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Enforcement of Foreign Judgments

Fundamental Principles [United Arab Emirates]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

Answer: Yes.

B. Applicable Law: General Rules

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer: Article 235(1) and Article 237(1) of the UAE Federal Law of No. 11 of the Year 1992 (hereinafter as the "UAE Civil Procedure Code") as replaced by Article 85(1) and 87(1) of the Cabinet Decision of No. (57) of 2018 (hereinafter as "the Regulations") provide for the enforcement of foreign judgment in situations not governed by bilateral and multilateral international conventions to which UAE has adhered.

As stipulated in Article 88, the rules given in the Articles aforementioned are without prejudice to the provisions as contained in the agreements and conventions entered into or ratified by the UAE in relation to the execution of foreign judgments, orders and bills.

C. Special Rules: European Union

- 1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

Answer: NA

- 2. Does the European Union have a special procedure to enforce court judgments coming from its member states?**

Answer: NA

D. Average Duration of Enforcement Procedure

- 1. What is the average length of time for this kind of procedure?**

Answer: The time period from the date of filing the application to recognize the foreign judgment to the date of execution is estimated to be three (3) months when it is not contested and two (2) years if it is contested.

It should be noted that the process for recognition is comparatively lengthier than the execution process. The execution judge is to issue his decision for an execution order in no more than three (3) days from the date of submission of a petition by virtue of Article 85(2) of the Regulations, assuming the conditions given under the mentioned Article are fulfilled.

The execution judge, however, has a right to demand any documentation deemed necessary for the substantiation of the petition prior to granting the execution order¹. This may cause delay to the 3-day delivery of the decision as stipulated in the rule.

II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Article 85(2) of the Regulations provides that an execution order shall not be granted before verifying the conditions as follows: -

- a. That the State Courts are not authorized exclusively to examine the litigation in which the decision or the order has been delivered and that the foreign courts which have delivered it are so authorized according to the international rules of the judicial jurisdiction decided in their law.
- b. That the decision or the order has been delivered from an authorized court according to the law of the country where it has been issued.
- c. That the litigants, in the claim in which the foreign decision has been delivered, have been summoned to attend and have been properly represented.
- d. That the decision or the order has acquired the power of res judicata according to the law of the court which delivered the same.
- e. That it does not conflict with a decision or an order delivered previously from a court in the state nor does it include what breaches the morals or the public order therein.

Following this, the execution judge may deny and has the right to deny enforcement pursuant to the conditions stated above not being fulfilled.

¹ Article 85(3) of the Regulations

In terms of attested documents and conciliation reports authenticated by courts in foreign countries, the UAE Courts may similarly deny recognition if the conditions as set forth in Article 85(2) are not complied with². In addition, the fulfilment of the conditions required for enforcement of the document or the report according to the law of the country where its documentation or authentication has been accomplished must be verified as well as to ensure that the document or report is not against public order or the moral standards of UAE. The non-fulfilment of any of the aforesaid justifies a rightful denial of recognition and enforcement.

Nevertheless, it should be noted that the enforcement of foreign judgment is subject to the principle of reciprocity codified under Article 85(1) of the Regulations. The judgments and orders adjudicated outside of the UAE and attested documents and conciliation reports authenticated courts in foreign jurisdiction may be enforceable under the same terms and conditions applicable to enforcing UAE judgments, orders or reports in these foreign jurisdictions ie. enforcement on a like-basis.

Having said that, unless the UAE has a bilateral or multilateral agreement with the country of origin of the foreign judgment or is a signatory to a convention to which the country of origin is also part of, the mentioned principle has rendered it difficult to enforce foreign judgments in the UAE.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: Legal fees:

It should be noted at the outset that fee contingency agreements are disallowed in the UAE. Legal fees are usually charged considering, inter alia, the amount of the claim, complexity of the case and whether there is any requirement for consultation on foreign legal opinion. Following the aforesaid, the legal fees may be charged on an hourly basis or a lump sum fee as agreed between the lawyers and their clients.

Translation fees and Legalization fees:

A foreign judgment must be further legalized by the Ministry of Foreign Affairs in the UAE. Further, any document in a foreign language must be officially translated into Arabic where the translation must be certified by a sworn translator licensed by the Ministry of Justice in the UAE. In light of this, the costs and expenses will involve translation fees for the foreign judgment or the Power of Attorney to be officially translated into Arabic as

² Article 87(2) of the Regulations

well as legalization fees for the relevant documents. For more details, please see IV C below.

Court fees:

Court fees are calculated based on a percentage of the claimed amount. Such percentage varies in each of the seven Emirates.

Miscellaneous fees:

The fees for notification and knowledge fees may also be involved.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: S 225(3) of the UAE Civil Procedure Code as replaced by Article 75(4) of the Regulations provides that a foreign court judgment, which is classified as a Writ of Execution under Article 75(2), may not be executed after **fifteen (15) years** of non-execution following the date of the last executory transaction or if left for the same period without execution as from the date of issue thereof.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: Yes, it is mandatory for the foreign judgment to be final and definitive.

By virtue of Article 85(2) of the Regulations, a foreign decision or order must have been delivered from an authorized court according to the law of the country where it has been issued and achieved the status of res judicata following the law of the court which delivered the foreign judgment.

Further, Article 85(2)(c) of the Regulations provides as one of the pre-conditions to obtaining an execution order that the litigants in the claim in which the foreign decision has been delivered have been served, summoned to attend and have been properly represented.

Therefore, if the foreign judgment is a default judgment, it should properly notify the defendant with the summons as per the applicable law of the foreign country and the proof of said notification should be obtained.

In light of the above, an executable foreign judgment in the UAE should be final and conclusive subject to the requirement of reciprocity.

C. Necessary Requirements

1. What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?

Answer: The foreign court judgment must have been delivered by foreign courts which have jurisdiction to do so in accordance with the jurisdictional rules decided in their law which are in line with international standards. The UAE Courts shall have no jurisdiction over the dispute on which the judgment or order was passed.

The party seeking to apply for an execution order must ensure that the litigants concerned in the claim of the foreign court judgment were served, summoned to attend and were properly represented.

The foreign court judgment shall be final and conclusive and that it does not conflict with a decision or order previously delivered by the UAE Courts nor does it violate the UAE moral code or public order.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay court fees for this kind of application?

Answer: Yes. Refer to II B1.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent court

1. Which court or courts are competent to decide an enforcement application?

Answer: The application must be made to the Execution Court of the Court of First Instance.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: The party seeking to apply for an execution order shall submit a petition to the execution judge containing the details as follows: -

- a. The Plaintiff's name, title, ID number (if any) or a copy of ID card or any other documents issued by a Government authority and his profession or job, domicile, workplace and phone number, fax or email. If the Plaintiff does not have a domicile in the state, then the elected domicile shall be stated together with his representative's name, title profession or job, domicile, workplace, fax number or email address;
- b. The Defendant's name, title, ID number (if any), profession or job, domicile or elected domicile, residence, workplace, phone number as well as his representative's name, title profession or job, domicile, workplace if he works for others. In the event neither the Defendant or his representative have a known domicile or workplace, the last known domicile, residence or workplace and postal address, fax number or email thereof shall be mentioned;
- c. The court before which the petition is filed;
- d. The date of submission of the petition to the Case Management Office;
- e. The subject matter of the petition, requests and grounds thereof; and
- f. Signature of the Plaintiff or his representatives after verifying their identities.³

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: The party interested to submit a petition must ensure the foreign judgment is stamped by the court stating that the judgment is final, conclusive and executable or present a document, if any, from the court certifying that all means of review of the judgment have been exhausted rendering the finality of the judgment.

If it is default judgment a certificate from the concerned court should be obtained stating that the defendant has been notified legally as per the procedural law of that foreign country.

The said final judgment and the certificate should be attested and legalized (attested from the Ministry of Foreign Affairs and UAE Embassy in that

³ Article 16 of the Regulations

foreign country) and should be further legalised in Ministry of Foreign Affairs in UAE.

In addition, a power of attorney duly legalized, translated into English and attested by the UAE Embassy in the country where the foreign court judgment is delivered has to be issued. When the document arrives in the UAE, it will be attested in the Ministry of Foreign Affairs in the UAE, translated into Arabic and it will be sent for further attestation at the Ministry of Justice.

If the party seeking to enforce the foreign judgment is a company, the authorization to initiate the petition as such is to be proved via a registered commercial extract duly stamped by the commercial register or other equivalent corporate documents mandating as such including the party's power to appoint a lawyer and other authorized powers. The document should be attested in the home country and legalized at the UAE Embassy.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: Once all the requirements to the petition for enforcement are fulfilled and adequate for the execution judge to issue his decision, a writ of execution will be issued by the execution court after payment of the relevant court fees. Then said execution court will issue summons to the judgment debtor to oblige the execution of the foreign judgment within 15 days from the date of receipt of said summons. If said judgment debtor did not appear or respond to the said summons within 15 days, the court will issue an order as per the UAE Civil Procedural Law to notify the judgment debtor by publication in a local newspaper.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: See II A above.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?

Answer: Yes. This right is provided under Article 85(2) of the Regulations.

2. Can this appeal suspend the enforcement?

Answer: Yes. Once a grievance is filed against the execution order, execution proceedings are automatically suspended.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: The Court will usually order the judgment debtor to pay the judgment creditor's costs such as the court fees, attorney fees with the maximum of AED2,000 and publications fees. The Court may however take into account other factors such as the conduct of the parties when ruling as such.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: All movables (bank account, vehicles, stocks and shares) and immovables (properties situated in the UAE) properties registered in the name of judgment debtor to recover the value of the judgment amount.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: In the UAE Federal System, foreign judgments are recognized following the principle of reciprocity. In this regard, it is challenging for a foreign judgment to be enforced in the UAE as the UAE have entered into very few bilateral or multilateral agreements or conventions in connection to enforcement of foreign judgments outside of the Gulf Co-operation Council and Arab countries where the treaties as follows, inter alia, are applicable: -

- The Riyadh Arab Convention for Judicial Cooperation 1983 ("the Riyadh Convention")
- The GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications 1996

- The Legal and Judicial Cooperation Convention between the UAE and the Arab Republic of Egypt 2000

Apart from the UAE Federal System, there are special regimes applying the common law in the UAE such as the Dubai International Financial Centre (the “DIFC”) Courts and the Abu Dhabi Global Market (“ADGM”) Courts.

For instance, following the DIFC Court Rules, foreign judgments can be enforced in absence of a treaty in accordance with the Rules of the DIFC Courts. Hence, a foreign judgment can be recognized and enforced following the general rule that the foreign court delivering the judgment must have competent jurisdiction to decide on the merits of the case.

Article 24(1)(a) of the DIFC Law No. 10 of 2004 stipulates that the DIFC has jurisdiction to ratify any judgment, order or award of any “recognized...foreign court”. The DIFC Court of Appeal also held that this gives the Court broad jurisdiction to recognize and enforce foreign judgments in the DIFC and stated further that the DIFC Courts may be used as a conduit jurisdiction to enforce a foreign judgment. The person seeking to enforce the foreign judgment may approach alternative executive mechanisms in the Federal system to execute against assets in another jurisdiction⁴.

⁴ DNB Bank ASA v. Gulf Eyadah Corporation ([2015] DIFC CA 007)

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