

## UAE Ministry of Justice Confirms that Dubai Courts May Enforce English Court Judgments

September 22, 2022

The Ministry of Justice of the United Arab Emirates has called upon the Dubai courts to enforce judgments of the English courts, with potentially wide-ranging implications for the enforcement of judgments in the UAE.

On September 13, 2022, the Ministry of Justice issued a letter to the Director General of the Dubai courts, confirming that the Dubai courts may now enforce judgments of the English courts under the principle of reciprocity. The confirmation comes in the wake of the decision of the English Court of Appeal in *Lenkor Energy Trading DMCC v Puri* [2021] EWCA Civ 770, in which the English courts upheld the enforcement in England and Wales of a judgment of the Dubai courts concerning a dishonored cheque. Traditionally, a lack of reciprocity had hampered the enforcement of English court judgments in the UAE.

The Ministry of Justice's confirmation marks a pro-enforcement shift in the UAE, and provides greater judicial certainty to those seeking to enforce English court judgments against assets in the UAE.

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### Background: Looking for reciprocity

There is no bilateral treaty currently in force between the UAE and the United Kingdom governing the reciprocal recognition and enforcement of court judgments. Although the Treaty between the UK and the UAE on Judicial Assistance in Civil and Commercial Matters is in force and governs matters of judicial assistance, the Treaty does not contain any provisions related to enforcement.<sup>1</sup> Even if the memoranda of guidance signed between the English courts and the courts of Abu Dhabi Global Market (“ADGM”) and Dubai International Financial Centre (“DIFC”) provide some clarity with respect to the enforcement of English court judgments in those jurisdictions,<sup>2</sup> beyond these special economic zones with their separate legal systems, parties seeking to enforce English judgments in the UAE have faced significant hurdles to date.

In the absence of any applicable framework, the UAE applied the principle set out in Article 85 of Cabinet Resolution No. 57 of 2018 on the Implementing Regulation of Federal Law No. 11 of 1992 (as amended),<sup>3</sup> which only permits the UAE courts to enforce foreign judgments “*under the same conditions as prescribed in the law of that country for the execution of judgments and orders issued in the State*”, *i.e.* where there is reciprocity in respect of recognition and enforcement between the UAE and the jurisdiction issuing the judgment.

In England and Wales, in the absence of any applicable frameworks, the courts applied the common law test when enforcing UAE judgments, pursuant to which the English court must be satisfied that the UAE court: (i) had original jurisdiction to render its judgment; (ii) issued a final and conclusive judgment; and (iii) issued a judgment for a definite

and calculable sum. Defenses to enforcement may include that the enforcement of the foreign judgment would contravene English public policy.<sup>4</sup>

Historically, the English courts had proved reluctant to enforce judgments issued by the UAE courts, in turn hampering the enforcement of English court judgments in the UAE.

### The *Lenkor* Case

The Ministry of Justice’s communiqué was issued in response to the decision of the Court of Appeal of England and Wales in *Lenkor Energy Trading DMCC v Puri* to enforce a judgment of the Dubai courts. Mr. Puri, a British citizen, issued two payment guarantee cheques totaling approximately USD 55 million in connection with an agreement between Lenkor Energy Trading DMCC (“Lenkor”), an oil trading company, and a third-party, for the supply of “high speed diesel”. The judgment records that, to conceal the origin and nature of the product that was being supplied and avoid issues associated with Iranian sanctions, Lenkor’s principal falsified certain shipping documents and loadport test results which were provided to the buyer and customs authorities.<sup>5</sup>

Subsequently, Lenkor attempted to cash the cheques it had received, but the cheques were not honored, and Lenkor subsequently brought proceedings against Mr. Puri before the Dubai courts under the Dubai Commercial Transactions Law, pursuant to which a person who draws a cheque may be held personally liable for the amount of the cheque.<sup>6</sup> The proceedings resulted in a judgment against Mr. Puri personally in Dubai, which Lenkor subsequently sought to enforce in England and Wales.<sup>7</sup>

<sup>1</sup> Treaty between the United Kingdom of Great Britain and Northern Ireland and the United Arab Emirates on Judicial Assistance in Civil and Commercial Matters, dated December 7, 2006.

<sup>2</sup> See [Memorandum of Guidance as to Enforcement between the Commercial Court, Queen’s Bench Division, England and Wales and Abu Dhabi Global Market Courts](#) (December 6, 2016); [Memorandum of Guidance as to Enforcement between the DIFC Courts and the Commercial Court, Queen’s Bench Division, England and Wales](#) (January 23, 2013).

<sup>3</sup> Cabinet Decision No. 57 on the Implementing Regulation of Federal Law No. (11) of 1992 on the Civil Procedure Law (December 9, 2018), Article 85.

<sup>4</sup> See, e.g., *JSC VTB Bank v Pavel Valerjevich Skurikhin, Pikeville Investments LLP, Perchwell Holdings LLP* [2014] EWHC 271 (Comm), ¶¶ 18-20.

<sup>5</sup> *Lenkor Energy Trading DMCC v Mr Irfan Iqbal Puri* [2021] EWCA Civ 770, ¶¶ 10-16.

<sup>6</sup> *Ibid.*, ¶¶ 33-35.

<sup>7</sup> *Ibid.*, ¶ 1.

Mr. Puri resisted enforcement of the Dubai judgment in England and Wales on a number of grounds, including that the judgment was tainted by the illegality of the underlying agreement, making it unenforceable as a matter of public policy under English law.<sup>8</sup>

However, the Court of Appeal – and the High Court before it – held that “*this is not a question of enforcing a contract,*” but rather “*a question of enforcing a judgment given by a foreign court of competent jurisdiction.*”<sup>9</sup> For reasons including that “[t]he degree of connection between the claim and the illegality must also be balanced against the strong public policy in favour of finality, and in favour of enforceability,”<sup>10</sup> the Court of Appeal rejected Mr. Puri’s defenses, and enforced the Dubai judgment.

#### The Ministry of Justice confirms reciprocity

The *Lenkor* decision was referred to by the UAE Ministry of Justice as demonstrating reciprocity in enforcement matters between the two jurisdictions. Accordingly, in its statement of September 13, addressed to the Director General of the Dubai Courts, the Ministry of Justice noted that “*the principle has been considered by the English Courts upon previous enforcement of a judgment issued by Dubai Courts by virtue of a final judgment issued by the High Court of the United Kingdom in Lenko Energy Trading DMCC v Puri (2020) EWHC 75 (QB), which constitutes a legal precedent and a principle binding on all English Courts according to their judicial system.*” The statement therefore requests that the Dubai courts “*take the relevant legal actions regarding any requests for enforcement of judgments and orders issued by the English Court, in accordance with the laws in force in both countries, as a confirmation of the principle of reciprocity initiated by the English Courts and assurance of its continuity between the English Courts and the UAE Courts.*”<sup>11</sup>

Although the Ministry of Justice’s communiqué relates to the Dubai courts only, there is the possibility of a similar stance being taken in the Abu Dhabi courts.

#### Looking forward: new avenues for enforcement

The Ministry of Justice’s statement marks a pro-enforcement shift in the UAE, and will be a significant boost for parties seeking to enforce English court judgments in Dubai (and, potentially in due course, elsewhere in the UAE). Creditors of English court judgments will in principle now be able to enforce such judgments before the Dubai courts, provided that the conditions set out in Article 85 of Cabinet Resolution No. 57 of 2018 on the Implementing Regulation of Federal Law No. 11 of 1992 are fulfilled, which require that the foreign court that issued the judgment is competent (and that the courts of the UAE are not exclusively competent), the judgment was properly issued and ratified under the foreign municipal law, the litigants were summoned and duly represented, the judgment has *res judicata* effect, the judgment does not conflict with a judgment of the UAE courts and does not contain anything contrary to public order or morals, and provided the UAE courts have the right to obtain documents supporting the application for enforcement.<sup>12</sup>

Looking forward, parties to disputes before the English courts will have new enforcement options available where assets are located in the UAE. Conversely, defendants with assets in the UAE will take note that the enforcement landscape has shifted and that enforcement against assets in the UAE is now a real possibility.

In short, for creditors under English court judgments, this development signals greater judicial certainty, and suggests that the UAE is becoming increasingly pro-enforcement.

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<sup>8</sup> *Ibid.*, ¶ 36.

<sup>9</sup> *Ibid.*, ¶ 40.

<sup>10</sup> *Ibid.*, ¶ 40.

<sup>11</sup> 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).

<sup>12</sup> Cabinet Decision No. 57 on the Implementing Regulation of Federal Law No. (11) of 1992 on the Civil Procedure Law (December 9, 2018), Article 85.