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# METHODOLOGY FOR THE STUDY OF THE PRINCIPLES OF ESTABLISHING TERRITORIAL JURISDICTION AND MECHANISMS FOR RESOLVING DIGITAL DISPUTES BY THE COURTS OF THE INTERNATIONAL FINANCIAL CENTER OF DUBAI

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*Abstract:* The article attempts to analyse the principles of establishing territorial jurisdiction when resolving disputes in the courts of Dubai International Financial Centre (DIFC) in the United Arab Emirates. In the context of globalization scientists and practitioners face the question of selecting appropriate and effective methods to cognize jurisdiction, the application of regulatory methods and mechanisms to resolve digital disputes in international practice. Attention is drawn to the need to develop theoretical approaches to establish the nature of relations arising from digital disputes and to determine the liability of parties in relation to the subject matter of a digital dispute, as well as in relation to technologies controlled by artificial intelligence and robotics.

*Keywords:* jurisdiction, digital dispute, DIFC, artificial intelligence, digitalisation, jurisdictional methodology.

## Introduction

The Courts at the Dubai International Financial Centre (DIFC) in the United Arab Emirates are a uniquely complex and efficient judicial system, generally governed by common law, delivering independent and speedy justice in English, through the resolution of national and international commercial or civil disputes. The Dubai-based courts are completely transparent. DIFC's highly qualified judges apply international legal standards in delivering their judgments.

The Dubai International Financial Centre (DIFC) is an integral jurisdiction of the Emirate of Dubai and the United Arab Emirates. Neither

the DIFC Authority nor the DIFC Courts themselves can enter into international treaties on their own, but they must comply with the conditions set out therein. The experts believe that Article 24(2) of the DIFC Court Law (*DIFC Courts, 2023, Law No. 10 of 2004*) should be followed in this regard, which clarifies that: "Where the UAE has entered into an applicable treaty for the mutual enforcement of judgments, orders or awards, the Court of First Instance shall comply with the terms of such treaty" (*Enforcement of Foreign Judgments – DIFC, 2022*).

Initially, the DIFC Courts were geographically limited as they were only established to hear cases relating to the Dubai International Finan-

cial Centre. The rapidly growing reputation of the DIFC Courts for administering justice quickly and efficiently enabled them to expand their jurisdiction in October 2011. However, this raised a host of questions in establishing territorial jurisdiction between the DIFC Courts and the Dubai courts. In this regard, by Decree No. 19 of 2016, the Emir of Dubai established the Joint Judicial Tribunal to resolve conflicts of jurisdiction that may arise between the Dubai Court and the DIFC Courts. Thus, the DIFC Courts apply the Law governing the contract in question, but if this cannot be ascertained the DIFC common law system, based primarily on the UK law system, must be applied. Furthermore, amendments were made to Law No. 10 of 2005 on the Law Relating to the Application of DIFC Laws. In particular, paragraph 10 of Part 3 “Applicable Law of Contracts” provides that, in the absence of expressly stated governing law, unless the parties specify the governing law of a contract, the contract shall be governed by the law of the DIFC.

There is also a provision in Law No. 10 of 2005 which clearly sets out the rules for the interpretation of the DIFC legislation:

- “(a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC; and
- (d) the Law is the law relating to the Application of DIFC Laws, DIFC Law No.4 of 2004 made by the Ruler” (*DIFC Courts*, 2023).

Lawyers and partners at the UAE law firm Afridi & Angell, Bashir Ahmed, Chatura Randeniya, Mevan Kiriella Bandara and Tania Garg (2022) note in their research that until very recently, the decisions of the Judicial Tribunal have favoured the view that “the Dubai Courts have general or ordinary jurisdiction and that the DIFC Courts must only exercise this power in exceptional circumstances (as in the case where a defendant has assets within the DIFC)” (p. 24).

One of the basic principles of establishing jurisdiction in territory is the principle of territoriality, according to which the judicial system is based on geographical boundaries and the allocation of territories. However, in the context of technological development and the emergence of

a digital environment, borders become less obvious and the ability of the judicial system to adapt to the new realities is important. The need to resolve digital disputes poses a challenge to the courts – achieving justice requires the creation of dispute resolution mechanisms that can operate in the digital sphere, ensuring fairness and compliance with legal postulates.

In addition, the topic raises the important question of legal efficiency and the enforcement of court decisions in the context of digital disputes.

Professor I. V. Mikhailovskii (1914) more than a century ago expressed the position that the philosophy of law is intended to indicate the ideals and ideal models to which law should aspire. This philosophical thought has not lost its relevance in today’s digital reality in relation to judicial and executive proceedings, since the execution of court decisions in the digital environment generates specific difficulties and requires appropriate mechanisms and infrastructure that will ensure the proper application of legal decisions.

Professor D. A. Kerimov (2007) described “philosophy as the “soul” of methodology, its core, because it acts not only as a universal method of cognizing nature, society and mind, but also as a general theoretical premise for any research” (p. 9). Based on this statement, the philosophical significance of the topic under study lies in recognizing the need to develop and adopt legal systems to the modern challenges of the digital age. It requires consideration of issues of fairness, independence and legal efficiency to ensure the protection of the interests and rights of all participants in the digital environment.

## Methodology

In the popular legal encyclopaedic dictionary edited by O. E. Kutafin, the term “jurisdiction”, which in Latin “jurisdictio” means legal procedure, from “jus” – right and “dictio” – say, is understood as the totality of the powers of the relevant state bodies established by law to settle legal disputes and resolve cases of offences, assess actions of a person or other subject of law in terms of their legality or illegality, apply legal sanctions to offenders (Kutafin et al., 2000, p. 795).

Or a similar definition is given in the glossary

to the textbook on the history and methodology of legal sciences, where jurisdiction should be understood as a set of powers of relevant state bodies established by a normative legal act to resolve “legal disputes and solve cases of offences”, dissemination of information defaming the honour and dignity of a citizen or organisation, etc., “disciplinary offences and administrative offences, etc.” (Komarova, 2015, p. 171).

For a detailed analysis of the jurisdiction methodology, it is first necessary to identify what this legal category is. In order to avoid mistakes in determining jurisdiction and to ensure the correct application of the normative legal acts, when using the jurisdiction methodology it is important to consider all aspects of the legal regulation, the essential terms of the concluded international agreements, as well as the established requirements for the enforcement of DIFC Court decisions by foreign courts and vice versa, according to the diplomatic arrangements.

If we look at the methodology of jurisdiction from the point of view of a substantive characterisation, it follows that it is a set of rules, principles and methods used to determine jurisdiction in legal and procedural matters. Consequently, the methodology of jurisdiction includes the analysis of legal norms, agreements and treaties, as well as the practice of their application.

Firstly, jurisdictional methodology can be used to determine which laws and regulations apply to certain issues and to determine the competence of the judiciary and other authorities in dealing with legal matters. This may include determining the location of the court, adjudicating disputes related to international treaties, etc.

Secondly, jurisdictional methodology is a field of law that studies the methods and approaches used to define and apply the legal rules within a jurisdiction. The study of jurisdictional methodology is undertaken not only by legal practitioners, judges, attorneys at law, but also by academic and educational institutions specialising in the field of jurisprudence.

Thirdly, jurisdictional methodology is a scientific discipline that studies methods and approaches used in jurisprudence to address legal issues. Within this discipline, scholars are engaged in studying legal norms, analysing how they are interpreted and applied, and developing new methods and approaches in the field of law.

Among the leading scholars specialising in the study of the methodology of legal science are: N. A. Vlasenko, D. A. Kerimov, I. P. Kozhokar, A. I. Komarova, A. V. Malyshkin, V. M. Strykh (Strykh, 2012), Y. A. Tikhomirov (2008, 2011), etc.

Researchers have been analysing and developing new methods and approaches in the field of law for many years. However, not all innovations can be effective. For example, Professor N. A. Vlasenko (2019) “sharply criticises the proposed new methodologies in the theory of law. This is the so-called paradigmatic approach. The author believes that the change of scientific paradigms is a natural phenomenon for legal and other sciences. ...Synergetic, phenomenological and other ideas of new methodological foundations in the theory of law and state are criticised” (p. 5).

Professor Y. A. Tikhomirov (2008) in his research “The Development of Theoretical and Methodological Approaches to Evaluating the Effectiveness of Existing Legislation (Legal Monitoring)” draws attention to the lag between law enforcement and lawmaking and notes that “a passion for normativity has led to an overrated attention to the texts of legal acts whose preparation and adoption have become synonymous with legal regulation” (pp. 92-93).

We agree with the opinion of Professors I. P. Kozhokar and E. P. Rusakova that “the real regulatory effect of the correct application of the legal terminology proposed by the legislator arises in the process of law enforcement activity. ...the enforcer is obliged to observe certain legal-technical rules, including the consistency of terminology of the enforcement act with the terminology of the applicable normative legal act” (Kozhokar & Rusakova, 2023, p. 127; Kozhokar et al., 2023).

A. V. Malyshkin writes about the choice of methods of jurisdiction, noting that “the correct choice of methods of jurisdiction predetermines the efficiency of jurisdictional activity”. In order to achieve the tasks set before the jurisdiction one should be guided by the methods of legal regulation. However, one of the main tasks of modern researchers remains the choice of necessary methods of cognition of jurisdiction “as a complex activity and the prospects of its transformation” (Malyshkin, 2018, p. 126).

Continuing to reflect on the topic of jurisdiction A. V. Malyshkin (2018) in his research points out that this legal category also represents “a kind of legal activity and, taking into account the abovementioned, in relation to its methods can be designated as a set of theoretical and normatively fixed practical actions for the implementation of jurisdictional activity aimed at achieving the goals of jurisdiction” (p. 127).

The methods of introducing artificial intelligence technologies into the judicial system, digital courts, national laws on the admissibility of decisions rendered by online or electronic arbitration, and issues of applying modern information and telecommunication technologies in legal activities and proceedings are analysed in detail by Professors E. P. Ermakova and E. E. Frolova (2021).

An interesting conclusion is drawn by Professors E.P. Rusakova and E. E. Frolova on the methods of legal regulation of the new procedure for the protection of digital rights in foreign practice. The authors believe that “the developed foreign experience of resolving smart contracts is progressive and effective: 1) for the first time special rules of digital dispute resolution appeared, in the development of which not only lawyers, but also IT-specialists participated; ...; 4) there is an ongoing process of improvement of the digital dispute resolution procedure” (Rusakova & Frolova, 2022a, 2022b, 2022c).

## Main Study

### *The peculiarity of establishing jurisdiction in the DIFC Courts.*

There is a certain peculiarity related to the conduct of official court proceedings. The DIFC Courts operate in English, despite the fact that more than half of the staff are native Emirati speakers of Arabic. Thus, all hearings are conducted in English and all paperwork is done in English – this reduces the time required to resolve disputes concerning English-language contracts.

What is the fundamental difference between DIFC vessels and those in the Emirate of Dubai?

The DIFC Courts are part of the courts in Dubai and their main difference is the limits of the courts’ competence, i.e. their jurisdiction and the legislation that governs them.

As mentioned above, the DIFC Courts have jurisdiction over certain civil and commercial disputes. The civil courts in Dubai handle all other cases in these matters. The DIFC Courts adjudicate cases based on English common law, whereas the civil courts in Dubai follow the Federal Civil Procedure Law.

The Dubai International Financial Centre (DIFC) Courts include:

- Small Claims Tribunal;
- Court of First Instance, which includes the following divisions:
  - Civil & Commercial Division;
  - Technology & Construction Division;
  - Arbitration Division;
  - Digital Economy Court Division;
- Court of Appeal.

Let us take a closer look at the activities of each court.

### *Small Claims Tribunal of DIFC Courts (SCT).*

The Court Act states that the Small Claims Tribunal of DIFC Courts (SCT) was formed to hear and resolve specific claims that fall under the jurisdiction of the DIFC. The difficulty with this dispute resolution mechanism is the length of the process, which averages four weeks. The SCT usually deals with cases whose value of the subject matter or amount of the claim is up to AED 500,000 (approximately USD 136,164.28). Also, labour disputes or disputes with a claim value of less than AED 1 million (approximately USD 272,323.70) can be handled by the SCT if the parties have agreed in advance in writing.

In the event of an unsatisfactory outcome of the case, the parties may seek legal advice from the Court of First Instance (CFI) before filing an appeal.

### *Court of First Instance (CFI).*

According to Article 5 of Law No. (16) of 2011 Amending Certain Provisions of Law No. (12) of 2004 Concerning Dubai International Financial Centre Courts “the Court of First Instance (CFI) shall have exclusive jurisdiction to hear and determine any civil or commercial claims or actions where it relates to the DIFC. Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations” (Law No. (16) of 2011 Amending Certain Provisions of Law No. (12) of 2004 Concerning Dubai International Financial Centre Courts).

However, the rule is not absolute, so there are a few exceptions to the rule that should be noted. These are final judgments rendered by other courts in respect of civil or commercial claims. In this case, the Court of First Instance (CFI) cannot hear these types of claims.

Under section 5(3) of Law No. (16) of 2011, a civil or commercial claims falling within its jurisdiction may be brought before the Court of First Instance even if the parties have agreed in writing to hear the case before another court which has dismissed the action for lack of jurisdiction.

The Court of First Instance may hear cases where the contract specifies the jurisdiction of the DIFC Courts or where both parties decide to use the DIFC Courts to resolve a dispute that has already arisen.

#### *Civil & Commercial Division of the Court of First Instance.*

The Civil and Commercial Division acts as a mechanism for resolving complex disputes requiring specialist knowledge and involving breach of contract, property rentals, banking and finance. The task of the judge is not only to persuade the parties to agree on a timetable for dealing with the cases, but also to ensure that the matters that require resolution are dealt with quickly and fairly, in line with the DIFC Courts' predilection for transparent and efficient access to justice.

#### *Technology & Construction Division (TCD).*

The Technology and Construction Division (TCD) is staffed by judges who are experts in the new industry rules, ensuring that disputes are resolved quickly. The department handles only technically complex cases. These can include procedures arising in the construction sector, complex engineering disputes or claims arising from fires, as well as issues relating to new technologies such as artificial intelligence or unmanned vehicles, technology-related cases, can include liability for cybercrimes, disputes over property rights and data use.

#### *Arbitration Division.*

In 2020, the Arbitration Division was set up in order to deal with arbitration cases quickly. The Arbitration Division uses a special court electronic register that allows effective control over the supervision and management of cases, which allows for the instant processing of requests for interim measures in one of the mecha-

nisms for resolving digital disputes and the judicial protection of infringed rights.

The official website of the DIFC Courts notes that the existence of extensive national, regional, and global connectivity, "the DIFC Courts empowers its specialised Arbitration Division to leverage existing enforcement expertise, helping to ensure certainty of recognition and enforcement of arbitral awards".<sup>1</sup>

Thus, guided by common law principles, the Arbitration Division employs judges specialising in international arbitration to decide the following matters:

- the appointment of independent arbitrators;
- interpretation of arbitration agreements;
- the application of interim measures for the duration of the arbitration;
- enforcement of the decision after the end of the process.

#### *Digital Economy Court Division.*

In 2021, the DIFC Courts established its Digital Economy Court Division "to oversee complex national and transnational disputes related to current and emerging technologies across areas ranging from big data, blockchain, AI, fintech and cloud services, to disputes involving unmanned aerial vehicles (UAVs), 3D printing and robotics".<sup>2</sup>

The growth of digital transformation around the world inevitably integrates digital technologies in processes mainly related to trade and services. This inevitably leads to digital disputes. "An innovative judicial system is key to ensuring the safety, security and protection of companies and businesses" in resolving digital disputes.

The Digital Economy Court Claims ("DEC Claims") are governed by Part 58 of the Rules of the Dubai International Financial Centre Courts (2014) ("RDC 2014") and the "Rules of the DIFC Courts and the Guidelines, Registrar's directions and Practice directions DEC".

BSA Dubai senior lawyer William Prasifka (2023) notes in his study that the Rules of the DIFC Courts 2014 "RDC 2014" "provide a procedural framework that allows technology to be used throughout the proceedings ... the default

<sup>1</sup> See <https://www.difccourts.ae/media-centre/newsroom/worlds-first-international-digital-economy-court-unveils-new-specialised-rules-and-global-judicial-expertise>

<sup>2</sup> See <https://www.difccourts.ae/media-centre/newsroom/worlds-first-international-digital-economy-court-unveils-new-specialised-rules-and-global-judicial-expertise>

position is that all trials are held remotely, with the pretrial exchange of documents taking place electronically” (pp. 20-21). Article 58.9 “Power to conduct proceedings digitally” states that “The Court shall, as far as possible, conduct DEC Claims making appropriate use of information technology and with a view to maximising the efficiency and minimising the costs and environmental impact of court proceedings” (“RDC 2014” - The Rules of the Dubai International Financial Centre Courts, 2014).

According to Article 58.5 of the Rules of the DIFC Courts 2014 “RDC 2014” a “DEC Claim” means a claim which:

Firstly, involves issues relating to the digital economy arising independently, referred to the Digital Economy Court or arising from an appeal from the Financial Markets Tribunal of the DFSA in respect of its supervision of legal entities.

Secondly, the parties have agreed to be a DEC Claim.

In addition, the value of a “DEC claim” cannot exceed AED 500,000, the exception being claims with a value exceeding AED 500,000, but the parties have consented to the claim being determined under the Consumer DEC Claim.

According to Article 58.12 “Smart forms” of the Rules of the DIFC Courts 2014 “RDC 2014” an electronic dynamic system may be operated by the Court for DEC Claims by which the parties provide information through smart forms, driven by artificial intelligence, which procure necessary information for the conduct of the claim.

An appeal against the decisions of the Court of First Instance may be lodged with the Court of Appeal.

#### *Court of Appeal of DIFC.*

The Court of Appeal of DIFC is the highest court in the DIFC legal system. Here, parties seeking fair justice can only appeal against decisions made by lower courts. The Court of Appeal of DIFC does not accept new cases. Cases may be referred to the Court of Appeal for judicial review. The Court of Appeal of DIFC shall also deal with the judicial interpretation of the laws of DIFC. The Court of Appeal makes the final judgment or decision of the courts and the decision of the Court of Appeal is not subject to appeal.

A person who has created an account on the

e-Registry portal on the DIFC website, an online platform for filing documents, claims, paying fees and participating in case hearings, can file a claim with the DIFC Courts.

#### *So how are DIFC Court decisions enforced?*

The UAE is party to a number of bilateral treaties relating to the enforcement of foreign judgments. Based on international instruments such as the Riyadh Convention of 1983, the GCC Convention of 1996, the decisions of the DIFC Courts are enforceable throughout the Arab world by the member states. DIFC judgments and orders are also enforceable in France under the 1992 Paris Convention on judicial assistance, recognition and enforcement of judgements in civil and commercial matters between France and the UAE (1992) and in many other countries, including China and India, in accordance with domestic laws governing the recognition and enforcement of foreign judgments.

The main sources of law relating to the enforcement of foreign judgments are:

- Law No.12 of 2004 in respect of the Judicial Authority at Dubai International Financial Centre as amended (known as the Judiciary Law);
- DIFC Court Law (DIFC Law No. 10 of 2004);
- Rules of the DIFC Courts; and
- A growing body of case law relating to the enforcement of foreign judgments, including:
  - DNB Bank ASA vs Gulf Eyadah Corp (2015) DIFC CA 007;
  - D’amico Shipping Italia Spa vs Endofa DMCC [2016] DIFC CFI 042;
  - Barclays Bank PLC and Ors vs Essar Global Fund Ltd (2016) DIFC CFI 036;
  - McConnell Dowell South East Asia Pte Limited vs Essar Projects Limited (2018) DIFC CFI.

In addition to the above, and although they do not have the force of law, the DIFC Courts have entered into memoranda with the courts of several foreign jurisdictions that are designed to determine how parties can expect the signatory courts to deal with each other’s cases.

In accordance with Federal Decree-Law No.42 on Civil Procedures Law, only subject to the procedure stipulated by the DIFC Law (Dubai Law No. 12 of 2004 as amended) DIFC Court decisions must be enforced through the Dubai Courts. Also, according to Article 7 (2) of

Law No. 16 of 2011, from the entry into force of the said Law, “decisions of the DIFC Courts can be enforced in other Emirates or by execution in Dubai by a judge or directly by the local “competent authority” in the UAE”.

The official website of the DIFC Courts includes several examples of possible formalities for the enforcement of DIFC Court judgments by foreign courts and vice versa, according to diplomatic arrangements (Memorandum of Guidance):

- between the DIFC Courts and United States District Court for the Southern District of New York (SDNY), March 22, 2015;
- between the UAE Ministry of Justice and DIFC Courts, May 05, 2015;
- between Supreme Court of the Republic of Kazakhstan and DIFC Courts, August 28, 2015, et al.

It is important to note that the aforementioned Memoranda are not legally binding, but rather define the parties’ understanding of the procedure for enforcing judgments: “The parties believe that the cooperation demonstrated by these Memoranda will promote a mutual understanding and guidance of the judicial processes and will improve public perception and understanding” (official website of DIFC Courts, 2023).

For example, in order to sue in the DIFC Courts, the decision of the New York court must be final and uncontested. In order to resolve a dispute under DIFC Law and conflict of laws rules, the New York State Court must have jurisdiction. DIFC Courts generally hold that the New York court had the necessary jurisdiction only if the person against whom the judgment was rendered:

- was located, at the time of the commencement of proceedings, in that jurisdiction or within the jurisdiction of the Court of New York; or
- had, prior to the commencement of the proceedings in relation to the subject matter, consented to submit to the jurisdiction of the New York Court.

In New York State it is not allowed to bring an action for recognition or enforcement of a foreign judgment after the statute of limitations for enforcing the judgment has expired in New York, or in a foreign jurisdiction. The applicable

statute of limitations in New York is usually 20 years.

Before the signing of the Memorandum between the Supreme Court of the Republic of Kazakhstan and the Dubai International Financial Center, in 2009, the “Agreement between the Republic of Kazakhstan and the United Arab Emirates “On the provision of legal assistance in civil and commercial cases was signed”. This agreement is incorporated into the national law of the UAE by Federal Decree 2009 No. 117 of 2009 on Ratification of Agreements and Judicial Cooperation in Civil and Commercial Matters between the UAE and the Republic of Kazakhstan. This act provides for the conditions for the recognition and enforcement of judicial acts of each of the parties (Paragraph 8 of the Memorandum, Press Service of the Supreme Court of Kazakhstan).

The Parties are guided by internal legislation, as well as the Agreement between the Republic of Kazakhstan and the United Arab Emirates of 2009.

Under Article 128 of the Kazakh Code of Civil Procedure, the Courts of Kazakhstan shall not review the merits of the decision of the DIFC Courts. The decision cannot be challenged on the grounds that it contains a factual or legal error.

The procedure for the recognition and enforcement of judgments must comply with the provisions of the Agreement between the Republic of Kazakhstan and the United Arab Emirates (see, in particular, Articles 21-27 of the 2009 Agreement, which specifically provide for the requirements for the recognition and enforcement of judgments).

Requirements for the enforcement of judgments of the courts of the Republic of Kazakhstan in the DIFC Courts.

In order to apply to the DIFC Courts, a decision of the courts of the Republic of Kazakhstan must be final and unconditional, even if it is subject to appeal. It is noteworthy that the DIFC Courts do not enforce certain types of decisions of the courts of the Republic of Kazakhstan, such as decisions on the recovery of taxes, fines and penalties.

The courts of the Republic of Kazakhstan must have jurisdiction under the DIFC conflict of laws rules in order to hear a dispute.

A judgment of a court of the Republic of Ka-



zakhstan is enforceable on the basis of a legal obligation of the defendant recognised by the DIFC Courts to enforce the judgment of a court of the Republic of Kazakhstan.

Thus the DIFC Courts apply general common law principles for the recognition and enforcement of foreign judgments from any sending jurisdiction and do not require proof of reciprocity between a foreign court and the DIFC Courts (although a number of Memoranda of Understanding or guidelines agreed between the DIFC Courts and the courts of many foreign jurisdictions set out the procedure for enforcing judgments involving foreign monies).

Logical questions arise: what is the limitation period for enforcing a foreign judgment, and under what circumstances will the enforcing court consider the foreign jurisdiction's limitation period? According to Article 38 of the DIFC Court Law, subject to any other DIFC law, litigation must not commence more than six years after the date of the events that give rise to the proceedings.

#### *Alternative dispute resolution.*

What action should the court take if the parties have an enforceable agreement to use alternative dispute resolution and the defendant argues that this requirement has not been complied with by the party seeking enforcement?

Enforcement of a foreign judgment in the DIFC Courts may be challenged if the judgment is rendered in proceedings initiated contrary to the jurisdiction or arbitration agreement. If the agreement also contains an obligation for alternative dispute resolution (e.g. as part of a tiered provision) that is sufficiently certain to be enforceable, it may be open to DIFC. The courts have concluded that the foreign court does not have jurisdiction because the person against whom enforcement is sought has not agreed to submit to the jurisdiction of the foreign court prior to the commencement of the proceedings and as to its subject matter. However, given the common law preference not to disturb the foreign court's reasoning, this does not necessarily render the DIFC Courts' conclusion that the foreign court had territorial jurisdiction, or that the foreign judgment was rendered, without any conflict with UAE public policy, or if the proceedings were conducted in the manner established by the DIFC Courts, not contrary to the principles of equity.

## Conclusion

The issue of determining territorial jurisdiction when resolving digital disputes by DIFC Courts remains complex and ambiguous, so judicial jurisdiction is more often applied depending on the prevailing subjective, objective and legal factors individually or in combination. The topic has not been sufficiently explored at the doctrinal level. Especially when it comes to the Digital Economy Court established by the DIFC Courts in 2021. The growth of digital transformation around the world inevitably leads to digital disputes and an innovative judicial system must provide security, stability and protection for businesses when resolving digital disputes. The specific nature of the new court is to oversee complex national and transnational disputes related to information technology in areas ranging from big data, blockchain, artificial intelligence and cloud services, to disputes arising from the use of drones (UAVs), 3D printing and robotics.

However, one of the main challenges remains - there is no clear definition and interpretation of the legal category of "digital dispute". Another issue that arises from this is the establishment of the territorial jurisdiction of courts when resolving digital disputes. In addition, the nature, legal rights, obligations and liability of the parties in relation to the subject matter of the digital dispute in various fields, as well as in relation to technologies controlled by artificial intelligence and robotics, are to be established at the legislative level. Who should be liable in the event of a software failure, e.g. its developers or owners, who may be physically located in different parts of the world, or will they be jointly and severally liable?

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