

# Interim injunctions from the DIFC Courts – a useful tool in Dubai?

An interim injunction is an order of a court prohibiting a person from taking a particular action or requiring them to take a particular action before the substantive case or arbitration has been decided. Common types of injunctions include freezing injunctions, search orders, and anti-suit injunctions which restrain a party from commencing or continuing a court action or arbitration.

This briefing looks at the unique features of interim injunctions from the DIFC Courts, their enforcement outside the DIFC and the issues facing third parties (in particular financial institutions) when served with an injunction.

Interim injunctions are particularly useful where a party wishes to prevent the status quo from being irrevocably altered. For example, a freezing injunction may be issued to prevent a defendant from dissipating or removing its assets from the jurisdiction of the court. A court may also be asked to prevent the calling of a performance bond or the cashing of a cheque.

Interim injunctions can also be granted to compel a party to provide certain information that may be of use in court or arbitral proceedings.

The DIFC Courts have granted a number of interim injunctions since their establishment. These include a recent worldwide freezing injunction and search order against former Leeds United director David Haigh<sup>1</sup>,

a recent freezing injunction against Wadhawan International Investments<sup>2</sup>, and an injunction preventing the cashing of a cheque. Interim injunctions may be ordered in support of (or in anticipation of): (1) substantive proceedings in the DIFC Courts, (2) arbitration, and (3), in some circumstances, foreign proceedings.

As such the DIFC Courts offer a party a wide range of interim orders to preserve their position, which go beyond the more limited pre-judgment remedies offered by the 'onshore' Dubai Courts – generally limited to precautionary attachments over particular assets.

## Key issues

- Using an interim injunction to preserve your position
- Enforcement of interim injunctions outside of the DIFC in 'onshore' Dubai
- Impact of interim injunctions on financial institutions

## Obtaining a DIFC Court injunction

Any party seeking an injunction from the DIFC Courts must first establish that the DIFC Court has jurisdiction. Unless proceedings are already afoot in the DIFC Courts or in a DIFC seated arbitration (and none of the parties have challenged jurisdiction), it will be necessary to persuade the court that it has jurisdiction under one of the 'gateways' set out at Article 5(1) of the DIFC Judicial Authority Law. For example, the DIFC Courts should

<sup>1</sup> CFI 020/2014 *GFH Capital Limited v David Lawrence Haigh*, freezing and search orders dated 12 June 2014.

<sup>2</sup> CFI 023/2014 *Sailesh Kumar Jataina v Wadhawan International Investments Ltd.*, freezing order dated 9 July 2014.

accept jurisdiction where one of the parties is a Centre Establishment, where the dispute relates to a contract executed in the DIFC or where the proceedings are in support of an arbitration seated in the DIFC.

Assuming that the DIFC Courts have jurisdiction, an application for an injunction may be made with notice to the other party or, as is common with freezing injunctions, without notice. Where an injunction is granted at a without notice hearing, the court will set a 'return date' where the absent party has the opportunity to argue that the injunction should be lifted.

When deciding whether to grant an interim injunction the DIFC Courts can be expected to apply English procedural law and the three key questions a court should consider when deciding an application for an injunction<sup>3</sup>:

1. Is there a serious question to be tried?  
If the answer is 'yes', then two further questions arise:
2. Would damages be an adequate remedy for a party injured by the court's grant of, or its failure to grant, an injunction?
3. If not, where does the 'balance of convenience' lie?

The first question is a relatively low barrier, requiring a party to establish only that its substantive cause of action has substance and reality, and is not frivolous or vexatious.

The second question requires a court to consider whether damages would be a sufficient remedy to compensate the party that is prejudiced by the grant of, or failure to grant, the injunction. For example, if a freezing injunction is not granted is there a risk that a party will remove its assets from the jurisdiction of the court?

<sup>3</sup> *American Cyanamid Co v Ethicon Ltd* [1975] A.C. 396.

Conversely, if one is granted would it irredeemably damage a party's business? Where an injunction is granted, the applicant may be required to give a 'cross undertaking in damages' to compensate the enjoined party for any losses suffered should the applicant lose the substantive case.

If the answer to the second question is uncertain, a court should then look at the 'balance of convenience' – i.e. which course of action will cause the least irremediable prejudice to one party or the other?

Additional criteria will also apply to certain types of injunctions. For example, freezing injunctions require the applicant to establish that it has a 'good arguable case' in its substantive claim. A good arguable case will be more than merely 'arguable', although a court need not be convinced that there is a greater than 50% chance of it succeeding.<sup>4</sup>

### Enforcement in 'onshore' Dubai and complying with injunctions

Orders of the DIFC Courts are routinely enforced 'onshore' in Dubai.<sup>5</sup> For example, the case of *Mohammed Usman Saleem v. Oasis Crescent Capital (DIFC) Limited and HSBC Bank Middle East Limited* saw a freezing injunction enforced onshore. The 'onshore' Dubai Courts are likely to be familiar with the concept of a freezing injunction, as it is similar to a precautionary attachment over assets that may be issued by the Dubai Courts.

<sup>4</sup> *Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft* [1983] 2 Lloyd's Rep 600.

<sup>5</sup> DIFC Court judgments are also theoretically enforceable in other UAE emirates and GCC Convention countries, although we are not aware of a successful attempt to enforce in one of these emirates/ countries yet.

By contrast, according to the DIFC Courts' enforcement guide, there is no record of the execution of any DIFC Court search orders by the Dubai Courts: "*This is due to the practice of the Dubai Courts of only enforcing applications for the execution of orders against assets but not, by contrast, against documents and other evidence.*"<sup>6</sup> It will therefore be interesting to see to what extent the recent search order granted by the DIFC Courts against David Haigh is enforced, if necessary, by the Dubai Courts (and the Dubai authorities).<sup>7</sup>

To enforce any DIFC Court order 'onshore' in Dubai it is necessary to submit it to an enforcement judge. Nevertheless, parties should consider the specific wording of an injunction to ascertain whether they might be subject to it prior to enforcement taking place. If a party is subject to an injunction and fails to comply, they may be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

The standard form wording for a DIFC Court freezing order suggests that, in general, a third party outside of the DIFC will only be subject to a freezing order if it is declared enforceable by, or is enforced by, a court in the relevant country or state. However, the standard form also provides that a third party outside of the DIFC will be immediately subject to a freezing order if they are a person who:

1. is subject to the jurisdiction of the DIFC court;
2. has been given written notice of the order at their residence or

<sup>6</sup> DIFC Court Enforcement Guide, paragraph 15, [http://difccourts.complinet.com/en/display/display\\_main.html?rbid=2725&element\\_id=9053](http://difccourts.complinet.com/en/display/display_main.html?rbid=2725&element_id=9053)

<sup>7</sup> CFI 020/2014 *GFH Capital Limited v David Lawrence Haigh*, search order dated 12 June 2014.

place of business in the jurisdiction of the DIFC Court; and

3. is able to prevent acts or omissions outside the jurisdiction of the DIFC Court which constitute or assist a breach of the terms of the order.

This is most likely to apply to any organisation having a branch in the DIFC that is not legally separate from its branches elsewhere, such as a branch 'onshore' in Dubai (as is common for many international banks).

However in certain circumstances there are protections available to third parties. Where a third party is subject to a freezing order, the standard form wording provides an exemption in relation to assets located outside of the DIFC – a third party is not prevented from complying with what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which assets subject to the freezing order are located or the governing law of any contract between itself and the person subject to the injunction.

A third party will also be exempt from

complying if it is prevented from doing so by a court order in the jurisdiction where the assets are located. These provisions are designed to protect financial institutions which would face a competing claim from a customer if the customer's funds are frozen without a local court order. So, for example, if a third party is not subject to the jurisdiction of the DIFC court the freezing order is unlikely to be enforceable against that third party without a similar order from the local court.

The standard form of wording for an injunction prevents enforcement of the order outside the DIFC without the permission of the DIFC Court. The recent freezing order against David Haigh allows for enforcement in the Emirate of Dubai, England and Wales or the British Virgin Islands only (unless the court grants permission), presumably to cover the possibility that third parties in those jurisdictions do not voluntarily comply with the injunction.

A bank or other third party is also expressly permitted to apply, without notice to any party, to the DIFC Court for directions where the freezing order affects or may affect the position of

the bank or third party under legislation, regulations or procedures aimed at preventing money laundering.

## Conclusion

An interim injunction from the DIFC Courts potentially offers litigants a wide variety of options to protect their position during the early stages of a court case or arbitration. It should be effective against the enjoined party and third parties based in the DIFC or Dubai, although it is likely to be necessary to enforce the injunction 'onshore' for it to take effect in Dubai.

This form of relief is often seen as a "nuclear option" and raises unique issues in the contrasting civil and common law jurisdictions in Dubai, both for the parties involved and for third parties affected by the injunction which will no doubt continue to be debated for the foreseeable future.

## Contacts



**James Abbott**  
Partner

T: +971 4 362 06208

E: james.abbott  
@cliffordchance.com



**Mark Padley**  
Associate

T: +971 4 362 0619

E: mark.padley  
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, Building 6, Level 2, The Gate Precinct, Dubai International Financial Centre, P.O. Box 9380, Dubai, United Arab Emirates

© Clifford Chance 2014

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571. Registered office: 10 Upper Bank Street, London, E14 5JJ. We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications. Licensed by the DFSA.

[www.cliffordchance.com](http://www.cliffordchance.com)

---

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta\* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

\*Linda Widyati & Partners in association with Clifford Chance.