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Enforcement of foreign judgments v. enforcement of foreign awards: The limits of the DIFC Courts' role as a host jurisdiction

Gordon Blanke (Blanke Arbitration LLC) · Monday, August 10th, 2015

In a recent ruling of the DIFC Court of First Instance (CFI 043/2014 – *DNB Bank ASA v. (1) Gulf Eyadah Corporation (2) Gulf Navigation Holding PJSC*, ruling of the DIFC Court of First Instance of 2nd July 2015), H.E. Justice Ali Al Madhani, one of the UAE-national resident judges of the DIFC Courts, drew a distinction between the role of the DIFC Courts as a “conduit” or “host” jurisdiction in the enforcement of foreign judgments and foreign arbitral awards. In the Justice’s view, given the confined scope of application of DIFC Law No. 12 of 2004 as amended by DIFC Law No. 16 of 2011, also known as the Judicial Authority Law, the DIFC Courts could only serve as a conduit jurisdiction in the enforcement of foreign arbitral *awards*, not however in the enforcement of foreign *judgments*.

By way of background, on a previous occasion in the past, the DIFC Courts confirmed their status as a host jurisdiction in the enforcement of foreign arbitral awards (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 [my previous blog](#)). By way of reminder, the DIFC as host or conduit jurisdiction allows an international award creditor to execute an award against assets of an award debtor in mainland (or onshore) Dubai through the DIFC Courts even absent any geographic nexus to the DIFC (other than the actual application to the DIFC Courts for enforcement and onward execution of the underlying award). A foreign award ratified before the DIFC Courts will benefit from the mutual recognition regime in place between the Dubai and DIFC Courts under Article 7 of the Judicial Authority Law. For the avoidance of doubt, directing the enforcement process through the DIFC Courts is commonly believed to forestall any of the residual procedural uncertainties that enforcement before the mainland Dubai courts may entail (although given the recent history of enforcement of New York Convention awards before the Dubai Courts, these may – out of all fairness – have significantly diminished, on which see my various reporting in this Blog, most recently in Case No. 434/2014 – *Al Reyami Group LLC v. BTI Befestigungstechnik GmbH & Co KG*, ruling of the Dubai Court of Cassation of 23rd November 2014, see [my previous blog](#)). Importantly also, the DIFC Courts have otherwise lent their full support to a wide jurisdiction to hear enforcement actions of foreign awards without a nexus to the DIFC, refusing more recently leave for an application to the Union Supreme for an examination of the constitutionality of the mutual recognition regime under Article 7 of the Judicial Authority Law operated in conjunction with the DIFC Courts’ wide jurisdiction under DIFC Law No. 1 of 2008 as amended (the “DIFC Arbitration Law”) (see Case ARB 001/2014 – (1) X1 (2) X2 v. (1) Y, Order of the Dubai Court of

First Instance of 5 January 2014 and [my previous blog](#) on the subject-matter). Finally, it is worth mentioning that parallel developments have taken place in relation to the DIFC Courts' role as a host jurisdiction for the recognition and enforcement of domestic awards (see ARB 003/2013 – *Banyan Tree Corporate Pte Ltd v. Meydan Group LLC*, ruling of the DIFC Court of First Instance of 2nd April 2015 and [my previous blog](#); and ARB 002/2014 – A v. B, Order of Justice Sir David Steel of 16 December 2014, and [my previous blog](#)).

In the present case, the Claimant, the judgment creditor, sought recognition and enforcement before the DIFC Courts of a judgment order issued by the English High Court of Justice that required the Defendant, the judgment debtor, to pay the judgment creditor US\$ 8.7 million plus cost under various finance documents in dispute between the Parties. The judgment debtor moved to challenge the jurisdiction of the DIFC Courts, essentially on the basis that in the absence of any assets in the DIFC, a foreign judgment could not be enforced against it through the DIFC Courts. The Parties' various arguments of the DIFC Courts' proper jurisdiction brought to the fore the Courts' acquired role as a conduit jurisdiction in the recognition and enforcement of foreign arbitral awards. Prompted to consider the question as to whether the DIFC Courts' role as a conduit jurisdiction in arbitration was transferrable to the enforcement of foreign judgments, Justice Al Madhani found as follows:

44. [...] Unlike the situation in cases where an Arbitral Award is brought for recognition and then for enforcement, Recognised Foreign Judgments or Orders by the DIFC Courts cannot be said to be referred to the Dubai Courts for execution beyond the DIFC jurisdiction.

45. Article 7(2) of the Judicial Authority Law [...] provides that:

‘Where the subject matter of execution is situated outside the DIFC, the judgments, decisions and orders rendered by the Courts and the Arbitral Awards ratified by the 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 Courts and these entities[,] [s]uch execution shall be subject to the following conditions.’

46. In this Article there is reference to judgments, decisions and orders rendered by the DIFC Courts and the Arbitral Awards ratified by the DIFC Courts to be referred for execution but no reference at all to any foreign judgment recognised by the DIFC Courts. The Article has excluded Recognised Foreign Judgments from that rule. This is not by mistake, because Articles 7(4) and 7(5) of the said law stated that Dubai Court decisions and Arbitral Awards ratified by the Dubai Courts could be brought for execution in the DIFC but not Foreign Courts Judgments recognised by Dubai Courts.

47. Recognised Foreign Judgments were only mentioned in Article 7(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 Courts.’

48. In my view, the meaning of Article 7 of the Judicial Authority Law [...] along

with Article 24(1) of the Court Law in regards to Foreign Court Judgments is that although this Court may execute judgments, decisions and orders rendered by any Recognised Court other than Dubai Courts, that execution shall not go beyond the jurisdiction of this Court which requires this Court not to refer Recognised Foreign Judgments to the Dubai Court for execution and vice versa.

49. This would surely lead me to say that this Court cannot be said to be a '*conduit jurisdiction Court*' if the matter before it is related to a Foreign Court Judgment. There shall be no contradiction between my finding and the finding in the *Banyan Tree case and XX v YY*, since these cases involved Ratified Arbitration Awards that were said to be able to be sent for execution between the DIFC Courts and Dubai Courts according to Article 7(3)(4) and (5). For these reasons one cannot imagine that the DIFC Courts are obliged to enforce foreign court judgments in the same way they are obliged to enforce Foreign Arbitral Awards (*XX v YY*) or even domestic arbitral awards (*Banyan Tree*).

50. One might argue that Foreign Judgments or Orders recognised by the DIFC Courts come under the meaning of '*the judgments, decisions and orders rendered by the Courts*' in Article 7(2) and therefore can be referred to the Dubai Courts for execution. In my view it does not, and if that were the correct approach there would be no need to particularly mention or add 'Arbitral Awards ratified by the Courts' in separate words to that provision. The acknowledgment of the '*Arbitral Awards ratified by the Courts*' means that a distinction must be drawn to what this Court issues or renders (*judgments, decisions and orders*) by itself and between what is rendered or issued by another court or institution and then brought for recognition or ratification.

51. My interpretation of Article 7 is that a Recognised Foreign Court Judgment or Ratified Arbitral Award cannot be said to be within the meaning of '*the judgments, decisions and orders rendered by the Courts*'.

52. In conclusion, although this Court has jurisdiction to recognise and enforce Foreign Judgments and that power shall be within the DIFC and cannot extend beyond the DIFC, this Court has no power to refer Recognised Foreign Judgments to Dubai Courts for execution. [...]" (italics in the original)

The lesson to be drawn from Justice Al Madhani's ruling in *DNB Bank* is clear: Contracting parties, who wish to benefit from the DIFC Courts' service as a host or conduit jurisdiction for enforcement purposes, should opt for arbitration as the prevailing contractual dispute resolution mechanism. Irrespective of whether the arbitration of a future dispute is seated in the UAE or abroad and hence produces a domestic or foreign arbitral award, the award creditor – regardless of the location of the award debtor's assets in mainland Dubai – will be able to apply to the DIFC Courts for the ratification and enforcement of that award with onward execution before the Dubai Courts in reliance on the regime of mutual recognition between the Dubai and DIFC Courts under Article 7 of the Judicial Authority Law.


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