

## THE JUDICIAL TRIBUNAL DECISIONS – EMERGING TRENDS

### INTRODUCTION

The Judicial Tribunal established in 2016 under Dubai Decree No.19 of 2016 (the Tribunal) continues to determine conflicts of jurisdiction between the DIFC Courts and the onshore Dubai Courts (the Dubai Courts). In July 2017 we considered the remit of the Judicial Tribunal and the first eight publicly available Tribunal decisions ([The decline of the conduit jurisdiction of the DIFC Courts](#)). Our analysis of those decisions was that the effectiveness of the DIFC Courts' conduit jurisdiction to enforce foreign or Dubai seated arbitral awards in onshore Dubai appeared to be on the decline. Since our last briefing the Tribunal has issued a further nine decisions.

With 17 publicly available decisions, certain trends are emerging from the Tribunal's jurisprudence which we have summarised on the next page.

### SUMMARY

The Tribunal has, through its new decisions, confirmed that the Dubai Courts have exclusive jurisdiction to enforce foreign court judgments and foreign and Dubai seated arbitral awards in onshore Dubai. While the conduit jurisdiction appears to have declined further, on a positive note, the Tribunal in a different case confirmed that the DIFC Courts have exclusive jurisdiction in a dispute involving a DIFC Licensed Establishment. This is a welcome decision and in line with the Judicial Authority Law (Law No. 12 of 2004 as amended) and established DIFC case law. The Tribunal has also upheld the principle of res judicata and dismissed a second referral brought by the same party seeking to reopen the Tribunal's decision in the first referral.<sup>1</sup>

The Tribunal's jurisprudence arguably provides some clarity for parties, but it also highlights the importance of jurisdiction clauses in contracts. Parties who wish to avail the benefits of enforcing an arbitral award or judgment in onshore Dubai via the DIFC Courts should consider an express "opt-in" to the DIFC Courts' jurisdiction or choosing the DIFC as the arbitral seat. Whilst the validity of an express "opt in" clause has yet to be considered by the Tribunal, this should place the party seeking to invoke the jurisdiction of the DIFC Courts in a stronger position in the event of any referral of a conflict to the Tribunal.

**Please see next page for a table setting out the key trends in the Tribunal's jurisprudence.**

#### Key issues

- Clear trends emerging from 17 publicly available decisions of the Tribunal
- The conduit jurisdiction of the DIFC Courts has declined further but it is possible to opt into the DIFC Courts' jurisdiction
- The Tribunal confirmed that the DIFC Courts have exclusive jurisdiction over disputes involving a DIFC Licensed Establishment
- Principles like res judicata are available before the Tribunal.

<sup>1</sup> Cassation No.7 of 2017.

No.	Type of Conflict	Tribunal's Decision & Comment
<b>Enforcement of Arbitral Awards</b>		
1.	<p><b>Dubai seated arbitral awards</b> – DIFC Courts recognised the arbitral award but the award debtor sought to annul the award before onshore Dubai Courts.</p> <p>(Cassation No.1/2016 - <i>Daman Real Capital Partners Company LLC v Oger Dubai LLC</i>; Cassation No.2/2016 - <i>Dubai Water Front LLC v Chenshan Liu</i> and Cassation No.3/2017 - <i>Ramadan Mousa Mishmish v Sweet Homes Real Estate LLC</i>.)</p>	<p><b><i>Dubai Courts have jurisdiction to the exclusion of DIFC Courts.</i></b></p> <p>A minority comprising the DIFC Court judges dissented, noting that both courts had jurisdiction. DIFC Courts have exclusive jurisdiction to recognise and enforce an arbitral award within the DIFC, which is distinct from annulment of an arbitral award for which the Dubai Courts have exclusive jurisdiction as the supervisory courts of the arbitral seat.</p> <p>As set out in item 2 below, there may be an exception to the general rule where the parties have selected DIFC-LCIA Rules.</p>
2.	<p><b>Dubai seated award rendered under DIFC-LCIA Rules</b> – The award creditor commenced enforcement proceedings in the DIFC Court while the award debtor applied to the Dubai Courts to annul the award.</p> <p>(Cassation No.1/2018 - <i>Sinbad-Marine-Inc.-LLC-v-Essam-Al-Tamimi</i>.)</p>	<p><b><i>DIFC Courts have jurisdiction to enforce and recognise the award.</i></b></p> <p>This decision deviates from the line of cases noted at item 1 above (i.e. in the sense that the selection of the DIFC-LCIA Rules seemed to trump the selection of a Dubai seat). Both the majority and minority decisions confirmed the DIFC Courts had jurisdiction but differed in their reasoning. The majority decision was premised on the fact that the DIFC-LCIA is based in the DIFC. The minority opinion disagreed with this reasoning, but their reasons are yet to be published. It will be interesting to see if the Judicial Tribunal continues to apply the majority reasoning in future cases.</p>
3.	<p><b>DIFC seated arbitral award</b> – Award creditor sought recognition and enforcement of the award from both DIFC Courts and onshore Dubai Courts. The DIFC Court of First Instance refused to set aside the award, the decision was not appealed.</p> <p>(Cassation No.6/2017 - <i>Assas Investments Limited v Fius Capital Limited</i>.)</p>	<p><b><i>DIFC Courts and Dubai Courts have jurisdiction to enforce the award.</i></b></p> <p>There was held to be no conflict in this case as the parallel enforcement proceedings were in respect of different assets and therefore both courts had jurisdiction in the respective proceedings. The Tribunal confirmed that parties can pursue enforcement of arbitration awards simultaneously in multiple jurisdictions (including DIFC and Dubai) and this is unlikely to result in a conflict of jurisdiction.</p>
4.	<p><b>Foreign seated arbitral award</b> – Award creditor sought recognition of foreign award from DIFC Courts, but debtor commenced proceedings before the Amicable Settlement of Disputes Centre of the Dubai Courts.</p> <p>(Cassation No.1/2017 - <i>Gulf Navigation Holding P.S.C v Jinhai Heavy Industry Co. Limited</i>)</p>	<p><b><i>Dubai Courts have jurisdiction to the exclusion of the DIFC Courts.</i></b></p>

No.	Type of Conflict	Tribunal's Decision & Comment
<b>Enforcement of Foreign Judgments</b>		
5.	<p><b>Foreign Judgments</b> – Award creditor sought recognition of foreign court judgment from DIFC Courts who recognised it, but debtor commenced parallel proceedings in the onshore Dubai Courts claiming that Dubai Courts have exclusive jurisdiction.</p> <p>(Cassation No. 4/2017 - <i>Endofa DMCC v D'Amico Shipping</i> and Cassation No.3/2018 - <i>Farkehad Teimar Bely Akhmedov v (1) Tatiana Mikhailovna Akhmedova (2) Straight Establishment</i>)</p>	<p><b><i>Dubai Courts have jurisdiction to the exclusion of the DIFC Courts.</i></b></p> <p>In Cassation 4 of 2017, the majority comprising the Dubai Court judges noted that:</p> <p>(a) The timing of parallel proceedings was irrelevant so long as both proceedings were commenced before the Tribunal issued its decision. A party could therefore start a claim in the Dubai Courts quite late and still be able to refer the conflict to the Tribunal.</p> <p>(b) Any concession to a court's jurisdiction must be express and in writing. An appearance before the DIFC Court stating that a party intends to defend all the claims is not a concession.</p>
<b>Licensed DIFC Establishments</b>		
6.	<p><b>Where a DIFC Establishment is involved</b> – The DIFC Courts found they had exclusive jurisdiction over a case involving a DIFC Establishment. The other party commenced proceedings against the DIFC Establishment before the Dubai Courts.</p> <p>(Cassation No.2/2018 - <i>Re-Point-Ventures-FZ-Co (1) Jai-Narain-Gupta (2) Mayur-Kumar-Gupta (3) Saroj-Gupta-V-Tavira-Securities-Limited (4).</i>)</p>	<p><b><i>DIFC Courts have exclusive jurisdiction.</i></b></p> <p>The Tribunal held that the DIFC Courts have exclusive jurisdiction where one of the parties is a Licensed DIFC Establishment, even if the claim arose from events which occurred before it had been registered in the DIFC.</p>

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