

Company & Commercial - United Arab Emirates

Interpreting Contracts in the DIFC

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Background

The Dubai International Finance Centre (DIFC) is the fastest growing financial centre in the world and remains of great interest to foreign investors looking to establish a presence in Dubai and the United Arab Emirates. The DIFC was established using the best practices of global financial centres and applies international standards to the Dubai and Middle Eastern markets.

The DIFC has a set of laws which are based on common law. Its common law system distinguishes the DIFC from onshore Dubai (and the United Arab Emirates), which has a civil law system in place. DIFC laws are fairly comprehensive in nature and provide for certainty when applying contract law.

This update highlights and briefly discusses the salient features of the DIFC Contract Law (6/2004) and the DIFC Implied Terms in Contracts and Unfair Terms Law (6/2005).

Contract Law

The Contract Law was enacted on September 16 2004 to establish freedom of contract and provide for the creation of informal binding contracts. In general, the Contract Law seeks to establish a simple, workable legal framework for governing the formation, validity, interpretation, content and assignment of contracts.

Two of the key elements of a valid and binding contract - offer and acceptance - are governed by the Contract Law. However, its provisions do not cover matters such as 'intention to create legal relations' or 'consideration', which are key contract law principles established in western jurisdictions (eg, the United Kingdom and Australia).

The Contract Law also sets out rules on the performance of contract obligations and provides various remedies in the event of non-performance for aggrieved contracting parties and third-party beneficiaries, including damages, restitution and offset.

Finally, the Contract Law specifies coherent rules governing the principles of agency. Its agency provisions clarify when an 'agency relationship' arises and provide a list of an agent's duties to its principal. These duties are similar to a director's duties to its company and include a duty:

- of care and skill;
- of loyalty; and
- to avoid conflicts of interest.

Implied Terms Law

The Implied Terms Law, which was enacted on June 21 2005, aims to provide for fairness and certainty in contracts governed by DIFC law. The law provides terms and conditions which are not usually included in contracts and seeks to provide the necessary framework for their enforcement.

The Implied Terms Law implies a variety of terms into contracts governed by DIFC law, including contracts:

- for the sale or supply of property;
- for the hire of property;
- for the supply of services;

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- relating to transfer of property; and
- relating to auctions.

Terms implied into contracts governed by DIFC law generally relate to:

- title to property;
- correspondence of property with its description;
- quality of property and fitness for purpose;
- correspondence of property with any sample;
- care and skill; and
- risk and delivery.

However, terms set out in the Implied Terms Law do not apply to contracts relating to:

- real estate;
- formation or dissolution of a body corporate or unincorporated association;
- the constitution or rights and obligations of members or partners; and
- the creation or transfer of securities or of any right or interest in securities.

The Implied Terms Law permits parties to exclude any of the implied terms by express agreement. However, the 'unfair terms' provisions of the Implied Terms Law do not permit parties to exclude or restrict liability for death or personal injury.

Comment

The Contract Law and Implied Terms Law are reasonably comprehensive pieces of legislation and cover many of the issues that arise between contracting parties. Their provisions allow contracting parties a level of comfort and protection and provide valuable guidance to those operating in the DIFC.

For further information on this topic please contact [Pier Terblanche](#) at Taylor Wessing (Middle East) LLP by telephone (+97 14 332 3324) or by fax (+97 14 332 3325) or by email (p.terblanche@taylorwessing.com).

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