

DIFC Courts refuse to stay proceedings based on pending Dubai Court Claim

In a judgment of Deputy Chief Justice Sir David Steel issued by the DIFC Courts on 1 August 2016 in *Standard Chartered Bank v Investment Group Private Limited* (CFI 026/2014), the DIFC Courts confirmed that they will not stay legitimate DIFC Court proceedings based merely on parallel claims filed in the Dubai Courts.

In particular, the DIFC Courts held that it is not enough for there to be a pending claim in the Dubai Courts to give rise to a "conflict of jurisdiction" that could result in the stay of DIFC proceedings – rather, both courts must issue conflicting judgments for this to occur. The judgment also deals briefly with Decree No. 19 of 2016 (the Decree) which was issued by the Ruler of Dubai on 9 June 2016 to regulate conflicts of jurisdiction between the DIFC Courts and the Dubai Courts.

Background to the proceedings and the stay application

The DIFC Court proceedings were filed by Standard Chartered Bank (SCB) in August 2014 seeking repayment of amounts outstanding under two loans (the Loans).¹ Investment Group Private Limited (IGPL) objected to the jurisdiction of the DIFC Courts and that objection was ultimately dismissed by the DIFC Court of Appeal in November 2015. In the meantime, IGPL had commenced parallel proceedings in the Sharjah Courts against SCB in relation to the Loans but those proceedings were ultimately dismissed for lack of jurisdiction by the Federal Supreme Court.

Subsequently, IGPL commenced parallel proceedings in the onshore Dubai Courts against SCB in May 2016 in relation to the Loans (the Dubai Court Claim). SCB objected to the jurisdiction of the Dubai Courts on the basis that the DIFC Courts have exclusive jurisdiction and the Dubai Courts

In brief...

- The judgment of the DIFC Courts confirms that it will not stay legitimate DIFC Court proceedings based merely on parallel claims in the Dubai Courts.
- In order for there to be a "conflict of jurisdiction" that might result in a stay of DIFC Court proceedings, there must be two positive judgments of different UAE Courts (for example, the DIFC Courts and the onshore Dubai Courts) which both accept or decline jurisdiction. There will not be a "conflict of jurisdiction" based merely on the existence of two pending claims in different UAE Courts as this would "allow a reluctant defendant to dispatch into the long grass a good, valid claim by the simple device of issuing proceedings in another emirate".
- Both parties' experts on UAE law agreed that the Decree eliminates the jurisdiction of the USC to determine conflicts of jurisdiction between the DIFC Courts and the Dubai Courts and confers this jurisdiction on a new Judicial Authority comprised of DIFC Court and Dubai Court judges. However, there was a divergence of opinion as to whether or not the Decree applies retroactively to petitions filed in the USC prior to 9 June 2016. The DIFC Court did not consider it necessary to resolve these issues, which will need to be resolved in the future.

¹ James Abbott and Shane Jury of Clifford Chance have been acting for SCB in connection with these Proceedings since 2014 and appeared on behalf of SCB at the hearing of the stay application that is the subject of this briefing.

reserved judgment on that jurisdiction objection. The judgment of the Dubai Courts has been adjourned until at least 18 August 2016.

After filing the Dubai Court Claim, IGPL filed a petition in the Union Supreme Court (USC), requesting the USC to determine the alleged "conflict of jurisdiction" between the DIFC Courts and the Dubai Courts (the USC Petition). Based on the USC Petition, IGPL brought stay applications in the DIFC Courts and the Dubai Courts requesting a stay of both proceedings pending determination of the USC Petition.

The dismissal of the stay application

The stay application was filed on the basis of Article 60 of UAE Law No. 10 of 1973 (the USC Law) which provides for a "conflict of jurisdiction between two or more... judicial authorities" to be submitted to the USC to determine which court ought to have jurisdiction. Article 60 of the USC Law also provides that the filing of a petition in the USC "shall entail the stay of the proceedings of disputed actions until the competent court is appointed".

The crux of IGPL's stay application was that the mere filing of the Dubai Court Claim was sufficient to give rise to a "conflict of jurisdiction" under Article 60 of the USC Law and that the DIFC Courts were obliged to stay their proceedings upon the filing of the USC Petition. In contrast, SCB maintained that a "conflict of jurisdiction" required conflicting judgments of both Courts over the same claim and that it was insufficient to merely file a parallel claim to stay the DIFC Court proceedings.

The DIFC Courts emphatically accepted SCB's interpretation of

Article 60 noting that IGPL's interpretation would "allow a reluctant defendant to dispatch into the long grass a good, valid claim by the simple device of issuing proceedings in another emirate".² Justice Sir David Steel considered that both the plain and ordinary meaning of Article 60 and any purposive interpretation supported SCB's position. Therefore, merely filing a parallel claim was held to be insufficient to give rise to a conflict of jurisdiction under Article 60 of the USC Law.³

Effect of the Decree

The Decree provides a mechanism for the resolution of conflicts of jurisdiction between the DIFC Courts and the Dubai Courts. It requires any such conflict to be submitted to a new judicial authority comprising a combination of DIFC Court and Dubai Court Judges that must issue its determination within 30 days. As is the case with the USC Law, the Decree provides for a stay of proceeding pending determination of a conflict of jurisdiction.

There was a dispute between the parties regarding whether or not the Decree applied retroactively to the USC Petition given that the USC Petition was filed three days before the Decree was issued. The parties had filed expert reports on the effect of Decree and both experts agreed that the Decree eliminated the jurisdiction of the USC in respect of conflicts of jurisdiction between the DIFC Courts and the Dubai Courts.⁴ Although the judgment did not make

any findings on this point (it being unnecessary to do so given the absence of a conflict of jurisdiction), Justice Sir David Steel expressed reservations as to whether or not the Decree could take jurisdiction away from the USC.⁵

In relation to the retroactive effect of the Decree, there was a divergence of opinion between the experts with IGPL's expert maintaining that it did not apply to petitions filed in the USC before 9 June 2016 whereas SCB's expert contended that it did by virtue of Article 1(a) of the UAE Civil Procedures Code. Again, the judgment did not make any findings on this point although Justice Sir David Steel noted that "the point is not entirely easy".⁶

It is apparent from the judgment that there are a number of lingering questions regarding the effect of the Decree that will need to be resolved in the future. Clarification from the new Judicial Authority established by the Decree and/or from the USC regarding these issues would be welcomed. However, the judgment of the DIFC Court does give claimants comfort that the Court will continue to take a commercial and pragmatic approach to the robust management of proceedings in the DIFC Courts. IGPL has not sought permission to appeal the judgment within the time limit prescribed by the DIFC Court Rules.

² CFI 026/2014, para 24.

³ Ibid, para 33.

⁴ Ibid, para 19.

⁵ Ibid, para 20.

⁶ Ibid, para 22.

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