

Ras Al Khaimah and the DIFC Courts: New Agreements to Forge an Ever-Closer Partnership

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The courts of the DIFC (DIFC Courts) began operating in 2006, having been established by Dubai Law No. 12 of 2004 (the Judicial Authority Law). They operate a common law system which draws extensively on the laws of England and Wales. This gives international commercial parties operating in the region the option of choosing a legal system with which they are generally more familiar, and whose working language is English, rather than submitting to the Arabic-speaking civil law system prevailing across the GCC states. Businesses operating within the jurisdiction of the DIFC Courts also benefit from the availability of experienced judges from a number of established common law jurisdictions, as well as several resident Emirati judges with civil law backgrounds.

An increasingly attractive destination for foreign investors, the Emirate of Ras Al Khaimah has now formally agreed to work with the DIFC Courts to ensure that the option of using the DIFC's legal system is available to a wide range of parties wishing to do business in the Emirate.

One of the new components of this relationship is the Agreement on Judicial Cooperation with the DIFC Courts entered into by the Executive Council of the Government of Ras Al Khaimah, the Judicial Council of Ras Al Khaimah and the Ras Al Khaimah Courts. In this agreement, the Executive Council has confirmed that the government agencies of Ras Al Khaimah, as well as any local or foreign investors operating in the Emirate, may enter into contracts which are expressed to be subject to the exclusive or non-exclusive jurisdiction of the DIFC Courts.

The Agreement on Judicial Cooperation provides furthermore for the mutual enforcement of judgments between the Ras Al Khaimah Courts and the DIFC Courts. Judgments issued in Ras Al Khaimah may be enforced in the DIFC Courts in accordance with the Judicial Authority Law. In return, the Ras Al Khaimah Courts have agreed to enforce directly DIFC Court judgments of any kind, notably including both interim orders and judgments relating to wills and probate matters, provided that the following conditions are satisfied:

- The subject of enforcement is within the Emirate (whether property located in the Emirate or a person legally residing there);
- The judgment is final, in the sense of being capable of execution, and accompanied by an execution writ issued by the DIFC Courts;
- The execution writ, along with a translation into Arabic, is submitted to the execution judge of the Ras Al Khaimah Courts;
- The conditions set out in the Federal Civil Procedures Law are complied with; and
- A letter is received by the Ras Al Khaimah Courts from the DIFC Courts' Registry asking for the judgment to be enforced.

The effect of these provisions is to remove the need for claimants to take a DIFC Courts' judgment to the Dubai Courts for conversion into a Dubai Courts judgment and subsequent referral on to the Ras Al Khaimah Courts under the so-called 'deputisation' process.

The DIFC Courts and Ras Al Khaimah Courts have agreed to set up a panel of judges drawn from both legal systems to resolve cases where their respective laws disagree. However, unlike the judicial committee created by Decree 19/2016 in Dubai, which decides alleged conflicts of jurisdiction and/or judgments involving the Dubai Courts and DIFC Courts, the decisions of the Ras Al Khaimah/DIFC 'collaborative committee' will not be binding.

In parallel with the Agreement on Judicial Cooperation, the Executive Council of the Government of Ras Al Khaimah has concluded an Agreement on Arbitration Cooperation with the DIFC Arbitration Institute. Under this Agreement, the Emirate's government agencies, along with investors, may enter into arbitration agreements subject to the rules of the DIFC-LCIA Arbitration Centre and with a seat in the DIFC.

The intended and anticipated effect of these two agreements is to increase confidence on the part of investors doing business with Ras Al Khaimah governmental institutions that they can validly submit any dispute they may encounter to a relatively familiar, internationally-recognised and English-language forum.

The aims of the agreements are furthered by several memoranda of understanding issued at the same time, which seek to strengthen the ties between the DIFC and Ras Al Khaimah authorities.

One MoU covers the registration of wills with the DIFC Wills and Probate Registry (WPR). Eligible users of the WPR service are able to nominate to whom property located in the Emirate of Dubai will be given after their death, subject to certain provisions. The Ras Al Khaimah Courts and Municipal Department have agreed to enforce decisions of the DIFC Courts relating to WPR-registered wills. It is anticipated that the DIFC Courts' WPR Rules will be amended in early 2017 to extend their protection to property located within the Emirate of Ras Al Khaimah as well, giving more freedom and rights to people drafting WPR wills.

In other memoranda, the DIFC and Ras Al Khaimah authorities have agreed to implement a number of measures to improve communication and cooperation. The staff of the DIFC Courts will provide the Emirate's authorities with onsite training on DIFC Courts judgments and probate orders. There will also be a single point of contact to whom queries and requests for information can be addressed. The Executive Council of Ras Al Khaimah, together with the Sheikh Saqr Programme for Government Excellence and the DIFC Academy of Law, have agreed to establish a system to educate Emirati students and professionals on the common law with the aim of producing lawyers familiar with both the civil law system, generally applicable in the UAE, and the common law system prevailing in the DIFC and several other international business centres.

As with many strategic projects, the real impact of these agreements and memoranda can only be measured several years from now. The overarching agreement is for a provisional three-year period, and there is likely to be much learning for all sides over that period. None of the agreements or memoranda are legally enforceable as such, but they are supported by existing federal law and the law of individual Emirates. There are some noteworthy provisions of real significance, such as the confirmation by the Emirate of Ras Al Khaimah of the reciprocal enforceability of judgments, and that its authorities can enter into DIFC jurisdiction and arbitration agreements.

Whether such agreements materialise remains to be seen and both lawyers and investors will watch with interest to see whether the DIFC's dispute resolution options become more widely used by parties with interests in Ras Al Khaimah. For now, parties with interests in both Ras Al Khaimah and the DIFC are likely to be reassured by the newly enhanced relationship between the two jurisdictions.