
New York and English Courts Issue Similar Joint Memoranda on the Enforcement of Money Judgments with Dubai Courts

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The March 23, 2015 Memorandum of Guidance issued jointly by the Dubai International Financial Centre Courts (DIFC Courts) and the U.S. District Court for the Southern District of New York (SDNY Court) follows the same pattern as an earlier joint memorandum released by the DIFC Courts and Commercial Courts of England and Wales and explains the courts' respective rules on the recognition and enforcement of money judgments.

Background

Because of globalization, courts are increasingly faced with the question of whether to recognize and enforce foreign money judgments. To ensure that the rules on the recognition and enforcement of foreign judgments are understood, earlier this year Chief Justice of the DIFC Courts, Michael Hwang, and Chief Judge of the SDNY Court, Loretta A. Preska, issued a joint memorandum to provide guidance on that issue. The DIFC Courts have issued similar joint memoranda with courts in other major commercial centers, including the Commercial Courts of England and Wales released in 2013, as well as the Supreme Court of Singapore and the Federal Court of Australia.

The Memoranda of Guidance detail the structure for recognition of money judgments in each jurisdiction and outline the requirements for enforcement of money judgments. Although the Memoranda do not have binding legal effect or supersede any existing legislation, they clearly state the position of the courts that have issued a Memorandum.

The DIFC Courts, pursuant to a protocol signed by the DIFC Courts and the Dubai Courts, have jurisdiction over commercial and civil matters in the Dubai International Financial Centre, a financial free zone established by the Emirate of Dubai in the United Arab Emirates. The SDNY Court, together with the New York State Supreme Court, in the first instance hears certain cases brought in Manhattan, the Bronx and Westchester County. The Commercial Courts of England and Wales is a specialist court within the

Queen's Bench Division of the High Court of England and Wales that handles civil law cases involving international trade, banking, insurance, commodities or arbitration.

Enforcement of New York and English Judgments in the DIFC Courts

A party may sue on a New York or English judgment in the DIFC Courts when a judgment is final and conclusive, and the New York or English court had jurisdiction, according to the DIFC rules on the conflict of laws, over the defendant when the judgment was rendered. However, the DIFC Courts will not enforce certain types of judgments, such as judgments ordering the payment of taxes or fines.

When the DIFC Courts rule that a New York or English judgment is final and conclusive and was rendered by a court with sufficient jurisdiction, a New York or English Court judgment may be challenged in the DIFC courts only on the grounds that (i) the judgment was obtained by fraud, (ii) the judgment is contrary to public policy, or (iii) the proceedings were conducted in a manner contrary to the DIFC courts' principles of natural justice.

In order to enforce a New York or English court judgment in the DIFC courts, the DIFC Courts must be provided with a certified copy of the judgment and a completed Claim Form, which includes a description of the nature of the claim and the amount of the judgment debt sought. If the defendant acknowledges service, the claimant must serve "Particulars of Claim," setting forth the facts supporting the claim, including the basis for the foreign court's jurisdiction. Unless the defendant can satisfy the court that it has a real prospect of establishing one of the defenses, the claimant will be entitled to summary judgment.

Recognition of Foreign Money Judgments Under New York Law

New York State law governs the enforceability in both federal and state courts—generally recognizing litigated foreign country money judgments that are final, conclusive and enforceable where rendered. The law on the recognition of default judgments, however, is unsettled. A New York court will decline to recognize a foreign country money judgment if (i) the money judgment was rendered under a dispute resolution system that does not accord with procedures consistent with due process of law, or (ii) the foreign court lacked personal jurisdiction over the defendant.

A New York court has discretion to find that the foreign court had personal jurisdiction where the exercise of personal jurisdiction by the foreign court would be considered fundamentally fair under U.S. jurisprudence. For example, a New York court will not find that personal jurisdiction is lacking if the defendant agreed to submit to the jurisdiction of the foreign court, is personally served in the foreign country, or has sufficient ties to the foreign country.

A New York court will deny recognition where:

- The foreign court lacked subject matter jurisdiction;
- The defendant did not receive proper notice of the proceedings;
- The judgment was obtained by fraud;
- The cause of action upon which the judgment is based is repugnant to the public policy of New York. (A cause of action will not be deemed repugnant simply because a New York Court would have decided it differently.);
- The judgment conflicts with a separate, distinct final judgment;
- The proceeding in the foreign court was contrary to a prior agreed-upon method of dispute resolution; or

- The judgment is for defamation, and freedom of speech receives less protection than under the United States or New York constitutions.

Procedure for Enforcement of the DIFC Courts Judgments in New York Courts

In New York, recognition and enforcement of a foreign country judgment cannot occur after the judgment enforcement statute of limitations has expired under New York law or the foreign country's law. The statute of limitations in New York for foreign judgment enforcement is generally twenty years. Assuming that the statute of limitations has not run on a specific judgment, recognition and enforcement may be sought by filing (i) an action for recognition and enforcement of the judgment, (ii) a motion for summary judgment in lieu of a complaint if the enforcement action is started in New York State court, or (iii) if an action is already pending between the same parties, a counterclaim, cross-claim or assertion of an affirmative defense.

Enforcement of Foreign Judgments in English Courts

The approach to the reciprocal enforcement of money judgments in the DIFC Courts and the English courts was set out in a Memorandum of Guidance in 2013, between the DIFC Courts and the Commercial Courts of England and Wales. Both courts apply principles based on the English common law. In order to be enforceable, a foreign money judgment must be final and conclusive, and must not be for the enforcement of taxes, fines or penalties. The English courts will apply their conflict of laws rules to be satisfied that the foreign court had jurisdiction to determine the subject matter of the dispute underlying the judgment. Once jurisdiction is established, the foreign judgment can be challenged only on limited grounds—for example, that it was obtained by fraud, is contrary to public policy, or that the proceedings contravened principles of natural justice.

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