ANOTHER STEP FORWARD FOR ENFORCEMENT OF FOREIGN COURT JUDGMENTS IN THE UNITED ARAB EMIRATES

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UAE Litigation and Dispute Resolution Alert

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In a recent decision dated 4 June 2024, the Dubai Court of Cassation (Court of Cassation) in Case No. 392 of 2024 held that a summary judgment issued by the Ontario Superior Court of Justice, Canada, recognizing a restitution order issued in a criminal case in New York, United States of America (USA), was enforceable in the United Arab Emirates (UAE).

BACKGROUND

In the Canadian proceedings, the USA sought to enforce civilly a restitution order made against the defendant in a criminal case in which the defendant was found guilty of securities fraud and conspiracy to commit money laundering. He was also sentenced to 72 months imprisonment and received a US$25 million fine.

The Canadian judgment recognized the restitution order and enforced it as a judgment issued by the Canadian courts, and also ordered the defendant to pay certain amounts, including interest, legal costs, and advocacy fees.

The USA subsequently commenced enforcement proceedings against the defendant in the UAE relying upon the Canadian judgment. The enforcement judge originally confirmed that the Canadian ruling could be enforced in the UAE. However, upon appeal by the defendant, the Court of Appeal ruled to vacate that order on the grounds that the judgment to be enforced in the UAE was a summary judgment and, as such, could only be enforced in the country in which it was issued. The USA appealed this decision to the Court of Cassation.

RULING OF THE COURT OF CASSATION

The Court of Cassation held that the power of the UAE courts concerning judgments issued by foreign courts is limited to ordering enforcement of such judgments according to the conditions provided in Article 85 of Cabinet Resolution No. 57 of 2018 Concerning the Implementing Regulations of Old Civil Procedures Law No. 11 of 1992 (Implementing Regulations). The text of Article 85 was amended by Cabinet Resolution No. 75 of 2021 corresponding to Article 222 of Law No. 42 of 2022 (New Civil Procedures Law).

The conditions in Article 85(2) of the Implementing Regulations (as amended) that must be satisfied are:

1. The UAE courts do not have exclusive jurisdiction over the underlying dispute, and the foreign court that issued the judgment or order has jurisdiction thereover in accordance with the rules governing international jurisdiction laid down in its law;

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2. The judgment or order was issued by a court in accordance with the laws of the country in which it was issued and duly ratified;
3. The litigants were properly summoned to appear and duly represented;
4. The judgment or order has the force of res judicata in the state in which it was issued; and
5. The judgment does not conflict with any judgment or order already issued by a UAE court and does not include anything that is contrary to public order or morals.

The Court of Cassation emphasized that there is no room for interpretation of the law as the language is clear and unambiguous. Further, the provisions of Article 85(2) are general and absolute, encompassing all types of judgments and orders issued by a foreign country.

In this case, the Court of Cassation found that the conditions in Article 85(2) had been satisfied and, therefore, that the Canadian judgment should be enforced in the UAE. Specifically, the Court of Cassation noted that it had not been established that: the UAE courts have exclusive jurisdiction over the subject matter of the foreign judgment; the judgment was in violation of the law of the country in which it was issued; the judgment was contrary to public order or morals in the UAE; or the judgment contradicts a judgment issued in the UAE.

In response to the appellant's argument that the judgment should not be enforced because it was a summary judgment, the Court of Cassation held that the fact that the original judgment was executed in Canada by way of a summary procedure does not mean that it is a summary judgment under UAE law. Rather, the Canadian judgment was a substantive judgment that was subject to a summary procedure as required by Canadian law. Given that the defendant had participated in the proceedings (by submitting written memoranda and making oral submissions), it had not been deprived of a defense, so there was no basis to refuse enforcement.

The Court of Cassation also emphasized that Article 75(2) of the Implementing Regulations, corresponding to Article 212 of New Civil Procedures Law, broadened the definition of execution writs to include criminal judgments in relation to restitution, compensation, fines, and other civil rights. Such judgments were not previously included in the definition of execution writs contained in Article 224 of the Old Civil Procedures Law.

CONCLUSION

The judgment illustrates the willingness of the onshore UAE courts to enforce foreign judgments even in the absence of a bilateral enforcement treaty between the UAE and the country in which the judgment was issued. It also demonstrates the significance of the broadening of the enforcement provisions to encompass criminal judgments in relation to restitution, compensation, fines, and other civil rights.

ABOUT THE FIRM

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