

THE CREATION OF INTERNATIONAL FINANCIAL CENTER: EXPERIENCE OF ARABIAN PENINSULA

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Abstract: *Abu Dhabi Global Market (ADGM), Qatar Financial Center (QFC) and Dubai International Financial Center (DIFC) have similar approaches in building up a financial hub, especially in terms of legal framework. ADGM and DIFC are financial free zones located in the United Arab Emirates, while Qatar is a financial service licensing authority situated in the Qatar region. All three financial centers aim to be leading financial centers offering world-class legal and regulatory framework that will enable to make transactions in the region and around the world. All three operate under Common Law, permit 100% foreign ownership and establish zero tax rates for financiers.*

The article analyzes the legal system of three financial centers of GCC– specifically, Dubai International Financial Center (DIFC), Abu Dhabi Global Market (ADGM) and Qatar Financial Center (QFC) – as successful financial center models implementing English law as their rule of law.

Keywords: *international financial center, financial hub, investors, financiers, English law, Arabian peninsula, DIFC, QFC, ADGM.*

СОЗДАНИЕ МЕЖДУНАРОДНОГО ФИНАНСОВОГО ЦЕНТРА: ОПЫТ СТРАН АРАВИЙСКОГО ПОЛУОСТРОВА

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Аннотация: *глобальный рынок Абу-Даби (ADGM), финансовый центр Катара (QFC) и Дубайский международный финансовый центр (DIFC) имеют схожие подходы в создании финансового центра, особенно в плане правового регулирования. ADGM и DIFC являются финансово-свободными зонами, расположенными в Объединенных Арабских Эмиратах, в то время как QFC является центром лицензирования финансовых услуг, расположенным в регионе Катар. Все три нацелены стать ведущими финансовыми центрами, предлагающими международную нормативно-правовую базу, которая позволит совершать сделки в регионе и во всем мире. Все три действуют в рамках Английского права, разрешают 100% иностранную собственность и устанавливают нулевые налоговые ставки для финансистов.*

В статье анализируется правовая система трех финансовых центров Аравийского полуострова, в частности: Дубайский международный финансовый центр (DIFC), Глобальный рынок Абу-Даби (ADGM) и Катарский финансовый центр (QFC), в качестве успешных моделей финансовых центров, реализующих английское правовое регулирование.

Ключевые слова: *инвесторы, финансисты, английское право, Аравийский полуостров, DIFC, QFC, ADGM.*

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The monarchies of the Arabian Peninsula (Saudi Arabia, the United Arab Emirates, Qatar, Kuwait, Oman, and Bahrain) have been carrying out a full-scale socio-economic modernization based on oil export revenues since the 1970 [1, p. 80; 2]. In economic literature, these countries are called the Cooperation Council for the Arab States of the Gulf (the GCC countries) - the integration group created by them in 1981.

Over the past period, the modernization model of the GCC has undergone significant changes. They were among the major donors of the world economy with the growth of oil prices in the 1970s, because their national economies could not accumulate petrodollar revenues [3]. At present, unlike the 70s-90s, these countries are in a position not only to "digest" huge financial receipts, but also to use them effectively by demonstrating high economic growth rates [1, p. 80].

The most important strategic direction of the GCC in diversifying specialization in the international division of labor was the policy of transforming the region into a major capital center, and not just an orientation toward

the export of energy resources [1, p. 81; 4]. For a long period of time, there was no large financial center for regions between Southeast Asia (Singapore, Hong Kong, Shanghai) and Europe (London, Frankfurt am Main) [1]. However, at present, five financial centers are developing in the region (Bahrain, Qatar, Dubai, Abu Dhabi, Saudi Arabia), which are created for a more convenient and preferential regime both for investors and local financiers, and provides infrastructure for raising capital in other branches of the economy.

The companies registered in these centers are governed by specially enacted laws that differ from the legislation of the rest of the country. In order to obtain the credibility, the financial free zones are given a special status such as independence from the decisions of various state authorities with the exception of (most cases) the cabinet of ministers or only the head of state.

Table 1. Ratings of the Arabian Peninsula financial centers [5]

1	London	795
2	New York	794
3	Singapore	752
18	Dubai	698
32	Abu Dhabi	662
40	Doha	641
58	Bahrain	619

The article analyzes the legal system of three financial centers of GCC– specifically, Dubai International Financial Center (DIFC), Abu Dhabi Global Market (ADGM) and Qatar Financial Center (QFC) – as successful financial center models implementing English law as their rule of law.

Legal framework

The stability of the regulatory and legal environments is a requirement for the development of the asset management industry. Regulatory frameworks are evolving in the financial centers to ensure clearly organized and enforced operating standards, upon which financial services providers can build their strategy and operations. Even though the GCC countries are considered relatively safe compared to other jurisdictions in the Middle East and North Africa, local regulators are still defining and setting up the regulatory regimes [7, p.365].

The modernization is creating both opportunities and challenges. As industry practices become more transparent, investor confidence and operator interest will continue to grow. At the same time, the complexity and cost of ensuring compliance with tightening regulatory standards will increase, in particular, considering the multiple, country-specific frameworks present in the region [7, p. 366].

Abu Dhabi Global Market (ADGM) and Dubai International Financial Center (DIFC) operate under a similar legal framework. ADGM was established as a second financial center in the United Arab Emirates after the DIFC, but under the same Federal legislation. ADGM shares the same attributes with its counterpart DIFC. ADGM and DIFC have special status that differs from other financial free zones within the UAE, as they have competence to self-legislate but are subject to Federal or Emirate law in the absence of specific regulation [8;9]. Qatar Financial Center does not possess the same status as its counterparts, it can be considered as a platform providing financial services.

Court system

All three financial centers operate under Common Law jurisdictions that are separate from the local and Federal law regime. The scope jurisdictions of financial centers are limited to proceeding connected to their financial centers only. DIFC's jurisdiction was extended in 2011 as a result of special regulation, while jurisdiction matters of ADGM are still to be determined due to the very recent establishment of the institution. The following paragraphs analyze the peculiarities of the court system of three financial centers.

Dubai International Financial Center's Court system

The DIFC Courts possess wider scope of jurisdiction to hear the disputes compared to ADGM and QFC. The DIFC Courts accept jurisdiction in proceedings where the parties have agreed in writing for the courts to determine their disputes, as well as in proceedings connected to the DIFC (for example, involving a DIFC company). The ability for regional and international parties to opt-in to the jurisdiction of the DIFC Courts took effect in 2011, following a change in law.

Unlike the Dubai Local Courts system, the DIFC Courts use the English language. As for substantive law, the DIFC Courts normally apply DIFC law, which is generally derived from common law principles. Originally, the DIFC Courts had jurisdiction over only certain non-criminal matters connected with the financial free zone.

Later, the jurisdiction of the DIFC Courts was expanded to enable parties without any connection to the DIFC to bring disputes to the DIFC Courts under certain conditions [10].

Qatar Financial Center Court System

For the QFC, Court system is technically not a free zone. Rather, it is more of a financial services platform. However, the QFC is otherwise comparable to the DIFC. The judiciary of the QFC is the Civil and Commercial Court of the Qatar Financial Centre, which has become a part of the Qatar International Court and Dispute Resolution Centre or QICDRC [11]. A related entity is the QFC Regulatory Tribunal. The QICDRC has consensual jurisdiction to handle disputes from outside the QFC or even beyond Qatar. These courts operate in English and operate under common law [11]. Hence, they are different from the mainstream court system in Qatar.

Abu Dhabi Global Market Court System

Like its forebears, the Qatar Financial Centre (“QFC”) and the Dubai International Financial Centre (“DIFC”), the ADGM is empowered to enact its own civil and commercial laws with the aim of providing an attractive legal and regulatory environment for companies minded to establish in the new jurisdiction, and encouraging inward investment to and a greater diversification of the Emirate’s economy.

The ADGM courts, like the DIFC courts, will operate independently of the local courts and the Federal courts. The ADGM courts will consist of a Court of First Instance and a Court of Appeal. However, the scope of the DIFC’s jurisdiction is considerably larger than the ADGM’s at present. Currently, the ADGM courts will only have jurisdiction to hear and determine civil/commercial disputes connected to the ADGM. The DIFC courts, however, can hear and determine civil/commercial disputes between parties who have expressly “opted into” the DIFC courts’ jurisdiction even if there is no connection of the parties to the DIFC. It took a number of years for the DIFC courts to increase their jurisdictional scope, and with time, it is expected that the ADGM courts will follow the similar approach. Similarly, given the ADGM’s infancy, no guidelines have been published as to how judgments of the ADGM courts would be enforced in the UAE and beyond.

Outcomes

In a 2016 study of Governing Law and Jurisdictional choices in cross border transactions in the Middle East undertaken by the DRA Academy of Law, legal practitioners reported a preference for choosing DIFC law as the governing law and DIFC Courts for dispute resolution [12]. Based on the inputs of 122 respondents from across the legal sector in Dubai, UAE and beyond, the study found that:

- DIFC is the preferred dispute resolution venue for 42 per cent of legal practitioners involved with cross-border transactions in the Middle East;
- 79 % are familiar with the DIFC Courts’ opt-in jurisdiction clause, whilst 57% have used the opt-in clause in contracts for cross border transactions;
- DIFC Courts’ established system and jurisprudence, familiarity, and certainty of law are the top three reasons for choosing the DIFC as governing law.

These results reinforce the DIFC Courts’ continued attraction as a jurisdiction of choice for commercial law, particularly in the light of the belief of 62% of respondents that cross-border business in the Middle East is on the increase, and of 28% of respondents that the transaction volumes will remain on a par with 2016.

The QFC Courts are also developing in terms of their jurisdiction. Recently, under Law No. 2 of 2017 “Issuing the Law of Arbitration in Civil and Commercial Matters” (the “New Arbitration Law”), the QFC Court has been conferred with additional powers to discharge certain supportive and supervisory functions over arbitrations seated in the State of Qatar, only if it is chosen by the parties as the Competent Court in the arbitration agreement. This is an important development as it allows the parties, inter alia, to utilise the QFC Court, which is modelled on leading international commercial courts, in relation to the arbitral proceedings, and to work under procedures similar to those found in common law systems.

ADGM is expected to adopt the best practices of the DIFC, to learn from the experience it has in conducting business in this region, so that the ADGM and the DIFC would complement each other in creating a world-class financial services platform in the United Arab Emirates. However, ADGM’s approach is slightly different from DIFC in that it proposes to adopt specified English laws, related jurisprudence and common law by way of regulation. Enforcing contracts is a key issue in international transactions involving UAE entities, and the ability to resolve disputes, should they arise, in regional English language, precedent-based court systems with familiar procedures and language facilitates the ease of doing business in the free zones. However, the fine print of the Global Market Courts is yet to be finalized. In determining matters before it, the Global Market Courts will be bound by English Supreme Court decisions. In contrast, DIFC Court judges have discretion to consider decisions made in other jurisdictions but are not bound by the decisions of a foreign court. DIFC also has an arbitration institution, the DIFC-LCIA Arbitration Centre. There is currently no arbitration institution in ADGM.

Conclusion

It is clear that much effort has been done in establishing the financial centers as a modern and attractive legal and regulatory architecture, which would encourage parties to arbitrate their disputes in the Center and establish a business there. One way was to provide a credible legal framework, and English law was chosen as such a

legal system that would be attractive for investors. Referring to the practices of the financial center, it can be seen that each has a different approaches in adopting English law. Thus, when adopting English law as a working law of financial center, cautious approach should be undertaken.

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