DIFC COURTS CONFIRM JURISDICTION TO GRANT INTERIM RELIEF IN SUPPORT OF FOREIGN PROCEEDINGS WHERE THERE IS NO ASSET LINK TO THE DIFC

Date: 27 October 2025

UAE Litigation and Dispute Resolution Alert

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INTRODUCTION

Prior to Law No. 2 of 2025 Concerning the Dubai International Financial Centre (DIFC) Courts (New DIFC Courts Law)—a law which consolidates and updates the legal framework of the DIFC Courts—the DIFC Court of Appeal (Court of Appeal) in *Carmon Reestrutura-engenharia E Serviços Técnios Especiais, (Su) LDA v Antonio Joao Catete Lopes Cuenda [2024] DIFC CA 003* (Carmon) had confirmed that the DIFC Courts have jurisdiction to issue a freezing order in support of foreign court (or arbitral) proceedings even where the prospective judgment debtor has no assets in the DIFC. The Court of Appeal held that it was sufficient that the foreign proceedings may give rise to a judgment capable of recognition and execution by the DIFC Courts.

Following the introduction of the New DIFC Courts Law, the DIFC Court of First Instance (Court of First Instance) in *Nadil v Nameer [2025] DIFC CFI* (Nadil) rejected an application for a worldwide freezing order on the basis that there was no "direct asset link" to the DIFC. Permission to appeal was granted in part on the basis that the Court of First Instance failed to consider Article 15(4) of the New DIFC Court Law, which expressly addresses the jurisdiction of the DIFC Courts to hear and determine applications for interim and precautionary measures related to claims or arbitral proceedings brought outside the DIFC.

RECENT DECISION OF THE DIFC COURT OF APPEAL

The question of whether the DIFC Courts have jurisdiction to issue freezing orders in aid of foreign court proceedings that may yield a judgment that is enforceable in the DIFC Courts was recently revisited by the Court of Appeal in *(1) Trafigura PTE LTD (2) Trafigura India PTV LTD v (1) Mr Prateek Gupta (2) Mrs Ginni Gupta [2025] DIFC CA 001* (Trafigura). In this case, the Court of First Instance had refused to issue a United Arab Emirates (UAE)-wide freezing order against assets of the respondent located onshore in the UAE (not in the DIFC) on the basis that the DIFC Courts lacked jurisdiction and power to make such an order in the light of the New DIFC Courts Law.

One key issue in dispute was the interpretation of Article 15 of the New DIFC Courts Law, which provides (based on the published English translation of the original Arabic text) that the DIFC Courts have jurisdiction to hear and

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determine applications for interim or precautionary measures related to claims "brought outside the DIFC seeking suitable precautionary measures within the DIFC". Although the Court of Appeal ultimately found that nothing turned on the different translations, the parties agreed that the most accurate translation of Article 15(4) is that the DIFC Courts have jurisdiction to hear and determine applications for interim or precautionary measures related to claims "brought outside the DIFC provided that suitable precautionary measures are taken within the DIFC".

The Court of Appeal in Trafigura had no difficulty determining that Article 15(4) encompasses interim measures sought in the DIFC in aid of proceedings which could yield a judgment capable of being recognised and enforced in the DIFC—without any requirement for assets to be located in the DIFC.

The Court of Appeal further confirmed that the reasoning and public policy considerations behind the decision in *Carmon* remained valid and unaffected by the New DIFC Courts Law. In this regard, the Court of Appeal highlighted a passage from the judgment in *Carmon* which provides that the DIFC Court of First Instance "has power to grant interim remedies under Pt 25 of the [Rules of the DIFC Courts], including freezing orders which extend to freezing orders restraining a party from dealing with any assets whether located within the jurisdiction or not […]. Those powers are available to prevent the Court's jurisdiction being thwarted. That includes its jurisdiction to recognise and enforce foreign judgments. That jurisdiction may be thwarted if a party to a foreign proceeding seeks to dissipate its assets in advance of an apprehended judgment which might be susceptible to recognition and enforcement in the DIFC."

ANALYSIS

This is a welcome development that resolves the uncertainty introduced by the judgment in *Nadil*. It further confirms the DIFC Court's expansive approach, informed by public policy, to questions of jurisdiction.

ABOUT THE FIRM

Our Litigation and Dispute Resolution practice has a long history of acting as counsel on high-stakes international arbitration and litigation mandates. Our lawyers in Dubai have extensive experience advising on litigation and arbitration with respect to complex, high-value disputes in the UAE and wider Middle East region.

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