

# Opting into the Jurisdiction of the DIFC Court

by Muhammad Mahmood - m.mahmood@tamimi.com - Dubai International Financial Centre

April 2014

The recent DIFC Courts' decision in SPX Middle East FZE v Judi for Food Industries was the first judgment to have been issued as a result of contracting parties' election to opt into the DIFC Courts' jurisdiction, which has been possible since October 2011 pursuant to Dubai Law No. 16 of 2011.

This law amended Dubai Law No. 12 of 2004, which established the DIFC Courts and set out the original gateways granting exclusive jurisdiction to them. The parties in this case initially agreed that the courts of the Claimant's country would have exclusive jurisdiction over any dispute arising under or in connection with the agreement between them. Subsequently, however, the parties decided to confer jurisdiction on the DIFC Courts by way of a written agreement.

In the DIFC Courts' short history, this case represents a further example of its expanding jurisdiction. Prior to Law No. 16, the DIFC Courts could only assume jurisdiction over matters that had a direct connection to the DIFC, as set out in Law No. 12. Broadly, this connection had to involve the subject matter of the dispute, the location of the parties or the transaction concluded.

Law No. 12, as amended by Law No. 16, opened the gates to potential cases without such a jurisdictional connection, or gateway. It granted the DIFC Courts jurisdiction over cases "*if submitted thereto by the agreement of the parties in writing whether before or after the dispute*". As seen in the SPX Case, the effect of this opt-in provision is to allow the DIFC Courts to hear disputes between parties located anywhere in the world where there is no other jurisdictional connection with the DIFC.

Although the decision to opt into the jurisdiction of DIFC Courts should take account of a number of factors, the DIFC Courts have become known for offering several advantages over other courts in the region. Their advantages include: an international judiciary with significant experience in sophisticated commercial disputes; the availability of an immediate/summary judgment; and the opportunity to recover most of a successful party's legal costs. As a firm, Al Tamimi shares Justice Sir David Steel's sentiment expressed in the SPX Case that it is "*legitimate to hope that this example is the first of many where parties take advantage of the extended jurisdiction of the Court*".