



MEMORANDUM OF GUIDANCE
BETWEEN
THE FEDERAL COURT OF MALAYSIA
AND
THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS
ON
UNDERSTANDING THE ENFORCEMENT OF MONEY
JUDGMENTS

THE FEDERAL COURT OF MALAYSIA having its address at Level 5, Palace of Justice, Presint 3, PUTRAJAYA (hereinafter referred to as “**THE FEDERAL COURT OF MALAYSIA**”) and the Dubai International Financial Centre Courts (hereinafter referred to as “**DIFC Courts**”) having its address at Ground Floor, Building 4 The Gate District, Dubai, United Arab Emirates (hereinafter referred to individually as “**the Participant**” and collectively as “**the Participants**”),

Introduction

1. The purpose of this memorandum is to set out the Participants understanding of the procedures for the enforcement of each Participant’s money judgments in the other Participant’s courts. This memorandum is concerned only with judgments requiring a person to pay a sum of money to another person.
2. This memorandum has no binding legal effect. It does not constitute a treaty or legislation, is not binding on the judges of either Participant and does not supersede any

existing or future laws, judicial decisions or court rules. It is not intended to be exhaustive and is not intended to create or alter any existing or future legal rights or relations or to create any binding arrangements for the reciprocal enforcement of each Participant's money judgments.

3. The Participants 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.

The Federal Court of Malaysia

4. The Federal Court of Malaysia is the highest Superior Court within the hierarchy of Malaysian Courts and it is established by Part IX of the Federal Constitution. The other Superior Courts also established by Part IX of the Federal Constitution are the Court of Appeal and two High Courts of coordinated jurisdiction namely the High Court of Malaya and the High Court of Sabah and Sarawak. All these Superior Courts have jurisdiction on civil, commercial and criminal matters.

The Dubai International Financial Centre ("DIFC") Courts

5. The DIFC Courts form part of the legal system of the United Arab Emirates ("UAE"), 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 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.

Enforcing a judgment of the DIFC Courts at the High Court, Malaysia

6. There is currently no treaty and legislation in place pursuant to which either party's judgments may be enforced by the other party's courts. In the absence of a relevant treaty, a foreign judgment may be enforced at Malaysia's High Courts by a claim made at common law.
7. The approach of Malaysia's High Courts is similar to the position found in the English 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. This legal obligation to pay the debt is however separate from the underlying cause of action.
8. The judgment of the DIFC Courts must be final and conclusive on the merits of the case, and for a fixed or ascertainable sum of money. The fact that there is an appeal to a higher court does not prevent the judgment from being final and conclusive.

9. The Malaysia's High Courts will not enforce a judgment of the DIFC Courts which would amount to the direct or indirect enforcement of any foreign penal, revenue or public law.
10. The DIFC Courts must have had jurisdiction, according to the conflict of laws rules determined to be applicable by Malaysia's High Courts, to determine the subject matter of the dispute. The Malaysia's High Courts will generally consider the court to have had the required jurisdiction only where the person against whom the judgment was given:
 - (a) was, at the time the proceedings were commenced, present or resident in the jurisdiction of the DIFC Courts; or
 - (b) was the claimant, or counterclaimant, in the proceedings; or
 - (c) submitted to the jurisdiction of the DIFC Courts; or
 - (d) agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the DIFC Courts.
11. Where the above requirements are established to the satisfaction of Malaysia's High Courts, a judgment of the DIFC Courts may be challenged in the Malaysia's High Courts only on limited grounds. Those grounds include (but are not limited to):
 - (a) where the judgment was obtained by fraud;
 - (b) where the judgment is contrary to Malaysian public policy; and
 - (c) where the proceedings were conducted in a manner which the Malaysia's High Courts regards as contrary to the principles of natural justice.
12. The Malaysia's High Courts will not re-examine the merits of a judgment of the DIFC Courts. The judgment may not be challenged on the grounds that it contains an error of fact or law.

The requirements for enforcing judgments of the Malaysia's Superior Courts in the DIFC Courts

13. Similar principles to those set out above will be applied to determine whether a party may sue on a judgment of the Malaysia's Superior Courts in the DIFC Courts.
14. In order to be sued upon in the DIFC Courts, a judgment of the Malaysia's Superior Courts must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
15. The DIFC Courts will not enforce certain types of judgments, for example judgments ordering the payment of taxes, fines or penalties.

16. The Malaysia's Superior Courts 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 Malaysia's Superior Courts to have had the required jurisdiction only where the person against whom the judgment was given:
 - (a) was, at the time the proceedings were commenced, present in the jurisdiction; or
 - (b) was the claimant, or counterclaimant, in the proceedings; or
 - (c) submitted to the jurisdiction of the Malaysia's Superior Courts; or
 - (d) agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the Malaysia's Superior Courts.

17. Where the above requirements are established to the satisfaction of the DIFC Courts, a judgment of the Malaysia's Superior Courts may be challenged in the DIFC Courts only on limited grounds. Those grounds include (but are not limited to):
 - (a) where the judgment was obtained by fraud;
 - (b) where the judgment is contrary to UAE public policy; and
 - (c) where the proceedings were conducted in a manner which DIFC Courts regards as contrary to the principles of natural justice.

18. The DIFC Courts will not re-examine the merits of a judgment of the Malaysia's Superior Courts. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of the Malaysia's Superior Courts will be enforced on the basis that the defendant has a legal obligation, recognized by the DIFC Courts, to satisfy a judgment of the Malaysia's Superior Courts.

The procedure for enforcement of DIFC Courts Judgments in the Malaysia's High Courts

19. In order to enforce a judgment of the DIFC Courts, the judgment creditor must commence an action by filing a writ or an originating summons at the High Court, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt (*action in debt*). A certified copy of the judgment should be exhibited to the writ.

20. A party may obtain a certified copy of a DIFC Court 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 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 or the Registrar. The certified copy of the judgment will be sealed with the seal of the DIFC Courts.

21. Where the judgment debtor is outside of Malaysia, the judgment creditor needs to seek the leave of court to serve the writ out of the jurisdiction in accordance with Order 11 of Malaysia's Rules of Court 2012 ("RoC 2012"). The application for leave should be supported by an affidavit:
 - (a) exhibiting a certified copy of the DIFC Court judgment;
 - (b) stating that the claim is brought to enforce a DIFC Court judgment (see in particular Order 11, rule 1 (M) of the RoC 2012);
 - (c) stating that the judgment creditor believes that it has a good cause of action; and
 - (d) stating the place or country the judgment debtor is, or probably may be found.
22. If, following service, the judgment debtor does not respond to the claim, the claimant will be entitled to obtain judgment in default under Order 13, rule 1 of RoC 2012.
23. If the judgment debtor acknowledges service, the claimant must file and serve a statement of claim setting out the material facts which are relied upon for the claim, and the necessary particulars of the claim.
24. In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial under Order 14 of RoC 2012, unless the judgment debtor can raise a triable issue in relation to a defence based on the ground that the DIFC Court judgment was obtained by fraud, contrary to Malaysia's public policy or rendered contrary to principles of natural justice. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
25. If the claim on the DIFC Court judgment is successful, the judgment creditor will then have the benefit of a judgment of the Malaysia's High Courts. The judgment creditor will be entitled, if necessary, to use the procedures of the Malaysia's High Courts to enforce the judgment under Order 45 of RoC 2012.

The procedure for enforcement of judgments of the Malaysia's Superior Courts in the DIFC Courts

26. In order to enforce a judgment of the Malaysia's Superior Courts 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.
27. A party may obtain a certified copy of a judgment of the Malaysia's Superior Courts by making an application in accordance with the RoC 2012.
28. Under Rule 9.53 of the Rules of the DIFC Courts 2014, 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.

29. 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 2014.
30. 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 Malaysia's Superior Courts had jurisdiction on the grounds set out in paragraph 16 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence. In most cases, a party will be entitled to apply to obtain summary judgment without trial under Part 24 of the Rules of the DIFC Courts 2014, unless the debtor can satisfy the Court that it has a real prospect of establishing at trial one of the grounds set out in paragraph [17] above.
31. If the claim on the judgment of the Malaysia's Superior Courts is successful, the judgment creditor will then have the benefit of a DIFC Court 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; and
 - (i) orders relating to insolvency procedures.

Contacting the Courts

32. Further information about the Malaysia's Superior Courts can be obtained:
 - (a) by visiting the website of the Malaysian Courts at <http://www.kehakiman.gov.my>;
 - (b) by contacting the Office of the Chief Justice, Federal Court:
 - (i) at Level 5, Palace of Justice, Precint 3, 62506, Putrajaya, Malaysia;

(ii) by telephone at +603 8880 3500/3502; or

(iii) by email at cj@kehakiman.gov.my

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

(a) by visiting the website of the DIFC Courts at <http://www.difccourts.ae/Default.aspx>;

(b) by contacting the DIFC Courts Registry:

(i) at Ground Floor, Building 4, The Gate District, PO Box 211724, Dubai, UAE;

(ii) by telephone at +971 4 427 3333; or

(iii) by email at registry@difccourts.ae.

SIGNED this..... day of _____, 2016 by:

TUN ARIFIN BIN ZAKARIA
CHIEF JUSTICE
THE FEDERAL COURT OF MALAYSIA

MICHAEL HWANG, SC
CHIEF JUSTICE
DIFC COURTS