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Enforcement of Judgments 2022

UAE: Law & Practice
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Law and Practice

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1. IDENTIFYING ASSETS IN THE JURISDICTION

1.1 Options to Identify Another Party's Asset Position

Apart from obtaining a judgment, it is a challenging task, even for large companies and private investigators who offer credit checking facilities, to gather information on a debtor's asset position.

The most effective way is to apply for an interim measure for a precautionary attachment order. If a creditor possesses an official document or an ordinary document for a debt payable and is not subject to a condition, or where they hold a non-enforceable judgment (eg, a judgment issued by the Court of First Instance which is still subject to appeal or an arbitral award which is not yet confirmed or recognised), provided that the debt established is of a specified amount, the creditor may request the summary judge to issue an order to freeze the assets of the debtor to secure the monetary claim.

Notably, the court may, before accepting the application for attachment of property, request any statements, evidence or affidavits, or conduct a brief investigation or investigations with the assistance of the competent authorities where the court deems it necessary. This serves as a safety measure to prevent enforcement of a future final and binding judgment from becoming cumbersome or even impossible.

This interim measure is set forth in sub-paragraph 3 of Article 111 of the Cabinet Resolution No 57 of 2018 of the Executive Regulations of Federal Law No 11 of 1992 on the Civil Procedure Law (hereinafter the "Cabinet Resolution").

Alternatively, this could be attained through the execution of any writ of execution held by a creditor, such as a final and binding judgment.

As part of the execution process, if a debtor fails to pay within 15 days of being notified of the execution case, the court orders an investigation in the banks, Road Transport Authority, Land Department, Economic Department and other concerned authorities for these authorities to report back to the court about their findings. The court would then proceed to attach the available assets of the debtor.

2. DOMESTIC JUDGMENTS

2.1 Types of Domestic Judgments

The UAE courts operate under a civil law system (onshore courts). The emirates of Dubai and Abu Dhabi established financial free zones within their territories, namely the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Markets (ADGM), which both operate under a common law system.

Enforcement Before Onshore Courts

Domestic judgments and any writ of execution set forth in Article 75 of the Cabinet Resolution can be enforced in the UAE. The form of the writ of execution is as follows.

- Judgments and orders, including penal judgments along with any refunds, compensation, fines and other civil rights contained therein. This category includes:
 - (a) money judgments and non-money judgments, whether rendered by onshore or offshore courts;
 - (b) payment orders;
 - (c) precautionary attachment orders, whether rendered by onshore or offshore courts;
 - (d) interlocutory or interim orders, whether rendered by onshore or offshore courts;
 - (e) judgment in presence or in absentia rendered by the criminal court; and
 - (f) reconciliation judgment rendered by the criminal court.

- Notarised documents in accordance with the law on authentication and notarisation. This category includes any mortgage contract.
- Minutes of the conciliation ratified by the courts, whether onshore or offshore courts.
- Other documents granted in the capacity set by the law.

Enforcement Before Offshore Courts

DIFC and ADGM

A number of different types of judgments are available in the DIFC and ADGM Courts. Judgments are usually handed down after a trial of the matter or by an application for a default judgment or immediate judgment. Judgments usually take the form of:

- money judgments, where a person or entity is ordered to pay a sum of money; and
- judgments, where a person or entity is ordered to take specific action or to stop doing something.

These judgments are executory where the court has determined the rights of each party and orders one (or both) parties to act in a specific way.

Interim judgments are also possible, for example where one party's assets are at risk of dissipation and the court considers that an order should be given preventing dissipation of those assets or where a definite sum is owed, and the court considers that a payment should be made to the other party before the trial of the matter is held.

Other judgments may involve the court determining the legal status of the relationship or affairs between the parties and giving a declaratory judgment which will inform the parties as to their legal rights or obligations to each other.

2.2 Enforcement of Domestic Judgments

Enforcement Before Onshore Courts

For a judgment or any writ of execution to be enforced, they must have the exequatur form affixed by the court. On obtaining the exequatur, the creditor shall rely on Section 3 of the Cabinet Resolution which regulates enforcement procedures in addition to other articles.

A creditor shall apply to the execution judge asking for the enforcement of the exequatur referred to above, following which the execution court will open a new lawsuit called an "execution case" and serve summons notice on the debtor requesting payment of the debt within 15 days from the date of the notification.

The Cabinet Resolution grants a holder of a writ of execution the right to impose precautionary attachments as well as executory attachments over assets that are owned by a debtor or in the possession of a third party. On the successful application by the holder of a writ of execution, the court will issue an attachment order against the debtor's assets.

The Cabinet Resolution also grants the holder of a writ of execution the right to request that the court declares the debtor as insolvent or bankrupt as the case may be and/or to impose detainment and a travel ban in certain circumstances for the purposes of fulfilling the judgment debts.

Declaration of bankruptcy or insolvency

UAE law differentiates between bankruptcy and insolvency procedures as set out below.

- Bankruptcy procedures apply to commercial companies and any person having the capacity of trader and are regulated by the UAE Federal Decree Law No 9 of 2016 on Bankruptcy.

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- Insolvency procedures apply to non-traders regulated by the UAE Federal Decree Law No 19 of 2019 on Insolvency, which shall apply to debtors who are not subject to the provisions of Federal Decree Law No 9 of 2016 mentioned above.

Under either of the above laws, a judgment creditor can apply before the Court of First Instance requesting it to declare a debtor bankrupt or insolvent depending on the capacity of the debtor if the assets of the latter are insufficient to satisfy the judgment.

Detainment

If an authorised officer of a corporate debtor or a natural-person debtor refuses to execute any writ of execution, such as a judgment ordering specific performance, the creditor may request the execution judge to issue an order for their detention for a period not exceeding one month, and which may be renewed for further periods.

An order of detention of the debtor may not be issued if:

- the debt is less than AED10,000 (unless it is a fine);
- a debtor is under 18 or older than 70 years of age;
- a debtor suffers from a disease as evidenced by a certified medical report; or
- a debtor falls into any other circumstances laid down in Article 185 of the Cabinet Resolution.

A detention order can be appealed within ten days of its issuance before the Court of Appeal. The Appellate Court's decision shall be final.

The appeal in itself would not lead to a suspension of the detention unless the Appellate Court temporarily suspends the detention pending its final decision.

Travel ban

Pursuant to Article 188 of the Cabinet Resolution, if the debt is equal or superior to AED10,000 and there are reasonable grounds for believing that the judgment debtor may leave the UAE, to the exception of a debt found in an established alimony in support of the debtor's family, in relation to work remuneration or omission of an act, the creditor may request the execution judge to issue an order for a travel ban prohibiting the debtor from travelling. If granted, the debtor will not be allowed to cross the border or enter the UAE.

In the case of an unliquidated debt, apart from the requirement that the claim for the right of entitlement shall be based on written evidence, the execution judge may require the creditor to provide a guarantee to the court to cover losses or damages the debtor may suffer as a result of being prohibited from travelling if the application for a travel ban is later found to be wrongful or unjustified.

The travel ban order can be appealed within seven days of its issuance by filing a grievance before the President of the Court of First Instance whose decision shall be final as set forth in sub-paragraph 1 of Article 72 of the Cabinet Resolution.

Enforcement of judgments, decisions or orders issued by DIFC Courts in Dubai outside of DIFC

As per Article 7 (2) of the Dubai Law No 12 of 2004 as amended by Dubai Law No 16 of 2011 (hereinafter the "Judicial Authority Law"), any DIFC Court judgment, decision or order can be enforced through the Dubai courts if three conditions as follows are met:

- they are final and executory;
- they are legally translated into Arabic; and

- they are certified by the DIFC Courts for execution and have the following formula of execution affixed by the Courts: “Authorities must take the initiative to enforce this document and assist in implementing it even forcefully whenever requested to do so.”

The creditor must request an execution letter called “Judicial Deputation to Enforcement” from the DIFC Courts.

A draft of this execution letter and a translation of the same must be included in the application for the executory formula to be affixed on the relevant judgment, decision or order. The execution letter would contain the parties’ names and addresses and the following wording:

“Based on the request of the Enforcing Party, and in accordance with Article 7 (2) of Law No 12 of 2004, as amended by Law No 16 of 2011 concerning the DIFC Courts, we send to you the (relevant court judgment/decision/order) dated [...] under Claim No [...] for recognition and enforcement of (the final court judgment/decision/order/arbitration award) dated [...], along with a copy translated into Arabic and containing the enforcement stamp, and this is for you to take forward in accordance with your standard procedures.”

It should be noted that the DIFC Courts will only issue an execution letter in respect of a judgment, decision or an order to which they have affixed the executory formula.

Enforcement of judgments, decisions or orders issued by DIFC Courts in other emirates than Dubai

DIFC Court judgments, decisions and orders can be enforced by the local courts of any emirate within the UAE, in accordance with the procedure and rules adopted by such courts, as well as with any agreements or memoranda of

understanding between DIFC Courts and these onshore courts. The said enforcement and/or execution is subject to conditions identical to those under the enforcement and execution before Dubai courts.

Enforcement of ADGM judgments within onshore jurisdictions

Enforcement of ADGM judgments outside of the ADGM jurisdiction can be done by one of two ways. First, by way of deputisation of an Abu Dhabi Judicial Department enforcement judge, or secondly by a direct application to the Abu Dhabi Judicial Department (Court) for enforcement.

Both require a copy and a translation of the judgment into Arabic along with an executory letter from the ADGM Court. Written evidence that the judgment has been served upon the judgment debtor will also be required.

Enforcement Before Offshore Courts

Enforcement of onshore judgments before DIFC Courts

Charging order

This is undertaken by obtaining a court order which puts a charge over property (including land and securities) which is owned by the judgment debtor. This order prevents the judgment debtor from selling assets which are covered by the order without reference to the judgment creditor. The order also allows the judgment creditor to seek an order from the court for sale of those assets in order to pay the judgment debt.

An application is made without notice to the court and a judge handles the application without a hearing. Following this, a final judgment order can be applied for where the judgment debtor will be able to dispute the charging order.

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Attachment of assets

This follows the same procedure as for charging orders but is in relation to obtaining an order for the payment of money which a third party owes to the judgment debtor (a third-party debt order). This allows the judgment creditor to obtain payment without the judgment debtor being paid by the third party first.

An application is made in the same way as for a charging order save that the order is final unless the third party makes an application for the order to be reconsidered as the sum to be paid to the judgment debtor is more than the sum that they owe to the judgment debtor or that they does not owe a debt to the judgment debtor.

Attachment of earnings

Where the judgment debtor is an individual, the judgment creditor may make an application for an attachment of earnings. This provides for a court order instructing the judgment debtor's employer to pay a specified amount out of the judgment debtor's earnings to the judgment creditor. The debt must be in excess of USD100.

An application is made in the same way as for a charging order.

Enforcement by taking delivery of goods

The judgment creditor may apply to the court to take delivery of the judgment debtor's goods in order to sell them and pay the judgment debt. If the court makes such an order, an enforcement officer (bailiff) will be instructed to serve a writ of execution upon the goods of the judgment debtor. The goods are usually sold by public auction although an application can be made for sale otherwise than by public auction.

The judgment debtor may make an application to the court to stay the execution of the court order for such periods as the court considers reasonable.

An application is made in the same way as for a charging order.

Insolvency proceedings – appointment of a receiver

This is an unusual method of enforcing a judgment debt and should only be used as a last resort where it is not possible to use the other methods of enforcement. The difficulties will be that the fees of a receiver may outweigh the assets of the judgment debtor or that a significant proportion of the judgment debtor's assets are covered by security from banks, etc, which may take precedence over the debts owed to the judgment creditor.

Freezing order

A judgment debtor may apply for a freezing order where it is likely that the judgment debtor will move assets out of the court's jurisdiction. Good evidence of the risk of dissipation will be needed.

The DIFC Courts can enforce judgments from onshore UAE courts. This is undertaken by application to the DIFC Court with all relevant details of the debtor and a copy of the award to be enforced. The statutory provisions under which the application is made must be stated. The DIFC Court Registrar may deal with the application without the need for a hearing.

In most cases this is essentially an administrative matter but occasionally the jurisdiction of the DIFC Courts may be questioned and a hearing set down to deal with such matters as required.

Once the DIFC Court has decided that the onshore award can be enforced, the usual methods of enforcement, as noted previously in this section, can be used.

Enforcement of onshore judgments before ADGM Courts

On 11 February 2018, the ADGM Courts entered into a memorandum of understanding between the ADGM Courts and the Abu Dhabi Judicial Department on the mutual and reciprocal recognition and enforcement of judgments, decisions, orders and ratified arbitral awards (2018 MOU).

The process is similar to the DIFC Courts with the judgment having an executory formula attached and translated into Arabic. After the judgment creditor submits an application to the Abu Dhabi courts, a judgment will be enforced according to the relevant procedures but without re-examination of the merits of the judgment.

Enforcement of DIFC and ADGM judgments before offshore courts

The enforcement process in these financial free zones does not include an additional step in which the judgment must be the subject of an execution order.

DIFC

Judgments issued by the DIFC Courts are to be enforced pursuant to the Rules of the DIFC Courts (abbreviated to RDC) as stipulated in Article 42 of the DIFC Court Law.

Parts 36 and 45 of the RDC are the relevant rules governing such enforcement.

ADGM

Part 29 of the ADGM Court Procedure Rules sets out the rules to be complied with in filing an enforcement application. Apart from complying with the ADGM Court Procedure Rules, an applicant must also observe the rules together with any relevant practice direction to which a judgment pertains.

2.3 Costs and Time Taken to Enforce Domestic Judgments Before Onshore Courts

The timeframe for completion of the enforcement process of domestic judgments varies between 2 and 24 months. This timeframe depends on a wide range of factors which may include:

- the availability of the debtor's assets;
- the nature of the debtor's assets;
- the evaluation of the debtor's assets by a court-appointed expert;
- the number of potential third parties, if any, who may have assets belonging to the debtor; and
- the length of the auction process.

Some special regulations explain the procedures and requirements for the enforcement against the debtor's assets; for instance, under the UAE Maritime Code, which regulates the ship mortgage foreclosure and the judicial sale of a ship, the expected timeframe to auction a ship and get the sales proceedings may be 3 to 24 months.

However, if the enforcement is against money in a debtor's bank account, the expected timeframe may be one week only, which is the most efficient and prompt enforcement choice.

The costs associated with enforcement procedure would include:

- court fees for opening an execution file before the Court of First Instance, which are estimated to be AED5,000 in the Emirate of Dubai;
- fees for investigations ordered by the Court (eg, for an investigation within the General Directorate of Residency and Foreigners Affairs, the estimated investigation fee is AED250);
- publication fees (if notification by way of publication is ordered by the court) for the purposes of notifying the debtor of the

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- enforcement and/or execution, which may range from AED250–600;
- translation fees;
- court-appointed expert fees to evaluate the debtor's assets;
- costs and fees incurred by Emirates Auction, which is the exclusive party to be appointed by the execution judge to conduct auction proceedings; and
- costs and fees that might be paid to a custodian engaged by the execution judge to store a movable asset.

Before Offshore Courts (DIFC and ADGM Courts)

In comparison to the costs of taking a matter to trial, the costs of enforcement are relatively small and cost-effective. The application for charging orders, attachment of assets and attachment of earnings should be straightforward. However, it should be noted that the more complex a matter is the greater the cost will be.

Costs can and will increase where the judgment debtor challenges an order both as to its validity and as to its applicability to the debt in question. In particular, charging orders and the subsequent applications for the sale of property can be a long and laborious task. Obtaining the initial charging order may afford protection for that property against being sold and the asset dissipated, but to take the next step and obtain an order for the sale and payment is rather more difficult. There are many issues that will be fought over in the sale of property, especially if it is a family home. Considerations include the reasonableness of such a sale, what equity is there in the property and who else, apart from the debtor, will be damaged by the sale.

If insolvency proceedings are to be considered, then it needs to be recognised that the process is complicated and costly. A professional insolvency practitioner will need to be appointed and

their professional fees will be paid out before any of the sums recovered can be distributed. Additionally, other creditors will have an interest in the sums recovered by the insolvency practitioner, which will have the effect of reducing any sum that can be paid out to the judgment creditor. In most insolvency proceedings, unsecured creditors receive very little, if any, of the sums that they are owed.

2.4 Post-judgment Procedures for Determining Defendants' Assets Onshore Courts

The most efficient way of determining what assets the defendant holds and where they are located is, for judgment creditors or any holder of a writ of execution, to request that the execution judge, against nominal court fees, issues directives to any natural or legal persons the creditor designates in its request in addition to public registers and regulatory authorities for disclosure of any information relating to a judgment debtor's assets that they may be aware of and which is otherwise not accessible.

These entities include, the Real Estate Regulatory Agency, the Land Department, the Central Bank, different company registries, the Roads and Transport Authority, the Securities and Commodities Authority, customs, insurance companies and the financial markets in the UAE.

Offshore Courts

Under Part 50 of the RDC, the DIFC Court may order a judgment debtor to attend court to provide information so that a judgment creditor may enforce a judgment against the judgment debtor.

The judgment creditor makes an application without notice to the court, which will issue an order for the judgment debtor to attend court so that they can be questioned under oath.

Under Part 30 of the Court Procedure Rules, the ADGM Court has a similar process to the DIFC Court for a judgment debtor to attend court to provide information.

2.5 Challenging Enforcement of Domestic Judgments

Challenging Enforcement of Foreign Judgments Before Onshore Courts

The debtor has two available channels to challenge any enforcement procedure and to seek a stay pending the outcomes of a challenge depending on the grounds of the challenge.

Challenging Enforcement before the Court of First Instance

The debtor may challenge enforcement by filling a grievance within seven days from the day following the date of the issuance of any decision of the execution judge before the President of the Court of First Instance or their authorised representative on the following grounds:

- order of priority among the prevailing parties;
- postponement of the execution of the decision for any reason;
- granting the debtor a time limit to pay the amount for which settlement of the execution has been ordered, or allowing them to pay it in instalments;
- acceptance or rejection of the guarantee;
- travel ban; or
- arrest warrant.

The decision of the President of the Court of First Instance on the grievance shall be final.

Challenging Enforcement before the Court of Appeal

The debtor may challenge enforcement by filing an appeal within ten days from the day following the date of the issuance of any decision of the execution judge before the Court of Appeal on the following grounds:

- the competence or lack of competence of the execution judge to enforce the writ of execution;
- where the assets seized are such that they may or may not be seized or sold;
- the participation of parties other than litigants in the enforcement procedures;
- the decision to imprison the debtor, provided that the appellant presents a sponsor responsible for bringing the judgment debtor or paying the amount adjudged, and if they are unable or fail to bring them before court, the court shall impose upon them to pay the amount of the guarantee and collect the same in the manner under which the judgments are executed.

The decision of the Court of Appeal might be appealed in cassation in very narrow circumstances.

Challenging Enforcement of Judgments Before Offshore Courts

Both the DIFC and ADGM Courts, being common law courts, will allow appeals to be brought by the unsuccessful party in relation to the judgment itself. The process of enforcement allows a party to challenge the enforcement within those proceedings and the judgment may be set aside where the judgment was wrongly entered or was not within the court's jurisdiction.

2.6 Unenforceable Domestic Judgments

Onshore Courts

Domestic judgments must be enforced within 15 years of the date that the judgment became enforceable or from the date of the last executory transaction; ie, the last act performed in relation to execution.

There is no specific type of domestic judgment that cannot be enforced in the UAE. All judgments which have the exequatur form affixed

by the court can be enforced, except the ones which have been stayed either by the execution judge or stayed and/or overruled by the Court of Cassation or the ones which do not impose an obligation on its parties such as some non-money judgments or some declaratory judgments which confirm the proper termination of a contract. These kinds of judgments can be relied upon but cannot be enforced.

2.7 Register of Domestic Judgments

Onshore Courts

There is no central register of all judgments in the UAE onshore courts. Lawsuit files are accessible exclusively to the parties to the proceedings and can be accessed through the electronic court system using the parties' credentials.

Offshore Courts

DIFC Courts

The basic case details of all public cases filed with the DIFC Courts are recorded in the Courts' e-registry which the public is able to access. The documents involved in the cases or the documents of the parties are, however, not disclosed. All judgments, decisions or orders of public cases can also be accessed through the DIFC Courts' website, from decisions of a small claims tribunal to court administrative orders.

ADGM Courts

The public is only able to access public cases if the details, such as the case number or the parties' names, are known. The date of commencement of the matter can also be known from the ADGM Courts' online list of cases. No other information is revealed. However, a copy of the judgment can be downloaded upon the closure of the case.

3. FOREIGN JUDGMENTS

3.1 Legal Issues Concerning Enforcement of Foreign Judgments Before Onshore Courts

The UAE has entered into the following two multilateral treaties for the reciprocal recognition and enforcement of foreign judgments so they are deemed part of the applicable domestic laws of the UAE.

- The Riyadh Arab Agreement for Judicial Cooperation, 6 April 1983, which has 18 state signatories: the UAE, Jordan, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen.
- The Gulf Co-operation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications, 1996, which has six members of the GCC: the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait.

Before Offshore Courts

Before DIFC Courts

In addition, the courts in the financial free zone have entered into bilateral memoranda of understanding with several courts of foreign jurisdictions. Most of these jurisdictions are of the common law nature.

For example, the DIFC Courts have entered into the following memoranda:

- the Memorandum of Guidance as to Enforcement with the High Court of England and Wales;
- the Memorandum of Guidance as to Enforcement with the High Court of Hong Kong;
- the Memorandum on Enforcement with the Supreme Court of Singapore; and

- the Memorandum of Guidance on Understanding the Enforcement of Money Judgments with the Federal Court of Malaysia.

The DIFC is not a sovereign entity and is bound by the treaties entered into by the UAE. Accordingly, where the UAE has entered into a treaty for the mutual enforcement of judgments, orders or award, the DIFC Court will conform to those treaties and enforce any such foreign judgments, orders or awards. In order to ensure that a foreign judgment, order or award is ratified and enforced, the following steps should be complied with.

- The foreign judgment must be final and conclusive – it may be final and conclusive even though it is subject to an appeal.
- The DIFC Courts will not enforce certain types of foreign judgment (eg, judgments ordering the payment of taxes, fines or penalties).
- The foreign court must have had jurisdiction, according to the DIFC Rules on the Conflict of Laws, to determine the dispute – the DIFC Courts will generally consider the foreign court to have had the required jurisdiction only where the person against whom the judgment was given was present in the jurisdiction at the time that the proceedings were commenced, was the claimant or counter-claimant in the proceedings, submitted to the jurisdiction of the foreign court, or agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the foreign court.

If the foreign judgment complies with the above requirements (even where there is no treaty), the grounds to challenge recognition and enforcement will be limited to the judgment having been obtained by fraud, being contrary to public policy or where the proceedings were conducted in a manner that the DIFC Courts considers to be contrary to natural justice.

Whilst the RDC do not specify a limitation period for recognition and enforcement of foreign judgments, orders or awards under the laws of England and Wales (which can be applied in the DIFC Courts where no specific DIFC law applies), it is considered that the limitation period would be six years.

Before ADGM Courts

The ADGM Courts, whilst similar to the DIFC Courts procedure for the enforcement of foreign judgments, orders and awards, are more restrictive in that they require reciprocity to be established.

3.2 Variations in Approach to Enforcement of Foreign Judgments Onshore Courts

After satisfying the requirements of the Tier 1 procedure stated in **3.4 Process of Enforcing Foreign Judgments**, the provisions of the Cabinet Resolution do not differentiate between the enforcement of domestic and foreign judgments, notwithstanding the country of issuance of the said foreign judgment.

Offshore Courts

The DIFC and ADGM Courts do not differentiate between the enforcement of domestic and foreign judgments, notwithstanding the country of issuance of the said foreign judgment (see **3.4 Process of Enforcing Foreign Judgments**).

3.3 Categories of Foreign Judgments Not Enforced Onshore Courts

A foreign judgment or order may not be enforced by UAE Courts if the relevant court does not have the jurisdiction to do so. The condition of jurisdiction can be fulfilled as follows:

- the jurisdiction should be given to the authorised Court of First Instance in which circuit

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the address, or the residence of the debtor exists; or

- the jurisdiction should be given to the authorised Court of First Instance in which circuit there are movable or immovable assets that are owned by the debtor or in the possession of a third party.

Any foreign judgment or order which does not satisfy the conditions set out in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments** cannot be recognised and thereby enforced in the UAE.

Offshore Courts

DIFC

The DIFC Courts will look to ensure that the issuing court had the jurisdiction to render the judgment. The Courts may refuse enforcement when they find otherwise.

ADGM

The registration of the judgment will be set aside if the ADGM Court of First Instance is convinced that the issuing court has no jurisdiction in the circumstances of the case. In doing so, the Court will go through the criteria set out in Article 175 (2) of the ADGM Court Regulations for an issuing court to assume jurisdiction.

3.4 Process of Enforcing Foreign Judgments

If a creditor selects the onshore courts route, Article 85 of the Cabinet Resolution governs the enforceability of foreign court judgments or any foreign writ of execution set forth in Article 75.

Onshore Courts Route

The process is set with a two-tiered procedure as described below.

Tier 1

A party seeking the enforcement of a foreign writ of execution before an onshore court must

obtain an execution order from the execution judge by filing an “*exequatur* petition” as per the conditions and procedures for the initiation of a lawsuit set forth in Article 16 of the Cabinet Resolution. The court will issue its decision on an *ex parte* basis within five working days from the date of the submission of the petition.

The execution order may only be issued if the conditions required for the enforceability of the foreign writ of execution stated above are fulfilled.

For the Tier 1 procedure, the execution judge’s order of execution remains subject to the usual channels of appeal; ie, before the Court of Appeal and the Court of Cassation as well in accordance with the rules and procedures prescribed for filing an appeal.

Tier 2

After the obtention of the *exequatur*, the creditor shall rely on the Cabinet Resolution, which regulates the enforcement procedures in addition to other articles, by applying to the execution judge asking for the enforcement of the *exequatur*, following which the execution court will open a new lawsuit called an execution case and serves summons notice on the debtor requesting payment of the debt with 15 days from the date of the notification.

If the debtor fails to pay the judgment debt and/or amount, this grants the holder of the execution order the right to impose precautionary attachments as well as executory attachments over movable and immovable assets that are owned by the debtor or in the possession of a third party. Following the mentioned holder’s application, and subject to the court’s approval, the court will issue attachment orders against the debtor’s assets.

In addition, the Cabinet Resolution grants the holder of the execution order the right to request that the Execution Court declares the debtor insolvent or bankrupt as the case may be, and/or imposing detention and a travel ban in certain circumstances.

For the Tier 2 procedure, the debtor has the two possible channels (as stated in **2.5 Challenging Enforcement of Domestic Judgments**) to challenge enforcement procedures against them as well as to seek a stay pending the outcomes of the challenge depending on the grounds of the challenge.

Offshore Courts Route

For the execution of judgments rendered outside the DIFC, within the DIFC the procedures set out in the RDC must be followed. An enforcement application (the type of which depends on the type of assets to be enforced) is made to the DIFC Courts Enforcement Division.

Foreign judgment creditors have been known to utilise the Judicial Authority Law to seek an order of the DIFC Courts to ratify their foreign judgments and then enforce the same before the Dubai Courts, and in some circumstances even when the matter and assets had no nexus with the DIFC Courts. It is noteworthy that the Joint Judicial Tribunal for the Dubai Courts and DIFC Courts (under Decree No 19 of 2016), which was established in 2016, has served to curtail the use of the DIFC Courts as a conduit jurisdiction to enforce foreign judgments since its establishment.

For ADGM Courts, the process of enforcement of foreign judgments is largely the same as the process in the DIFC Courts.

3.5 Costs and Time Taken to Enforce Foreign Judgments Before Onshore Courts

Since the enforcement process of foreign judgments and any foreign writ of execution is set with a two-tier procedure as described in **3.4 Process of Enforcing Foreign Judgments**, the timeframe and the costs are split between the two tiers.

Tier 1

The court will issue its decision on the execution order application within three days from the date of its submission. The estimated court fees are AED320.

Tier 2

See **2.3 Costs and Time Taken to Enforce Domestic Judgments**.

Before Offshore Courts (DIFC and ADGM Courts)

The process in both the DIFC and ADGM Courts can vary due to the potential for any application to enforce being challenged and a hearing required to ensure that the requirements of the DIFC and ADGM Courts have been followed. This is likely to take several months and could be longer depending on the type of challenge that may be made and the preparation for any hearing.

The costs will not be high if the application for recognition and enforcement is straightforward, but with a challenge by the defendant, which could be lengthy and complex, the costs will rise significantly.

3.6 Challenging Enforcement of Foreign Judgments

Challenging Enforcement of Foreign Judgments Before Onshore Courts

It shall not be possible for any UAE court to order the execution of a foreign judgment before the verification of the following.

- The reciprocity requirement – the UAE court must ensure that the judgments and orders delivered by a foreign country may be ordered to be executed in the UAE under the same conditions as prescribed in the law of that country for the execution of judgments and orders issued in the UAE.
- The UAE courts are not exclusively competent in the dispute in which the judgment or order was rendered.
- The judgment or order is delivered by a competent court in accordance with the law of the country in which it was issued and the judgment or the order is duly ratified and authenticated (ie, the need for the judgment or the order to be shown that it has been rendered enforceable in the jurisdiction in which it was made by having the exequatur form affixed by the court of issuance).
- The litigants in the case in which the foreign judgment was delivered were summoned and were duly represented.
- The judgment or order has the force of res judicata in accordance with the law of the court which issued it.
- The judgment does not contradict any existing judgment or order rendered by any UAE court and does not contain anything contrary to public policy or morality in the UAE.
- The execution judge shall have the right to obtain the documents supporting the application before issuing their decision.

Hence, if a creditor obtained an execution order which the debtor finds does not comply with the conditions above, a debtor may challenge the

execution order following the Tier 2 procedure as stated in **3.4 Process of Enforcing Foreign Judgments.**

Challenging Enforcement of Foreign Judgments in the DIFC and ADGM Courts

DIFC

The DIFC Courts will only look to ensure that the court that issued the judgment had jurisdiction to determine the dispute and will assume that the foreign court had jurisdiction where the defendant was:

- present in the jurisdiction when proceedings were commenced;
- a party to the proceedings;
- otherwise submitted to the jurisdiction of the relevant court (that is, by filing a defence or party agreement).

If these requirements are not met, the DIFC Court will not recognise or enforce a judgment.

ADGM

The ADGM Court will, on an application made by any party against whom a registered judgment can be enforced, set aside the registration of the judgment if the ADGM Court of First Instance is satisfied that the original court did not have jurisdiction in the circumstances of the case. The requirements are as follows.

- In the case of a judgment given in an action in person:
 - (a) if the judgment debtor voluntarily appeared in the proceedings;
 - (b) if the judgment debtor was a claimant or counter-claimant in the proceedings in the original court;
 - (c) if the judgment debtor had before the commencement of the proceedings agreed to submit to the jurisdiction of that court or of the courts of the country of that court;

- (d) if the judgment debtor was, when the action was commenced, resident in, or being a body corporate was registered under the laws of, the country of that court; or
- (e) if the judgment debtor had an office or a place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place.
- In the case of a judgment given in an action, the subject matter of which was immovable property, or in an action in rem, the subject matter of which was movable property, and the property situated in the country of that court when the action was commenced.
- If the jurisdiction of the original court is recognised by any applicable Abu Dhabi law or any ADGM enactment.

4. ARBITRAL AWARDS

4.1 Legal Issues Concerning Enforcement of Arbitral Awards Before Onshore Courts

The enforcement of domestic arbitral awards is regulated by the UAE Federal Arbitration Law No 6 of 2018 (“the UAE Arbitration Law”).

On the other hand, the enforcement of foreign arbitral awards is regulated by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the “NYC”), which the UAE ratified without any reservation, which means that even arbitral awards issued in a non-contracting state may be recognised and enforced in the UAE under the NYC.

Besides the NYC, the UAE also signed the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1966 (the “ICSID Convention”) on 23

December 1981, which entered into force on 22 January 1982.

Before Offshore Courts

Similarly, the Conventions referred to above apply to awards being enforced in the UAE, including the DIFC and the ADGM.

For onshore awards enforcement in the financial free zones (and vice versa), the procedures as discussed in **2.2 Enforcement of Domestic Judgments** on the enforcement of judgments is equally applicable to arbitral awards seated in the DIFC to be enforced outside of the DIFC in Dubai and governed by Article 7 of the Judicial Authority Law (and vice versa).

4.2 Variations in Approach to Enforcement of Arbitral Awards

In terms of enforcement, the UAE laws distinguish between domestic arbitral awards seated in the UAE and foreign arbitral awards seated outside of the UAE. While the confirmation and enforcement of domestic arbitral awards is governed by Articles 55–57 of the UAE Arbitration Law, the recognition and enforcement of foreign arbitral awards is governed by the provisions of the NYC which prevail over the provisions of the domestic UAE laws.

4.3 Categories of Arbitral Awards Not Enforced

Onshore Courts

For domestic arbitral awards which may be nullified pursuant to the UAE Arbitration Law and are thereby not capable of being enforced, please see **4.6 Challenging Enforcement of Arbitral Awards**. As for foreign arbitral awards seated outside of the UAE, these are not subject to any nullification procedures, as explained in **4.6. Challenging Enforcement of Arbitral Awards**.

In the UAE, although most arbitral awards that are either confirmed (for domestic arbi-

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tral awards) or recognised (for foreign arbitral awards) and thereafter enforced are money judgments, certain non-money awards may also be either confirmed or recognised but not enforced in certain cases.

The arbitral award creditor in a domestic arbitral award may choose to apply only for its confirmation or its confirmation and enforcement.

Similarly, the arbitral award creditor in a foreign arbitral award may choose to apply only for its recognition or its recognition and enforcement.

Section **4.4 Process of Enforcing Arbitral Awards** explains the two-tier process to recognise or confirm and to enforce an arbitral award, and shows the difference between the confirmation or recognition of an award from one side and the enforcement from another.

Redfern and Hunter explain that “[t]he purpose of recognition on its own is to act as a shield; it is used to block any attempt to initiate fresh proceedings, issues which have already been decided in the arbitration that gave rise to the award whose recognition is sought. The purpose of enforcement is, however, to ‘act as a sword, not a shield’”.

Thus, the confirmation or the recognition of an award refers to the doctrine of *res judicata* and serves as a shield to ensure that an action may not be disputed once its merit has been decided on by the arbitrator, as happened in the arbitration case *Omnium de Traitement et de Valorisation SA (OTV) v Hilmarton Ltd* (Com Ct, NLD, 8 June 1999, [1999] 2 Lloyd’s Rep 223).

DIFC and ADGM Courts

In both the DIFC and ADGM Courts an arbitral award will not be enforced if:

- a party to the arbitration agreement lacked capacity;
- the arbitration agreement is not valid under the applicable law;
- the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the proceedings or was otherwise unable to present its case;
- the award decides on matters not falling within the terms of reference or exceeding their scope but, if those matters can be separated from those on which the tribunal had the authority to rule, only the portion of the award addressing issues on matters not submitted to arbitration may be set aside;
- the composition of the tribunal or the procedure was not in accordance with the parties’ agreement or, in the absence of such an agreement, with the applicable law;
- the subject matter of the difference is not capable of settlement by arbitration under the DIFC or ADGM laws; and
- the recognition or enforcement of the award would be contrary to the public policy of the UAE.

4.4 Process of Enforcing Arbitral Awards

Process for Enforcing Domestic Arbitral Awards Before Onshore Courts

The process is set with a two-tiered procedure as described below.

Tier 1—confirmation

Firstly, the award is to be confirmed by the competent Court of Appeal in whose jurisdiction the arbitration was conducted by following the procedure of confirmation set forth in Article 55 of the UAE Arbitration Law. Then the award creditor will obtain an execution order (ie, *exequatur*) to forcibly enforce the award against the debtor.

Once an arbitral award is confirmed, it becomes enforceable and can be enforced by the same

means as described by Tier 2 in **3.4 Process of Enforcing Foreign Judgments**.

It is noteworthy that for the purposes of enforcement, Articles 18 and 21 of the UAE Arbitration Law empowers the president of the UAE Courts of Appeal to issue orders of interim measures for a UAE-seated onshore arbitration, upon the request of a party or the arbitral tribunal.

Process for Enforcing Foreign Arbitral Awards

The process is set with a two-tiered procedure as described below.

Tier 1 – recognition

A party seeking the enforcement of a foreign arbitral award before an onshore court must obtain an execution order in the same manner as stated in Tier 1 of **3.4 Process of Enforcing Foreign Judgments**. The court will issue its decision on an ex parte basis within three days from the date of the submission of the petition.

The execution order may only be issued if the conditions required for the enforceability of the foreign arbitral award stated in Articles IV and V of the NYC are fulfilled.

The execution judge's order of execution remains subject to the usual channels of appeal as mentioned in Tier 1 of **3.4 Process of Enforcing Foreign Judgments**.

Tier 2 – enforcement

After the obtention of the exequatur referred to in Tier 1 above, the creditor shall rely on the Cabinet Resolution in the same way as explained in **3.4 Process of Enforcing Foreign Judgments**.

The parties have two possible channels, as stated in **2.5 Challenging Enforcement of Domestic Judgments**, to challenge the enforcement procedures and to seek a stay pending the

outcomes of the challenge, depending on the grounds of the challenge.

Enforcement of Arbitral Awards Ratified by DIFC Courts in Dubai Outside of the DIFC

By reference to the procedures enumerated in **2.2 Enforcement of Domestic Judgments**, the Judicial Authority Law provides that the same procedures shall apply to enforcement of arbitral awards ratified by DIFC Courts in the UAE outside of the DIFC.

Process of Enforcing Arbitral Awards Before the Offshore Courts *DIFC*

Articles 42 to 44 of the DIFC Law No 1 of 2008 (the "DIFC Arbitration Law") together with Part 43.62 to 43.74 of the RDC are relevant for the enforcement of awards within the DIFC (wherever the seat of the award).

A party must make an application for enforcement in the DIFC Courts under Articles 42 (1) and 43 of the DIFC Arbitration Law, and under the Rules of the DIFC Courts Part 43 by using a Part 8 claim form. Applications can be made without notice. Subject to any challenges to recognition and enforcement, if the DIFC Court decides to recognise the award, it will issue an order in both English and Arabic.

The applicant must then serve the DIFC Court order on the other party. It should be noted that the award cannot be enforced until a period of 14 days has elapsed since the publication of the award or until any set-aside order has been finally dealt with.

Part 43.62 to 43.74 of the RDC regulates the enforcement of arbitral awards, regardless of the seat of the award.

The documents for enforcing an award in the DIFC include:

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- a witness statement exhibiting the original award, or a certified copy;
- the original arbitration agreement, or a certified copy (if these are not in English, a certified translation should also be provided); and
- a draft recognition/enforcement order in English and Arabic.

ADGM

Part 4 of the ADGM Arbitration Regulations 2015 (the “ADGM Arbitration Regulations”) and Chapter 10 of the ADGM Court Regulations are the pertinent legislations for the ADGM procedure. Article 56 of the ADGM Arbitration Law sets out the basic requirements for the recognition or enforcement of an arbitral award, regardless of the seat of the arbitration.

The documents for enforcing an award in the ADGM include the following.

- The original or a duly certified copy of both:
 - (a) the arbitral award; and
 - (b) the arbitration agreement.
- An application for the enforcement of an award must contain:
 - (a) an arbitration claim form;
 - (b) the name and registered business address (or usual or last known place of residence for an individual) of the award creditor and debtor; and
 - (c) any information on the extent to which the award has been complied with at the date of the application.

4.5 Costs and Time Taken to Enforce Arbitral Awards

Domestic Arbitral Awards Before Onshore Courts

The court fees payable for Tier 1 related to the confirmation of the award vary between AED320-520 depending on which emirate the application is submitted in. The court will issue its decision on an ex parte basis within 60 days

of submission of the request for confirmation and enforcement.

For Tier 2, after the obtention of the confirmation of the award and the exequatur referred to in Tier 1 above, the creditor shall rely on the Third Section of the Cabinet Resolution in the same way as explained in **3.4 Process of Enforcing Foreign Judgments**. The costs and timeframe will be the same as described in **2.3 Costs and Time Taken to Enforce Domestic Judgments**.

Foreign Arbitral Awards Before Onshore Courts

The court fees payable are the same as Tier 1 above. The court will issue its decision on the execution order application within three days from the date of its submission.

For Tier 2, see **2.3 Costs and Time Taken to Enforce Domestic Judgments** and **3.4 Process of Enforcing Foreign Judgments**.

Enforcement of Arbitral Awards Before Offshore Courts

The cost and time taken to enforce arbitral awards before the DIFC and ADGM Courts is similar. As with the enforcement of judgments and foreign judgments, the cost and time is very much dependent on whether the award is challenged, and the nature of that challenge. Despite this, in recent years the process has become more streamlined with both courts usually dealing with enforcements within a few months where they are straightforward.

4.6 Challenging Enforcement of Arbitral Awards

Challenges against Domestic Arbitral Awards before Onshore Courts

To challenge a domestic arbitral award under a nullity action, Article 53 (1) of the Arbitration Law sets out eight grounds, ie, Article 53 (1)(a)-(h), on

which the court may object to an arbitral award or for refusal of an application for confirmation.

Further, the court will also nullify an arbitral award if the subject matter of the dispute is not capable of being ventilated by arbitration or the arbitral award is in conflict with public order and morality of the state.

Some of the disputes which are not capable of ventilation by arbitration in the UAE and are subject to the exclusive jurisdiction of UAE courts include:

- commercial agency;
- labour disputes;
- disputes of personal status (of a familial nature); and
- disputes of a criminal nature.

An applicant who seeks to nullify a domestic arbitral award may bring their action within 30 days from the date of notification of the arbitral award to the applicant. The decision issued by the court for such nullification shall be final and may only be subject to appeal by cassation.

Procedures for challenges against domestic arbitral awards

Any challenges against the confirmation of a domestic arbitral award may be raised in the same manner as described in Articles 56 and 57 of the UAE Arbitration Law.

For an order obtained under Tier 2, any challenges may be raised following the two possible channels stated in **2.5 Challenging Enforcement of Domestic Judgments** to challenge the enforcement procedures and to seek a stay pending the outcomes of the challenge, depending on the grounds of the challenge.

Challenges against Foreign Arbitral Awards before Onshore Courts

It should be noted that although the UAE courts have jurisdiction to decide on a nullity action against domestic arbitral awards, foreign arbitral awards are not subject to any nullification procedures, the foreign arbitral award debtor can resist enforcement only.

Procedures for challenges against foreign arbitral awards

The procedures are the same as Tier 1 and Tier 2 mentioned in **3.4 Process of Enforcing Foreign Judgments**.

Challenging Enforcement of Arbitral Awards before Offshore Courts (DIFC and ADGM Courts)

In both DIFC and ADGM Courts the process of challenging enforcement of arbitral awards complies with the provisions of the NYC.

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Alsuwaidi & Company is a full-service law firm, rooted in regional know-how. Since the firm's inception in 1997, it has supported leading businesses across the UAE and beyond, assisting them in navigating complex and commercial challenges. The firm has built a reputation for its knowledge and expertise, and its formidable standing in the Dubai and Abu Dhabi courts is second to none. Alsuwaidi & Company's regional expertise is consolidated by wider knowledge of international legal systems and

the firm boasts a number of qualified arbitrators and lawyers registered to practise in the DIFC and ADGM Courts, enabling the firm to provide for its clients' needs in all forums. The dispute resolution practice boasts an admirable track record that is demonstrative of its prowess. The firm's legal teams are fluent in Arabic and English, and have an established network with regulatory bodies, government agencies and the court circuits.

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