

DIFC Courts Confirm Enforcement Principle in Article 31(4) proceedings against Non-DIFC Assets

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1. David Parratt KC (Scot) and Dr Zhen Ye appeared before H.E. Justice Sir Jeremy Cooke on an application by the Defendant to set aside an Enforcement Order and a Receivership Order, both granted in aid of orders of the English Court. The subject matter centred on real property situated onshore in Dubai.

The Backdrop: The Developing Landscape

2. In the last year the DIFC court in a series of cases addressed the fundamental question: is the DIFC an international commercial court with broad enforcement reach, or a self-contained jurisdiction whose powers are tethered to assets and parties within its geographic boundaries? In ***Nadil v Nameer* [2025] DIFC CFI (1 April 2025)**, DCJ Ali Al Madhani suggested that Dubai Law No. 2 of 2025 (the ‘**New Courts Law**’) offered a clean slate, on which the Court could be re-established as a self-contained jurisdiction, and that the older JAL-based case law could be discarded entirely. The DIFC Court of Appeal in ***Trafigura PTE Ltd v Gupta* [2025] DIFC CA 001 (22 September 2025)** overturned that approach, rejecting any requirement for a direct asset link to the DIFC as a precondition to granting interim relief under Article 15.4. Justice Black in ***Techteryx v Aria Commodities* [2025] DIFC CFI (17 October 2025)** reinforced this, holding that Article 15.4 was intended to give a firm statutory footing to the enforcement principle established in the older authorities.
3. Against that backdrop, H.E. Justice Nassir Al Nasser in ***Ostin v Oleda* ENF 185/2025 (25 November 2025)** moved in a different direction, finding, in a short judgment, that the phrase “*inside the DIFC*” in Article 31.4 limited enforcement jurisdiction to assets situated within the DIFC, and varying his own Part 50 order accordingly. This misaligned with the

approach in *Trafigura* and left practitioners with a directly conflicting line of authority on final enforcement orders and territorial reach.

The Application in respect of the Enforcement Order

4. The central question of the Application to set aside the Enforcement Order was whether the DIFC Courts had jurisdiction under Article 31.4 of the New Courts Law to enforce a foreign judgment where no assets were situated within the DIFC.
5. The Defendant argued that Article 31.4, read in context alongside Articles 14 C.2 and 15, required the existence of assets within the DIFC before an Enforcement Order could attach. Primary reliance was placed on the decision of H.E. Justice Nassir Al Nasser in *Ostin and Oleda*, in which the Court had held that the phrase “*inside the DIFC*” in Article 31.4 limited enforcement jurisdiction to assets situated within the DIFC. *Trafigura* was said to be distinguishable as it concerned only interim measures under Article 15.4.
6. In dismissing the Application, H.E. Justice Sir Jeremy Cooke rejected each strand of this argument for the following reasons:
 - On Article 14 C.2, the Court found it of no assistance, as it merely grants discretion to decline jurisdiction where a final judgment of another court is already capable of enforcement in the DIFC and says nothing about which judgments are so capable.
 - On Article 31.4 itself, the Court held that its plain wording conferred jurisdiction to enforce both final judgments and interim orders of local and foreign courts “*inside the DIFC*”, with no reference to any requirement for assets within the DIFC. Critically, Article 32, which required the Enforcement Judge to seek the assistance of the onshore Dubai Courts where the object of enforcement is situated outside the DIFC, expressly contemplated that Enforcement Writs might be issued by the DIFC Courts in respect of assets situated elsewhere. The structure of the statute, therefore, itself militates against any asset-nexus requirement.
 - On *Trafigura*, the Court held that the Court of Appeal had confirmed that enforcement of a foreign judgment “*inside the DIFC*” did not require assets to be present within the DIFC, and considered that the authorities, namely, the decisions in *Lateef*, *Carmon*, *DNB Bank and Banyan Tree*, under the predecessor law to the effect that there was no need for assets within the DIFC for enforcement writs to be granted remains good law under the new statute.

- The position on final enforcement orders was, in the Court's judgment, a fortiori to that on interim measures: it would be, in the Court's view, bizarre, if the Enforcement Principle applied to interim relief but not to final orders.
- As to *Ostin v Oleda*, while acknowledging the "*valiant efforts of Counsel for the Defendant*" in finding an authority running counter to *Trafigura*, the Court declined to follow it. It was characterised as an essentially unreasoned decision that had not engaged with *Trafigura* and whose conclusion could not stand in light of the Court of Appeal's reasoning.

Practical Implications

7. For now, the door has been firmly closed on any suggestion that onshore assets lie beyond the reach of Article 31.4 Enforcement Order.
8. It is understood that *Ostin v Oleda* is the subject of a pending appeal. The profession will watch closely to see how the Court of Appeal brings the Article 31.4 debate to a definitive close.
9. One further observation: *Nadil* suggested that the pre-2025 enforcement case law was no longer of assistance under the New DIFC Courts Law (at [23]). His Lordship's express endorsement of *Carmon, Lateef, DNB Bank and Banyan Tree* in this Application as remaining good law makes that proposition, at minimum, now open to question.
10. David Parratt KC (Scot) and Dr Zhen were instructed by HAS Law Firm.

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