



JUDICIARY OF
ENGLAND AND WALES



Memorandum of Guidance as to Enforcement between the DIFC Courts and the Commercial Court, Queen’s Bench Division, England and Wales

Introduction

1. The purpose of this memorandum is to set out the parties’ understanding of the procedures for the enforcement of each party’s money judgments in the other party’s courts. This memorandum is concerned only with judgments requiring a person to pay a sum of money to another person.
2. This memorandum has no binding legal effect. It does not constitute a treaty or legislation, is not binding on the judges of either party and does not supersede any existing laws, judicial decisions or court rules. It is not intended to be exhaustive and is not intended to create or alter any existing legal rights or relations.
3. The parties desire and believe that the cooperation demonstrated by this memorandum will promote a mutual understanding of their laws and judicial processes and will improve public perception and understanding.

The Commercial Court

4. The Commercial Court is a specialist court within the Queen’s Bench Division of the High Court of England and Wales. It deals with complex cases arising out of business and financial disputes, both national and international, which fall within its jurisdiction. It was established as a separate court within the Queen’s Bench Division by section 3 of the Administration of Justice Act 1970 (now section 6(1)(b) of the Senior Courts Act 1981), although a specialist Commercial List had operated since 1895 for the hearing of commercial cases, to which specifically designated judges with commercial experience were assigned. The Court is internationally recognised for its experience and expertise in commercial dispute resolution.

The DIFC Courts

5. The DIFC Courts form part of the legal system of the United Arab Emirates, albeit that this memorandum only states the position as it applies to the DIFC Courts. They deal with civil and commercial disputes which are connected to the Dubai International Financial Centre or in respect of which the parties have agreed that the DIFC Courts should have jurisdiction. The DIFC Courts consist of a Small Claims Tribunal (SCT), a Court of First Instance and a Court of Appeal. They were established by Dubai Laws 9 and 12 of 2004 and operate as a common law court, applying the highest international standards of legal procedure. The Courts' judiciary is selected from common law jurisdictions around the world and from Dubai and enjoy the highest international renown.

Application of the common law of England and Wales

6. There is currently no treaty in place pursuant to which either party's judgments may be enforced by the other party's courts.
7. In the Commercial Court, in the absence of a relevant treaty, a foreign judgment may be enforced by a claim made at common law, in accordance with the principles and practice described below.
8. Under the English common law, where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another, a legal obligation arises on the debtor to pay that sum. The creditor may bring a claim to enforce that obligation as a debt.
9. The approach of the DIFC Courts to the enforcement of Commercial Court judgments is based on the English common law and the same approach is applied.

The requirements for enforcement of DIFC Courts' judgments in the Commercial Court

10. In order to be sued upon in the Commercial Court, a judgment of the DIFC Courts must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
11. The Commercial Court will not enforce certain types of DIFC Court judgments, for example judgments ordering the payment of taxes, fines or penalties.
12. The DIFC Courts must have had jurisdiction, according to the English rules of the conflict of laws, to determine the subject matter of the dispute. The Commercial Court will generally consider the DIFC Courts to have had the required jurisdiction only where the person against whom the judgment was given:
 - a. was, at the time the proceedings were commenced, present in the jurisdiction;
 - or

- b. was the claimant, or counterclaimant, in the proceedings; or
 - c. submitted to the jurisdiction of the DIFC Courts; or
 - d. agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the DIFC Courts.
13. Where the above requirements are established to the satisfaction of the Commercial Court, a DIFC Court judgment may be challenged in the Commercial Court only on limited grounds. Those grounds include (but are not limited to):
- a. where the judgment was obtained by fraud;
 - b. where the judgment is contrary to English public policy; and
 - c. where the proceedings were conducted in a manner which the Commercial Court regards as contrary to the principles of natural justice.
14. The Commercial Court will not re-examine the merits of a DIFC Court judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A DIFC Court judgment will be enforced on the basis that the defendant has a legal obligation, recognised by the English court, to satisfy a judgment of the DIFC Courts.

The requirements for enforcing Commercial Court judgments in the DIFC Courts

15. The same principles set out above will be applied to determine whether a party may sue on a Commercial Court judgment in the DIFC Courts.
16. In order to be sued upon in the DIFC Courts, a judgment of the Commercial Court must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
17. The DIFC Courts will not enforce certain types of Commercial Court judgment, for example judgments ordering the payment of taxes, fines or penalties.
18. The Commercial Court must have had jurisdiction, according to the DIFC rules on the conflict of laws, to determine the dispute. The DIFC Courts will generally consider the Commercial Court to have had the required jurisdiction only where the person against whom the judgment was given:
- a. was, at the time the proceedings were commenced, present in the jurisdiction;
or
 - b. was the claimant, or counterclaimant, in the proceedings; or
 - c. submitted to the jurisdiction of the Commercial Court; or

- d. agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the Commercial Court.
19. Where the above requirements are established to the satisfaction of the DIFC Courts, a Commercial Court judgment may be challenged in the DIFC Courts only on limited grounds. Those grounds include (but are not limited to):
 - a. where the judgment was obtained by fraud;
 - b. where the judgment is contrary to public policy; and
 - c. where the proceedings were conducted in a manner which the DIFC Courts regard as contrary to the principles of natural justice.
 20. The DIFC Courts will not re-examine the merits of a Commercial Court judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A Commercial Court judgment will be enforced on the basis that the defendant has a legal obligation, recognised by the DIFC Courts, to satisfy a judgment of the Commercial Court.

The procedure for enforcement of DIFC Court judgments in the Commercial Court

21. In order to enforce a judgment of the DIFC Courts in the Commercial Court, a party must issue a Claim Form in the Commercial Court, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the claim form.
22. A party may obtain a certified copy of a DIFC Court judgment by making an application to the DIFC Courts. The application may be made without notice and must exhibit a copy of the judgment which is required to be certified. Where the DIFC Courts provide a certified copy of a DIFC Court judgment, it will provide a copy of the judgment on which will be endorsed a certificate that it is a true copy. The certificate will be signed by a Judge or by the Registrar. The certified copy of the judgment will be sealed with the seal of the DIFC Courts.
23. Where the judgment debtor is outside the United Kingdom, the claimant must apply for permission to serve the claim out of the jurisdiction in accordance with Rules 6.36 and 6.37 and Part 23 of the Civil Procedure Rules 1998. The application should be supported by a witness statement:
 - a. exhibiting a certified copy of the DIFC Court judgment;
 - b. stating that paragraph 3.1(10) of Practice Direction 6B applies – the claim is made to enforce a DIFC Court judgment;
 - c. stating that the claimant believes that the claim has a reasonable prospect of success;

- d. stating the defendant's address if known; and
 - e. clearly bringing to the Court's attention any matter which, if the defendant were represented, the defendant would wish the court to be aware of. This includes any matters which might tend to undermine the claimant's application.
24. If, following service, the defendant does not respond to the claim, the claimant will be entitled to obtain judgment in default under Part 12 of the Civil Procedure Rules 1998. However, it remains open to the defendant to challenge the jurisdiction of the Commercial Court.
25. If the defendant acknowledges service, the claimant must file and serve Particulars of Claim, setting out a concise statement of the facts relied on in support of the claim. The Particulars of Claim should contain a statement that the DIFC Courts had jurisdiction on the grounds set out in paragraph 12 above.
26. In most cases, a party will be entitled to apply to obtain summary judgment without trial under Part 24 of the Civil Procedure Rules 1998 (as amended), unless the debtor can satisfy the Court that it has a real prospect of establishing at trial one of the grounds set out in paragraph 13 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
27. If the claim on the DIFC Court judgment is successful, the judgment creditor will then have the benefit of a Commercial Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the English Courts to enforce the judgment, including:
- a. third party debt orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
 - b. charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;
 - c. orders for possession of land;
 - d. orders for sale of land or other property over which the judgment creditor has the benefit of a charge;
 - e. orders requiring judgment debtors to provide information about their assets;
 - f. orders appointing enforcement officers to seize and sell the judgment debtor's goods;
 - g. orders appointing receivers;
 - h. orders for committal for contempt of court;

- i. orders relating to insolvency procedures.

The procedure for enforcement of Commercial Court judgments in the DIFC Courts

28. In order to enforce a Commercial Court judgment in the DIFC Courts, the procedure is very similar.
29. In order to enforce a Commercial Court judgment in the DIFC Courts, a party must issue a Claim Form in the DIFC Courts, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the claim form.
30. A party may obtain a certified copy of a Commercial Court judgment by making an application to the Commercial Court. The application may be made without notice and must exhibit a copy of the judgment which is required to be certified. Where the Commercial Court provides a certified copy of a Commercial Court judgment, it will provide a copy of the judgment on which will be endorsed a certificate that it is a true copy. The certificate will be signed by a Judge. The certified copy of the judgment will be sealed with the seal of the Commercial Court.
31. Under Rule 9.52 of the Rules of the DIFC Courts 2011, there is no requirement to obtain the permission of the DIFC Courts before serving proceedings outside the DIFC. However, it remains open to the defendant to challenge the jurisdiction of the DIFC Courts.
32. If, following service, the defendant does not respond to the claim, the claimant will be entitled to obtain judgment in default under Part 13 of the Rules of the DIFC Courts 2011.
33. If the defendant acknowledges service, the claimant must file and serve Particulars of Claim, setting out a concise statement of the facts relied on in support of the claim. The Particulars of Claim should contain a statement that the Commercial Court had jurisdiction on the grounds set out in paragraph 18 above.
34. In most cases, a party will be entitled to apply to obtain summary judgment without trial under Part 24 of the Rules of the DIFC Courts 2011 (as amended), unless the debtor can satisfy the Court that it has a real prospect of establishing at trial one of the grounds set out in paragraph 19 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
35. If the claim on the Commercial Court judgment is successful, the judgment creditor will then have the benefit of a DIFC Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the DIFC Courts to enforce the judgment, including:

- a. third party debt orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
- b. charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;
- c. orders for possession of land;
- d. orders for sale of land or other property over which the judgment creditor has the benefit of a charge;
- e. orders requiring judgment debtors to provide information about their assets;
- f. orders appointing enforcement officers to seize and sell the judgment debtor's goods;
- g. orders appointing receivers;
- h. orders for committal for contempt of court;
- i. orders relating to insolvency procedures.

Contacting the Courts

36. Further information about the Commercial Court can be obtained:

- a. by visiting the website of the Commercial Court at
<http://www.justice.gov.uk/courts/rcj-rolls-building/admiralty-commercial-mercantile-courts>
- b. by contacting the Registry or Listing Office of the Commercial Court:
 - i. at Ground Floor, 7 Rolls Building, Fetter Lane, London, EC4A 1NL;
 - ii. by telephone on +44 (0)207 947 6826; or
 - iii. by email at Comct.issue@hmcts.gsi.gov.uk or
ComCt.Listing@hmcts.gsi.gov.uk

37. Further information about the DIFC Courts can be obtained:

- a. By visiting the website of the DIFC Courts at
<http://www.difccourts.ae/Default.aspx>;
- b. By contacting the DIFC Courts Registry:

- i. at Ground Floor, Building 4, The Gate District, PO Box 211724, Dubai, UAE;
- ii. by telephone on +971 4 427 3333; or
- iii. by email at registry@difccourts.ae .

Signed this 23rd day of January, 2013 by:

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Michael Hwang, SC

Chief Justice

DIFC Courts

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The Hon. Mr. Justice Cooke

Judge in Charge

UK Commercial Court, Queen's Bench Division