ENGLISH COURT SEES NO OBSTACLES TO ENFORCEMENT OF AN ENGLISH COURT JUDGMENT IN THE UAE

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Litigation and Dispute Resolution Alert

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The English Commercial Court has held, in the context of an application for security for costs against a United Arab Emirates (UAE)-domiciled bank, that there is no real risk that a judgment of an English Court may be refused enforcement in the UAE.

BACKGROUND

In November 2022, the English Commercial Court handed down a judgment on interim applications made by some of the defendants for security for costs (*Invest Bank PSC v El Husseini and others* [2022] EWHC 3008 (Comm)). The case arose out of a claim by a UAE-domiciled bank alleging fraud by the first defendant and seeking various orders to undo the alleged dissipation of cash and assets to the other defendants. The claimant had already secured a judgment against the first defendant from the Abu Dhabi Courts.

The applications for security for costs were brought on the basis that there was a real risk that any award of costs given by the English Court in favour of the defendants may not be enforced in the UAE.

ANALYSIS

Rule 25.13(2)(a) of the English Civil Procedure Rules gives the English Court discretion to order security for costs where the claimant is resident outside the jurisdiction, but not resident in a state bound by the 2005 Hague Convention—conditions met by the claimant in the present case, which was domiciled in Sharjah, UAE. English case law established that the test to be met is whether there is a "real risk" that a costs award may not be enforced against the claimant.

The Court considered the two routes for enforcement: (i) enforcing a putative costs judgment directly in the onshore UAE Courts, and (ii) enforcing via the Dubai International Financial Centre (DIFC) Courts as a "conduit" jurisdiction. The applicants contended that, through either channel, the defendants would face serious obstacles representing a real risk that they would not be able to enforce a costs judgment against the claimant. The claimant and defendants both adduced expert evidence on UAE law.

ONSHORE ENFORCEMENT

The defendants argued that there were three obstacles to enforcement via the onshore UAE Courts, namely:

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1. A real risk that the UAE Courts would refuse to enforce a judgment on the ground that there is no reciprocity between the English and UAE Courts;
2. A real risk that the UAE Courts would refuse to enforce a judgment on the ground that they have exclusive jurisdiction over the subject matter of the dispute; and
3. A real risk that the UAE Courts would refuse to enforce a judgment on the ground that to enforce an order for costs would be contrary to public policy.

RECIPROCITY

The onshore UAE Courts require reciprocity in order to enforce a judgment of a foreign court. The Court found that reciprocity was clearly established. Following the English Court's recent enforcement of a UAE Court judgment (*Lenkor Energy Trading DMCC v Puri* [2020] EWHC 1432 (QB)), the UAE Ministry of Justice issued a letter to the director general of the Dubai Courts confirming that the principle of reciprocity was satisfied vis-à-vis the English Courts. Although in the *Lenkor* case the claimant was domiciled in the Emirate of Sharjah, the Court considered the letter to be very strong evidence that the reciprocity requirement was met.

EXCLUSIVE JURISDICTION

The defendants argued that there was a real risk that the UAE Courts would assert exclusive jurisdiction over the dispute and thus refuse to enforce an English judgment. They contended that exclusive jurisdiction would arise because the proceedings before the English Court were in part an attempt to enforce an Abu Dhabi Court judgment in the United Kingdom. The Court rejected this argument, holding that enforcement proceedings are necessarily territorial and it would not make sense for the UAE Courts to assert exclusive jurisdiction over enforcement proceedings in the United Kingdom.

PUBLIC POLICY

The defendants argued that to enforce an English judgment representing an award of legal costs would be contrary to the public policy of the UAE, and thus a ground to refuse enforcement. Ordinarily, the UAE Courts award only a small or nominal sum in respect of legal costs, rather than allowing a successful party to recover most or all of its legal costs (as in the English Courts).

However, the English Court saw no evidence that a public policy exists prohibiting the award of substantial legal costs. In particular, the Court noted that:

- The willingness of the UAE Courts to award sums (even if only token) by way of legal costs militates against there being a prohibition as a matter of public policy;
- The DIFC Courts may award full legal costs in the same way as the English Courts (and their judgments may be enforced onshore); and
- The UAE Courts enforce arbitral awards ordering costs to be paid.

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ENFORCEMENT VIA THE DIFC COURTS

The alternative would be to enforce the judgment in the DIFC Courts, and then to enforce the resulting DIFC judgment in the UAE. It was common ground between the parties' experts that there would be no proper basis for the claimant to resist enforcement of an English Court judgment in the DIFC. The defendants argued instead that the claimant could obstruct enforcement by commencing parallel proceedings in the onshore UAE Courts seeking a declaration that the English Court judgment was unenforceable, potentially creating a conflict of jurisdiction requiring resolution by the Joint Judicial Committee. The Court rejected this argument for two reasons. First, the onshore UAE Courts would have no jurisdiction to hear a claim for declaratory relief brought by the claimant against the defendants, which were not resident in the UAE. Second, the claimant indicated its willingness to contractually agree to submit to the jurisdiction of the DIFC Courts for enforcement purposes, and to give an undertaking to the Court not to commence parallel onshore UAE court proceedings. Accordingly, the Court was not persuaded that there was a real risk that enforcement via the DIFC as a conduit jurisdiction would not be possible.

CONCLUSION

The judgment represents a welcome confirmation that, at least in the view of the English Commercial Court, there are no necessary difficulties in enforcing a judgment of the English Courts in the UAE. Following the recent enforcement of a UAE court judgment in England in the *Lenkor* case, there appears to be an emerging recognition by the judiciary in both jurisdictions that the principle of reciprocity applies and that their judgments should be mutually enforceable.

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