



Memorandum of Guidance as to Enforcement between the Supreme Court of the Republic of Kazakhstan and the DIFC Courts

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 act, 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.
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.

The Supreme Court of the Republic of Kazakhstan

4. The Supreme Court of the Republic of Kazakhstan is the highest judicial body of the Republic of Kazakhstan on civil, administrative, criminal and other cases which are under the competence of the local and other courts, it supervises the latter's activities and provides explanations concerning judicial practice in the context of procedures prescribed by law. The Supreme Court of the Republic of Kazakhstan consists of two supervisory boards: (i) on civil and administrative cases; and (ii) on criminal cases. The total number of judges of the Supreme Court of the Republic of Kazakhstan is 33. The Supreme Court of the Republic of Kazakhstan acts in accordance with the Constitution of the Republic of Kazakhstan adopted after the national referendum on 30 August 1995, and the Constitutional Law of the Republic of Kazakhstan "On the judicial system and status of judges" of 25 December 2000, No 132-II. The Supreme Court of the Republic of Kazakhstan is located in Astana, at 29 Kunayev Street.
5. The judicial system of the Republic of Kazakhstan consists of the Supreme Court of the Republic of Kazakhstan, together with local and other courts established by the Constitution of the Republic of Kazakhstan and Constitutional Law. The local courts include: regional and equatable courts (municipal court of the capital of the republic, municipal courts of republican cities), district and equatable courts (municipal courts and inter-district courts) and specialised courts (military, financial, economic and administrative courts, courts on minor issues and others).



6. Specialised inter-district economic courts hear civil cases on property and non-property disputes, the parties in which are citizens engaged in entrepreneurial activities and legal entities. They also hear corporate disputes and civil cases concerning the restructuring of financial institutions, organisations within the banking sector and non-financial institutions in cases provided for by the laws of the Republic of Kazakhstan.

The DIFC Courts

7. 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 DIFC Courts judiciary is selected from common law jurisdictions around the world and from Dubai and enjoys the highest international renown.

Cooperation between the Supreme Court of the Republic of Kazakhstan and the DIFC Courts

8. The Parties refer to the Agreement between the Republic of Kazakhstan and the United Arab Emirates on Judicial Assistance in Civil and Commercial Matters, which has been incorporated into UAE domestic law via Federal Decree No. 117 of 2009 on Ratification of Agreements and Judicial Cooperation in Civil and Commercial Matters between the UAE and the Republic of Kazakhstan, and which makes provision for the conditions under which either party's court decrees will be recognised and enforced.

9. Furthermore, the Parties indicate their willingness to engage in further cooperation in conducting joint activities (such as meetings, seminars and conferences) and the exchange of information to discuss their respective court experience and the practice of law in the field of commercial disputes in their respective jurisdictions. The Parties may arrange mutual visits for educational and informational purposes as well as advanced training in the interests of each of the Parties. The Parties may publish information on joint activities under this Memorandum and associated statistics.

The requirements for enforcement of DIFC Courts judgments in the courts of the Republic of Kazakhstan

10. The Parties are guided by domestic law, as well as the Agreement between the Republic of Kazakhstan and the United Arab Emirates on Judicial Assistance in Civil and Commercial Matters, concluded on 16 March 2009 (see paragraph 8 above, hereinafter "the Agreement").

11. In the courts of the Republic of Kazakhstan, a foreign judgment may be enforced in accordance with the principles and practices for recognition and enforcement described below.



12. In order for an application for recognition and enforcement in the courts of the Republic of Kazakhstan to be made, a DIFC Courts judgment shall be final and not subject to revision.

13. The decision of the DIFC Courts may be brought for recognition and enforcement within three years from the date of entry into force of the decision. If the time-limit has been missed for a valid reason the term may be extended by the court of the Republic of Kazakhstan. The court of the Republic of Kazakhstan will only extend the time for lodging an application for the issue of an enforcement order if it finds the reasons for the deadline having been missed to be reasonable. The application for extension shall be brought to the same court which is to consider the recognition and enforcement application. This application shall be heard by the court in the presence of the parties to the case, who shall be notified of the time and place of the hearing, but their absence shall not be an obstacle to determining the question put to the court, if they fail to appear having been duly notified. The application for recognition and enforcement of a DIFC Courts judgment shall be filed simultaneously with the application for an extension (see Article 128 of the Kazakhstan Civil Procedure Code).

14. The procedure for the recognition and enforcement of court decisions must conform to the provisions of the Agreement between the Republic of Kazakhstan and the United Arab Emirates (see in particular Articles 21 to 27 of the Agreement which specifically provide for the requirements in order for court decrees to be recognised and enforced).

15. The courts of the Republic of Kazakhstan will not re-examine the merits of the DIFC Courts judgment. The decision cannot be challenged on the ground that it contains an error of fact or law. DIFC Courts decisions are subject to execution on the ground that the defendant has a legal obligation, recognised by the courts of the Republic of Kazakhstan to satisfy a judgment of the DIFC Courts.

The requirements for enforcing judgments of the courts of the Republic of Kazakhstan in the DIFC Courts

16. In accordance with 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.

17. The approach of the DIFC Courts to the enforcement of judgments of the courts of the Republic of Kazakhstan is based on the English common law and the same approach is applied.

18. The principles set out in Articles 21 to 27 of the Agreement will apply in determining whether a party may sue on a judgment of the courts of the Republic of Kazakhstan in the DIFC Courts.

19. In order to be sued upon in the DIFC Courts, a judgment of the courts of the Republic of Kazakhstan must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.



20. The DIFC Courts will not enforce certain types of judgments of the courts of the Republic of Kazakhstan, for example judgments ordering the payment of taxes, fines or penalties.

21. The court of the Republic of Kazakhstan 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 court of the Republic of Kazakhstan 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 court of the Republic of Kazakhstan; or
- d. agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the court of the Republic of Kazakhstan.

22. Where the above requirements are established to the satisfaction of the DIFC Courts, a judgment of the courts of the Republic of Kazakhstan may be challenged in the DIFC Courts only on limited grounds. In addition to the provisions in Articles 15 and 21 of the Agreement between the Republic of Kazakhstan and the UAE, those grounds include (but are not limited to):

- a. where the judgment was obtained by fraud;
- b. where the judgment is contrary to 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.

23. The DIFC Courts will not re-examine the merits of a court of the Republic of Kazakhstan judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A court of the Republic of Kazakhstan 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 court of the Republic of Kazakhstan.

The procedure for enforcement of DIFC Courts judgments in the Supreme Court of the Republic of Kazakhstan

24. The application for recognition and enforcement of a DIFC Courts judgment may be filed in the Supreme Court of the Republic of Kazakhstan or the competent court of the Republic of Kazakhstan depending on the location of the debtor or the location of the premises of the legal entity; and if the place of residence or location is unknown, then to the court in the location of the debtor's property.

25. 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.

26. The request for recognition or execution of a judgment shall be accompanied by the following:
- An official copy of the judgment;
 - A certificate showing that the judgment is final and executable, unless that is specifically stated in the judgment itself;
 - In the case of a decree in absentia, an authenticated copy of the summons or any other document showing that the defendant was duly summoned;
 - A document to establish that any party who suffers incapacity or lack of capacity in litigation has been duly represented.

27. The application for recognition and enforcement of a DIFC Courts judgment shall be considered by a single judge.

28. The Court shall notify the judgment debtor concerning the Claimant's application for recognition and enforcement of a DIFC Courts judgment, as well as the place and time of the respective court hearing. The Claimant should also be notified of the place and time of the hearing of the application. Failure of the judgment debtor or the claimant to appear at the court hearing shall not be an obstacle to the consideration of the application, in the event that the judgment debtor did not lodge an application for the consideration of the application to be adjourned, indicating reasonable justification for their inability to appear in court.

29. Following the application, the Court shall issue a ruling on the recognition and enforcement of the decision, accompanied by either the issuance of a writ or refusal to enforce the judgment in question.

30. The Kazakhstan court ruling upon the consideration of an application for recognition and enforcement of a DIFC Courts judgment can be appealed by the judgment creditor or debtor in the manner specified by Article 344 of the Civil Procedure Code of the Republic of Kazakhstan, which provides the following: A private petition (appeal) against the ruling of a first instance court shall be submitted to the court which delivered the ruling in question. Such private petition (appeal) may be filed within fifteen days from the date of delivery of a copy of the court ruling rendered by the court. The judge, upon the receipt of a private petition, shall submit the case to the court of appeal. The appellate court shall notify the parties to the case of the time and place of the court hearing. In the event of non-appearance of any of the parties to the case due to them not having been properly notified of the time and place of the court hearing, the court shall suspend the court hearing. Parties' failure to appear following sufficient notification of the time and place of the court hearing shall not prevent the consideration of the case. The ruling of the appellate court rendered on a private petition shall enter into legal force immediately after its rendering. A cassation petition may be brought to the Supreme Court of the Republic of Kazakhstan on the ruling of the appellate court rendered on a private petition, or the ruling of the first instance court



within three months from the day the ruling of the first instance court or court of appeal enters into legal force. The judge of the Court of Cassation shall: request the submissions in the civil enforcement case; send the copies of the petition and the attached written materials to the parties in the case, set the deadline for the submission of the statement of defence; and notify the parties to the case of the time and place of consideration of the cassation petition. Parties and their representatives' failure to appear at the court hearing, having been duly notified of the time and place, shall not prevent the consideration of the case. The decree of the Court of Cassation shall enter into legal force from the day of its announcement.

31. The recognition and enforcement of judgments may be refused in the cases provided for in Articles 15 and 21 of the Agreement between the Republic of Kazakhstan and the UAE, as well as in cases where:

- a) the statute of limitations provided for by the relevant law in the DIFC applies;
- b) the recognition and enforcement of the judgment is contrary to public policy in the Republic of Kazakhstan.

32. If the claim in court for recognition and enforcement of a DIFC Courts judgment is successful, the judgment creditor will receive a court order which has the force of a decision of a court of the Republic of Kazakhstan. The judgment creditor has the right, if necessary, to use the procedures of the executive bodies of the Republic of Kazakhstan in order to enforce the judgment in accordance with the Agreement between the Republic of Kazakhstan and the United Arab Emirates, including:

- a. orders for levies of execution to satisfy the debtor's obligation;
- 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 for committal for contempt of court.

The procedure for enforcement of judgments of the courts of the Republic of Kazakhstan in the DIFC Courts

33. In order to enforce a judgment from a court of the Republic of Kazakhstan 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.



34. A party may obtain a certified copy of a judgment issued by a court of the Republic of Kazakhstan by making an application to the relevant court of the Republic of Kazakhstan. The application may be made without notice and must exhibit a copy of the judgment which is required to be certified. Where the court of the Republic of Kazakhstan provides a certified copy of the court of the Republic of Kazakhstan 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 Courts of the Republic of Kazakhstan.

35. 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.

36. 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.

37. 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 Court of the Republic of Kazakhstan had jurisdiction on the grounds set out in paragraph 21 above and as provided in Article 19 of the Agreement entered into between the UAE and the Republic of Kazakhstan.

38. 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 22 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.

39. If the claim on the court of the Republic of Kazakhstan 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.

Contacting the Courts



40. Further information about the Supreme Court of the Republic of Kazakhstan can be obtained by:

- a. visiting the website of the Supreme Court of the Republic of Kazakhstan at <http://www.sud.kz>
- b. by telephone on 008 (7172)710000, or
- c. by email at: vsrk@sud.kz

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

- a. By visiting the website of the DIFC Courts at <http://www.difccourts.ae>;
- b. By contacting the DIFC Courts Registry:
 - i. at Ground Floor, Building 4, The Gate District, PO Box 211724, Dubai, UAE;
 - ii. by telephone on +971 4 427 3333; or
 - iii. by email at registry@difccourts.ae.

Signed on ____/____/____ by: Signed on ____/____/____ by:

Michael Hwang SC

Chief Justice, DIFC Courts

Kairat Mami

**Chairman, Supreme Court of the Republic
of Kazakhstan**