



MEMORANDUM OF GUIDANCE AS TO ENFORCEMENT

BETWEEN

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

AND

NATIONAL COURT ADMINISTRATION OF THE SUPREME COURT OF KOREA

Introduction

1. 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.
2. 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 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 party's money judgments.
3. 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.

National Court Administration of the Supreme Court of Korea, the Courts of Korea

4. The National Court Administration is an institution established under the Supreme Court and manages the overall administrative affairs of the Courts of Korea. The Minister of the National Court Administration administers the entire affairs under the command of the Chief Justice and oversees judicial administrative affairs of the courts. The Minister of the National Court Administration is appointed among Supreme Court Justices by the Chief Justice.

The Courts of Korea are comprised of the Supreme Court as the highest court, high courts, district courts, patent court, family courts and administrative courts, basically forming a three-instance court structure of the Supreme Court, high court and district court.

The Dubai International Financial Centre (“DIFC”) Courts

5. 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 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 in the Courts of Korea

6. There is currently no treaty 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 in the courts of Korea by a claim made according to the relevant law of Korea.
7. 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.
9. The Courts of Korea 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 the Courts of Korea, to determine the dispute. The Courts of Korea 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, 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.

The judgment debtor of a DIFC Courts judgment must have received, pursuant to a lawful method, service of a summons or a document equivalent thereto, and a notice of date or an order, with a time leeway sufficient to defend (excluding the case pursuant to service by public notice or similar service), or must have responded to the lawsuit even without being served. There must also exist reciprocity, or that the requirement for recognition and enforcement in the Courts of Korea and the DIFC Courts are not significantly in imbalance and are not substantially different in major parts.

11. Where the above requirements are established to the satisfaction of the Courts of Korea, the enforcement of a DIFC Courts judgment may be challenged on the following grounds. Those grounds include (but are not limited to):
 - (a) where the recognition and enforcement of the judgment violates good morals and other public policy of Korea;
 - (b) where a judgment of the DIFC Courts on torts results in a significant violation of basic order under Korean law or international treaties to which Korea is a party.
12. The Courts of Korea 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 Courts of Korea 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 Courts of Korea in the DIFC Courts.
14. In order to be sued upon in the DIFC Courts, a judgment of the Courts of Korea 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 Courts of Korea 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 Courts of Korea 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 Courts of Korea; or
 - (d) agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the Courts of Korea.

17. Where the above requirements are established to the satisfaction of the DIFC Courts, a judgment of the Courts of Korea 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 the DIFC Courts regard as contrary to the principles of natural justice.
18. The DIFC Courts will not re-examine the merits of a judgment of the Courts of Korea. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of the Courts of Korea will be enforced on the basis that the defendant has a legal obligation, recognised by the DIFC Courts, to satisfy a judgment of the Courts of Korea.

The procedure for enforcement of DIFC Courts judgments in the Courts of Korea

19. In order to enforce a judgment of the DIFC Courts, the judgment creditor must file a suit seeking an enforcement judgment in the Courts of Korea according to the relevant rules.
20. 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, 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 by the Registrar. The certified copy of the judgment will be sealed with the seal of the DIFC Courts.
21. If, following service of a complaint, the judgment debtor does not respond to the claim within 30 days, the claimant will be entitled to obtain judgment in default under Article 257 of the Civil Procedure Law of Korea.
22. In order to obtain an enforcement judgment from the Courts of Korea, a DIFC Courts judgment must satisfy all the requirements for recognition and enforcement prescribed in Article 217 of the Civil Procedure Law of Korea.
23. If the claim on the DIFC Courts judgment is successful, the judgment creditor will then have the benefit of a judgment of the Courts of Korea. The judgment creditor will be entitled, if necessary, to use the procedures of the Courts of Korea to enforce the judgment under the Civil Enforcement Law of Korea.

The procedure for enforcement of judgments of the courts of Korea in the DIFC Courts

24. In order to enforce a judgment of the courts of Korea in the DIFC Courts, the procedure is very similar.

25. In order to enforce a judgment of the courts of Korea 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.
26. A party may obtain a certified copy of a judgment of the Courts of Korea by making an application in accordance with the relevant rules of the Courts of Korea.
27. 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.
28. If, following service, the defendant does not respond to the claim, the claimant will be entitled to obtain a judgment in default under Part 13 of the Rules of the DIFC Courts 2014.
29. 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 courts of Korea had jurisdiction on the grounds set out in paragraph 16 above.
30. 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 one of the grounds set out in paragraph 17 above at trial. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
31. If the claim on the judgment of the courts of Korea 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; and

- (i) orders relating to insolvency procedures.

Contacting the Courts

32. Further information about the courts of Korea can be obtained:

- (a) by visiting the website of the Courts of Korea at <http://eng.scourt.go.kr/eng/main/Main.work>
- (b) by contacting the Registry of the Courts of Korea:
 - i. at National Court Administration, 219 Seocho-ro, Seocho-gu, Seoul 06590 Korea
 - ii. by telephone at +822 3480 1100 ; or
 - iii. by email at international1@scourt.go.kr.

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 fourth day of November, 2015 by:

Michael Hwang, SC

Chief Justice

DIFC Courts

PARK Byoung-dae

Minister of National Court
Administration/Justice

Supreme Court of Korea