

# Amended DIFC Courts Practice Direction No. 2 of 2015 – Referral of Judgment

## Payment Disputes to Arbitration

MAY 27, 2015 PRACTICE DIRECTIONS

### REFERRAL OF JUDGMENT PAYMENT DISPUTES TO ARBITRATION

#### Citation

This Amended Practice Direction will come into effect on the date of signature and supersede the former Practice Direction No. 2 of 2015. It shall be known and cited as Practice Direction 2 of 2015 – Referral of Judgment Payment Disputes to Arbitration – and may be abbreviated to PD 2 of 2015.

#### Referral to **DIFC**-LCIA Arbitration of any Judgment Payment Dispute

If parties who have submitted (or have agreed to submit) to (or are bound by) the **jurisdiction** of the **DIFC Courts** wish further to agree that any dispute arising out of or in connection with the non-payment of any money judgment given by the DIFC Courts may, at the option of the judgment creditor (as defined below), be referred to arbitration under the Arbitration **Rules** of the DIFC-LCIA Arbitration Centre, they may to that end adopt an arbitration clause in the terms of the recommended arbitration agreement set out below by reference to the Referral Criteria as defined.

#### The Referral Criteria

In the Referral Criteria, the following terms have the following meanings:

‘Judgment Payment Dispute’ any dispute, difference, controversy or claim between a judgment creditor and judgment debtor with respect to any money (including interest and costs) due under an unsatisfied judgment, including:

- (i) a failure to pay on demand any sum of money remaining due under a judgment on or after the date on which that sum becomes due under Rule 36.34; and/or
- (ii) the inability or unwillingness of the judgment debtor to pay the outstanding portion of the judgment sum within the time demanded,

but excluding any dispute about the formal validity or substantive merits of the judgment;

'judgment' a judgment (including a summary or default judgment) of any of the DIFC Courts for the payment of money (including interest and costs) in respect of which there is a Judgment Payment Dispute that the judgment creditor refers to arbitration under this Practice Direction (whether or not the judgment also provides for remedies other than the payment of money);  
'judgment creditor' any of the parties who has obtained or is entitled to enforce a judgment;  
'judgment debtor' any of the parties against whom a judgment has been given or made.

The Referral Criteria are:

- (1) The judgment has taken effect in accordance with Rule 36.30;
- (2) The judgment is not in respect of an employment contract or consumer contract which is subject to Article 12(2) of the Arbitration Law 2008 precluding arbitration in respect of such contracts;
- (3) The judgment is not subject to any appeal, and the time permitted for a party to the judgment to apply for permission to appeal has expired;
- (4) There is a Judgment Payment Dispute; and
- (5) The judgment creditor and judgment debtor have agreed in writing that any Judgment Payment Dispute between them may be referred to arbitration pursuant to this Practice Direction.

#### Suggested Arbitration Clause

Any Judgment Payment Dispute (as defined in DIFC Courts Practice Direction No 2 of 2015) that satisfies all of the Referral Criteria set out in the Practice Direction may be referred to arbitration by the judgment creditor, and such dispute shall be finally resolved by arbitration under the Arbitration Rules of the DIFC-LCIA Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. There shall be a single arbitrator to be appointed by the LCIA **Court** pursuant to Article 5.4 of the DIFC-LCIA Arbitration Rules. The seat, or legal place of arbitration, shall be the Dubai International Financial Centre. The language to be used in the arbitration shall be English.

This agreement for submission to arbitration shall in all respects including (but not limited to) its

existence, validity, interpretation, performance, discharge and applicable remedies be governed by and construed in accordance with the laws of the Dubai International Financial Centre.

The judgment creditor may, before or after exercising its option to refer a Judgment Payment Dispute to arbitration as provided above, exercise all rights of enforcement of the judgment in a national **Court** by way of execution on the assets of the judgment debtor, and the judgment debtor shall not be entitled to resist execution before any such national court on the grounds of this arbitration agreement, which is intended to provide a judgment creditor with additional, and not alternative, remedies for enforcement of its judgment.

Nothing in this Practice Direction shall be taken to rescind, vary, curtail or suspend the effect or operation of any judgment of the DIFC Courts save as expressly provided in the Rules of the DIFC Courts as they may be amended from time to time.

#### Commentary

PD 2 of 2015 has been amended in order to clarify the manner in which it should be applied by the parties. The way in which PD 2 of 2015 is meant to operate is as follows.

First, the judgment creditor would consider its judgment options in order to determine the preferred method of obtaining assets from the judgment debtor.

Its choice from those options would be likely to depend on where the judgment debtor's assets may be located. For example, if the judgment debtor has assets in Dubai, the judgment creditor would be likely to return to the **courts** in Dubai. If the judgment debtor has assets in another common law jurisdiction, the judgment creditor may wish to sue on the DIFC Courts judgment as a foreign judgment in that particular common law jurisdiction. If the judgment debtor has assets in another GCC country, then the judgment creditor may wish to sue on the DIFC Courts judgment in the relevant GCC country in reliance on the mutual enforceability of court judgments in the GCC region under the GCC Convention. The same considerations would apply if the judgment debtor has assets in a country with which the **UAE** has a treaty providing for the mutual recognition and enforcement of judgments.

Next, if the above litigation options do not permit recovery of the judgment debt, then the judgment creditor should turn to enforcement through arbitration as provided for in this PD 2 of

2015. A judgment creditor is likely to have recourse to this option only if any judicial remedies have been exhausted or are unlikely to be available.

In order to allay concerns about whether this arbitration clause works in the above described manner, and further to clarify that the judgment creditor has not by agreement to this arbitration clause given up its rights to litigate, an express provision has been added in the suggested arbitration clause which states that the option to litigate is not precluded by the entitlement to commence arbitration.

This would result in a possible execution of the judgment as follows.

1. The judgment creditor has the option either to litigate or to arbitrate (as long as the arbitration has not commenced).
2. The judgment creditor would opt to litigate before arbitration if the judgment debtor has assets in Dubai, a common law country, a GCC country and/or another country with which the UAE has a treaty providing for mutual recognition and enforcement of judgments.
3. If the judgment debtor does not have assets in Dubai, a common law country, a GCC country and/or a country with which the UAE has a bilateral or multilateral treaty on recognition and enforcement of judgments (or if the above step proved to be unsuccessful), the judgment creditor would commence arbitration.

In the last scenario, it is likely that the vast majority of New York Convention countries will uphold this arbitration clause and the arbitration award could then be enforced in almost all of the more than 150 countries that have acceded to the New York Convention.

Dated this 27 day of May 2015

**Chief Justice** Michael Hwang

Link: <https://www.difccourts.ae/rules-decisions/practice-directions/amended-difc-courts-practice-direction-no-2-of-2015-referral-of-judgment-payment-disputes-to-arbitration>