

If You Cannot Enforce a Judgment in Your Jurisdiction, You May Still Be Able to Enforce in England

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In the recent case of *Invest Bank PSC v. Ahmad Mohammed El-Husseini and Others* [2023] 2302 (Comm), the High Court of England and Wales determined that two monetary judgments issued in the United Arab Emirates (UAE) could be enforced in the English courts under common law, despite the fact that the judgments were no longer enforceable in the UAE as a result of a statutory change to domestic law.

ENFORCEMENT OF FOREIGN JUDGMENTS: THE LEGAL POSITION

A foreign judgment may be enforced in England under common law where no other statutory method of enforcement is available.

For a foreign judgment to be enforced in England under common law, the foreign judgment must:

- Be final and conclusive on the merits of the case;
- Relate to a debt or obligation to pay a certain sum of money; and
- Have been determined by a court that is considered to be of competent jurisdiction under English law rules.

In order to enforce a foreign judgment that meets the conditions set out above, the party that has obtained the foreign judgment must commence new proceedings against the debtor in the courts of England and Wales.

THE FACTUAL BACKGROUND: INVEST BANK PSC V AHMAD MOHAMMED EL-HUSSEINI AND OTHERS

The dispute arose after the bank brought a claim in the courts of Abu Dhabi against the borrowers and the guarantor of two credit facilities granted by the bank to two UAE companies. The bank successfully obtained two monetary judgments totaling approximately AED96 million (around

US\$26 million). The bank was unable to enforce the monetary judgments in the UAE, as the UAE government enacted a decree that prevented financial institutions from enforcing claims under credit facilities against individuals or their private individual enterprises. Following this change in law, the guarantor actually obtained orders from the execution courts in Abu Dhabi prohibiting the bank from executing the monetary judgments against him.

Undaunted, the bank sought to enforce the judgments against the guarantor in England. The bank issued proceedings in the English courts and obtained a default judgment against the guarantor, who had failed to file a defense. The default judgment ordered the guarantor to pay the sums due under the UAE monetary judgments to the bank. Some months later, a co-defendant of the guarantor applied to have the default judgment set aside.

JUDGMENT

The English High Court determined that:

- The UAE monetary judgments could be enforced in England despite the fact that they were unenforceable in the UAE;
- The guarantor was liable to the bank under the

guarantees, as the guarantees remained valid under UAE law despite the statutory change preventing the monetary judgments from being enforced in the UAE; and

- The default judgment should not be set aside.

In reaching his decision, High Court Judge Stephen Houseman KC found that the UAE monetary judgments were final and binding and had *res judicata* status. The judge also found that there was no rule under common law that prevented a foreign judgment from being enforced in England as a result of unenforceability in its domestic jurisdiction. In reaching his decision, the judge determined that the inability to enforce the monetary judgments in the UAE was a procedural impediment that did not alter their validity and finality, and it was therefore not relevant to the English courts' determination of the matter before it. The guarantor therefore had no reasonable prospect of defending an enforcement claim against him in England.

PRACTICAL IMPLICATIONS

In cases where a judgment is rendered unenforceable according to local law, it is worth assessing options for enforcement in England as, according to the clarification

provided by this judgment (albeit only at first instance), the foreign judgment may still be enforceable in England under common law.

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