

New ground rules set following success in nullifying DIAC Arbitral Awards relating to registration of off-plan sales



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The Dubai Court of Cassation has recently held that disputes concerning the legal consequences of late registration of an off-plan sale pursuant to Article 3 of Law No. 13 of 2008 regulating the interim Real Estate Register in the Emirate of Dubai (the Law) cannot be validly submitted to arbitration.

Clyde & Co acted for a major property developer in defending arbitration proceedings commenced against the developer by a group of investors. The investors had purchased a number of off-plan properties from the developer but, owing to the financial downturn, decided to arbitrate with a view to terminating the respective Sale and Purchase Agreements (SPAs) and obtaining a full refund.

In support of their claims for termination the investors sought to rely on the alleged breach of Article 3 of the Law, which required property developers to register SPAs for off-plan sales with the Dubai Land Department (DLD) within 60 days of the date of publication of the Law, or by the deadline of October 30th, 2008.

In fact, the developer had registered the SPAs in April 2009 (after the deadline), as the DLD had been accepting late registrations if a developer submitted sufficient reasons and evidence as to why it had not complied with the deadline.

Notwithstanding the developer's registration and late compliance with the Law, the Arbitral Tribunal rendered three awards (one in favour of each of the investors) concluding that, *inter alia*, the SPAs were invalid because they had not been registered before October 30th, 2008.

Ratification of the arbitral awards before the Dubai Courts

On behalf of the developer, Clyde & Co challenged the enforce-

ment of the awards before the Dubai Courts of First Instance, Appeal and Cassation, on the basis that:

1. the Arbitral Tribunal had made a significant error of law;
2. the application of Article 3 of the Law was a matter of public policy; and
3. ratification of the awards would give rise to public policy concerns because the awards are inconsistent with the principles recently set out by the Dubai Court of Cassation in respect of the registration of sales and other dispositions pursuant to Article 3 of the Law which accepted the late registration.

Despite the above arguments, the lower courts refused to set aside the awards and found in favour of the investors.

Developer's success

On appeal and final consideration of the issues, the Dubai Court of Cassation agreed with the arguments raised by Clyde & Co on behalf of the developer, overturned the judgments of the lower courts and ruled that:

'disputes concerning Article 3 are matters of "public policy" and that, accordingly, such disputes cannot be submitted to arbitration.'

Legal implications

Following the Dubai Court of Cassation's final judgments, if arbitral awards have been rendered in similar matters or arbitral proceedings are ongoing involving reliance on Article 3 of the Law for termination of an SPA or of another disposition subject to registration, developers have reasonable grounds to argue that the award should be nullified, or to challenge the jurisdiction of the Arbitral Tribunal in ongoing proceedings.

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