

Quick Guide to Dubai International Financial Centre Courts Jurisdictional Gateways, Approach to Jurisdiction and Necessary and Proper Party Jurisdiction

The Dubai International Financial Centre (or the DIFC) is a free zone within Dubai, which has its own legal system which is separate to the onshore Dubai legal system. This system includes a special judiciary in the form of the DIFC Courts and the jurisdiction of the DIFC Courts to hear and determine disputes arises under statute.



Jurisdictional Gateways

The DIFC Courts' jurisdictional framework is contained in Article 5 (A) of the Judicial Authority Law which is commonly referred to as the JAL. It contains five independent jurisdictional gateways, all of which require a dispute to have some form of connection or nexus to the DIFC.

The First gateway

is concerned with the status of the parties. So for example, where either party to the dispute is a DIFC Establishment, the DIFC Courts will generally enjoy exclusive jurisdiction over any dispute which concerns such an entity.

The Second and Third gateways

are concerned with the subject matter of the dispute. These include laws which confirm jurisdictions where the dispute concerns contracts performed or concluded, or partly performed or concluded, in the DIFC and confirms jurisdiction in relation to incidents or transactions performed, or partly performed in the DIFC.

The Fourth gateway

relates to appeals.

The Fifth gateway

confers jurisdiction on the courts where other DIFC laws or Regulations operate to confer jurisdiction on the courts.



Separately, Article 5 sub paragraph 2 of the JAL also confers jurisdiction where the parties have "opted in" to the court's jurisdiction. This covers the scenario where the parties agree in writing either before or after a dispute arises to refer the dispute to the DIFC Courts.



Necessary and Proper Party Jurisdiction

The necessary and proper party jurisdiction allows the Courts to order the joinder of a party to proceedings in circumstances where the claim against that party does not otherwise fall within any of the other gateways of Article 5 of the JAL.



Case Study

In 2019, the DIFC Court of Appeal decision in the Nest Investments case confirmed that the Court can find jurisdiction though Rule 20.7 of the Rules of the DIFC Courts.

That rule provides that a party may be joined to proceedings if it is desirable to do so to resolve all the matters in dispute. In so concluding, the Court of Appeal confirmed that Rule 20.7 is a DIFC Regulation for the purposes of the fifth gateway of the JAL.



Key Significance

This development will help solve problems in relation to complex disputes involving multiparty and multijurisdictions in the DIFC Courts and is arguably vital to the functioning of a mature international court such as the DIFC Courts.



Key Takeaway

Careful consideration should always be given to the cost consequences of seeking to challenge jurisdiction particularly in the context of any wider litigation strategy.

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