

**ENGLISH HIGH COURT REJECTS CHALLENGE TO ENFORCEMENT OF
DUBAI ARBITRATION AWARD**

Honeywell International Middle East Ltd v Meydan Group Llc [2014] EWHC 1344

Introduction

In a decision released on 30 April 2014 in *Honeywell International Middle East Ltd v Meydan Group Llc* [2014] EWHC 1344, the English High Court upheld an award of the Dubai International Arbitration Centre made against the owner of the Meydan Racecourse in Dubai.

Background

The Claimant, Honeywell, was a company incorporated in Bermuda which operated in the United Arab Emirates through its branch in Dubai. The Respondent, Meydan, was incorporated in Dubai and is the owner of the Ned al Sheba racecourse, commonly referred to in Dubai as the Meydan Racecourse where horse races, concerts and exhibitions are hosted.

Honeywell was invited to tender for certain works at the Meydan racecourse, and subsequently, on 7 June 2009, an agreement was signed between Meydan and Honeywell for the execution and completion of those works.

While payments were initially made by Meydan to Honeywell, those payments ceased in February 2010. On 15 July 2010 Honeywell commenced arbitration proceedings against Meydan by submitting a Request for Arbitration to DIAC. On 19 January 2012 Meydan Group LLC commenced arbitration proceedings against Honeywell.

On 1 March 2012 the tribunal in the first arbitration made the Award in which it awarded Honeywell AED 73,323,272.44 together with costs of AED 3,757,000.00. The tribunal in the second arbitration refused to reconsider the subject of that award on the grounds of res judicata. On 12 November 2013, Meydan submitted various documents to the second arbitral tribunal (including a copy of a bribery complaint dated 8 October 2013 made to the Public Prosecutor of the Government of Dubai against Honeywell and a copy of a letter dated 11 November 2013 from the head of the Dubai Public Funds Prosecution Department to the Head of Bur Dubai Police Station requesting that investigations be conducted).

On 17 May 2012 Honeywell commenced proceedings before the Dubai Courts for ratification of the Award in DIAC Case No 201/2010 in order to enforce the Award. On 26 July 2012 Meydan issued a submission setting out the grounds for claiming that the Award should be held void and/or invalid and should not be enforced by the Dubai Courts. In those proceedings the Award was recognised and its enforcement ordered by the Dubai Court of

First Instance on 21 February 2013. Meydan appealed against that decision, and the Dubai Courts stayed the execution of the award.

Proceedings before the English Courts

On 12 November 2012, Honeywell made a without notice application to the English courts under s.101(2) of the Arbitration Act 1996 and CPR 62.18(1)(b) for leave to enforce the Award in the same manner as a judgment or order of the court.

By an order made on 12 November 2012 and sealed on 22 November 2012 ("the Order") Mr Justice Akenhead gave leave to enforce the Award in the same manner as a judgment or order of the court to the same effect but ordered that the Order should not be enforced for 21 days if Meydan applied within those 21 days to set aside the Order, until after such application had been finally disposed of.

On 29 October 2013, Meydan issued an application seeking an order setting aside the Order, based on a number of grounds including:

- The Award was not valid under UAE law because it resulted from a contract procured by the Claimant bribing public servants in Dubai;
- The Award was not valid because Meydan was deprived of the opportunity to nominate an arbitrator such that the arbitral procedure and composition of the tribunal which purported to render the Award was not in accordance with the agreement of the parties and/or Meydan was otherwise unable to present its case.
- The Award dealt with a difference not contemplated by or not falling within the terms of the submission to arbitration.
- The Award was suspended by a competent authority in the country in which and/or under the law of which it is made (i.e. the United Arab Emirates).
- The Award was in respect of matters which were not capable of settlement by arbitration under applicable law.
- Enforcement of the Award would be contrary to the public policy of the United Kingdom because the Award represented property obtained through unlawful conduct on the part of Honeywell within the meaning of Part 5 of the Proceeds of Crime Act 2002 and/or because the Award is based upon a contract procured by bribing public officials; the award had caused substantial injustice to Meydan; and the Award was obtained by deceit by Honeywell.
- Honeywell failed to establish a legitimate interest in enforcing the Award as a judgment of the English Court and failed to disclose highly material matters in its application.

Decision

The High Court dismissed Meydan's application and ordered that the Order should be given effect and the Award enforced.

In giving his judgment, Mr Justice Ramsey noted the following general principles applicable to the enforcement of arbitration awards under sections 100-103 of the Arbitration Act 1996:

- In accordance with s.103(1) the court must order enforcement unless the grounds are made out.

- The opening words of s.103(2) indicate that if one of the grounds under that subsection are made out then recognition or enforcement of the award "may be refused". That introduces a discretion which is not open-ended and the court would be unlikely to exercise its discretion to enforce an award which is subject to a fundamental or structural defect.
- English law recognises an important public policy in the enforcement of arbitral awards and the courts will only refuse to do so under s.103 in a clear case.
- The intention of the New York Convention is that the grounds for refusing recognition and enforcement of arbitral awards should be applied restrictively.

Mr Justice Ramsey held that Meydan had not raised any ground which had a real prospect of success in relation to the application to set aside the Order.

In particular:

- Meydan could not rely on the allegations of bribery because the evidence to establish the alleged bribery was available to and could have been deployed by Meydan before the arbitrators made the Award and the fact that Meydan did not participate in the arbitration did not affect that position.
- Even if the contract had been induced by bribery, the arbitration provision was severable and therefore there was still a valid arbitration agreement between the parties.
- Whilst bribery is clearly contrary to English public policy and contracts to bribe are unenforceable, as a matter of English public policy, contracts which have been procured by bribes are not unenforceable.
- Under the DIAC rules, the Award was binding. The simple bringing of a challenge against an award in the Dubai courts by Meydan was not sufficient on its own to prevent enforcement, in the absence of an order of the Dubai courts ordering the award to be suspended or set aside.

17th June 2014

