

UPDATE

# Recognition and enforcement of an arbitral award set aside at the seat of the arbitration

Update prepared by Shane Donovan (British Virgin Islands)

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In *Abdul Kadir Al Muhaidib & Sons Company v Kamel & Ors* (Claim No. BVIHC (COM) 2024/0213, 29 January 2026), the High Court of the British Virgin Islands, Commercial Division, refused to recognise and enforce an Egyptian arbitral award that had been set aside by the apex court of that jurisdiction. It held that the discretion conferred on it was a narrow one, and that refusal to recognise a foreign annulment decision would only be justified in exceptional circumstances, such as where recognition would offend basic principles of honesty, natural justice, or the public policy of the British Virgin Islands.

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## The statutory framework

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**), which provides for the reciprocal enforcement of arbitral awards, is given statutory effect in the British Virgin Islands (**BVI**) through the Arbitration Act (Revised 2020) (the **Act**).

Section 86 of the Act, which reflects Article V of the New York Convention, sets out the limited grounds on which enforcement of a Convention award may be refused. Under section 86(2)(f)(ii), one such ground is that the award has been set aside by a competent court at the seat of the arbitration.

## Background

On 20 October 2022, the claimant, Abdul Kadir Al Muhaidib & Sons Company, obtained an arbitral award (the **Award**) issued by the Cairo Regional Centre for International Commercial Arbitration. The Award ordered the defendants - Dr Moamena Kamel, Dr Hend El Sherbini, and the heirs of a deceased third party - to pay USD23 million in damages for breach of a 2007 Memorandum of Understanding concerning the proposed sale of an interest in a Middle Eastern medical laboratory group.

An appeal to the Cairo Court of Appeal was dismissed.

In May 2024, the claimant filed a claim in the BVI seeking recognition and enforcement of the Award and obtained an ex parte freezing order in support. At that time, a final appeal remained pending before Egypt's highest court, the Court of Cassation (the **CC**).

## Set aside at the seat

In May 2025, the CC set aside the Award on the bases that:

- the award of compensation denominated in USD violated mandatory Egyptian public-order currency rules; and
- the underlying transaction contemplated payment in Egyptian pounds, not USD.

The CC's annulment was final and not subject to further appeal.

Despite this, the claimant argued that the CC's ruling should not be recognised or given effect in the BVI.

## The scope of the BVI Court's discretion

The BVI Court accepted that, under section 86(2) of the Act, it retains a discretion to recognise and enforce an arbitral award even where the award has been set aside by a competent court at the seat. The issue, therefore, was whether that discretion should be exercised in favour of enforcing the Award despite its annulment.

In addressing this question, the BVI Court emphasised that:

*'The discretion conferred by section 86(2)(f)(ii) is a narrow one. It does not permit the enforcing court to re-examine the merits of the annulment decision or to determine whether the foreign court correctly applied its own law.'*

It further observed that:

*'It is well established in England and Wales that judgments of the courts of the seat - particularly apex courts - are ordinarily entitled to recognition, both as a matter of comity and because the New York Convention allocates supervisory authority primarily to the courts of the seat. Refusal to recognise a foreign annulment decision is justified only in exceptional circumstances, such as where recognition would offend basic principles of honesty, natural justice, or the fundamental public policy of the enforcing jurisdiction.'*

## The claimant's arguments

The claimant contended that the BVI Court should enforce the Award notwithstanding its annulment because:

- the CC had allegedly made serious legal errors, particularly concerning currency laws;
- the CC was said to have ignored the provisions of an investment treaty between Egypt and Saudi Arabia; and
- the annulment was alleged to be so defective as to amount to unfairness or bias.

## The BVI Court's findings

The BVI Court held that the claimant's criticisms of the CC's judgment fell far short of the threshold required to justify exercising its discretion to enforce the Award. In particular:

- The BVI Court could not revisit the merits of the CC's reasoning. Under established principles of private international law, an erroneous or even manifestly incorrect application of foreign law by a competent foreign court does not, without more, justify refusing recognition or enforcement.
- It would be 'anathema' for the BVI Court to act as an appellate tribunal over Egypt's supreme court.
- The record disclosed no basis for a finding of apparent or actual bias. The claimant's allegations amounted to little more than assertions that the CC's decision was wrong on the law.
- Enforcing an award that has been finally annulled by the apex court of the seat - absent compelling evidence of impropriety - would undermine legal certainty and comity.
- The CC's judgment was unanimous, supported by sufficient reasoning, and delivered by the court with primary supervisory authority over the arbitration.

The BVI Court therefore refused to recognise or enforce the Award. By contrast, the CC's judgment was recognised and given effect. The claim was dismissed, and the freezing order was discharged immediately.

## Conclusion

The judgment of the BVI Court confirms that absent exceptional circumstances - such as clear unfairness or violation of natural justice - the BVI Court will not enforce an arbitral award that has been validly set aside at the seat of arbitration. The discretion to enforce an annulled New York Convention award is a narrow one: it does not permit reassessing the merits of the annulment decision or evaluating whether the foreign court correctly applied its own law. Errors - whether real or apparent - do not equate to bias or unfairness, and principles of comity and finality carry substantial weight.

# Contacts

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