



Landmark enforcement decision in the Kingdom of Saudi Arabia

Litigation Update

31 MAY 2016

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The Enforcement Court in Riyadh has recently confirmed that a US\$ 18.5 million ICC award rendered in London, will be enforced in the Kingdom against a Saudi-domiciled award debtor. The enforcement process, handled by our Litigation, Arbitration & Investigations team, took just 3 months before the Enforcement Court. The decision to enforce this major foreign award, in addition to the relative speed with which the decision was reached, is one of the most significant developments in arbitration in the Middle East for many years.

Why is this significant?

The recognition and enforcement of foreign arbitral awards has long been fraught with difficulty in Saudi Arabia. As a result, contracting with Saudi parties with no identifiable assets outside the Kingdom has always involved an added layer of risk. However, the Kingdom recently revamped its arbitration and enforcement laws to more closely reflect international standards - changes which prompted the hope that Saudi might become a more arbitration-friendly jurisdiction as it seeks to diversify its economy and encourage more foreign investment.

This case is the first example of what we hope will be many more pro-arbitration decisions emanating from the Kingdom.

Key facts

In late 2011, a UAE subsidiary of a Greek telecommunications company (Claimant) obtained an ICC arbitral award totalling c.US\$ 18,500,000 from a London-seated tribunal of three experienced arbitrators. In summary, the Claimant (for whom DLA Piper acted) succeeded in its claims against a Saudi data communications service provider, and was also successful in defending counterclaims totalling c. US\$ 350 million. The Claimant then sought recognition and enforcement of the award in the Saudi courts.

During the course of the enforcement proceedings, Saudi Arabia passed two separate laws, both of which commentators regarded as having the potential to transform the arbitration regime in Saudi Arabia, namely:

1. A new arbitration law, which is based on the UNCITRAL Model Law, and
2. A new Enforcement Law.

One effect of the new Enforcement Law is to require parties seeking recognition and enforcement of foreign arbitral awards to commence proceedings directly before the Enforcement Courts, rather than through the Board of Grievances. This legislative change is very advantageous to award creditors, as there is no appeal from the decision of the enforcement judge.

As a result of this change, the Claimant transferred its proceedings from the Board of Grievances to the Enforcement Courts. Three months later, the enforcement judge has now stamped the award (thereby confirming that the award is recognised and will be enforced in Saudi Arabia, and also effectively converting the award into an executable Saudi court judgment). As stated above, there is no possibility of appeal against this decision.

In confirming the enforceability of the award, the enforcement judge had to satisfy himself (by reference to Article 11 of the Enforcement Law) that:

1. The country in which the award was rendered would reciprocate in enforcing awards rendered in Saudi Arabia (in the case of England, this was simple to establish by reference to the UK's accession to the New York Convention)
2. The Saudi courts did not have jurisdiction to hear the underlying dispute (which they did not as a result of the arbitration clause in the contract)
3. The award was rendered following proceedings which complied with due process
4. The award was in final form according to the law of the seat of the arbitration
5. The award was not inconsistent with a judgment or order issued in relation to the same subject by a judicial authority of competent jurisdiction in the Kingdom, and
6. The award did not contain anything which contradicted Saudi public policy (and in particular Saudi law). In relation to this last requirement, the award did not include any award of interest, which might otherwise have been problematic.

Enforcement proceedings in the Kingdom of Saudi Arabia require a deep understanding of local law. It is clear from our involvement in this case that it is crucially important for any parties involved in proceedings against Saudi entities to ensure they obtain proper advice from the outset about the pre-requisites to enforcement under Saudi law. There are particular requirements and practical steps that must be undertaken during the process which it is important for parties to understand.

The execution regime in Saudi Arabia explained

Having obtained an execution order, the full weight of the Saudi Arabian enforcement regime can now be brought to bear on the award debtor. The powers of the Enforcement Court under Articles 46 and 47 of the Enforcement Law are significant: if the award debtor fails to pay the sum owed or fails to disclose property sufficient to satisfy the award within five days of notification of the execution order, it is deemed to be procrastinating and the enforcement judge can:

1. Ban the award debtor from travel (in the case of a company, its general manager or board of directors)
2. Suspend the award debtor's ability to issue powers of attorney either directly or indirectly in relation to its assets
3. Order disclosure of the existing assets of the debtor and any future revenues in an amount sufficient to satisfy the award, seize such assets and take all actions permitted by the law to execute the award against them
4. Order disclosure of the licenses and records of the commercial and professional activities of the award debtor, and
5. Notify credit agencies and similar organisations that the award debtor has failed to satisfy an award, which will result in them being added to a credit blacklist.

Conclusion

While foreign arbitral awards have been recognised and enforced in Saudi Arabia sporadically in the past, the process has generally been a tortuous one, and Saudi has long been regarded as one of the most problematic New York Convention signatory countries. With this first practical example of recognition and enforcement of a foreign award since the promulgation of the Kingdom's new arbitration and enforcement laws, there are clear signs that the situation is changing for the better in the Kingdom.

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