

DUBAI: CREATING A GLOBAL LEGAL PLATFORM?

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Globalisation is a complex economic and ideological notion that has revolutionised commercial realities in recent decades. This transforming mode of commercial arrangement requires a legal ecosystem that weaves its way across and between domestic, international and transnational legal systems and cultures. This article seeks to understand how Dubai has sought to create a global legal platform that is seeking, in essence, to create a de-territorialised legal fiction. In other words, they are seeking to develop a privatised dispute resolution system that operates within and without national borders and jurisdictions. It is arguably establishing a new legal platform to turn globalisation into a tangible legal idea.

The Dubai International Financial Centre ('DIFC') is located in downtown Dubai yet aims to operate as if it were offshore. DIFC is composed of the DIFC Dispute Resolution Authority, the DIFC Authority (which functions as an executive body) and the Dubai Financial Services Authority (which regulates banking and finance). Despite being geographically located in downtown Dubai, they have their own rules and dispute resolution system separate from Emirati law and courts. DIFC is consciously a part of making Dubai into a global hub for legal services.

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I INTRODUCTION: TRANSNATIONAL LEGAL INFRASTRUCTURE

The Dubai International Financial Centre ('DIFC'), as an institution, is reinterpreting how transnational (cross-border and privatised) adjudication operates. This is arguably because of its newness to this sphere, having

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commenced operations in 2004.¹ It is still in a phase of legal and technological innovation. The processes of the DIFC Court, an arm of the Dispute Resolution Authority,² are streamlined, technologically-based and customer service-oriented. They chose to operate in English,³ rather than the standard Arabic used in the domestic Dubai courts ('Dubai courts'). They made this linguistic choice to appeal to a broad international, rather than just a local (or regional) clientele. DIFC also operates under a common law system. This system is perceived to make the 'process ... less risky for Western firms',⁴ which are cautious of bringing an action under the civil law system of the Dubai courts. This is because of the Dubai courts' reputation of 'favouring Emiratis over foreigners'.⁵ DIFC is making every effort to embrace the trend towards arbitration as the 'procedure of choice' for transnational commercial disputes,⁶ and to facilitate a system that offers the valued combination of 'neutrality and finality' with globally binding outcomes.⁷

Despite these international ambitions for the legal platform, at its inception the DIFC Court had a limited jurisdiction to hear arbitration cases, due to the precondition that there must be a direct connection to its physical jurisdiction.⁸ Following an amendment in 2011, the DIFC Court's geographic constraints were lifted.⁹ Arbitration was no longer limited to instances where the parties had a direct connection with DIFC, as an 'opt-in' option was available for those seeking to have matters arbitrated there.¹⁰ The DIFC courts have been

¹ Ali Khaled, 'How DIFC Courts Has Helped Connect the UAE's Legal System', *Arabian Business* (online, 11 June 2017) <<http://www.arabianbusiness.com/the-court-of-public-opinion-676522.html>>, archived at <<https://perma.cc/NLJ3-KPJZ>>; Zain Al Abdin Sharar and Mohammed Al Khulaifi, 'The Courts in Qatar Financial Centre and Dubai International Financial Centre: A Comparative Analysis' (2016) 46(2) *Hong Kong Law Journal* 529, 553.

² Sharar and Khulaifi (n 1).

³ 'Money for Old Laws: New International Courts in Dubai Are Giving British Legal Firms a Boost', *The Economist* (online, 14 December 2013) <<https://www.economist.com/news/business/21591583-new-international-courts-dubai-are-giving-british-legal-firms-boost-money-old-laws>>, archived at <<https://perma.cc/6FRR-ERMV>>.

⁴ *Ibid.*

⁵ *Ibid.*; Dalma R Demeter and Kayleigh M Smith, 'The Implications of International Commercial Courts on Arbitration' (2016) 33(5) *Journal of International Arbitration* 441, 444.

⁶ Christopher A Whytock, 'Litigation, Arbitration, and the Transnational Shadow of the Law' (2008) 18(2) *Duke Journal of Comparative and International Law* 449, 458, quoting Tom Carbonneau, 'The Remaking of Arbitration: Design and Destiny' in Thomas E Carbonneau (ed), *Lex Mercatoria and Arbitration: A Discussion of the New Law Merchant* (Juris Publishing, rev ed, 1998) 23, 23. But see Theodore Eisenberg and Geoffrey P Miller, 'The Flight from Arbitration: An Empirical Study of Ex Ante Arbitration Clauses in the Contracts of Publicly Held Companies' (2007) 56(2) *DePaul Law Review* 335, 373–4.

⁷ Demeter and Smith (n 5) 441–2.

⁸ See, eg, *Protocol of Jurisdiction*, Dubai Courts–DIFC Courts, signed 7 December 2009 (Memorandum of Understanding) <<https://www.difccourts.ae/2009/12/07/protocol-jurisdiction-difc-courts-dubai-courts/>>, archived at <<https://perma.cc/V35Y-GUM7>>.

⁹ *Law No 16 of 2011 Amending Certain Provisions of Law No 12 of 2004 concerning Dubai International Financial Centre Courts* (Dubai) art 5(A)(1)(b) ('*Law No 16 of 2011*').

¹⁰ *Law No 12 of 2004 in Respect of the Judicial Authority at Dubai International Financial Centre* (Dubai) art 5(A)(2) ('*Law No 12 of 2004*'), which provides that

empowered to hear, inter alia, any matter related to civil or commercial disputes where this forum has received jurisdiction through a contractual term agreed upon between the concerned parties.¹¹

Along with these changes came a partnership with the London Court of International Arbitration ('LCIA') that created the DIFC-LCIA Arbitration Centre, another arm of the Dispute Resolution Authority. This partnership ensures that in arbitral matters, the standards of LCIA will be applied and then blended with the regional knowledge that DIFC brings into the equation.¹² It is our contention that the benefits of this arrangement are oriented mostly towards DIFC, as they are a relatively new player in the arbitration world, and that the arrangement provides an established pedigree to this new dispute resolution forum. Such an arrangement lends legitimacy to DIFC. However, the partnership is also useful to LCIA as it reinforces its international role as a respected and pre-eminent seat of international commercial arbitration hearings.¹³

DIFC is seeking to craft a position for itself in the lucrative business of transnational dispute resolution through the creation of a model that is hybrid in nature.¹⁴ The DIFC Dispute Resolution Authority comprises the DIFC Court, the DIFC-LCIA Arbitration Centre, the DIFC Wills and Probate Registry and an Academy of Law.¹⁵ International commercial arbitrations can be a profitable business, with the number of commercial arbitrations growing rapidly.¹⁶ The majority of the costs related to bringing an action in DIFC are listed as percentages of the judgement or claims, as well as standard fees.¹⁷ This fee arrangement needs to be put into a commercial context. There was a total of AED5.8 billion (USD1.59 billion) in total value for all the arbitration cases heard through DIFC in 2016.¹⁸ Therefore, even a small percentage of this figure indicates a serious revenue stream, with significant room for growth as will be seen later.

II DUBAI AS AN EXEMPLAR OF TRANSNATIONAL LEGALITIES

In order to understand the role that DIFC is trying to play in the Middle East and Indian Ocean regions, and its role within the emerging architecture of Inter-Asian legalities, it is useful to clarify the transnational legal arrangements that it

[t]he Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions.

¹¹ *Law No 16 of 2011* (n 9) art 5(A)(1)(b).

¹² See 'Overview', *DIFC-LCIA Arbitration Centre* (Web Page, 2018) <<http://www.difc-lcia.org/overview.aspx>>, archived at <<https://perma.cc/R654-S5UT>> ('Overview').

¹³ *Ibid.*

¹⁴ Demeter and Smith (n 5) 442.

¹⁵ 'Overview' (n 12).

¹⁶ Stephan Wilske, 'The Global Competition for the "Best" Place of Arbitration for International Arbitrations: A More or Less Biased Review of the Usual Suspects and Recent Newcomers' (2008) 1(1) *Contemporary Asia Arbitration Journal* 21, 23.

¹⁷ DIFC Courts, *Practice Direction No 2 of 2019: DIFC Courts Fees Amendment*, 13 March 2019, art 1.

¹⁸ Sarah Townsend, 'DIFC Courts Records \$1.59bn of Cases in 2016, up 5%', *Arabian Business* (online, 1 February 2017) <<https://www.arabianbusiness.com/difc-courts-records-1-59bn-of-cases-in-2016-up-5-661773.html>>, archived at <<https://perma.cc/RQ9T-DBAJ>>.

operates within. When we talk of these transnational legal arrangements, they involve managing complex multi-layered regulatory, cultural and commercial realities. This emerging legal reality often relies, to a degree, on the laws and institutions of state jurisdictions, while also carving out privatised transnational legal spaces bound together through contractual (and relational) obligations that weave their way within, and beyond, international law. As Terence C Halliday and Gregory Shaffer suggest, '[l]egal norms that become transnational can originate inside or outside of the nation-state'.¹⁹ These transnational legal relationships arise and are enforced through legal instruments and regulatory obligations, as well as social and commercial influences. These arrangements are mediated and documented by actors, particularly transnational corporate lawyers and the global law firms in which they work. It is this multi-layered transnational, and transsystemic, legal order which incorporates state and non-state legal and commercial connections. This legal ecosystem creates the connective tissue of transnational law and Inter-Asian legalities discussed throughout this article.²⁰

The transnational corporate lawyers and the global law firms that they work in provide a gravitas and cache to commercial and legal relationships that act as guarantees to the quality of the cross-border transactions and dispute resolution mechanisms.²¹ These law firms have developed over the last century initially starting in global (and well-established) cities of commerce, such as London, New York and Paris, however, these have spread and taken firm root over the last two decades across Asia and the Middle East. These global law firms have created networks from these commercial centres, from New York and London, to Dubai and Singapore and then onwards to cities, such as Hong Kong and Shanghai.²² It is these networks and the transnational law they apply that creates an Inter-Asian legal ecosystem. Transnational corporate lawyers acted as guarantors of the transnational fabric of law and governance.²³ Dubai, and DIFC particularly, act as an important example of how this new legal environment operates.

These transnational corporate lawyers working within this complex transnational legal environment are therefore confronted with challenging interconnected legal realities that are transforming local circumstances and

¹⁹ Terence C Halliday and Gregory Shaffer, 'Transnational Legal Orders' in Terence C Halliday and Gregory Shaffer (eds), *Transnational Legal Orders* (Cambridge University Press, 2015) 3, 19.

²⁰ See Yves Dezalay and Bryant G Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press, 1996) vii–viii, 3–4.

²¹ See *ibid.* Yves Dezalay and Bryant Garth's seminal book examines the manner by which lawyers create social capital through their skills and placement within the legal services market.

²² See generally JV Beaverstock, PJ Taylor and RG Smith, 'The Long Arm of the Law: London's Law Firms in a Globalising World Economy' (1999) 31(10) *Environment and Planning A: Economy and Space* 1857; Sida Liu, 'The Legal Profession as a Social Process: A Theory on Lawyers and Globalization' (2013) 38(3) *Law and Social Inquiry* 670, 679.

²³ See John Flood and Fabian Sosa, 'Lawyers, Law Firms, and the Stabilization of Transnational Business' (2008) 28(3) *Northwestern Journal of International Law and Business* 489, 493. See also John Flood, 'Institutional Bridging: How Large Law Firms Engage in Globalization' (2013) 54(3) *Boston College Law Review* 1087, 1089 ('Institutional Bridging').

reshaping modes of Inter-Asian legal connection. This situation is neither clean nor tidy. For instance, Churchill Mining, a London-based publicly listed company, had a large Kalimantan mining concession that came into dispute when the local political elite became dissatisfied with the profit-sharing arrangements. This led to the concession being terminated at a projected loss of USD100 million to Churchill Mining annually.²⁴ They sought legal redress in Indonesia's domestic courts and then took the matter to international commercial arbitration. Both of these litigation strategies, at the local and transnational levels, failed to reinstate the mining concession or bring them any compensation.²⁵

These kinds of disputes and the mercantile arrangements that bond local, national, and international interests together commercially and legally are creating the new legal architecture across Asia (and beyond). The Churchill example illuminates the privatised — and fraught — manner that globalisation blends into local legal norms, domestic legal regimes and commercial activities that cross borders to create a new mode of *lex mercatoria* (law of traders) that is built on private contractual relationships while simultaneously being governed by domestic and international legal orders.²⁶

The Inter-Asian legalities, which form the core of this article, are not new. The idea of law and its transmission through legally binding private arrangements, spreading across the Indian Ocean and then through trade routes into East Asia, has been an important element of Inter-Asian connections for hundreds of years. Although such arrangements involved legal intermediaries exchanging private legal documents/contracts, it was often Muslim religious scholars rather than transnational corporate lawyers, who prepared and interpreted these documents.²⁷ The nature of the intermediaries has changed but the patterns of cross-border legal relationships, which jump jurisdictional boundaries on the back of commercial contracts and other legal instruments, is nothing new. With this all said, in order to manage this new legal environment, the need for highly skilled legal practitioners and service providers has grown in places such as Dubai, Singapore and Shanghai. In the next section, we will consider the social and physical infrastructure that is being developed to facilitate the legal services that support global commerce.

III GARRISON TOWN

Dubai is creating a legal services hub that houses large numbers of lawyers who can and do have the whole region, and beyond, as their sphere of operation.

²⁴ See *Churchill Mining plc v Indonesia (Decision on Annulment)* (ICSID Arbitral Tribunal, Case Nos ARB/12/14 and ARB/12/40, 18 March 2019) [141], [230].

²⁵ *Ibid* [4]–[6], [266].

²⁶ See generally Galf-Peter Calliess and Peer Zumbansen, *Rough Consensus and Running Code: A Theory of Transnational Private Law* (Hart Publishing, 2010).

²⁷ See, eg, Fahad Ahmad Bishara, 'Paper Routes: Inscribing Islamic Law across the Nineteenth-Century Western Indian Ocean' (2014) 32(4) *Law and History Review* 797; Michael Laffan, *The Makings of Indonesian Islam: Orientalism and the Narration of a Sufi Past* (Princeton University Press, 2011).

These global and regional law firms ‘garrison’ their lawyers in Dubai,²⁸ deploying them, and utilising their skills from this hub across the region as necessary, hence the notion of calling this a ‘garrison town’. No longer do we have walled towns just protected by trained soldiers or mercenaries. Garrison towns are now secured by a phalanx of lawyers and other allied professional services providers, such as management consultants. Globalisation has forced the creation of a social space that allows for transnational communities to emerge.²⁹ In part, the garrison town has developed in order to respond to the global law firm which quickly emerged in the 1990s.³⁰ Although several countries prevent foreign lawyers from advising on local law, this is not an impediment to the formation of garrison towns as transnational law governs the majority of global financial and corporate transactions.³¹ When interviewing corporate and arbitration lawyers in Dubai in 2015, Jeremy Kingsley, one of the authors, found them almost universally speaking of international best practice law. When pressed on what this meant, the corporate lawyers interviewed all noted that this was a legal relationship defined by contract law, with English (or New York) law as choice of law.³²

Dubai, and DIFC particularly, have sought to become a professional services hub for an array of industries, from management consulting to law firms. In order to attract multinational businesses and the best professional talent, this Gulf city has developed high quality infrastructure, like Dubai International Airport, and the provision of a variety of expatriate services, such as international schools. Due to the quality of infrastructure and expatriate services, Dubai is becoming a hub for global law firms to house their Middle East and North African (‘MENA’) operations. It is necessary to provide appropriate infrastructure for these foot soldiers as they are the ‘prime assets’ of their international law firms, serving as the “‘face” of the firm’.³³ Beyond increasing the appeal for professionals to live long-term in Dubai, these modern facilities and infrastructure allow for the deployment of ‘little armies of lawyers’ who take

²⁸ Global law firms, such as Clifford Chance, Jones Day and White & Case, all have offices in the Dubai International Financial Centre (‘DIFC’): ‘Clifford Chance LLP’, *Dubai International Financial Centre* (Web Page, 2019) <<https://www.difc.ae/public-register/clifford-chance/>>, archived at <<https://perma.cc/3V2Q-E8RX>>; ‘Jones Day’, *Dubai International Financial Centre* (Web Page, 2019) <<https://www.difc.ae/public-register/jones-day/>>, archived at <<https://perma.cc/WGM7-AGXJ>>; ‘White & Case LLP’, *Dubai International Financial Centre* (Web Page, 2019) <<https://www.difc.ae/public-register/white-case/>>, archived at <<https://perma.cc/WA3H-8WCV>>. Major regional law firm, Al Tamimi & Co, also has an office in DIFC: ‘Al Tamimi & Co Corporate Services Limited’, *Dubai International Financial Centre* (Web Page, 2019) <<https://www.difc.ae/public-register/al-tamimi-co-corporate-services/>>, archived at <<https://perma.cc/JJ5C-BUM5>>.

²⁹ Jonathan V Beaverstock, “‘Managing across Borders’: Knowledge Management and Expatriation in Professional Service Legal Firms” (2004) 4(2) *Journal of Economic Geography* 157, 158, quoting Glenn Morgan ‘Transnational Communities and Business Systems’ (2001) 1(2) *Global Networks* 113, 118.

³⁰ Eve Darian-Smith, ‘Global Law Firms in Real-World Contexts: Practical Limitations and Ethical Implications’ (2015) 6(1) *Beijing Law Review* 92, 93.

³¹ *Ibid* 94.

³² See John Flood, ‘Legal Education, Globalization, and the New Imperialism’ in Fiona Cownie (ed), *The Law School: Global Issues, Local Questions* (Ashgate, 1999) 127, 130.

³³ Beaverstock (n 29) 166.

up residence across the region for short stints of time.³⁴ Enticing the movement of lawyers — and their knowledge base — can also be a difficult task as these lawyers fear they may lose the social capital that they have accumulated when they move to networks that are away from the major centres of activity, such as New York or London.³⁵

Lawyers who are garrisoned in Dubai are able to better engage in the arbitration options available in the region because practitioners gain expertise in the law where they are based.³⁶ The global law firm develops and retains knowledge in each unit throughout its decentralised and relatively self-sufficient local operations.³⁷ Embracing transnational practice arguably also allows for consistent best practice advice to be offered to clients,³⁸ which necessitates managing location benefits and regional predilections rather than leaving these advantages to local firms. It is necessary to engage within the region in order to capture and coordinate transactions that operate within networks of relationship-based structures, such as ethnic and religious networks. This guarantees that expectations are met in preference to a strict interaction with domestic legal structures, which can be unfamiliar and often offer sub optimal outcomes.³⁹

In its quest to sustain the growth of DIFC beyond the immediate future, the DIFC Academy of Law has offered scholarships to entice leading young legal minds to Dubai.⁴⁰ These scholarships have been created with the aim of educating law students about the non-standard operation that this legal platform uses and how to operate in both Dubai's civil and DIFC's common law jurisdictions. These scholarships were not limited to local scholars but have been offered globally.⁴¹ The reach of the scholarship program highlights the global aspirations of DIFC and its desire to attract the next generation of transnational lawyers. It also showcases the potential influence of a privatised transnational space on the legal education sector.⁴²

As mentioned earlier, DIFC is seeing success through its innovations, such as the 'Small Claims Tribunal', which was established in 2007. The Tribunal of limited, but unique, arbitral jurisdiction is able to hear matters relating to registered bodies in DIFC or related to contracts involving DIFC where the

³⁴ Wilske (n 16) 28–9.

³⁵ Liu (n 22) 679.

³⁶ Wilske (n 16) 28.

³⁷ Beaverstock (n 29) 160.

³⁸ See generally Christopher J Whelan, 'The Paradox of Professionalism: Global Law Practice Means Business' (2008) 27(2) *Penn State International Law Review* 465.

³⁹ Flood and Sosa (n 23) 493. See also Flood, 'Institutional Bridging' (n 23) 1104–5.

⁴⁰ See, eg, 'A Helping Hand: DIFC Academy of Law Scholarship Programme 2018', *Dispute Resolution Authority Academy of Law* (Web Page, 30 October 2018) <<https://www.scholarshipsin.org/scholarship/helping-hand-difc-academy-law-scholarship-programme-2018-402826>>, archived at <<https://perma.cc/XQ4D-RMHY>>.

⁴¹ See, eg, 'DIFC Academy Launches Law Scholarships', *Trade Arabia* (online, 5 June 2017) <http://www.tradearabia.com/news/EDU_325957.html>, archived at <<https://perma.cc/NTX2-96UA>>; 'DIFC Launches Scholarship for Law Students', *Khaleej Times* (online, 5 June 2017) <<http://www.khaleejtimes.com/business/economy/difc-launches-scholarship-for-law-students>>, archived at <<https://perma.cc/E6ES-MDG9>>.

⁴² See generally Liu (n 22).

amount of the claim does not exceed AED500,000 (USD136,115).⁴³ Where parties opt in to the DIFC jurisdiction, this limit is extended to AED1 million (USD272,243).⁴⁴ The bulk of cases heard by DIFC at the moment are in this category of ‘small claims’ matters.⁴⁵ There were only 14 larger arbitration cases heard in 2016, in comparison to the 217 heard in the Small Claims Tribunal.⁴⁶

In a 2017 survey undertaken by the DIFC Dispute Resolution Authority’s Academy of Law, over half of the 122 commercial legal practitioners surveyed, who deal with cross-border transactions in the Middle East, preferred English law as the governing law used for transactions. Of the remaining responses, DIFC law was only slightly preferred over United Arab Emirates (‘UAE’) law.⁴⁷ Despite a preference for English law, the survey found that DIFC was more preferred as a venue for dispute resolution than the United Kingdom.⁴⁸ The survey also showed that over half of the practitioners were likely to use the DIFC opt-in jurisdiction clause.⁴⁹ This appears to be a positive indicator for DIFC as a global legal platform, but in reality this survey has limited use in illustrating the actual preferences of the practitioners operating in DIFC, as the survey only involved 122 of the 658 registered legal practitioners in DIFC.⁵⁰ With this said, it does indicate the supremacy of Anglo-American common law within DIFC and that this is considered by many to be a default for international best practice.⁵¹

DIFC’s global legal platform rests, as will be discussed in the next section, on significant technological innovations, which have altered the infrastructure that is used to provide legal services. These advances to physical and technological infrastructure, such as those related to transport, communications and data management, are not just changing the operation of law in MENA, but rather

⁴³ DIFC Authority, *DIFC Authority Annual Review 2015* (Report, 2015) 49 <https://www.difc.ae/files/6014/6641/8043/DIFC_Authority_Annual_Review_2015.PDF>, archived at <<https://perma.cc/PQ43-C3XM>>. This currency conversion is based on the AED to USD exchange rate as at 12 July 2019: ‘United Arab Emirates Dirhams (AED) to US Dollars (USD) Exchange Rate for July 12, 2019’, *Exchange-Rates.org* (Web Page) <<https://www.exchange-rates.org/Rate/AED/USD/7-12-2019>>, archived at <<https://perma.cc/CBM4-6T7A>> (‘AED to USD’).

⁴⁴ See ‘Small Claims Tribunal’, *DIFC Courts* (Web Page, 2017) <<http://difccourts.ae/small-claims-tribunal/>>, archived at <<https://perma.cc/V4T3-4A88>>. This currency conversion is based on the AED to USD exchange rate as at 12 July 2019: ‘AED to USD’ (n 43).

⁴⁵ DIFC Courts, *DIFC Courts Annual Review 2013* (Report, 2014) 7 <<https://www.difccourts.ae/wp-content/uploads/2017/10/DIFCAnnualReport2013.pdf>>, archived at <<https://perma.cc/8Z8J-SG4B>>.

⁴⁶ DIFC Courts, *Annual Review 2016* (Report, 2017) 20–1 <<https://www.difccourts.ae/wp-content/uploads/2017/10/DIFC-Annual-Review-2016.pdf>>, archived at <<https://perma.cc/RL5R-9GJE>>.

⁴⁷ DRA Academy of Law, *Study on Governing Law & Jurisdictional Choices in Cross-Border Transactions* (Study, 1 January 2017) 4 <https://www.draacademy.ae/files/9315/1867/1980/Study_on_Governing_Law_Jurisdictional_Choices_in_cross-border_transactions.pdf>, archived at <<https://perma.cc/S5NN-F68W>>.

⁴⁸ *Ibid* 6.

⁴⁹ *Ibid* 7.

⁵⁰ See *ibid* 1; Dubai International Financial Centre Courts, *Fact Sheet: Full Year 2016* (Fact Sheet, March 2017) 2 <https://issuu.com/difccourts/docs/difc_2017_factsheet_aw_online?e=29076707/47115918>, archived at <<https://perma.cc/J3UE-XJD3>>.

⁵¹ James R Faulconbridge et al, ‘Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work’ (2008) 28(3) *Northwestern Journal of International Law and Business* 455, 460.

these are part of a global transformation of what it means to be a lawyer and the way that legal practice is undertaken.

IV TECHNOLOGY'S LEGAL EMPIRE

One of the predominant factors that has enabled the development of a global legal platform in Dubai has been the incorporation of technology into legal services and international dispute resolution processes. DIFC has actively sought to operationalise these technological opportunities. For instance, the filing of documents in the DIFC Courts can be done with ease and speed from a computer or even a mobile device.⁵² The ability to file a document from anywhere in the world, rather than having to lodge documents physically, serves to de-territorialise the originating stages of a legal action.⁵³ A paperless office and web-based case management allow a case to be monitored from anywhere in the world with ease. This results in better speed, clarity and simplicity of proceedings, which are all benefits that arguably contribute to making the jurisdiction an increasingly appealing destination for those seeking a transnational legal platform for adjudication of disputes.

Beyond web-based case management, some proceedings can be conducted without the need for parties to step foot within the physical jurisdiction of DIFC. The Small Claims Tribunal can be conducted virtually, with participants beamed in through a secure video conferencing service.⁵⁴ This encourages the resolution of less financially significant cross-border transactions which might otherwise not have been pursued, but rather written off, due to the usually high costs of bringing arbitration proceedings weighed against the financial benefit of success.⁵⁵ This virtual courtroom allows DIFC to be what is effectively a de-territorialised digital arbitral court, meaning that parties need not even be physically present for proceedings. Without question this reduces costs and makes the process more accessible.

There are definite commercial reasons for promoting the legal services market in Dubai through the use of technological advances. For the outside observer, it is not just the development of a global legal platform that is important. One needs to understand that the platform exists within larger networks and legal relationships. For example, Dubai is woven into Inter-Asian legal networks and relationships. The next section will consider the transforming Inter-Asian legal

⁵² See 'General Guidelines for Electronic Bundles in the DIFC Courts', *DIFC Courts* (Web Page, 2019) <<http://difccourts.ae/e-bundle/>>, archived at <<https://perma.cc/DFM6-N6YE>>.

⁵³ Electronic filing is available via email at the Singapore International Arbitration Centre, via email with an accompanied hard copy at the International Chamber of Commerce or through the online portal at the London Court of International Arbitration: *Arbitration Rules of the Singapore International Arbitration Centre* (2016) r 3.1(b); 'Filing a Request', *International Chamber of Commerce* (Web Page) <<https://iccwbo.org/dispute-resolution-services/arbitration/filing-a-request/>>, archived at <<https://perma.cc/3A6M-N3R8>>; London Court of International Arbitration, *Practice Note: LCIA Notes for Parties*, 18 August 2017, [28] <<https://www.lcia.org/adr-services/lcia-notes-for-parties.aspx>>, archived at <<https://perma.cc/9HPK-RNWB>>.

⁵⁴ Sarah Townsend, 'DIFC Courts to Launch GCC's First "Virtual Court"', *Arabian Business* (online, 20 July 2016) <<http://www.arabianbusiness.com/difc-courts-launch-gcc-s-first-virtual-court--639255.html>>, archived at <<https://perma.cc/WF4Y-FTD7>>.

⁵⁵ See *ibid.*

architecture in detail and how these connections and interactions reflect the application of transnational law.

V AN INTER-ASIAN LEGAL MINDSET

DIFC is emulating and extending existing regionally connected legal spaces. It is now weaving its way into the regional (Inter-Asian) legal architecture and has become a part of the larger global legal architecture that is being woven within and outside of privatised legal spaces and the laws of nation states (and international law). For centuries, West Asia (otherwise known as the Middle East), and in particular the Gulf States, have been connected socially and commercially through the Indian Ocean to East, South and Southeast Asia.⁵⁶ Over the past few decades these connections have been developing, and as mentioned earlier, reconfiguring.

All too often legal scholars and educators ignore the intricate new transnational, and often transsystemic, legal spaces where lawyers must successfully navigate multiple legal regimes and requirements, at any given time. One of the strengths of Dubai's global legal platform is that it expressly recognises this reality and creates a legal infrastructure that tries to facilitate a transsystemic, or multi-layered, legal order. DIFC is operating, and marketing its arbitration activities, in a similar vein to the Singapore International Commercial Court, to overcome issues such as the joining of third parties, which have resulted in unsatisfactory results for parties wishing to engage in arbitration elsewhere in the world.⁵⁷ DIFC is seeking to further integrate into the global system along with others in the Asian region and this has resulted in the escalation of competition for participants in international arbitration.⁵⁸

The appointment of the immediate former Chief Justice of DIFC, the Hon Michael Hwang SC from Singapore,⁵⁹ is an embodiment of DIFC trying to create a global platform. In some ways, it reflects a recognition of Singapore's successful creation of a global legal platform. Mr Hwang SC brought his extensive legal experience to DIFC, which was of the highest pedigree and something this global platform needed in order to create legitimacy of legal rule and process, which is essential to promote growth.⁶⁰ Recognised institutional experience and legal pedigree are attributes that a global platform seeks to capture, with an appointee required to have held a high judicial office in any jurisdiction recognised by the government of the UAE, as well as having significant experience as a qualified lawyer or judge in the common law system.⁶¹ Presiding judges primarily come from common law jurisdictions, with

⁵⁶ See generally Laffan (n 27) 3–6; Bishara (n 27).

⁵⁷ Demeter and Smith (n 5) 444–5.

⁵⁸ Wilske (n 16) 24, citing Graeme Johnston, 'The Best Providers for Asian Arbitrations' (2007) 2(6) *Global Arbitration Review* 13, 13.

⁵⁹ 'Dr Michael Hwang SC', *International Dispute Resolution Academy* (Web Page, 2016) <<https://idracademy.org/dr-michael-hwang>>, archived at <<https://perma.cc/SA47-DK5N>>.

⁶⁰ The importance of reputation and status for transnational lawyers, particularly for arbitrators, is identified in Dezalay and Garth (n 20) 8–9, ch 2.

⁶¹ See 'Court Structure', *DIFC Courts* (Web Page, 2019) <<https://www.difccourts.ae/court-structure/>>, archived at <<https://perma.cc/EXD4-P843>>.

the majority from Australia, Malaysia, Singapore and the UK.⁶² These international roots and judicial pedigree are arguably essential in order to continue to entice parties to DIFC, as judges are appointed by this arbitral body to a particular case and parties are not given a choice in this selection.⁶³

The legal infrastructure that underpins transnational legal activities needs intermediaries and brokers who create legitimacy for these Inter-Asian legal connections. They create an integral element of the global legal architecture. Mr Hwang SC is a great example of a practitioner of the region with significant social cache and professional pedigree. The transnational lawyers and arbitrators operating in Dubai are intermediaries between commercial, political and social interests that span from Tokyo through to Dubai and beyond. These legal hubs create the Inter-Asian legal network. The network is underpinned by an intricate series of commercial relationships that span Asia and require documentation and formalisation. Those who draft and adjudicate these commercial relationships provide legitimacy to the process.

The personnel of the DIFC Court highlights an attempt to centralise legal talent. These personnel allow businesses and governments to take comfort in this node of the Inter-Asian legal architecture. The creation of this legal hub over the past two decades allows a new legal ecosystem to become solidified across Asia that gives effect to the reconfiguration of legal and commercial networks.

DIFC is creating an emerging global legal hub. However, it still has a long way to go before it becomes a truly pivotal legal hub. For instance, it only has 36 of the top 100 global law firms in the world.⁶⁴ While Singapore has 42 of the top 100 global law firms, Hong Kong is even more established with 61 of these firms. The differential looks even starker if you compare Dubai to the two epicentres of transnational legal services, London and New York, with 85 of the firms having offices in London and 93 in New York.⁶⁵ Yet, it would be unwise not to recognise the regional legal hubs developing in Asia as they significantly affect global legal connections. Further to this, the development of legal hubs, such as Dubai, Hong Kong and Singapore, have, and will continue to, lead to a revolution in global legal services through a diffusion of both legal service providers and talent. For instance, DIFC provides a garrison town where foot soldiers, or administrators of globalisation, have a base in the MENA region. This fortification of legal services has seen a professionalisation of the legal environment, with the DIFC Courts requiring practitioners to be registered with DIFC and the implementation of a Mandatory Code of Conduct for Legal Practitioners.⁶⁶

⁶² 'Judges', *DIFC Courts* (Web Page, 2019) <<https://www.difccourts.ae/court-structure/judges/>>, archived at <<https://perma.cc/H9VP-7AQF>>. As of 2016 seven out of the ten judges were from these international jurisdictions: see Demeter and Smith (n 5) 446–7.

⁶³ Demeter and Smith (n 5) 446.

⁶⁴ This data is compiled from the official website of each of the top 100 firms of 2016 based on gross revenue: 'The Global 100', *The American Lawyer* (Web Page, 26 September 2016) <<https://www.law.com/americanlawyer/almID/1202767838452/>>, archived at <<https://perma.cc/4TW9-G8ZJ>>.

⁶⁵ *Ibid.*

⁶⁶ Demeter and Smith (n 5) 447.

Another way to judge the place of Dubai in the transnational legal architecture is to see how it compares to other more established arbitration centres. In all honesty, Dubai, and DIFC more particularly, are yet to perform at a similar level to their international and regional competitors. The LCIA has heard close to 300 new arbitration cases per year since 2013.⁶⁷ This number is further dwarfed by the International Court of Arbitration of the International Chamber of Commerce in Paris, which had 966 new arbitration cases filed in 2016.⁶⁸ The traditional dispute resolution forums, including France, Switzerland, the UK and the United States, remain the preference for arbitration matters to be heard.⁶⁹

With this said, it is a little unfair to compare the fledgling DIFC to these well-established arbitration centres. However, in comparing DIFC to regional rivals such as Singapore's arbitral body, the Singapore International Arbitration Centre ('SIAC'), it still fails to perform at the same level as SIAC, which heard 402 new cases in 2018.⁷⁰ Even when combining the DIFC courts and the Dubai International Arbitration Centre ('DIAC'), the figures generally reflect less than 300 new arbitration cases per year.⁷¹ Significantly, these figures may in future be considered together, as DIAC has recently established an office in the offshore DIFC in light of a potential shifting towards DIFC as the default seat for DIAC arbitration proceedings.⁷² Despite this, it is clear from the figures that Dubai has a significant arbitration scene; however, it has a long way to go before it becomes a pre-eminent global arbitral centre. We argue that DIFC's role is as an important new legal services hub that connects to a network of Asian cities, such as Mumbai, Shanghai and Singapore, which creates an Inter-Asian legal ecosystem.

⁶⁷ Sarah Lancaster, London Court of International Arbitration, *Registrar's Report 2015* (Report, 2015) 1 <<http://www.lcia.org/LCIA/reports.aspx>>, archived at <<https://perma.cc/T8NW-9CN6>>.

⁶⁸ International Chamber of Commerce, 'ICC Reveals Record Number of New Arbitration Cases Filed in 2016' (Media Release, 18 January 2017) <<https://iccwbo.org/media-wall/news-speeches/icc-reveals-record-number-new-arbitration-cases-filed-2016/>>, archived at <<https://perma.cc/2QUT-VMTX>>.

⁶⁹ Wilske (n 16) 30–1.

⁷⁰ Singapore International Arbitration Centre, *Annual Report 2018* (Report, 2018) 14 <http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_AR2018-Complete-Web.pdf>, archived at <<https://perma.cc/3N4T-TZ6W>>. See also Hong Kong International Arbitration Centre, *Annual Report 2017* (Report, 2017) 9 <https://www.hkiac.org/sites/default/files/annual_report/2017%20HKIAC%20Annual%20Report%203469-5010-8172%20v.1.pdf>, archived at <<https://perma.cc/Q8R4-4WE3>>; Markus Altenkirch and Nicolas Gremminger, 'Parties' Preferences in International Arbitration: The Latest Statistics of the Leading Arbitral Institutions', *Global Arbitration News* (Web Page, 5 August 2015) <<https://globalarbitrationnews.com/parties-preferences-in-international-arbitration-the-latest-statistics-of-the-leading-arbitral-institutions-20150805/>>, archived at <<https://perma.cc/7Z8J-4P46>>.

⁷¹ Dubai Chamber of Commerce and Industry, *Future Ready Dubai: Annual Report 2017* (Report, 2017) 71; Alec Emmerson and Robert Stephen, 'DIFC-LCIA' in Global Arbitration Review (ed), *The Middle Eastern and African Arbitration Review 2018* (Law Business Research, 2018) 35, 35.

⁷² Alain Farhad, 'Two Steps Forward, One Step Back: A Report on the Development of Arbitration in the United Arab Emirates' (2018) 35(1) *Journal of International Arbitration* 131, 142.

VI IS DIFC'S AUTONOMOUS JURISDICTION CRUMBLING?

One of the primary issues that threatens to topple the legal fiction at the heart of DIFC's innovative strategy, which is its jurisdictional autonomy, is the potential erosion of DIFC's autonomous jurisdiction and the blending of this with the domestic jurisdiction. For a judgement from a DIFC court to be enforced outside of DIFC, it must be ratified by an executive judge at the Dubai courts.⁷³ This appears to be merely a rubber stamp which requires a translation into Arabic.⁷⁴ Yet the potentially problematic reality of this subordinate situation has been seen through the 'onshore' Dubai courts challenging the authority of the DIFC Court.

Recently, the decision in *Daman Real Capital Partners Co LLC v Oger Dubai LLC* ('*Daman Real Partners*'),⁷⁵ highlighted how serious the issue of jurisdictional bleeding could be to the crafting of an independent global legal platform in DIFC. In *Daman Real Partners*, proceedings had been commenced in both the DIFC Court, as well as in the local Dubai courts. There was hence a clash of jurisdiction which had to be determined by the Dubai-DIFC Judicial Committee.⁷⁶ This landmark decision established a potential precedent (not in the common law sense) that in cases where proceedings have been simultaneously brought in both jurisdictions, the Dubai courts will have jurisdiction and be the ultimate decision-makers in the matter. This has since been affirmed in *Dubai Water Front LLC v Chenshan Liu*.⁷⁷ Similarly, in the case of *Meydan Group LLC v Banyan Tree Corporate Pte Ltd*,⁷⁸ the Dubai Court of First Instance gave a ruling that purported to define the limits of the DIFC courts' jurisdiction.⁷⁹ This is clearly problematic and speaks to both the subordinate nature of the DIFC courts, as well as a dependence on the Dubai courts, which suggest that DIFC is less de-territorialised than its self-image suggests.

Arguably, an additional complication of DIFC autonomy is that to enforce an arbitral award under the *Convention on the Recognition and Enforcement of Arbitral Awards* ('*New York Convention*'), the award must be treated as being

⁷³ *Law No 12 of 2004* (n 10) art 7(2)–(3). Once a decision is ratified international enforcement is ensured through numerous international treaties as outlined in the DIFC enforcement guidelines: DIFC Courts, *Enforcement Guide 2018* (Report, 2018) 6–7 [25] <https://issuu.com/difccourts/docs/enforcement_guide_combined_single__?e=29076707/61750336>, archived at <<https://perma.cc/7EPV-GYHZ>>.

⁷⁴ *Law No 12 of 2004* (n 10) art 7(2)(b).

⁷⁵ *Daman Real Capital Partners Co LLC v Oger Dubai LLC* (Judicial Tribunal for Dubai Courts and DIFC Courts, Cassation No 1/2016, 19 December 2016).

⁷⁶ The Dubai-DIFC Judicial Committee is also known as the 'Judicial Tribunal' or 'Joint Judicial Committee'. The Committee determines issues of jurisdiction between the Emirati and DIFC Courts and was established by *Decree No 19 of 2016* (Dubai) art 1: Gordon Blanke, 'The Dubai-DIFC Judicial Committee and DIFC Conduit Jurisdiction: A Sequel in Four Parts — Game Over? (Part 4)', *Kluwer Arbitration Blog* (Blog Post, 16 October 2017) <<http://arbitrationblog.kluwerarbitration.com/2017/10/16/dubai-difc-judicial-committee-difc-conduit-jurisdiction-sequel-four-parts-game-part-4/>>, archived at <<https://perma.cc/MN8T-NZE6>>.

⁷⁷ *Dubai Water Front LLC v Chenshan Liu* (Judicial Tribunal for Dubai Courts and DIFC Courts, Cassation No 2/2016, 19 December 2016) 6.

⁷⁸ *Meydan Group LLC v Banyan Tree Corporate Pte Ltd* (Unreported, Dubai Court of First Instance, Case No 1619/2016).

⁷⁹ The DIFC Court's jurisdiction is established in *Law No 12 of 2004* (n 10) art 5.

made in a contracting state.⁸⁰ The problem is that it is Dubai, and not the DIFC, which is considered to be the contracting state under the *New York Convention*.⁸¹ DIFC's autonomy is therefore curtailed as it requires ratification of its decisions in Dubai domestic courts in order to be enforced.⁸² Indeed, the Dubai Court of First Instance enforced two London arbitral awards in 2011 and stated then that its role was supervisory in so much as they were required to ensure there was no 'conflict with the Federal Decree under which the UAE acceded to the *New York Convention*'.⁸³

Going to domestic Emirati courts is not an implicit problem, but it does challenge the notion of DIFC as an unfettered independent global platform. Arguably, this reality is just an acknowledgement of transnational legal realities that weave domestic, international and privatised legal spaces together. The practical challenges that arise from this issue relate to the enforcement of an arbitral award, which is pivotal to the continued operation of DIFC as a global legal platform. In order to fall within the parameters of the *New York Convention*, the decision needs to have been issued in a genuine alternative to the jurisdiction of the domestic court,⁸⁴ which will not be possible should the Dubai courts continue to challenge the authority of DIFC. Domestic courts need to be seen as providing legal support and not competition to DIFC. This is directly related to the incentive parties have to use particular arbitral institutions, such as DIFC, for transnational commercial disputes. Essentially, parties want a high degree of certainty that enforcement is likely, before commencing any dispute resolution process.⁸⁵ They wish to engage in a more privatised system of governance for regulating transnational disputes over the public judicial forum.⁸⁶ DIFC is well poised to provide this certainty and privatised system, provided it maintains its marketable reputation for keeping its commitments, and is not further curtailed by the Dubai courts.⁸⁷

VII CONCLUSION

DIFC is developing into a global legal (and services) platform; however, it is still in the formative stages of this ambitious task. Dubai, and DIFC, provide many regional and international businesses a point of entry into MENA and a safe harbour from which to operate. During these turbulent times in MENA, this role as a safe, and productive, business environment is useful in and of itself. As political and social affairs settle down in the region, the real question is how

⁸⁰ See *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, opened for signature 10 June 1958, 330 UNTS 3 (entered into force 7 June 1959) art III.

⁸¹ See Whytock (n 6) 450, 464.

⁸² See, eg, *Marin Logistics Solutions LLC v Wadi Woraya LLC* (Judicial Tribunal for Dubai Courts and DIFC Courts, Cassation No 3/2016, 19 December 2016) 3; *Gulf Navigation Holding PJSC v DNB Bank ASA* (Judicial Tribunal for Dubai Courts and DIFC Courts, Cassation No 5/2016, 19 December 2016).

⁸³ Farhad (n 72) 135–6, quoting *Macsteel International LLC v Airmech Dubai LLC* (Unreported, Dubai Court of First Instance, Case No 268/2010, 12 January 2011).

⁸⁴ Demeter and Smith (n 5) 456, citing Loukas A Mistelis and Domenico di Pietro, 'New York Convention, Article I [Scope of Application]' in Loukas A Mistelis (ed), *Concise International Arbitration* (Kluwer Law International, 2nd ed, 2015) 3, 4.

⁸⁵ Demeter and Smith (n 5) 466–7.

⁸⁶ See Whytock (n 6) 455.

⁸⁷ See *ibid* 466.

important Dubai will become as a commercial centre, stimulating the rebuilding and economic rejuvenation of the region. This is where enormous opportunity lies.

It is clear that DIFC has not yet been fully embraced by international commercial actors, nor global law firms. With this said, it should be recognised that Dubai has made significant strides to add legal substance to its impressive built environment. Despite many challenges, DIFC should be watched to see how, in the coming years, it influences the global legal services infrastructure, and meshes itself into a rapidly changing Inter-Asian legal ecosystem.