

MEMORANDUM OF GUIDANCE

BETWEEN

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS



AND

THE HIGH COURT FOR ZAMBIA



JUDICIARY OF ZAMBIA



1. Introduction

- 1.1 A Memorandum of Guidance signed this.....day of Two Thousand and Seventeen between the Dubai International Financial Centre Courts (**‘the DIFC Courts’**) and the High Court of the Republic of Zambia (**‘the High Court’**).
- 1.2 The purpose of this memorandum is to set out the parties’ understanding of the procedures for the enforcement of each party’s money judgments in the other party’s courts. This memorandum is concerned only with judgments requiring a person to pay a sum of money to another person.
- 1.3 This memorandum has no binding legal effect. It does not constitute a treaty or legislation, is not binding on the judges of either party and does not supersede any existing laws, judicial decisions or court rules. It is not intended to be exhaustive and is not intended to create or alter any existing legal rights or relations or to create any binding arrangements for the reciprocal enforcement of each party’s money judgments.
- 1.4 The parties desire and believe that the cooperation demonstrated by this memorandum will promote a mutual understanding of their laws and judicial processes and will improve public perception and understanding.

2. The High Court for Zambia

The High Court is established under Article 133 of the Constitution of the Republic of Zambia and forms part of the court hierarchy. The High Court has unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law, except for matters exclusively reserved for the jurisdiction of the Industrial and Labour Relations Court. The civil jurisdiction of the High Court has two divisions namely; i) the General List; and ii) the Commercial List. The Commercial List is governed by Order 53 of the High Court Rules, Chapter 27 of the Laws of Zambia and specifically deals with disputes arising out of any transaction relating to commerce, trade, industry or any action of a business nature. However, appeals from both the General List and Commercial List lie to the Court of Appeal.

3. The DIFC Courts

The DIFC Courts form part of the legal system of the United Arab Emirates, albeit that this memorandum only states the position as it applies to the DIFC Courts. They deal with civil and commercial disputes which are connected to the Dubai International

Financial Centre or in respect of which the parties have agreed that the DIFC Courts should have jurisdiction. The DIFC Courts consist of a Small Claims Tribunal (SCT), a Court of First Instance and a Court of Appeal. They were established by Dubai Laws 9 and 12 of 2004 (now amended) and operate as a common law court, applying the highest international standards of legal procedure. The Courts' judiciary is selected from common law jurisdictions around the world and from Dubai and enjoy the highest international renown.

4. Application of the common law of England and Wales

- 4.1 Pursuant to section 10 of the High Court Act, Chapter 27 of the Laws of Zambia (the "**High Court Act**"), the jurisdiction of the High Court as regards practice and procedure is to be exercised in the manner provided under *inter alia*, the High Court Act or such written law and in default thereof in substantial conformity with the law and practice for the time being observed in England.
- 4.2 In Zambia, registration of foreign judgments is governed by the Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76 of the Laws of Zambia (the "**FJRE Act**"). Under section 3 of the FJRE Act, the President of the Republic of Zambia may by statutory instrument direct reciprocal enforcement of judgments of superior courts of a specified foreign country by the High Court subject to the provisions of the FJRE Act.
- 4.3 The parties recognise and agree that there is currently no treaty and no statutory instrument in place pursuant to which either party's judgments may be enforced by the other party's courts and that the DIFC Courts are not superior courts within the meaning of the FJRE Act.
- 4.4 The parties also agree that by effect of this memorandum, in the absence of a relevant treaty and statutory instrument, a foreign judgment may be enforced in the High Court and the DIFC Courts by way of a claim made at common law, in accordance with the principles and practice described below.
- 4.5 Under the common law, where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another, a legal obligation arises on the debtor to pay that sum. The creditor may bring a claim to enforce that obligation as a debt.
- 4.6 The approach of the DIFC Courts to the enforcement of High Court judgments is based on the English common law and the same approach is applied.

5. The requirements for enforcement of DIFC Courts judgments in the High Court

5.1 In order to be sued upon in the High Court, a money judgment of the DIFC Courts must stipulate a definite sum and must be final and conclusive. It may be final and conclusive even though it is subject to an appeal. Under section 3(2) of the FJRE Act, any judgment of a superior court of a foreign country (if the foreign country is permitted as such by statutory instrument) other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which the FJRE Act applies if:

5.1.1 it is final and conclusive as between the parties thereto; and

5.1.2 there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

5.2 The High Court will not enforce certain types of DIFC Courts judgments, for example judgments ordering the payment of taxes, fines or penalties.

5.3 The DIFC Courts must have had jurisdiction, according to the Zambian rules of the conflict of laws, to determine the subject matter of the dispute. In addition, the enforcement proceedings in the High Court must be in respect of a money judgment issued by the DIFC Courts. The High Court will generally consider the DIFC Courts to have had the required jurisdiction only where the person against whom the judgment was given:

5.3.1 was, at the time the proceedings were commenced, habitually resident or incorporated in or having a principal place of business in the jurisdiction;

5.3.2 was the claimant, or counterclaimant, in the proceedings; or

5.3.3 submitted to the jurisdiction of the DIFC Courts; or

5.3.4 agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the DIFC Courts.

5.4 Where the above requirements are established to the satisfaction of the High Court, a DIFC Courts judgment may be challenged in the High Court only on limited grounds. Those grounds include (but are not limited to):

5.4.1 where the judgment was obtained by fraud;

- 5.4.2 where the judgment is contrary to Zambian public policy; and
- 5.4.3 where the proceedings were conducted in a manner which the High Court regards as contrary to the principles of natural justice.
- 5.5 Notwithstanding clause 5.4 above, the High Court will not re-examine the merits of a DIFC Courts judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A DIFC Courts judgment will be enforced on the basis that the defendant has a legal obligation as a matter of common law, recognised by the High Court to satisfy a judgment of the DIFC Courts.

6. **The requirements for enforcing High Court judgments in the DIFC Courts**

- 6.1 The same principles set out above will be applied to determine whether a party may sue on a High Court judgment in the DIFC Courts.
- 6.2 In order to be sued upon in the DIFC Courts, a judgment of the High Court must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
- 6.3 The DIFC Courts will not enforce certain types of High Court judgments, for example judgments ordering the payment of taxes, fines or penalties.
- 6.4 The High Court must have had jurisdiction, according to the DIFC rules on the conflict of laws, to determine the dispute. The DIFC Courts will generally consider the High Court to have had the required jurisdiction only where the person against whom the judgment was given:
- 6.4.1 was, at the time the proceedings were commenced, present in the jurisdiction; or
- 6.4.2 was the claimant, or counterclaimant, in the proceedings; or
- 6.4.3 submitted to the jurisdiction of the High Court; or
- 6.4.4 agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the High Court.
- 6.5 Where the above requirements are established to the satisfaction of the DIFC Courts, a High Court judgment may be challenged in the DIFC Courts only on limited grounds. Those grounds include (but are not limited to):
- 6.5.1 where the judgment was obtained by fraud;

- 6.5.2 where the judgment is contrary to public policy; and
- 6.5.3 where the proceedings were conducted in a manner which the DIFC Courts regard as contrary to the principles of natural justice.
- 6.6 The DIFC Courts will not re-examine the merits of a High Court judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A High Court judgment will be enforced on the basis that the defendant has a legal obligation, recognised by the DIFC Courts, to satisfy a judgment of the High Court.

7. The procedure for enforcement of DIFC Courts judgments in the High Court

- 7.1 In order to enforce a judgment of the DIFC Courts in the High Court, a party must issue a Summons in the High Court accompanied by an Affidavit Verifying Facts ("Verifying Affidavit"). The Affidavit should exhibit a certified copy of the judgment intended for enforcement. The Summons together with the Verifying Affidavit should be filed at the High Court with a list of witnesses and a bundle of documents containing all relevant documents which the enforcing party relied on in the DIFC Courts.
- 7.2 A party may obtain a certified copy of a DIFC Courts judgment by making an application to the DIFC Courts. The application may be made without notice and must exhibit a copy of the judgment which is required to be certified. Where the DIFC Courts provide a certified copy of a DIFC Courts judgment, they will provide a copy of the judgment on which will be endorsed a certificate that it is a true copy. The certificate will be signed by a Judge or by the Registrar. The certified copy of the judgment will be sealed with the seal of the DIFC Courts.
- 7.3 Where the judgment debtor is outside the Republic of Zambia, the claimant must apply for leave to serve process outside the jurisdiction pursuant to Order X of the High Court Rules.
- 7.4 If, following service of summons, the defendant does not respond to the claim within the specified time period, the claimant will be entitled to obtain judgment in default pursuant to Order XI of the High Court Rules.
- 7.5 Where a judgment debtor enters appearance, but fails to file a defence within the required period of time, the judgment creditor will be entitled to enter judgment on admission.

- 7.6 If the claim on the DIFC Courts judgment is successful, the judgment creditor will then have the benefit of a High Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the High Court to enforce the judgment, including:
- a. orders for delivery of any property specifically decreed;
 - b. orders for attachment and sale, or for sale without attachment of any property including land;
 - c. orders for attachment of debts;
 - d. orders for arrest and detention in prison of any person (subject to prescribed conditions under Zambian law);
 - e. orders for appointment of a receiver; or
 - f. orders for execution in such other manner as the nature of the relief granted may require.

8. The procedure for enforcement of High Court judgments in the DIFC Courts

- 8.1 In order to enforce a High Court judgment in the DIFC Courts, the procedure is very similar.
- 8.2 In order to enforce a High Court judgment in the DIFC Courts, a party must issue a Claim Form in the DIFC Courts, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the claim form.
- 8.3 A party may obtain a certified copy of a High Court judgment by making an application to the High Court. The application may be made without notice and must exhibit a copy of the judgment which is required to be certified. Where the High Court provides a certified copy of a High Court judgment, it will provide a copy of the judgment on which will be endorsed a certificate that it is a true copy. The certificate will be signed by a Judge. The certified copy of the judgment will be sealed with the seal of the High Court.
- 8.4 Under Rule 9.53 of the Rules of the DIFC Courts 2017, there is no requirement to obtain the permission of the DIFC Courts before serving proceedings outside the DIFC. However, it remains open to the defendant to challenge the jurisdiction of the DIFC Courts.

- 8.5 If, following service, the defendant does not respond to the claim, the claimant will be entitled to obtain judgment in default under Part 13 of the Rules of the DIFC Courts 2017.
- 8.6 If the defendant acknowledges service, the claimant must file and serve Particulars of Claim, setting out a concise statement of the facts relied on in support of the claim. The Particulars of Claim should contain a statement that the High Court had jurisdiction on the grounds set out in clause 6.4 above.
- 8.7 In most cases, a party will be entitled to apply to obtain immediate judgment without trial under Part 24 of the Rules of the DIFC Courts 2017, unless the debtor can satisfy the Court that it has a real prospect of establishing at trial one of the grounds set out in clause 6.5 above. Applications for immediate judgment are dealt with swiftly, without the need for oral evidence.
- 8.8 If the claim on the High Court judgment is successful, the judgment creditor will then have the benefit of a DIFC Courts judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the DIFC Courts to enforce the judgment, including:
- a. third party debt orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
 - b. charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;
 - c. orders for possession of land;
 - d. orders for sale of land or other property over which the judgment creditor has the benefit of a charge;
 - e. orders requiring judgment debtors to provide information about their assets;
 - f. orders appointing enforcement officers to seize and sell the judgment debtor's goods;
 - g. orders appointing receivers;
 - h. orders for committal for contempt of court;
 - i. orders relating to insolvency procedures.

9. Contacting the Courts

9.1 Further information about the High Court can be obtained:

9.1.1 by visiting the website of the Judiciary of Zambia at:
www.judiciaryzambia.com

9.1.2 by contacting the Principal or Commercial Registries of the High Court at:

Address: The Judiciary of Zambia, Plot 438, Independence Avenue, P.O. Box 50067, Lusaka, Zambia.

Telephone: +260 211 255104

Email: commercialcourt@judiciaryzambia.com

10. Further information about the DIFC Courts can be obtained:

10.1.1 By visiting the website of the DIFC Courts at: <http://difccourts.ae/>

10.1.2 By contacting the DIFC Courts Registry at:

Address: Ground Floor, Building 4, The Gate District, PO Box 211724, Dubai, UAE;

Telephone: +971 4 427 3333;

Email: registry@difccourts.ae

Signed this

day of October, 2017 by:

Michael Hwang, SC
Chief Justice
DIFC Courts

The Hon. Mrs Justice Irene C. Mambilima
Chief Justice
Republic of Zambia

The Honourable Mr. Mark Beer
Registrar General
DIFC Courts

The Honourable Mr. Charles Kafunda
Chief Registrar of the High Court
Republic of Zambia