



NON-EXCLUSIVE, OR EXCLUSIVE JURISDICTION – THAT IS THE QUESTION?

(RE)INSURERS, BEWARE OF UNINTENDED CONSEQUENCES

MUTUAL RESPECT AND JUDICIAL COMITY SHOWN BETWEEN THE DIFC COURTS AND THE UAE COURTS

In a recent landmark ruling following the Order of H.E. Justice Shamlan Al Sawalehi in the matter of Union Insurance Company PJSC v. International Precious Metals Refiners LLC [2024] DIFC CFI 064, the DIFC Courts upheld judicial comity and mutual respect for the onshore courts of Sharjah.

BLK Partners' Simon Isgar acted as counsel, supported by Associate Bader Khoury, both part of the BLK (Re)Insurance Practice Group, representing International Precious Metals Refiners LLC, the Defendant. The team was instructed by Al Rasheed & Partners.

In affirming the Sharjah Federal Court of Appeal's decision and subsequently ordering that the DIFC Court proceedings be stayed pursuant to Rule 4.2(6) of the DIFC Court Rules, the DIFC Courts considered the newly enacted Law No. (2) of 2025 Concerning the Dubai International Financial Centre Courts for the first time following the new law's promulgation.

BACKGROUND

The Claimant, Union Insurance Company PJSC, issued a Gold Refinery Insurance Policy, Property All Risk Cover (the "**Policy**") to International Precious Metal Refiners LLC, which covered the Defendant against all risks of physical loss or damage, including but not limited to the gold commodity whilst stored and refined at the Defendant's refinery premises.

In September 2021, an incident occurred at the Defendant's premises resulting in the loss of a substantial quantity of gold commodity held in solution (the "**Incident**"). The Defendant issued a claims notification under the Policy. After further investigation and enquiries, the Claimant issued a declinature and refused to indemnify the Defendant for any loss caused by the Incident under the Policy on alleged grounds of fraud, breach of duty of good faith, no fortuity, absence of cover, non disclosure, and no liability for alleged loss due to failure to cooperate and exercise due diligence pursuant to the coverage terms.

The Defendant subsequently filed a complaint before the Central Bank's Insurance Dispute Resolution Committee ("**IDRC**"), to challenge the declinature, which was dismissed. To challenge the IDRC's decision, the Defendant pursued proceedings before the Sharjah Federal Court of First Instance seeking indemnification under



the Policy issued by the Claimant on the basis that the Sharjah Federal Court of First Instance is the 'competent court/forum' to determine the dispute.

In parallel, the Claimant issued proceedings in the DIFC Courts seeking a negative declaration to avoid the Policy based on allegations of, inter alia, deliberate misrepresentation and/ or non-disclosure by the Defendant to the Claimant pre-inception of the Policy as pleaded by the Claimant to deny the Defendant from seeking any indemnification under the policy.

CHOICE OF LAW & JURISDICTION

One of the issues in dispute pertained to the choice of law under the Policy, which provided that:

"This insurance shall be governed by and construed in accordance with the law of UAE and each party agrees to submit to the exclusive jurisdiction of the courts of UAE."

DIFC COURT PROCEEDINGS

Earlier in the DIFC Court proceedings, the Defendant contested the jurisdiction of the DIFC Courts on the basis that reference to the "courts of UAE" shall, in the circumstances be limited to the local Federal Courts of the UAE and not the DIFC Courts. In dismissing the Defendant's application, Justice Wayne Martin of the DIFC Courts provided, on a proper construction that the clause must be given its natural and ordinary meaning in finding that reference to the "courts of the UAE" include the DIFC Courts (see *Horizon Energy LLC v Al Buhaira National Insurance Company* [2022] DIFC CA 015). Justice Martin held that a connection between the parties and the DIFC Courts was not a requirement for the DIFC Courts to retain jurisdiction. Accordingly, Justice Martin determined that the parties had agreed to confer jurisdiction upon the DIFC Courts by way of a "non-exclusive jurisdiction clause in accordance with Article 5(A)(2) of the Judicial Authority Law, Dubai Law No. 12 of 2004 ("**JAL**"), the previous DIFC Courts Law.

SHARJAH FEDERAL COURT DECISION

Justice Martin's decision did not affect the Sharjah Court proceedings. In fact, the Sharjah Court of First Instance set aside the decision of the IDRC and ordered the Claimant to pay the indemnity amount to the Defendant. In doing so, the Court of First Instance established that it is the 'competent court' and that it holds jurisdiction to hear the dispute.

The Court of First Instance decision was upheld by the Sharjah Court of Appeal, which confirmed that the DIFC Court's assumption of jurisdiction and their issuance of rulings, whether on jurisdiction or the merits, is "improper" and "do[es] not impact the continuation of proceedings before the Sharjah Courts, which hold proper jurisdiction".

The Court of Appeal's decision was appealed to the Union Supreme Court, which dismissed the appeal. As a result, the Court of Appeal's decision was upheld, confirming that the Union Supreme Court, by implication, agreed with the Court of Appeal that jurisdiction over the dispute vested with the Sharjah Federal Court, while the DIFC Courts lack jurisdiction to hear it. Accordingly, the Defendant pursued execution proceedings to enforce the final judgment held via and bank instrument to the order of the Sharjah Court.



DIFC STAY APPLICATION PROCEEDINGS

Following the Union Supreme Court's decision/judgment, the Defendant's counsel filed a Part 23 application with the DIFC Courts seeking an order that the DIFC Court proceedings be stayed pending completion of the execution proceedings. As part of the Defendant's application, the Defendant relied on the doctrine of "Res Judicata" and the new provisions of Article 14(C)(2) of Law No. (2) of 2025 Concerning Dubai International Financial Centre Courts (the "**New DIFC Courts Law**"), which provides that:

C. *"The DIFC Courts may decline jurisdiction to hear the following proceedings:*

...
2. *Claims in which a final judgement has been issued by any other court and can be enforced within the DIFC."*

In granting the stay application, H.E. Justice Shamlan Al Sawalehi had regard to the Sharjah Court of Appeal and Union Supreme Court decision and was satisfied that the Sharjah Court of Appeal decision is final and binding and that the dismissal of the appeals by the Union Supreme Court conclusively affirmed that decision. Importantly, Justice Al Sawalehi stated that:

"This finality not only resolves the substantive issues but also supersedes any prior jurisdictional findings, including the determination of Justice Wayne Martin..., which was rendered before the final resolution by the Union Supreme Court."

Justice Al Sawalehi further found that the Union Supreme Court's affirmation of the Sharjah Court of Appeal decision conclusively determined the issues that are the subject of the DIFC Court proceedings and that the matter is now res judicata.

The DIFC Courts also considered that Article 14(C)(2) of the DIFC Courts Law should be relied on in circumstances where a UAE court has provided a final decision capable of enforcement within the DIFC Courts and that such a decision would be a compelling factor when assessing the appropriateness of a stay under the DIFC Court Rules. Importantly, the DIFC Courts explained that "[t]his statutory framework not only promotes judicial coherence and consistency across the UAE's unified legal system but also prevents the risk of conflicting determinations and duplicative litigation where final judgements have been rendered by onshore UAE courts".

As this was a highly complicated litigation matter, BLK Partners worked closely with Al Rasheed & Partners, aligning their respective expertise to provide tactical advice to the client, which resulted in a favourable outcome for the end client.





KEY TAKEAWAYS AND COMMENTS

This is a welcome ruling in respect of the development of UAE jurisprudence providing a degree of certainty for parties to consider the merits of both onshore and offshore dispute forums. It also reflects the high integrity and mutual respect between the two judicial systems via the legal principles of comity in a somewhat complicated jurisdiction of both civil and common law systems. On a reading and construction of the choice of law and jurisdiction clause in the Policy, it appears that the use of wordings "law of UAE" and "courts of UAE" in the absence of arguments around factual context and the intention of the parties, presents a wide all-encompassing use of all UAE courts resulting in a non-exclusive jurisdiction clause for parties to opt either onshore, offshore or indeed opt for both.

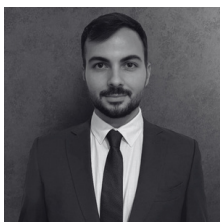
(Re)Insurers should be alert to the risk of unintended consequences when considering keywording in choice of law and jurisdiction clauses within policy and coverage terms. If overlooked, this may result in parallel, expensive legal proceedings. Often, most coverage wordings, especially law and jurisdiction clauses, are ill-considered in the UAE markets, given, inter alia, the common adoption of London market wordings (LMW) and the complexity of the coverage terms. We recommend that insurers/reinsurers carry out a compliance audit of their existing coverage terms to provide certainty of outcome, as well as provide strict guidance and training to their underwriters and internal legal and compliance functions.

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