

Reciprocity between jurisdictions: Are we there yet?

A commentary by Jenner & Block and KBH on the trend towards reciprocity in the enforcement of UAE, English, and US judgments and awards.

Given the increasing number of companies with assets and operations spanning the UAE, England and the US the ability to enforce judgments and awards across these jurisdictions has never been more important. As between the UAE and England, there is a clear trend towards streamlining the enforcement process based on reciprocity. The US continues to enforce UAE judgments in a like manner to most other foreign jurisdictions; however, whilst it is possible to enforce a US decision in the UAE, real challenges remain.

RECIPROCITY BETWEEN THE UAE AND ENGLAND?

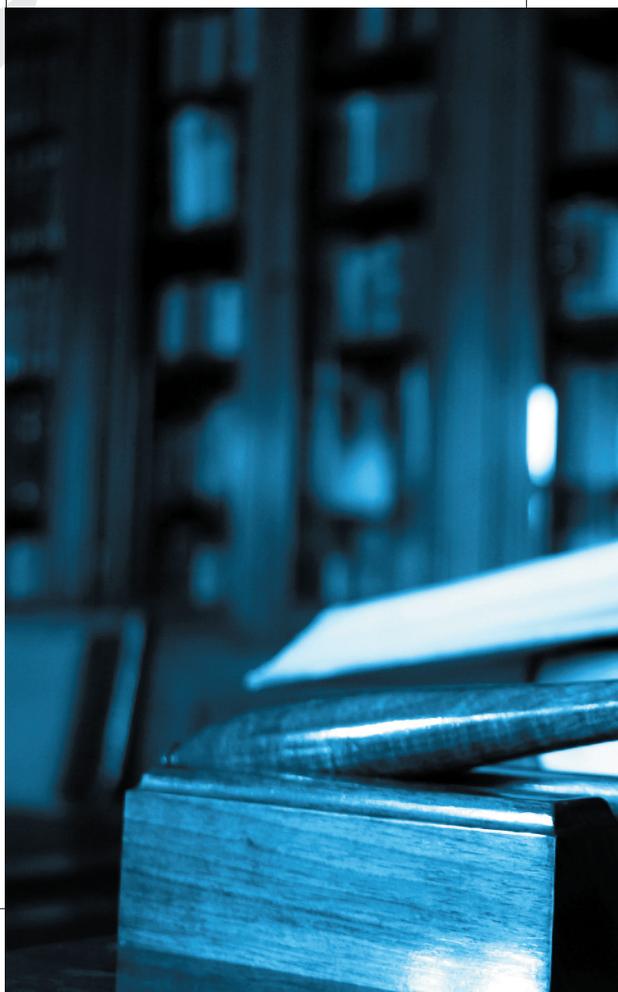
There is no treaty dealing with the recognition and enforcement of judgments between England and the UAE, meaning that the enforcement in England of UAE judgments (both Dubai International Financial Centre (DIFC)¹ and onshore UAE judgments) is governed by English common law.

Foreign judgments are enforceable in England under the common law where (i) there is a final and conclusive foreign judgment for a debt or definite sum of money given by a court of competent jurisdiction; and (ii) the enforcement would not be contrary to public policy.

Traditionally, litigants have been more confident in enforcing DIFC judgments in England, as opposed to judgments of the onshore UAE courts. Recent case law demonstrates, however, that litigants can now be relatively confident about enforcing onshore UAE judgments in England as well—provided that the criteria for recognition and enforcement are met.

In January 2013, the DIFC courts and Judiciary of England and Wales entered into a non-binding memorandum of understanding (“MoU”)² setting out

their desire to promote their cooperation and a mutual understanding of their respective laws and judicial processes. The MoU provides clarity on the reciprocal enforcement of English and DIFC judgments. In January 2022, as an example of the English courts’ application of the MoU, a claimant was granted summary judgment on a claim to enforce a judgment of the DIFC courts for USD131 million³. In rejecting the defendant’s argument that it would be unfair to proceed with the English enforcement proceedings because he lacked legal representation, the court made clear that there are “very limited grounds” in



which the court may refuse the enforcement of a DIFC judgment.

The MoU does not, however, apply to onshore UAE judgments. This means that, historically, litigants seeking to enforce onshore UAE judgments in England have faced greater uncertainty than those seeking to enforce DIFC judgments. This changed in May 2021, following the decision in *Lenkor Energy Trading DMCC v Puri* [2021] EWCA Civ 770. In this case, the defendant resisted the enforcement in England of a UAE judgment in respect of dishonored cheques. The defendant argued that the illegality of a linked contract in respect of which the cheques had been issued would make the enforcement of the judgment contrary to English public policy. The court rejected the defendant's argument, noting that where there is limited degree of connection between the claim sought to be enforced and the relevant illegality, then the court will afford greater weight to the "strong public policy in favour of finality, and in favour of enforceability".⁴

The English courts' commitment to enforcing UAE judgments was again demonstrated in May 2023 in the case of

Emirates NBD Bank PJSC v Rashed Abdulaziz Almkhawi and Others [2023] EWHC 1113 (Comm). The court rejected the defendant's challenge to the enforcement of a UAE judgment on the basis of a "mere procedural irregularity".

The significance of *Lenkor* extended outside of England. In the UAE, courts can enforce foreign judgments where there is evidence that the country in which the judgment was issued would recognise and enforce UAE rulings⁵. In December 2021 and with *Lenkor* undoubtedly playing a large part in the decision, the Dubai Court of First Instance recognised and enforced an English judgment on the basis that that there was reciprocity as between the UAE and the English Courts⁶. On 13 September 2022, the position was reinforced in a letter sent by the UAE Ministry of Justice (MOJ) to the Director General of the Dubai Courts⁷. The MOJ letter expressly referred to the *Lenkor* decision and encouraged the Dubai Court to take note of the decision and reciprocate enforcement of English judgments.

The MOJ letter has been welcomed by all as a positive development towards



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it did not fulfill factors classified under US law as due process requirements, with broader leeway for courts to decline enforcement. For example, if the defendant did not have notice of the proceeding, or if a court lacked jurisdiction, or is not considered impartial, or if there is substantial doubt about its integrity, the US court may refuse to uphold the judgment. Therefore, litigants

trying to enforce foreign judgments in the US may be forced to re-litigate a number of procedural and factual issues in the case and prior proceedings. However, comity and reciprocity still weigh in favor of US enforcement.

reciprocity. Creditors looking to enforce English court decisions in the UAE should proceed with greater confidence. Significantly, in *Invest Bank PSC v Ahmad Mohammed El-Husseini and ors* [2022] EWHC 3008 (Comm), the English High Court refused to award security for costs on the basis that there was no real risk of substantial obstacles to enforcement in either the onshore UAE or offshore DIFC courts of any English costs order, in light of *Lenkor* and the MOJ letter.

RECIPROCITY BETWEEN THE UAE AND US?

As with England, there is no treaty regulating judgment enforcement between the US and UAE, and so recognition proceeds under a particular jurisdiction's statutory or common law. Parties seeking to enforce a final judgment in the US must file an action in a US court, whether state or federal, and the judgment must meet that jurisdiction's requirements for enforcement.

While states differ in their procedures and requirements, the majority, including New York, have laws permitting foreign judgment enforcement based on the Uniform Foreign Country Money-Judgments Recognition Act ("UFCMJRA"). The UFCMJRA intends to encourage reciprocity "assuring foreign jurisdictions that their judgments would receive streamlined enforcement here"⁸.

New York's current enactment of the UFCMJRA provides that courts should generally uphold a foreign judgment unless

trying to enforce foreign judgments in the US may be forced to re-litigate a number of procedural and factual issues in the case and prior proceedings. However, comity and reciprocity still weigh in favor of US enforcement.

In *Badawi v. Alesawy*, 135 A.D.3d 792, 792–93, 24 N.Y.S.3d 683, 684 (2016), decided under the previous enactment of the UFCMJRA, the court upheld a UAE judgment of divorce on the principle of comity. In a subsequent litigation among the same parties, the court held that there was "no evidence to raise an issue of fact that the procedures promulgated in Abu Dhabi were not compatible with the requirements of due process"⁹. Greater opportunities for defendants to challenge foreign judgments under the new enactment of the UFCMJRA may mean that parties face more difficulties today.

Enforcing US judgments in the UAE can also be complex and challenging. Enforcement generally follows a specific procedure outlined in Federal Law No. 11 of 1992 (also known as the UAE Civil Procedure Code). Article 235 of the UAE Civil Procedure Code outlines the general provisions for recognising and enforcing foreign judgments. It establishes the conditions that need to be met for a foreign judgment to be recognised and enforced in the UAE. Before enforcing US judgments the UAE courts will (among other things) consider whether the judgments conflict with UAE judgments, violate public order or morality, and meet principles of reciprocity. The position would be different if there

was a comparable case to Lenkor in the US – such a case could demonstrate that the reciprocity criteria in the civil code has been fulfilled and that Dubai should reciprocate enforcement.

However, at present, unlike the trend toward greater reciprocity between the UAE and courts of England, the UAE and US evaluate each other’s judgments thoroughly before upholding them.

A NOTE ON ARBITRATION AWARDS

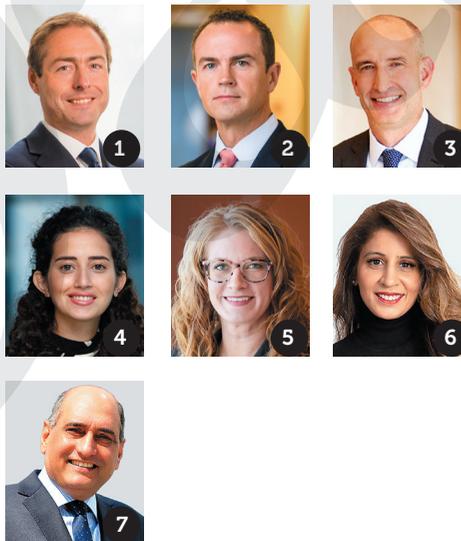
It is in principle more straightforward to enforce arbitration awards in any of these three jurisdictions, because each are signatories to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”). Subject to certain conditions, the UK, UAE, and US are bound to recognise and enforce foreign awards under the New York Convention.

CONCLUSION

Enforcement reciprocity between the UAE and England is increasing. In the US, specifically New York, it is the hurdles to enforcement which may be increasing, though they are not insurmountable. The UAE likewise evaluates the procedure and policy of a US judgment before agreeing to enforce it. Because each jurisdiction is a party to the New York Convention, an arbitration award may be easier to enforce than a final judgment. Parties with a presence in these jurisdictions should seek advice regarding enforcement prospects at any early stage in any contentious situation, as this is likely to be important in developing an effective dispute resolution strategy. 📌

4. *The Supreme Court rejected an application for permission to appeal the decision.*
5. *UAE Cabinet Resolution No (57) of 2018 Concerning the Executive Regulations of Federal Law No (11) of 1992 on the Civil Procedure Law (Art 85) (as amended in 2021).*
6. *The judgment was upheld on appeal a few months later. The case is “unreported” but has been publicized anonymously by legal counsel acting on it.*
7. *Communiqué from Judge Abdul Rahman Murad Al-Blooshi, Director of the International Cooperation Department of the Ministry of Justice, to His Excellency Tarish Eid Al Mansoori, Director General of the Dubai Courts (September 13, 2022).*
8. *Abu Dhabi Com. Bank PJSC v. Saad Trading, Contracting & Fin. Servs. Co., 117 A.D.3d 609, 610–11, 986 N.Y.S.2d 454, 457 (2014) (citation omitted) (interpreting prior version of New York’s enactment of the UFCMJRA to uphold a UK judgment brought by a UAE entity).*
9. *Alesawy v. Badawi, 56 Misc. 3d 949, 959, 57 N.Y.S.3d 879, 889 (N.Y. Sup. Ct. 2017)*

1. *The DIFC has a separate judicial system to the rest of the UAE.*
2. <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/uk-uae-protocol-with-logos.pdf>; see also MoU between the English courts and the Abu Dhabi Global Market Courts: <https://www.adgm.com/documents/courts/memorandum-of-understanding/international/mog-between-commercial-court-queens-bench-division-england-and-wales.pdf>
3. *Barclays Bank Plc v Shetty [2022] EWHC 19 (Comm)*



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