The right foundation for tackling a dispute

Shireen Fazal, Partner, Al Aidarous explains the importance of selecting the most appropriate dispute resolution method, particularly with construction disputes which make up a major part of her work.

Prior to reading law, I obtained a bachelor's degree in English Literature and then went on to qualify in law from the Faculty of Law in New Delhi, India. Although literature and law are different fields, both require an analytical and critical approach, and an emphasis on nuances and details. I moved to Dubai at the start of my career in 2002 and so, my practice has predominantly been in the UAE. Moving to a completely different jurisdiction at that early stage made me much more receptive to understanding the country's laws. I now have over 20 years' experience in the UAE, and have developed a deep, organic understanding and appreciation of the UAE law and legal system and can meld together concepts across different jurisdictions and legal systems.

I was primarily involved in transactional work at the start of my career. However, given Dubai's business-centric outlook and the property boom around that period, construction disputes started becoming a staple for many law firms. As was the case for many practitioners, the gravitational pull of construction disputes was inevitable, and I began immersing myself in that practice area.

Construction disputes are by their nature document intensive and highly technical, and involve many legal issues. Close synergy between lawyers and technical experts (in engineering as well as in delay and quantum issues) is required at the outset to ensure both the legal and technical aspects of the case speak with one voice.

The prevailing approach in the national courts on construction litigation is to appoint an expert to investigate the dispute's technical and factual aspects.

In terms of construction arbitration, there is an increasing preference to have technical experts of both sides giving evidence simultaneously at the arbitration hearing, a practice affectionately known as "hot tubbing". This allows the Tribunal to have an interactive assessment of the two conflicting positions and in real time.

One of the more interesting cases I have been involved in was a major, complex and high value construction dispute which was simultaneously heavily contested between the same parties in the Dubai Courts, DIFC Courts and arbitration. This dispute has required an overarching strategy while remaining vigilant on the dynamic developments as every event has a domino effect on the other forum.

It was like a chess game being played out through effective legal strategy, testing the borders and strains of Dubai's unique jurisdictional boundaries.

With actual legal practice, gauging successes and accomplishments involves navigating a nuanced and inherently subjective landscape.

For me, the true measure of achievement is the ability to discover how a client's meticulously crafted legal strategy, developed in collaboration with my dedicated team, or from exhaustive research focused on a specific aspect, has translated into a favourable and positive result.

This is particularly gratifying, as it stems from the culmination of tireless, often unnoticed work behind the scenes over extended periods.

The choice of the forum for dispute resolution is one of a litigant's most important decisions and various factors have to be considered when selecting a forum for resolving disputes generally, particularly, in construction. Most of the issues that were previously faced by parties in arbitration have now been countered with the promulgation of Federal Law No. 6/2018 and more recently, the DIAC Arbitration Rules 2022.

A major benefit of opting for arbitration is the higher level of scrutiny on technical matters as, the tribunal members are highly experienced and specialised in construction disputes, and almost invariably encourage parties to appoint technical experts, and factual witnesses to support their case. While this makes arbitration the preferred choice for very technical and high value claims, the costs in this process are significantly higher than those in actions before the courts, which makes arbitration unsuitable for low value claims.

There are also certain measures and actions that can be obtained more efficiently and easily before the courts, for example, applications to impose a precautionary attachment of bank guarantees or other assets or payables can be obtained ex parte and within a matter of days.