

Litigation - Cyprus

Supreme Court clarifies approach for enforcement of arbitral awards

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Alternative dispute resolution proceedings and arbitral awards brought before Cyprus courts are generally respected, as summarised in the judgment of the Supreme Court in *Attorney General of Kenya v Bank Für Arbeit und Wirtschaft AG*⁽¹⁾:

"Arbitration constitutes an alternative dispute resolution method...It constitutes a characteristic supplement of every modern legal system. The method survives without judicial means. Only in specified instances may [judicial means] be used against an arbitration award. In our internal legal system, these rules, as well as the wider rules on arbitration, are stipulated within specialised legislation namely, the Arbitration Law, Cap.4

The frequent and successful use of this method worldwide forced the United Nations to create in the interest of completeness and uniformity a complete model law which was adopted on 21/06/85 by UNCITRAL. Its conclusion was the result of systematic review of relevant rules of various countries... The Cyprus International Commercial Arbitration Law 101 of 1987 clearly reflects the central ideas and the whole of the provisions of this code."

In a May 2011 decision the Supreme Court further demonstrated that the Cyprus courts will rigorously apply the provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, as ratified by Cyprus in 1979.⁽²⁾

In the case in question, the first instance court had rejected an application for the recognition and enforcement of an Austrian arbitration award on the basis that the applicants failed to satisfy the precondition of Article IV(1)(b) of the New York Convention. Article IV of the convention provides that:

"1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

- (a) The duly authenticated original award or a duly certified copy thereof;*
- (b) The original agreement referred to in article II or a duly certified copy thereof.*

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent."

The Supreme Court made clear that while the applicants had filed the original arbitration agreement with the arbitration court, this did not relieve them of the obligation to file it with the court in the proceedings to enforce the award, as required by Articles IV(1)(a) and (b) of the convention. Based on this finding, the court upheld the first instance judgment.

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Endnotes

⁽¹⁾ [1999] 1(A) CLR 585 at p 590.

⁽²⁾ *Re an Arbitration at the International Court of International Arbitration of the Austrian Chamber of Commerce and Industry and its Arbitration Award Sch-4883 and Bristol Business Corporation v Besuno Ltd* (Civil Appeal 321/2007).

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