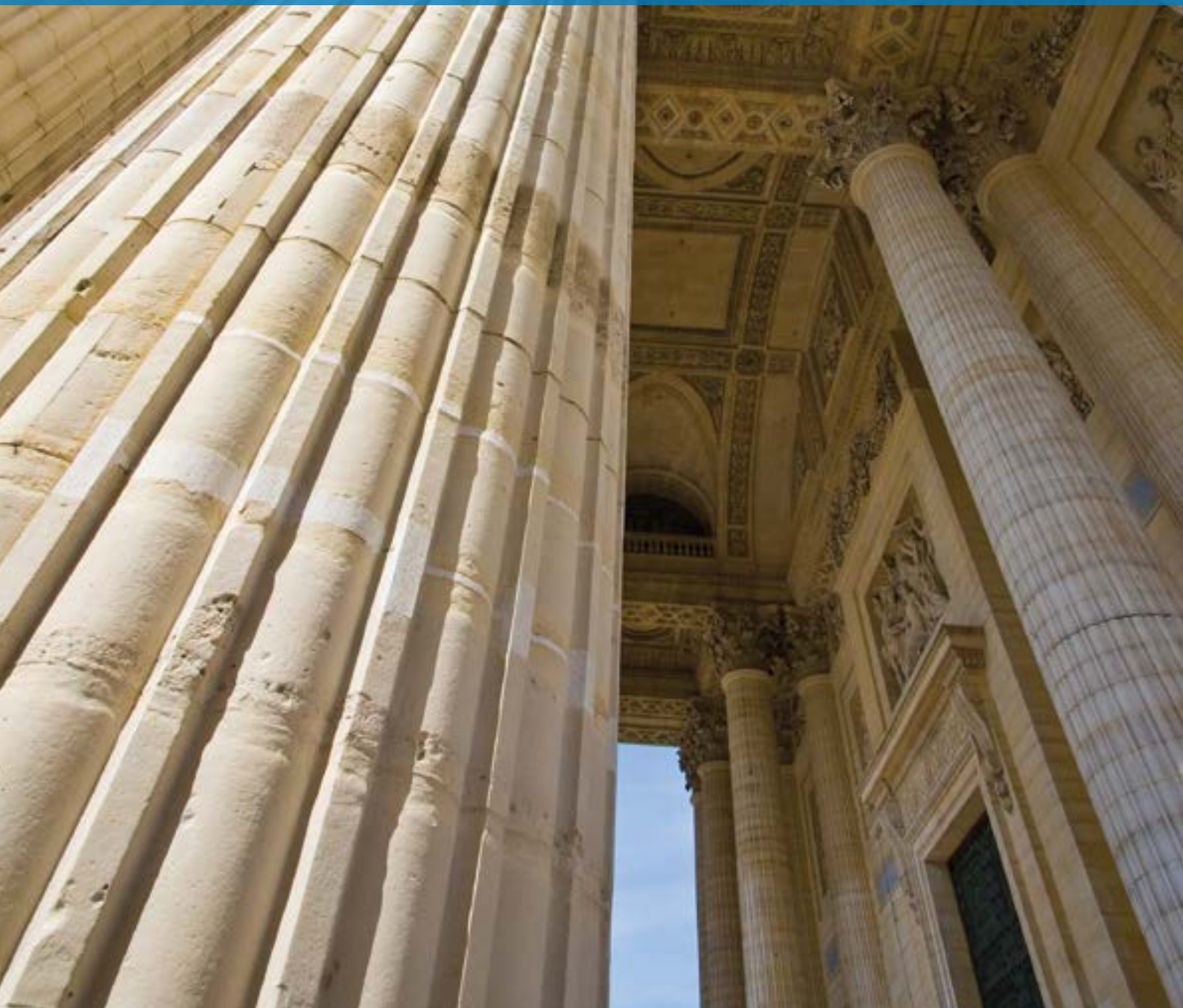




A NEW APPROACH TO ENFORCING  
AWARDS AND JUDGMENTS IN  
**DUBAI AND  
THE WIDER MIDDLE EAST**



# WHAT YOU NEED TO KNOW

## INTRODUCTION

It is now critically important for in-house counsel, and all companies operating in the United Arab Emirates, to take note of a newly-confirmed route for the enforcement of foreign court judgments and arbitral awards – as it has the potential to revolutionise the historically challenging enforcement landscape in this region.

In a series of recent landmark judgments, the English language, common law courts of the Dubai International Financial Centre (**DIFC Courts**) have confirmed that DIFC law allows the DIFC Courts to be used as a so-called “*conduit jurisdiction*” for the enforcement of (a) foreign court judgments and foreign arbitral awards and (b) domestic arbitral awards, against assets located outside the DIFC in “onshore” Dubai/UAE. Importantly, the DIFC Courts have confirmed that this is the case even where the underlying dispute, as well as the award/judgment debtor, has no connection with the DIFC at all.



## THE TWO DIFFERENT COURT PROCESSES

The onshore, Arabic language, UAE Courts have in recent years established a more reliable track record for the enforcement of domestic and foreign arbitral awards (notwithstanding the odd rogue decision). However, the enforcement process is still lengthy and unpredictable, often taking longer than two years. Moreover, the enforcement of foreign court judgments remains very problematic; in short, unless there is an applicable enforcement treaty between the UAE and the relevant country in which the judgment originated (of which there are very few), the prospects of a successful enforcement are slim.

By contrast, the DIFC Court's enforcement regime is much swifter in relation to both awards and judgments – and there are far fewer grounds on which a valid award or judgment will not ultimately be enforced within the DIFC. The significance of this, is that DIFC Court judgments can be (and regularly are) enforced in onshore Dubai. There is now a well-established process (enshrined in Dubai law) for taking DIFC Court judgments to the execution judge of the onshore Dubai Courts for enforcement. Importantly, the execution judge is required by law to enforce the judgment, and is not permitted to examine the underlying merits.

The key question which lawyers have been asking for some time is:

*Can successful parties in foreign litigation or arbitration (or even onshore arbitration) use the DIFC Courts, and the “onshoring” enforcement regime that is in place, to enforce foreign judgments and awards against assets located in onshore UAE, without having to go directly to the onshore UAE Courts (with all the uncertainty and risk that that entails)?*

**The answer appears to be “yes”.**

## “ONSHORING” DOMESTIC ARBITRAL AWARDS

In *Banyan Tree Corporate PTE Ltd v Meydan Group LLC*, the hotel operator Banyan Tree sought recognition and enforcement in the DIFC Courts of an arbitral award rendered in a DIAC arbitration (seated in onshore Dubai). The DIFC Court of Appeal confirmed that it had jurisdiction to recognise and enforce arbitral awards rendered in onshore Dubai, even though Meydan has no presence or assets in the DIFC, and that Banyan Tree's only intention was to take the resulting DIFC Court judgment onshore for enforcement.

The judgment in *Banyan Tree* potentially opens the door for domestic award creditors to have onshore UAE awards recognised and enforced in the DIFC Courts first – thereby avoiding the often lengthy and unpredictable UAE Court ratification process.

## “ONSHORING” INTERNATIONAL ARBITRAL AWARDS

In a series of recent cases, the DIFC Courts have also confirmed that they can be used as a conduit for the enforcement of foreign arbitral awards in onshore Dubai/ UAE, even where the foreign award debtor is based outside the DIFC. Previously it was thought that foreign awards could only be enforced in onshore Dubai if they were taken directly to the onshore Dubai Courts to be ratified, but the DIFC Courts have explicitly confirmed that it is not an abuse of process, or contrary to UAE public policy, to take a foreign award straight to the DIFC Courts for enforcement (even where the sole intention is to take the resulting DIFC Court judgment onshore).

The use of the DIFC Courts as a means of enforcing foreign arbitral awards could become even more significant following an unfortunate recent judgment of the Dubai Court of Appeal, in which the enforcement of an ICC award issued in London was rejected on the basis that the Court was not satisfied that the UK was a signatory to the New York Convention – a remarkable conclusion given the widely available evidence of its accession to the Convention, and the lack of contention surrounding this point previously.



## “ONSHORING” FOREIGN COURT JUDGMENTS

Finally, in *DNB Bank ASA v Gulf Eyadah Corporation and Gulf Navigation Holdings PJSC*, the DIFC Court of Appeal ruled that parties may enforce foreign court judgments in the DIFC Courts (even in circumstances where the judgment debtor has no presence or assets in, or any other connection with, the DIFC), before taking the resulting DIFC Court judgment onshore to the Dubai Courts for execution.

Importantly, under DIFC Law, the DIFC Courts are required to recognise and enforce final and binding foreign court judgments regardless of whether the UAE has a treaty in place with the country in which the judgment was handed down. Moreover, when a foreign court judgment is recognised by the DIFC Courts, the result is a final and binding DIFC Court judgment – which as discussed above is enforceable onshore by law.

## CONCLUSION

These judgments have generated a great deal of publicity recently. It is worth sounding one note of caution however: it remains to be seen what the consistent reaction of the

Dubai Courts will be when asked to enforce “conduit” DIFC Court judgments (although recent experience point towards an encouraging level of cooperation between the two court systems).

Another reason why these developments are significant, is that they potentially open up much wider routes to enforcement across the Middle East through the GCC and Riyadh Conventions (well established mutual enforcement treaties which over 20 different countries in the MENA region have signed up to). Whether enforcement will work in practice remains to be seen, but in theory at least, there appear to be pathways to enforcement which did not previously exist.

Successful parties seeking to enforce foreign court judgments or domestic/foreign arbitral awards in the UAE and in the wider region should therefore seriously consider exploiting the DIFC Courts’ status as a conduit jurisdiction. Again, in theory at least, the DIFC Courts offer a quicker, more straightforward, and less uncertain route to enforcement – while obtaining a public court judgment against an opponent can also be a significant driver for settlement discussions.

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