

UAE's UK Reciprocity Order Is Good Start, Not Rubber Stamp

By **Rebecca Kelly and David Waldron** (November 4, 2022, 2:06 PM EDT)

The United Arab Emirates and English governments have never entered into a bilateral treaty for the reciprocal recognition and enforcement of court judgments.

Parties wishing to enforce a judgment of the English courts in the onshore UAE jurisdiction have always been required to seek judicial review of the merits of the underlying claim from the onshore UAE courts prior to having an enforceable debt instrument.

This has meant additional layers of time, cost and uncertainty for litigants trying to enforce judgments of the English courts in the onshore UAE jurisdiction.

However, on Sept. 13, the United Arab Emirates Ministry of Justice released an official communication direction to the courts of Dubai, which confirms that the Dubai courts are now to accept English judgments, and that orders issued by English courts satisfy the principles of reciprocity as a result of the High Court of Justice of England and Wales decision in *Lenkor Energy Trading DMCC v. Puri* in 2020.[1]

Although we consider that this is clearly a step toward removing barriers to enforcing judgments of English courts in the UAE, enforcing parties should not be under a misconception that this will mean automatic recognition of such judgments.

Pursuant to Article 85 of Cabinet Resolution No. 57 of 2018, as amended in 2021, the onshore UAE courts must still be satisfied, among other criteria, that they have both exclusive jurisdictions to decide the matter and the foreign judgment does not contradict the existing laws of the UAE.

Position of the English Courts

The first step toward reciprocity between the two jurisdictions was taken by the English High Court in the 2020 decision of *Lenkor Energy*, with both the English High Court and Court of Appeal ruling that a Dubai Court of Cassation judgment was from a competent jurisdiction, did not offend English public policy and was final.

This meant that a judgment debt from the UAE courts could be enforced through the English courts,



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subject to the enforcing party satisfying the English court that such actions were not contrary to public policy.

UAE Response in Reciprocity

In response to Lenkor Energy, on Sept. 13, the UAE Ministry of Justice directive stated, as translated from the original Arabic version:

Article (85) of the Executive Regulation of the Civil Procedures Law ... kindly request[s] ... you to take the relevant legal actions regarding any requests for enforcement of judgments and orders issued by the English Court ... as a confirmation of the principle of reciprocity initiated by the English Courts (referring to Lenkor Energy) and assurance of its continuity between the English Courts and the UAE Courts.

Although the concept of reciprocity between the English courts and UAE courts has not been enshrined into UAE legislation or been the subject of a mutual recognition treaty, we consider that this official directive is a positive first step to reducing the barriers for enforcing English court judgments in the UAE.

What Does This Mean for Court Decisions in the UAE Courts?

It must be noted that the letter does not allow onshore UAE courts to simply ratify a foreign judgment of the United Kingdom. This is because reciprocity is only one requirement of the relevant UAE legislative regime that must be satisfied in order to enforce a foreign judgment.

After an initial assessment of the letter from the UAE Ministry of Justice and the requirements of Article 85 of Cabinet Resolution No. 57 of 2018, as amended, we consider that an onshore UAE court will, notwithstanding the terms of the treaty, still need to assess and be satisfied that, among other criteria, any foreign judgment is not contrary to the existing laws of the UAE, that all the litigants were represented in the proceedings and that the UAE court did not have exclusive jurisdiction over the matter.

Over time we would hope to see a level uniformity of the enforcement process between onshore UAE courts and the Dubai International Financial Centre and the Abu Dhabi Global Market, where a memorandum of guidance regarding the enforcement of decisions exists with the English courts; however, we have not yet reached such a point.

What Does This Mean for Court Decisions in the U.K. Courts?

The directive creates a level of certainty for litigants and is another reason London may expect to remain one of the venues of choice for international disputes. Parties will feel further confidence in agreeing to hear disputes in court in London when the counterparty or the counterparty's assets are in Dubai.

Parties may consider London to be a more favorable location for hearing arbitrations because, in addition to the enforcement route of the New York Convention, it may become possible to seek to enforce London-seated arbitration awards through the English courts and then on to Dubai through the directive.

Immediate Impact of the Directive

Although enforcement of judgments from the United Kingdom is still entirely discretionary for the UAE onshore courts, we anticipate that such a decision will be well received by the business community and will see an increased level of confidence for U.K.-based investors who are looking to enforce judgment debts from English court or arbitration awards and those in the UAE seeking reciprocity in the U.K.

This may also have the effect of seeing an increasing reliance on English governing law provisions in commercial contracts in the UAE; however, this may require additional consideration.

Takeaways for Practitioners

Although there is cause for optimism across both jurisdictions, practitioners should note that several points.

At this stage, the directive from the UAE Ministry of Justice only serves to direct judges of courts in Dubai, and not the other emirates of the UAE, to consider that the element of reciprocity is satisfied with a judgment of the English courts.

Additionally, enforcement of any foreign judgments remains entirely discretionary for the onshore UAE courts, who must be satisfied that they have exclusive jurisdiction and that the foreign judgment does not contradict UAE laws, among other criteria set out in Cabinet Resolution No. 57 of 2018, as amended.

Finally, local law advice should be sought and research conducted to ascertain whether any judgment may be enforceable.

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[1] Lenkor Energy Trading DMCC v. Puri, EWHC 75 (QB).