

# The New DIFC Courts Law

## Future Proofing a 21st Century International Court System

In March 2025, His Highness Sheikh Mohammed bin Rashid al Maktoum issued Law No. 2 of 2025, containing a new set of rules for the operation of the DIFC Courts. This replaces DIFC Law No. 10 of 2004 and Law No. 12 of 2004. In many respects, the new law codifies and re-states existing practice in the Courts, but there are some new provisions which are likely to attract particular attention from users.

With the DIFC Courts already well positioned for individuals and businesses locally and internationally to resolve disputes effectively, with expertise brought in from an increasing range of common law / Commonwealth jurisdictions, this new Law seeks to embed the DIFC Courts as a prime forum for years to come.

Our Middle East Dispute Resolution team consider the key changes, from a practical and strategic perspective.

### New Contempt of Court Provisions

Article 35(A) makes it a contempt of court to fail to comply with, or decline to act upon, a court order, alongside other acts such as “*wilfully insulting a Judge...witness, expert...or lawyer...either before or during proceedings*”.

Many cases, particularly at the disclosure and witness evidence stage, require substantial work and often a need by at least one party to seek to extend a deadline imposed by court order. The contentious nature of litigation can frequently lead to heated correspondence between opposing counsel, as well as intense cross-examination of witnesses and experts at trial. For example, it is unfortunately commonplace for one side to allege that the other side or their counsel have acted unprofessionally in the conduct of the litigation. Such personal attacks rarely sit well with the Judge but will certainly be considered “insulting” by the recipient.

The key question is whether such conduct will now result in allegations or findings of contempt of court under Article 35? Or conversely, will Article 35 drive a more mature and constructive engagement between counsel?

It is important to recognise that this Article is preceded by a system that contained no statutory powers of this nature; in particular, the DIFC court had (and still has) no authority over criminal acts. Accordingly, while a finding of contempt under Article 35 may lead to the imposition of a fine, that sanction has civil law consequences, not criminal; except for an extreme case where the DIFC Court refers the conduct to the Attorney General of the Emirate. Such referrals have been rarely made to date.

It is conceivable that some parties and indeed lawyers will seek to engage Article 35 as a tactical weapon against opposing counsel by threatening to refer acts, omissions and behaviours to the Judge for sanctions. However, commercial Judges of the DIFC Court are used to dealing with “spats” of this nature and we believe can be relied upon to filter out “noise” from genuine complaints. In practice, findings of contempt will only be made in the most extreme cases of wilful misconduct.

However, it is notable that Article 35(A)(5) states that failing to comply with a court order e.g. for disclosure by a certain date, “*shall be punished with a fine*” (emphasis added), suggesting that the Judge has no discretion on whether to sanction such a breach.

While we can expect to see opportunistic applications to invoke Article 35, we believe that Judges of the DIFC Court will be reluctant to sanction in practice. Nevertheless, as is always the case with Court orders, it is far better to seek an extension or variation in advance than to breach and then retrospectively apply for relief from sanction.

## Court Appointed Assessors

One of the new powers emerging from Law No. 2 of 2025, which was not present in its predecessors, is the DIFC Court's authority to appoint Assessors pursuant to Article 24. By introducing the ability for the Court to appoint Assessors, Dubai Law No. 2 of 2025 brings to the DIFC Court a power and practice that is more common in onshore UAE courts.

Article 24 stipulates that an Assessor must be independent, an expert in their field, and appointed by the Court to assist in determining any issues arising in the proceedings. The Assessor is also required to take an oath or affirmation at the outset of their appointment. While the Court is not obliged to accept an Assessor's opinion, it must record the fact if it relies upon such an opinion.

It remains to be seen how the DIFC Court's use of Assessors, for example, on quantum issues, will interact with, overlap, or in some cases serve as an alternative to the parties' appointment of expert witnesses - a practice more prevalent in common law jurisdictions. Importantly, while expert witnesses owe their duties to the Court, they are chosen and appointed by the parties, and advocates have the ability to cross-examine them at trial.

In contrast, Article 24(A)(2) states that parties to a dispute before the DIFC Court can make submissions on the Assessor's advice to the Court but is silent on whether Assessors are expected to be cross-examined. We anticipate that the Court's potential use of Assessors could consequently impact trial strategy.

Although the ability to appoint Assessors is a new power for the DIFC Court, in practice it may be used only occasionally. Chief Justice Wayne Martin has indicated that there is no intention for the DIFC Courts to use this power as widely as it is sometimes used by onshore courts, even describing their anticipated usage as "*rare and exceptional*" (although such language is not found in Law No. 2 of 2025).

## Mediation

Two years ago, the use of mediation and conciliation as a means of resolving disputes in the UAE was recognised by the Federal Decree-Law No. 40 of 2023. Law No. 2 of 2025 significantly builds on that by providing for the establishment of a "Mediation Centre" at the DIFC Courts as per Article 13, under the supervision of the President of the DIFC Court.

Despite the obvious benefits of achieving a mediated settlement of a dispute (time, costs, risk avoidance etc) parties have been slow to embrace mediation in the UAE, fearing perhaps that the chosen mediator may lack independence, that a "decision" may be imposed on them, or that the basis for or propriety of any compromise reached by the parties may later be challenged. There have also been concerns about whether a mediated settlement agreement will be enforceable.

Articles 14 and 30 of Law No. 2 should address a number of these concerns by establishing the DIFC Mediation Centre and providing for the creation of a list of mediators. Both should promote greater confidence and transparency in the mediation process.

Law No.2 also reconfirms that Judges can order parties to mediate. Further, Article 30 expressly provides that an Enforcement Judge can issue an Enforcement Writ for the compulsory enforcement of signed settlement agreements if they have been approved by the DIFC Court Mediation Centre.

This is an important development as it will dispense with the current need to sue for breach of a settlement agreement (if a party later tries to back out of a compromise reached). Although it is not mandatory for parties to use the DIFC Mediation Centre, doing so will clearly make it easier to enforce any approved settlement agreement.

We do not expect that Articles 14 and 30 will result in parties being routinely ordered to mediate. Instead, we expect that orders will only be made if the Court considers likely that a mediation will result in a settlement. The parties' expressed willingness to engage in mediation will be a strong indicator of that.

## Jurisdictional gateways and recent JJC changes

Law No. 2 of 2025 introduces several key changes to the jurisdiction of the DIFC Courts compared to the old law, Dubai Law No. 12 of 2004, as amended in 2011. One change is the expansion of jurisdiction expressly to include arbitration-related claims under Article 14 where the DIFC is the legal seat. This expansion reflects a broader scope of the court's authority, allowing it to handle a wider range of legal matters within the financial centre. The new law also provides more detailed provisions for handling arbitration claims, including those where parties have agreed to the DIFC's jurisdiction for arbitration disputes, thereby enhancing the court's role in arbitration matters.

Additionally, the new law maintains the DIFC Courts' jurisdiction over civil, commercial, and employment claims involving DIFC entities, similar to the old law. However, it offers more explicit details on the interpretation of DIFC Laws and Regulations upon requests from DIFC Bodies, which could lead to more consistent application of the law. The new law also outlines the jurisdiction of the DIFC Courts under Article 15 to hear applications for interim and precautionary measures, including those related to future or current arbitral proceedings outside the DIFC. This provision ensures that the courts can provide necessary legal remedies even in complex cross-border disputes.

Furthermore, while both laws allow parties to agree in writing to submit disputes to the DIFC Courts, the new law provides more clarity on the conditions under which the DIFC Courts may decline jurisdiction if parties have agreed to another court's jurisdiction. However, as demonstrated in a number of cases, the doctrine of forum non conveniens, is still available as a gateway to DIFC Court jurisdiction if it is the more appropriate forum. This clarity helps in managing jurisdictional conflicts and ensures that the parties' agreements are respected. Overall, these changes reflect an expansion and clarification of the DIFC Courts' jurisdiction, particularly in relation to arbitration, as well as providing more detailed procedural guidance.

Historically, jurisdictional clashes between the onshore Dubai Courts and the DIFC Courts led to costly and protracted procedural battles, often delaying the resolution of substantive disputes.

The Joint Judicial Committee (JJC), established in 2016 to address these conflicts, was itself a source of uncertainty. However, following its revamp in 2023 to streamline decision-making and improve consistency, and with the new law now in force, there is real hope that such longwinded jurisdictional fights will finally be a thing of the past.

The new law as well as the improved JJC procedure will, no doubt, lead to greater efficiency and effectiveness of the DIFC Court proceedings, providing greater access to justice to those with interests in and connected to the DIFC.

## Employment

Distinct from Law No. 10 of 2004 and Law No. 12 of 2004, Law No. 2 of 2025 introduces a dedicated Article 14 addressing the subject of 'jurisdiction', applicable to all courts within the DIFC, including the Small Claims Tribunal, the Courts of First Instance, and the Court of Appeal.

Article 14 unequivocally establishes the exclusive jurisdiction of the DIFC Courts over employment law claims involving DIFC entities. Historically, employment disputes were frequently categorised under 'civil or commercial' claims, leading to potential ambiguities. The enactment of Law No. 2 of 2025 rectifies this by explicitly categorising employment disputes, thereby eliminating uncertainty and ensuring that all such disputes connected to the DIFC are adjudicated within the Court's exclusive jurisdiction. This enhancement provides greater certainty for both employers and employees and aligns more closely with international best practices.

While there was anticipation that Law No. 2 of 2025 might introduce specialist employment tribunals with a view to reducing costs associated with employment disputes, the law does not contain such provisions.

At present, Judges in the Small Claims Tribunal already handle, very regularly, employment law claims and therefore have substantial expertise in that area. Hiving off employment claims into a separate forum is not needed from the perspective of ensuring judicial expertise.

Nonetheless, given the DIFC's commitment to ensuring accessible judicial processes for all parties, the establishment of a bespoke employment tribunal, complete with its own procedural rules, including lower or no fees, and distinct rules on the right to legal representation, may be something that follows in the future.

## Composition and Jurisdiction of the Court of Appeal

The Court of Appeal comprises circuits that typically consist of three Judges, however Article 17A provides that, in exceptional cases, a circuit may include up to five Judges. Although Law No. 2 of 2025 does not specify what constitutes an "exceptional" case, it is likely to include cases in which a previous decision of the Court of Appeal would be reviewed.

The jurisdiction of the Court of Appeal is explicitly defined under Article 17 of Law No. 2 of 2025. It holds exclusive jurisdiction to hear appeals against decisions and judgements issued by the Courts of First Instance. Additionally, the Court of Appeal has exclusive jurisdiction to hear requests for interpretation of any DIFC Laws and Regulations upon application by DIFC Bodies, DIFC Establishments, or Licensed DIFC Establishments, or other relevant entities. This may assist in clarifying any previous ambiguities arising out of Article 8, Second, 7 of Dubai Law No. 9 of 2004 in terms of how DIFC laws are applied or interpreted.

Article 17D provides that dissenting judges may file dissenting opinions. Although this likely serves as a clarification, as there was previously nothing preventing judges from filing dissenting opinions, it will likely encourage judges to record dissenting judgments or opinions they may have.

Under Article 17F, a single judge may exercise the appellate jurisdiction of Court of Appeal to deal with applications for permission to appeal, appeals regarding decisions by the Enforcement Judge, extensions of time, amendments to the grounds of appeal, and the stay of proceedings.

These provisions are likely intended to streamline the appellate process. However, further clarity would be helpful, particularly on the issue of whether applications can be made directly to the Court of Appeal, or if they must first be made to the judge below.

We have outlined the key changes, and their effect on litigation strategy through our regular court activity, and our dialogue with the judiciary and other key stakeholders and continue to monitor and adapt to the dynamic and innovative DIFC court system.

## Enquiries

Please get in touch with us via the contact details below to understand how you will be affected by the changes, and how we can assist in pursuing, defending and ultimately resolving your legal disputes.

### New Contempt of Court Provisions

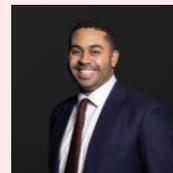


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### Mediation

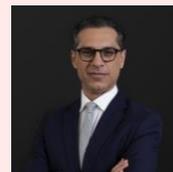


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### Jurisdictional gateways and recent JJC changes



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### Employment



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