

Watch Out! the Domestic jurisdiction of the Emirate of Dubai is a matter of Public order

Sherif Hikal
s.hikal@tamimi.com

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Jurisdiction is an extremely important issue that should be taken into consideration:

- a) prior to concluding any contract;
- b) at the conclusion of a contract; and
- c) whenever a dispute arises that requires recourse to the courts.

According to the relevant articles of the UAE Constitution and the UAE Civil Procedure Law (the “CPL”), any legal action must be filed before the courts of the relevant Emirate having jurisdiction, failing which the court may dismiss the action on the grounds that it has no jurisdiction to hear the matter. This is because most jurisdictional issues are classified as Public Order matters which the courts should address *sua sponte* even if the parties themselves do not address them.

However, the failure of a practitioner (the “practitioner”) to determine the competent court to file a claim will result in the loss of time, effort and money and could negatively affect the practitioner’s prospects of success if the court dismisses the case on the grounds of lack of jurisdiction; such a situation will embarrass the practitioner as it would reflect his failure to fulfil his professional research obligations at an appropriately early stage (i.e. not sufficiently considering the available facts and law during the pre-suit stage).

In order to avoid such an undesired situation a practitioner should take into consideration the correct interpretation of the court’s domestic jurisdiction of section 5 stated below that we will shed light on in this article, particularly in terms of the common practice/understanding (the “Common Understanding”) and the extent to which it can be applied in light of the precedents issued from the Dubai Court of Cassation.

Section 5 of article 31 of the CPL provides that:

“In circumstances other than those stipulated in Article 32 and Articles 34 to 39, it may be agreed that a particular court will have competence to hear a dispute. In this event, competence lies with this court or the court in the jurisdiction of which the defendant has an address, place of residence or place of work”.

It is clear from this article that parties can agree to have their case adjudicated before a certain court that originally had no jurisdiction or was not locally competent (hereinafter the “Selected Court”), except in the following circumstances:

1. Article 32: a) In actions in rem or actions for the recovery of a thing possessed by another¹ the jurisdiction shall belong to the court in whose precinct the real estate or part thereof is located if such real estate is located in several court precincts; b) In actions quasi in rem², the jurisdiction shall belong to the court in whose precinct the real estate or defendant’s domicile is located.

2. Article 34: In cases related to estates and lodged before partition thereof by the estates or by some heirs against each other, the jurisdiction shall belong to the court in whose precinct the deceased's last domicile is located;
3. Article 35: a) In cases related to commercial bankruptcy, the jurisdiction shall belong to the court in whose precinct the bankrupt's business is located. If he has several businesses, the jurisdiction shall belong to the court of the business which he has taken as head office of his commercial affairs; b) If the trader retires from the trade, the case shall be lodged before the court to which the defendant's domicile belongs; c) Cases arising from proceedings of inspection shall be lodged before the court which has declared the bankruptcy.
4. Article 36: The jurisdiction for disputes related to supplies, contracting, residential rents and wages of workers, craftsmen and labourers shall belong to the court of the defendant's domicile or the court in whose precinct the relevant agreement was concluded or executed.
5. Article 37: In disputes related to the claim of an insurance amount, the jurisdiction shall belong to the court in whose precinct the beneficiary is domiciled or the place of the insured property.
6. Article 38: a) In cases requesting that temporary or summary proceedings be taken, the jurisdiction shall belong to the competent First Instance Court in whose precinct the defendant's domicile is located, or to the court in whose precinct the proceedings are requested to be taken; b) in summary actions related to the execution of judgments and deeds, the jurisdiction shall be to the court in whose precinct the execution is effected.
7. Article 39: The court looking into the principal action shall be competent to examine the incidental demands. However, a defendant in the case of a guarantee may invoke the lack of jurisdiction of the court if it is established that the principal action was merely filed with the aim of bringing him before a court other than the court having jurisdiction.

A quick reading of section 5 supports the idea that, in circumstances other than those stipulated in article 32 and articles 34-39 of the CPL, parties can agree to bring the competence to the selected court to adjudicate any dispute that might arise between them during the execution of their contract. In this event, competence lies with this selected court or the courts in the jurisdiction where the defendant has an address, place of residence or place of work.

Due to the misinterpretation of section 5 of article 31 during the contracting stage, parties used to incorporate a clause in their contracts whereby they gave the Dubai Courts the jurisdiction to adjudicate disputes that might arise of or in connection to their contracts, even though the Dubai Courts had no original jurisdiction as a matter of law (*de jure*) (the "Clause").

The core question here is:

Will the Dubai Courts recognise the Clause and adjudicate the case?

The Dubai Court of Cassation has answered this question and put an end to the confusion and the misinterpretation of section 5 of article 31. It laid down principles that totally contradict the Common Understanding, which can be summarized as follows:

The Dubai Courts represent a judicial system that is independent from the federal judicial system and other legal systems of the UAE. The Dubai Courts must abide by the limitations imposed on their jurisdiction and may not actively or passively transgress those limitations. They may not give up their jurisdiction or oust the jurisdiction of another national court. Such jurisdiction, being constitutionally conferred, is a rule of public policy in respect of which no agreement may be made to the contrary. Accordingly, it is not a matter of local jurisdiction to be decided only by the court that is part of the same judicial system and it has to be addressed by the court *sua sponte* for the purposes of determining whether or not it has jurisdiction to adjudicate the case. An agreement between the parties to apply the laws of the Emirate of Dubai does not by itself confer jurisdiction upon its courts.

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Principle, 2010 Issue (Civil) set out in the decision that was handed down by the Dubai Court of Cassation on 14.03.10 in Property Appeal No. 58-2009

Furthermore, when applying the above article, the Dubai Court of Cassation distinguish between the competence of the judicial institutions in the Emirate of Dubai and the Federal one, on the ground that the courts in the Emirate of Dubai are independent from the federal judicial systems; and hence section 5 of article 31 of the CPL shall not be applicable in terms of the jurisdiction whenever it brings the competence to the Dubai Courts from a federal court or vice-versa. According to the Court of Cassation, this matter is related to public policy that parties cannot contractually agree to depart from and shall not, in any case, be considered a question of local jurisdiction.

In line with the above, the Dubai Court of Cassation, in case 36/2007 and 39/2007 civil appeal held that:

“it has been settled by this court that the courts in the Emirate of Dubai are independent from the federal judicial systems and the former shall not override their competence and shall not transgress it positively or negatively; consequently, the court shall not waive its competence and shall not take away the competence of another local court; As this type of judicial competence is related to public order and the court shall decide on it sua sponte in order to determine whether it has jurisdiction or not to adjudicate the case”.

Conclusion:

1. The Dubai Court of Cassation has clarified in its principles that the courts in the Emirate of Dubai are independent from the federal judicial system; hence, section 5 of article 31 of the CPL does not apply and accordingly parties cannot agree in their contracts to bring the competence to the Dubai Courts when these are not originally competent courts as a matter of law (de jure) – or agree to take competence away from them in favour of other courts located in another Emirate – whenever the Dubai Courts are originally competent to adjudicate the case.
2. The Dubai Court of Cassation has also clarified that this type of judicial competence is related to public order and the court shall decide on it sua sponte in order to determine whether it has jurisdiction or not to adjudicate the case.

Footnotes:

1. i.e. action for a thing.
2. Action related to a defendant's interest in property.