

A STEP FORWARD FOR EXPEDITED ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN THE UNITED ARAB EMIRATES

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In a further significant development in the United Arab Emirates ("UAE") arbitration landscape, UAE Cabinet Resolution 57 of 2018 (the "Cabinet Resolution") provides for an expedited procedure for the enforcement of foreign arbitration awards in the UAE. The Cabinet Resolution, which was enacted in December 2018, came into force on February 17, 2019, and will sit alongside the 1958 New York Convention (the "New York Convention"), which governs the substantive grounds for enforcement of foreign arbitration awards under UAE law. The New York Convention's precedence in substantive enforcement matters is confirmed in the Cabinet Resolution, which is stated to be without prejudice to the conventions that the UAE has entered into with other states.

Articles 85, 86, and 88 of the Cabinet Resolution, which will replace Articles 235, 236, and 238 of the existing UAE Civil Procedure Law concerning the procedure for enforcement of foreign judgments and orders, provide that:

- The relevant provisions of the Cabinet Resolution concerning the enforcement of foreign judgments and orders shall also apply to foreign arbitration awards, provided they are issued in a manner in accordance with UAE law and are enforceable in the country of issue; and
- A petition for enforcement of a foreign arbitration award must be brought directly to the competent execution judge in the UAE, who must issue a determination within a maximum of three days from the date of filing (the execution judge's determination remains, however, subject to the usual channels of judicial appeal).

While the substantive grounds set out in the New York Convention that apply to the enforcement of a foreign arbitration award in the UAE have not changed by the enactment of the Cabinet Resolution, it represents a substantial and seemingly positive change to enforcement procedure. Previously, a petition for enforcement had to be brought as a normal case in the competent UAE Court of First Instance, which was subject to appeal to the Court of Appeal and then to the Court of Cassation before the award was capable of enforcement by an execution judge. As a result, enforcement proceedings were often drawn out over many months and sometimes years and were highly vulnerable to obstruction and delay.

It is to be hoped that, with the enactment of the Cabinet Resolution, the enforcement of foreign arbitration awards in the UAE will now proceed far more expeditiously, even though the available substantive challenges to enforcement remain; in particular, the UAE courts may still reject all or part of an arbitration award if it violates any aspect of public policy in the UAE (which may include issues of Sharia). As with any new law, it remains to be

seen how the Cabinet Resolution will be applied by the UAE courts in practice and whether significant time savings can, in fact, be delivered. One area of uncertainty that may not be resolved until the Cabinet Resolution is tested in the UAE courts is the effect of an appeal lodged by an award debtor against an execution judge's decision to enforce a foreign arbitration award and whether or not enforcement would be stayed until the appeal process is resolved.

The Cabinet Resolution is another step in the UAE's development of a more permissive judicial approach toward the enforcement of foreign arbitration awards following its ratification of the New York Convention in 2006. The enactment of the Cabinet Resolution also resolves uncertainty over the applicable enforcement procedure for foreign arbitration awards after the enactment of the UAE Federal Arbitration Law in 2018, which introduced a more streamlined regime for the enforcement of domestic arbitration awards. It now appears clear that the enforcement of foreign arbitration awards will follow the procedure set out in the Cabinet Resolution, which means that the UAE operates two separate regimes for the enforcement of foreign and domestic arbitration awards.

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