

The Dubai International Financial Centre (DIFC) stands as a distinguished special economic zone and globally recognized financial epicenter, hosting numerous businesses and trade operations within the United Arab Emirates (UAE). Renowned for its exceptional infrastructure, tax-efficient arrangements, and a conducive environment that fosters economic development and investments in the UAE, the DIFC holds a unique position as an independent financial free zone. It features its own distinct legal framework and courts, known as the DIFC Courts, which operate in the English language and are rooted in the principles of common law. Functioning as a transparent and robust justice system, the DIFC Courts serve as a pivotal platform for resolving both local and global disputes related to commercial and civil transactions. This article analyses the evolution of litigation in the DIFC, focusing on jurisdiction, enforcement, and distinctions from mainland Courts. It provides a concise overview of the DIFC Court structure while emphasizing its new divisions.

1. Jurisdiction

To establish the DIFC Courts, amendments were made to existing laws, such as the modification of Article 121 of the UAE Constitution. This amendment empowered the federation to establish a financial free zone and enact its legislation within an emirate. Consequently, a series of laws and amendments led to the establishment of the DIFC Courts with Dubai Law No.12 of 2004 ("**DIFC Courts Law 2004**") being the key legislation that not only established the Courts but also granted them the exclusive authority to handle disputes arising within the DIFC.

The jurisdiction of the DIFC Courts encompasses all civil and commercial disputes, excluding criminal matters. These disputes span a wide range, from employment issues to financial transactions and debt collection affairs. Consequently, Article 5. A. (2) of Dubai Law No. 16 of 2011 which amended the DIFC Courts Law 2004 and expanded the Court's jurisdiction to include disputes not directly related to the DIFC by having parties agree to it in writing. This provision, commonly known as 'opt-in' jurisdiction, is now available to mainland parties seeking the advantages offered by the DIFC Courts, such as

proceedings in English language, the availability of summary judgments, and the ability to strike out vexatious claims and as well as obtaining compensatory damages.

In addition to the opt-in jurisdiction, another noteworthy feature contributing to the increasing popularity of the DIFC Court is its acquired status as a conduit jurisdiction. This status empowers the courts to hear application for the recognition and enforcement of non-DIFC arbitration awards in mainland Dubai. This development arose since the Dubai Courts are obliged to execute DIFC judgement and awards ratified by the DIFC.

Traditionally, for an award to be enforced in the DIFC, there needed to be a connection with the DIFC. However, this position was challenged by the *Banyan Tree* line of cases, where the Dubai Courts nullified a decision of the DIFC Courts on the recognition and enforcement of an arbitral award, citing an alleged lack of jurisdiction due to the absence of a nexus to the DIFC.

As a response to these challenges, the Joint Judicial Tribunal (JT) for the Dubai Courts and DIFC Courts was established in 2016 under Dubai Decree No.19 of 2016 to resolve

conflicts of jurisdiction between the two court. The clarification of the court's position came in Cassation No. 8/2019, where the JT ruling affirmed the competence of the DIFC Courts to hear actions for the nullification awards rendered under the DIFC Arbitration Law. Additionally, it confirmed the role of the DIFC Courts as a conduit for the enforcement of DIFC awards.

2. Difference between DIFC Courts and Mainland Courts

Several distinctive features set apart the DIFC Courts from Mainland Courts, contributing to the former's popularity. Here are some key differences:

- Mainland courts necessitate that all documents and submissions be presented in Arabic by a local Emirati lawyer. In contrast, the DIFC Courts allow documents and submissions to be presented in English by any DIFC registered lawyer, facilitating international expertise.
- The jurisdiction of the DIFC Courts, while expanding, is primarily limited to claims related to civil and commercial disputes. On the other hand, Dubai Courts have a broader jurisdiction, handling legal disputes across various sectors, including real estate actions, matrimonial issues, and criminal matters.
- In the DIFC Courts, according to Clause 30 (1) (d) of the DIFC Courts Law 2004, the parties' chosen foreign law is freely recognized and applied to the dispute at hand. In Mainland Courts, however, the chosen foreign law is recognized only subject to fulfilment of certain conditions. Mainland courts retain discretion to apply UAE laws when the chosen foreign law lacks a strong nexus with mainland laws.
- The DIFC Courts, under Clause 45 (3) of the DIFC Courts Law 2004 subject to the Rules of Court, permit the successful party in a claim to recover a

reasonably incurred and proportionate amount of their litigation costs. In contrast, Mainland Courts are often reluctant to award litigations costs in full. At most, the courts may grant the successful party court and expert fees.

These distinctions enhance the attractiveness of the DIFC Courts to international businesses, as they establish a legal framework accommodating various jurisdictions. This feature provides specific advantages, such as facilitating the recovery of litigation costs, making it particularly appealing to global interests.

3. Specialized Divisions

The DIFC Courts encompass various specialized divisions, each serving a distinct purpose within the legal framework. These divisions include the Small Claims Tribunal, Court of First Instance & Court of Appeal, along with the Technology and Construction Division, Arbitration Division, and the Digital Economy Division.

- **Small Claims Tribunal**

Established in 2007, the Small Claims Tribunal (SCT) is renowned for proving individuals and businesses with expeditious dispute resolution, typically within an average span of four weeks. It operates with confidentiality and cost-effectiveness.

The SCT's jurisdiction extends to three situations: claims not exceeding AED 500,000, employment disputes exceeding AED 500,000, and non-employment disputes amounting to less than AED 1 million. Parties involved in the second and third situations must agree in writing to have their dispute heard by the SCT.

Further, the SCT will settle any claims as authorized by the Chief Justice. Additionally, there is no value limit for the elective jurisdiction of SCT in employment claim matters.

Dissatisfied parties can file an appeal in the Court of First Instance.

- **Court of First Instance**

The Court of First Instance (CFI) holds exclusive jurisdiction over civil and commercial matters related to the DIFC. Single-judge proceedings cover various matters, including disputes involving entities operating or registering under DIFC laws, contracts related to the DIFC, written agreements allowing the use of DIFC Courts, applications within DIFC Courts' jurisdiction, and objections/appeals against decisions of other DIFC regulatory bodies. Dissatisfied parties can file an appeal in the Court of Appeal.

- **Court of Appeal**

The apex court of the DIFC, the Court of Appeal, comprises of at least three judges including the Chief Justice or the senior most judge. It hears appeals against the CFI judgements and awards and provides interpretations for any article of the DIFC's laws upon the request of any DIFC establishment, provided the establishment has obtained the leave of the chief justice to this regard. This Court does not settle disputes in new matters but renders the final judgement from appeals made to it. No appeal lies from the decision of the Court of Appeal.

- **Technology and Construction Division**

Established in 2017, this division exclusively handles technically complex cases related to the technology and construction industries, including engineering disputes, issues related to artificial intelligence, and liability for cybercrime, and other industry-specific disputes.

- **Arbitration Division**

Formed in 2020 to address the increasing number of arbitration cases, this division streamlines case management, allowing for quicker application reviews. Internationally qualified judges manage arbitrator appointments, interpretation of arbitrary agreements, and enforcement of decisions.

The DIFC Courts launched an Arbitration Working Group in 2020, providing a platform for a panel of experts to reinforce the best practices and share developments. The Arbitration Division is likely to gain further importance in purview of the new DIAC Rules of Arbitrations which provide for the DIFC as the default seat of arbitration.

- **Digital Economy Division**

Established in 2021, this division oversees complex national and transnational disputes involving current and emerging technologies, such as AI, fintech, block chain, big data, and robotics. Adapting to the inevitable digital integration transformation in almost every sector, this division provides security and reliability to businesses.

4. Conclusion

As a globally recognized financial hub, the DIFC stands out as an attractive platform for the resolution of commercial and civil disputes through its dedicated judicial arm, the DIFC Courts. The DIFC remains committed to promoting alternative dispute resolution mechanisms, reflecting its overarching objective. Its distinctive operational approach, set apart from mainland courts, combined with its visionary Courts of the Future initiative exploring areas like blockchain and space, represents a noteworthy and impressive feature within Dubai's legal landscape.

The legal framework of the DIFC offers flexibility, accessibility, and reliability, establishing an internationally accepted and

innovative jurisdiction for conflict resolution. The DIFCs commitment to staying at the forefront of legal advancements underscores its dedication to proving a cutting-edge platform for dispute resolution.

The dedicated DIFC Dispute Resolution team at SCHLÜTER GRAF via its DIFC registered practitioners can gladly assist you in connection with any civil or commercial disputes stemming from any sector before the DIFC Courts. For any DIFC related queries, please reach out to your usual point of contact at SCHLÜTER GRAF or email at info@schlueter-graf.com

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