



Anti-Suit Injunctions

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Overview

Unlike the United Arab Emirates (UAE) onshore courts, the Dubai International Financial Centre (DIFC) Courts easily grant anti-suit injunctions and can automatically enforce anti-suit injunctions issued by foreign courts. The DIFC Courts present more opportunities to challenge arbitral jurisdiction than the onshore UAE courts as their procedural rules tend to reflect those of the English courts. The DIFC Courts have been developing a robust line of jurisprudence in this regard. For example, the decision of the DIFC Court of First Instance in *Multiplex Constructions v Elemec Electromechanical Contracting* (November 2020), established a precedent for the DIFC Courts to grant anti-suit injunctions should a party commence litigation in breach of an arbitration agreement. The DIFC Courts have also shown their willingness to issue anti-suit injunctions restraining proceedings in the onshore Dubai courts where the DIFC Courts have exclusive jurisdiction over the dispute between the parties and there is no legitimate purpose to the onshore court proceedings.

Definitions

- *DIFC*: Dubai International Financial Centre.
- *DIFC-LCIA*: Dubai International Financial Centre - London Court of International Arbitration.
- *UAE*: United Arab Emirates.

Practical Guidance

Anti-suit injunctions

The issue of anti-suit injunctions has arisen before the DIFC Courts. A string of DIFC decisions demonstrate that the DIFC courts are developing a robust line of jurisprudence in regard to upholding and enforcing valid arbitration agreements as follows:

- In DIFC 014/2010 *Taaleem PJSC v National Bonds Corporation PJSC and Another* on 21 November 2010, the claimant requested an injunction from the DIFC Courts ordering the respondent to apply for a stay of proceedings in an action it brought before the onshore Dubai courts concerning the same facts. The DIFC Court accepted that it had jurisdiction to hear the dispute, and that the Dubai court did not. However, it declined to order the anti-suit injunction requested by the claimant, noting that it was "unlikely to be helpful for the court to seek to appropriate to itself, the right to decide questions of jurisdiction to the exclusion of the Dubai Civil Court" (paragraph 18 of DIFC 014/2010). The court left open the question of whether the DIFC Courts have the power to grant anti-suit injunctions.
- In DIFC 020/2016 *Brookfield Multiplex Constructions LLC v DIFC Investments LLC and Dubai International Financial Centre Authority* on 28 July 2016, the claimant sought an injunction, restraining the defendant from litigating in the onshore Dubai Courts, allegedly in breach of an arbitration agreement mandating a DIFC seat. The DIFC Court found that the defendant's actions were not inconsistent with the arbitration agreement (since the defendant was only requesting the Dubai court to appoint an expert to inspect the property in dispute) and therefore declined to grant the injunction. However, the court did provide some useful commentary on the status of anti-suit injunctions in the DIFC Courts. First, it affirmed that the DIFC Courts have the power to issue anti-suit injunctions. The court went on to consider some English case law, determining that it had the power to issue anti-suit injunctions even where the arbitration agreement in question did not provide for a DIFC seat. The DIFC Courts will be reluctant to make such an order where the parties have chosen a different seat (and have, therefore, implicitly nominated the courts of that seat to have a supervisory role) but will do so in exceptional circumstances. Examples of such circumstances include "the inability of the court of the seat to grant such an injunction or the practical ineffectiveness of any such remedy".
- In *Multiplex Constructions v Elemec Electromechanical Contracting* (DIFC Court of First Instance, November 2020, unpublished), the DIFC Court has gone a step further, and demonstrated that it will fully exercise its supervisory authority with regard to arbitrations seated in the DIFC. In this case, the parties entered into a contract governed by UAE law. The parties agreed to settle disputes by arbitration, seated in the DIFC, under the DIFC-LCIA Arbitration Rules. When a dispute arose between the parties, Elemec filed proceedings in the onshore Dubai courts in contravention of the arbitration agreement. Multiplex commenced a Dubai International Financial Centre - London Court of International Arbitration (DIFC-LCIA) arbitration and simultaneously sought a declaratory order from the DIFC Courts regarding the effect of the arbitration agreement. The DIFC Court ordered that Elemec refrain from pursuing proceedings in the onshore Dubai courts. Furthermore, the DIFC Court attached a penal notice, meaning that if the anti-suit injunction was breached by Elemec, the company and its directors could face fines and/or imprisonment.
- In DIFC 013/2022 *Ledger v Leeor*^[1 p.6], the DIFC Court considered a request for an anti-suit injunction in circumstances where the seat of the arbitration was in dispute. This case concerned a clause providing for DIFC-LCIA arbitration where "the place of the arbitration will be Dubai". Leeor commenced proceedings in the onshore Dubai courts and Ledger then applied to the DIFC Court for an anti-suit injunction, asserting that the seat of the arbitration was the DIFC and, accordingly, the DIFC Courts had jurisdiction to grant the interim relief. Ledger argued that the reference to the "place" of the arbitration meant the "venue", and therefore the seat and supervisory court were not specified, and, as such, defaulted to the DIFC because of the selection of the DIFC-LCIA Arbitration Rules. Alternatively, Ledger argued that "Dubai" included the DIFC based on the finding by the DIFC Court of Appeal in DIFC 002/2021 *Ashok*

Kumar Goel, Sudhir Goyel, Manan Goel, Prerit Goel v Credit Suisse (Switzerland) Limited that the “courts of Dubai” or “Dubai courts” refers to all courts in the Emirate of Dubai which includes the DIFC. The DIFC Court confirmed that where the parties are bound by an arbitration agreement and the seat is the DIFC, and those elements are not in issue, the DIFC Court will readily grant anti-suit injunctions restraining the continuation of proceedings brought in breach of an arbitration agreement. Where the existence or validity of the arbitration agreement, or the arbitral seat, are in issue, then the DIFC Court may intervene and issue an anti-suit injunction where there is a “high degree of probability” that there was an agreement that disputes would be determined by a DIFC-seated arbitration. Even where the DIFC is not the seat of arbitration, the DIFC Court suggested that it may still grant an anti-suit injunction, albeit only in “exceptional” cases (though no guidance was given about what may constitute such a case). In this case, the court was not persuaded by either of Ledger’s arguments and therefore found that it was not satisfied that there is a high degree of probability that there is a binding arbitration agreement with DIFC as its seat. Further, the court also found that there were good reasons why it would not exercise its discretion to grant an anti-suit injunction if the DIFC were not the seat.^[2 p.6]

The *Multiplex v Elemec* and *DIFC 013/2022 Ledger v Leeor* decisions clearly build on the DIFC Court’s earlier decisions, and the DIFC Courts have now made it very clear that they will step in to uphold valid arbitration agreements.

Further, the DIFC Courts have demonstrated a willingness to issue anti-suit injunctions restraining proceedings in the onshore Dubai courts in circumstances where the DIFC Courts have exclusive jurisdiction over the dispute between the parties and there is no legitimate purpose to the onshore court proceedings. In [DIFC CFI 045/2020 Emirates NBD and others v KBBO CPG Investment LLC and others \(2020\)](#)^[5 p.6] the DIFC Court of First Instance issued an anti-suit injunction to restrain proceedings in the onshore Dubai courts. In that case, by the time the judgment was issued, the onshore Dubai courts had already declined jurisdiction on the basis that the DIFC Courts had exclusive jurisdiction over the dispute. Accordingly, the injunction prohibited new proceedings but did not prevent the defendants from exercising their right of appeal as that would interfere with the jurisdiction of the onshore Dubai courts. More recently, the DIFC Courts have confirmed that they will take a robust approach to litigants pursuing parallel proceedings in the onshore Dubai courts. In [DIFC CFI 068/2024 Ivankovich v KJM Marine LLC and others \(2024\)](#)^[4 p.6], the DIFC Court of First Instance issued an anti-suit injunction prohibiting proceedings in the onshore Dubai Courts pending final judgment in the DIFC Court proceedings. The DIFC Court of First Instance held that there was no legitimate purpose to the onshore Dubai court proceedings and the defendant’s pursuit of parallel proceedings was vexatious, oppressive and unconscionable and an abuse of the DIFC Court’s process.

The process for applying for an anti-suit injunction is the same as other applications for injunctions before the DIFC Courts and is governed by rule 25 of the [DIFC Court Rules](#)^[5 p.6]. This involves filing an application notice with the courts, which should include a draft of the order sought and relevant supporting evidence. Rule 25(8) of the [DIFC Court Rules](#)^[5 p.6] provides that notice should be given to the other side unless there are good reasons for not giving notice (it is unlikely that such reasons would exist in the context of an anti-suit injunction).

Anti-arbitration injunctions

There is no DIFC case law or legislation expressly addressing the issue of anti-arbitration injunctions. However, the DIFC Courts do have jurisdiction to rule on the jurisdiction of an arbitral tribunal in certain circumstances. As noted above, article 13(3) of DIFC Law No. 1/2008 DIFC Arbitration Law allows a party to bring a challenge to the DIFC Courts regarding an arbitral tribunal’s decision that the tribunal has jurisdiction to hear the dispute. This is only applicable, however, if the arbitration is seated in the DIFC.

Related Content

Legislation

- DIFC Law No. 1/2008 DIFC Arbitration Law

Regulations

- DIFC-LCIA Arbitration Rules
- [DIFC Court Rules](#)^{[5 p.6][6 p.6]}

Cases

- *Multiplex Constructions v Elemec Electromechanical Contracting* (DIFC Court of First Instance) (November 2020)
- *DIFC 014/2010 Taaleem PJSC v National Bonds Corporation PJSC and Another* on 21 November 2010
- *DIFC 020/2016 Brookfield Multiplex Constructions LLC v DIFC Investments LLC and Dubai International Financial Centre Authority* on 28 July 2016^[2 p.6]
- *DIFC 013/2022 Ledger v Leeor*^[7 p.6]
- *DIFC 002/2021 Ashok Kumar Goel, Sudhir Goyel, Manan Goel, Prerit Goel v Credit Suisse (Switzerland) Limited*
- [DIFC CFI 045/2020 Emirates NBD and others v KBBO CPG Investment LLC and others \(2020\)](#)^[3 p.6]
- [DIFC CFI 068/2024 Ivankovich v KJM Marine LLC and others \(2024\)](#)^[4 p.6]

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Memberships

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Biography

- Nazanin Aleyaseen is a senior member of the International Arbitration team. She regularly advises and represents international and UAE-based companies in DIAC, DIFC-LCIA, ADCACC and ICC administered arbitration proceedings as well as ad hoc proceedings. She has full advocacy rights, and advises and represents clients, in disputes before the Dubai International Financial Centre Courts.
- Ms. Aleyaseen is also a partner in the Dubai office's Labour, Employment and Workplace Safety practice which is recognized and ranked by Chambers Global in 2014 and 2015. She acts as exclusive employment counsel to multinational corporations with operations in the MENA and GCC region.
- Before settling in Dubai in 2008, she practised in Toronto, Canada and has published several articles relating to litigation and arbitration as well as employment and labour law.



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Education

- Bar Vocational Course, Inns of Court School of Law, 2006.
- B.A., Brasenose College, Oxford University, 2005 (*Hons*).

Memberships

- Bar Admissions: Employed Barrister, England & Wales.
- Court Admissions: Dubai International Financial Centre Courts.

Biography

Jennifer Paterson is a partner in the International Arbitration and Litigation and Dispute Resolution teams of the firm's Dubai office, based in the Dubai International Financial Centre (DIFC). Jennifer regularly advises and represents both regional and international clients in a wide range of commercial disputes. She has experience representing clients in local and

international arbitration proceedings administered many of the major arbitration centers, including the ICC, LCIA, DIFC-LCIA, DIAC, and ADCCAC, as well as ad hoc proceedings. Jennifer has full rights of audience before the DIFC Courts and the Courts of England and Wales. She also works closely with local counsel in respect of litigation pending before the UAE Courts.

[Read Jennifer Paterson's full biography.](#)^[8 p.6] to learn more.

Notes

1. [^] [p.2] [https://reedelsevier-my.sharepoint.com/personal/pillaya2_legal_regn_net/Documents/Desktop/Documents%20to%20edit/Updates/Anti-Suit%20Injunctions_DubaiInternationalFinancialCentre%20\(KLG%20edits\).docx#_ftn3](https://reedelsevier-my.sharepoint.com/personal/pillaya2_legal_regn_net/Documents/Desktop/Documents%20to%20edit/Updates/Anti-Suit%20Injunctions_DubaiInternationalFinancialCentre%20(KLG%20edits).docx#_ftn3)
2. [^] [p.3] [p.3] [https://reedelsevier-my.sharepoint.com/personal/pillaya2_legal_regn_net/Documents/Desktop/Documents%20to%20edit/Updates/Anti-Suit%20Injunctions_DubaiInternationalFinancialCentre%20\(KLG%20edits\).docx#_ftn4](https://reedelsevier-my.sharepoint.com/personal/pillaya2_legal_regn_net/Documents/Desktop/Documents%20to%20edit/Updates/Anti-Suit%20Injunctions_DubaiInternationalFinancialCentre%20(KLG%20edits).docx#_ftn4)
3. [^] [p.3] [p.3] <https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/cfi-0452020-1-emirates-nbd-bank-pjsc-2-hsbc-bank-middle-east-limited-3-icici-bank-limited-4-icici-bank-uk-plc-5-union-bank-india-1>
4. [^] [p.3] [p.3] <https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/cfi-0682024-steven-ivankovich-v-1-kjm-marine-llc-2-mohammad-saleh-moosa-hassan-aj-jasmi-3-kji-marina-boats-manufacturing-llc-and>
5. [^] [p.3] [p.3] [p.3] <https://www.difccourts.ae/rules-decisions/rules>
6. [^] [p.3] [https://reedelsevier-my.sharepoint.com/personal/pillaya2_legal_regn_net/Documents/Desktop/Documents%20to%20edit/Updates/Anti-Suit%20Injunctions_DubaiInternationalFinancialCentre%20\(KLG%20edits\).docx#_ftn2](https://reedelsevier-my.sharepoint.com/personal/pillaya2_legal_regn_net/Documents/Desktop/Documents%20to%20edit/Updates/Anti-Suit%20Injunctions_DubaiInternationalFinancialCentre%20(KLG%20edits).docx#_ftn2)
7. [^] [p.3] [https://reedelsevier-my.sharepoint.com/personal/pillaya2_legal_regn_net/Documents/Desktop/Documents%20to%20edit/Updates/Anti-Suit%20Injunctions_DubaiInternationalFinancialCentre%20\(KLG%20edits\).docx#_ftn5](https://reedelsevier-my.sharepoint.com/personal/pillaya2_legal_regn_net/Documents/Desktop/Documents%20to%20edit/Updates/Anti-Suit%20Injunctions_DubaiInternationalFinancialCentre%20(KLG%20edits).docx#_ftn5)
8. [^] [p.5] <https://www.klgates.com/Jennifer-Paterson>