



Enforcement of foreign judgments in the UAE - A new dawn?

Litigation Update

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By: Henry Quinlan | Adam Vause | Charlotte Leith

What has happened?

In a recent decision, the DIFC Court of Appeal has handed down a judgment that has the potential to alter the enforcement landscape in the UAE significantly.

The DIFC Court of Appeal has ruled that parties may enforce foreign judgments in the DIFC Courts (even in circumstances where the judgment debtor has no presence or assets in, or connection with, the DIFC), and may then take the resulting DIFC Court judgment to the Dubai Courts for enforcement.

The Court of Appeal's landmark ruling overturns the first instance judgment in *DNB Bank ASA v Gulf Eyadah Corporation and Gulf Navigation Holdings PJSC*. The lower Court had determined that, although the DIFC Courts had jurisdiction to enforce and recognise foreign judgments within the DIFC, it did not have the power to refer those recognised foreign judgments to the "onshore" Dubai Courts for execution against assets located in Dubai (but outside the DIFC).

Why is this important?

The judgment appears likely to make the enforcement of foreign court judgments in the UAE a quicker and less hazardous process than has been the case until now.

Historically, the UAE has been a challenging place in which to enforce foreign court judgments. This is principally because:

- a) in the absence of an international treaty between the UAE and another country for the mutual recognition and enforcement of court judgments, the UAE courts invariably refuse to enforce foreign court judgments; and
- b) even if a treaty does exist, the ability of a party to challenge that judgment all the way to the Dubai Court of Cassation can typically lead to a long-winded, expensive and unpredictable enforcement process.

While the UAE has entered into standalone mutual enforcement treaties with a number of countries, including (among others) France, India and China, there are some notable exceptions where no treaty exists e.g. the USA, England, Germany and Russia.

However, under DIFC Law, the DIFC Courts are required to recognise and enforce final and binding foreign court judgments *regardless* of whether the UAE has a treaty in place with the relevant country or not. Significantly, once

a foreign court judgment has been recognised by the DIFC Court, it then effectively becomes a DIFC Court judgment - and under Dubai law, DIFC Court judgments are automatically enforceable in the onshore courts of Dubai via the (now well-trodden) mutual enforcement mechanism which exists between the two court systems.

Comment

The judgment represents an important departure from the previous position under which it was difficult (and often impossible) to enforce a foreign judgment in Dubai. The Court of Appeal's ruling also highlights the increasingly important role of the DIFC Courts as a "conduit jurisdiction" for the enforcement of foreign arbitral awards, and court judgments and orders against parties based in Dubai (but outside the DIFC financial free zone).

Those currently (or likely to be) involved in foreign litigation against individuals or companies located in "onshore" Dubai (i.e. outside the DIFC) should certainly take heed of this important judgment.

The case in brief

DNB Bank ASA sought to enforce an English High Court judgment in Dubai via the DIFC Courts, which required Gulf Eyadh Corporation and Gulf Navigation Holding PJSC to pay USD 8.7 million in damages (plus costs). Gulf Eyadh Corporation and Gulf Navigation Holding PJSC are located in onshore UAE and have no connection whatsoever with the DIFC.

The DIFC Court of First Instance held that, whilst the foreign judgment could be recognised and enforced within the DIFC (only), the Court did not hold the power under the relevant DIFC Law to refer that recognised foreign judgment to the onshore Dubai Courts for execution.

DNB Bank appealed this decision, on the grounds that the DIFC Courts should consider their decision to recognise and enforce a foreign judgment as an "independent local judgment" (i.e. a judgment issued by the DIFC Courts in their own jurisdictional capacity) which is capable of being taken onshore for enforcement.

The Court of Appeal agreed with this submission and found that, as the effect of a decision to recognise and enforce the foreign judgment was to render a DIFC Court judgment in the same terms as the foreign judgment, it was possible for that judgment to be taken onshore for enforcement in the usual way.

AUTHORS



Henry Quinlan

Partner
Dubai | T: +971 4 438 6100
Henry.Quinlan@dlapiper.com



Adam Vause

Partner
Dubai | T: +971 4 438 6100
adam.vause@dlapiper.com



Charlotte Leith

Senior Associate
Manchester | T: +44 (0)20 7349 0296
charlotte.leith@dlapiper.com
