

Enforcing foreign judgments in Dubai

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- the nature of the judgment;
- the subject matter of the underlying dispute;
- the identity and domicile of the parties;
- the location of relevant assets;
- whether the court is an ordinary Dubai Court or a court of the Dubai International Financial Centre ('the DIFC');
- whether or not the country in which the judgment was issued has entered into a judicial recognition treaty with the United Arab Emirates; and
- whether there is a credible assertion that the enforcement of the judgment would be contrary to public policy.

A fundamental feature of the courts of Dubai since 2004 has been that they operate two distinct branches: the ordinary Dubai Courts ('the Dubai Courts') established pursuant to Dubai Law No. 3 of 1992, and the courts of the DIFC ('the DIFC Courts') established under the amended Dubai Law No. 12 of 2004 ('the Judicial Authority Law'). The Dubai Courts adopt the civil law system, while the DIFC Courts follow the common law model and have jurisdiction over all DIFC-related matters that do not involve criminal law or family law. The DIFC itself is a financial free zone with its own commercial laws and regulations.

The Dubai Courts

The conditions for the enforcement of foreign judgments in the UAE (outside the DIFC) are set out in Article 235 of the UAE Civil Procedure Law (the following is an unofficial English translation):

1. Judgments and orders issued in a foreign country may be ordered to be enforced in the UAE on the same conditions as prescribed in the laws of that country for the enforcement of similar judgments and orders issued in the UAE.
2. An enforcement order shall be applied for under the normal litigation procedure in the court of first instance within whose jurisdiction the enforcement is required. Enforcement may not be ordered until the following has been verified:
 - That the UAE courts do not have jurisdiction in the dispute in which the judgment has been given or the order made, and that the foreign courts which issued it have jurisdiction therein under the international rules for legal jurisdiction prescribed in their laws.
 - That the judgment or order has been issued by a court having jurisdiction under the law of the country in which it was issued.
 - That the opposing parties in the case in which the judgment was given were summoned to appear and duly appeared.
 - That the judgment or order has acquired the force of a *fait accompli* under the law of the court which issued it.
 - That it does not conflict with a judgment or order previously issued by a court in the UAE and contains nothing in breach of public morals or order in the UAE.

As can be seen, the Dubai Courts will not enforce a foreign judgment where they would have had original jurisdiction to hear the underlying dispute (Article 235(2)(a)). For these purposes, original jurisdiction is

interpreted broadly by the Dubai Courts, who will exercise jurisdiction over a defendant with an address or place of residence in Dubai or relevant assets in the emirate. A foreign judgment relating to such a defendant would therefore not usually be enforceable in Dubai even where the underlying contract contains an exclusive jurisdiction clause (i.e. an agreement by the parties that only a particular foreign court has jurisdiction over a dispute). The Dubai Court of Cassation, Dubai's highest court, has ruled that jurisdiction clauses are void on public policy grounds where UAE courts have jurisdiction over a matter (Decision 325/2004).

In addition, the enforcement of foreign judgments granting certain remedies of a non-monetary nature, such as injunctions, is not generally possible because such remedies are not ordinarily available in the Dubai Courts. Any party seeking to enforce a judgment falling within these categories would need to file a new substantive claim in the Dubai Courts based on the original claim in the foreign proceedings and submit the foreign judgment as evidence in support of this new claim.

The DIFC Courts

Although the procedure is relatively untested, the laws of Dubai and the DIFC permit the enforcement of foreign judgments by the DIFC Courts in accordance with the Rules of the DIFC Courts ('the RDC'). Pursuant to Article 7(6) of the Judicial Authority Law and Article 24(1)(a) of the DIFC Court Law (DIFC Law No. 10 of 2004) the DIFC Courts have jurisdiction to ratify any judgment of a recognized foreign court for the purposes of any subsequent application for enforcement in the courts of Dubai.

The enforcement of a recognized foreign money judgment in the DIFC against a defendant with assets located in the DIFC should be relatively straightforward. This is especially so for such judgments emanating from England because in January 2013 a non-legally binding Memorandum of Guidance as to Enforcement was signed by the DIFC Courts and the English Commercial Court to facilitate the mutual enforcement, subject to certain conditions, of money judgments issued in the two jurisdictions. It is also possible to enforce foreign judgments of a more complex nature, such as injunctions and freezing orders, in the DIFC Courts, again subject to certain conditions.

The enforcement of a foreign judgment in the DIFC Courts can be procured by filing a claim for a judgment debt or a declaration, the latter of which is a remedy available under Article 37 of the DIFC Law of Damages and Remedies (DIFC Law No. 7 of 2005). The claim can be filed either under Part 7 of the RDC, which is the more common procedure for commencing claims, or alternatively by way of an RDC Part 8 claim if the claim is unlikely to involve a substantial dispute of fact. Any resulting judgment issued by the DIFC Courts is effective and binding on any parties with a presence in the DIFC.

Based on the reciprocal recognition provisions of the Judicial Authority Law, which permit judgments of the DIFC Courts to be enforced in the rest of Dubai through the Dubai Courts and vice versa, it may also be possible for a party to file a claim for the ratification of a foreign judgment in the DIFC Courts and then convert the resulting DIFC Courts-ratified judgment into a judgment of the Dubai Courts for the purposes of enforcement, even where there is no other link between the judgment and the DIFC. This would effectively be using the DIFC Courts, which deal with civil and commercial disputes that are connected to the DIFC or expressly submitted to its jurisdiction by contracting parties, as a gateway into the rest of Dubai. However, this procedure is untested and it remains unclear whether the DIFC Courts have jurisdiction to recognise any foreign judgment in circumstances where the parties involved have no presence or assets in the DIFC.

Reciprocal enforcement treaties

The UAE is a party to several treaties facilitating the reciprocal enforcement of judgments. In practice the most relevant of these treaties is the 1996 GCC Convention, which at Article 1 provides that "the GCC countries shall execute the final judgments issued by the courts of any member state in civil, commercial and administrative cases...", subject to the condition that the originating court must have had jurisdiction over the underlying claim. According to Article 238 of the Civil Procedure Law, the courts of Dubai must enforce qualifying GCC (and other treaty-governed) judgments without reconsidering their merits even

where they had concurrent jurisdiction over the original claims. This is an important exception to Article 235(2)(a) of the Civil Procedure Law, which as noted above prevents the enforcement of foreign judgments in the courts of the UAE where the latter have jurisdiction over the underlying claims.

Both the Dubai Courts and the DIFC Courts are courts of the UAE, a GCC member state, and on this basis other GCC states should enforce judgments of these courts in accordance with Article 1 of the GCC Convention. The DIFC Courts are legally bound to comply with the terms of treaties for the mutual enforcement of judgments, pursuant to Article 24(2) of the DIFC Court Law.

Conclusion

The enforcement of foreign judgments in Dubai is possible both in the Dubai Courts and in the DIFC Courts, although in practice it is difficult to achieve in the Dubai Courts and relatively untested in the DIFC Courts. A number of conditions must be met before such judgments can be enforced in either set of courts and the enforcement processes are fairly complex, particularly in the absence of a judicial treaty between the UAE and the state from which the relevant judgment originates.