

DIFC Court of Appeal: The DIFC Courts have jurisdiction to recognise domestic UAE arbitral awards

The DIFC Court of Appeal has ruled that it has jurisdiction to recognise and enforce arbitral awards, irrespective of seat. In a judgment dated 3 November 2014 in the case of *Meydan Group LLC v Banyan Tree Corporate Pte Ltd*, the Court found that it has jurisdiction to try claims calling for the recognition and enforcement of arbitral awards irrespective of the state in which the award was made, even where neither party is based or has assets in the DIFC.

This briefing note considers the reasoning in the judgment and goes on to discuss the possible effects of the decision.

The hotel operator Banyan Tree originally applied to the Dubai International Financial Centre Court of First Instance (DIFC Courts) in December 2013 for the recognition and enforcement of an arbitral award obliging Meydan, a Dubai property developer, to pay approximately US\$19 million. The seat of the arbitration was Dubai and the arbitration was conducted pursuant to the Rules of the Dubai International Arbitration Centre (DIAC). In January 2014, Meydan made an application to the DIFC Courts disputing its jurisdiction to recognise and enforce the arbitral award. In reliance on the redacted judgment of Deputy Chief Justice Sir John Chadwick in *ARB-002-2013 (1) X1 (2) X2 v (1) Y1 (2) Y2 (X v Y)* the application was dismissed at first instance by H.E. Justice Omar Al Muhairi in May 2014. Permission was granted to appeal on 19 June 2014.

Neither Banyan Tree nor Meydan fell within the first four 'gateways' to jurisdiction as established by the Judicial Authority Law.

The Court of Appeal's judgment

The judgment, written by Justice Sir David Steel and endorsed by Justice Roger Giles and H.E. Justice Ali Al Madhani, considers two fundamental issues:

1. do the DIFC Courts have jurisdiction to recognise and enforce arbitral awards within the Dubai International Financial Centre (DIFC); and
2. if yes, are there reasons why the DIFC Courts should not exercise this jurisdiction?

Jurisdiction to recognise arbitral awards

In considering whether the DIFC Courts has jurisdiction to recognise

and enforce an arbitral award, Sir David set out in detail the basis of the DIFC Courts' jurisdiction under UAE, Dubai and DIFC law.

Key issues

- The DIFC Courts have jurisdiction to recognise and enforce any arbitral award, including those made in Dubai
- Arbitral awards recognised and enforced by the DIFC Courts may be enforceable in Dubai

In summary, the DIFC is established pursuant to UAE Federal and Dubai law and is exempt from "Federal civil and commercial laws" such as the UAE Civil Procedure Code.¹ Instead

¹ Federal Law No. 8 of 2004, Federal

of Federal law, specific Dubai and DIFC laws apply within the DIFC.

In relation to the DIFC Courts, the Judicial Authority Law (Dubai Law No. 12 of 2004) as amended by Dubai Law No.16 of 2011 establishes the DIFC Courts and sets out the limits of their jurisdiction.

Pursuant to Article 5 of the Judicial Authority Law, the DIFC Court of First Instance has jurisdiction in a number of situations, including claims to which a DIFC Establishment is a party and claims over which the DIFC Courts have jurisdiction in accordance with DIFC laws and DIFC regulations (Article 5A(1)(e)).

The judgment explains that the DIFC Law enlivened by Article 5A(1)(e) is Article 42 of the DIFC Arbitration Law,² which provides

"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 Courts, shall be enforced subject to the provisions of this Article and of Articles 43 and 44." (emphasis added)

Sir David also referred to The DIFC Court Law which provides the DIFC Court of First Instance with jurisdiction to ratify both domestic and foreign arbitral awards.³

Having reviewed the relevant laws relating to the DIFC Courts' jurisdiction and the recognition and enforcement of arbitral awards in the DIFC, Sir David concluded that *"there is no basis for importing some limitation on the express terms of the DIFC Courts' jurisdiction."* Therefore, Sir David found that a combination of Article 5A(1)(e) and Article 42 of the DIFC Arbitration Law meant that the DIFC Courts have jurisdiction to

recognise and enforce any arbitral award irrespective of seat. This applies even where the parties have no connection to the DIFC (other than an arbitral award capable of recognition under Article 42). The question of whether the DIFC Courts may refuse to recognise and enforce an award pursuant to the limited grounds set out in Articles 43 and 44 of the DIFC Arbitration Law is separate and will be decided at a later stage in the proceedings.

Reasons to decline jurisdiction

Meydan advanced a number of arguments as to why the DIFC Courts should not exercise any jurisdiction it may have to recognise and enforce the award. These included the doctrine of *forum non conveniens* and abuse of process.

Forum non conveniens is the common law doctrine that, where there are two or more available forums for the determination of issues between the parties, the more appropriate and suitable forum should be chosen.

In this case Sir David noted that there is no alternative forum for the determination of the question whether an award should be recognised and enforced within the DIFC.

He went on to refer to and agree with the DIFC Court of First Instance's decision in *Alliance Risk Transfer v Al Ain Ahlia*, which held that the doctrine did not apply between the DIFC Courts and other courts of the UAE.

In relation to abuse of process, Meydan argued that the only purpose of seeking recognition of an arbitral award in the DIFC in circumstances where neither party had any assets in the DIFC was to use the *"machinery for automatic recognition and enforcement of DIFC money judgments in the Dubai Courts"* which precludes any examination of the merits of the judgment or underlying

award endorsed by the execution judge of the Dubai Courts.

Sir David rejected this argument. Firstly, he found that it was difficult to characterise the use of the DIFC Courts' machinery as an abuse of process, not least before that machinery is even invoked. He also noted that *"whether the bar on considering the merits of the DIFC order before the execution judge would also inhibit the Dubai Courts from ruling on a challenge to the validity of the underlying award is a matter for the Dubai Courts"*.

Possible effects of the decision

In relation to the jurisdiction of the DIFC Courts to hear actions for the recognition and enforcement of arbitration awards which (i) are seated outside the DIFC; and (ii) which otherwise do not fall within the first four 'gateways' of Article 5A (1) of the Judicial Authority Law, the decision makes it clear that the DIFC Courts will not entertain arguments that seek to limit the clear meaning of the fifth 'gateways' to jurisdiction in Article 5 of the Judicial Authority Law. The DIFC Courts will always have jurisdiction to recognise and enforce awards within the DIFC. Further, the DIFC Courts will consider on a case by case basis reasons why it should decline to exercise that jurisdiction. New arguments may be presented in due course, however, for now it is clear that the DIFC Courts will not entertain arguments to the effect that another court of the UAE is a more appropriate forum, or that bringing such a claim before the DIFC Courts is an abuse of process.

Now that the DIFC Courts have accepted jurisdiction to try Banyan Tree's claim, it remains to be seen whether (i) it will recognise and enforce the award; and if it does, (ii) whether Banyan Tree will be able to use the DIFC Courts' machinery to

Decree No. 35 2004 and Dubai Law No. 9 of 2004.

² DIFC Law No. 1 of 2008

³ DIFC Law No. 10 of 2004.

assist in enforcing the award in 'onshore' Dubai.

As noted by Sir David, this may ultimately be an issue for the Dubai Courts to determine if and when enforcement is sought onshore.

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