

DIFC Court of Appeal Paves Way for Enforcement of Foreign Judgments in UAE

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In doing so, the DIFC Court of Appeal reversed the finding of the DIFC Court of First Instance which had found that while foreign judgments could be recognised and enforced within the DIFC, they could not then be taken to the Dubai Courts for enforcement purposes.

The Court of Appeal judgment was issued on 25 February 2016 in the case of DNB Bank ASA v Gulf Eyadah Corporation & Gulf Navigation Holding PJSC (CA/007/2015). Al Tamimi represented the successful appellant, DNB.

This judgment represents a significant change to the long-standing position that it is difficult if not impossible to enforce foreign judgments in the UAE in the absence of a specific treaty obligation relating to the mutual recognition of judgments.

Background

DNB obtained a judgment against the defendants in the English Commercial Court for around US\$8.7m. It then brought proceedings before the DIFC Courts seeking the recognition and enforcement of the English judgment.

The defendants contested the jurisdiction of the DIFC Courts to hear DNB's claim, arguing that there were no assets in the DIFC against which the English judgment could be enforced and there was no other connection with the DIFC that could justify the proceedings.

The defendants also argued that the proceedings were an abuse of process because DNB's aim was to have the English judgment recognised and enforced by the DIFC Courts in order to then take it to the Dubai Courts for enforcement outside the DIFC, relying on the reciprocal enforcement mechanism available under Article 7 of the Judicial Authority Law (Dubai Law No. 12 of 2004 as amended by Dubai Law No. 16 of 2011). Those provisions provided for, among other things, the reciprocal enforcement of judgment orders between the DIFC Courts and the Dubai Courts. This, the defendants argued, was abusive as it sought to avoid initial engagement with the Dubai Courts and their more restrictive approach to the recognition and enforcement of foreign judgments in Dubai.

At first instance, H.E. Justice Ali Al Madhani dismissed both complaints. He held that the DIFC Courts had jurisdiction to recognise and enforce English judgments, and that such jurisdiction was not dependent on establishing the existence of any assets in, or other connection with, the DIFC.

The judge also dismissed the defendants' abuse of process complaint, but for a reason not argued by either side. He found that it would not be possible to enforce the foreign judgment order in the DIFC Courts and then take it to the Dubai Courts for enforcement. On that basis, the abusive behaviour which was

asserted by the defendants was not possible.

Article 7(2) of the Judicial Authority Law provides for the enforcement in the Dubai Courts of:

“judgments, decisions and orders rendered by the [DIFC] Courts and the Arbitral Awards ratified by the [DIFC] Courts”.

In the Court of First Instance, the judge noted that while recognised foreign arbitral awards were referred to in this provision, “recognised foreign judgments” were not. Recognised foreign judgments did not therefore fall within the reciprocal enforcement provisions of the Judicial Authority Law. As a result, it was not possible, in his view, to enforce a foreign judgment in the DIFC Courts and then take it to the Dubai Courts for enforcement.

Although it was the successful party in the jurisdiction application brought by the defendants, DNB appealed on the basis that the reasoning in the decision might establish an issue estoppel in the defendants’ favour which would prevent DNB from taking the resulting order of the DIFC Courts to the Dubai Courts for enforcement. The issue was, in any event, an issue of significant legal importance.

The defendants cross-appealed against the findings on jurisdiction, abuse of process and costs. The jurisdiction and abuse cross-appeals were abandoned at the hearing. Despite this, the Court of Appeal dealt with them in its judgment. It found that it would entertain DNB’s appeal against the decision as the issue was one of legal significance. In doing so, the Court of Appeal applied English authorities on the circumstances in which there is jurisdiction to hear a winner’s appeal.

The Court of Appeal, comprised of Chief Justice Michael Hwang SC, Justice Sir David Steel and H.E. Justice Omar Al Muhairi, confirmed that it had jurisdiction to recognise and enforce foreign judgments within the DIFC under Article 24(1) of the DIFC Court Law and Articles 5(A)(1)(e) and 7(6) of the Judicial Authority Law. The presence of assets in the DIFC was not a precondition to the DIFC Courts exercising jurisdiction.

The Court of Appeal also confirmed that the proceedings were not abusive, but for different reasons than those relied on by the original judge. By analogy with the DIFC Courts’ decisions on the recognition and enforcement of arbitration awards, there was nothing wrong with using the DIFC Courts as a “conduit” jurisdiction.

On the central issue, DNB’s position was that the original judge had erred in finding that the judgment resulting from recognition and enforcement proceedings in the DIFC would be a “recognised foreign judgment” and as such not covered by Article 7(2) of the Judicial Authority Law. The DIFC Courts adopt the common law, rather than the civil law, approach to the recognition and enforcement of foreign judgments. This position is recorded in a non-binding Memorandum of Guidance signed by the English Commercial Court and the DIFC Courts in 2013. Similar memoranda have subsequently been signed with courts of other jurisdictions. Under common law principles, the resulting judgment would be an independent judgment of the DIFC Courts i.e. a substantive DIFC Court judgment, not a “recognised foreign judgment”. As such, it was a “judgment” within the meaning of Article 7(2) of the Judicial Authority Law and so would be available for referral to, and enforcement by, the Dubai Courts.

The Court of Appeal accepted this position. Drawing support from decisions from around the Commonwealth, it found that the result of the claim for enforcement of a foreign judgment would be an independent judgment of the DIFC Courts. This would fall within the term “judgments, decisions and orders rendered by the [DIFC] Courts” set out in Article 7(2).

Like any other judgment of the DIFC Courts, it could be enforced in the Dubai Courts under Article 7 of the Judicial Authority Law. There was therefore no need for Article 7 to provide for enforcement of “recognised foreign judgments”. By contrast, “recognised foreign awards” had to be referred to because the process for recognition of a foreign arbitration award did not necessarily result in judgment in terms of the award.

The result of this Court of Appeal decision is that foreign judgment orders may now be recognised and enforced in the DIFC Courts and the resulting orders of the DIFC Courts taken to the Dubai Courts for enforcement.

Al Tamimi & Company instructed Tom Montagu-Smith of XXIV Old Buildings to appear for DNB Bank at the Court of Appeal hearing. A similar version of this article appears on Tom's website.