

The benefits and disadvantages of the law on the expansion of the jurisdiction of the DIFC Court

Expansion of
the jurisdiction

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Received 25 May 2017
Accepted 7 June 2017

Abstract

Purpose – This paper aims to discuss the benefits and disadvantages of the law on the expansion of the jurisdiction of the Dubai International Financial Centre (DIFC) Court. The major role of DIFC Courts in the Arab community is to handle cases related to commerce and business. For a long time, the court had been acting only in their geographical area until a new law was enacted to extend their jurisdiction all over the world. Afterward, a lot of criticism emerged as for why and how the court will benefit from such actions. The law has drawn a harsh response, although most benefits have also been experienced since the court received quite a large number of new signings. Interaction at the world business forum has benefited the economy of Dubai thanks to the law.

Design/methodology/approach – The following study focuses on a description of such benefits and drawbacks. The study does not evaluate a factual process of expansion but indicates the most distinct evidence of positive, as well as negative consequences of the expansion.

Findings – It is appropriate to make a general comment on the fact that the expansion of DIFC Court is not sufficiently effective at the current stage. Needless to say, it contains numerous positive aspects, but the gaps are evidently essential because they place the entire Court in a hard circumstance. The Court does not have a well-developed legal framework for its new area of jurisdiction as long as its limited volume of prior precedent is a distinct sign of the Court's dependence on the UAE's Law. In such way, DIFC Court will not be able to address issues within new fields of jurisdiction, as it simply lacks an expertise and international law in its legal framework. Moreover, the jurisdiction over new areas of international business was not verified with a plain system of mediation, which is why a current expansion of DIFC Court has to be recognized as redundant. However, its advantages are tending to produce their effects provided that the Court manages to address its current problems.

Originality/value – The study has described the basic benefits and drawbacks of DIFC Court expansion. To speak about the main benefits, they can be depicted as appliance of the common law, unification of English language for proceedings, presence of a preliminary arbitration and guarantees of award enforcement. In a similar way, the drawbacks of the expansion have been issued. The study has identified such drawbacks as lack of international and sophisticated expertise, untested legal framework, strong influence of forum non conveniens, and existence of a limited volume of prior precedent. The paper has not assessed a success of a factual expansion of DIFC Court jurisdiction, but it has managed to fulfill its primary purpose. Thus, the paper has identified a certain tendency concerning the expansion.

Keywords Benefits and disadvantages, DIFC Court, Forum non conveniens

Paper type Research paper



Introduction

It is becoming increasingly difficult to ignore the fact that international business is a complicated issue, as it requires a wide range of perspectives to be involved. Consequently, international business has to be controlled in terms of certain legislation for purposes of a fair and competing-based performance of international companies. That is why appliance of a certain international law and legal framework is required. Likewise, international business needs involvement of a court that will hold a responsibility to regulate and solve all disputes among international parties. Dubai International Financial Centre (DIFC) is known to provide a free zone of economy for its members, which is why a legal regulation is also needed. As a result, DIFC established its Court for such purposes because of the fact that growth of international business in Dubai caused a need for a respective growth of DIFC Court. Thus, the Court should expand its jurisdiction on new segments. Ambiguity of such situation is apparent, as expansion of DIFC Court jurisdiction contains particular benefits and disadvantages.

Regarding that, the following study focuses on a description of such benefits and drawbacks. The study does not evaluate a factual process of expansion but indicates the most distinct evidence of positive, as well as negative consequences of the expansion. The study identifies such benefits as reliance on a common law, utilizing of English language, preliminary arbitration and reward enforcement. As for disadvantages, the study discusses lack of international expertise, untested legal framework, limited volume of previous precedents and a proactive impact of forum non convenience. However, the paper also introduces DIFC Court to contextualize the study. As the thesis and the key terms of the paper have been outlined, it is necessary to proceed to the next section.

Dubai International Financial Centre Court description

The DIFC Courts are situated in Dubai being in action since 2006. Ideally, the Court was built to control civil and commercial matters within the region. Formerly, the DIFC Courts had only covered the jurisdiction within their geographical area before October 31, 2011, when a new Dubai law No. 16 was introduced. According to [Kantaria \(2014\)](#), the law only allowed the parties to “opt out” of the DIFC Court jurisdiction. The new law permitted the DIFC Court to investigate local and international cases resolving commercial disputes all over the world with the authority of every party. Thus, the advanced law gave the parties an opportunity to “opt into” the DIFC Court jurisdiction in terms of writing their contracts. The amended law brought about some effects both positive and negative. Dubai is a center of attraction for many business people all over the world because of its development and advanced infrastructure. Therefore, owing to the presence of all the businesses around Dubai, partnership and contracts are the basic modes of legal interaction. Initially, the DIFC Court limited their scope of power to those clients who compromised the effects of business partnership. After the amendment of the “law” No. 16 of 2011, by His Highness Sheikh Mohammed Bin Rashid Al Maktoum, a free gate pass was introduced to all the business people who wanted their cases to be investigated by the DIFC Court.

DIFC Court is created for purposes of interim arbitration and enforcement in terms of DIFC. DIFC Court solves disputes between international companies, which are members of DIFC, or any other parties that agree to held proceedings under jurisdiction of DIFC Court. The Court utilizes mainly a traditional English Common Law, which is why its proceedings are familiar with many of international organizations. DIFC Court includes a branch for quick solutions of disputes to leverage fairness of business performance within the terms of Dubai free zone of economy. The Court positions itself as an independent legislative system with its custom legal framework, which is based on a collection of the

most significant international laws of interim and arbitration. The Emirate of Dubai strives for a further advance in the international business within its territory. As a result, DIFC Court was given a right to expand its jurisdiction.

Expansion of DIFC Court jurisdiction is a dubious process, as it implies certain benefits and disadvantages for itself, as well as for the entire DIFC ([Keep Calm Talk Law Ltd, 2014](#)). Expansion of the jurisdiction seems to be quite natural process, as DIFC proceeds on its growing, and more international companies are particularly interested to perform in the business environment of DIFC. That is why DIFC needs to expand the jurisdiction of its Court because a more global context of international business means a wider range of issues and disputes to emerge in a common practice. Expansion of jurisdiction is a drastic change to the Court's layout, but it is unavoidable. DIFC Court is placed in a context that does not lead to successful outcomes only. The Court is expected to conduct a great amount of work regarding its reorganization and enhancement. Therefore, the most distinct benefits and drawbacks of the expansion should be indicated.

Benefits

Common law

One of the most evident benefits of DIFC Court's expansion is based on the evidence that it utilizes a standard Common Law applicable to the majority of DIFC participants. DIFC Court provides a meaningful support in arbitration. The system is built upon a traditional English Common Law so that its placement in the offshore environment does not produce any impacts on the UAE executive and legislative systems. The Court includes an autonomous inter alia that enables it to arrange its internal arbitration proceedings, as well as supportive and advisory services ([Ziyaeva et al., 2015](#), p. 122). In such way, expansion of DIFC Court offers a guaranteed fairness of business within DIFC sector without respect to a particular organization's application to the Court. In other words, any member of DIFC may refer to the Court without initial request for the Court's services. Hence, building the court system on a traditional English Common Law is appropriate, as its framework is the most applicable to international arbitration.

Common Law is especially important to the expansion of DIFC Court as long as it eliminates a considerable degree of vagueness regarding arbitration and jurisdiction. DIFC Court was substantially limited with the UAE Law Article 22 CPC about jurisdiction on international issue. The article suggests that UAE Law is enabled to penetrate the international issues for making an assessment of the event only ([Ziyaeva et al., 2015](#), p. 123). Generally speaking, the UAE Law just estimates extents and causes of a dispute, as well as determines a party with the primary jurisdiction. Thus, the expansion of DIFC Court creates its own field of jurisdiction regardless of the state of Dubai law. DIFC Court leaves a right for DIFC members to held proceedings in terms of the regular UAE Law. However, DIFC Court is especially based on English Common Law because it is simpler and commonly recognized as the most efficient judiciary system.

English language

Expansion of DIFC Court presupposes involvement of a wide range of organizations, which is why a need for a common standard language of proceedings became apparent. Needless to say, English language was proclaimed as the primary language of any DIFC Court proceedings, as it is internationally recognized. It is hard to argue with the fact that establishment of a common language of proceedings intensifies unification of business community. As a consequence, regional business representatives start utilizing such advantage, as their performance within DIFC is ensured with a highly efficient process of

arbitration. Proactive willingness of regional organizations to perform in terms of DIFC made a process of expansion more natural. Consequently, it is a well-justified action from the side of the Court, as its jurisdiction has to cover the entire field of DIFC commercial operations (IBP, 2014). Implementation of English language as a unified language for all proceedings plays an important role. Otherwise, the expansion of DIFC would result in a dramatic difference in arbitration.

One may argue that English language is a particular advantage for some group of companies and an obvious hardship for the others. It is certainly not true because each company performs in a free international economy zone, which is why English language is expected to be one of the prominent languages of all documentation, as well as operations. Moreover, fluency in English language does not imply any advantages as long as the enforcement of a certain decision can be embodied in terms of a full understanding of the decision by all parties. Therefore, a party that was awarded penalty because of potential lack of understanding may provide additional material under new circumstances of already understood proceedings terms. Such cases, however, are mainly hypothetical, as a common practice suggests that representatives of international organizations are mostly fluent at English language.

Judges from all over the world are boosting judgments through expertise

The court system comprises employed judges and advocates either locally or internationally. This means that the employees of the court come from different parts of the world. Therefore, the staff consists of people with different level of education and expertise. Cases brought forward to the court will eventually be handled by these diverse experts. Thus, the court now handles cases rapidly and easily, as the employees and judges are now more adequate and reliable. According to Jones, every judge or advocate is entitled to his/her area of practice and expertise (Jones, 2011). Also, the court has a memorandum of guidance from other courts; for example, the US District Court, which follows the same protocol for handling vital cases.

Reimbursement to the winning parties from the losing litigants

In every court case, there must be a plaintiff and a defendant. Daudpota (2013) claims that these are the parties that bring their cases to the court, whenever some disagreement arises between them. For instance, regarding the cases DIFC Courts handle, an agreement can be broken if one party breaks the contract concluded earlier by the parties. Therefore, if one party breaks the contract, the other one is entitled to remedies and compensation that are brought about by the broken contract. Most of them are financial damages, and therefore, the winning party is entitled to be refunded the set amount of money by the losing litigant. Thus, this is only possible if the court comes out with healthy judgments depending on the case that favors the client through evidence and facts.

Hearing of small tribunal cases

Initially, the DIFC Court did not handle SCT (Small Claims Tribunal), making it difficult for small business owners to lose, as they could not afford the huge fees to be paid to the courts. Therefore, after the expansion of the jurisdiction of the DIFC Courts, the SCT introduction allowed all growing or small business holders to participate in court matters, as they were open to do so. The court since then has been able to handle many cases of SCT within a short period as stated by Kantaria (2014). Therefore, the court system has helped many small businesses by sustaining their legal requirements that had earlier been limited.

Introducing the court of appeal

The DIFC Courts' main agenda is to reduce the risks of commerce and allow small business entities to grow into prosperous companies. Similarly, the clients who feel as though their cases are not handled appropriately have a right to appeal their cases. At first, the court of first instance is usually headed by one judge but on the appeal, other judges emerge to handle the case on the appellant's conditions. Therefore, chances are given to the applicants that they will be satisfied with the final ruling. This is only applicable for the second hearing bearing in mind that the first instance has been held. According to [Blanke \(2014\)](#), the court only grants an appeal if the first instance has been present. Earlier on, the court could not grant an appeal because their ruling was bound only to the area they are in. After the expansion of the jurisdiction, the Court of Appeal was introduced, and many changes took place in relation to the parties registered with DIFC. This brings about the advantage, as some cases end up with one claimant being unsatisfied with the ruling; therefore, he/she is given the second chance.

Clients gained trust to the court

In matters of trust, the expansion of the jurisdiction of the DIFC Courts has led to the progress of rulings, as most parties from different areas all over the world can extend their case hearings to the DIFC Courts. [Hwang \(2008\)](#) stated that, clients have gained confidence with the rulings as defined by the court to come to a relevant execution regardless of their place of origin. The DIFC Courts enforce the rulings as if they were their own in a manner of justice and honesty. However, many entities entrust the court with their cases and prefer to be associated with the court itself.

The court system having an award winning set of modern technology

The DIFC Court has a remarkable record of producing rulings with the best jurisdiction in the region. According to [Hamade \(2011\)](#), the court possesses an award-winning state of technological system owing the use of e-learning in every aspect of their online forum, which helps individuals all over the world to access the information they need and also to freely register online as partners. Similarly, the use of video conferencing helps the court to be accessible to a great number of existing and potential clients and motivate them to join the forum. Therefore, the court's new law has reasonable remarks that have led the court to gain its fame all around the globe.

International lawyers will be welcomed in the court

Since the expansion of the jurisdiction of the DIFC Courts, international lawyers have been openly registering in the court system as new members. Similarly, the local councils are not necessarily required as before to represent their client. For example, a European businessman will be able to come with his/her lawyer to be represented in the court. This is an opportunity for the recognized companies to work freely with the court and also to appear with their own lawyers they can trust.

The court can borrow civil law through its ruling

As discussed earlier, the DIFC Courts will be working under the common law originally known as English law that has an international basis. Therefore, unlike before, the court can base its jurisdiction in any form of law, common or civil one. They are free to borrow procedures that connect precedent with the civil law. [Hwang \(2008\)](#) states that the use of

common and civil law helps make the judgment more reliable to come up with the best ruling in the court's jurisdiction.

On the contrary, the DIFC Court did not only benefit from the expansion of their jurisdiction. This means some of the previous local clients were uncomfortable with the new changes of the law. [Bracewell and Giuliani \(2012\)](#) state that some drawbacks were experienced in the recent past since the law had been enacted, as many companies were in denial, as they could not easily accept the new move by the court. Most of the Arabic companies did not want the law to be changed, as they were satisfied with their previous form of judicial court. But the court itself discussed some issues before they came up with the strategy and the expansion could be explained by some of the challenges they faced. They had to limit the challenges so as to maximize their scope of jurisdiction globally.

Preliminary arbitration

Expansion of the entire DIFC caused certain issues regarding jurisdiction of the national and DIFC Courts so that any DIFC member has to mention what exactly jurisdiction should be the primary instance. In case a jurisdiction is not specified, DIFC Court is chosen as a default court. Needless to say, such rule is applicable to companies that belong to DIFC. As a result, disputes between a member of DIFC and some external organization cannot be qualified as a subject to DIFC Court jurisdiction ([Kolkney et al., 2012](#)). The recent expansion of jurisdiction of DIFC Court enables it to make an assessment between DIFC members and an external party. Such intervention is limited to the evaluative process so that DIFC Court is not allowed to initiate any decision enforcement. However, predictions concerning decisions and penalties in terms of DIFC Court are possible.

In such cases, an external party is expected to mention in the contract whether it agrees to conduct any dispute solution under jurisdiction of DIFC Courts or not. Nevertheless, the current aspect may seem to be dramatically confusing, as it provides explicit advantages for DIFC members. It is essential to note that DIFC Court does not imply any commercial purposes, as DIFC is not particularly interested in destabilization of international business. Instead, DIFC Court is aimed at regulating the process, which is why acceptance of its jurisdiction does not mean "playing on the opponent's field" ([Ercanbrack, 2015](#)). As a result, preliminary DIFC arbitration is conducted for identification of a party to be penalized even though it represents DIFC. In addition, DIFC is licensed with UAE regulation and control power ([Ercanbrack, 2015](#)). Overall, preliminary arbitration regulates international business even beyond the terms of DIFC jurisdiction, as it controls DIFC representatives under any circumstances of international business.

Guaranteed rewards and penalties

As DIFC Court is allowed to assign enforcement of the awards and penalties to the parties, which participate in external court proceedings and are subject to DIFC Court jurisdiction, expansion of the Court is a particular advantage for the entire international business. As it has been mentioned earlier, DIFC Court does not perform for a purposeful benefit of DIFC members to guarantee the enforcement of awards, as well as justify decisions of the Court. That is why external parties are enabled to sign an agreement for carrying a dispute solution under jurisdiction of DIFC Court ([Williams, 2014](#), p. 351). Nobody would argue with the fact that non-DIFC companies may prefer to solve disputes under jurisdiction of DIFC Court. It results in the fact that fairness of the proceedings is also justified. It is possible to argue that independent performance of DIFC Court presupposes a distorted process of arbitration and award enforcement.

However, DIFC Court, as well as the UAE Article 238 of CPC recognizes international laws so that legislative system of DIFC Court is not based on an entirely new complex of laws and regulations (Williams, 2014, p. 352). Therefore, the final decision is made in accordance with the related international law that is regarded as a national law of the UAE. That is why expansion of DIFC Court is not a completely independent legislative body. Regarding such fact, expansion of the Court presupposes a more sophisticated system of award enforcement and penalization. It is a particular benefit for international business because its fairness is preserved with effective system of restrictions and penalties. A limitation of UAE's Court jurisdiction is not recognized as a concern of loss the power over DIFC. It can be explained by the fact that the UAE attempts to intensify its integration with world macroeconomics. Consequently, DIFC Court provides a favorable environment for a fair and secure international business.

Drawbacks

Abandonment of local courts

The local courts of Dubai used to handle local tribunals associated with local companies. Therefore, after the new law had been enacted, all the companies shifted their treaties to the DIFC Courts leading to the abandonment of local courts. The DIFC Courts uses English common law; hence, it is more foreign than before, putting the local courts at risk. The challenge DIFC Courts presents to the local courts is more commercial because they will serve most of the customers in the region. However, even the foreign individuals in Dubai will eventually shift their services to the new court abandoning the local courts.

Misunderstanding of the new ruling

The new improvised DIFC Courts will be performing under civil law, hence, creating a misunderstanding as for what they used to practice. Blanke (2014) argues that the new system can give rise to inconsistency because of the unpredictable and conflicting judgments. This means they will be required to study further new ways of handling local and international tribunals. A set of new changes comes with the need to improve the quality of work provided to the client. Moreover, the new law challenges the officials concerning the way they should handle their civic law enforcement.

Shifting to English is hectic

There has been a challenge concerning the use of a common language in the courts. The DIFC Courts mainly used the Arabic language in all matters of their proceedings and writings. Therefore, the need to adapt to the new international law means they have to use an international language that is English for all their activities. It is a bit challenging, as such shift can be rather radical. English is not a language to study overnight. Therefore, the courts officials are faced with the problem of shifting from Arabic language to English.

Loss of information in translation

Similarly, the effect of changing the language from Arabic to English can also lead to information loss. It can be experienced when Arabic legal written articles are translated into English. Also, the cost of changing everything into another language will eventually be higher compared to the past. Therefore, some rulings after the translation are likely to be against everyone's expectations and will affect the courts' ruling operations.

Additional cost of the increase in the number of judges

Expansion of anything leads to the extension of manpower in every entity. Also, the DIFC Courts means the courts must increase their working conditions because many companies are open to conducting business with the courts. Therefore, they are required to add more judges and advocates to meet all the customers' needs. By doing so, the court will have to incur more costs by hiring more manpower to their team of experts, which is not cheap. It is a challenge to the court and the government of Dubai.

Plenty of work in the line

The time limit may also put the court at risk. The expansion of the jurisdiction of the DIFC Courts will mean more companies will be in the queue for their services. More so, the court is not aware of the problem they might face in future. This means loads of work will be at their tables day in, day out, and they will not handle all of them at the same time. [Daudpota \(2013\)](#) argues that delays and complaints will eventually interfere with their daily routine because many companies will be having different hearings at different times. This is a major disadvantage of the courts, and therefore, it will lead to the worsening of the quality of work they initially provided.

Lack of complicated international basis

DIFC Court expands itself proactively, but its heavy reliance on Small Claims Court contains certain drawbacks, which are accordingly reflected on the overall complexity of the Court. Generally speaking, expansion of the Court's jurisdiction does not comply with external requirements to a sophistication of a legal framework. DIFC Court is attempting to cover a broader range of issues with the same set of international rules and regulations. Contemporary trends on corporate agenda include numerous perspectives of corporate governance, and the ability of the Court to trace the entire span of activities becomes more difficult. A redundancy of a current legal framework is apparent to DIFC Court, while expansion of its jurisdiction is respectively unavoidable. That is why DIFC Court needs to widen and rework its current legal framework. In other case, a new area of its jurisdiction will remain unaddressed.

Consequently, the expansion of DIFC Court will not result in a desired outcome. The Court will lose its power over DIFC members. It will mean a possibility to avoid or reduce penalties in terms of the UAE Law that is also limited to certain international standards. International laws, which are not included in the national legal framework, do not have any power over jurisdiction of the UAE Law. From the perspective of the national interests, it is evidently a positive tendency ([Chadee et al., 2015](#)). Nevertheless, the UAE cares much about its international integration, which is why international business should be institutionalized in terms of dispute solution. DIFC Court has only one distinct way to maintain its effectiveness within its expanded field of jurisdiction. A redesign of the legal framework is supposed to comply with specific areas of new jurisdiction and related best practices of the international law. A heavy reliance on the best practice and existing international role will provide DIFC members, as well as any other international organizations with the most reasonable judgment of disputes.

Untested system

At the same time, a new field of jurisdiction is obviously untested, as none of preliminary proceedings were initiated in terms of new jurisdiction. It is becoming increasingly apparent that DIFC Court lacks an empirical knowledge regarding new areas of jurisdiction. It thwarts the Court from its factual expansion as long as it will not be trusted any longer. A

widespread vagueness in the legal framework, as well as its unpreserved enforcement does not comply with already formulated image of DIFC Court. Furthermore, the UAE positions its international zone of free economy as its global advantage. DIFC Court is expected to meet international requirements otherwise attractiveness of offshore business in Dubai will substantially decrease. Expansion of DIFC Court automatically needs implementation of a roughly designed legislative system so that similar cases under equal jurisdiction are likely to face different outcomes.

The main problem of the untested legal framework of the Court is based on absence of recent amendments to the Trust Law (Jones and Pexton, 2015). It is the most prominent law for DIFC Courts, and its applicability to new areas of jurisdiction determines the entire mechanism of arbitration and award enforcement. A common practice of the UAE business law suggests that a development of mediation should have become the most appropriate method to verify applicability of particular international laws. DIFC Court should have initiated some preliminary practice within the new filed of jurisdiction. Preliminary proceedings would have had an experimental nature. It means a possibility to review the same disputes at the angle of the finally developed legal framework for new sectors of the Court's jurisdiction. Eventually, untested legal framework does not actually indicate certain borders of the Court's jurisdiction, which is why the entire Court becomes considerably ineffective.

Forum non conveniens

In spite of the fact that DIFC Court is expanding its jurisdiction, it still can be limited by a doctrine of forum non conveniens that presupposes a neutralization of a specific jurisdiction by a legislative system with more power. This way, decisions and enforcements of DIFC Court can still be denied throughout proceedings under jurisdiction of Court of Appeal (Latham and Watkins Corporate and Financial Departments, 2012). It is certainly true, as the Court does not involve any proceedings in cases of appeal to the decision and award enforcement. Thus, jurisdiction of forum non conveniens can be easily applied because most of the disputes presuppose a possibility of appeal. Then, revision of the issue is conducted beyond terms of DIFC Court jurisdiction to give the international companies a possibility to avoid DIFC Court award enforcement. The same doctrine may issue an appeal to DIFC Court without a request of a party to be penalized as long as use of a certain jurisdiction of DIFC Court is also limited (Latham and Watkins Corporate and Financial Departments, 2012, p. 4). Conversely, all parties are allowed to request for submission of a preferred jurisdiction even though a dispute has already arisen. As a result, the main determinant of DIFC Court success is its clients as long as they make a final decision regarding a choice of jurisdiction. A certain party is only one body that cannot be influenced with a doctrine of forum non conveniens. DIFC Court should consider such aspect to build its entire complex of legal system for a new area of jurisdiction.

Taking such points into account, vague effectiveness, as well as legal framework of DIFC Court is the most possible outcomes of the jurisdiction's expansion. The Court did not manage to formulate a distinct system of proceedings for new areas of jurisdiction and did not provide testing for its expanded rights of intervention. It is hard to deny the fact that most of decisions and enforcements within new areas of jurisdiction are tending to be declined by forum non conveniens. The law of the UAE presupposes such possibility, as the DIFC Court does not involve solution of appeals. It witnesses a fairly weak independence of DIFC Court. To explain figuratively, DIFC Court will lose its effectiveness and trustworthiness in case it proceeds with expansion of its jurisdiction. The Court needs to fill

the gaps described above-mentioned issues to enter a larger context of international jurisdiction. In other case, its primary purpose will occur to be redundant.

Existence of prior precedent

In the same way, new jurisdiction of the DIFC Court suggests that the related cases were under jurisdiction of some external courts and legal frameworks. It results in the fact that a new system of awards enforcement may occur to be dramatically unsatisfactory for international organizations. In its turn, it can lead to appeals that can switch jurisdiction of DIFC Court. Such consequences are a direct reflection of a strong influence of forum non conveniens. Moreover, owing to them, the majority of cases under new jurisdiction of DIFC Court will be appealed. Hence, the Court will lose its effectiveness, as a little number of cases is solved under new jurisdiction. As a matter of fact, all attempts of DIFC Court to expand its jurisdiction are tending to result in a slight amendment in its system, while its factual power over intended fields of jurisdiction will remain obviously vulnerable.

DIFC Court prefers to associate itself with an independent legal system for international business in Dubai. Nevertheless, the Court still depends on certain issues of the UAE law, and it does not have any expertise in new fields of modern jurisdiction. DIFC Court is not directly related to the UAE law, as it presents entirely different paradigm of legal system, but it does not rely on any international practices regarding new areas of jurisdiction. In this way, a limited volume of prior precedent results in a vague legal framework of the Court ([Latham and Watkins Corporate and Financial Departments, 2012](#), p. 4). Addressing a more global context of international business is supposed to consider much wider array of international laws and global interim practices, while DIFC Court is trying to expand its jurisdiction with the same set of legal tools for addressing disputes under new jurisdiction. Overall, it is the basic gap of the Court's expansion, which is why the current issue has to be initially reworked.

Conclusion

The expansion of the jurisdiction of the DIFC Courts has many effects worldwide. The expansion has helped most business establishments to sustain their businesses and also maintain their strength in the economy. Thus, there has been an increase in the development since many countries have entered into contracts globally with the most efficient developing countries; for instance, Arabic countries such as Dubai. The geographical area of Dubai makes it more affordable and available to most investors who come from different parts of the world. For example, Dubai does not have an adequate climate for farming; it has welcomed other farming countries to conduct business with them through food importation. This is only an indication as for how nations depend on each other for the benefit of the economy. Dubai also has well-modernized hotels and beaches that are the main attraction for tourists all over the globe. Therefore, since the law had been enacted, a lot of business opportunities emerged and were brought about by the interaction between different countries. All these attributes were brought into light by the newly enacted law of the expansion of the jurisdiction of the DIFC Courts. Thus, the new law of DIFC Courts has been in practice for a while, and its benefits surpass the drawbacks in many ways. Therefore, any law enacted by the court is vital, and its effect should be perceived as positive for the society. DIFC Courts have played a major role in ensuring smooth interaction between business people from every corner of the world hence boosting the economy.

The study has described the basic benefits and drawbacks of DIFC Court expansion. To speak about the main benefits, they can be depicted as appliance of the common law, unification of English language for proceedings, presence of a preliminary arbitration and

guarantees of award enforcement. In a similar way, the drawbacks of the expansion have been issued. The study has identified such drawbacks as lack of international and sophisticated expertise, untested legal framework, strong influence of forum non conveniens and existence of a limited volume of prior precedent. The paper has not assessed a success of a factual expansion of DIFC Court jurisdiction, but it has managed to fulfill its primary purpose. Thus, the paper has identified a certain tendency concerning the expansion.

It is appropriate to make a general comment on the fact that the expansion of DIFC Court is not sufficiently effective at the current stage. Needless to say, it contains numerous positive aspects, but the gaps are evidently essential because they place the entire Court in a hard circumstance. The Court does not have a well-developed legal framework for its new area of jurisdiction as long as its limited volume of prior precedent is a distinct sign of the Court's dependence on the UAE's Law. In such way, DIFC Court will not be able to address issues within new fields of jurisdiction, as it simply lacks an expertise and international law in its legal framework. Moreover, the jurisdiction over new areas of international business was not verified with a plain system of mediation, which is why a current expansion of DIFC Court has to be recognized as redundant. However, its advantages are tending to produce their effects provided that the Court manages to address its current problems.

References

- Blanke, G. (2014), "DIFC court of appeal confirms the DIFC's status as host jurisdiction for recognition of domestic awards", *Kluwer Arbitration Blog*, available at: <http://kluwerarbitrationblog.com/2014/11/11/difc-court-of-appeal-confirms-the-difcs-status-as-host-jurisdiction-for-recognition-of-domestic-awards/> (accessed 16 November 2015).
- Bracewell and Giuliani (2012), "The expansion of the jurisdiction of the DIFC courts", available at: www.bracewellgiuliani.com/news-publications/updates/expansion-jurisdiction-difc-courts (accessed 16 November 2015).
- Chadee, D., Roxas, B. and Rogmans, T. (2015), *Prospects and Challenges of Free Trading Agreements: Unlocking Business Opportunities in Gulf Cooperation Council*, Palgrave Macmillan, New York, NY.
- Daudpota, F. (2013), "Review jurisdiction of the DIFC courts", *SSRN Electronic Journal*, available at: <http://ecgi.ssrn.com/delivery.php?ID=954020088007068020013089082021001070007012064010087068076004022072073013101095014071027102040034061127107011019082004029086097117042055041008009108094114015001090102081062010004107117073004066088026118028119079078088097113021089003015126090089120006116&EXT=pdf> (accessed 17 November 2015).
- Ercanbrack, J. (2015), *The Transformation of Islamic Law in Global Financial Markets*, Cambridge University Press, Cambridge.
- Hamade, D. (2011), "Expansion of DIFC courts introduces a new set of choices", *The National*, available at: www.thenational.ae/thenationalconversation/comment/expansion-of-difc-courts-introduces-a-new-set-of-choices (accessed viewed 16 November 2015).
- Hwang, M. (2008), "The Courts of the Dubai International Finance Centre – A Common Law island in a Civil Law ocean", *DIFC Courts*, available at: <http://difccourts.ae/the-courts-of-the-dubai-international-finance-centre-a-common-law-island-in-a-civil-law-ocean/> (accessed 16 November 2015).
- IBP (2014), *UAE: How to Invest, Start, and Run a Profitable Business in the UAE Guide*, International Business Publications, Washington, DC.
- Jones, R. (2011), "DIFC Courts' jurisdiction widens", *The National*, available at: www.thenational.ae/business/economy/difc-courts-jurisdiction-widens (accessed 17 November 2015).
- Jones, G. and Pexton, P. (2015), *ADR and Trusts: An International Guide to Arbitration and Mediation of Trust Disputes*, Spiramus Press Ltd, London.

- Kantaria, S. (2014), "The enforcement of foreign judgments in the UAE and DIFC courts", *Arab Law Quarterly*, Vol. 28 No. 2, pp. 193-204.
- Keep Calm Talk Law Ltd (2014) "Extending The DIFC's Jurisdiction: A Blessing or Failure?", The Dubai International Financial Centre, available at: www.keepcalmtalklaw.co.uk/extending-the-difcs-jurisdiction-a-blessing-or-failure/ (accessed 28 November 2015).
- Kolkney, D., Chernick, R. and Neal, B.N. (2012), *Practitioner's Handbook on International Arbitration and Mediation*, 3rd edition, JurisNet, LLC, Huntington, NY.
- Latham & Watkins Corporate and Financial Departments (2012), "New Dispute Resolution Options in the DIFC Courts" Client Alert, no. 1420", pp. 1-6.
- Williams, L. (2014), *The Baker & McKenzie International Arbitration Yearbook 2013-2014*, JurisNet, LLC, Huntington, NY.
- Ziyaeva, D., Laird, I.A., Sabahi, B. and Whitesell, A.M. (2015), *Interim and Emergency Relief in International Arbitration*, JurisNet, LLC, Huntington, NY.

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