

**MEMORANDUM OF GUIDANCE**

**between**

**DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS**



**and**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK  
FOR THE ADVISORY GROUP TO THE NEW YORK FEDERAL-STATE JUDICIAL COUNCIL**



**22 March 2015**

## **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 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 or to create any binding arrangements for the reciprocal enforcement of each party's money judgments. (See Appendix for further discussion of background and purpose.)
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.

## **Courts Located in New York**

4. There are two judicial systems in New York: State and Federal. The State Court of first instance is called the Supreme Court for the county in which it sits, and its Judges are, with some exceptions, elected for fourteen year terms by voters in the state judicial district in which it sits. The Federal Court of first instance is called the District Court, and its Judges are appointed for lifetime terms by the President of the United States with the consent of the United States Senate.
5. A foreign country judgment creditor may seek recognition in New York of a foreign country judgment in either State or Federal court.

## **The DIFC Courts**

6. 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 Judges of the DIFC Courts are 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 New York**

### **(i) Jurisdictional Requirements**

7. Generally, in order for a State or Federal court to hear a case, it must have both subject matter (type of case) and personal (authority over the parties) or asset-based jurisdiction (authority over assets located in the jurisdiction). The New York Supreme Courts have general jurisdiction over all types of cases, and therefore subject matter jurisdiction will generally be present. Federal District Courts are courts of limited jurisdiction, but that jurisdiction includes “diversity” cases where the amount in dispute exceeds \$75,000 and is between citizens of two different states of the United States or between a citizen of a state and a citizen of a foreign country (but not between two citizens of foreign countries). This means that if the dispute is between two companies headquartered or incorporated abroad, the recognition proceeding should be filed in a New York State court.
8. In a recognition and enforcement proceeding, asset-based jurisdiction is generally not a problem provided that assets of the judgment debtor are known to be located in New York. In that case, however, the binding effect of the recognition and enforcement orders may be limited to particular assets if there is not, in addition, personal jurisdiction over the judgment debtor. Recent decisions of courts in the United States leave open the question of what connection between the judgment debtor and the State of New York is needed to allow the court to exercise personal jurisdiction over the judgment debtor. This open question arises from federal constitutional considerations and therefore potentially exists for recognition and enforcement proceedings throughout the United States. Rather than set forth the competing positions here, it makes sense for the party seeking recognition and enforcement to seek case specific guidance from qualified counsel in the United States.
9. If personal jurisdiction does exist, once a foreign money judgment (not including one for taxes or related to matrimonial matters) has been recognized in any State of the United States, most courts in the United States will enforce it in the same manner as any other U.S. judgment by according what is called “full faith and credit” under the United States Constitution. Because of this strong presumption in favor of enforcement, most United States courts allow a recognition judgment of a State or Federal court that had personal jurisdiction over the judgment debtor to be enforced following a simple registration of the judgment through filing with the court clerk. Moreover, New York law gives the judgment creditor broad rights of global discovery to locate assets potentially subject to enforcement. Since a party pursuing enforcement of a DIFC Court judgment will have retained a New York lawyer, the specific mechanics of enforcement, e.g., garnishment, attachment, turnover and

levy, are beyond the scope of this guidance. Suffice it to say that courts in New York are not hostile to the vigorous enforcement of duly recognized foreign court money judgments.

10. The presumption of foreign judgment validity is rooted in the common law doctrine of “comity,” which favors respect for the sanctity of the foreign jurisprudence with limited exceptions. The United States Supreme Court set forth this doctrine in *Hilton v. Guyot*, an opinion that has become widely accepted judicial policy.<sup>1</sup>

**(ii) New York Law Governing Recognition**

11. New York state law governs recognition in both Federal and State courts in New York. This is because the only basis for federal jurisdiction is the diversity jurisdiction described above, and in a diversity case state law is the applicable law governing matters of substance. This can be contrasted with actions for the confirmation and enforcement of international arbitration awards which are governed by applicable international treaties (e.g., the New York Convention) and can be litigated in Federal Court under what is called federal question jurisdiction.
12. New York has adopted the 1962 version of the Uniform Recognition of Foreign Money Judgments Act, and the terms as enacted in New York can be found in Article 53 of the New York Civil Practice Law and Rules (CPLR). This statute articulates common law jurisprudence. Consistent with the Uniform Act, New York courts generally recognize foreign country money judgments that are final, conclusive and enforceable where rendered even though an appeal therefrom is pending or possible in the future. The New York State or Federal court from which recognition is sought may, however, stay the recognition proceeding in its discretion in light of a pending or intended appeal abroad. The law is unsettled whether recognition will be given to a default foreign country judgment.

**(iii) Mandatory Grounds for Non-Recognition under New York Law**

13. Under Article 53 of the CPLR there are two mandatory grounds for non-recognition of a foreign court money judgment under New York law.
  1. The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law. The procedures do not have to be like those employed in New York so long as substantial justice is provided by an impartial judiciary.
  2. The foreign court did not have personal jurisdiction over the defendant.

---

<sup>1</sup> *Hilton v. Guyot*, 159 U.S. 113, 164 (1895) (“[comity] is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.”).



14. Under the following circumstances, a New York court will not find that the foreign court lacked personal jurisdiction and thus will not refuse to recognize a foreign country judgment due to lack of personal jurisdiction:
  1. The defendant was served personally in the foreign state;
  2. The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
  3. The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
  4. The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;
  5. The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state; or
  6. The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of such operation.
15. The State or Federal courts in New York may also give recognition under other bases of personal jurisdiction that are considered fundamentally fair in the United States, such as jurisdiction over a claim arising from the transaction of business in the foreign jurisdiction.

**(iv) Discretionary Grounds for Non-Recognition under New York Law**

16. The following are the statutory grounds upon which a State or Federal court in New York may deny recognition:
  1. The foreign court lacked subject matter jurisdiction;
  2. The defendant did not receive notice of proceedings in sufficient time to defend;
  3. The judgment was obtained by fraud;
  4. The cause of action on which the judgment is based is repugnant to the public policy of this state (New York) (a judgment will not be considered repugnant simply on the ground that it would be decided differently under New York law);
  5. The judgment conflicts with another final and conclusive judgment;
  6. The proceeding in the foreign court was contrary to a prior agreed-upon method of settlement; or

7. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.<sup>2</sup>

17. Recognition may also be denied to a defamation judgment obtained in a country providing less protection for freedom of speech than would be provided under the U.S. or New York Constitution.

#### **The requirements for enforcing New York judgments in the DIFC Courts**

18. Similar principles to those set out above will be applied to determine whether a party may sue on a New York judgment in the DIFC Courts.
19. In order to be sued upon in the DIFC Courts, a New York Court judgment 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, for example judgments ordering the payment of taxes, fines or penalties.
21. The New York Court 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 New York 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 in the jurisdiction; or
  - (b) was the claimant, or counterclaimant, in the proceedings; or
  - (c) submitted to the jurisdiction of the New York Court; or
  - (d) agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the New York Court.
22. Where the above requirements are established to the satisfaction of the DIFC Courts, a New York 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.

---

<sup>2</sup> N.Y. C.P.L.R. 5305 (b). But see *Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros.*, 38 Misc. 3d 831, 957 N.Y.S.2d 602 (Sup. Ct. 2012), *aff'd*, 100 A.D.3d 578, 973 N.Y.S.2d 197 (App. Div. 2013) (finding that “[i]n the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action” (N.Y. C.P.L.R. 5304(b)(7)) did not apply in part because the defendant was served in his home country of Saudi Arabia, not in the forum country, Bahrain).



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

#### **The procedure for enforcement of DIFC Courts judgments in the New York Courts**

24. Recognition of foreign country money-judgments may be sought in one of three ways:
- (i) by filing (with notice to the judgment debtor) an action for recognition and enforcement of the judgment,
  - (ii) in State Court, a motion for summary judgment in lieu of a complaint,<sup>3</sup> or
  - (iii) if an action is already pending in New York between the same parties, the foreign judgment can be enforced by filing a counterclaim, cross-claim or asserting an affirmative defense.
25. In New York, one may not commence an action to recognize or enforce a foreign country judgment after the statute of limitations on judgment enforcement has run in either New York or the foreign jurisdiction.<sup>4</sup> The applicable statute of limitations in New York is generally 20 years.

#### **The procedure for enforcement of New York Court judgments in the DIFC Courts**

26. In order to enforce a New York Court judgment in the DIFC Courts, the procedure is very similar.
27. In order to enforce a New York Court judgment 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.
28. A party may obtain a certified copy of a New York Court judgment, by mail or in person, upon written request and payment of a small fee to the clerk of court for the court where judgment was rendered.
29. 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.

---

<sup>3</sup> N.Y. C.P.L.R. 3213.

<sup>4</sup> N.Y. C.P.L.R. 202. ("An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.").

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 2014.
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 New York Court had jurisdiction on the grounds set out in paragraph 21 above.
32. 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.
33. If the claim on the New York Court judgment 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**

34. Further information about the Courts in New York:
  - (a) Further information can be obtained about the New York State Judiciary on its website, [www.newyorkcourts.gov](http://www.newyorkcourts.gov). Further information about the United



States District Court for the Southern District of New York can be obtained on its web site, [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov). The Courthouse for the Southern District of New York is located in downtown Manhattan at 500 Pearl Street, New York, NY 10007, and the Courthouse for the Supreme Court of the State of New York for the County of New York (Manhattan) is located nearby at 60 Centre Street, New York, NY 10007.

- (b) The addresses for the Supreme Courts for the other counties in New York State can be found on the New York Courts website above. The addresses of the other three United States District Courts located in New York State can be found on the website for each of those Courts, [www.edny.uscourts.gov](http://www.edny.uscourts.gov); [www.ndny.uscourts.gov](http://www.ndny.uscourts.gov); [www.wdny.uscourts.gov](http://www.wdny.uscourts.gov).

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 at +971 4 427 3333; or
  - iii. by email at [registry@difccourts.ae](mailto:registry@difccourts.ae).

Signed this day of 22 March, 2015 by:

\_\_\_\_\_  
Michael Hwang SC  
Chief Justice  
DIFC Courts

\_\_\_\_\_  
Loretta A. Preska,  
Chief Judge,  
United States District Court for the  
Southern District of New York  
for The Advisory Group to the New York  
Federal-State Judicial Council

\_\_\_\_\_  
Mark Beer  
Registrar  
DIFC Courts

## Appendix

### **Background and Purpose of this Basic Guidance Memorandum**

The New York Federal-State Judicial Council is composed of Federal and State Judges appointed by the Chief Judges of the State of New York and the United States Court of Appeals for the Second Circuit, assisted by an Advisory Group of judges and practitioners appointed by the Council. The mission of the Council is to foster improved communication and cooperation among Federal and State court systems throughout New York by developing and sponsoring joint projects. Projects carried out by the Advisory Group, with the approval of the Council, have included practitioner guidance materials and continuing legal education projects on topics that arise in both the Federal and State courts in New York.

Judge Loretta A. Preska, Chief Judge of the United States District Court for the Southern District of New York, referred to the Council a request from the Chief Executive and Registrar of the DIFC Courts at the Dubai International Financial Centre for cooperation in advising practitioners and other parties interested in practice before the DIFC Courts of the procedures under which money judgments of those Courts could be recognized in State and Federal Courts in New York.

We have been advised of the following. The DIFC Courts include both first instance and appellate courts. DIFC Courts are an independent, common law judicial system established in 2004 with exclusive jurisdiction over all civil and commercial disputes within DIFC financial district, including bodies and companies registered in DIFC. The DIFC is an independent jurisdiction under the United Arab Emirates ("UAE") Constitution, with its own civil and commercial laws distinct from those of the wider UAE. DIFC laws are promulgated by the Ruler of Dubai, His Highness Mohammed bin Rashid Al Maktoum, and are written in English.

The Judges of the DIFC Courts are appointed by Decree of the Ruler for specific terms not exceeding three years and may not be removed except for inability, incapacity, or misbehavior after an inquiry whose report and conclusions are published. The salary of the Judges of the DIFC courts may not be reduced during their term. Judgments of the DIFC courts are issued in the name of the Ruler. The Judges of the DIFC Court are persons drawn from a number of countries, including the United Kingdom, Australia and Singapore. Three of the nine Judges are from the UAE. The persons selected as Judges are thought capable of handling complex commercial cases, and the DIFC Courts function primarily as a judicial body for the resolution of commercial disputes.



The DIFC Courts and the parties whose disputes they resolve have an obvious interest in the enforcement of their judgments in a major business, legal and financial center like New York. The investment of judicial, counsel and party time in dispute resolution can be substantial, and the ability to enforce judgments, particularly in major commercial centers, can be necessary to justify that effort. At the same time, it is in New York's interest, and the interest of the Federal and State judiciary in New York, to be of all reasonable assistance to foreign country courts and to take care that the State and Federal judicial systems in New York be open in so far as the law allows to litigants seeking judicial assistance in the enforcement of judgments obtained abroad.

With these understandings in mind, the Basic Guidance set forth below that was prepared under the auspices of the practitioner members of the Advisory Group. **Because neither State nor Federal Judges in New York have any authority to issue advisory opinions, and the Council of course has no mandate to do so, the Council has not participated in the preparation of the Basic Guidance. It has no binding legal effect whatsoever and is not intended to be cited or relied upon in any legal proceeding whether for the entitlement to recognition of the judgments of the DIFC Courts or for its discussion of United States state and federal law.** It is solely guidance provided under the auspices of the practitioner members of the Advisory Group to be helpful to colleague practitioners before the DIFC Courts and other persons interested in the basic elements of the law governing the enforceability in New York of DIFC judgments.<sup>5</sup>

It is worth emphasizing that this Basic Guidance Memorandum is written with that DIFC Courts centered audience in mind. It is not at all detailed or exhaustive and is intended only to give general information about the enforcement process in New York. In an actual case of enforcement the party seeking enforcement of a DIFC judgment will need to engage a lawyer qualified to appear in a State or Federal court in New York having jurisdiction. That lawyer should make his or her own legal assessment and not rely on this simplified report prepared for other purposes.

---

<sup>5</sup> A few decisions have refused to recognize judgments issued from courts in Dubai. See, e.g., *Shehadeh v. Alexander*, 315 Ga. App. 479, 479, 727 S.E.2d 227, 227 (2012) (refusing to recognize a Dubai judgment due to the lack of proof of reciprocity (which is not required in New York)); *Cont'l Ins. Co. v. Wehbe*, No. 96 CIV. 1176 (JFK), 1996 WL 109060, at \*1 (S.D.N.Y. Mar. 13, 1996) (refusing to recognize a Dubai judgment due to fraud and inadequate notice (citing the order of New York Supreme Court Justice Cahn but declining to enjoin enforcement effort in England)). These decisions did not concern judgments obtained in the DIFC Courts. We are advised, as described above, that the DIFC Courts function independently and in accordance with international standards, and we are not aware of any decision of a U.S. court addressing the enforceability of a judgment obtained in the DIFC Courts.