



# Small But Significant

Mariam Deen of the DIFC Courts explains the reasons behind the increasing popularity of the DIFC Small Claims Tribunal.

**T**he DIFC Courts are made up of the Small Claims Tribunal (SCT), the Court of First Instance (CFI) and Court of Appeal (CA). Generally, all civil and commercial claims under 500,000 AED in value are within the jurisdiction of the SCT and those with a value between 500,000 and 1 million AED may still be dealt with by the SCT if both parties consent in writing. There are many reasons why an increasing number of parties are choosing to do this.

## EMPLOYMENT

Under Article 5(A) of Dubai Law No. 12/2004, (Judicial Authority Law), the DIFC Courts have exclusive jurisdiction over employment disputes arising out of employment by a DIFC body or establishment, or an employment contract partly or wholly concluded, finalised or performed within the DIFC.

Therefore, the position for employment cases falling within the jurisdiction of the DIFC Courts is unique as parties may 'opt-in' to

SCT jurisdiction regardless of the value of the claim. Therefore, most DIFC employment cases are heard by the SCT.

## PROCESS

The process used within the SCT is user friendly and efficient as claims can be filed online and there is a quick turnaround, with 90% of cases being resolved within four weeks of papers being successfully served on the defendant.

## MEDIATION

Once a claim is filed, a consultation is then arranged with a mediator. This provides an opportunity for the parties to come together and discuss the issues and remedies sought in order to try and reach an amicable settlement.

This mediation phase which is offered to the parties, is another reason why the SCT route is so popular. There are remedies available to parties reaching a settlement that cannot be ordered by a

judge following a hearing. Many of the cases are actually successfully concluded at the mediation stage and do not need to progress to a formal hearing before a judge.

For example, there have been cases involving disputes where an employer has offered to provide a former employee with a good reference letter as part of their settlement. In some cases, this has been far more valuable to the employee than the value of the claim itself, as it would potentially help them to secure further employment.

Apologies have also been offered and accepted as a negotiating tool following a disagreement or falling out. A judge would be unable to order these types of remedy, and in some cases which are emotionally driven, these gestures can be more important than the claim's monetary value.

### REPRESENTATION AND USE OF LAWYERS

If the parties are unable to reach settlement, a hearing is scheduled before an SCT judge and the parties are required to attend in person or via teleconference in order to make their submissions. Parties may be able to authorise someone else to represent them or accompany them to both the consultation and hearing stages. However, lawyers are not permitted to attend without the express permission of the judge, unless they are an in-house legal counsel. (In-house lawyers can represent a company which is one of the parties to the dispute.)

The aim of taking this approach is to keep the process within the SCT as simple and affordable as possible. However, lawyers are occasionally necessary and can be properly justified and used when cases involve highly complex legal issues or the SCT judge is satisfied a party is unable to present their arguments sufficiently well without the aid of legal representation.

### CONFIDENTIALITY

One of the most notable benefits of an SCT case is that resulting settlements and judgments are confidential. This provides for a discreet process in which companies and individuals can resolve their disputes.

All orders or judgments subsequently published are carefully anonymised. This has proved to be a particularly attractive feature of the SCT, and it helps to ensure parties feel comfortable in airing (and often settling) their grievances in what is a safe and private environment, without the risk of attracting adverse publicity.

### COSTS

Another advantage of using the SCT for cases is the ability to keep costs low. Lawyers are not required, so, the only necessary expense for claimants is the initial court filing fee.

These are 2% of the value of the claim in the case of employment disputes and 5% of the value of the claim for all other types of dispute.

In addition, as is the case with DIFC CFI and CA cases, if a claim is successful these costs can be recovered from the defendant.

### SPEED

The speed of the SCT process also makes it an attractive option for both claimants and defendants. Cases can be filed and resolved in weeks rather than months.

This can be particularly important for employees who are waiting for salary payments which they rely on to pay rent or utility

bills or for those awaiting the return of their passport in order to be able to travel.

A quick resolution can be equally significant for defendants in cases where interest is accruing on a debt, particularly employers in cases where Article 18 of DIFC Law No. 4/2005 applies and there is a daily penalty (equivalent to the employee's daily wage) imposed as long as the employer is in arrears.

### THE HEARINGS

In cases which proceed from mediation to hearing, parties are given time to provide written submissions and produce evidence in advance of the scheduled hearing date.

SCT hearings offer a relatively informal setting for the parties to present their cases before an SCT Judge. For example, the parties are often representing themselves unless permission has been granted for lawyers to attend.

Occasionally, even at this stage, once the cases have been argued more thoroughly, the parties wish to settle the case and are not precluded from doing so at any time prior to the judgment being delivered.

This process is far more conducive to reaching an amicable solution between the parties than formal litigation, and can be particularly helpful for parties seeking to try and maintain a business relationship or even continued employment.

### COMPLIANCE

Compliance is normally another factor to bear in mind when parties are attempting to settle a claim. It is far more likely that parties who have reached a settlement will comply with the terms of that settlement. Therefore, the pro-settlement approach taken by the SCT is useful in this context.

In addition, SCT Judgments are enforceable so parties can rest assured there is certainly recourse through the Courts in cases where there is non-compliance with an Order of the Court. However, this does involve an additional process and time which is avoided in cases where compliance is not an issue.

### UPTAKE EXPECTATIONS

Overall, the SCT offers a method of dispute resolution which is not only time and cost effective, but also encourages parties to reach amicable solutions and resolve cases in a discreet way which allows for continued business relationships where possible. As a result, an increasing number of parties are 'opting-in' to the jurisdiction of the DIFC's Small Claims Tribunal before disputes occur and as awareness of this option grows it seems likely it will also be taken by more parties post-dispute. ■

