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Dawn of a New Age: Reciprocity of UAE-India Judgments Agreed

Enforcement of UAE Judgments in India Now Viable

On 18 January 2020, notification was officially published in the Indian Gazette confirming the Ministry of Law and Justice (Department of Legal Affairs) declaration that the United Arab Emirates (the "UAE") is now recognized as a reciprocating territory pursuant to section 44A of the Indian Code of Civil Procedure 1908 (the "CPC") (the "Notification"). This means that judgments issued by the courts of the UAE are, in principle, now directly enforceable in India as if they were judgments of the India courts.

BACKGROUND

The Notification resolves a longstanding lacuna on the long road to the realization of reciprocity between the two countries. The journey began in October 1999 with the agreement on Juridical Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgements and Arbitral Awards (the "1999 Agreement"). Despite the 1999 Agreement being ratified and coming into force in the UAE pursuant to Federal Decree No. 33 of 2000, until now it was of little practical benefit because the UAE still needed to be recognized by India as a reciprocating state. The recent Notification constitutes such recognition and thus finally puts into effect the purpose of the 1999 Agreement, namely that UAE judgments can now be recognized and enforced in India, without having to register a completely new action.

ENFORCEMENT OF UAE JUDGMENTS IN INDIA UNDER THE NEW REGIME

With the exception of criminal judgments, including fines or penalties relating to taxation and administrative charges, most civil judgments of the UAE courts are now directly enforceable in India. The applicable UAE courts have been specified as:

- the UAE Federal Supreme Court;
- all Federal, First Instance and Appeals Courts in the Emirates of Abu Dhabi, Sharjah, Ajman, Umm Al Quwain and Fujairah;
- the Abu Dhabi Judicial Department;



- the Dubai Courts;
- the Ras Al Khaimah Judicial Department;
- the ADGM Courts; and
- the DIFC Courts.

Subject to clarification from the Ministry of Law and Justice (Department of Legal Affairs), it is possible that the Notification has retroactive effect too. This means that in addition to judgments issued from 18 January 2020, judgments delivered prior to the date of the Notification may also be directly enforced in India under the new regime. Guidance on how the new regime will work in practice is yet to be established through test cases - only time will tell whether the road ahead for UAE judgment creditors enforcing in India is smooth.

COMMERCIAL IMPACTS

For Indian businesses and investors involved in proceedings in the UAE or subject to a UAE judgment the Notification is significant news. Previously, the enforcement of UAE judgments in India required the judgment creditor to commence fresh proceedings in the Indian courts to recognize the UAE judgment. This usually involved re-arguing the merits of the case. Outcomes were uncertain. The only certainties were that it would be time consuming and costly. UAE judgment debtors with assets in India knew this well and used it as pretext to delay or avoid payment. Such tactics ought now to be much reduced. Likewise, if the Notification is deemed to have retroactive effect, the floodgates may open. UAE judgment creditors who had previously deferred or declined seeking enforcement should now be more amenable to kick starting the process.

Whilst further clarification is needed from the UAE authorities, the Notification also appears to open the way for the enforcement of Indian judgments in the UAE with equivalent ease, given that Article 85 of Cabinet Resolution No. (57) of 2018 provides: *"judgments and orders issued in a foreign state may be ordered to be enforced in the State under the same conditions prescribed in the Law of that foreign state for the enforcement of judgments and orders issued in the State."*

Finally, the Notification is likely to have impact on everyday transactions. The previous hesitance of UAE businesses to include UAE court dispute resolution clauses in their contracts with Indian counterparties may now recede, paving the way for an increase in the volume of UAE-India related disputes handled in the UAE courts, as opposed to arbitration.

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