

DIFC Court confirms that forum non conveniens does not apply between the different courts of the UAE

By the Order of Justice Sir David Steel dated 15 January 2015¹, the DIFC Court of First Instance confirmed that the common law concept of *forum non conveniens* (FNC) does not apply between the DIFC Courts and other courts of the UAE (in this case, Sharjah). FNC provides that, where a forum in another state is clearly a more appropriate forum to try the case, a court should grant a stay of proceedings before it in favour of the alternative forum. While FNC has been recognised by the DIFC Courts in cases where there is a connection with the UAE and another sovereign state, its applicability in cases that have connections to two emirates within the UAE was less clear.

In the case of *Standard Chartered Bank v Investment Group Private Limited* (CFI-026-2014), Standard Chartered Bank (SCB) filed a claim in the DIFC Courts on 6 August 2014 for the repayment of debts owed to it by Investment Group Private Limited (IGPL), a Sharjah registered company. IGPL then challenged the jurisdiction of the DIFC Courts to hear the claim. While it was accepted by both parties that the DIFC Courts had jurisdiction over claims involving SCB (by virtue of its status as a DIFC Establishment), IGPL argued that the DIFC Courts should decline to exercise its jurisdiction over the case. It relied on the concept of FNC, arguing that the courts of Sharjah were a more appropriate forum to try the case.

Having had the benefit of argument from both parties on the point of whether FNC should apply between the courts of different emirates, rather than just between courts of the UAE

and foreign courts, Justice Steel ruled that FNC does not apply between the courts of different emirates.

Justice Steel found that there were two "threshold" difficulties with applying FNC within the UAE. Firstly, he noted that the concept of FNC as introduced in England under the case *Spiliada Maritime Corp v Cansulex Ltd*² is "directed at circumstances where a court in another state had competent jurisdiction. It is not apposite to a situation where there is concurrent competent jurisdiction in different courts of the same state". Secondly, Justice Steel was influenced by the fact that the courts of the UAE (other than the DIFC Courts) do not recognise or accept FNC at all.

Justice Steel adopted the reasoning of H.E. Justice Ali Al Madhani in *Allianz Risk Transfer AG v. Al Ain Ahlia Ins. Co* (CFI-012-2012). Following that decision, he stated that UAE federal constitutional and statutory provisions restrict if not eliminate the possibility of conflict between the courts of the UAE, with any residual dispute as to jurisdiction at federal or local level being resolved by the Union Supreme Court under the UAE Constitution. He went on to quote and agree with H.E. Justice Al Madhani's conclusion that FNC "...is not applicable at a national level (inside one country) where the parameters of jurisdiction between the local courts are clearly defined and, more importantly, where there is a higher authority responsible to decide over jurisdictional conflicts".³

¹ Case CFI-026-2014.
² [1987] AC 460

³ *Allianz*, paragraph 64.

Practical Implications

In summary, where two courts within the UAE have jurisdiction by virtue of the law of the UAE or the relevant emirate, it is not for one of those courts to decline the jurisdiction given to it. Instead, any conflict that may arise between different courts within the UAE will be determined in the way prescribed by the UAE Constitution.

From a practical perspective, both *Allianz* and *SCB v IGPL* clarify the DIFC Courts' jurisdiction where the case in question involves some degree of connection to an emirate other than Dubai.

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