

Enforcing foreign court judgments in Dubai – the DIFC Courts confirm a new avenue

The DIFC Court of Appeal has held in the recent case of *DNB Bank ASA v Gulf Eyadah Corporation & Gulf Navigation Holding PJSC* (CA-007-2015) that the DIFC Courts can be used as a conduit jurisdiction to enforce a foreign money judgment onshore in Dubai even when neither party has any assets in the DIFC.

This is a significant judgment as it opens up an alternate avenue for parties seeking enforcement of foreign court judgments or orders against parties' assets based onshore in Dubai (ie outside the DIFC) whereby judgment creditors might not have to satisfy the stringent conditions for enforcement of foreign judgments that apply in the non-DIFC Dubai courts.

DIFC Court of First Instance Decision

This was the first case to consider whether the DIFC Courts have the power to refer foreign court judgments to the non-DIFC Dubai Courts for execution under the DIFC Judicial Authority Law¹ which provides for, amongst others, the mutual enforcement of judgments between the DIFC Courts and the non-DIFC Dubai Courts.

The DIFC Court of First Instance held that while the DIFC Courts have jurisdiction to enforce and recognise foreign judgments within the DIFC, they do not have the power, to refer a

"recognised foreign judgment" to the non-DIFC Dubai Courts for execution.² The background facts of the case and the reasoning of the learned judge at first instance are discussed in our July 2015 briefing note "Enforcing foreign court judgments in Dubai – one avenue less?".³

The DIFC Court of Appeal's decision has now effectively reversed this part of the DIFC Court of First Instance's decision.

DIFC Court of Appeal Decision

DNB Bank ASA (the Appellant) appealed the DIFC Court of First Instance's decision on the basis that the judge had erred in treating a DIFC judgment enforcing a foreign judgment as a "recognised foreign judgment". Instead, the Appellant argued that such a judgment should be treated as a judgment rendered by the DIFC Court itself which would therefore come within Article 7(2) of the Judicial Authority Law.

Article 7(2) of the Judicial Authority Law provides that where the assets against which enforcement is sought are outside the DIFC, the "judgements, decisions and orders rendered by the [DIFC] Courts and the Arbitral Awards ratified by the [DIFC] Courts shall be executed by the competent entity having

¹ Law No. 12 of 2004 as amended by Law No. 16 of 2011.

² *DNB Bank ASA v Gulf Eyadah* (CFI-043-2014).

³ The briefing note is available at http://www.cliffordchance.com/briefings/2015/07/enforcing_foreigncourtjudgmentsindubaion.html.

jurisdiction over such assets outside DIFC in accordance with the procedure and rules adopted by such entities in this regard, as well as with any agreements or memoranda of understanding between the Courts and these entities".

The DIFC Court of Appeal accepted the Appellant's argument and held that a DIFC Court judgment enforcing a foreign court judgment or order should be treated as an independent judgment rendered by the DIFC Court for the purposes of Article 7 of the Judicial Authority Law and therefore be available for execution by a competent entity having jurisdiction outside the DIFC, in this case the non-DIFC Dubai Courts.

Chief Justice Michael Hwang SC upheld part of the decision of the learned judge in the DIFC Court of First Instance by confirming that the enforcement of foreign court judgments within the DIFC under the Judicial Authority Law will be allowed whether or not there are assets within the DIFC. Whilst recognising that the absence of assets in the DIFC might be a point for consideration by the DIFC courts in granting **execution** against assets, the Chief Justice noted that it was not by itself a bar to the **entry of a judgment** by the DIFC Courts in respect of such foreign court judgment or order.

Practical Implications

Following the DIFC Court of Appeal's decision, parties should now consider using the DIFC Courts to enforce foreign court judgments or orders against parties' assets onshore in Dubai even if there is no immediate connection with, or assets in, the DIFC.

The DIFC Courts have entered into bilateral memoranda or protocols for

enforcement of judgments with courts of various jurisdictions including England & Wales, the Southern District of New York, Singapore, Australia and South Korea.⁴ Parties attempting to enforce court judgments or orders from courts in these jurisdictions might find it easier to obtain a DIFC Court judgment enforcing the foreign judgment or order and then take this to the non-DIFC Dubai Courts or the other non-DIFC UAE Courts for execution.

It remains to be seen if the non-DIFC Dubai Courts will execute a DIFC Court judgment recognising a foreign court judgment. The Chief Justice commented that enforcement in those circumstances would be at the party's "own risk", but nevertheless noted that the Respondent in the Appeal had not argued that the non-DIFC Dubai courts would **not** enforce the judgment. The DIFC Court of Appeal's decision has certainly increased the possibility of executing a foreign court judgment or order against parties' assets located onshore in Dubai. It is further good news for users of the DIFC Courts following on from the decision of the Court of Appeal in *Standard Chartered Bank v Investment Group Private Limited* (CA-004-2015, broadening the jurisdiction of the DIFC Courts).

⁴ A full list of the memoranda entered into by the DIFC Courts can be found at <http://difccourts.ae/publications/protocols-and-mous/>.

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