

# DUBAI – THE REGION'S LEGAL HUB?

Dubai may well be on its way to becoming a legal hub for the region – but will litigation increase?

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The international legal community gathering at the recent IBA conference in Dubai was among the first to hear about HH Sheikh Mohammed Bin Rashid Al Maktoum signing a new law, (Law No. 16 of 2011 amending law No. 12 of 2004), extending the DIFC Court jurisdiction dramatically by enabling all parties to bring their commercial cases before the DIFC Court and thus putting the DIFC Court forward as a forum of choice.

Previously, the DIFC Court was somewhat limited by a restrictive jurisdiction clause asking for the contract or transaction in question to relate to the DIFC and not allowing parties to opt into the DIFC Court jurisdiction. The DIFC Court was initially designed to be a limited, specialised court for DIFC-related matters only.

This was clearly not acceptable to many in the industry, and became one of the focus points of discussion over recent years. It gave rise to ample discussion as its limitations were unclear to such an extent it needed clarification by way of a "Jurisdiction Protocol", signed by the Dubai and the DIFC Courts in 2009. It was regularly challenged by parties seeking the DIFC Court to grant jurisdiction to their matters and more and more case law emerged providing guidelines and clarifying on the subject.

## WHY WAS THERE EVER-GROWING DEMAND TO EXTEND THE DIFC COURT JURISDICTION CLAUSE?

Legal counsel faced with a choice of forum would advise on inserting a jurisdiction clause naming an established system – such as the UK or New York – as parties to a case at Dubai Courts face the following non-exhaustive problems:

- Cases are obviously heard in the official language Arabic – albeit the vast majority of business transactions are conducted in English.

- The UAE law follows the civil system; and is therefore unknown territory.
- All relevant and supporting documents need to be translated into Arabic – and often the merits of the case are lost in translation.
- There is a need for an additional Arabic speaking lawyer representing the case before the court, detaching the parties even further from their conflict.
- So called 'court experts' are appointed by the court and cannot be chosen by the parties, often making parties feeling uncomfortable.
- The Dubai Court does not always follow the parties' agreed choice of law.
- There is no reimbursement for legal costs. The Dubai Court only grants nominal reimbursements of a tiny portion and this gives rise to abuse of the court system. This denies right to access to justice; as parties fearful of high legal costs will not follow up on their rightful claims.
- There is no binding precedence law; and so limited legal security.

So far, international companies have got around these problems by either inserting arbitration clauses or foreign jurisdiction clauses in their contracts.

Dubai and DIFC Courts have put their heads together with the one common goal – to attract further investors to the region and to grow Dubai as a business hub by providing more legal security.

The timing of announcing the new law during the recent IBA was impeccable, drawing the attention of the international legal audience to the new choice of forum.

## HOW CAN THE EXTENDED JURISDICTION OF DIFC COURTS ASSIST IN ATTRACTING BUSINESS TO THE REGION?

The advantages for the Middle Eastern and international business community are overwhelming.

In general, legal advisers of multi-national companies will feel more at ease with a court system with rules and procedures modelled on common law systems.

Cases are heard in English in the DIFC Court, granting easier access to justice for all, and more transparency in the judicial process.

The DIFC Courts features highly regarded international judges with a track record of more than six years; proven to uphold the choice of law as agreed by the parties.

Documents, agreements and correspondence will not have to be translated into Arabic; so there is no longer the dangers of legal meanings getting lost in translation, as well as losing the additional costs and time.

DIFC Court allows for international practitioners to register – so parties can stay with existing lawyers – and will feel more comfortable.

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Lawyers registered with DIFC Courts have to adhere to a code of conduct, which sets out certain standards, providing greater security to clients.

Another important aspect that may even lead to Arabic speaking business people to consider the DIFC Courts as a preferred choice of judicial forum, is the fact that under DIFC Court rules, the winning party can claim back reasonable legal costs, including a reasonable part of its lawyers' fees. In any other court in the UAE, lawyers' fees cannot be recovered as a matter of principle.

The court provides a very successful small claims track which provides a forum for claims of up to AED 100,000 – saving on legal costs by being allowed to appear without legal support.

DIFC Court also has an award-winning state-of-the-art technology system, including the recently introduced e-filing system, which will lead to a paperless court. Video conferencing was possible from its outset, and for even more convenience, teleconferencing is available, allowing cross examination by phone.

There is also the new, and successful, pro bono scheme.

#### WILL PARTIES MAKE USE OF THE EXTENDED JURISDICTION CLAUSE AND OPT FOR THE DIFC COURT?

They certainly will in time, but as Sir David Steel said, there will not be an immediate flood of new matters.

This is true as lawyers have an obligation to carefully analyse how to maximize the advantages of this new opportunity.

Cases can now be heard in front of the DIFC Court if there is a clear and precise agreement opting for the DIFC Court; it does not matter whether such agreement is reached before or after the dispute has arisen.

The exercise many law firms are going through at the moment is concentrating on looking into on-going cases in front of the Dubai Court, and analysing whether it would be of any advantage for the client to approach opponents to discuss the possibility of shifting the case to the DIFC Court.

They are advising clients as to whether to change the jurisdiction clauses in their contract templates for future agreements, and on whether



to add an addendum to existing contracts to change the jurisdiction.

They must also decide whether to change their own jurisdiction clauses to the DIFC, should they not be a DIFC entity.

Parties in on-going cases are unlikely to find an amicable agreement on anything, and there will be most likely always be one side who feels at an advantage, and would not wish to jeopardise this by changing jurisdiction.

The DIFC Court (as forum of choice for international contracts tackling large scale or complex transactions between international institutions and choosing established and tested jurisdictions such as the UK, Singapore or New York) bears the risk that it is still a relatively newly established jurisdiction – so DIFC law remains largely untested.

But within these large scale transactions the DIFC Court will be of major significance should either of the parties possess assets within either Dubai or the GCC/Middle East region because of the potential to take advantage of enforcement agreements between GCC countries and Arab League states, as well as between local courts in the UAE.

Whilst many lawyers will be reluctant to have

their cases heard as test cases, and will await the outcome of enforcements of judgments in other cases, it will be straight forward to advise clients with domestic businesses to opt for the new DIFC Court jurisdiction. Whether this should be drafted as an exclusive or non-exclusive DIFC Court jurisdiction clause will depend on the merits of each matter.

For law firms to include a DIFC Court jurisdiction clause in their engagement agreements might be unwise; as the recent negligence claim against a Dubai-based international law firm in the DIFC Court shows. Claims for malpractice are not entertained by Dubai Courts so far.

#### WHAT ABOUT THE FUTURE OF DUBAI COURTS?

Voices stating concerns that this law is “unfair” towards Dubai Courts are getting it all wrong. This new law is not about a competition between the Dubai Courts and the DIFC Courts but the opposite: combining forces to attract tactical shopping to consider Dubai as a forum of choice instead of the UK, Singapore or New York – helping to build Dubai as a business hub by making investors and international companies more comfortable in handling their disputes within the region.

This is not about whether a case is going to Dubai or DIFC; but whether the DIFC Court will provide a jurisdiction of more convenience in the short run for business in the region, and in the long run globally.

To put it with the words of Dr. Ahmed Bin Hazeem, Director General of the Dubai Courts: “This is a very positive development for justice”. ■

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