could compel satisfaction in a jurisdiction where capital controls rendered the award's monetary value inaccessible. The ruling stands as an important precedent, clarifying that courts in secondary jurisdictions may consider the real-world impact of a primary jurisdiction's economic policies and capital controls when exercising their discretion to stay or enforce a foreign arbitral award.

As geopolitical tensions increase and sovereign states predictably implement capital control measures to manage economic stress, award-creditors will increasingly look to solutions that mitigate the risk of trapped funds. The strategic approach seen in this case is likely to become more prevalent. Commercial parties will proactively seek to confirm and enforce arbitral awards in stable financial centers where debtors hold assets, thereby using the robust framework of the New York Convention to bypass the economic barriers erected in a debtor's home jurisdiction. The *Iraq Telecom* decision thus reinforces the Convention's role not merely as a tool for resolving disputes, but as an essential mechanism for navigating the financial realities of an increasingly fragmented global economy.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com