

The Dubai International Financial Centre: Legislative Changes regarding the DIFC

Fiona Campbell
f.campbell@tamimi.com

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The DIFC was established as the UAE's first financial free zone with ambitious objectives to enhance Dubai's economic development and to ameliorate reliance on oil revenues by diversifying and supporting the growth of the banking and financial sectors. The DIFC has since become the financial and business gateway between regional, emerging and international markets and contributes significantly to the UAE's nation building mission.

The Amending Law does not change the role of the DIFC; rather its structure is being enhanced to further the original objectives and to clarify governance procedures.

In summary, the DIFC Amending Law acknowledges the relative maturity of the DIFC and reinforces its independence from "onshore" legislators. In the Amended Law, we note:

- The three main Bodies of the DIFC are retained – DIFC Authority, DFSA (the Financial Services Regulator) and the DIFC Courts. These bodies are also confirmed as discrete economic units with separate budget lines to be approved by the DIFC President (currently, Sheikh Maktoum)
- Creation of Higher Board of directors comprising the Governor of the DIFC (currently H.E Saeed Mohamed Al Tayer) and chairmen of each of the three bodies to confer, collaborate and oversee the coordinated policy development and management of the DIFC – a form of "Privy Council" to advise the President of the DIFC and, in turn the Ruler of Dubai.
- The definition of the manner of appointment and the role of the Governor of the DIFC.
- The clarification of the governance and management structures of each of the three bodies.
- The clarification of the application of DIFC laws.
- The DIFCA is made responsible formally for establishing, regulating and developing a separate payment system in consultation with the UAE Central Bank to enable wholesale large-value payment systems, including multi-country, multi-currency real time clearance and settlements. In other words, DIFCA has the capacity to clear and settle payments and to implement a system accordingly (subject always to what can be agreed with the federal authorities.).

There is an apparent devolution of responsibility to the DIFC and an introduction of new layers of self-governance. The Dubai parent is allowing its economic brainchild to come of age albeit retaining strict control of the purse strings. Although each body is mandated to maintain a separate budget independent of the other and subject to the DIFC President's approval, budgetary policy considerations appear to fall outside the DIFC Higher Board's remit and each body shall be allocated separately the necessary Dubai Government funding.

There are still a number of questions that the Amended Law does not answer regarding the parameters of jurisdiction of the DIFC Courts, the respective supervisory and regulatory roles of DIFCA and the DFSA or even whether trade in local currency will be permitted in and from the DIFC and, if so, when. Indeed, the Amending Law suggests that more changes are afoot which may heighten a sense of uncertainty and indecision in the already unsettled banking and financial markets.

However, subtle changes to the definition of Centre Establishment tend to suggest that the Ruler intends to confirm the width of the first gateway to DIFC Court jurisdiction by affirming the Court's exclusive power to adjudicate upon civil or commercial cases involving a party which is also an entity or business established, licensed, registered or authorised to carry on business or activities in the Centre pursuant to the Centre's Laws, including Licensed Centre Establishments.

When we examine Articles 8 and 13 regarding the DIFC Courts and applicable laws respectively, we find a number of confusing changes. As before, only the DIFC Court itself may interpret the Centre's laws and regulations but apparently it might now have to compete with other courts to interpret the provisions of this Law. This may lead to conflicting or confusing rulings pertaining to matters or entities affecting the DIFC indirectly. This will not engender certainty or market confidence and may encourage rather than eliminate forum shopping between the two Dubai legal systems.

The Amending Law heralds further promotion of the DIFC and Dubai as an oasis of peace, order and good governance. The DIFC community and stakeholders have welcomed this legislative commitment to subsidise DIFC's contribution to the international financial services industry as may be necessary to maintain efficiency, transparency and integrity.

While the Dubai Government appears to have stayed true to its original vision for the DIFC, it is recognised the international markets look to the Federal authorities, including the Central Bank, to make a clear commitment to cooperate with, and to facilitate, the DIFC as the UAE's pre-eminent financial centre. The Federal authorities are further called up to hasten legal and regulatory reforms to raise the standard of onshore regimes where relevant and appropriate while truly integrating the DIFC within the UAE's commercial legal framework. It should be resisted any attempt to quarantine or diminish the scope of DIFC Court jurisdiction and DFSA regulatory supervision and enforcement powers or fail to afford them mutual recognition and reciprocity. The DIFC bodies themselves must also resist the temptation to "read down" or construe narrowly their respective roles and functions due to budgetary restraints or competitive political demands.

It remains to be seen how quickly the DIFC can implement the business development objectives set out in the Original Law and re-affirmed by this Amending Law and achieve its unfettered participation in the global economy. For example, the benefits of widening the gateways to the DIFC to allow international commercial parties to choose or contract for DIFC Court jurisdiction should be considered.

Meanwhile, the DIFC continues to serve as a model for international commercial arbitration and provides a neutral place for parties to resolve their disputes regardless of their connection with the country or even the region.

We commend the market to watch this space. As the buildings in the DIFC zone reach completion and regional players take cover from disquiet elsewhere, this very space might fill quickly.