

Major extension to the jurisdiction of the DIFC Court



By Alec Emmerson

On 31 October the Ruler of Dubai signed a Decree which will extend the jurisdiction of the DIFC Court beyond its current limits.

The jurisdiction of the DIFC Court has until now been limited (in broad terms) to civil disputes involving or connected with the DIFC.

Article 5 of the new law rewrites these jurisdictional limitations by allowing parties to agree expressly in writing to have their dispute determined by the DIFC Court (so long as no final judgement has been issued by another Court).

Note that the new law requires the special and explicit written agreement of the parties to the jurisdiction of the DIFC Court in matters not involving or connected with the DIFC. So the Court will only begin to exercise its new jurisdiction once cases develop from contracts where the parties have explicitly agreed to its jurisdiction or, where they agree after a dispute has arisen to have the DIFC Court determine that dispute.

Many international and multi-national companies doing business predominantly in the English language will give serious consideration to agreeing DIFC Court jurisdiction if they wish to have any disputes arising out of a contract determined in the English language and under common law procedures.

This option will now be available to businesses anywhere in the world. So, in a similar way to companies now agreeing to the jurisdiction of say the English Commercial Court, the Singapore Court, the Hong Kong Court or the Southern District of New York Court, parties will also be free to agree to bring their disputes to the DIFC Court.

Why should parties do that?

Location – Dubai has great connectivity with the MENA region and the rest of the world thanks to the development of Dubai International Airport as a major hub. It also sits midway between the UK, Europe and the Far East.

Legal Infrastructure – the DIFC Court has established a track record for the quality of the judges and the service provided since its formation more than six years ago. There are also many inter-

national and local law firms and lawyers (based in Dubai and elsewhere) licensed to handle cases in the DIFC Court, and able to provide high-quality legal services.

Language – proceedings in the English language will be attractive to English speaking parties and to parties conducting business in English. The translation of agreements and documents in to Arabic (which always carries a risk of ambiguity and inaccuracy and increases costs) will be avoided.

Costs – the fact that in the DIFC Court, the winning party can claim its legal fees from the losing party will be attractive to international businesses who would expect to recover costs if successful in Court.

Law – parties will be able to agree which law to apply to their contract and this choice of law will be applied by the DIFC Court. English commercial law is well understood internationally and many contracts, for instance in insurance, shipping, energy and construction, rely on English legal principles developed over many years. In the past it has been common around the region for such contracts to be signed with local law and jurisdiction clauses irrespective of whether the same principles apply under relevant local law. In addition, sometimes, English or another law has been agreed contractually and then not considered by the Court having jurisdiction or held not proven for technical reasons, leaving the Court to rely on the law of its own jurisdiction.

In negotiating some contracts the availability of the DIFC Court will now be considered as a possible alternative to arbitration because the DIFC Court filing fees (which help pay for the DIFC Court services) will be cheaper than the fees and costs for arbitration. The availability of an appeal in the DIFC Court but no appeal in arbitration, may be seen as an advantage by some and otherwise by others! However, justice in the DIFC Court is transparent and therefore public. Arbitration will therefore continue to be important, as it is elsewhere around the world because of its confidentiality and the ability of the parties to have a say in the choosing of their arbitrator or arbitrators, as well as because of international enforcement benefits.

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