

## Enforcement of judgments and arbitral awards in the United Arab Emirates: overview

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### ENFORCEMENT OF JUDGMENTS AND ARBITRAL AWARDS IN THE UNITED ARAB EMIRATES

The regime for the enforcement of judgments and arbitral awards in the UAE is currently in flux.

On 9 June 2016, H.H. The Ruler of Dubai issued Decree 19/2016 (Decree). The Decree provided for the establishment of a judicial tribunal for the Dubai courts and the Dubai International Financial Centre (DIFC) courts to rule on conflicts of jurisdiction between the DIFC court and the onshore Dubai courts.

In theory, the Union Supreme Court could have ruled on such conflicts. In practice, the DIFC court has itself been active, in a number of decisions, in defining the boundary between its own jurisdiction and that of the onshore Dubai courts. These developments have come in the context of the development of the DIFC court as a "conduit jurisdiction" for the recognition and enforcement of arbitral awards and court judgments which would ultimately be enforced outside the DIFC in onshore Dubai (see below).

Decree 19/2016 established the judicial tribunal to resolve any conflicts of jurisdiction between the two courts. Since being established it has had an impact on the previously settled regime for the recognition and enforcement of judgments and arbitral awards in the UAE.

#### Conduit jurisdiction

The "conduit jurisdiction" refers to the use, by a judgment or award creditor, of the DIFC courts to obtain the recognition and/or enforcement of that judgment or award. The creditor can then take its DIFC court judgment recognising the judgment or award to the local execution courts in Dubai, under a protocol for the mutual recognition and enforcement of judgments agreed between the DIFC courts and the onshore Dubai courts.

The terms of this protocol are now set out in Article 7 of the Judicial Authority Law (Dubai Law No. 12 of 2004). The local executing court is obliged to execute the DIFC court judgment and cannot reconsider its merits. In this way, award and judgment creditors were able to execute foreign judgments and awards against assets in onshore Dubai without needing to seek the recognition and enforcement of the foreign judgment or award before the local courts.

There were a number of decisions in which the DIFC courts had held that this way of enforcing judgments and awards was permissible under DIFC and UAE federal law and not contrary to public policy (for example, *Egan v Eva* [2013] ARB 002, *Fiske v Firuzeh* [ARB-001-2014], *Meydan Group LLC v Banyan Tree Corporate Pte Ltd* [ARB 003/2013], and *DNB Bank ASA v Gulf Eyadah Corp* [CA 007/2015]).

Nevertheless, this and other questions, led to controversy about how the jurisdiction between the DIFC courts and the onshore Dubai courts should be drawn and, perhaps more importantly, who should draw the boundary. This was particularly the case after

*Meydan* permitted the enforcement of domestic arbitral awards through the conduit jurisdiction.

#### Judicial tribunal

Against the background of the conduit jurisdiction, the judicial tribunal was created. There was little warning of its development, and its creation came as a surprise to many practitioners. It is comprised of judges from the onshore Dubai courts and the DIFC court.

Its early decisions have already impacted on the previously understood conduit jurisdiction regime.

In *Daman Real Capital Partners LLC v. Oger Dubai LLC*, the judicial tribunal appeared to take an approach that may prevent the use of the conduit jurisdiction for the recognition and enforcement of domestic awards in the way contemplated in *Meydan* (see above).

However, subsequent decisions indicate that the judicial tribunal does not simply see its mandate as being to roll back the DIFC court's jurisdiction and its use as a conduit jurisdiction.

In its more recent decisions (of the four reported decisions to date), the judicial tribunal has indicated that it will not intervene to prevent the DIFC courts being used as a conduit jurisdiction for the enforcement of foreign arbitral awards and judgments in the onshore Dubai courts in circumstances where no proceedings have been commenced before the onshore Dubai courts involving the same parties and relating to the same subject matter.

In *Marine Logistics Solutions LLC & others v Wadi Woraya LLC & others*, the award creditor sought recognition and enforcement from the DIFC courts of a London arbitral award even though the award debtor was located in onshore Dubai and had no assets in the DIFC. The award debtor applied to the judicial tribunal to determine whether the DIFC courts or the onshore Dubai courts had jurisdiction to hear the enforcement proceedings.

The judicial tribunal rejected this application and held that the DIFC courts did have jurisdiction as, where the award debtor had not issued proceedings before the onshore Dubai courts, there was no conflict of jurisdiction between the two courts. This prompts the question whether the judicial tribunal would have reached the same result if there had been parallel proceedings on foot before the onshore Dubai courts.

Similarly, in *Gulf Navigation Holding PJSC v DNB Bank ASA*, the judgment debtor applied to the judicial tribunal to challenge the DIFC court's decision in *DNB Bank ASA v (1) Gulf Eyadah Corp, (2) Gulf Navigation Holding PJSC* [CA 007/2015] that it could be used as conduit jurisdiction for the recognition and enforcement of foreign court judgments in onshore Dubai. The judicial tribunal deployed similar reasoning to that followed in *Marine Logistics Solutions LLC & others v Wadi Woraya LLC & others* and ruled that there was no conflict of jurisdiction between the two courts and the DIFC court had jurisdiction.

#### The future

The present regime for the recognition and enforcement of judgments and awards in the UAE is evolving rapidly. This article

will be updated once the new and developing regime is more settled.

## Practical Law Contributor profiles



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**Professional qualifications.** England and Wales, Solicitor, 2007

**Areas of practice.** Arbitration; litigation and dispute resolution; corporate governance; employment and labour; technology media and telecommunications disputes; real estate disputes; financial and shareholder disputes; fraud and investigations.

**Non-professional qualifications.** LLB, University College, London, 2004; LPC, College of Law, 2005

#### Recent transactions

Acting for a high profile US domiciled telecommunications entity in high value DIFC seat arbitral proceedings with parallel proceedings before the Pakistani courts and landmark proceedings before the courts of the DIFC.

Acting for a prominent European shipping corporation in landmark proceedings before the DIFC courts in respect of the enforcement in the UAE of two English seat LMAA arbitral awards valued at US\$114 million against a high-profile Dubai-based company.

Acting for a high net worth individual in a shareholder dispute before the DIFC courts against a prominent UAE based Investment Bank.

Acting for a Dubai sovereign-owned entity in a DIAC arbitration valued at approximately AED220 million in respect of a dispute regarding a district cooling plant and disputed power consumption rates.

Appearing before the Dubai World Tribunal on behalf of a major governmental entity in respect of employment proceedings brought by its former chief executive officer.

Acting for a well known European based weapons manufacturer in proceedings before UAE courts and involving parallel proceedings in a Western European jurisdiction.

Acting for a major Chinese financial institution in DIFC court proceedings involving issues of insurance and reinsurance.

**Professional associations/memberships.** DIAC registered arbitrator; Member of the LCIA, member of the DIAC, member of the Young International Arbitration Group and member of the International Council for Commercial Arbitration.

#### Publications

"Focus on Middle East dispute resolution," August 30, 2016 ([www.dentons.com/en/insights/alerts/2016/august/30/focus-on-middle-east-dispute-resolution](http://www.dentons.com/en/insights/alerts/2016/august/30/focus-on-middle-east-dispute-resolution)).

DIFC strikes back: ([www.dentons.com/en/insights/alerts/2017/february/9/difc-courts-still-a-conduit-jurisdiction](http://www.dentons.com/en/insights/alerts/2017/february/9/difc-courts-still-a-conduit-jurisdiction)).



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**Professional qualifications.** Called to the English Bar 2012.

**Areas of practice.** Arbitration; banking and finance services; civil fraud; asset tracing and recovery; commercial litigation; company; construction and projects; insolvency; partnership and joint ventures; professional negligence; real estate litigation; trusts and probate and estates.

**Non-professional qualifications.** BA (Hons) History, University of Oxford; GDL, City University, London

#### Recent transactions.

Matthew's practice encompasses a broad range of international commercial litigation. He has experience acting on disputes in a number of jurisdictions, including England, Dubai, the Channel Islands, and the Caribbean. Recent reported cases include:

*Sheikh Mohamed Bin Issa Al Jaber v Sheikh Walid Bin Ibrahim Al Ibrahim*[2016] EWHC 1989 (Comm): Matthew acts for one of the Saudi defendants in this substantial ongoing commercial litigation before the English commercial court.

*Peak Construction v Savva*[2016] EWHC 1295 (Ch): Matthew acts for a building contractor in a bribery claim against a former contracts manager.

*Silva v United Investment Bank* (DIFC Court of Appeal, No. 004/2014): Matthew acted for the successful appellant in this breach of fiduciary duty claim having assisted at the first instance trial.

**Professional associations/memberships.** The Chancery Bar Association, the Commercial Bar Association, and Junior Barrister Member: Bankruptcy and Companies Court Users' Committee.

#### Publications.

- Trusts Abroad: the problems of creating trusts in 'non-trust' jurisdictions in the light of *Akers v Samba* (TQR March 2015).
- The practice and procedure of appointing a special manager (Lexis Nexis PSL – Practice Note).
- Chambers Legal Practice Guides – Litigation (2014): UK section.



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**Professional qualifications.** England and Wales, Solicitor, 2009

**Areas of practice.** Construction disputes resolution; litigation; arbitration; energy; project finance and infrastructure and PPP.

**Non-professional qualifications.** First Class Honours degree in Law at Keele University, 2007; LPC at University of West England (Distinction)

#### Recent transactions.

Advising a specialist contractor in an ICC arbitration relating to works under a bespoke construction contract as part of a port project in the Middle East. The claim for around QAR425,000,000 (approximately GBP£81.5 million) related to numerous changes to the contractor's scope of works and the associated time and costs. This involved close cross-border working with our Doha colleagues and application of the Qatari Civil Code.

Acting for a high profile US domiciled telecommunications entity in high value DIFC seat arbitral proceedings. This matter included parallel proceedings before the Pakistani Courts and landmark proceedings before the courts of the DIFC.