

Enforcement of Foreign Court Judgments in Civil Proceedings

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Overview

This Practice Note provides practical guidance on the recognition and enforcement of foreign court judgments in UAE local courts.

Practical Guidance

Article 1 of the [Montevideo Convention on the Rights and Duties of States](#)^[1 p.5] specifies that a sovereign state has a permanent population, defined territory, one government and the capacity to enter into relations with other sovereign states. It is also normally understood that a sovereign state is neither dependent on or subject to any other power or state.

A key element of sovereignty is the exclusivity of jurisdiction, which maintains that decisions rendered by a sovereign entity within its territory should not be contradicted by another sovereign state or entity. On 7 September 1927, the Permanent Court of International Justice established the 'lotus principle' (the case of the S.S. 'Lotus' France v. Turkey). Usually considered a foundation of modern Public International Law, the 'lotus principle' provides that sovereign states may act in any way they wish as long as they do not contravene an explicit prohibition. A typical example of a contravention of an explicit prohibition is violating the 'territoriality principle'.

The territoriality principle is a principle of public international law which provides that a sovereign state can only exercise the administration of justice within its territorial borders. The principle also bars states from exercising jurisdiction beyond their borders unless they have jurisdiction under other principles such as the principle of nationality, the passive personality principle, the protective principle and possibly universal jurisdiction.

Due to the principle of sovereignty, foreign judgments may only be recognised based on bilateral or multilateral treaties or understandings, or unilaterally without an express international agreement.

The recognition and enforcement of a foreign judgment occurs when the court of one country or jurisdiction accepts a judicial decision made by the courts of another foreign country or jurisdiction, and issues a judgment in substantially identical terms without rehearing the substance of the original lawsuit.

Once a foreign judgment is recognised, the party who was successful in the original case can then seek the enforcement of the foreign judgment in the country which recognises and allows such enforcement. If the foreign judgment is a monetary judgment and the debtor has assets in the recognising jurisdiction, the judgment creditor has access to all the enforcement remedies as if the case had originated in the recognising country.

If the country that issued the judgment and the country where recognition is sought are not parties to the Hague Convention on Foreign Judgments in Civil and Commercial Matters or a similar treaty or convention providing for the routine of registration and enforcement between States, the courts of the latter may accept jurisdiction to hear cases for the recognition and enforcement of judgments awarded by the courts of another state if the defendant or relevant assets are physically located within their territorial boundaries. Whether recognition will be given is determined by the *lex fori*, for example, the domestic law of the court where recognition is sought relying on the principle of comity.

Comity is a practice among courts of different jurisdictions involving the mutual recognition of judicial acts on the grounds of reciprocity. The principle of reciprocity provides that favours, benefits or penalties that are granted by one state to the citizens or legal entities of another should be returned in kind.

Incidentally, the UAE is signatory to two multilateral treaties relating to the enforceability of foreign judgments within its territory. These include:

- the 1983 Riyadh Arab Agreement for Judicial Cooperation; and
- the 1996 Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications.

The UAE is also a signatory to a number of bilateral agreements covering the enforcement of foreign judgments including:

- the 1992 Convention on Judicial Assistance, Recognition and Enforcement of Judgments in Civil and Commercial Matters signed between the UAE and France;
- the 2004 Convention on Judicial Assistance in Civil and Commercial Matters signed between the UAE and China;
- the 2009 Agreement on Judicial Assistance in Civil and Commercial Matters between UAE and Kazakhstan; and
- the 2020 Agreement on Juridical and Judicial Cooperation in Civil and Commercial Matters between UAE and India for the enforcement of civil and commercial judgments.

In addition, the UAE and UK have been parties to the bilateral Treaty on Judicial Assistance in Civil and Commercial Matters since December 2006. This treaty sets out agreed procedures for the service of judicial documents and taking of evidence. However, it is important to note that this treaty does not include enforcement.

Interestingly, in September 2022, the Ministry of Justice in the UAE issued a communique or a memo to the Director General of the Dubai Court, stating that judgments issued in the UK or English courts should be enforced in the UAE, based on the principle of reciprocity. See case: *Lenkor Energy Trading DMCC v Puri* QB [2020] EWHC 75 (QB), where a UK court enforced a Dubai court judgment. This memo confirmed the enforceability of judgments on a reciprocity basis, which now allows individuals and entities who have obtained judgments from UK courts to enforce them in UAE courts.

The key to successful enforcement of an English court judgment in the UAE depends on where the English court judgment is to be enforced. The method to be used with respect to the recognition and enforcement of an English court judgment in the UAE is set out below.

Article 222 of Federal Decree-Law No. 42/2022 On the Promulgation of the Civil Procedure Law, which is the new civil procedure law in the UAE, provides for the execution of foreign judgments, orders and bond. The law states the following:

- Judgments and orders delivered by a foreign country may be ordered to be executed in the state under the same conditions as prescribed in the law of that country for the execution of judgments and orders issued in the state.
- The execution, including the particulars specified in article 44 of Federal Decree-Law No. 42/2022, which talks about filing and registration of lawsuits, will be made on a petition and submitted by the person concerned to the execution judge. The judge will issue their order within five days from the date of the submission. The order may be appealed in accordance with the rules and procedures prescribed for filing an appeal.

It will not be admissible to order the execution before the verification of the following:

- The courts of the state are not exclusively competent in the dispute in which the judgment or order was rendered and the foreign court that issued it are competent in accordance with the rules of international jurisdiction established by their law.
- 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.
- 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, provided that the judgment has acquired the force of res judicata or was provided for in the same judgment.
- 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 execution judge will have the right to obtain the documents supporting the application before issuing his decision.

Further, the provisions of article 222 of Federal Decree-Law No. 42/2022 will apply to arbitrators' awards issued in a foreign country. The arbitrators' award must be issued in a matter in respect of which arbitration is admissible pursuant to the law of the state and enforceable in the country in which it was issued.

Regarding the execution of foreign conciliation awards, one would require authenticated documents and the minutes of conciliation ratified by the courts in a foreign country. These may then be ordered to be executed in the state under the same conditions prescribed in the law of that country for the enforcement of the judgments rendered in the State. For the execution order referred to as aforesaid, it must be made on a petition to be submitted to the execution judge under the same procedures and conditions stipulated in clause 2 of article 222 of Federal Decree-Law No. 42/2022 as stated above. The execution order may only be carried out after verifying that the conditions required for the enforceability of the document, or the minutes, are fulfilled in accordance with the law of the country in which it has been authenticated or ratified and that it does not breach the public order or morals in the state.

Related Content

Legislation

- Federal Decree Law No. 42/2022 On the Promulgation of the Civil Procedure Law

International Conventions

- [Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters \(1971\)](#)^[2 p.5]
- [Montevideo Convention on the Rights and Duties of States \(1933\)](#)^[1 p.5]
- [Vienna Convention on Consular Relations \(1963\)](#)^[3 p.5]

Cases

- Lenkor Energy Trading DMCC v Puri QB [2020] EWHC 75 (QB)

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Areas of expertise

Intellectual Property; Corporate.

Education

B.Sc (Hons), LL.B, Delhi University.

Memberships

- Bar Council of Delhi, India.
- Authorised Legal Consultant by Legal Affairs Department, Government of Dubai, UAE.

Biography

Rajiv is one of the leading expert lawyers with over 29 years of experience specialising in the field of Intellectual Property laws, Commercial and Transactional laws including contracts, information technology and media. He holds degree in Sciences and Law. He qualified as a lawyer in 1994 and since then has practiced as an Advocate/Legal Consultant.

His expertise lies at handling both contentious and non-contentious issues both in India and UAE. Rajiv advice clients on strategies involving a wide range of intellectual property matters and has been involved in managing corporate portfolios across various industries.

He has also dealt extensively on commercial and transactional matters involving drafting and vetting varied forms of commercial agreements/contracts, technical knowhow agreements, licensing issues including third party/vendor contracts, non-disclosure agreements, manufacturing of goods agreement, business development and service agreement, brand acquisition agreement, assignment deed/s, drafting and execution of Wills in UAE etc.

He has been an author/co-author of articles relating to intellectual property issues and corporate matters for some of the leading legal publications. He has been a speaker at webinars/round table/s on issues relating to intellectual property rights and non- muslim personal law in UAE.

His name appears in UK's whoswholegal.com (WWL) 2008 for UAE, as a ranked prosecution lawyer in Managing Intellectual Property (MIP) 2019, in the list of World's Leading Trademarks professionals by World Trademarks Review (WTR) for the years 2020, 2021, 2022 & 2023 (UAE) and in the list of IP experts compiled by AsiaIP for the years 2021 and 2022.

Rajiv is fluent in English and Hindi.

Notes

1. [^] [p.2] [p.3] <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20165/v165.pdf>
2. [^] [p.3] <https://assets.hcch.net/docs/bacf7323-9337-48df-9b9a-ef33e62b43be.pdf>
3. [^] [p.3] https://treaties.un.org/doc/Treaties/1967/06/19670608%2010-36%20AM/Ch_III_6p.pdf