

ENFORCEMENT OF FOREIGN JUDGMENTS

United Arab Emirates



Enforcement of Foreign Judgments

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Freshfields Bruckhaus Deringer

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.

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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 UAE and China, and the 2009 Agreement between Kazakhstan and the UAE on Judicial Assistance in Civil and Commercial Matters. In addition, in 2020, the UAE signed a bilateral enforcement of civil and commercial judgment with India.

Recently, in September 2022, the Ministry of Justice of the UAE circulated a memo to the Director General of the Dubai Court, stating that judgements issued in the United Kingdom may be enforced in the UAE under the principle of reciprocity, in view of the UK Court's enforcement of a Dubai Court Judgement in *Lenkor Energy Trading DMCC v Puri* (2020) EWHC 75 (QB). The UAE and UK have been parties to the bilateral Treaty on Judicial Assistance in Civil and Commercial Matters since December 2006, which covers the service of judicial documents and the taking of evidence but excludes enforcement. The new memo, therefore, is a significant development, confirming enforceability on a reciprocal basis, and thus allowing individuals and entities who have obtained judgements from UK courts to enforce these in UAE courts.

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 - 05 July 2023

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 Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law (the New Civil Procedure Law), which replaced the old Civil Procedures Law (Federal Law No. 11 of 1992), taking into consideration international treaties. The UAE local courts apply the same general civil law approach.

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

Sources of law

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

The sources are Chapter 3, articles 222, 223, 224 and 225 of the New Civil Procedure Law, Regulation No. 57/2018 amended by Cabinet Decision No. 33/2020 and Cabinet Decision No. 75/2021, and the international treaties to which the UAE is a party.

Law stated - 05 July 2023

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 - 05 July 2023

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 3, article 222 of Federal Decree-Law No. 42/2022 (the New Civil Procedure 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 222.

Federal Law No. (1) 1987 concerning Civil Transactions Law of the UAE, section 3, 'Lapse of time barring a right', articles 473 to 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.

'Chapter 3 – Execution of Foreign Judgments, Orders and Bonds

Article 222

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 application for execution, including the particulars specified in Article (44) of this Law shall be made on a petition and submitted by the person concerned to the execution judge. The judge shall issue his order within (5) five days from the date of its submission. His order may be appealed in accordance with the rules and

procedures prescribed for filing an appeal. It shall 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 courts 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 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.'

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

Law stated - 05 July 2023

Types of enforceable order

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

Article 222 of the New Civil Procedure 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 that 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 - 05 July 2023

Competent courts

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

As per section 3, Articles 222–225, of the New Civil Procedure 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 - 05 July 2023

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 the 'collection or execution stage', which comes directly after the final Supreme Court order or Appeal Court order.

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 Decree-Law No. 42/2022 (section 3, articles 222 to 225). This would include, for example, anything against the applicable laws or public policy in the UAE (shariah and cultural, political or social policy) or anything contrary to international treaties, mainly the New York Convention.

Law stated - 05 July 2023

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 that will ratify the award.

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

The main legal grounds of any possible challenge would be as per Chapter 3, Execution of Foreign Judgments, Orders and Bonds:

'Article 222'

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 - 05 July 2023

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

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

The Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law (the New Civil Procedure Law) has stipulated the mandatory requirements and provisions to enforce awards as below:

'Chapter 3 - Execution of Foreign Judgments, Orders and Bonds

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 application for execution, including the particulars specified in Article (44) of this Law shall be made on a petition and submitted by the person concerned to the execution judge. The judge shall issue his order within (5) five days from the date of its submission. His order may be appealed in accordance with the rules and procedures prescribed for filing an appeal. It shall 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 courts 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 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.'

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

Law stated - 05 July 2023

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 New Civil Procedure 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 - 05 July 2023

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 3, article 222 of the New Civil Procedure 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 duly represented.

Law stated - 05 July 2023

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 222 of Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law (the New Civil Procedure Law) 2(a-e). The litigant shall make the proper submissions to meet the requirements of article 222 of the New Civil Procedure Law 2(a-e). The submissions shall include a court certificate from the foreign court that supports 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 - 05 July 2023

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 222 of the New Civil Procedure Law 2(a-e). The litigant shall make the proper submissions that meet the requirements of article 222 of the New Civil Procedure Law 2(a-e).

Law stated - 05 July 2023

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 222 2(c) of the New Civil Procedure Law has specified the provisions for this aspect as follows: 'It shall not be admissible 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 - 05 July 2023

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 222 2(a-b) of the New Civil Procedure Law has specified the provisions for this aspect as follows:

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

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 - 05 July 2023

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiating by fraud

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

Article 222 of Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law (the New Civil Procedure 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 222.

The court will examine the submissions but the examination will be limited to the provisions of article 222 of the New Civil Procedure Law. Therefore, the court will not investigate fraud allegations. Fraud will be subject to common law practice.

Law stated - 05 July 2023

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 222 2(e) of the New Civil Procedure Law has specified the provisions for this aspect as follows: 'It shall not be admissible 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 - 05 July 2023

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 222 2(e) of the New Civil Procedure Law has specified the provisions for this aspect as follows: 'It shall not be admissible 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 - 05 July 2023

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 New Civil Procedure Law, section 3, 'Seizure of the Debtor's Property in the Hands of a Third Party', article 252, grants the obligee the right to apply before the execution judge for an attachment over the movable property of or debts owing to their obligor in the hands of third parties, notwithstanding that they may be deferred, subject to a condition or disputed.

Law stated - 05 July 2023

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's jurisdiction to decide the original case. In this scenario, the enforcement will be dismissed in light of the provisions of article 222 2(a) of the New Civil Procedure Law.

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

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 - 05 July 2023

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 - 05 July 2023

Alteration of awards

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

A UAE court might consider limiting the award enforcement in cases where the claimant requests a specific limitation for the enforcement with supportive evidence. The limitation might be for the claim amount or the awarded amount, named judgment debtors, or any other aspect.

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 - 05 July 2023

Effect of sanctions

What effect do foreign or domestic sanctions have on the enforcement of foreign judgments in your jurisdiction? Will a court refuse enforcement of a judgment against or in favour of a sanctioned entity or individual? If so, which sanctions regimes do the courts of your jurisdiction recognise?

In general, on a legal basis, a UAE court will not discuss whether foreign or domestic sanctions will have an effect on the enforcement of a foreign judgement, as this does not fall under its jurisdiction. However, in practice, any foreign or domestic sanctions imposed are likely to have an effect on the recovery of funds, as any blockages on personal or corporate bank accounts of sanctioned individuals or entities will likely hinder any financial recovery ensuing from the enforcement of a foreign judgement.

Law stated - 05 July 2023

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 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 - 05 July 2023

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 222 (2) of Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law (the New Civil Procedure Law) specifies the provisions for this aspect as follows:

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

The application for execution, including the particulars specified in Article (44) of this Law shall be made on a petition and submitted by the person concerned to the execution judge. The judge shall issue his order within (5) five days from the date of its submission. His order may be appealed in accordance with the rules and procedures prescribed for filing an appeal.'

Law stated - 05 July 2023

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 by 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 - 05 July 2023

Pitfalls

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

Article 222 2(e) of Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law (the New Civil Procedure Law) specifies 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 characteristics of the judgment, the nature of the agreement and the business between the parties. The objective is to authorise the enforcement of an order that does not contain anything contrary to public policy (eg, money laundering, drugs, etc), or public morals (eg, Islamic culture, local tradition, etc).

Law stated - 05 July 2023

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 have rejected foreign judgment enforcements due to being competent in the dispute. The UAE court will always examine if it has 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, the currency of the contract, the physical address of the parties, etc. The approach differs on a case-by-case basis.

Law stated - 05 July 2023

Jurisdictions

	Australia	Ironbridge Legal
	Austria	WEBER & CO.
	Bahrain	Charles Russell Speechlys
	Egypt	Soliman, Hashish & Partners
	France	Signature Litigation
	Germany	Willkie Farr & Gallagher LLP
	Greece	PotamitisVekris
	Iran	Dadflamingo
	Italy	Ughi e Nunziante
	Japan	TMI Associates
	Jordan	Hammouri & Partners
	Nigeria	Streamsowers & Köhn
	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	Winston & Strawn LLP
	USA	Freshfields Bruckhaus Deringer