Enforcement of DIFC Courts’ Judgments and Orders within and outside the DIFC

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Enforcement of DIFC Courts’ Judgments within the DIFC

• Enforcement of DIFC Courts judgments where the assets are within the DIFC follows the procedures set out in Part 46 of the Rules of the DIFC Courts.

• A Judgment Creditor may enforce a money judgment by: a charge over property, attachment of assets, execution against assets or the appointment of a receiver.
Enforcement of DIFC Courts’ Judgments in Dubai
(but outside of the DIFC)

• The 2009 Protocol of Enforcement between the DIFC Courts and Dubai Courts

• Purpose: simple, swift and effective enforcement of DIFC Courts’ judgments by the Dubai Courts
Enforcement of DIFC Courts’ Judgments in Dubai (but outside of the DIFC) Cont’d

1. That the judgment is “final”
   - It is final and unappealable or
   - It is an order made before or during the course of proceedings and is considered and “Execution Order”

2. That it is accompanied by a “legal” translation, one which was carried out by a translator authorized by the UAE Ministry of Justice
The Enforcement Protocol is now codified in Dubai Law No. 16 of 2011

Three Requirements under Article 7(2) -

1. That the judgment is final
2. That it is translated into Arabic by “legally certified” translator
3. That it is certified by the DIFC Courts for execution, with a formula of how this is to be accomplished affixed by the Courts
The procedure for enforcement is outlined in Article 7(3)

1. The enforcing party must first request an execution letter from the DIFC Courts.

2. The party seeking enforcement must submit an application for enforcement.

3. On receipt of this, the Dubai Courts must enforce the Judgment (in accordance with the UAE Federal Civil) Effect: A DIFC Court judgment is now converted into a judgment of the Dubai Courts, which has the effect of being enforceable under any enforcement treaties of which the UAE is a party.
1. **The enforcing party must first request an execution letter from the DIFC Courts**

This is a letter written by the DIFC Courts to the Chief Justice of the Dubai Courts outlining the required procedures of the enforcement of the judgment.
2. **The party seeking enforcement must submit an application for enforcement**

This is to be presented to the execution judge at the Dubai Courts, accompanied by the execution letter and a legal interpretation of the judgment into Arabic.
3. **On receipt of this, the Dubai Courts must enforce the Judgment (in accordance with the UAE Federal Civil)**

- Enforcement may be challenged in compliance with methods included in this law
- However, the execution judge may not re-examine the merits of the case
- Article 235 Federal Civil Procedures Law provides that the UAE Courts will not enforce a foreign judgment if they would have had jurisdiction to preside over the matter
Enforcement of DIFC Judgments and Orders
Outside of Dubai

Prior to November 2011 and the promulgation of Law No. 16 of 2011, enforcement of DIFC Courts judgments outside of Dubai was by “deputisation” or “referral” as per Art. 221 of UAE Civil Procedure Code:
Article 221 Procedures:

a. The execution judge shall refer the judgment to the execution judge for the area in which the judgment is being sought for enforcement and shall provide him with the legal papers required for execution.

b. The execution judge to whom the referral has been made, shall make all of the necessary decisions to execute the referral and shall rule on procedural objections only. His decisions may be subject to appeal before the Court of Appeal in his area.
Article 221 Procedures Cont’d

c. The execution judge who has executed the execution shall inform the referring execution judge of the proceedings and transfer to him any items or property he has received as a result of the sale of the things attached.

d. If the execution judge to whom the matter was referred finds no legal reasons precluding the execution, or if it is impossible for him to execute for any other reason, he must notify the execution court.
As of Article 7(2) of Law No. 16 of 2011:

“Where the subject matter of execution is situated outside of the DIFC, the judgments rendered by the Courts and the Arbitral Awards ratified by the Courts shall be executed by the competent entity having jurisdiction out of the DIFC in accordance with the procedure and rules adopted by such entities in this regard . . .”
Effect:

- DIFC Courts’ judgments may be sent directly to the competent entity for execution within the UAE, no longer require “deputisation” or “referral”.

- However, as this is not yet established practice, to be safe, parties seeking enforcement may rather proceed with Art. 221 route.

- Recent MOUs between the DIFC Courts and other UAE Courts are expected to make enforcement within the UAE easier and more efficient.
Enforcement of DIFC Judgments and Orders outside of the UAE

- DIFC Courts is part of the Dubai judicial system, hence judgments are equally treated for enforcement outside UAE.

- Enforcement depends on the terms of the treaties between States.

- If there is no treaty in place, it will depend on the State laws in place of enforcement.
Treaties in place between UAE regarding Enforcement of Judgments

- The GCC Convention (1996) - Bahrain, Saudi Arabia, Oman, Qatar and Kuwait
- The Riyadh Arab Agreement for Judicial Cooperation (1983) - Jordan, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen
- The Agreement on Judicial Cooperation, Execution of Judgments and Extradition of Criminals between the UAE and the Tunisian Republic (1975)
Treaties in place between UAE regarding Enforcement of Judgments Cont’d

- The Convention on Judicial Assistance, Recognition and Enforcement of Judgments in Civil and Commercial matters signed between France and the UAE (“the Paris Convention” 1992)
- The Agreement on Judicial Cooperation in Civil and Commercial Matters with India (2000)
Examples of enforcement of DIFC Courts’ Judgments outside the UAE:

*Global Strategies Group v Aqeeq Aviation Holding Company:* The arbitral award creditor filed an application in the DIFC Courts to enforce the reward rendered in their favor. The DIFC Courts ratified this award through issuing an order, but requested of the applicant to serve it outside of the DIFC, where the award debtor was located (Kuwait). The DIFC Courts order was recognized by UAE Ministry of Foreign Affairs, the Kuwait embassy in the UAE and the Ministry of Justice in Kuwait. This all occurred in the absence of any stamp of the Dubai Courts.
• Where no Treaty exists, enforcement will be enforced in a foreign jurisdiction with which no treaty exists, will be a matter for the execution court to decide

• In Russia, Denmark, Iceland, Finland and Norway, the courts will not enforce a foreign judgment at all without the existence of a relevant treaty

• In some countries, the courts will require reciprocity, meaning they will investigate whether the originating court would enforce its own money judgments, such as Germany, Austria, Japan, Nigeria, Singapore and a small number of USA States
Comparison of Enforcement of Court Judgments and Arbitral Awards

The New York Convention was signed in 1958 and ratified in the UAE in 2006.

The Convention allows for reciprocal enforcement of arbitration judgments between signatory States totalling 148 States.
Example of enforcement by DIFC Courts of a GCC order:

Farooq Al Alawi v Lloyds TSB Bank: Here the DIFC Courts upheld a judgment from the Bahrain Family Courts and a resolution from the Bahrain Board of Minors’ Fund Custody
Enforcement of Arbitral Awards by the DIFC Court

The DIFC Courts follows the DIFC Arbitration Law 2008 which binds the Courts to any treaty to which the UAE is a signatory, including the New York Convention.

The procedure to enforce a foreign arbitration award is to submit the authenticated original award or a duly authenticated copy alongside a legally translated copy in English.
The DIFC Arbitration Law 2008 also ensures that enforcement of an arbitration award where the assets are within the DIFC is easily facilitated. The procedure is the same as above.
Thank you

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