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<i>United Arab Emirates</i>

Dubai extends DIFC Court Jurisdiction

Guiding Principle

This Article introduces the recent changes in the jurisdiction of DIFC Courts. The jurisdiction is now open to agreements of the parties allowing them to benefit from the common law jurisdiction. This brings advantages for the party but creates new problems with local courts.

I. Introduction

On 31 October 2011 his Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, signed a law allowing any businesses to use the DIFC Courts to resolve commercial disputes. The courts are part of the Dubai International Financial Centre (DIFC), which is a Free Zone in Dubai. The new law amends Dubai Law No. 12 of 2004, which regulates the jurisdiction of DIFC Courts.

II. Old Regulations

Before, DIFC Courts had only jurisdiction over:

- Civil or commercial cases and disputes involving the DIFC or any of the DIFC's Bodies or any of the DIFC's Establishments.
- Civil or commercial cases and disputes arising from or related to a contract, that has been executed or a transaction that has been concluded, in whole or in part, in DIFC or an incident that has occurred in DIFC.

- Objections filed against decisions made by the DIFC's Bodies, which are subject to objection in accordance with the DIFC's Laws and Regulations.
- Any application over which the Courts have jurisdiction in accordance with the DIFC's Laws and Regulations;

III. New Changes

Under the new rules, parties can agree to resolve their disputes now in DIFC courts. This agreement has to be made expressively and in written form. Beside the choice of court the agreement can include the language for the hearing (Arabic or English), the applicable procedure (civil- or common law) and which authority shall hear the case (Court of First Instance, the Small Claims Tribunal, the Court of Appeal). In other words, parties wherever located are free to opt now to choose the jurisdiction of the DIFC Courts and elect them to adjudicate their dispute.

IV. Advantages

The new regulation will allow companies and private persons to let international law firms handle their cases directly and have the cases heard by international experienced judges, some with knowledge in specific fields of law like maritime or real estate law. Furthermore the court can award justified legal cost, including the cost of the lawyer. The DIFC Courts are also one of the most advanced commercial courts in the world, employing new technologies including electronic case management and video-conferencing, which makes procedures faster and more efficient.

V. Problems with the Changes

However the new extension of the jurisdiction of DIFC courts is not without critics and problems.

1. Conflict with local Courts

The new choice of law and especially law procedure deepens a conflict in the otherwise uniform law system of the UAE. The English common law is foreign to the civil law system in the UAE and instead of improving the standard in the local courts, this increases the conflict, as it is expected that more and more companies will chose to avoid local courts. The DIFC court already became the home of the Dubai World Tribunal, a panel established to hear disputes arising from the state-backed conglomerate's debt restructuring, which local courts were seen unfit to rule over.

2. Problems with Enforcement

It is also unclear to what extend courts and jurisdictions of other emirates and other countries will recognize judgments from DIFC courts. While there is a clear regulation for Dubai courts, there is no regulation on the federal level.

However the DIFC Courts remain committed to cooperating with other Courts in the region and beyond. The DIFC Courts signed a number of Memoranda of Understandings with other bodies to work together towards furthering judicial excellence and innovation. There are regular meetings with judicial bodies from across the region, including Qatar and Bahrain, in an effort to work together more closely.

Tobias Speer

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Iran

Importation of Foreign Products into Iranian Market

Guiding Principle

Foreign companies, which intend to import and sell their products directly into the Iranian market, need to establish a branch or they may import their products through an Iranian commercial company. For the import of goods into Iran, an import license and commercial card are required. The commercial card is issued by the Iran Chamber of Commerce, Industries and Mines. With regards to the import license, the foreign importer is required to register its order before the Ministry of Industry, Mine and Trade and shall obtain the respective import license.

A. The Initial Requirement for Importing Products into the Iranian Market

Foreign companies, which intend to import and sell their products directly into the Iranian market, need to establish a branch, unless their activities are carried out through an Iranian limited liability company, private joint stock company or any other form of legal vehicle recognized by the Commercial Code of Iran and/or they should mainly import and distribute their products through the local distributors.

According to Art. 1 of By-law of the Law for Allowing the Registration of a

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Branch or Representative of Foreign Companies dated 3 May 1999, foreign companies, which are recognized as legal companies in the country where they have been registered, may, on the provision of the reciprocal conduct of their home country, register their branch or representative office for launching activities in Iran, in the following areas:

- Offering after-sale services for the goods or services of the foreign company.
- Carrying out the executive operations of the contracts concluded between Iranian persons and foreign companies.
- Studying and laying grounds for the foreign company's investment in Iran.
- Cooperation with Iranian technical and engineering companies for undertaking activities in third countries.
- Increasing the non-oil exports of the Islamic Republic of Iran.
- Offering technical and engineering services, and transfer of know-how and technology.
- Engaging in activities permitted by the governmental agencies legally authorized to issue such permits, in areas such as offering services in transportation, insurance and surveying, banking, marketing, etc.

Furthermore and according to the Decree No. H317T/23974 dated September 30, 1992, concerning Registration of Official Representation of the Foreign Supplier Conducting Sales in Iran, any purchases and procurement of all types of equipment, machinery and services from foreign companies shall be contingent upon existence of registered official representation of the foreign

supplier conducting sales in Iran.

It is worth mentioning since 2003, all official representatives of foreign companies or individuals or legal entities are obliged to register their branch or office if they want to supply Iran with foreign goods or services. Without registration, imported goods are declared as smuggled goods and will be dealt with accordingly.

In this respect, Note 19, (r), (9) of the State Budget Act of 1382 (2003-04) provides as follow:

All natural and juristic persons distributing foreign goods and services in Iran are required to offer their products in local market through official representative offices and presentation of after sale services within the framework of the laws and regulations of the Ministry of Industry, Mine and Trade. In case the natural and juristic persons fail to observe such regulations proclaimed by the Ministry of Industry, Mine and Trade, they shall be subject to laws and regulations related to smuggling of goods.

Art. 1 of the By-law on the Manner of Operation of Natural and Juristic Persons Distributing Foreign Goods and Services in Iran, constituting the subject-matter of the above Note 19, declares as follow:

All foreign natural and juristic persons and official representatives of foreign companies wishing to distribute goods and services in Iran are required, whether their operations are carried out in the format of a company or as a guilds unit, to have their branch or

representative office distributing their products registered with the Ministry of Industry, Mine and Trade, indicating the particulars of their products and the relevant representation agreement, with due observance of all current laws and regulations of Iran.

Art. 2 of the said by-law provides:

All foreign companies and official representatives of foreign companies constituting the subject-matter of Article 1 of this Circular are required to establish after-sale services centres and authorized service centres, commensurate with the volume and range of distribution of their goods, and to make available a list thereof to the Ministry of Industry, Mine and Trade.

By taking into consideration the above, direct selling and importing foreign products by foreign companies in the Iranian market cannot be done unless the foreign company establish a branch office in Iran or the foreign products are distributed in Iran by a commercial company (e.g. local distributors), established based on the provision of the Commercial Code of Iran. Afterwards, the legal representative of the foreign company, whether in the form of branch office or a commercial company, is required to be registered before the Ministry of Industry, Mine and Trade.

B. The Manner of Importation of Foreign Products

For the import of goods into Iran, an import license and commercial card are required. The commercial card is issued by Iran Chamber of Commerce, Industries and Mines and approved by the Ministry of Industry, Mine and Trade. With regard to the import license,

the foreign importer is required to register its order before the Ministry of Industry, Mine and Trade and shall obtain the respective import licence.

Before authorizing the import, the Ministry will examine if the merchandise is on the list of permitted import merchandise. The Iranian import regulations differentiate between:

- (a) “Authorized Goods”, which may be imported in accordance with the general regulations (i.e. industry equipment and machines),
- (b) “Conditional Goods”, which are subject to special conditions (i.e. cosmetics, food and medicines), and
- (c) “Prohibited Goods”, which may not be imported according to Iranian law or which come from Israel.

The government can exclude products classed as “not necessary” (because they are sufficiently available from in-house production) from importing altogether. Goods produced in the country are not issued an import permit. If the national demand exceeds the local production, an import permit may be issued as an exception at the request of the importer. The following documents are required for registration of a product order:

- Valid Commercial Card;
- Membership Card of Ministry of Industry, Mine and Trade;
- The completed Product Order Form;
- The original copy of Performa;
- Catalogue and booklet and material analysis for some specific products.

In case the products are ordered and/or purchased by the governmental bodies, the following documents are required:

- The written approval of the respective

governmental body;

- The written request of the governmental body;
- The copy of the purchase contract;
- Invoice;
- The copy of B/L (Bill of Lading) and warehouse receipt.

After registration of the product order before the Ministry of Industry, Mine and Trade, a L/C (Letter of Credit) should be opened. After that, the products will be forwarded by courier to Iran and upon their arrival to the Customs, the procedures for customs clearance should be followed.

The following documents are required for clearance of the products from the Customs:

- The Product Order Form;
- Completing the Customs Declaration;
- Shipping Documents (Invoice, B/L, Packing List, Certificate of Origin, Certificate of Inspection);
- Commercial Card;
- Warehouse Receipt;
- Clearance Certificate (This certificate is issued by the courier or forwarder showing there is no outstanding payment between the product owner and the courier.);
- L/C.

Zahra Tahsili

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Saudi Arabia

Kingdom Tower, the Highest Building in the World 2016

Guiding Principle

In a region experiencing the highest rates of spending on real estate developments in the world, the Gulf region is going to be the platform for the world's tallest building for the second consecutive time. The Kingdom Tower in Jeddah is going to overtake the title of Burj Khalifa as the current highest building in the world – with an overall height of 1 Kilometer. However, this will not happen any time before 2016 the estimated time for finishing the construction works of the new tower.

Driven by the oil revenue, and as a reflection for the increasing economic activities in the region, building skyscrapers has become the feature that distinguishes the cities in the Gulf.

In a further step to attract more attention, the Emirate of Dubai in the United Arab Emirates has started a new phase in building skyscrapers by building the highest tower in the world "Burj Khalifa" with an overall height of 828 metres (2,716.5 feet), more than 160 storeys, and \$ 1.5 billion as the total cost for the constructions.

This step was under focus from Dubai's neighbours in the GCC, where the first impact of this step has happened in Saudi Arabia the largest country in the Gulf region in terms of influence, area and population. On August 1st, 2011, it was announced that an agreement has

been signed for the construction of the highest tower in the world "Kingdom Tower" in the city of Jeddah at the west cost of Saudi Arabia. Construction works for building the tower has already started in January 2012.

H.R.H. Prince Al-Waleed Bin Talal - the richest person in the Arab world, the 19th in the world and a member of the Saudi royal family – is the one who stand behind this project through his company Kingdom Holding, which owns 33.35% of the shares of Jeddah Economic Company (JEC). JEC is a company established for the development of the city of Jeddah including the tower project. The remaining shares were distributed as follows: Abrar International Holding Company holds 33.35%, Abdel Rahman Al-Sharbatly Company holds 16.67% and Bin Laden Group, which will be the contractor of the project as well, holds 16.63%.

This will be the second tower holding the same name "Kingdom Tower" in Saudi Arabia. Kingdom Holding company already owns another tower in Riyadh under the same name, which is the highest tower in the Kingdom currently with an overall height of 300 meter.

Based on the experience gained from the building Burj Khalifa, the total cost of building the "Kingdom Tower" shall be less than the cost for building the Burj Khalifa, with \$ 270 million. The cost saving occurred as the project development is being managed by Emaar Properties PJSC, which was the same developer of Burj Khalifa, also the designer of Kingdom Tower. Adrian Smith is one of the designers who

designed Burj Khalifa. The total cost is estimated at Saudi Riyal 4.6 billion (\$ 1.23 billion). In accordance with the statement issued by the Kingdom holding company in regards to the project execution, Saudi Riyal 1.5 billion shall be funded by the cash capital, while the rest of the estimated cost shall be funded by banks and the project income.

Building the tower represents the 1st phase of a larger project for building the Kingdom city in Jeddah, where the tower shall represent the centre of this city. The 2nd phase shall include developing the infrastructure of the entire land of the project, which is estimated at 5.3 million square meters. The study for the 3rd phase is still not completed yet.

The project is expected to be finalized within 63 months from the date of starting construction works, being finalized approximately by January 2016.

Hany Kenawi
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United Arab Emirates

The 10th edition of the Nice Classification for trade mark applications

Guiding Principle

The tenth edition of the International (Nice) Classification of Goods and Services for the purposes of the registration of trademarks will come into effect on 1 January 2012.

The Nice Classification is an international classification of goods and services for the purpose of registration of trademarks, which was adopted in 1957 by the Nice Agreement.

This Classification consists of

- A list of classes, together with, as the case may be, explanatory notes;
- An alphabetical list of goods and services, with an indication of the class into which each of the goods or services falls (Article 1(2) Nice Agreement).

There are significant changes to the classification on items across several classes, as well as class headings, explanatory notes and general remarks. We highlight some of the substantive changes as follows:

- a) Dietary supplements, whether used as supplement to normal diet or to achieve a health benefit, will now be uniformly classified in Class 5. This removes the requirement to specify “for medical purposes”. Furthermore, Class 5 now extends to pharmaceuticals and other preparations, including dietary

- supplements, for veterinary purposes;
- b) Baby Diapers, napkin-pants and diaper-pants, regardless of whether they are disposable or made of textile, will be classified uniformly in Class 5 instead of Class 16;
- c) Various items that were previously considered apparatuses under Class 9 will now be considered machines and machine parts under Class 7. For instance, welding and soldering apparatus, vending machines, electric door openers and closers, self-regulating fuel pumps, electrical packaging apparatus will now be classified under Class 7;
- d) Floats for bathing and swimming, water wings, swimming belts, and swimming jackets, all being playthings, will now be classified under Class 28 and not Class 9;
- e) The distinction between deodorants for personal and non-personal use has been removed. Deodorants are now to be classified in Class 3 if they are “for human beings or for animals” or in Class 5 if they are “other than for humans or for animals”;
- f) Downloadable ring tones for mobile phones, downloadable music files, cell phone straps, portable media players, USB flash drives, and GPS apparatus have been added to Class 9;
- g) Leasing and franchising services will now be classified in the same way as rental services, i.e. they will be classified in the same classes as the services provided by the Lessor or the Franchisor. However, hire or lease-purchase financing will be

classified in Class 36 as a financial service;

- h) Entertainment and gaming devices are now classified uniformly in class 28. The previous, and rather artificial, distinction between consumer devices that are equipped with an external display screen or monitor (in Class 9) and those with built-in screen (in class 28) has been removed;
- i) Evaluation services in relation to standing timber and wool, previously settled under Class 35 services, will now be classified under Class 36 if they are financial evaluation services and under Class 42 if they are qualitative evaluation services.

While classification changes are procedural for the most part, they do have a substantive impact on the trademark examination process in some countries, such as Japan, where a finding of similarity between goods can be based simply on the goods being located in the same class even when the goods are in fact different. With the Classification now being revised every year, these countries may need to reconsider their approach to determining similarity of goods to create stability and predictability of outcome in the examination process.

The Nice classification is continuously revised by WIPO and a new edition is published every five years. The revision is usually carried out by a Committee of Experts set under the Nice Agreement. All states party to the Agreement are members of the Committee of Experts.

It is not clear how soon countries from Middle East will be adopting the 10th Edition.

Tareq Jeroudeah

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Oman

Omani Labour Law - Recent Changes and Amendments

Guiding Principle

With Royal Decree No. 113/2011 amendments and changes to the Omani Labour Law, Royal Decree No. 35/2003 has been published. The aim to the new changes has been to clear up uncertain areas in the Labour Law. The changes are quite far-reaching, in particular to changes in working hours, overtime, leave, etc.

I. Introductory Note

The Labour Law in Oman (Omani Labour Law = OLL) is regulated by Sultan's Decree No 35/2003 and issued by the Ministry of Manpower (MOM). The Labour Law applies to all employers and employees, public and private establishments, organizations and their subsidiaries, are they Omani or Expatriates, which practice their activities in the Sultanate of Oman, Art.4 OLL.

II. Recent Changes and

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Amendments to the Omani Labour Law

Already some time rumoured and discussed about, the OLL was recently finally amended in October 2011 by Royal Decree No. 113/2011. The key amendments are hereinafter summarized as follows:

1. Payment of Salary and Overtime

With Royal Decree 113/2011 the definition of gross salary has been amended by including all allowances, such as travel, transport and housing allowance, in addition to the basic salary. Previously travel, transport and housing allowance was not considered to be part of the gross salary.

Furthermore and with the change, the new Royal Decree has reinforced the payment of salaries to employees within 7 days of the date on which the salary becomes due, whereas the salaries must be paid into a local licensed bank account of the employee. However and as an exemption, this rule does not apply where employers have agreed with their employees to transfer the salary into overseas bank accounts.

Another amendment was made with regards to the payment of overtime. In cases where the employee is claiming overtime, the payment will be now calculated on the employee's basic salary. Nevertheless, each employer has still the liberty to pay overtime on the basis of the gross salary.

2. Working hours

The most significant change is introducing the 5-day working week. Consequently, the maximum working hours has been reduced from 48 hours a

week to 45 hours per week, Art. 68 OLL. During the month of Ramadan, the maximum working hours per week has been also reduced to 30 hours per week. However, the daily working hours of 9 hours has been maintained, whereas the employer must grant the employee now a 2 day weekend and thus reducing the working week from a six-day week to a five-day week.

A further change has been passed with respect to overtime. The new Royal Decree has capped the maximum worked hours a day by 12 hours, meaning that an employee cannot make more than 3 hours per day overtime.

3. Maternity Leave

Unlike the previous Article in the Omani Labour Law respective maternity leave, with the new amendments by Royal Decree 113/2011 maternity leave has been increased to 50 days (previously maximum 6 weeks as per Art. 83 OLL). This entitlement is limited to a maximum of three separate sets of maternity leave during employment.

4. Annual Leave

According to the existing Omani Labour Law, each employee was entitled to receive in the first year of employment 15 calendar days of leave. This entitlement has now been increased to 30 days per year and is payable on the basis of the gross salary.

Additionally the law stipulates that it is not anymore permissible to waive any leave, meaning that that forwarding and carrying over leave is likely to be held null and void, with the effect that the employer has to compensate the employee for any loss or not taken leave

during employment or upon termination of employment.

5. Emergency Leave

Emergency leave according to Art. 61 OLL has been now increased from 4 days to 6 days per year. In the past, emergency leave was limited to 2 days at the same time. This rule has been abolished now. A new Ministerial Decision is expected soon to regulate on how emergency leave can be taken.

6. Transfer of Employees

With the implementation of the new Royal Decree 113/2011, a new provision to Art. 48 of the OLL concerning the sale, lease or like of a business has been added. Where there is a transfer of an employment contract on a project from one contractor to the other, and the work to be carried out remains the same, then employees will be automatically transferred to the other contractor on the same terms and conditions as held under the old contractor.

7. Omanisation

Generally employers must employ Omani workers as far as possible. The Ministry of Manpower (MOM) from time to time has stipulated the percentage of Omanisation required in each sector of economic activity.

Now with the amended regulation, an employer who does not meet the prescribed Omanisation target may fear to pay a penalty between OMR 250 and OMR 500 for each Omani worker required to be employed. Each employer will have a timeline of 6 month to meet the requirement, otherwise the penalty will be doubled.

8. Awards for Unfair Dismissal

Another significant change is the removal of the cap on compensation awards for unfair dismissal, to be decided and ruled by Oman courts. Before the amendment, the court had to award the employee a minimum compensation equal to 3 month gross salary. Now, the amount the court may award as compensation for unfair dismissal is unlimited, which may result in uncertainty for both employer and employee.

Hanka Jahn

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