

ENFORCEMENT OF FOREIGN JUDGMENTS

United Arab Emirates



Enforcement of Foreign Judgments

Consulting editors

Oliver Browne, Tom Watret, Georgie Blears

Latham & Watkins LLP

Quick reference guide enabling side-by-side comparison of local insights into relevant treaties, conventions and other sources of law; limitation periods; types of enforceable order; competent courts; separation of recognition and enforcement; opposition; jurisdiction of the foreign court; awards and security for appeals; enforcement and pitfalls; and recent trends.

Generated 27 April 2022

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2022 Law Business Research

Table of contents

LEGISLATION

Treaties

Intra-state variations

Sources of law

Hague Convention requirements

BRINGING A CLAIM FOR ENFORCEMENT

Limitation periods

Types of enforceable order

Competent courts

Separation of recognition and enforcement

OPPOSITION

Defences

Injunctive relief

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

Other factors

Procedural equivalence

JURISDICTION OF THE FOREIGN COURT

Personal jurisdiction

Subject-matter jurisdiction

Service

Fairness of foreign jurisdiction

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiating by fraud

Public policy

Conflicting decisions

Enforcement against third parties

Alternative dispute resolution

Favourably treated jurisdictions

Alteration of awards

AWARDS AND SECURITY FOR APPEALS

Currency, interest, costs

Security

ENFORCEMENT AND PITFALLS

Enforcement process

Pitfalls

UPDATE AND TRENDS

Hot topics

Coronavirus

Contributors

United Arab Emirates



Ghassan El Daye
ghassan.eldaye@crsblaw.com
Charles Russell Speechlys



Ahmad El Sayed
ahmad.el-sayed@crsblaw.com
Charles Russell Speechlys



LEGISLATION

Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties, and what, if any, amendments or reservations has your country made to such treaties?

The local federal United Arab Emirates (UAE) courts follow the laws of the UAE. The courts themselves are not capable of entering into international treaties but are bound by any treaty signed and ratified by the UAE.

The UAE is a party to two principal multilateral treaties relating to the enforcement of foreign judgments, namely the 1983 Riyadh Arab Convention for Judicial Co-operation and the 1996 Gulf Co-operation Council (GCC) Convention for the Execution of Judgments, Delegations and Judicial Notifications.

The UAE is a party to a number of bilateral treaties covering the enforcement of foreign judgments, such as the 1992 Convention on Judicial Assistance, Recognition and Enforcement of Judgments in Civil and Commercial matters signed between France and the UAE, the 2004 Convention on Judicial Assistance in Civil and Commercial Matters between the United Arab Emirates and the People's Republic of China, and the 2009 Agreement between the Republic of Kazakhstan and the United Arab Emirates on Judicial Assistance in Civil and Commercial Matters. In addition, in 2020, the UAE signed a bilateral enforcement of civil and commercial judgement with India.

The UAE is furthermore a party to treaties providing for judicial assistance between jurisdiction that excludes enforcement, such as the 2008 Treaty between the United Kingdom and the United Arab Emirates on Judicial Assistance in Civil and Commercial Matters that covers the service of judicial documents and the taking of evidence only.

Generally, the UAE federal government is open to signing and ratifying both bilateral and multilateral treaties providing for mutual enforcement. Where the UAE has entered into an applicable treaty, the courts will comply with its terms. However, practitioners should check carefully whether an applicable treaty exists between the sending and receiving jurisdictions that covers foreign enforcement (as opposed to general judicial assistance), whether both jurisdictions have ratified the treaty following signature, and whether any material amendments or reservations have been made.

Law stated - 29 March 2022

Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

With regard to the UAE onshore courts, yes, as the Dubai, Abu Dhabi and all other Emirates' local courts onshore are applying the UAE Procedures Law (Federal Law No. 11 of 1992 with the latest modifications and amendments), taking into consideration international treaties. The UAE local courts apply the same general civil law approach.

This is not to be confused with the DIFC Courts or ADGM Courts where they have exclusive jurisdiction to enforce an arbitration award, under common law.

Law stated - 29 March 2022

Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

The sources are Chapter 4, articles 8586-87–88 of the UAE Federal Procedures Law (Federal Law No. 11 of 1992), Regulation No. 57/2018 amended by the decree No. 33/2020, the international treaties to which the UAE is a party.

Law stated - 29 March 2022

Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

The UAE is not a party to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

Law stated - 29 March 2022

BRINGING A CLAIM FOR ENFORCEMENT

Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

Section 4, article 85 of the UAE Federal Procedures Law does not clearly define a limitation or specific time frame to enforce the awards. The Law stipulates the conditions and provisions to enforce awards as below. However, the parties will have the opportunity to object to the award based on the lack of any of the provisions stipulated in article 85.

Federal Law No. (1) 1987 concerning Civil Transactions Law of the UAE, section 3, 'Lapse of time barring a right', articles 473–488 stipulates the limitation period for multiple specific rights. The court might consider the lapse of time barring a right when enforcing a foreign judgment or when it is raised by the defendant.

1. The execution judge shall have the right to obtain the documents supporting the application before issuing his decision.

Law stated - 29 March 2022

Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Article 85 of the UAE Federal Procedures Law clearly stipulates the conditions for what is acceptable to enforce and what is not. Mainly the judgment or order shall acquire the force of res judicata in accordance with the law of the court, which issued it. Furthermore, the judgment shall not conflict with a judgment or order rendered by a court of the state and shall not contain anything contrary to public policy or morals.

Law stated - 29 March 2022

Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

As per section 4, articles 85–88, of the UAE Federal Procedures Law, the cases must be brought forward in front of the UAE Courts of Execution at the first instance (execution Judge). Any party then has the right to appeal before the Court of Appeals and then to the Supreme Court if necessary.

Law stated - 29 March 2022

Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

In the UAE, there are two stages for the enforcement. Stage 1 is the ratification of the award itself, which should be concluded by the Supreme Court with a final order. The second stage after ratification is called 'collection or execution stage', which comes directly after the final Supreme Court order or Appeal Court order.

Law stated - 29 March 2022

OPPOSITION

Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

The enforcement might be rejected if the provisions are not in line with UAE Federal Law No. 11 (section 4, articles 85–88). For example, anything against the applicable laws or public policy in the UAE (Shari'ah and cultural, political or social policy) or if contrary to international treaties, mainly the New York Convention.

Law stated - 29 March 2022

Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

Any party has the legal right to challenge the foreign judgment enforcement proceedings before the same court which will ratify the award.

The challenge or prevention shall be through filing an appeal before the appeal court to stop the enforcement order which was granted by the judge in the first stage.

The main legal grounds of any possible challenge would be as per Chapter 4, Execution of Foreign Judgments, Orders and Bonds.

1. The Courts of the State are not exclusively competent in the dispute in which the judgment or order was rendered and the foreign Courts that issued it are competent in accordance with the rules of international jurisdiction established by their law.
2. The judgment or order is delivered by a Court in accordance with the law of the country in which it was issued and duly ratified.
3. The litigants in the case in which the foreign judgment was delivered were summoned and were duly represented.
4. The judgment or order has the force of res judicata in accordance with the law of the Court, which issued it, provided that the judgment has acquired the force of res judicata or provided for in the same judgment.
5. The judgment does not conflict with a judgment or order rendered by a Court of the State and does not contain anything contrary to public order or morals.

Law stated - 29 March 2022

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

The UAE Federal Procedures Law has stipulated the mandatory requirements and provisions to enforce awards as below:

1. The execution judge shall have the right to obtain the documents supporting the application before issuing his decision.

Law stated - 29 March 2022

Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and, if so, what factors?

In addition to stipulations under the UAE Federal Procedures Law, the court may ask for a document or certificate from the foreign court proving that the order to be enforced is final and not subject to another Appeal.

Law stated - 29 March 2022

Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction and, if so, how is that requirement evaluated?

Section 4, article 85 of the UAE Federal Procedures Law stipulates these requirements. The evaluation and examination are made by the court. For example, the court will mainly verify if the litigants in the case in which the foreign judgment was delivered were summoned and were duly represented.

Law stated - 29 March 2022

JURISDICTION OF THE FOREIGN COURT

Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant and, if so, how is that requirement met?

The UAE court will examine the jurisdictional aspect by auditing the litigant application and submissions that support this element as stipulated in article 85 of the UAE Procedures Law (a-e). The litigant shall make the proper submissions to meet the requirements of article 85 of the UAE Federal Procedures Law (a-e). The submissions shall include a court certificate from the foreign court that support the requirements, a copy of the foreign law, a copy of the contract that can define the relationship between the parties and the competent court, etc.

Law stated - 29 March 2022

Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy and, if so, how is that requirement met?

The UAE court will examine the subject matter jurisdictional aspect by auditing the litigant application and submissions that support this element as stipulated in article 85 of the UAE Federal Procedures Law (a-e). The litigant shall make the proper submissions that meet the requirements of the article 85 of the UAE Procedures Law (a-e).

Law stated - 29 March 2022

Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

Article 85(c) of the UAE Federal Procedures Law has specified the provisions for this aspect as follows: 'It shall not be possible to order the execution before the verification of the following: The litigants in the case in which the foreign judgment was delivered were summoned and were duly represented.'

Law stated - 29 March 2022

Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

Yes, article 85(a-b) of the UAE Federal Procedures Law has specified the provisions for this aspect as follows:

1. The Courts of the State are not exclusively competent in the dispute in which the judgment or order was rendered and the foreign Courts that issued it are competent in accordance with the rules of international jurisdiction established by their law.

2. The judgment or order is delivered by a Court in accordance with the law of the country in which it was issued and duly ratified.

Law stated - 29 March 2022

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiation by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Article 85 of the UAE Federal Procedures Law has stipulated the conditions and provisions to enforce awards, however, the parties will have the opportunity to object to the award based on the lack of any of the provisions stipulated in article 85.

The court will examine the submissions but the examination will be limited to the provisions of the article 85 of UAE Federal Procedures Law. Therefore, the court will not investigate fraud allegations. Fraud will subject to common law practice.

Law stated - 29 March 2022

Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

Yes. In addition, the court will examine the compliance with the Islamic Laws and Principles. Article 85(e) of the UAE Federal Procedures Law has specified the provisions for this aspect as follows: 'It shall not be possible to order the execution before the verification of the following: the judgment does not conflict with a judgment or order rendered by a Court of the State and does not contain anything contrary to public order or morals.'

Law stated - 29 March 2022

Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

It will reject the enforcement. Article 85(e) of the UAE Federal Procedures Law has specified the provisions for this aspect as follows: 'It shall not be possible to order the execution before the verification of the following: the judgment does not conflict with a judgment or order rendered by a Court of the State and does not contain anything contrary to public order or morals.'

Law stated - 29 March 2022

Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

The enforcement shall only be against the named judgment debtor.

In parallel, The UAE Federal Procedures Law, section 3, 'attachments of obligor's assets in the hands of third parties' article 116, grant the obligee the right to apply before the execution judge for an attachment over movable property of or debts owing to his obligor in the hands of third parties, notwithstanding that they may be referred, or subject to a condition.

Law stated - 29 March 2022

Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

The court shall exclusively examine if the 'alternative dispute resolution' is referring to the UAE Court jurisdiction to decide the original case. In this scenario, the enforcement will be dismissed in light of the provisions of the article 85(a) the UAE Procedures Law.

1. The Courts of the State are not exclusively competent in the dispute in which the judgment or order was rendered and the foreign Courts that issued it are competent in accordance with the rules of international jurisdiction established by their law.

Law stated - 29 March 2022

Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

Yes, where the UAE has entered into a bilateral multinational applicable treaty that covers foreign award enforcement, the courts will comply with its terms with greater deference.

Law stated - 29 March 2022

Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

The UAE Court might consider to limit the award enforcement in case the claimant requests a specific limitation for the enforcement with supportive evidences. The limitation might be for the claim amount or the awarded amount, named judgment debtors, any other aspect etc.

The defendant might raise the limitation of the award enforcement supported with solid justification. The court will always have the sole discretion to accept or reject the limitation.

Law stated - 29 March 2022

AWARDS AND SECURITY FOR APPEALS

Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

The UAE court will always convert the damage award to local currency and takes into account as interest court costs and exchange control. The interest of the UAE local law is calculated from the starting date of filing the enforcement request.

Law stated - 29 March 2022

Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

Yes, article 85(2) of the UAE Federal Procedures Law has specified the provisions for this aspect as follows:

Law stated - 29 March 2022

ENFORCEMENT AND PITFALLS

Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Once the foreign judgment is recognised by the UAE Supreme Court or the Appeal Court, an execution stage is required to ensure the proper collection against the defendant's assets, properties and bank accounts.

The claimant shall file the application to open the execution stage supported with the final enforcement order. The execution Court will trace, track and seize the defendant's assets in the UAE through an internal investigation mechanism between the UAE court and central bank, Dubai land department, Dubai economy, free zone divisions and all public authorities.

The successful execution rate of the award will depend on the capabilities and eligibility of the defendant to commit to the order and pay the judgment amount. This is a collection stage that may differ from one case to another.

Law stated - 29 March 2022

Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

Article 85(e) of the UAE Federal Procedures Law has specified the provisions for this aspect as follows: 'the judgment does not conflict with a judgment or order rendered by a Court of the State and does not contain anything contrary to

public order or morals.’

The UAE court will always examine the legal and commercial characteristic of the judgment, nature of the agreement and business between the parties. The objective is to authorise the enforcement to an order that does not contain anything contrary to public policy (money laundering, drugs, etc), or public morals (Islamic culture, local tradition, etc.).

Law stated - 29 March 2022

UPDATE AND TRENDS

Hot topics

Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

In several precedents, the UAE courts rejected the foreign judgment enforcement due to being competent in the dispute. The UAE court will always examine if it has the exclusive competence or jurisdiction in the dispute in which the judgment or order was rendered. It is always required that the foreign courts that issued it are competent in accordance with the rules of international jurisdiction established by their law. The examination process would start by verifying the approved dispute resolution clause between the parties, the place of performance of the signed contract between the parties, currency of the contract, physical address of the parties, etc. The approach differs on a case by case basis.

Law stated - 29 March 2022

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In response to the covid-19 pandemic, the UAE has initiated many laws and decrees giving time for debtors to pay in full or to pay in instalments.

Law stated - 29 March 2022

Jurisdictions

| | | |
|---|---|--|
|  | Austria | WEBER & CO. |
|  | Bahamas | Higgs & Johnson Counsel & Attorneys at Law |
|  | Bahrain | Charles Russell Speechlys |
|  | Bermuda | Trott & Duncan |
|  | Brazil | Kobre & Kim LLP |
|  | Cyprus | N. Pirilides & Associates LLC |
|  | Denmark | Poul Schmith/Kammeradvokaten |
|  | Germany | Willkie Farr & Gallagher LLP |
|  | Greece | PotamitisVekris |
|  | Hong Kong | Gall |
|  | Ireland | Matheson |
|  | Italy | Ughi e Nunziante |
|  | Japan | TMI Associates |
|  | Jordan | Hammouri & Partners |
|  | Luxembourg | Wildgen |
|  | Nigeria | Streamsowers & Köhn |
|  | Philippines | SyCip Salazar Hernandez & Gatmaitan |
|  | Switzerland | Walder Wyss Ltd |
|  | Turkey | Gün + Partners |
|  | United Arab Emirates | Charles Russell Speechlys |
|  | United Arab Emirates - Abu Dhabi | Charles Russell Speechlys |
|  | United Arab Emirates - DIFC | Charles Russell Speechlys |
|  | United Kingdom | Latham & Watkins LLP |
|  | USA | Freshfields Bruckhaus Deringer |