

# First Anti-Suit Injunction obtained in the Dubai International Financial Centre Courts

For the first time the DIFC Courts have issued an anti-suit injunction in favour of a party wishing to prevent on-shore Dubai Court proceedings in order to proceed with an Arbitration.

In the order issued last week in *Multiplex Constructions LLC v Elemec Electromechanical Contracting LLC*, HE Justice Shamlan Al Sawalehi ordered the Defendant not only to refrain from taking any further steps in ongoing Dubai Court proceedings, but also to discontinue those proceedings forthwith. The Order was backed by a penal notice, meaning that if the Defendant disobeys the order it (and its Directors) face the prospects of fines from the Court and even imprisonment.

In doing so the Court had to consider and dismiss numerous arguments over three hearings including:

- The construction of the Arbitration Agreement;
- Arguments as to the capacity of those entitled to sign Arbitration agreements (an argument often raised in the region); and
- Arguments as to whether the Claimant had lost its right to seek such an injunction by its actions in participating in the Dubai Court litigation under an express reservation of rights as to jurisdiction.

In making the penal Order the DIFC Court applied and built on the view of Justice Sir Jeremy Cooke in the 2016 case of *Brookfield Multiplex Construction LLC v DIFC Investments (CFI 020/2016)* that:

*“If the seat of the Arbitration is DIFC... the primary responsibility for the enforcement of the arbitration agreement would lie on the courts of the seat, if relief was sought. This court would then be concerned, first to protect its own exclusive jurisdiction under the Judicial authority law and, secondly, as the court of the seat, to protect the agreement of the parties to refer their disputes to the determination of arbitrators, if there was some infringement of the parties right to arbitrate their dispute.”*

The tactic of seeking to “trump” DIFC-based Arbitration clauses by commencing “onshore” Dubai Court proceedings is a common one in the region. This first instance of the DIFC Court reacting to such a move by granting a penal anti-suit Order. The decision is therefore an indication that the DIFC Court will, in an appropriate case, both protect its jurisdiction and exercise its responsibility as the Supervising jurisdiction for such clauses in a robust way.

The decision is therefore likely to have a significant impact on disputes in the region. Many companies who have the benefit of DIFC-based Arbitration clauses are likely to be looking at the Order carefully.

The successful Claimant was represented by [Sean Brannigan KC](#), Joint Head of Chambers at 4 Pump Court, instructed by [Matthew Heywood](#) and [Alexander Studholme](#) of [Mantle Law Limited](#), assisted in the DIFC by Morgan, Lewis & Bockius LLP.

This summary was prepared by [James Bowling](#).