

Enforcement of foreign judgments in the United Arab Emirates

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1. UNIFORMITY OF LAW AND REGULATIONS

The local country is a federation of seven emirates. The constituent emirates are Abu Dhabi (the capital), Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm al-Quwain. However, the same law and regulations for the enforcement of foreign judgments apply in all emirates.

The enforcement of foreign judgments is subject to the regulations provided by the UAE Code of Civil Procedure as well as the several bilateral and multilateral international conventions to which UAE has adhered.

2. JUDGMENTS

2.1. Definition

There is no definition of ‘judgment’ in the UAE law. However, for the purpose of enforcement procedures, foreign judgments capable of enforcement and execution are all judgments which have been issued by countries other than UAE.

According to Article 235 of the UAE Civil Procedure Code, **judgments and orders passed in a foreign country** may be ordered for execution and implementation within UAE if the following was verified:

- (a) State courts have no jurisdiction over the dispute on which the judgment or the order was passed and that the issuing foreign courts have such jurisdiction in accordance with the International Judicial Jurisdiction Rules decided in its applicable law.
- (b) Judgment or order was passed by the competent court according to the law of the country in which it was passed.
- (c) Adversaries in the lawsuit on which the foreign judgment was passed were summoned and duly represented.
- (d) Judgment or order had obtained the absolute degree in accordance with law of the issuing court.
- (e) It does not conflict or contradict with a judgment or order previously passed by another court in the State and does not include any violation of moral code or public order.

In addition to the above mentioned and according to Article 236 of the UAE Civil Procedure Code, **arbitration decisions passed in foreign countries** must be given in a matter which is capable of decision by way of arbitration according to the law of the country and must be enforceable in the country in which it was given.

Furthermore, Article 237 of the UAE Civil Procedure Code stipulates that **attested documents and conciliation reports authenticated by courts in foreign countries** may be capable of execution in UAE.

The UAE Courts may order such execution if:

- (1) The conditions for the implementation of the document or report were verified to have been met in accordance with the laws of the country in which it was attested or authenticated.
- (2) If the document or report do not violate the UAE moral code or public order.

2.2. Categories

- (a) Money judgments are enforceable.
- (b) Specific performance is enforceable subject to the conditions set in Article 235 of the UAE Civil Procedure Code cited in section 2.1 here above.
- (c) Injunctions are enforceable, but not often used in the UAE, because commercial requirements are mainly based on financial transactions.
- (d) Article 236 of the UAE Civil Procedure Code makes clear that arbitration decisions passed in foreign countries are enforceable.
- (e) Personal status judgment is enforceable subject to the conditions set in Article 235 of the UAE Civil Procedure Code.
- (f) An award for multiple/punitive damages is enforceable subject to the conditions set in Article 235 of the UAE Civil Procedure Code.

- (g) A judgment which is in itself a recognition of a previous foreign judgment is enforceable subject to the conditions set in Article 235 of the UAE Civil Procedure Code.
- (h) A foreign interim order for *pendente lite* relief and maintenance or custody can be enforced by UAE courts. However, the judgment must be in compliance with UAE's customary laws (Sharia). Often judgments from non-Islamic countries will not meet the UAE's standard and thus will not be enforced.
- (i) According to Article 235(2)(e) of the UAE Civil Procedure Code, it is required for granting the execution of the foreign judgement in the UAE that the foreign judgement does not conflict or contradict with a judgment or order previously passed by another court in the State. Therefore, judgments against the local State or any of its organs are not enforceable.
- (j) Foreign judgments are enforceable if the requirements of Article 235 (2) of the UAE Civil Procedure Code are verified. There are no specific articles related to the enforcement of a foreign fiscal judgment. Therefore, its enforceability is subject to the conditions set in Article 235 of the UAE Civil Procedure Code and to the principle of reciprocity.

2.3. Reciprocity

Articles 235(1) and 237(1) of the UAE Civil Procedure Code prescribe reciprocity as a necessity for granting the execution of the foreign judgment in the UAE. In fact, the judgments and orders passed in a foreign country as well as the attested documents and conciliation reports authenticated by courts in foreign countries may be ordered for execution in UAE under the same conditions provided for in the law of foreign state for the execution of judgments, orders and reports passed in the UAE (i.e., the UAE courts will enforce a foreign judgment on a like basis).

3. CURRENCY REGULATIONS AND RESTRICTIONS

- (a,b) In UAE, there are no exchange control regulations preventing the free transfer of any amount recovered as a result of the enforcement of foreign judgment.
- (c) The request of the execution of judgments must mention the foreign currency and its equivalent in Emirati Dirhams. The payment can be made either in the foreign currency or the Emirati Dirhams.

4. DOCUMENTARY REQUIREMENTS

In general, the documentary requirements for enforcement, in addition to the certified copy of the judgment are the following:

- Documents provided by the court proving that the foreign judgment has obtained power of enforcement in its own country.
- If the judgment was rendered by default, a certified copy of the application that was sent to the defendant (absent from the hearings) is required as well as a copy of the writ of service which proves that this party was duly served.

(Article 5 of the convention between the government of UAE and the governments of Jordan, Iraq, Lebanon, Yemen, Syria, Saudi Arabia and Egypt; Article 9 of the Convention between the governments of UAE and the Gulf Cooperation Council; Article 34 of the Riyadh Arab Convention for Judicial Cooperation; Article 18 of the Convention of Judicial Assistance between the government of UAE and the government of the People's Democratic Republic of Algeria; Article 16 of the Convention on Judicial Assistance, Recognition and Enforcement of Judgments in Civil and Commercial Matters between the UAE and France; Article 23 of the Legal and Judicial Cooperation Convention between the UAE and the Hashemite Kingdom of Jordan; Article 34 of the Legal and Judicial Cooperation Agreement between the UAE and the Syrian Arab Republic; Article 18 of the Convention between the government of UAE and the government of the Republic of Armenia; Article 19 of the convention between the government of

UAE and the government of the Islamic Republic of Pakistan; Article 23 of the Convention between the government of UAE and the government of the Republic of India; Article 35 of the Legal and Judicial Cooperation Agreement between the UAE and the Arab Republic of Egypt).

– In addition to that, a power of attorney duly legalized, translated into English and attested by the UAE Embassy in home country has to be issued. It will be attested in the Ministry of Foreign Affairs in the UAE, translated into Arabic and further attested at the Ministry of Justice.

(a) If the plaintiff is a company, the authorization to act should be proved through a registered (stamped by the commercial register) commercial extract or other equivalent corporate document showing the person authorized to appoint a lawyer and mentioning his powers. This document must be duly attested in home country and legalized up to the UAE Embassy.

(b) The only requirement is the presentation of a document from the competent authorities (usually the court) certifying that all means of review of the judgment have expired, and that the judgment became final.

(c) Only originals are accepted. Faxed supporting documents or notarized copies are not.

5. CONVENTIONS

The UAE is not a signatory of any of these conventions.

6. AUTHENTICATION OF DOCUMENTS

According to Article 237 of the UAE Civil Procedure Code, attested documents and conciliation reports must be authenticated by foreign Courts.

7. TRANSLATION OF DOCUMENTS

- (a) Any document redacted in a foreign language must be officially translated into Arabic, the official language in the UAE (Article 45 of the UAE Civil Procedure Code). Furthermore, all arbitration decisions must be drafted in Arabic unless agreed upon otherwise by the parties. In this case, an official translation must be attached (Article 212 of the UAE Civil Procedure Code).

However, Article 20 of the convention between the government of UAE and the government of the republic of Armenia states that documents may also be translated into English.

- (b) A sworn translator licensed by the Ministry of Justice in UAE has to certify the translation.

8. REOPENING OR REVIEW OF JUDGMENTS

- (a,b) In general, and referring to the conventions between the government of UAE and others countries, local courts are not allowed to a review in substance of foreign judgments, as long as they meet local requirements. (Article 2 of the convention between the government of UAE and the governments of Jordan, Iraq, Lebanon, Yemen, Syria, Saudi Arabia and Egypt; Article 20 of the convention of judicial assistance between the government of UAE and the government of the People's Democratic Republic of Algeria; Article 17 of the convention between the government of UAE and the government of the republic of Armenia; Article 18 of the convention between the government of UAE and the government of the Islamic Republic of Pakistan; Article 22 of the convention between the government of UAE and the government of the Republic of India).
- (c) The allegation of fraud should be raised in front of the foreign court, and then the documents proving the same must be submitted in front of the UAE courts to suspend the enforcement procedures.

9. PENDING PROCEDURE

- (a) Any judgment issued in a foreign country is neither recognized nor executed in the UAE if a pending proceeding was instituted in the UAE before the institution of the legal action in the foreign country, given that it was instituted before the competent court in UAE, between the same parties and concerning the same facts. Any proceedings instituted by the defendant in another foreign country would have no effect.
- (b) A pending appeal will lead to the rejection of an application for exequatur.

10. DEFENCES

The defendant may appear before the court if he has any objections to the foreign judgment being enforced in the UAE on the grounds that:

- The judgment was obtained by fraud.
- The judgment is contrary to public policy.
- The UAE court had sole jurisdiction. This would apply to different legal areas such as commercial agencies, labour disputes, real estate in the UAE and contracts with government entities.

11. JURISDICTION

- (a,b) Pursuant to Article 235(2)(a) of the UAE Civil Procedure Code, it is required for execution of the foreign judgment in the UAE that the judge has verified that the foreign court issuing the judgment has jurisdiction to do so according to UAE laws.
- (c) According to the provisions of the aforementioned Article 235, UAE court does not require the consent of the foreign jurisdiction, nor that the party against whom judgment was granted be a resident/citizen, own a property or have a domicile in the foreign country, in order to enforce the foreign judgment, but the principle of reciprocity should be taken into consideration.

- (d) The entry of an appearance to defend in the foreign court does not prevent the defendant from repudiating the jurisdiction of the foreign court in proceedings before the local court since Article 235 of the UAE Civil Procedure Code states the foreign courts' competence as a condition for a judgment to be enforceable.
- (e) The foreign judgment granted by default cannot be enforced if the judge decides to interpret Article 235(2) (c) of the UAE Civil Procedure Code strictly. However, after verification that the parties were properly assigned to attend and duly represented, the judge may order the execution of the judgment.
- (f) A clause conferring exclusive jurisdiction on the foreign court may be ineffective in the UAE if the UAE courts have jurisdiction in relation to the matter. In fact, the Dubai Court of Cassation has ruled that jurisdiction clauses are void on public policy grounds where UAE courts have jurisdiction over a matter (Decision 325/2004). However, according to Article 238 of the UAE Civil Procedure Code, it may be possible to avoid the application of this principle by the terms of an international treaty.
- (g) The UAE Courts will exercise jurisdiction over a respondent with an address or place of residence in the UAE or relevant assets in the UAE.

12. CONTRACTUAL WAIVER

- (a) A prior contractual waiver of service or notice can be recognized by the local courts provided that it is expressly waived according to Article 271 of the UAE Civil Transaction Act.
- (b) The foreign judgment can be enforceable before the UAE courts although it was granted after a contractual waiver of procedural requirements imposed by the UAE court since it does not contradict public policy.

13. SERVICE REQUIREMENTS

UAE courts accept the method of service recognized by the foreign court, except when it is contradictory to UAE public order.

14. CESSION

- (a) There are no stipulations in the UAE laws and regulations as to the cession of a judgment, whether to a local or foreign claimant.
- (b) The local courts would not confer any advantages upon the change in the identity of the claimant.

15. INTERIM RELIEF

- (a) It is possible that the local court grants interim relief pending the enforcement proceedings of a foreign judgment.
- (b) The articles related to the enforceability of foreign judgments did not address this issue, but they point out the principle of reciprocity. Therefore, the answer to this question resides in the foreign laws related to the enforceability of foreign judgments.

16. INTEREST

UAE courts are not allowed to a review in substance of foreign judgments. Therefore, the interest stated in the original judgment is unconditionally allowed. When the interest is not defined in the judgment, it will be calculated according to the rate of interest current in the market at the time of dealing, provided that it does not exceed 12% until full settlement (Article 76 of the UAE Commercial Transactions Law).

17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

- (a) The estimated time period from the date of filing of the application until the date of the enforcement of the foreign judgment is five months if there is no opposition and two years if contested.

- (b) i. Articles 321 and 322 of the UAE Civil Procedure Code specify the procedure to be followed in order to enforce an attachment of property decision.
- ii. According to Article 224 of the UAE Civil Procedure Code the concerned parties should submit the executive deed to the execution delegates who will conduct the execution as ordered by the judge of execution.
- iii. The UAE Commercial Transactions Law specifies the procedure to be followed in order to enforce a bankruptcy order and proceed with the liquidation.
- iv. Article 329 of the UAE Civil Procedure Code can be unofficially translated as follows:

“ If serious conditions exist under which the debtor is likely to flee and the debt exceeds ten thousand dirham unless it is a prescribed alimony, the creditor may request from the competent judge or the head of the court circuit depending on the case, for an injunction to prevent the debtor from travelling even before filing a substantive lawsuit, in the two following cases:

First: The debt is specifically known, mature and unconditionally payable.

Second: If the amount of debt is not specified, the judge will make a temporary estimation of the debt provided that the two following conditions are satisfied:

- (1) The claim shall be based on written evidence; and
- (2) The creditor shall supply a guarantee acceptable to the court in which he guarantees any damages inflicted upon the debtor resulting from being prevented from travel, in case it appears that the creditor’s claim is unrighteous.
- (3) The judge, before giving the order, may conduct a brief inquiry if he is not satisfied with the documents presented in support of the application.

- (4) If an order for prevention from travel has been issued by him, the judge may order that the debtor's passport be deposited with the court's treasury, and the court order shall be circulated at all of the country's exit points.
- (5) The person against whom the order has been issued shall have the right to file an objection by the procedure prescribed for complaints against the order on the petitions (...).”

- (c) i. The orders of an execution judge are appealable before the competent court of appeal in specific cases specified in Article 222 of the UAE Civil Procedure Law.
- ii. The usual time period for such an appeal is seven days from the issuance of the decision if it is in appearance, and from the day it is delivered if it is issued in non-appearance.
- iii. The appeal filed by the defendant will automatically suspend execution proceedings until the court of appeal issues its decision. However, in case of appeal of an imprisonment decision additional conditions apply (refer to Article 222 of the UAE Civil Procedure Law).

18. EXPENSES, LEGAL FEES AND SECURITY FOR COSTS

- (a) Court fees are calculated as a percentage of the amount of the claim. Such percentage varies in each Emirate.
- (b) Lawyers can freely agree with their clients on the legal fees. They usually charge a percentage which takes into consideration several factors, including without limitation, the amount of the claim, the complexity of the case and the need to hire foreign lawyers/consultants. Lawyers can also charge on an hourly basis. However, the UAE courts could reduce the amount of the legal fees, upon the request of the client, if they find that the requested fees are extravagant.
- (c) Within the UAE, fee contingency agreements are not permitted.

- (d) In the event of the applicant's success, the latter will not be able to recuperate a large part of the costs incurred in litigation. Indeed, according to the UAE laws, the successful party cannot recover the court fees. As for the legal fees, the UAE courts usually only grant token or nominal amounts even though the legal fees paid, in reality, exceed the said amount.
- (e) There are no provisions in the UAE laws and regulations requiring a party to provide security for costs, nor do the courts make such orders. However, according to the UAE Civil Procedure Code, there may be a possibility that the court, in its sole discretion, requires the applicant to deposit an amount prior to submitting to the judge the application related to the attachment of properties.

19. BANKRUPTCY/LIQUIDATION

- (a) The foreign creditor will have equality of dividend with local creditors as a result of the enforcement of the foreign judgment.
- (b) Upon the enforcement of a foreign judgment of bankruptcy, the foreign trustee can accomplish his duties in the same manner the creditor would in his home country. However, UAE procedural rules related to the enforcement must be followed. Therefore, because a foreign trustee can accomplish the procedure, a local trustee is not required.

20. LAWYERS (WHO CAN APPEAR?)

A local lawyer can only appear before the jurisdiction of the emirate where he is registered as a lawyer.

21. INTERNATIONAL TREATIES

The UAE has entered into a number of treaties with other countries which govern the reciprocal enforcement of judgments:

- (a) The Convention on Judicial Cooperation, Execution of Judgments and Extradition of Criminals between the UAE and the Tunisian Republic (1975);

- (b) The Riyadh Arab Convention for Judicial Cooperation ('the Riyadh Convention' 1983);
- (c) The Convention on Judicial Assistance between the UAE and the government of the People's Democratic Republic of Algeria (1984);
- (d) The Convention on Judicial Assistance, Recognition and Enforcement of Judgments in Civil and Commercial Matters between the UAE and France ('the Paris Convention' 1992);
- (e) The GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications;
- (f) The Protocol on the Enforcement of Court Judgments, Letters of Rogatory and Judicial Notices in the Gulf Cooperation Council Arab countries (Regional Agreement) (1996);
- (g) The Legal and Judicial Cooperation Convention between the UAE and the Hashemite Kingdom of Jordan (1999);
- (h) The Legal and Judicial Cooperation Agreement between the UAE and the Arab Republic of Egypt (2000);
- (i) The Convention on Judicial Cooperation in Civil and Commercial Matters and Extradition of Criminals between the UAE and India (2000);
- (j) The Legal and Judicial Cooperation Agreement between the UAE and the Syrian Arab Republic (2002);
- (k) The Convention on Recognition and Enforcement of Judgments in Civil and Commercial matters between the UAE and the government of the Republic of Armenia (2003);
- (l) The Convention on Judicial Assistance in Civil and Commercial Matters between the UAE and the Republic of China (2004);
- (m) The Convention on Mutual Legal Assistance in Criminal Matters, Extradition of Criminals, Cooperation in Civil and Commercial Matters, Recognition and Enforcement of Judgments and Arbitration Awards between the UAE and the Republic of the Sudan (2005);

- (n) The Convention on Extradition of Criminals, Recognition and Enforcement of Judgments in Civil and Commercial Matters between UAE and the Islamic Republic of Pakistan (2005);
- (o) The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (ratification by UAE on 21 August 2006).

22. CROSS-EXAMINATION OF AFFIDAVIT'S DEPONENT

No affidavit is required in the proceedings before the UAE court.

23. REQUIRED AFFIDAVIT

Not applicable.

24. NEW ACTION INSTEAD OF ENFORCEMENT

- (a) A new action can be instituted before the competent UAE court if the requirements of Article 235(2) of the UAE Civil Procedure Code are not verified. In such case, the foreign judgment can be submitted to the relevant UAE court as evidence. The latter will evidently re-examine the case in order to evaluate its merits.
- (b) Article 473 of the UAE Civil Transaction Act specifies that the prescription period is generally fifteen years unless special provisions state otherwise.

25. PRESCRIPTION

According to Article 225 of the UAE Civil Procedure Code, 'no executive deeds may be executed after 15 years of non-execution or 15 years after the last executive transaction'. We can conclude that the action must be initiated within fifteen years from granting of the judgment in the foreign country.

26. STATES/CANTONS

Each emirate in the UAE is often in turn able to pass its own laws, but is subject to UAE Federal law. Further, a number of emirates have created free zones which are often in turn able to make their own laws and regulations. Nevertheless, the same laws and regulations for the enforcement of foreign judgments apply in all emirates.