

Enforcing Dubai Courts judgments in the debtor's country of residence: the DIFC Route

Foreign judgments and arbitral awards are routinely recognised and enforced in the UAE by the DIFC Courts. This recognition and enforcement of is sought either for its ultimate enforcement in onshore Dubai, or to get the judgment debt enforced against a DIFC establishment and/or an establishment with assets in the DIFC.

However, despite the fact that there are perfectly good laws and procedures in place to enforce DIFC and perhaps even non-DIFC Dubai court judgments in foreign countries, there have been fewer instances of judgment creditors enforcing local Dubai judgments outside the UAE.

Constitutionally, the DIFC Court is part of the Dubai judicial system, and therefore the enforcement of DIFC Court judgments outside the UAE will be done exactly the same as the enforcement of a judgment of the Dubai Courts. Whilst the UAE has existing treaties of mutual recognition and reciprocal enforcement of judgments with Arab countries, India, China, France and Kazakhstan; presently there are no treaties with jurisdictions such as the United States, England & Wales and Australia.

Having said that the DIFC courts have taken initiatives and have signed Memoranda of Guidance (MOGs) with other jurisdictions, namely with:

1. The Commercial Court of England and Wales on 23 January 2013(27).
2. The Supreme Court of New South Wales on 9 September 2013(28).
3. The Federal Courts of Australia on 28 March 2014(29).
4. The High Court of Kenya (Commercial & Admiralty Division) on 27 November 2014.
5. The Supreme Court of Singapore on 19 January 2015.
6. The United States District Court for the Southern District of New York (SDNY) on 29 March 2015.
7. The Supreme Court of Korea on 4 November 2015.

Although these memoranda do not constitute treaties, they set out a 'mutual understanding' of the applicable laws and judicial processes governing the reciprocal enforcement of final money judgments under the common law and Korea. The effect of these MoGs is to ease the process of enforcement of DIFC Courts judgments in these jurisdictions.

Recently a DIFC Court judgment was successfully enforced in Australia, however this area is still not being well exploited. The majority of UAE population consists of expatriates, with many hundreds of thousands from the above countries making major economic contributions to the UAE.

With economic and commercial relations come commercial disputes, whether between corporate entities, or between corporate entities and individuals. Many entities in the financial sector and even the construction and real estate sector have judgment awards against expats who have absconded since the passing of judgments. The above MoGs open new gateways for judgment creditors to enforce judgment debts in the defendant's country of residence.

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