



MEMORANDUM OF GUIDANCE

BETWEEN

THE FEDERAL COURT OF AUSTRALIA

and

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

Dated 28 March 2014

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 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 participants desire and believe that the cooperation demonstrated by this memorandum will promote a mutual understanding and guidance only of their laws and judicial processes and will improve public perception and understanding.

The Federal Court of Australia

4. The Federal Court of Australia was created by the Federal Court of Australia Act 1976 and began to exercise its jurisdiction on 1 February 1977. It assumed jurisdiction formerly exercised in part by the High Court of Australia and the whole jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy. The Court is a superior court of record and a court of law and equity. It sits in all capital cities and elsewhere in Australia from time to time. The Court's original jurisdiction and related common law jurisdiction is conferred by over 150 statutes of the Parliament. The Court is internationally recognised for its experience, expertise and innovation in dispute resolution.

The 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 participants 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.

Application of the common law of DIFC and of Australia

6. There is currently no treaty in place pursuant to which either participant's judgments may be enforced in the other participant's courts.
7. In the Federal Court, in the absence of a relevant treaty or the foreign court being a court to which the Foreign Judgments Act 1998 (Cth) applies, a foreign judgment may be enforced by a claim made at common law, in accordance with the principles and practice described below.
8. 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.

9. The approach of the DIFC Courts to the enforcement of Federal Court judgments is based on the common law and the same approach is applied.

The requirements for enforcement of DIFC Courts' judgments in the Federal Court

10. In order to be sued upon in the Federal Court, a judgment of the DIFC Courts must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
11. The Federal Court will not enforce certain types of DIFC Court judgments, for example judgments ordering the payment of taxes, fines or penalties.
12. The DIFC Courts must have had jurisdiction, according to Australian rules of conflict of laws, to determine the subject matter of the dispute and the parties to the DIFC Courts judgment and the enforcement proceedings must be the same. In addition, the enforcement proceedings in the Federal Court must be in respect of the money judgment issued by the DIFC Courts. The Federal Court will generally consider the DIFC 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 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.
13. Where the above requirements are established to the satisfaction of the Federal Court, a DIFC Courts judgment may be challenged in the Federal Court 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 Australian public policy; and
 - (c) where the proceedings were conducted in a manner which the Federal Court regards as contrary to the principles of natural justice.
14. The Federal 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, recognised by the Federal Court, to satisfy a judgment of the DIFC Courts.

The requirements for enforcement of Federal Court judgments in the DIFC Courts

15. The same principles set out above will be applied to determine whether a litigant may sue on a Federal Court judgment in the DIFC Courts.
16. In order to be sued upon in the DIFC Courts, a judgment of the Federal Court must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
17. The DIFC Courts will not enforce certain types of Federal Court judgment, for example judgments ordering the payment of taxes, fines or penalties.

18. The Federal Court must have had jurisdiction, according to DIFC rules on conflict of laws, to determine the dispute. The DIFC Courts will generally consider the Federal Court to have had the required jurisdiction only where the party 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 Federal Court; or
 - (d) agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the Federal Court.
19. Where the above requirements are established to the satisfaction of the DIFC Courts, a Federal Court judgment 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 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.
20. The DIFC Courts will not re-examine the merits of a Federal Court judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A Federal 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 Federal Court.

The procedure for enforcement of DIFC Courts' judgments in the Federal Court

21. In order to enforce a judgment of the DIFC Courts in the Federal Court, a litigant must file an application in the Federal Court in accordance with the rules of the Court, 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 application.
22. A litigant 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 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 by the Registrar. The certified copy of the judgment will be sealed with the seal of the DIFC Courts.
23. If, following service, the respondent does not respond to the claim, the applicant will be entitled to seek an order for default judgment under Rule 5.23 of the Federal Court Rules. However, it remains open to the respondent to challenge the jurisdiction of the Federal Court.
24. A litigant will also be entitled to apply to obtain summary judgment without trial under Rule 26.01 of the Federal Court Rules, unless the debtor can satisfy the Court that it has a real prospect of establishing at trial a ground of the kind set out in paragraph 13 above. Applications for summary judgment are dealt with quickly.

25. If the claim on the DIFC Courts' judgment is successful, the judgment creditor will then have the benefit of a Federal Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the Australian 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.

The procedure for enforcement of Federal Court judgments in the DIFC Courts

26. In order to enforce a Federal Court judgment in the DIFC Courts, the procedure is very similar.
27. In order to enforce a Federal Court judgment in the DIFC Courts, a litigant 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.
28. A litigant may obtain a certified copy of a Federal Court judgment by making an application to the Federal Court. The application may be made without notice and must exhibit a copy of the judgment which is required to be certified. Where the Federal Court provides a certified copy of a Federal 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 by the Registrar. The certified copy of the judgment will be sealed with the seal of the Federal Court.
29. Under Rule 9.52 of the Rules of the DIFC Courts 2011, 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.
30. 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 2011.
31. 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 Federal Court had jurisdiction on the grounds set out in paragraph 18 above.

32. In most cases, a litigant will be entitled to apply to obtain summary judgment without trial under Part 24 of the Rules of the DIFC Courts 2011, unless the debtor can satisfy the Court that it has a real prospect of establishing at trial a ground of the kind set out in paragraph 19 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
33. If the claim on the Federal 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.

Contacting the Courts

34. Further information about the Federal Court can be obtained:
- (a) by visiting the website of the Federal Court at <http://www.fedcourt.gov.au/>
 - (b) by contacting one of the Registries of the Federal Court. For example, the New South Wales Registry of the Federal Court*:
 - i. at the Federal Court of Australia, Level 17, Law Courts Building, Queens Square, 184 Phillip Street, Sydney, NSW 2000, Australia;
 - ii. by telephone on +61 29230 8567; or
 - iii. by email at nswdr@fedcourt.gov.au.

*Addresses for each Registry can be found at: <http://www.fedcourt.gov.au/contact>

35. 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 on +971 4 427 3333; or

Signed this day of 2014 by:

For the Federal Court of Australia

For the Dubai International Financial Centre
Courts

The Hon James Allsop AO
Chief Justice

Michael Hwang SC
Chief Justice