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News Alert – UAE – Legal – Abu Dhabi Courts to introduce compulsory English translation of case documents

The Abu Dhabi Judicial Department (ADJD) has announced the initiation of procedures that oblige the plaintiff in the civil and commercial cases to translate the case documents into English, in case the defendant is a foreigner.

1. Legal Framework

The Federal judicial procedures for commercial and civil cases are regulated in Federal Law No. (11) of 1992 Concerning Issuance of the Civil Procedures Code amended by Federal Law No. (30) of 2005 dated 30/11/2005 and Federal Law No. (10) of 2014 dated 20/11/2014 (**Federal Law**).

Article 4 of the Federal law states that the language of the court is Arabic. This applies not only to the court hearings but also to all legal documents submitted to court.

According to the UAE Constitution, each of the seven emirates has the right to either join the federal judicial system or to maintain its own judicial system (Article 104 and 105 of the Constitution).

The relationship between the two systems is regulated by articles of the UAE Constitution (Articles 94 to 109), which describe the broad principles of both systems, while leaving the details to the discretion of local judiciaries without violating or contradicting the broad principles laid down by the constitution.

The Emirate of Abu Dhabi has maintained its own judicial system. Abu Dhabi Courts were formed under the Law No (23) of 2006 which restructured ADJD.

On November 11th, 2018 the Administrative Circular No. 30 of 2018 (the "Circular") was issued and enforced by the ADJD making the English translation of summonses (the document that is sent to a defendant to start a claim against them), particulars of claim and any other evidential documents attached to the claim compulsory if the defendant is a foreigner.

The Circular further provides that the plaintiff can claim the cost of the translation from the defendant if it eventually prevails in the proceedings.

According to ADJD the new law reflects an enhancement of the judicial procedures and is very much in line with the ADJD and overall UAE constitutional objective to create a cohesive government structure.

The new law is therefore in accordance with the broad principles of both judicial systems regarding a fair trial and fundamental right of a party in a court case to request for a translator or translation.

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2. Historic background:

Historically, regardless of the nationality of the defendant all documents and communication presented to UAE court were provided in Arabic only. Foreign defendants had to translate case files to learn the details of the cases against them, which could end up being very costly for the defendant.

Now this obligation of translation is imposed upon the plaintiff - in other words- the initiator of the court case.

3. Objective of ADJD:

The decision of the ADJD originate from the efforts to develop the performance of the judicial and administrative system, in order to ensure an effective contribution to the realisation of the Abu Dhabi Economic Vision 2030, which pursuit to provide world class services to the residents, visitors and businesses of the UAE.

It arises from the same objective as the ADJD launch of an interpretation centre to provide translation services through video communications, in May this year.

ADJD refrained from applying this rule on labour and criminal matters, given that in these cases individuals may be discouraged if faced with the financial burden of providing translations at the start of proceedings.

Conclusion

It remains to be seen whether this initiative will lead to more civil and commercial contracts referring to Abu Dhabi courts in their judicial clause rather than to courts within the Free zones (e.g. Dubai International Financial Centre Court – DIFC Court), having a stronger international environment with an English prevailing court system. However, most judges of the ADJD are not fluent in English, hence the prospect of having a internationalised court proceeding as it is currently known within the DIFC Courts are very minimal.

The extent to which the requirements will be enforced in practice is indeed uncertain, considering that the Circular has only been published in Arabic as of now.

Furthermore, it remains to be seen how the term “foreigner” will be interpreted when the defendant is a corporation established in UAE but with mixed percentage of foreign and local shareholder or owner.

Furthermore, the Judicial Department has not given any indication that it intends to publish court judgments in English. Hence the chances of a serious effect on the judicial proceedings and hearings – which will remain in Arabic - are very low.

Finally, court experts (investigator of facts) appointed by judges, are Arabic-speaking and provide their reports in Arabic. There is no indication that this practice will be discontinued. Considering that these reports usually state an integral part of court proceedings and decisions, ADJD should include compulsory translation of expert reports.

Considering all the above, international companies operating in the UAE, in particular in Abu Dhabi, should insist on bilingual contractual agreements, preferably drafted by lawyers, to ensure clarity on the terms and conditions verbiage even prior to dispute, in order to accelerate the court proceedings (avoiding additional translation process) in case a dispute arise.

Furthermore, it remains to be seen whether the Dubai, Sharjah and other UAE Emirates local judicial departments and the Federal Court will follow this principal to ensure consistency throughout the entire UAE.

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