



محاكم  
DIFC  
COURTS

# DIFC COURTS ENFORCEMENT GUIDE

EDITION 4

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## **ENFORCING DIFC COURT JUDGMENTS AND ORDERS OUTSIDE THE DIFC**

1. This paper has been drafted with a view to serving as guidance to practitioners and potential claimants as to the legal background and practicalities involved in enforcing DIFC Court judgments, decisions and orders outside the DIFC. Although this Enforcement Guide has been produced by the DIFC Courts following public consultation, it does not constitute a protocol or set of rules which are binding on the DIFC Courts or the Courts of other jurisdictions in which enforcement of DIFC Court judgments may be sought.
2. The Guide will consider the enforcement of DIFC Court judgments and orders:
  - a. In Dubai, but outside the DIFC;
  - b. In the UAE, but outside Dubai; and
  - c. Outside the UAE.
3. A selection of English language versions of some of the relevant parts of the source materials referred to below are included in an annex to this paper.

### **A. The Enforcement of DIFC Court Judgments and Orders in Dubai, but outside the DIFC**

4. A system has been established for the enforcement of DIFC Court judgments and orders in Dubai<sup>(1)</sup>. The system is designed to be simple, swift and effective<sup>(2)</sup>. It has been used

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<sup>(1)</sup>Reference should be made to the Dubai Courts and the DIFC Courts Joint Committee which was established in January 2011 to oversee the development of operational protocols regarding jurisdiction and enforcement.

successfully on numerous occasions since its introduction in 2004<sup>(3)</sup>. In order to increase the efficiency of the system, the process has been slightly modified by the amendment to Dubai Law No. 12 of 2004 ("the DIFC Law") in October 2011<sup>(4)</sup>.

5. Prior to the amendment of the DIFC Law, the DIFC Courts and Dubai Courts entered into a Protocol of Enforcement ("the Protocol")<sup>(5)</sup>. Amongst other things, the Protocol clarified two of the requirements for the enforcement of DIFC Court judgments in Dubai<sup>(6)</sup>.
6. First, the Protocol clarified (at footnote 1) that a judgment, decision or order is "final" if either:
  - a. It is final and unappealable; or
  - b. It is an order made either before or during the course of proceedings and is said on its face to be an "Execution Order".

Second, the Protocol clarified (at footnote 2) that a "legal" translation was a translation carried out by a translator authorised by the UAE Ministry of Justice. This Protocol has now been superseded and codified by the terms of Law No. 16 of 2011.

7. DIFC Court judgments, decisions or orders may be enforced through the Dubai Courts if three conditions are satisfied (Article 7(2) of the DIFC Law):
  - a. They must be final and executory ;

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<sup>(2)</sup>An interesting distinction can be noted between the common law system, which the DIFC Courts to a large extent adopt, and in which judgments can be enforced even where an appeal is still available against them, save where a stay of execution pending appeal is granted; and the civil law system to which the Dubai Courts pertain, and in which judgments cannot be enforced until the time-limits for any available appeals against them have expired, save where an urgent order for execution has been granted.

<sup>(3)</sup>See Dubai Law No.12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre.

<sup>(4)</sup>See Law No. 16 of 2011 Amending Certain Provisions of Law No. 12 of 2004 Concerning the DIFC Courts, which has: (i) further clarified the procedures for the execution of DIFC Court judgments, decisions and orders; and (ii) expanded the jurisdiction of the DIFC Courts, by permitting the DIFC Courts to assert jurisdiction in cases submitted to the DIFC Courts by the agreement of parties in writing before or after the dispute has occurred (even if such parties do not have a nexus with the DIFC) (Article 5 of Law No. 16 of 2011). This expansion of jurisdiction is likely to increase the use of the DIFC Courts by a range of commercial parties in Dubai, the UAE and regionally.

<sup>(5)</sup>It should be noted that the Protocol served more as "soft law" guidance under UAE law (as such Protocols have no legal status until brought into effect by either Federal or Dubai Ruler's Decree.

<sup>(6)</sup>The legal provisions cited in this guide are subject to interpretation by the relevant courts.

- b. They must be legally translated into Arabic;
  - c. They must be certified by the DIFC Courts for execution and have a formula of execution affixed by the Courts<sup>(7)</sup>.
8. The procedure for enforcement is described in Article 7(3) of the DIFC Law (as amended).
  9. The enforcing party must first request an execution letter from the DIFC Courts. This is a letter written by the DIFC Courts to the Chief Justice of the Dubai Courts, setting out the procedures required for the enforcement of the judgment, decision or order.
  10. The party seeking enforcement must then present an application for enforcement to the execution judge at the Dubai Courts, accompanied by the execution letter and a legal translation into Arabic of the judgment, decision or order.
  11. On receipt of the application, the Dubai Courts must enforce the judgment, decision or order in accordance with the Federal Civil Procedures Law<sup>(8)</sup>. The basis on which enforcement may be challenged is set out in that law. Importantly, however, the execution judge may not re-open the merits of the case .
  12. Enforcement in Dubai of money judgments from the DIFC Courts has proved a reliable procedure to date. DIFC Court judgments should be enforced in the Dubai Courts in the same way as judgments delivered by the Dubai Courts outside the DIFC.
  13. The procedure now in effect is that the DIFC Court judgment, order or decision is “converted” into a judgment of the Dubai Courts, which can then subsequently be enforced under any enforcement treaties to which the UAE is a party.
  14. By way of background, Article 235 of the Federal Civil Procedures Law states that the UAE Courts will not enforce a foreign judgment if they would themselves have had

<sup>(7)</sup> The formula of execution affixed by the Courts reads as follows: “Authorities must take the initiative to enforce this document and assist in implementing it even forcefully whenever requested to.”

<sup>(8)</sup> 8 Civil Procedure [Fed. Law 11 of 1992] as amended – referred to in Article 7(3)(c) of Law No. 12 of 2004 (as amended).

<sup>(9)</sup> See Article 7(3)(c) of the DIFC Law as amended

jurisdiction over the dispute<sup>(10)</sup>. This requirement was applied in 1993, for example, in Dubai Court of Cassation decision No. 117/93. In that case, the Defendants were residents of the UAE and therefore, under UAE law, the Dubai Courts were deemed to have jurisdiction to hear the case. On that basis, the Dubai Court of Cassation refused to enforce a Hong Kong money judgment against them. Moreover, the UAE Courts are unlikely to enforce a foreign arbitral award or court judgment unless “reciprocity” has been proved by the party requesting enforcement<sup>(11)</sup>.

15. There are a number of cases where DIFC Court orders, decisions and judgments have been enforced by the Dubai Courts<sup>(12)</sup>. DIFC Court orders which have been so enforced include interim orders, such as freezing orders (Mareva injunctions)<sup>(13)</sup> However, there is no record of the execution of any DIFC Court search orders (Anton Piller orders) by the Dubai Courts. This is due to the practice of the Dubai Courts of only enforcing applications for the execution of orders against assets but not, by contrast, against documents and other evidence.

## **B. Enforcement in the UAE outside Dubai**

16. Prior to the coming into force in November 2011 of Law No. 16 of 2011 amending certain provisions of Law No. 12 of 2004, the enforcement of DIFC Court judgments and orders outside Dubai but in the UAE had to be pursued through the process of “deputisation” or “referral”, as provided under Article 221 of the Federal Civil Procedures Law.
17. Article 221 provides for the following procedure:
  - a. The “competent execution judge” (until now considered to be the Dubai execution judge as regards DIFC judgments) shall refer the judgment or order to the execution

<sup>(10)</sup> In the absence of a bilateral or multilateral treaty.

<sup>(11)</sup> See the decision of the Dubai Court of Cassation in *Arabian Express Lines v Tara Commercial Intermediary*, where it was held that an English High Court judgment enforcing a UAE court judgment was needed to be proved to the satisfaction of the Dubai court to have been effected in advance of the UAE enforcing any English court order.

<sup>(12)</sup> Feedback received from practitioners during consultation attests to relatively smooth procedures for enforcement at the Dubai courts – with DIFC judgments, decisions and orders going straight to execution as per the relevant provisions (Articles 221 and 235) of the UAE Federal Civil Procedures Law.

<sup>(13)</sup> One such example is the case of *Mohammed Usman Saleem v. Oasis Crescent Capital (DIFC) Limited and HSBC Bank Middle East Limited (CFI – enforcement no. 002/2008)* – in which a branch of HSBC Bank located outside the DIFC and in Dubai was ordered to freeze the amount of AED 70,809 in the account of the judgment debtor. In this case, a letter of execution was issued by the DIFC Courts to the Dubai Courts.

judge for the area in which the judgment or order is sought to be enforced, and provide the latter with all the legal papers required for execution.

- b. The execution judge to whom the referral is made shall take all the decisions necessary to execute the referral and shall rule on procedural objections relating to the execution raised before him, and his appealable decisions shall be subject to appeal before the court of appeal in his area.
- c. The execution judge who has carried out the execution shall inform the competent execution judge who made the referral of what has happened, and shall transfer to him any items or other property received by him as a result of the sale of things attached.
- d. If the execution judge to whom the matter has been referred finds that there are legal reasons precluding the execution, or if it is impossible for him to execute for any other reason, he must notify the competent execution court thereof.

18. Article 7(2) of Law No. 16 of 2011, which amends certain provisions of Law No. 12 of 2004 provides that:

*“where the subject matter of execution is situated outside the DIFC, the judgments, decisions and orders rendered by the Courts and the Arbitral Awards ratified by the Courts shall be executed by the competent entity having jurisdiction outside the DIFC in accordance with the procedure and rules adopted by such entities in this regard...”*

19. This has been interpreted by some as indicating that following the coming into force of this amending Law, DIFC Court judgments, decisions and orders will be able to be sent directly from the DIFC Courts for execution by the local “competent entity” within the UAE, without the need for going through the Dubai execution judge and the process of “deputisation” or “referral” set out in the above-mentioned Article 221 of the Federal Civil Procedures Law. Another view is that the Federal Civil Procedures Law always allowed for DIFC Court judgments to be sent directly to the competent entity where execution was being sought, and that amending Law No. 16 simply confirms the position that the DIFC execution judge may be considered to be a “competent execution judge” for the purposes of Article 221 of the Law<sup>(14)</sup>.

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<sup>(14)</sup> The interpretation of the relevant law on these points is still developing and readers would be well advised to consult current case-law and practice to get the most current understanding of enforcement of DIFC Court judgments, decisions and orders.

20. However, given that there is as yet no established practice of this, parties seeking to enforce judgments, decisions and orders emanating from the DIFC Courts might be better advised to opt for the “tried and tested” means provided by Article 221<sup>(15)</sup>.

21. The recent Memoranda of Understanding (MOUs) between the DIFC Courts and the Courts in the Emirate of Ras Al Khaimah and the UAE Federal Ministry of Justice are expected to assist in the enforcement of DIFC judgments, decisions and orders within the UAE<sup>(16)</sup>.

### **C. Enforcement outside the UAE**

22. In principle, the enforcement of DIFC Court judgments, decisions and orders outside the UAE will be exactly the same as the enforcement of a judgment of the Dubai Courts. Constitutionally, the DIFC Court is part of the Dubai judicial system and so its judgments have the same weight as Dubai Court judgments<sup>(17)</sup>.

23. Where there is a relevant treaty in place between the UAE and the target jurisdiction, enforcement will be governed by the terms of that treaty. Where there is not, enforcement will depend on the laws of the state in which the judgment creditor is seeking to enforce<sup>(18)</sup>.

#### *Treaties*

24. The UAE has entered into a number of treaties with other countries which govern the reciprocal enforcement of judgments:

- a. The GCC Convention (1996);

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<sup>(15)</sup> It has been suggested by some commentators in the legal community that the enforcement of the DIFC judgments, decisions and orders should be enshrined into statute either by way of an update to the UAE Civil Procedure Code or the issuance of a UAE Arbitration Law.

<sup>(16)</sup> There was also an MOU recently signed between the DIFC Courts and the Kingdom of Jordan.

<sup>(17)</sup> The exact nature of the DIFC Courts as a judicial body might be described as *Sui generis*. Though established by an amendment to Article 121 of the UAE Constitution and the Federal and Dubai laws which followed, it does not form part of the Dubai Courts Judicial Council and has to date been reliant on the Dubai Courts for the execution of its judgments and orders outside the DIFC. How Article 7 of the amending Law No 16 of 2011 might affect the enforcement procedure in the future remains to be seen.

<sup>(18)</sup> For the applicable procedure to be followed, see Article 7 of Law No. 12 of 2004, as amended.

- b. The Riyadh Arab Agreement for Judicial Cooperation ("the Riyadh Convention" 1983);
- c. The Agreement on Judicial Cooperation, Execution of Judgments and Extradition of Criminals between the United Arab Emirates and the Tunisian Republic (1975);
- d. The Convention on Judicial Assistance, Recognition and Enforcement of Judgments in Civil and Commercial matters signed between France and the UAE ("the Paris Convention" 1992);;
- e. The Agreement on Juridical Cooperation in Civil and Commercial Matters with India (2000);\*
- f. The Legal and Judicial Cooperation Agreement between the UAE and the Arab Republic of Egypt (2000);\*\*
- g. The Convention on Judicial Assistance in Civil and Commercial Matters between the United Arab Emirates and the Republic of China (PRC) (2004);
- h. The Agreement between the Republic of Kazakhstan and the United Arab Emirates on Judicial Assistance in Civil and Commercial Matters (2009);\*\*\*

*The GCC Convention (1996)*

- 25. The other signatories to the GCC Convention are Bahrain, Saudi Arabia, Oman, Qatar and Kuwait.
- 26. Article 1 of the GCC Convention states:  
  
*"Each of the GCC countries shall execute the final judgments issued by the courts of any member state in civil, commercial and administrative cases..."*
- 27. In order for a judgment to be enforceable, the originating court must have had jurisdiction, within the definition provided in the Convention. The various jurisdictional gateways are set out in Article 4. They include:

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\* Implemented into UAE Law by Federal Decree No. 33 of 2000, however it appears that the Agreement has not however been ratified in India

\*\* Implemented into UAE Law by Federal Decree No. 83 of 2000

\*\*\* Implemented into UAE Law by Federal Decree No. 117 of 2009

- a. Domicile or residence of the defendant in the jurisdiction (Article 4.A);
- b. Disputes relating to the activity of a branch in the jurisdiction (4.B);
- c. Disputes about the performance of a contract which took place or should have taken place in the jurisdiction (4.C);
- d. Disputes about acts which occurred in the jurisdiction (4.D);
- e. The existence of a jurisdiction agreement (4.E); and
- f. Submission to the jurisdiction by defending the action (4.F).

- 28. The Convention sets out a number of grounds on which enforcement may be contested. However, the merits of the claim may not be reviewed:

*"The task of the judicial authority of the state where the judgment is required to be executed shall be limited to confirming whether the judgment fulfills the requirements as provided by this agreement, without discussing the subject matter. ."(19)*

- 29. On the premise that the DIFC Courts are the courts of a GCC member state, other GCC nations should enforce DIFC Court judgments in accordance with Article 1 of the Convention, and should not distinguish between them and other judgments emanating from the Dubai Courts<sup>(20)</sup>.
- 30. Notwithstanding their constitutional status, in the light of the relatively recent establishment of the DIFC Courts, in practice it may be prudent to obtain recognition of the judgment or order in the Dubai Courts first, before going on to seek enforcement outside the UAE.

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<sup>(19)</sup> Article 7 of GCC Convention 1996.

<sup>(20)</sup> By extension, the courts in the other Emirates of the UAE should also treat DIFC Court judgments, decisions and orders as those emanating from a GCC member state.

Practical Example:

**Example case of the enforcement of a GCC order in the DIFC Courts**

*Farooq Al Alawi v. Lloyds TSB Bank PLC and Credit Suisse AG* <sup>(21)</sup>

In this case the DIFC Courts ordered that the respondents enforce a judgment which had been issued by the Bahraini Family Courts and a resolution emanating from the Bahraini Board of Minors' Funds Custody. The order in question made reference to the Rules of the DIFC Courts; the 1983 Convention on Judicial Cooperation between States of the Arab League; and the 1995 Protocol on the Enforcement of Judgments Letters Rogatory and Judicial Notices issued by the Courts of the Member States of the Arab Gulf Co-operation Council<sup>(22)</sup>.

The background to the case was as follows: The applicant had been issued with a Power of Attorney by the Minor Affairs Directorate of the Ministry of Justice and Islamic Affairs in the Kingdom of Bahrain. He had subsequently instructed the two respondent financial institutions located in the DIFC (where a Bahraini national, who had been subject in Bahrain to an order of distraint, had bank accounts) to comply with the terms of the judgments and resolutions issued by the Bahraini Courts. However, before so doing, an Execution Order from the DIFC Courts had to be issued first.

This serves as a good illustration of the enforcement of an order from another GCC country by the DIFC Courts, reference being made to the relevant applicable international conventions.

1.) *The Riyadh Convention (1983)* <sup>(23)</sup>

31. The other parties to the Riyadh Convention are: Jordan, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco<sup>(24)</sup>, Mauritania and Yemen.

32. Article 25 of the Riyadh Convention states that, subject to certain provisos:

*"each contracting party shall recognize the judgments made by the courts of any other contracting party in civil cases including judgments related to civil rights made by penal courts and in commercial, administrative and personal statute judgments having the force of res judicata and shall implement them in its territory in accordance with the procedures stipulated in this Part..."*

<sup>(21)</sup> Execution Order of 19 January 2011, Enforcement Order No: 02/2012.

<sup>(22)</sup> This was later revised on 31 January 2012, and the respondents were ordered to enforce a new Order of the Ministry of Justice and Islamic Affairs in Bahrain.

<sup>(23)</sup> It should be noted that although Riyadh Convention judgments in theory would be directly enforceable in the UAE Execution Courts (see Articles 31 and 32 of the Riyadh Convention in particular) - in practice they have not been directly enforceable, but rather require ratification by a UAE First Instance Court prior to execution. This is the main practical difference between a GCC Convention judgment and a Riyadh Convention judgment, whereby a final judgment of the former is directly enforceable in the Execution court of another GCC state.

<sup>(24)</sup> By way of example, in the case of Opera Gallery (Dubai) Limited v. Mr Hicham Daoudi (CFI 002-2012), the DIFC Courts assisted in serving a respondent in Morocco through a letter rogatory. In that case the DIFC Courts issued a letter written in Arabic addressed to the Dubai Courts confirming that the Claim Form and Particulars of Claim had been filed and requesting the Dubai Courts to assist with serving the Claim Form on the respondent. This procedure is provided for under RDC 9.51 to 9.63.

33. The Riyadh Convention requires that the originating court have jurisdiction in accordance with the laws of the enforcing state. However, the Riyadh Convention also sets out the circumstances in which the originating court shall be considered to have jurisdiction. These are very similar to, but slightly more extensive than, the jurisdictional gateways set out in the GCC Treaty.

34. Once again, although the Riyadh Convention sets out a number of bases on which enforcement may be refused, the enforcing Court may not review the merits of the decision:

*"The duties of the competent judicial body of the contracting party requested to recognize or to execute the judgment concerned shall be confined to establishing that the judgment complies with the provisions of this Agreement without examining the subject matter thereof"*<sup>(25)</sup>

2) *The Agreement on Judicial Cooperation, Execution of Judgments and Extradition of Criminals between the United Arab Emirates and the Tunisian Republic (1975)*

Article 20 of the Agreement between the UAE and Tunisia provides as follows:

*"Every final judgment granting civil or commercial rights, or deciding compensation from the criminal courts or related to personal status, which is issued by a judicial authority in any one of the two Contracting States shall be enforceable in the other State according to the provisions of this chapter. The conclusiveness of the judgment shall be determined by the law of the State in which the judgment has been issued."*

3) *The Paris Convention (1992)*

35. The UAE has the benefit of a bilateral treaty with France, described as a "Convention on judicial assistance, recognition and enforcement of judgments in civil and commercial matters" ("the Paris Convention").

36. Article 13(1) of the Paris Convention states that, if certain conditions are fulfilled:

*"Judgments rendered by the courts of one State shall be recognised and may be declared enforceable in the other State if (certain) conditions are met..."*

37. The originating court must have had jurisdiction either according to the laws of the enforcing state or according to the rules set out in Article 14 of the Convention.

38. Article 14 provides for jurisdictional gateways which are very similar to those set out in the GCC Treaty. Additional gateways are provided in respect of cases relating to immovable property, inheritance, maintenance and the custody of minors.

<sup>(25)</sup> Article 32 of the Riyadh Convention.

Article 15 makes clear that the merits are not to be reviewed

4) *The Agreement on Juridical Cooperation in Civil and Commercial Matters with India (2000)*

39. Article XV.1 of the Agreement with India which came into force on 29 May 2000<sup>(26)</sup> provides that each of the Contracting Parties shall, in accordance with its laws, recognise and or execute decrees passed by the Courts of the other Contracting Party in civil, commercial and personal matters and by criminal courts in personal matters.

40. However, Article XV.3 specifies that the Agreement does not apply to interim or provisional measures, except matters relating to taxation and allowances.

5) *The Convention on Judicial Assistance in Civil and Commercial Matters between the United Arab Emirates and the Republic of China (PRC) (2004)*

41. Article 1 of the Convention between the UAE and the Republic of China provides:

*"1-Citizens of either Party in the territory of the other are given judicial protection and have the right to resort to the courts of the other Contracting Party with the same terms and conditions that are available to nationals of the other party.*

*2-the above terms apply to the legal persons who carry on business in the territory of either party in accordance with national law"*

Article 4 states:

*"2- In accordance with this agreement, assistance will be provided in the following areas:  
...c Recognition of judgments and settlements and their implementation."*

*Memoranda of Guidance with other Common Law Jurisdictions*

42. The DIFC Courts have signed Memoranda of Guidance ("MOGs") with fellow common law jurisdictions – namely with the Commercial Court of England and Wales on 23 January 2013<sup>(27)</sup>, the Supreme Court of New South Wales on 9 September 2013<sup>(28)</sup> and the Federal Courts of Australia on 28 March 2014<sup>(29)</sup>, an MOG with the High Court of Kenya (Commercial & Admiralty Division) on 27 November 2014 and with the Supreme Court of Singapore on 19 January 2015. The DIFC Courts also signed an MOG with the United States District Court for the Southern District of New York (SDNY) on 29 March 2015.

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<sup>(26)</sup> See [http://www.indembassyuae.org/induae\\_bilateral.phtml](http://www.indembassyuae.org/induae_bilateral.phtml), information from Embassy of India in Abu Dhabi

<sup>(27)</sup> Available on the DIFC Courts' website at the following link:

<http://www.difccourts.ae/RulesContent.aspx?pid=4904&t=Memorandum-of-Guidance-on-Enforcement-DIFC-Courts-and-Commercial-Court-of-England-&-Wales>

<sup>(28)</sup> Available on the DIFC Courts' website at the following link:

<http://www.difccourts.ae/RulesContent.aspx?pid=4917&t=Memorandum-of-Guidance-between-the-DIFC-Courts-&-the-Supreme-Courts-of-New-South-Wales>

<sup>(29)</sup> Available on the DIFC Courts' website at the following link:

[http://difccourts.complinet.com/net\\_file\\_store/new\\_rulebooks/m/e/Memorandum\\_of\\_Guidance\\_Between\\_The\\_Federal\\_Court\\_of\\_Australia\\_and\\_DIFC\\_Courts.pdf](http://difccourts.complinet.com/net_file_store/new_rulebooks/m/e/Memorandum_of_Guidance_Between_The_Federal_Court_of_Australia_and_DIFC_Courts.pdf)

<sup>(30)</sup> All Memoranda of Guidance signed by the DIFC Courts are available at the following link:

<http://difccourts.ae/publications/protocols-and-mous/>

Although these Memoranda have no binding legal effect in that they do not constitute treaties or legislation, and do not have the effect of superseding any existing laws, judicial decisions or court rules, they set out a "mutual understanding" of the applicable laws and judicial processes governing the reciprocal enforcement of final money judgments under the common law.

On 28 August 2015 the first such MOG was signed with a civil law jurisdiction, namely the Supreme Court of the Republic of Kazakhstan <sup>(30)</sup>, reference being made to the Agreement between the Republic of Kazakhstan and the United Arab Emirates on Judicial Assistance in Civil and Commercial Matters (2009). On 4 November 2015 the DIFC Courts signed an MOG on Enforcement with the Supreme Court of Korea – the first with a civil law jurisdiction with which the UAE has no relevant treaty.

Where no treaty exists

43. The question of whether a DIFC Court judgment, decision or order will be enforced in a foreign country with which the UAE has no relevant treaty will be a matter for the courts of that country. This is not intended to be a comprehensive review of those enforcement procedures. However, the following general comments can be made.

44. In some countries, such as Russia, Denmark, Iceland, Finland and Norway, the courts will not enforce a foreign judgment at all, in the absence of a relevant treaty.

45. In other countries, the courts will require reciprocity and so will investigate the question of whether the originating court would enforce its own money judgments. This approach was historically taken more widely. More recently, it is no longer a requirement in many countries. Examples of courts which continue to require reciprocity are Germany, Austria, Japan, Nigeria, Singapore and a small number of states of the United States of America.

46. When considering whether to enforce a DIFC Court judgment, it is open to question whether the foreign court would investigate the question of reciprocity by looking at the laws applicable in the Dubai Courts or those applicable in the DIFC Courts.

47. At present, there are no decided cases in which the DIFC Court has had to grapple with the question of whether its powers to enforce foreign judgments are wider than those of the Dubai Courts. The relevant legislation appears to give the DIFC Courts a relatively free hand in determining the circumstances in which they will enforce a foreign judgment. Article 7(6) of Dubai Law No. 12 of 2004 (as amended) simply states that foreign judgments "shall be enforced within the Centre in the manner prescribed in the Rules of the Courts."

This language is echoed in Article 42 of the DIFC Court Law (DIFC Law No. 10 of 2004). Article 24 of the Court Law is expressed in similarly broad terms.

48. If the DIFC Courts' powers to enforce foreign judgments are wider than those of the Dubai Courts, then, in principle, DIFC Court orders may be easier to enforce in those foreign countries which require reciprocity.
49. It might further be ventured that given the process which the DIFC Courts follow, in particular their significant common law influence and their drawing from the practice of the English Courts, their judgments and orders might lend themselves to easier enforcement outside the UAE, especially in legal systems which follow similar procedures, simply because the process is more likely to be recognised and to be considered "safe" and therefore enforceable in the foreign courts concerned.

#### *Jurisdiction*

50. In most (possibly all) countries, the courts of the enforcing state will require that the originating court had jurisdiction according to the enforcing court's own criteria. Those criteria will vary from country to country. In many cases, the rules applied are quite restrictive, sometimes more restrictive than those rules by which that Court determines its own jurisdiction.
51. One example of this is the approach of the English Courts. Where no relevant treaty exists, the English Courts will apply the common law to determine whether the originating court had jurisdiction. In this context, in the case of a personal judgment, in order to establish that the originating court had jurisdiction, it needs to be shown that either:
  - a. The judgment debtor was physically present in the jurisdiction at the time that proceedings were instituted;
  - b. The judgment debtor was the claimant or made a counterclaim in the proceedings;
  - c. The judgment debtor submitted by voluntarily appearing in the proceedings;
  - d. The judgment debtor is bound by a valid jurisdiction agreement
52. Where no treaty exists, the English Courts therefore adopt a more restrictive test in determining a foreign court's jurisdiction than they would take when deciding whether they have jurisdiction over a case.

#### *Policy*

53. Most foreign countries will refuse to enforce certain types of judgment or order on policy grounds. For example, English Courts will not enforce orders for punitive damages. Awards of multiple damages under Article 40(2) of the DIFC Law of Damages and Remedies might therefore be difficult to enforce. Few courts will enforce judgments for the recovery of taxation. Many courts in the Arab world will refuse to enforce a judgment which is contrary to the principles of Sharia.

#### *Merits*

54. In many foreign countries, the enforcing court will not reopen the merits of the case. In the Courts of England and Wales, for example, the law considers that the existence of a judgment of a competent foreign court creates a free-standing and enforceable obligation

to pay the money which the defendant has been ordered to pay. The objections which may be raised to the enforcement of such a judgment are limited, such as that the foreign court did not have jurisdiction to try the case, the judgment is not for a liquidated sum of money (a foreign judgment can only be enforced in England and Wales if it is finally quantified), or that the judgment is not final and conclusive<sup>(31)</sup>.

55. In some countries, however, such as Belgium, Italy and Portugal, the courts will allow the merits to be reviewed in certain circumstances.

#### *Procedure*

56. Rules 45.18 to 45.24 of the Rules of the DIFC Courts (as amended in April 2014) set out the procedure to be followed in seeking to execute DIFC Court judgments, decisions, orders and awards ratified by the DIFC Courts outside of the DIFC<sup>(32)</sup>.

### **D. Conclusions**

57. The decisions of the DIFC Courts are decisions of one of the courts of the Dubai judicial system and so should be capable of enforcement at least as widely as Dubai Court judgments and orders.
58. Within the GCC and Riyadh Convention states, France, China and India enforcement will be governed by the treaties currently in place. In many Arab countries, a DIFC Court judgment is likely to confer a significant advantage.
59. Enforcement further afield will be determined by the laws of the target jurisdiction.
60. In considering whether to enforce a DIFC Court judgment, a foreign court will generally consider whether the DIFC Court had jurisdiction according to the foreign court's own criteria. Those criteria may well differ from the provisions of Article 5(A) of the Judicial Authority Law by which the DIFC Court determines its own jurisdiction<sup>(33)</sup>. There may therefore be circumstances in which a foreign court would refuse to enforce a DIFC Court judgment on jurisdiction grounds. However, the same applies to judgments of any other Court. More importantly, in very many courts, the relevant jurisdiction test will be satisfied if the judgment debtor submitted to the jurisdiction, either by means of a jurisdiction agreement or by participation in the proceedings.
61. In practice, given its relatively recent history, some foreign courts may be slow to recognise the DIFC Courts as part of Dubai's judicial system. In the circumstances, it may be prudent first to obtain a fast-track enforcement order<sup>(34)</sup> from the Dubai Courts before then going on to seek enforcement further afield. In time and with experience, it is to be hoped that this first preliminary step will no longer be required.

#### **Version 4 – last updated 3 January 2016**

<sup>(31)</sup> However, there is a general presumption that a foreign judgment is conclusive.

<sup>(32)</sup> See [http://difccourts.complinet.com/en/display/display\\_viewall.html?rbid=2725&element\\_id=9552](http://difccourts.complinet.com/en/display/display_viewall.html?rbid=2725&element_id=9552) for the applicable Rules of the DIFC Courts (RDC).

<sup>(33)</sup> Now significantly broadened in scope by Article 5 of Law No. 16 of 2011.

<sup>(34)</sup> In essence the conversion of a DIFC Courts judgment into one of the Dubai courts for the purposes of enforcement abroad.





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