

Enforcing Foreign Court Judgments in Dubai

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In general, it's difficult

They can also hear claims against parties who are based elsewhere if certain conditions set out in Article 21 of the CPC are met, such as where the claims relate to assets held in Dubai. While the Dubai Courts fall outside the UAE federal court system, in practice their approach to jurisdiction and the recognition of foreign court judgments is the same as elsewhere in the UAE as they apply the CPC, a federal law.

Contracting commercial parties often agree that the courts of a particular jurisdiction should hear claims brought under or in relation to their contract. The Dubai Courts will ignore a contractual choice of a foreign jurisdiction (and usually also a contractual choice of governing law) if they themselves have jurisdiction to hear the claim under the CPC. The Dubai Court of Cassation, Dubai's highest court, has held that jurisdiction clauses are void on public policy grounds in cases where the UAE Courts have jurisdiction over a claim.

As a result, international parties with foreign court judgments against parties based in Dubai have historically been unable to enforce such judgments in Dubai because the Dubai Courts themselves have jurisdiction, under the CPC, to hear the underlying claims and will decline to enforce foreign court judgments on that basis.

Prevention is better than cure

At best, there is a large question mark over whether judgments from foreign courts against Dubai-based parties have any practical value in the Dubai Courts. Claimants should carefully consider in which forum to bring their claims from an enforcement perspective, not just on the basis of where they believe they will obtain a favourable judgment on the merits. If a judgment is issued in the right forum, any difficulties with its enforcement in the Dubai Courts are reduced or eliminated altogether.

Commercial parties do not always pay much attention to the dispute resolution provisions of their agreements until a dispute has arisen. Once that happens, a claimant can be left with a choice of court in its contract that is unsuitable or unenforceable in Dubai. Parties with claims against Dubai-based entities or individuals may feel bound to commence proceedings in a foreign court because their agreements require them to do so, even though the Dubai Courts would be the appropriate forum to hear their claims as a matter of UAE law. They may also prefer the courts of their home countries which they are familiar with, as opposed to the Dubai Courts which are based on the civil law system, operate in Arabic language and whose judges have different backgrounds to those of common law jurisdictions.

Claimants seeking to bring claims against Dubai-based parties but who wish to avoid using the Dubai Courts have other forum options that present much less of a challenge from an enforcement perspective than foreign court judgments. One such option involves parties agreeing, in a contract, to submit any disputes arising between them to arbitration. The UAE acceded to the New York Convention in 2006 and despite occasional setbacks, its courts have adopted an increasingly positive approach to the recognition and enforcement of arbitral awards, particularly international awards.

A second option available to contracting parties is to submit their disputes to the jurisdiction of the Dubai International Financial Centre (DIFC), a financial free zone with its own laws and courts (DIFC Courts). The DIFC Courts are English-language common law courts that are also courts of Dubai. Their judgments have the same legal status as judgments of the Dubai Courts, including when it comes to enforcement. Apart from having jurisdiction over claims involving parties, contracts and incidents within the DIFC, the DIFC Courts have since 2011 been able to hear claims brought by parties who have opted into the DIFC's jurisdiction in their contracts but who have no other link to the DIFC. The DIFC's jurisdiction was expanded in this way as a result of Dubai Law No. 16 of 2011, which amended Dubai Law No. 12 of 2004 establishing the DIFC Courts. The amended law is often referred to as the Judicial Authority Law.

Judgments of the DIFC Courts can be enforced in Dubai outside the DIFC pursuant to Article 7 of the Judicial Authority Law. By specifying that any disputes between them are to be resolved by the DIFC Courts, contracting parties can ensure that their disputes are heard by courts that are fundamentally similar to the English Courts but whose judgments can be enforced across Dubai and the wider UAE without the difficulties associated with the enforcement of foreign court judgments.

If a cure is required

If claimants do, for whatever reason, obtain foreign court judgments against Dubai-based parties, they can try to enforce those judgments in either the Dubai Courts or the DIFC Courts.

If they select the Dubai Courts route, Article 235 of the CPC governs the enforceability of foreign court judgments. Although this provision does envisage such enforcement if it is reciprocated by the country from where the judgment originates, it goes on to specify as a condition of enforcement that the UAE Courts must not have had jurisdiction over the underlying claim. As noted above, the Dubai Courts have jurisdiction over claims against parties based in Dubai, or foreign parties with assets in Dubai.

Consequently, Article 235 of the CPC bars the Dubai Courts from recognising foreign court judgments if they themselves have jurisdiction over the underlying claims. The additional enforcement conditions set out in Article 235, such as the requirement for foreign court judgments to be final, will not even be relevant in those cases as the Dubai Courts will not generally enforce such judgments against Dubai-based parties in any event.

The approach of the DIFC Courts to the enforcement of foreign court judgments is different to that of the Dubai Courts. The DIFC Courts can, as a matter of DIFC law, recognise foreign court judgments. Article 7(6) of the Judicial Authority Law and Article 24(1)(a) of the DIFC Court Law (DIFC Law No. 10 of 2004) grant the DIFC Courts jurisdiction to ratify any judgment of a recognised foreign court.

The enforcement of a foreign money judgment in the DIFC Courts against a defendant located within the DIFC itself, or with assets there, is straightforward. This is particularly the case for money judgments from the English Courts. In January 2013 a non-legally binding Memorandum of Guidance as to Enforcement was signed by the DIFC Courts and the English Commercial Court to facilitate the mutual enforcement, subject to certain conditions, of money judgments issued in the two jurisdictions.

The DIFC Courts may also be used as a conduit jurisdiction in which claimants have their foreign court judgments (and arbitral awards) recognised despite the absence of any link to the DIFC. Following that, they can apply to have the resulting judgment of the DIFC Courts enforced outside the DIFC by the Dubai Courts. The enforcement of DIFC Courts judgments is possible in the Dubai Courts (and vice versa) as a result of Article 7 of the Judicial Authority Law.

The status of the DIFC as a conduit jurisdiction was affirmed by the DIFC Court of Appeal in the leading case of *DNB Bank v Gulf Eyadah Corporation & Gulf Navigation Holding* (in which Al Tamimi & Company represented the claimant), which opened the door to the possible enforcement of foreign court judgments across Dubai using the DIFC as a gateway. In that case, an English Court judgment was recognised and enforced by the DIFC Courts even though none of the parties to the case had a presence or assets in the

DIFC.

The use of the DIFC Courts as a conduit jurisdiction for the enforcement of foreign court judgments outside the DIFC remains relatively untested. It is one example of the DIFC Courts' expanding jurisdiction, a development that led to Dubai Decree 19 of 2016 and its establishment of the Judicial Tribunal comprising judges from both the Dubai Courts and DIFC Courts to resolve conflicts of jurisdiction between them. The Judicial Tribunal has already issued several decisions on applications to it by parties claiming that the DIFC Courts exceeded their jurisdiction. While the DNB Bank case withstood such a challenge, any sign of a flood of foreign court judgments being recognised by the DIFC Courts acting as a conduit jurisdiction could lead to an intervention by the Judicial Tribunal due to the inconsistency of such decisions with the approach of the Dubai Courts and the CPC to the enforcement of foreign court judgments.

Having a treaty helps

The New York Convention is not the only treaty that supports the enforcement of foreign decisions in the UAE. Foreign court judgments will, in principle, be enforceable if they originate from a state with which the UAE has a treaty providing for the reciprocal recognition and enforcement of judgments. The UAE is party to a series of such treaties, both multilateral ones such as the Riyadh Convention or the GCC Convention, and bilateral ones with France, India and several other states.

In practice the most relevant of these treaties is the 1996 GCC Convention, which at Article 1 provides that *"the GCC countries shall execute the final judgments issued by the courts of any member state in civil, commercial and administrative cases..."*, subject to the condition that the originating court must have had jurisdiction over the underlying claim. Under Article 238 of the CPC, the Dubai Courts are required to enforce qualifying GCC (and other treaty-governed) court judgments without reconsidering their merits, even where they have concurrent jurisdiction over the original claims. This is an important exception to Article 235 of the CPC, which as noted above prevents the enforcement of foreign court judgments in cases where the Dubai Courts have jurisdiction over the underlying claims.

Both the Dubai Courts and the DIFC Courts are courts of the UAE, a GCC member state, and on this basis other GCC states should enforce judgments of both these courts in accordance with Article 1 of the GCC Convention. The DIFC Courts are themselves legally bound to comply with the terms of treaties for the mutual enforcement of judgments, pursuant to Article 24(2) of the DIFC Court Law.

Conclusion

If a party is based in Dubai, the Dubai Courts will have jurisdiction over it, regardless of what a contract says. Claimants therefore need to consider carefully where they bring their claims against such parties. Obtaining a foreign court judgment may not be of any use to them in Dubai, but there are alternative forums available to them. If the claim involves a relatively straightforward debt, the Dubai Courts may be the most suitable forum for a claimant. If the subject-matter of a claim is of a technical nature, and if having proceedings conducted in English is important, submitting disputes to arbitration or the DIFC Courts may be the most appropriate option for contracting parties as the enforcement of such awards or judgments should be relatively straightforward across the UAE. However, where a claimant has already obtained a foreign court judgment, it may be enforced against a Dubai-based party by using the DIFC Courts as a conduit jurisdiction applying the DNB Bank precedent, as confirmed by the subsequent DIFC Courts judgment in *Barclays Bank & Others v Essar Global Fund Limited*.