

Enforcement in Dubai: Two Recent Cases

Kluwer Arbitration Blog

March 24, 2016

Henry Quinlan, Adam Bradshaw, Sam Stevens (DLA Piper LLP)

Please refer to this post as: Henry Quinlan, Adam Bradshaw, Sam Stevens, 'Enforcement in Dubai: Two Recent Cases', Kluwer Arbitration Blog, March 24 2016, <http://arbitrationblog.kluwerarbitration.com/2016/03/24/enforcement-in-dubai-two-recent-cases/>

Two recent decisions handed down by the DIFC Courts have further developed the enforcement landscape within the UAE, confirming the availability of a swifter enforcement regime for foreign investors. This article explores each decision in further detail and examines the significance for businesses.

The DIFC Court's recent decisions in *Bocimar v ETA and DNB Bank* (Appeal Court) follow hot on the heels of *Banyan Tree Corporate Pte Ltd v Meydan Group LLC* and *XX v YY*, in which the DIFC Courts' approach to being used as a conduit for onshore enforcement was first tested in the context of the enforcement of foreign and domestic arbitral awards. These latest cases relate to foreign court judgments and orders, and are further good news for international businesses and financial institutions – potentially offering parties a faster route to enforcing contractual rights and providing greater legal and commercial certainty.

Bocimar International N.V. (“Bocimar”) v Emirates Trading Agency LLC (“ETA”) (“Bocimar Case”)

The Claimant in the Bocimar Case commenced Part 8 proceedings in the DIFC Courts seeking judgment in respect of judgment debts arising under two orders made on 17 July 2014 by the English Commercial Court – those orders themselves were made pursuant to Section 66 of the English Arbitration Act 1996, in recognition of two London-seated arbitral awards. The Defendant sought to challenge the jurisdiction of the DIFC Courts. The Defendant ultimately withdrew its application on 19 January 2016 and the application was dismissed in an order made by consent on 26 January 2016, by which the Defendant was ordered to make payment to the Claimant of the sum of approximately USD 118 million.

By application issued shortly thereafter, the Claimant sought a freezing order restraining the Defendant from removing any of its assets from the DIFC or from dealing with its assets worldwide up to the amount of the judgment debt.

In his judgment, Justice Sir John Chadwick commented upon the judgment of the Court of First Instance in the DNB Case (as considered further below), in the context of considering whether it could be expected that the onshore Dubai Courts would take the steps necessary to enforce the DIFC Court judgment of 26 January 2016. While recognising that the first instance judgment in the DNB Case was subject to appeal, Justice Chadwick was comfortable with drawing a distinction in the present case. The DNB Case (as considered further below) concerned the enforcement of a foreign court judgment. The present case concerned not the enforcement of a foreign court judgment but a judgment (rendered 26 January 2016) of the DIFC Court itself. On that basis, there was no requirement for the judge to consider the issue any further.

The Bocimar decision is of limited direct consequence as regards the enforcement of foreign arbitral awards in the UAE. It is however an illustration of the means by which a party may ultimately be able to enforce such an award in onshore Dubai.

DNB Bank ASA v Gulf Eyadah Corporation and Gulf Navigation Holding PJSC (“DNB Case”)

In a landmark decision on 25 February 2016, the DIFC Court of Appeal overturned the first instance judgment in the DNB Case. In determining an application for recognition and enforcement of an English Commercial Court judgment (which claim was brought with the purpose of seeking to enforce the DIFC Courts’ judgment in onshore Dubai), the Court of First Instance had determined that, although the DIFC Courts had jurisdiction to enforce and recognise foreign judgments within the DIFC, they did not have the power under the JAL to refer its judgments in such proceedings to the onshore Dubai Courts for execution.

The Court of First Instance drew a distinction between the role of the DIFC Courts as a conduit jurisdiction for the enforcement of foreign court judgments, and the enforcement of foreign arbitral awards. The Court concluded that it had the power to allow the latter to be taken to the onshore Dubai Courts, but not the former.

The DIFC Court of Appeal’s judgment now means that this distinction no longer exists. The effect of the new judgment is that the DIFC Courts can be used as a conduit jurisdiction for the enforcement of foreign court judgments against assets located in “onshore” (i.e. non-DIFC) Dubai, irrespective of whether the foreign judgment debtor has any connection with, assets or presence in the DIFC.

However, one issue which was emphasised in the DNB Case is that, unlike foreign court judgments, the recognition of a foreign award (though the following principle presumably applies equally to awards rendered in onshore Dubai) does not, of itself, give rise to a DIFC Court judgment in the terms of the award.

This is an important point to bear in mind when considering whether, and how, to use the DIFC Courts as a conduit jurisdiction. As Justice David Steel explained in paragraph 138 of the DIFC Court of Appeal’s judgment, for the purpose of seeking enforcement of a foreign award:

“...the applicant must seek enforcement... by obtaining a judgment: [DIFC Court Rule] 43.75. But since that is a **discretionary remedy** [emphasis added], it follows that there may be situations in which the foreign award has been recognised but there is no judgment in its terms.”

The DIFC Court of Appeal’s judgment does not set out any guidance as to the precise circumstances in which the DIFC Courts would decline to exercise their discretion to enter judgment in the terms of an award. However, it is possible that the DIFC Courts might decline to do so where (for example) the award in question is already the subject of an application to set aside in the onshore Dubai Courts, such that to enter judgment in the terms of the award in the DIFC Courts (and to allow the award/judgment creditor to take that judgment onshore for enforcement) might create a risk that an award which is under review by the Dubai Courts might be enforced (indirectly, through a judgment issued in its terms).

Only time will tell how the DIFC Courts will address such issues. However, the decisions in *Banyan Tree Corporate Pte Ltd v Meydan Group LLC*, *XX v YY* and other similar recent cases represent very positive news for the efficient enforcement of arbitral awards in onshore Dubai/UAE.

Significance of both judgments

The judgments appear likely to make the enforcement of foreign court judgments and orders granted by foreign courts in the UAE (including those recognising and enforcing foreign arbitral awards) a quicker and less hazardous process.

Historically, the UAE has been a challenging place in which to enforce foreign court judgments and orders. 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 and/or orders, the UAE courts invariably refuse to enforce foreign court judgments and/or orders; and

(b) even if a treaty does exist, the ability of a party to challenge enforcement of judgments and/or orders 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 the 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, and judgment entered in the same terms, by the DIFC Court, what one is then enforcing is 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.

These recent rulings therefore offer greater predictability and commercial certainty to financial institutions and other successful litigants seeking to enforce foreign judgements and/or orders in Dubai.

What does this mean for the future?

Dubai is fast becoming a place where arbitral awards are readily enforced. Where parties may previously have been reluctant to agree to an arbitration clause with a Dubai entity, these developments suggest that it will be more straightforward to enforce not only onshore and foreign arbitral awards, but also judgments and/or orders rendered by foreign courts) in Dubai. It is likely that the DIFC Courts' caseload will increase significantly as a result of these developments.

One issue which remains unresolved is what, if anything, will be the reaction of the onshore Dubai courts to these judgments and what tensions, if any, may arise. For example, will the Dubai Courts differentiate between a DIFC Court judgment arising from a DIFC-seated arbitration/DIFC Court proceedings, on the one hand, and judgments of the DIFC Courts entered in the terms of foreign arbitral awards, foreign court judgments (or orders) and/or domestic onshore awards? Only time will tell.