

# DIFC COURT HOLDS PROVISIONAL AWARD ON INTERIM MEASURES TO BE ENFORCEABLE



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The Court of the Dubai International Financial Centre (DIFC) gave an important decision on 19 September 2023 concerning the enforceability of interim measures rendered by arbitral tribunals. The DIFC Court decided that regardless of the seat, awards on interim measures rendered by tribunals were enforceable by the DIFC Court. The decision is significant for clarifying the enforceability of provisional awards in the DIFC and confirms the progressive stance of the DIFC Court in support of effective dispute resolution.

In the decision *Muhallam v Muhaf* (ARB 021/2022), the issue before the DIFC Court was whether it had jurisdiction to enforce a provisional award on interim measures rendered by an arbitral tribunal seated outside the DIFC.

The Defendant challenged the DIFC Court's *ex parte* order, which had provided for the enforcement of the tribunal's award on interim measures, on the basis that interim measures were not enforceable as they did not constitute an "arbitral award" for the purposes of Articles 42 and 43 of the DIFC Arbitration Law. The Defendant further argued that the mechanism under Article 24(2) was the only way to enforce interim measures in the DIFC.



The DIFC Arbitration Law gives power to tribunals seated within the DIFC and the DIFC Court to order interim measures (Articles 24(1) and 24(3)). The recognition and enforcement of arbitral awards in the DIFC are governed by Articles 42 and 43 of the DIFC Arbitration Law which do not expressly govern the recognition and enforcement of interim measures granted by tribunals. The only express provision in the DIFC Arbitration Law on the issue is Article 24(2) which governs the enforcement of interim measures rendered by tribunals seated in the DIFC. The arguments in this case concerned the enforceability of interim measures rendered by tribunals seated outside the DIFC.

With reference to international court practices and scholarly views, the DIFC Court analyzed the issue under Articles 42 and 43 of the DIFC Arbitration Law. The Court stated that neither the New York Convention, nor the UNCITRAL Model Law (which forms the basis of the DIFC Arbitration Law), prevented the Court from deciding that interim measures are "awards" for the purposes of enforcement. The Court stated that the DIFC Arbitration Law itself recognizes that interim measures for the purposes of enforcement under Article 24 can be "in the form of an award or in another form".

The Court concluded that, as long as an interim measure qualified as an award, it could be recognized and enforced under Articles 42 and 43 of the DIFC Arbitration Law.

The Court also dismissed the Defendant's argument that Article 24(2) was the "source of an exclusive jurisdiction" to enforce interim measures granted by

tribunals. The Court held that Article 24(2) mainly provided for a "more summary procedure" for the enforcement of interim measures, rendered by DIFC-seated tribunals, which allows enforcement with the written permission of the tribunal.



## Comment

The speed and effectiveness of the implementation of interim measures, such as freezing orders or injunctions, can play a crucial role in protecting litigants and ensuring a meaningful adjudication on the merits. The *Muhallam v Muhaf* decision is a key development for clarifying that provisional awards on interim measures are enforceable in the DIFC.

The developments in the case law of the DIFC Courts continue to strengthen its reputation as an arbitration-friendly venue and a reliable jurisdiction for effective resolution of disputes. Further tools available to litigants under DIFC law, such as adverse costs<sup>1</sup> or contempt of court<sup>2</sup> orders against parties failing to comply with court decisions, as well as the reciprocal enforcement protocol between the DIFC Courts and the 'onshore' Courts of Dubai<sup>3</sup>, make the DIFC an attractive venue for litigants who seek to resolve their disputes swiftly and efficiently.

<sup>1</sup> Part 38 of the Rules of DIFC Courts.

<sup>2</sup> Part 52 of the Rules of DIFC Courts.

<sup>3</sup> The Law of the Judicial Authority at Dubai International Financial Centre, Law No.12 of 2004.