

## **Section 1: Holding the ring: interim remedies in the DIFC**

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### **Can the DIFC courts grant freezing orders in support of foreign legal proceedings?**

It is uncontroversial that a freezing order can be sought in support of an action to enforce a foreign judgment in the DIFC. Under Article 7(6), Judicial Authority Law, the CFI has original jurisdiction to enforce any judgments, decisions, orders and ratified arbitral awards rendered outside the DIFC by a court other than the Dubai courts.<sup>1</sup> Where execution proceedings are brought, a freezing order can be sought against the defendant where the relevant criteria are met. It has been held, however, in *Akhmedova v Akhmedov* that Article 7(6) does not confer the court jurisdiction over a third party to a foreign judgment, against whom enforcement is sought. Should an applicant wish to obtain an injunction against a third party over whom the DIFC courts would otherwise not have jurisdiction, they should first seek to join them as a party to the underlying judgment,<sup>2</sup> or alternatively to obtain jurisdiction under Art 5(A)(1)(e), Judicial Authority Law, by seeking the third party be joined under RDC r20.7.<sup>3</sup>

The DIFC courts have also made freezing orders in relation to on-going foreign legal proceedings, where judgment has not yet been obtained. In the unreported decision of *United States Securities and Exchange Commission v Wintercap* [2019] DIFC CFI 003,<sup>4</sup> the court made a freezing order in support of proceedings in the United States. The court held it had jurisdiction under Art 5(A)(1)(e), Judicial Authority Law, the court having the power to make injunctions as it considers appropriate under Article 32(b), Court Law.

As noted in question 1 above, the existence of such a jurisdictional gateway under Article 5(A)(1)(e) was doubted obiter by the court in *Childescu v Gheorghiu*. The court nonetheless held it had the power to make an injunction in support of foreign proceedings, where the CFI had jurisdiction against the respondents under other jurisdictional gateways in Article 5(A)(1) of the Judicial Authority Law. In *Lateef v Liela* [2020] DIFC ARB 017 (13 December 2021), the court agreed with the approach in *Wintercap* in a reasoned judgment, concluding that the injunctive powers granted under Articles 22 and 32(b), Court Law, and RDC r.25.1 and r.25.24 were capable of conferring jurisdiction to grant injunctive relief in relation to ongoing foreign proceedings. The court considered that there were no constraints in the statutory provisions restricting the court's jurisdiction and adopted the enforcement principle enunciated in the Privy Council decision of *Broad Idea v Convoy Collateral Limited*

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<sup>1</sup> The execution of judgments of the Dubai Courts are governed by Article 7(5) of the Judicial Authority Law.

<sup>2</sup> *Akhmedova v Akhmedov* [2018] DIFC CA 003 (19 June 2018) at [20]-[23].

<sup>3</sup> *Nest Investment Holding Lebanon SAL v Deloitte & Touche (M.E)* [2018] DIFC CA 011 (19 February 2019) at [52]-[56].

<sup>4</sup> A summary of the judgment can be found in Law of the DIFC, Vol. 1 (2<sup>nd</sup> ed.), para. 5.43(12).

[2021] UKPC 24. *Lateef* was recently followed in *Jones v Jones* [2022] DIFC CFI (14 September 2022), where the court concluded that it had jurisdiction to grant a freezing order in support of proceedings taking place abroad or in the Dubai Court as an adjunct to the enforcement principle enunciated in *Broad Idea*.<sup>5</sup> Justice Sir Jeremy Cooke did note that when exercising such jurisdiction it is usually in relation to assets within the jurisdiction of the DIFC court as opposed to assets amenable to the other court's jurisdiction.<sup>6</sup>

A similar injunctive jurisdiction was confirmed in support of arbitrations seated outside the DIFC in *Brookfield Multiplex Constructions LLC v DIFC Investments LLC* [2016] DIFC CFI 020 (28 July 2016). In that case, it was held that, while the court had no jurisdiction to order an injunction in relation to an arbitration seated outside the jurisdiction under the Arbitration Law (Law No. 1 of 2008), it could do so under the power conferred by Article 22, Court Law, to “*order an injunction restraining a person from engaging in conduct or requiring a person to do an act or thing or other order the court considers appropriate.*”<sup>7</sup>

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<sup>5</sup> *Jones v Jones* [2022] DIFC CFI 043 (14 September 2022) at [21].

<sup>6</sup> At [25].

<sup>7</sup> At [36]-[38].