

# The DIFC Courts: A New Decade, a New Era In Dispute Resolution Part II

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In our January 2010 Law Update edition, we published a cover story of the same name which explored the ground breaking developments and major issues that have dominated the agenda of the Dubai International Financial Centre (DIFC) Courts, an English language common law court, during the five years since their establishment. A further two years on and in a landmark development, the once limited jurisdiction of the DIFC Courts has been opened to all local, regional and international companies, making Dubai one of the most unique, distinctive and innovative jurisdictions for dispute resolution in the world.

In January 2010, it was abundantly clear that the DIFC Courts had already become a prominent feature of the legal landscape in Dubai, having taken decisive steps to reinforce their position as a world renowned legal system that is transparent, reliable, accessible and efficient dispensing equal justice according to the law and international best practice. 2009 in particular was a pivotal year in the development of the DIFC Courts which witnessed the introduction of significant protocols and initiatives designed to enhance access to justice and develop standards of legal procedure and process to provide the certainty, transparency and efficiency expected by the institutions operating within the DIFC.

The DIFC Courts were set up under two laws enacted by His Highness Sheikh Mohammad bin Rashid Al Maktoum, Vice President of the UAE and Ruler of Dubai. Dubai Law No. 12 of 2004 established the Judicial Authority at the DIFC and set out the jurisdiction of the Courts, while allowing for the independent administration of justice in the DIFC (the Judicial Authority Law). DIFC Law No. 10 of 2004 outlined the powers, procedures, functions and administration of the DIFC Courts.

Previously, the jurisdiction of the DIFC Courts was limited to civil or commercial cases and disputes that fell within one of the four jurisdictional gateways set out in Article 5A(1) of the Judicial Authority Law. Where the DIFC Court had jurisdiction, the jurisdiction of the Dubai Courts was specifically excluded except in relation to criminal and matrimonial matters. In order for the dispute to fall within the DIFC Courts' jurisdiction, there must have been a connection to the DIFC whether with respect to the subject matter, the location of the parties or the transaction concluded. The effect was to create a "common law island in a civil law ocean" to quote the DIFC Courts Chief Justice Michael Hwang.

This changed on 31 October 2011 with the signing of Dubai Law No 16 of 2011 (the Law) which amended the jurisdictional limitations in the Judicial Authority Law. Now, Article 5A(2) of the new Law permits parties to a contract to agree clearly and expressly in writing to refer their civil and commercial dispute to the DIFC Courts, even where there is no connection to the DIFC (and as long as no final judgment has been issued by another Court). Moreover, if a dispute has already arisen it can still be resolved in the DIFC Courts if both parties agree to have it heard there. In other words parties, wherever located, are now free to "opt in" to the jurisdiction of the DIFC Courts and elect the DIFC Courts to adjudicate their dispute.

However, where parties have not agreed clearly and explicitly in writing to refer their disputes to the jurisdiction of the DIFC Courts, and the dispute has a connection to the DIFC, then the DIFC Courts still maintain exclusive jurisdiction in relation to civil and commercial cases that fall within one of the now five jurisdictional gateways set out in Article 5A(1) of the Law. Although these jurisdictional gateways have also been amended under the Law, the gateways still demand a connection to the DIFC whether it be

territorial or based on the identity of the parties or the subject matter of the proceedings.

Importantly, processes and procedures relating to the enforcement of judgments, orders and awards inside and outside the DIFC are dealt with in Article 7 of the Law and have the power of law. Previously enforcement was the subject of a Protocol of Enforcement between the Dubai and DIFC Courts.

Ultimately, the Law represents choice – choice for local, regional and international business between the UAE’s Arabic language civil law courts or English language common law courts to resolve their disputes. Indeed Michael Hwang, Chief Justice of the DIFC Courts said when commenting on the Law: “The expansion of the DIFC Courts’ jurisdiction makes us even more accessible to the communities in which we operate and whom we serve. The importance of this change is that our Courts are now available to all who wish to choose us as their preferred forum for resolution of their disputes, and now widens the choice of forum for businesses in Dubai and elsewhere.”

Businesses now have the opportunity to choose the dispute resolution forum that best suits their business needs and reflects the commercial reality of their business and industry. Whilst both the DIFC Courts and the UAE local Courts share a commitment to justice and the rule of law, the court process and procedure that applies in each are very different, reflecting the two different legal systems in which they operate. The choice of forum and jurisdiction for the determination of disputes in a contract (and particularly when considering a choice between the UAE local Courts and the DIFC Courts) depends on a range of important factors including the identity and domicile of the parties; the governing law of the contract; the subject matter of the contract and the location of assets.

Choosing a dispute resolution forum and jurisdiction in a contract should not be taken lightly. In many cases it involves a balancing act of a number of factors depending upon the identity of the parties and the nature of their contractual relationship and business. Whilst the common island just got a little bigger in our UAE civil law ocean, with the new Law, Dubai has underlined its commitment to supporting investors and businesses locally and internationally by giving them the choice between a number of world class forums for the resolution of business disputes.

Al Tamimi & Company has one of the leading DIFC Court litigation practices in the region with extensive experience in advising on and litigating in the DIFC Courts. We have been involved in many of the leading and significant cases heard in the DIFC Courts to date.

Please get in touch with your existing contact at Al Tamimi & Company or alternatively the head of our DIFC litigation practice, Rita Jaballah, to discuss the Law directly and in particular how it may assist and impact your business.