

# DIFC Court of First Instance confirms its status as host jurisdiction for recognition of both domestic and foreign awards

## **Kluwer Arbitration Blog**

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In two recent rulings (see Case No. ARB 002/2013 – (1) X1, (2) X2 v. (1) Y1, (2) Y2, ruling of the DIFC Court of First Instance, undated, 2014; and Case No. ARB 003/2013 – *Banyan Tree Corporate PTE LTD v. Meydan Group LLC*, ruling of the DIFC Court of First Instance of 27 May 2014), the Court of First Instance of the Dubai International Financial Centre (DIFC) confirmed that it is competent to hear applications for the recognition of domestic and foreign arbitration awards within the DIFC without the need for a connection to the DIFC. This essentially means that the DIFC may serve as a host jurisdiction for the recognition of awards rendered (i) in mainland Dubai or elsewhere in the UAE (but outside the DIFC) (domestic awards) and (ii) anywhere outside the UAE (foreign awards). Importantly, the DIFC Court's rulings place my own discussions on the subject of the potential status of the DIFC as a "host" or "intermediate" jurisdiction for the enforcement of foreign awards under the New York Convention (see UN Convention on the recognition and enforcement of foreign awards, done at New York on 10 June 1958) in mainland Dubai and the wider UAE in a practical context for the first time (see my [previous blog](#) on "Enforcement of New York Convention Awards in the UAE (Part II) – The DIFC as "host" jurisdiction?").

By way of background, in Case No. ARB 002/2013, the Claimants, award creditors incorporated outside Dubai, sought orders recognizing and granting leave to enforce a *foreign* arbitral award obtained in their favour against award debtors incorporated outside the DIFC in mainland Dubai. In the second case, Case No. ARB 003/2013, Banyan Tree Corporate PTE LTD, an award creditor incorporated in Singapore, similarly sought from the DIFC Courts an order for recognition and enforcement of a *domestic* Dubai International Arbitration Centre (DIAC) award against the UAE-based Meydan Group LLC, the award debtor. In both cases, the award debtors objected to the DIFC Courts' jurisdiction and competence to hear applications for recognition and leave to enforce of awards not rendered in the DIFC.

In dismissing the applications in both cases, the DIFC Court of First Instance relied upon a combination of the various laws already discussed in some detail in my previous blog. More specifically, in finding that the DIFC Court was competent to hear an application for recognition of a foreign award for the purposes of enforcement in mainland Dubai (i.e. outside the DIFC), the location of the award debtor's assets, Deputy Chief Justice Sir John Chadwick placed exclusive reliance on Articles 42 and 43 of the DIFC Arbitration Law (see DIFC Law No. 1 of 2008 as amended) read together with Article 5(A)(1)(e) of the Judicial Authority Law (see Dubai Law No. 12 of 2004 as

amended by Dubai Law No. 16 of 2011), which confers exclusive jurisdiction on the DIFC Court of First Instance to hear and determine “[a]ny claim or action over which the [DIFC] Courts have jurisdiction in accordance with the DIFC Laws and the DIFC Regulations”. By way of reminder, Articles 42 and 43 of the DIFC Arbitration Law provide in pertinent part as follows:

#### “42. Recognition and enforcement of awards

(1) An arbitral award, irrespective of the State or jurisdiction in which it was made, shall be recognised as binding within the DIFC and, upon application in writing to the DIFC Court, shall be enforced subject to the provisions of this Article and of Articles 43 and 44. For the avoidance of doubt, where the UAE has entered into an applicable treaty for the mutual enforcement of judgments, orders or awards, the DIFC Court shall comply with the terms of such treaty.

[. . .]

(4) Awards issued by the DIFC Court may be enforced within the DIFC in the manner prescribed in this Law and any rules of Court made for this purpose. Awards recognised by the DIFC Court may be enforced outside the DIFC in accordance with the Judicial Authority Law and recognition under this Law includes ratification for the purposes of Article 7 of the Judicial Authority Law.

#### 43. Recognition

(1) Where, upon the application of a party for recognition of an arbitral award, the DIFC Court decides that the award shall be recognised, it shall issue an order to that effect.

[. . .]”

Article 44 of the DIFC Arbitration Law, it will be recalled, lists potential grounds for refusal to recognise and enforce, which are, however, irrelevant in the present context. Article 7 of the Judicial Authority Law (following amendment by Dubai Law No. 16 of 2011) in turn reads in pertinent part as follows:

#### “7 Execution

(1) The execution judge assigned pursuant to Paragraph (D) of Article 5 of this Law shall have jurisdiction over execution of the judgments, decisions and orders rendered by the [DIFC] Courts and the Arbitral Awards ratified by the [DIFC] Courts if the subject matter of execution is situated within DIFC, and such execution shall be in accordance with Rules of the [DIFC] Courts.

(2) Where the subject matter of execution is situated outside the DIFC, the judgments, decisions and orders rendered by the [DIFC] Courts and Arbitral Awards ratified by the [DIFC] Courts shall be executed by the competent entity having jurisdiction 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 [DIFC] Courts and such entities. Such execution shall be subject to the following conditions:

(a) The judgment, decision, order or ratified Arbitral Award to be executed is final and executory;

- (b) The judgment, decision, order or ratified Arbitral Award is translated into the official language of the entity through which execution is carried out;
- (c) The [DIFC] Courts affix the executory formula on the judgment, decision, order or ratified Arbitral Award.

(3) In addition to Paragraphs (a), (b) and (c) of Clause (2) of this Article, when executing the judgments, decisions and orders issued by the [DIFC] Courts or Arbitral Awards ratified by the [DIFC] Courts through Dubai Courts, the following must be observed:

- (a) the [DIFC] Courts shall issue an execution letter to the Chief Justice of the Court of First Instance of Dubai Courts stating the procedure to be carried out;
- (b) the person requesting execution shall submit to the execution judge of Dubai Courts an application accompanied by a copy of the judgment, decision or order, legal translation of the same, and the execution letter;
- (c) the execution judge of Dubai Courts shall apply the execution procedure and rules stipulated in the aforementioned Federal Civil Procedure Code, including any objections to the execution; the execution judge may not reconsider the merits of the judgment, decision or order;
- (d) Dubai Courts shall collect the execution fees for each execution request submitted to them in accordance with the aforementioned Dubai Courts Fees Law.

(4) Where the subject matter of execution is situated in DIFC, the judgments, decisions and orders rendered by Dubai Courts or Arbitral Awards ratified by Dubai Courts shall be executed by the execution judge of the [DIFC] Courts subject to the following conditions:

- (a) The judgment, decision or order to be executed is final and executory;
- (b) The judgment, decision or order is translated into English by the person requesting execution;
- (c) Dubai Courts affix the executory formula on the judgment, decision or order.

(5) In addition to Paragraphs (a), (b) and (c) of Clause (4) of this Article, when executing, through the [DIFC] Courts, the judgments, decisions and orders issued by Dubai Courts or Arbitral Awards ratified by Dubai Courts, the following must be observed:

- (a) the Dubai Courts shall issue an execution letter to the Chief Justice of the [DIFC] Courts stating the procedure to be carried out;
- (b) the person requesting execution shall submit to the execution judge of the [DIFC] Courts an application accompanied by a copy of the judgment, decision or order, legal translation of the same, and the execution letter;
- (c) the execution judge of the [DIFC] Courts shall apply the execution procedure and rules stipulated in the Rules of the [DIFC] Courts, including any objections to execution. The execution judge may not reconsider the merits of the judgment, decision or order;
- (d) the [DIFC] Courts shall collect the execution fees for each execution request submitted to them in accordance with their applicable fees law.

(6) The judgments, decisions, orders and ratified Arbitral Awards rendered outside DIFC by any court other than Dubai Courts shall be executed within DIFC in accordance with the procedure prescribed in the Rules of the [DIFC] Courts.”

Basing himself on a reference to Article III of the New York Convention, which requires Convention States to recognise and enforce New York Convention awards (see Case No. ARB 002/2013, at para.

9), the main planks in Sir John Chadwick's reasoning are self-explanatory and deserve full citation:

“35. [...] the jurisdiction of the DIFC Court of First Instance conferred by the DIFC Arbitration Law — and so the jurisdiction brought within Clause (1) of Article 5(A) by the gateway which sub-paragraph (e) of that clause provides — is jurisdiction to recognise a foreign arbitral award as binding within the DIFC and jurisdiction to enforce a foreign arbitral award against assets within the DIFC. The jurisdiction of the Dubai Courts does not extend to the recognition or enforcement of foreign arbitral awards within the DIFC. The jurisdiction of the DIFC Courts, within the DIFC, is exercisable to the exclusion of the Dubai Courts. The DIFC Courts do not have jurisdiction to recognise or enforce foreign arbitral awards outside the DIFC. The jurisdiction of the DIFC Courts and the jurisdiction of the Dubai Courts in relation to the recognition and enforcement of foreign arbitral awards are mutually exclusive.

36. Not only are the jurisdiction of the DIFC Courts and the jurisdiction of the Dubai Courts in relation to the recognition and enforcement of foreign arbitral awards mutually exclusive, they are also complementary. It is plain that, in enacting Article 7 of the Dubai Judicial Authority Law, the legislator contemplated that both the DIFC Courts and the Dubai Courts would have power (in appropriate cases) to ratify (or recognise) arbitral awards (including foreign arbitral awards); that the enforcement of such awards within the DIFC (in the sense of execution against assets within the DIFC) would be for the DIFC Courts; and that the enforcement of such awards outside the DIFC would be for the competent entity having jurisdiction outside the DIFC (which, in a case where execution was sought against assets outside the DIFC but within the Emirate of Dubai, could be expected to be the Dubai Courts).

37. It follows that, in the context of a claim for recognition of a foreign arbitral award, [...] the effect of the phrase ‘exclusive jurisdiction’ in the introductory words of Clause (1) of Article 5(A), when applied to the jurisdictional gateway which sub-paragraph (e) of that clause provides in the present context, is that the DIFC Courts have jurisdiction, to the exclusion of the Dubai Courts, to make an order for the recognition of such an award — and to enforce such an award — within the DIFC. The corollary, as it seems to me (while recognising that the extent of their jurisdiction is a matter for determination by the Dubai Courts), is that the Dubai Courts, and not the DIFC Courts, have jurisdiction to make an order for the recognition of such an award – and to enforce such an award — within the Emirate of Dubai other than in the DIFC.

38. [...] Article 42(1) of the DIFC Arbitration Law confers jurisdiction on the DIFC Court to recognise foreign arbitral awards ‘as binding within the DIFC’; and, when read with the first sentence of Article 42(4), confers on the DIFC Court jurisdiction to enforce awards which it has recognised within the DIFC. Those are ‘the matters with which it deals’; and, in respect of those matters, the article does confer jurisdiction which is ‘unlimited and exclusive’. Article 42(1), read with the second sentence of Article 42(4), makes it clear that the article does not confer on the DIFC Court jurisdiction to enforce awards which it has recognised outside the DIFC. Enforcement of such awards, within the Emirate of Dubai (but outside the DIFC) is a matter for the Dubai Courts; as the second sentence of Article 42(4), read with Article 7(2) and (3) of the Judicial Authority Law makes clear.”

In Case No. ARB 003/2013, H.E. Justice Omar Al Muhari fully endorsed Sir John Chadwick's reasoning in application to the recognition by the DIFC Courts of domestic awards rendered outside the DIFC.

Without more, according to Justice Al Muhari, *“Justice Chadwick’s judgment applies in the present case due to the language of Article 42(1) of the DIFC Arbitration Law stating that: ‘An arbitral award, **irrespective of the State of jurisdiction in which it was made**, shall be recognized as binding within the DIFC ...’.*” (see Case No. ARB 003/2013, at para. 29; emphasis in the original)

The practical relevance of the DIFC Court’s rulings is that contrary to my previous speculations on the DIFC Courts’ competence to hear applications for enforcement even without any geographic nexus to the DIFC, the DIFC Courts are likely to insist on the presence in the DIFC of assets against which an award creditor is seeking to enforce the subject award as a jurisdictional threshold for entertaining any enforcement applications – whether under the New York Convention or otherwise. In the clear words of Sir John Chadwick, contemplating grounds for refusal of recognition, *“in particular, the absence of assets within the jurisdiction against which to enforce the award may be fatal to an application for an order for execution, given the terms of Article 42(4) of the DIFC Arbitration Law [...] I accept that the powers of the DIFC Courts’ execution judge are exercisable only in relation to assets within the DIFC.”* (see Case No. ARB 002/2013, at paras 39 and 40). This being said, applications for recognition of a foreign award in the DIFC do not require the presence of any assets in the DIFC and will be entertained by the DIFC Courts on the basis of Article 42(1) of the DIFC Arbitration Law (read together with Article III of the New York Convention) even absent any geographic nexus to the DIFC. In practical terms, this means that award creditors (irrespective of whether the provenance of the subject award is domestic or international) will be able to circumvent any residual uncertainties in the Dubai Courts’ enforcement practice of both domestic and foreign awards by obtaining an order of recognition from the DIFC Courts, which in turn will have to be recognized and enforced by the Dubai execution judge without any review on the merits in compliance with Article 7(3) of the Judicial Authority Law as amended always provided that the award debtor has assets in mainland Dubai. The enforcement order obtained in Dubai will then be enforceable throughout the UAE by reference to Article 11 of UAE Federal Law No. 11 of 1973 on Judicial Relationships Amongst Emirates in the terms articulated in my previous blog on the subject-matter. This overall conclusion finds the full support of Sir John Chadwick when he states:

“In a case where the DIFC Court is required to recognise a foreign arbitral award under Article 42(1) of the DIFC Arbitration Law a party may apply for an order for recognition and enforcement. If the DIFC Court issues an order recognising the award, it may enforce the award within the DIFC (Article 42(4)). Article 42(4) provides, further, that awards recognised by the DIFC Court may be enforced outside the DIFC pursuant to the Judicial Authority Law (Dubai Law No. 12 of 2004, as amended by Dubai Law No. 16 of 2011).

[...]

I reject the submission [...] that it cannot have been the intention of the Dubai legislator in promulgating the Judicial Authority Law to allow the DIFC Courts to be used as a conduit jurisdiction for enforcement of an arbitration award against assets in Dubai (outside the DIFC) in circumstances where the owner of those assets has a legitimate expectation that such enforcement action can only properly be brought in the Dubai Courts. It seems to me plain, from the provisions in Article 7 of the Judicial Authority Law, that the legislator did contemplate that there could be circumstances in which recognition of a foreign arbitral award by the DIFC Court could trigger enforcement proceedings, through the Dubai Courts, against assets in the Emirate of Dubai (but outside the DIFC) without the need for separate recognition of the award by the Courts of Dubai; and vice versa. An example of such circumstances might be a case in which the party against whom the arbitral award had been made had assets in the Emirate of Dubai of which some were within the DIFC and others were not. In such a case it seems to me most

unlikely that the legislator intended that the party seeking to enforce the award should be required to seek recognition of the award from both the DIFC Court and the Dubai Courts.”

(see Case No. ARB 002/2013, at paras 5 and 41)

With this in mind, it is encouraging to see the development of a body of DIFC case law that will ultimately form the basis of a complementary interaction between the civil and common law court systems of the off-shore DIFC and mainland Dubai, which in turn will strengthen and create confidence in arbitration practice and procedure in the UAE more generally.