

REMEDIES FOR NON-COMPLIANCE WITH NON-MONEY JUDGMENTS:

A CLOSER LOOK AT COMMITTAL AND
SEQUESTRATION IN THE DIFC



REMEDIES FOR NON-COMPLIANCE WITH NON-MONEY JUDGMENTS

A Closer Look at Committal and Sequestration in the DIFC

1. While mechanisms for enforcing money judgments are better known and widely discussed, the enforcement of non-money judgments presents a different challenge. These are essentially orders that require a party to take a specific action or refrain from doing something, such as freezing orders, disclosure orders, etc. which demand a distinct set of remedies to ensure compliance. In cases where a party disobeys a court order, remedies such as committal and sequestration become crucial tools to ensure compliance. These remedies are designed to punish disobedience and compel the enforcement of judgments that do not involve the payment of money but rather specific conduct.

2. In the DIFC, committal and sequestration orders have proven to be effective enforcement tools. Under the Rules of DIFC Courts 2018 (“RDC”) 48.8, if a person fails to comply with a court judgment or order, whether by refusing to do something within a specified time or disobeying an order to refrain from an act, the court can enforce compliance through an order of committal,¹ and/or with the permission of the Court, a writ of sequestration.

3. This paper explores the use of committal and sequestration in the DIFC Courts, examining how these remedies function in practice and their broader implications for enforcing non-money judgments. By comparing these mechanisms to those available in common law jurisdictions, this analysis will highlight the distinctive features of the DIFC’s approach to maintaining the authority of its orders, particularly when parties are reluctant to comply.

I. COMMITTAL AS AN ENFORCEMENT TOOL IN THE DIFC

A. The DIFC Court’s jurisdiction over contempt

4. Contempt of court in the DIFC broadly mirrors its meaning and treatment in common law jurisdictions. The DIFC Courts are conferred with the jurisdiction to punish for contempt of Court under Article 43 of DIFC Law No. 10 of 2004 (“Court Law”) read with Article 5(A)(1)(e) of the Dubai Law No. 12 of 2004 (“JAL”). The DIFC Court may in the exercise of such jurisdiction:

- (a) make any order it considers necessary in the interests of justice;
- (b) impose fines; and
- (c) refer the matter to the Attorney General of Dubai for further action.

¹While committal orders are also issued in relation to misconduct by a party during legal proceedings, contempt in the face of the Court and false statements made on oath, this paper focuses on contempt of court by way of non-compliance with an order, judgment or undertaking.

5. One of the first cases where the DIFC Courts explored its jurisdiction and powers in relation to contempt was *VIH Dubai Palm Jumeirah Ltd (Cayman Islands) v. Assas Opco Ltd & Ors* (“*VIH Dubai*”).² The Court confirmed that its jurisdiction to handle contempt of court is “very wide” and no less extensive than that of the English High Court in comparable matters.³ The DIFC Court in *VIH Dubai* also clarified its extraterritorial reach, asserting that as long as it has *in personam* jurisdiction over a party, it can assume jurisdiction over alleged contemnors even if they reside outside the DIFC and if the acts alleged of contempt are committed outside the DIFC.⁴ Moreover, the Court confirmed that its powers also extend to third parties accused of being accessories to contempt or of wilfully interfering with the administration of justice, by facilitating the breach of a DIFC Court.⁵ This broad scope of jurisdiction allows the DIFC Courts to effectively address cases involving global actors or businesses that operate across multiple jurisdictions.

6. Though endowed with significant contempt jurisdiction, the DIFC Courts also are distinct law courts due to certain inherent limitations. Common law courts with contempt powers typically also have general criminal jurisdiction, opening a range of penal sanctions like imprisonment. The DIFC Court do not have criminal jurisdiction and cannot decide any matters that are crimes under Dubai or UAE law. In respect of contempt of court, the Court has the power to order fines and make any order it considers necessary in the interests of justice, except the imposition of a sentence of imprisonment.⁶ The judgment in *(1) Lateef (2) Lukman v (1) Liyela (2) Liyani* (“*Lateef*”) described the Court’s powers to penalise for contempt as “regulatory” or “at the highest, quasi-criminal”.⁷

7. In *Lateef*, the DIFC Court had, for the first time, found both individuals and corporate defendants guilty of serious contempt of court and referred them to the Attorney General of Dubai for prosecution. Where the DIFC Court considers that sanctions available to the Court are inadequate to appropriately reflect the significance of the contempt committed and impose appropriate punishment upon the contemnor, the matter may be referred to the Attorney General of Dubai. This referral process, while crucial, contrasts with common law practices where a reference to the Attorney General is made only if the court considers that a fuller investigation by the prosecuting authorities is necessary before any sanction is appropriately imposed on the relevant parties and/or accessories to the contempt. In the DIFC context, the referral serves more as a jurisdictional handoff, ensuring that any criminal elements of the contempt are dealt with under Dubai’s criminal law framework.

² *VIH Dubai Palm Jumeirah Ltd (Cayman Islands) v. Assas Opco Ltd & Ors* [2017] DIFC ARB 005 (25 December 2018) (“*VIH Dubai*”)

³ [82], *VIH Dubai*

⁴ [93], *VIH Dubai*

⁵ [104]-[105], *VIH Dubai*

⁶ [156], *VIH Dubai*

⁷ [12], *(1) Lateef (2) Lukman v (1) Liyela (2) Liyani* [2020] DIFC ARB 017 (24 March 2022) (“*Lateef*”)

B. Standard of proof and evidence in contempt applications

8. In *VIH Dubai*, the DIFC Courts confirmed that the standard of proof for contempt of court in the DIFC is the criminal standard in common law jurisdictions of “beyond reasonable doubt”.⁸ The Court went on to clarify that it is not necessary that every fact relied on in support of the charge must be proved to the criminal standard; only that the necessary elements of the alleged contempt are.⁹

9. In *Gulf Wings FZE v A&K Trading Limited & Ors (“Gulf Wings”)*, the DIFC Court of First Instance observed that in order to establish contempt by breach of an order of the Court, it is ordinarily necessary to show that the person concerned knew of the terms of the order, acted in a manner which involved the breach of it and knew of the facts that made their conduct a breach.¹⁰ This is similar to the English position, where an applicant must prove to the criminal standard of proof, that the defendant:

- (i) knew of the terms of the undertaking breached;
- (ii) acted in breach of, or failed to act in compliance with, the undertaking concerned; and
- (iii) knew of the facts that made his conduct a breach.¹¹

10. In *Lateef*, the Court expanded on the adoption of the criminal standard, noting that this implied the normal principles and procedures of criminal law in common law jurisdictions should apply to contempt proceedings in the DIFC.¹² Key principles include:

- (a) The onus of proof of criminal conduct rests upon the party alleging contempt at all times.
- (b) The alleged contemnor must have the requisite *mens rea*, that is, the act or omission giving rise to the contempt must have been knowing and wilful. That said, it is not necessary for the applicant to establish that the contemnor knew the legal consequence of their act or omission would be a breach; the applicant need only prove knowledge of the act or omission that constitutes the breach. Thus, once the court’s orders are served, any act or omission that breaches the order would be contempt, regardless of whether the contemnor realised the breach.
- (c) The liability for contempt has been treated as though it were strict; that is to say, not depending on establishing any specific intention either to breach the terms of the order or subvert the administration of justice in general.

⁸[32], *VIH Dubai*

⁹[32], *VIH Dubai*, referring to [51], *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411

¹⁰[34], *Gulf Wings FZE v A and K Trading Limited* CFI 004/2022

¹¹ [31(ii)], *Navigator Equities Limited, Vladimir Anatolevich Chernukhin v Oleg Vladimirovich Deripaska*, [2023] EWHC 788 (Comm)

¹² [13]-[16], *Lateef*

11. The DIFC Court in *Lateef* had observed that no adverse inference can be drawn against a person accused of committal solely due to their failure to provide evidence in their defence. However, English courts have held that adverse inferences may be drawn against alleged contemnors to the extent that it would be permissible in comparable criminal cases.¹³ Thus, the Court may take into account the fact that, when charged with contempt, the alleged contemnors have given no evidence or explanation of something within their knowledge, where they could reasonably be expected to do so if their version of events were true.

12. The recent decision in *Muhallam v Muhaf* (“*Muhallam*”) is illustrative of the DIFC Courts’ approach to defendants who fail to submit evidence in contempt proceedings.¹⁴ In this case, the defendant did not file any evidence in response to the contempt application. While the defendant argued, through a skeleton argument supporting a separate procedural application for extension of time, that the contempt application was not “ready to be heard” due to unsettled evidential issues requiring cross-examination and financial review, the Court found these claims largely anticipatory and unsupported, which did not justify delaying the hearing. The Court noted a lack of detail or explanation as to why the defendant could not have addressed these matters within the stipulated timelines, or why he could not summon the claimant’s witness to be cross-examined at the designated hearing. Lastly, the Court was critical of the fact that despite the hearing being fixed for the contempt application, after submissions on matters of procedure, the defendant’s counsel made an unanticipated departure from the hearing citing no instructions to address the merits of the contempt application. Frequently referring to the defendant’s failure to provide evidence or explanations, the Court found the defendant guilty of all acts of contempt and referred the matter to the Attorney General of Dubai for prosecution. This decision underscores that the DIFC Courts do not look favourably upon alleged contemnors who fail to substantiate their defence with evidence, especially when the purported complexities of the case do not justify such inaction.

C. Validity and discharge of committal

13. The validity of contempt applications first and foremost rests on the particularisation of the charges outlined against the alleged contemnors.

¹³ [17], *Kea Investments Limited v. Watson* [2020] EWHC 2599, citing [146], *Munib Masri v Consolidated Contractor International Company SAL & Ors* [2011] EWHC 1024 (Comm)

¹⁴ *Muhallam v Muhaf* [2022] DIFC ARB 021 (28 August 2024) (“*Muhallam*”). Notably, Singularity Legal acted for the claimant in this case.

The initial English position is that it is crucial for contemnors to know with sufficient particularity the breaches alleged against them with such information being available to them within the four corners of the application notice itself.¹⁵ Subsequent authorities on the point have found that the application notice need only set out a succinct summary and it is for the evidence to set out the details of such breaches.¹⁶ This somewhat technical precaution is vital to ensuring the validity and eventual success of contempt applications. The objective of a properly particularised application notice remains that an alleged contemnor should be told, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes contempt of court.¹⁷

14. A further interesting point to note is whether a contempt application would fail if the underlying order is set aside. This issue was discussed to some degree in *VIH Dubai*, where contempt was alleged due to a breach of an injunction ordered by the DIFC Courts in support of a DIFC-seated arbitration. The underlying arbitration agreement was later declared invalid by the Dubai Courts. While the DIFC Court concluded on facts that contempt had not been established to the criminal standard, it went on to address the “important and difficult question” of assuming the injunction was set aside, whether contempt application would have been rendered invalid *in limine*. The Court concluded that a court order must be obeyed unless and until it is discharged, regardless of whether the court later finds it lacked jurisdiction to issue the original order. This emphasises that the disobedience of an existing order, even one later invalidated, may still lead to contempt findings if the order was breached while in force.¹⁸

15. In contrast, *Sandra Holding v Al Saleh* appears to offer a different approach.¹⁹ In this case, the DIFC Court of Appeal found that, because the underlying worldwide freezing order (WFO) was declared invalid, there could be no contempt for non-compliance with an invalid order. The Court dismissed all findings of contempt, underscoring that there must be a valid and enforceable order for a contempt finding to be upheld.

16. Interestingly, in *Muhallam*, which involved a failure by the defendant to provide adequate security pursuant to a DIFC Court order, the court maintained that even if belated offers of security were made, such an act would merely go to purging any contempt, and would not be grounds for the failure of a contempt application.²⁰

¹⁵ [1683A-D], *Harmsworth v Harmsworth* [1987] 1 WLR 1676 (CA)

¹⁶ [80], *Deutsche Bank AG v Sebastian Holdings Inc, Mr Alexander Vik* [2020] EWHC 3536 (Comm); [43], *The Lord Mayor and the Citizens of the City of Westminster v Addbins Limited, Addison Lee plc* [2012] EWHC 3716

¹⁷ [935 B-C], *Attorney-General for Tuvalu v. Philatelic Distribution Corporation Ltd* [1990] 1 WLR 926

¹⁸ [84], *VIH Dubai*

¹⁹ [111] – [112], *Sandra Holding Ltd. & Nuri MUSAED Al Saleh v Fawzi MUSAED Al Saleh & Ors.* [2023] DIFC CA 003 (6 September 2023)

²⁰ [32], *Muhallam*

17. Once contempt has been found, the DIFC Courts take a strict approach when it comes to considering the purge of contempt for the discharge of the contempt orders. In *Gulf Wings*, the DIFC Court of Appeal explored these issues within the context of a freezing order issued in support of a debt claim, where an aircraft was moved in breach of the order.²¹ The Court of First Instance found the corporate defendant and two individual directors guilty of contempt for violating the freezing order and referred the matter to the Attorney General of Dubai. The contempt order outlined that it could be purged by either securing the return of the aircraft or paying the claimant's full claim along with indemnity for costs, and/or issuing a full apology to the Court and paying any fines imposed.

18. Following this, one of the defendants paid the principal debt, and the Court of First Instance discharged the contempt order, prompting the Attorney General of Dubai to close the case. However, the claimant appealed the discharge, arguing *inter alia* that the contempt had not been entirely purged, as interest on the debt and legal costs (both secured by the freezing order) remained unpaid. The Court of Appeal agreed with the claimant's position noting that the removal of the aircraft in contempt of the order deprived the claimant of security for its entire claim amount.

19. The Court of Appeal underscored the principle that contemnors must fully remedy the loss caused by their contempt before the contempt can be purged.²² The Court held that any application to purge contempt would only succeed if the contemnors paid or provided security for the entire outstanding amount, including interest, the costs of the contempt and appeal proceedings, and any reasonable costs incurred while attempting to recover the aircraft, and also paid the fine imposed by the court. Based on these factors, the Court ordered the restoration of the contempt orders and directed that a letter be sent to the Attorney General of Dubai, notifying him of the continued finding of contempt for his review and potential consideration of committal.

20. In conclusion, *Gulf Wings* reinforces that contempt orders can only be discharged or suspended when the full consequences of the contempt have been purged. This includes compensating the aggrieved party for any and all losses caused by contemptuous behaviour. The decision also highlights the DIFC Court's reliance on a combination of internal enforcement mechanisms and the broader Dubai judicial system to ensure compliance with court orders.

²¹ *Gulf Wings FZE v A And K Trading Limited and (1) Mr Kamel Abou Aly (2) Mr Ahmed Abouhashima* [2022] DIFC CA 014 (22 December 2022) ("Gulf Wings")

²² [24], *Gulf Wings*

D. Advantages of Committal as an Enforcement Mechanism

21. Committal serves as a potent enforcement mechanism for non-money judgments within the DIFC framework. Its ability to hold individuals accountable for contempt underscores the court's authority and enhances compliance with its orders. This mechanism acts as a deterrent against future non-compliance, reinforcing the integrity of the judicial process. Moreover, the DIFC Courts' commitment to ensuring that contempt orders can only be purged through full compensation for losses caused by contemptuous behaviour emphasises the seriousness with which they treat compliance with non-money judgments. The reliance on both internal enforcement mechanisms and the broader Dubai judicial system demonstrates a robust approach to maintaining adherence to court directives, ultimately promoting a more efficient legal environment.

II. ENFORCEMENT BY WRITS OF SEQUESTRATION IN THE DIFC

A. Writ of Sequestration in the DIFC

22. Sequestration has its roots in English common law, where it was historically used as a coercive remedy to enforce compliance with court orders, particularly in equity. The term itself refers to the temporary seizure of a party's assets to compel compliance with a court order, primarily in situations where monetary penalties or imprisonment would not suffice. The rationale behind sequestration lies in its punitive and coercive nature – sequestering property applies pressure on the disobedient party to comply with court directives by interfering with their assets, thus ensuring the authority of the court is upheld.

23. The legal principle underpinning sequestration is that it serves as a form of indirect compulsion. It is meant to secure the performance of an obligation (whether to perform an act or refrain from one), rather than directly punishing the party for disobedience, as is the case with committal for contempt. English law provides the foundation for the DIFC's adoption of sequestration, where it is used similarly as a mechanism to ensure compliance with non-money judgments.

24. Sequestration in the DIFC is governed by RDC 48.8, which outlines the procedure for obtaining permission for a writ of sequestration. The rule provides the framework for seeking sequestration in cases where a party has failed to comply with a court order. The case of *Muhallam*, discussed above, remains the only reported DIFC case where sequestration was granted.²³

²³[61] – [67], *Muhallam*

B. Sequestration as a distinct remedy from committal

25. The remedy of sequestration has often gone hand in hand with contempt. The CPR and its predecessors have gone through multiple amendments wherein sequestration has been distinct from contempt, and where it is granted as a consequence of contempt, supplemental to imprisonment and fines.²⁴ However, in the context of the DIFC this may not be relevant.

26. Sequestration and committal serve distinct purposes in the context of enforcement. Committal is a personal remedy directed at punishing the individual for contempt of court and is used when a party wilfully disobeys a court order. It often results in imprisonment or a fine. Sequestration, on the other hand, is aimed at coercing compliance through the temporary seizure of assets, rather than directly punishing the individual.

27. This debate appears to have come up in *Muhallam*, however the Court did not go much further into the question since he also held that the defendant was in contempt.²⁵ However, he made an observation that committal and sequestration serve different purposes and to the extent there is non-compliance with orders, the writ of sequestration is a form of remedy that seeks to achieve compliance.

28. Moreover, in the scheme of the RDC the two are treated distinctly. RDC 48.8 provides for a party to seek either or both remedies to enforce an order to do or not do an act. Similarly, sequestration is also independently a remedy for the enforcement of judgments for the delivery of goods (RDC 48.3 – 48.4).

C. Standard of proof in sequestration applications

29. The decision in *Muhallam* suggests that the standard of proof to establish a breach of a judgment or order for granting a writ of sequestration is “*not the civil standard of balance of probabilities*”.²⁶ However, this conclusion is not further explained and is presented without addressing the underlying debate or explaining the reasoning.

30. There are varying positions on this matter that stem from the question of whether sequestration is a stand-alone remedy or whether it is a remedy ordered in support of contempt applications. As discussed above, the RDC envisages sequestration as a stand-alone remedy, distinct from committal. In such circumstances, it may be argued that the appropriate position would be to apply the standard under English law, *i.e.*, the civil standard of balance of probabilities.

²⁴ [118] – [137], *ADM International SARL v Grain House International S.A.* [2024] EWCA Civ 33

²⁵ [63] & [67], *Muhallam*

²⁶ [64], *Muhallam*

- (a) The text of RDC 48.8 is derived from English legal provisions. Although not included in the current *CPR*, a similar provision existed in its predecessors, Order 45 rule 5(1) of the UK Rules of Supreme Court 1965 (“1965 RSC”), which was retained in earlier versions of the *CPR*.²⁷ Before this, Order 42 Rule 31 of the UK Rules of the Supreme Court 1881 (“1881 RSC”) stated that any judgment or order “wilfully disobeyed” could be enforced by sequestration against property.²⁸ The requirement of ‘wilful disobedience’ often implies a higher, criminal standard of proof, which makes its omission in the 1965 RSC instructive.
- (b) In considering Order 45 Rule 5(1) of the 1965 RSC (as amended), the House of Lords in *Heatons Transport (St. Helens) Ltd. v Transport and General Workers’ Union* has opined that the removal of the ‘wilful disobedience’ requirement could reduce the claimant’s burden to a *prima facie* case.²⁹
- (c) Moreover, since 1910 in *Stancomb v Trowbridge Urban District Council*,³⁰ and as recently as 2024 in *ADM International v. Grain House International*,³¹ courts have confirmed that even the 1881 RSC required only the mental element of civil contempt.
- (d) Therefore, for over 150 years, the issuance of a writ of sequestration to compel compliance has been viewed as a civil remedy.

31. Importantly, *RDC 48.8* adopts language from the 1965 RSC, not from earlier versions that appeared to reflect a criminal threshold. This suggests that civil standard ought to apply to sequestration, meaning that on balance it is more probable than not that the defendant breached a judgment or order.³² Once this civil standard is met, it is for the defendant to argue why the court should deny permission to issue a writ of sequestration. English courts have held that sequestration should only be denied if it is clearly shown to be a futile exercise, serving no useful purpose and merely adding to the costs of proceedings.³³ The burden of proving this futility lies on the defendant, who must

²⁷ The text is as follows: “(1) Where— (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under a court order or *CPR* rule 2.11; or (b) a person disobeys a judgment or order requiring him to abstain from doing an act, then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say—(i) with the permission of the Court, a writ of sequestration against the property of that person; (ii) where that person is a body corporate, with the permission of the Court, a writ of sequestration against the property of any director or other officer of the body; (iii) subject to the provisions of the Debtors Act 1869 and 1878, an order of committal against that person or, where that person is a body corporate, against any such officer.” (emphasis supplied)

²⁸ The text is as follows: “Any judgment or order against a Corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.” (emphasis supplied)

²⁹ p. 66, *Heatons Transport (St. Helens) Ltd. v Transport and General Workers’ Union* [1972] 3 W.L.R. 431

³⁰ [194], *Stancomb v Trowbridge Urban District Council* [1910] Ch 190

³¹ [119], *ADM International SARL v Grain House International S.A.* [2024] EWCA Civ 33

³² [2], *Miller v Minister of Pensions* [1947] 2 All ER 372)

³³ p. 476, *Hulbert v Cathcart* [1896] A.C. 470

demonstrate that the writ would be ineffective.³⁴

D. Assets against which sequestration can be granted

32. For sequestration to be an effective enforcement tool, it is crucial for the applicant to identify the assets over which it applies. English courts have recognised that once permission is granted, it may be necessary for the court to determine the specific property subject to sequestration.³⁵

33. RDC 48.8 provides that a writ of sequestration is issued against the property of that person, and where that person is a body corporate, against the property of any director or other officer of the body. In *Muhallam*, the Court granted permission for sequestration without specifying particular assets over which sequestration may be sought. This leaves room for enquiry into what kinds of assets are subject to sequestration under DIFC law.

34. There can be no doubt that this Court may permit the issuance of a writ of sequestration against personal assets located within the DIFC. The RDC provides a clear mechanism for obtaining a writ, which can then be executed within the jurisdiction.³⁶ The personal assets within the DIFC may not suffice to compel compliance, thus expanding the writ to cover these additional assets could be critical – particularly, to beneficially owned assets or extraterritorial assets.

35. English precedent may guide circumstances where courts have pierced the corporate veils of debtors while making orders. For instance, in *Kensington v Congo*, the English High Court pierced the corporate veil of several entities controlled by the Congo government, which were used to shield assets from creditors, and issued third-party debt orders to allow recovery of the money owed to Congo by intercepting payments made to these companies by third parties.³⁷ Similarly, in *Prest v Petrodel Resources*, the English Supreme Court confirmed that corporate veil-piercing is only permitted in cases of relevant impropriety, where the corporate structure is used for improper purposes.³⁸ In the DIFC too, the DIFC Courts have pierced the corporate veil of DIFC-incorporated companies to look into their shareholding and key individuals.³⁹

36. Additionally, it may be worth exploring whether a writ of sequestration can have extraterritorial reach, extending to assets beyond the DIFC. Article 20(1) of the Court Law

³⁴ p. 474, *Hulbert v Cathcart* [1896] A.C. 470

³⁵ pp. 172, 175 & 178, *Hyde v Hyde* (1888) 13 P.D. 166; p., *Miller v Miller* L. R. 2 P. & D. 54

³⁶ RDC 48.26 provides that a writ of sequestration must be in Form P48/05. But it may be worth noting that there is no Form P48/05 on the DIFC Courts online portal. Therefore, the writ may have to be filed as a writ for execution against assets in Form P48/02.

³⁷ [190], *Kensington v Congo* [2005] EWHC 2684 (Comm)

³⁸ [12], [145] & [156], *Prest v Petrodel Resources* [2012] EWCA Civ 1395

³⁹ *Jamaru Group Holding Ltd v Jasmine* [2019] DIFC SCT 116

grants the DIFC Court power to issue writs it deems appropriate, without limiting their territorial scope. Moreover, RDC 48.8 does not restrict the power of this Court to issue writs of sequestration solely against assets located within the DIFC.

37. In *Touton Far East v Shri Lal Mahal*, the English court granted a sequestration order against a defendant company even though it had no assets within the jurisdiction.⁴⁰ The court had remarked that a writ of sequestration in the UK would not be a meaningless order. The purpose of sequestration is to coerce compliance, not necessarily to seize local assets. The impact of the relief lies in the fact that a writ of sequestration has been issued against assets, and rather than an actual confiscation of such assets.

38. Such a sequestration order may be fashioned as a “worldwide sequestration order”. There is nothing in RDC Part 48 that prohibits the DIFC Court from issuing a worldwide sequestration order. In granting permission to issue a writ of sequestration under RDC 48.8, the Court is exercising its powers to enforce its own orders.

39. The question is not whether assets against which sequestration has been ordered are available subsequently for execution, but instead, whether the Court is persuaded that issuing a writ of sequestration would coerce compliance – whether the existence of a writ of sequestration issued by the DIFC Court against assets for non-compliance is sufficient to compel compliance and carry the impact of enforcement.

40. In *Lateef*, the DIFC Court had observed that in circumstances where it has powers to issue WFOs, the Court must also have the power to enforce such orders by way of proceedings for contempt, irrespective of where the conduct alleged to constitute the contempt takes place.⁴¹ While this was said in the context of contempt, sequestration too is a remedy for the enforcement of orders like freezing orders. A corollary of this could be that if the DIFC Court power to enforce its orders and compel compliance by sequestration, it ought to be able to exercise this power irrespective of where the assets lie.

41. Parallels may be drawn between a worldwide sequestration order and at least two other remedies in English and DIFC law – the appointment of a receiver by equitable execution and the issuance of WFOs. These parallels can be considered on three aspects – First, these remedies are granted against under the *in personam* jurisdiction of the courts against a defendant. Second, their purpose is not necessarily to execute by sale or other methods immediately, but to preserve assets pending judgment or eventual enforcement. Third, both these remedies have extraterritorial effect, and may be enforced in more jurisdictions than one.

⁴⁰ [21] – [22], *Touton v Shri Lal Mahal* [2017] EWHC 621 (Comm)

⁴¹ [50], *Lateef*

42. In the case of an equitable receiver, English courts have granted this relief against foreign assets because the order operates *in personam* and does not confer proprietary rights in the asset to the receiver.⁴² The key factor is whether the court has personal jurisdiction over the defendant, irrespective of whether the order will be recognised by foreign courts where the assets are located. Subject to a foreign court's recognition of the receiver's appointment and authority, the powers of the equitable receiver may extend over assets abroad to prevent defendants from otherwise dissipating them,⁴³ and may include the power to deal with and take possession of assets abroad, and bring proceedings outside the UK in the name of the defendant.⁴⁴

43. The role of a sequestrator bears resemblance to that of an equitable receiver. Under English law, a sequestrator is empowered to take possession of all the real and personal estate of the defendant and to collect, receive and take the rents and profits arising thereof and to keep this under sequestration until the defendant has complied with the underlying order.⁴⁵ At no point is there any transfer of the ownership of the asset in favour of the sequestrator. The appointment of an equitable receiver is similarly undertaken to ensure the defendant is dispossessed of assets, or rights or powers in those assets that it might exercise to resist eventual enforcement.⁴⁶

44. Likewise, WFOs are granted against an errant defendant to prevent the dissipation of assets and preserve assets for eventual enforcement. Once the court finds *in personam* jurisdiction over the defendant, it may issue a WFO, as in *U&M Mining Zambia Ltd v Konkola Copper Mines*, where a WFO in aid of enforcement was ordered despite the relevant assets for enforcement being located in Zambia.⁴⁷ In the DIFC too, the Court has repeatedly held that the power to issue freezing orders is not confined to assets located within the jurisdiction of the DIFC.⁴⁸ As was seen in *Sandra Holdings v Al Saleh*, a DIFC-issued WFO was successfully enforced in France, resulting in an attachment of up to EUR 39.8 million.⁴⁹

45. Consequently, it is entirely within the four corners of the RDC for the DIFC courts to issue a "worldwide sequestration order." A worldwide sequestration order be granted on the *in personam* jurisdiction of the DIFC Courts to enforce its own orders and compel compliance. While a worldwide sequestration order issued by the DIFC Courts might have extraterritorial impact, its issuance would not amount to the Court executing against assets situated in another jurisdiction.

⁴² [35] – [37], *Cruz City 1 Mauritius Holdings v Unitech Ltd* [2015] 1 All E.R. (Comm) 336

⁴³ [143], *Duder v Amsterdamsch Trustees Kantoor* [1902] 2 Ch. 132; [216]–[217], *Republic of Haiti v Duvalier* [1990] 1 Q.B. 202.

⁴⁴ [140], *Masri v Consolidated Contractors*, [2007] EWHC 3010 (Comm)

⁴⁵ UK CPR Form No. 67 for a Writ of Sequestration

⁴⁶ [16-011] – [16-013], Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 2020);

⁴⁷ [63] & [65], *U&M Mining Zambia Ltd v Konkola Copper Mines*, [2014] EWHC 3250 (Comm)

⁴⁸ [50], Lateef

⁴⁹ [13], *Sandra Holdings v Fawzi Musaed Al Saleh*, [2023] DIFC CA 003

III. CONCLUSION

46. The enforcement of non-money judgments through committal and sequestration in the DIFC presents both challenges and opportunities for ensuring compliance with court orders. Committal proceedings, focused on punishing non-compliance by imposing imprisonment, are limited by the DIFC's jurisdictional structure, which requires referral to the Attorney General of Dubai for enforcement, as imprisonment powers lie beyond the DIFC Court's direct authority. The strict interpretation of contempt, especially in purging, ensures that compliance with orders must be deliberate and in line with the underlying judgment, reinforcing the seriousness of defiance against court orders.

47. Sequestration, on the other hand, offers a civil remedy aimed at coercing compliance by targeting the defendant's assets. The DIFC courts follow the English legal framework, allowing for sequestration against personal assets, as well as potentially beneficially held extraterritorial assets, depending on the circumstances.

48. Overall, the DIFC's evolving jurisprudence on these enforcement mechanisms reflects a sophisticated alignment with international legal principles while preserving the distinct features of its own regulatory and judicial framework. These tools ensure that litigants cannot disregard court orders with impunity, reinforcing the credibility and authority of the DIFC court system.

ABOUT US

Singularity is an Asia and Africa focused international disputes boutique, established in August 2017. Since then, we have handled over US\$ 8 billion in cross-border disputes in various sectors, including energy and resources, construction and infrastructure, shipping and maritime, sports and entertainment, international trade and business, and private equity and finance. These disputes have arisen out of business relations and projects in various parts of the world including the Bahamas, British Virgin Islands, Cayman Islands, Canada, Egypt, Hong Kong, India, Israel, Italy, Indonesia, Kazakhstan, Nigeria, Malaysia, Oman, Philippines, Russia, Turkey, UAE, UK, USA, Saudi Arabia, Sierra Leone Singapore and Somalia.

We are recognised as market leaders.

- a. Ranked as "Most Active in the Enforcement & Annulment of Commercial Arbitration Awards" - Jus Connect's 2023 Rankings
- b. Chambers Global - Dispute Resolution: Arbitration (2023)
- c. Legal 500 - Tier 2 Dispute Resolution: Arbitration (2023)
- d. Asian Legal Business - Fast 30: Fastest & Fierce Growing Law Firms (2022)
- e. AsiaLaw Profiles - Notable Firm (2022)
- f. Benchmark Litigation (India) - Recognised for Commercials & Transactions; Construction; International Arbitration; White Collar Crime practice areas (2023); Top 6 Boutique Firms in Asia-Pacific for Dispute Resolution; Tier 3 in India for International Arbitration (2021)
- g. Leaders' League - Best Law Firm in India for Intl' Arbitration & White-Collar Crime (2021)
- h. Financial Times - Recognised for moving the Litigation Finance market forward (2021); Top 5 in Asia-Pacific for Innovation in Dispute Resolution (2020)
- i. Forbes India - Top Law Firm in India for White-Collar Crime and Arbitration practice (2021)
- j. BusinessWorld - Oil & Gas Law Firm of the Year (2021)

OUR MIDDLE EAST PRACTICE

Singularity Legal is licensed to practice as legal consultants in the UAE, including as solicitors before the courts at Dubai International Financial Centre (DIFC) and Abu Dhabi Global Markets (ADGM).

Our partner, Prateek Bagaria, has also been registered as a Part II lawyer with full rights of audience before the DIFC Courts and will be heading the firm's Middle East practice.

On the firm's entry into the UAE, he said:

“DIFC is an upcoming business and trade hub and has been a priority center for Indian financial institutions, funds, family businesses, multinational corporations, and trading houses, among others, operating in the Asia-Africa corridor. Moreover, in light of the new India-UAE Comprehensive Economic Partnership Agreement (CEPA), business dealings in the DIFC are slated to grow exponentially. We are thrilled to expand our practice to the Middle East, where our clients increasingly require our assistance with their disputes. This expansion will also give the clients more immediate access to the firm’s specialists and wider network in the MENA region.”

Singularity now has the end-to-end ability to service clients across the UAE, including DIFC and ADGM Courts, covering disputes relating to:

- (a) construction and infrastructure projects
- (b) shipping and maritime
- (c) bank guarantees and insurance
- (d) debt recovery, enforcement, and insolvency
- (e) intellectual property
- (f) digital assets
- (g) pro bono representation

In view of our remarkable achievements in the Middle East, we have also been ranked as one of the “most active law firms in the enforcement and annulment of commercial awards in the United Arab Emirates”.



ABOUT EXPERT TALK

The Expert Talk initiative seeks to provide quality continued digital education to professionals, through freely accessible webinars, and a digital library of blogs, alerts, insights and talks, on dispute resolution and litigation finance.

DISCLAIMER

The contents of this insight should not be construed as a legal opinion. This insight provides general information existing at the time of preparation. Singularity Legal neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this insight. It is recommended that professional advice be taken based on the specific facts and circumstances. This insight does not substitute the need to refer to the original pronouncements.



South Asia Office

1809-1810, One Lodha Place,
Senapati Bapat Marg,
Lower Parel,
Mumbai - 400013

United Arab Emirates

Level 41, Emirates Towers,
Sheikh Zayed Road,
Dubai, UAE
PO Box 31303

Singapore Office

138 Market Street,
#24-01 CapitaGreen,
Singapore 048946

e: singularity@singularitylegal.com

w: www.singularitylegal.com