

**"THE COURTS OF DUBAI"
OR "DUBAI COURTS"
IN A JURISDICTION
CLAUSE OF AN
AGREEMENT REFER TO
ALL COURTS CREATED
WITHIN THE EMIRATE OF
DUBAI, WHICH INCLUDES
BOTH DIFC AND NON-
DIFC COURTS - RECENT
DIFC COURT OF APPEAL
JUDGEMENT**



Overview of the decision

In a very recent judgement by the DIFC Court of Appeal in **Ashok Kumar Goel & another (Appellant) v. Credit Suisse (Switzerland) Limited (Respondent)**, [2021] DIFC CA 002 dated **26 April 2021**, confirmed that the terms "**the courts of Dubai**" in a jurisdiction clause of an agreement might be interpreted as a valid opt-in to the DIFC Courts' jurisdiction under **Article 5 (A) (2) of the Judicial Authority Law**.

Legal Provision involved in the case

Article 5 (A) (2) of Law No.12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre (Judicial Authority Law) was the primary Provision involved in the current case. It states that any civil or commercial claim or action may be heard and decided by the Court of First Instance, if the parties agree in writing to file a claim or action whether before or after the dispute arises, provided that such agreement is established pursuant to specific, clear, and express provisions.

Factual Background of the Case

1. The actions were initiated as a result of the **Guarantors (Appellants)** entering into guarantees with **Credit Suisse AG** [a "DIFC Establishment" as defined by the Judicial Authority Law ("JAL")], guaranteeing the performance of several borrowers under a Credit Facility Agreement.
2. Credit Suisse AG and Appellants, after that, entered into written agreements with **Credit Suisse (Switzerland) Limited (a non-DIFC Establishment) (Respondent)**, replacing Credit Suisse AG.

The laws of the Emirate of Dubai and the relevant Federal Legislation of the United Arab Emirates were the governing laws (UAE) under **Clause 16 of the Guarantee Agreement**. Further, the parties agreed that "**the Courts of Dubai shall have jurisdiction over all issues arising under this Guarantee**," as stated in **Clause 17.1 of the Guarantee Agreements**.

The decision of the Court of First Instances

The Respondent moved to the Court of First Instance ("CFI") for a worldwide freezing order ("WFO") restricting the Appellants from dealing with or disposing of their assets while the Respondent's claim was being resolved. The Appellants were not given notice of the hearing on that application.

Held: The Court of First Instance ruled that it lacked jurisdiction to issue the requested order, and it was dismissed.



The case went to the Court of Appeal.

The Respondent appealed the judgement of the Court of First Instance to the Court of Appeal. The Court of Appeal upheld the appeal on the basis that the Court of First Instance should have found that there was a good arguable case that the DIFC Court had jurisdiction. However, the Court of Appeal made worldwide freezing order (WFO) on 13 September 2020.

Order challenged by Appellants:

The Appellants informed the Court after receiving the WFO that they wanted to challenge the Court's jurisdiction to issue such an order. The jurisdictional challenge was submitted in the form of an application for a declaration that the Court (DIFC Court of Appeal) lacked jurisdiction to hear the Respondent's claim for a WFO and dismissal of the case on that basis.

The decision of the Court of Appeal

The Court held that in their natural and ordinary meanings, the terms "courts of Dubai" and "Dubai courts" refer to all courts created within the Emirate of Dubai, including DIFC and non-DIFC courts.

The fact that Credit Suisse AG was a DIFC Establishment when each Guarantee was made suggested that it was the parties' mutual intention that the DIFC Courts be included within the meaning of the phrase "Courts of Dubai." There was no indication of a shared desire to avoid the DIFC Courts' jurisdiction. The phrase "Courts of Dubai" in clause 17.1 "...should be given its natural and usual meaning and include the DIFC Courts".

Further, the Court said that if one of the parties to the jurisdiction agreement is a DIFC Establishment when the agreement is signed, the parties are presumed to have known and understood that the DIFC courts would have exclusive jurisdiction within Dubai to resolve disputes arising under such an agreement. Clear and express words would be required before it could be concluded that the parties' mutual intention was to exclude that jurisdiction.

The judgement referred to in the present Case:

The Court of Appeal referred to the decision of **Investment Group Private Limited v Standard Chartered Bank [2015] DIFC CA 004**. The Court, in this case, rejected the argument that the term "Dubai Courts" exclusively applied to non-DIFC Dubai Courts.

The Court further decided that the usual meaning of the term "**Dubai Courts**" must include all courts and judicial committees created by Emirate legislation inside Dubai's territory, regardless of whether these courts have distinct powers.



Conclusion

To summarize, it is crucial to understand that when the phrases "Courts of Dubai" or "Dubai Courts" are used in a contract, they relate to all courts within the Emirate of Dubai, including the DIFC Courts, unless the context or purpose indicates otherwise. To prevent misunderstanding, parties should indicate whether they want to exclude or include the DIFC Courts' jurisdiction in their agreement.

The purpose of this article is to provide a general overview of the subject. To know more about the case and related queries, please don't hesitate to contact us.

Reference:

<https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/1-ashok-kumar-goel-2-sudhir-goyel-3-manan-goel-4-prerit-goel-v-credit-suisse-switzerland-limited-2021-difc-ca-002>