LEGAL AND INSTITUTIONAL REMEDIES FOR MIDDLE EAST STATES WISHING TO DEVELOP AND INCREASE FOREIGN DIRECT INVESTMENT

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INTRODUCTION

For decades academics and the International Development Community (most notably the World Bank) have been telling NGOs, Western leaders, and those in charge in developing states that the way to attract Foreign Direct Investment (FDI) is by "changing" the legal system.[1] The change they talk of is more than a simple fix here or there but rather an institutional overhaul of the system.[2] This is especially true for countries without common law legal systems. However, what the

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1. For a work analyzing the application of the institutional theory in developing countries and by international institutions, see Lawrence Tshuma, *The Political Economy of the World Bank's Legal Framework for Economic Development*, 8 SOC. & LEGAL STUD. 75, 75–96 (1999), *available at* http://www.joptc.gov.et/Library%20Books%20Collection/legal%20materials%20downloaded%20from%20Internet/international%20economic%20law/International%20Economic%20Law%2010.pdf.

2. *Id.*

World Bank and the International Development community fail to note is the time, cost, and gravity of the changes they propose. The fact is that on paper the theory of the "Rule of Law" seems great—help rid the state of corruption, shorten the duration of disputes, and decrease the cost of disputes. However, as those outside the academic community are well aware, a theory or philosophical idea does not necessarily translate into real world success.

The cost to overhaul a legal system is astronomical.[3] For example, before and after the fall of the Soviet Union in the 1980s several states received billions of dollars in loans to help change their "legal systems" and make them more western friendly.[4] A couple of these states were West Germany and Japan, which received roughly 1.5 billion and 2.4 billion USD in loans.[5] Considering most of this money was given in the 1950s, the value today is probably three times or more those amounts. Without this aid, both states would have been unable to make the changes to their legal and judicial institutions necessary for FDI and renewed economic health. Additionally, neither state was able to completely repay their loans and had large sums forgiven.[6] This is revealing considering states such as Germany and Japan, known as first world states, were unable to completely repay such loans without help.[7] The question then becomes how do states outside the first world afford the cost?

States that need FDI, and states that the World Bank has advised on overhauling their legal systems, are usually from cultures and traditions that do not fit the western style legal system. For example, in the Middle East, the legal systems are all but common law legal systems. Moreover, foreign investors typically come from common law legal systems. Theoretically an investor must feel comfortable (*i.e.*, predictability, effectiveness) with the legal system before an investment will ever be made,[8] but some practitioners[9] have pointed out this is not necessarily true.[10] As I previously wrote in an earlier publicized article:

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3. *Id.*

4. *See generally* WILHELM K. KOHLER, FIFTY YEARS LATER: A NEW MARSHALL PLAN FOR EASTERN EUROPE? (1998).

5. U.S. CONG. HOUSE, STATISTICAL ABSTRACT OF THE UNITED STATES 1954 (1954).

6. ALLEN DULLES & MICHAEL WALA, THE MARSHALL PLAN (1993); GREG BEHRMAN, THE MOST NOBLE ADVENTURE; THE MARSHALL PLAN AND THE TIME WHEN AMERICA HELPED SAVE EUROPE (2007).

7. *See generally* MICHAEL J. HOGAN, THE MARSHALL PLAN: AMERICA, BRITAIN, AND THE RECONSTRUCTION OF WESTERN EUROPE, 1947–1952 (1987).

8. *See generally* AMANDA PERRY-KESSARIS, LEGAL SYSTEMS AS A DETERMINANT OF FOREIGN DIRECT INVESTMENT: LESSONS FROM SRI LANKA (2001).

9. John Hewko, *Foreign Direct Investment: Does the Rule of Law Matter*, 26 CARNEGIE ENDOWMENT FOR INT'L PEACE: RULE OF LAW SERIES 1–28 (2002).

10. Amanda Perry-Kessaris, *Finding and Facing Facts About Legal Systems and Foreign Direct Investment in South Asia*, 23 LEGAL STUDS. 649 (2003).

> Real business opportunities have been and will always be the most important/decisive factor in attracting FDI. Even if a state has the most efficient, transparent, and developed legal and judicial systems, that is not enough to attract FDI. Conversely, if the opposite of the above statement is true, the fact that the state's legal and judicial system is poor will not ultimately dissuade the investor from investing . . . This means that if a country offers significant business opportunities (through privatization or otherwise) and does not present any formal barriers to investment (e.g., war, significant social unrest, severe economic crisis, or legislation that prohibits foreign investment), it will attract a certain level of foreign investment despite the lack of an "ideal" legal system.[11]

This is evidently true for the natural resource rich states found in the Middle East such as Saudi Arabia, Abu Dhabi, and Kuwait. These three states have some of the worst and most dysfunctional legal systems in the entire Middle East; yet, they often lead the region in FDI.[12] The next question then becomes, "What is the course of action for Middle East states that are natural resource poor?"

The idea that a state whose legal system is centered on custom and tradition could effectively change its legal system to a common law system is questionable.[13] It would not only require extensive amounts of money but also a re-education of judges, lawyers, and the general population. Most importantly, such a far-reaching and overarching transformation could be considered an attack on the state's sovereignty. By shifting from the legal system that the state and its people are used to, the International Development Community restricts the ability of the state to regulate and protect its own economy.[14] Recent, though not perfect, examples of this can be found in Bilateral Investment Treaties (BIT). BITs are a common means used to spur FDI in developed and developing states. However, they also include provisions that allow major businesses and wealthy investors to contest and bypass laws within developing states (laws that were made in the best interest of the state and people).[15]

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11. Griffin Weaver, *The Underutilized Foreign Investor*, 5 CREIGHTON INT'L & COMP. L.J. 29 (2013).

12. *See generally* MATTEO LEGRENZI, THE GCC AND THE INTERNATIONAL RELATIONS OF THE GULF: DIPLOMACY, SECURITY AND ECONOMIC COORDINATION IN A CHANGING MIDDLE EAST (2011).

13. *See generally* Kevin E. Davis & Michael J. Trebilcock, *The Relationship Between Law and Development: Optimists Versus Skeptics*, 56 AM. J. COMP. L. 895 (2008).

14. Luke Peterson, *Out of Order*, *in* THE BACKLASH AGAINST INVESTMENT ARBITRATION: PERCEPTIONS AND REALITY 483–88 (2010).

15. Ruth Townsend, *When Trade Agreements Threaten Sovereignty: Australia Beware*, THE CONVERSATION (Nov. 14, 2013, 7:45 PM) http://theconversation.com/when-trade-agreements-threaten-sovereignty-australia-beware-18419.

This Article will argue that Middle East states have a proven, cost effective business model that they can imitate to dramatically increase FDI and protect their sovereignty. Specifically, the following arguments will be made:

One, Middle East states are ideally suited for implementing a foreign legal system within the boundaries of their respective states. Middle East history is ripe with examples of different legal systems being allowed to operate independently inside of the Islamic state. This success lies in the meaning of "contract" within Islamic Law and history.

Two, the creation of "free zones" is the first step in increasing FDI. Free zones are marked physical areas where businesses can operate tax-free and be 100% foreign owned. This step is necessary in order to help the state move up the development ladder, from an agricultural economy to that of a manufacturing economy. Free zones are ideal locations for business within the textile, technology, manufacturing, and construction industries. This step will then give a state enough FDI to help it make the necessary leap to the next stage of development—the service industry.

Three, in order for a Middle East state to move into the next stage of development (the financial service industry) and ensure its economic health for many years into the future, it must establish a separate, independent legal system. Ideally, this legal system should be based on the English Common Law. However, a cheaper alternative would be to set up an independent arbitration seat within the free zone.

I. THE HISTORY OF "CONTRACT" IN THE MIDDLE EAST

Central to Islamic culture is the concept of contract. The importance of this concept though, is far more significant than normally realized. For example, as renowned professor Lawrence Rosen once noted:

> The central analogy, or key metaphor, that may prove helpful when thinking about the social life of . . . much of the the Middle East – is concerned with notions of contract and negotiation. It is an image of the *bazaar* market-place writ large in social relations, of negotiated agreements extending from the realm of the public forum into those domains – of family, history, and cosmology – where they might not most immediately be expected to reside . . . Just as there are societies in Southeast Asia or the Pacific in which every activity must be the subject of ritual if it is to be at all meaningful to its members . . . so too in [the Middle East] there is a strong propulsion to envision and treat virtually every domain of life as subject to the capacity of human beings to shape that domain

by the bargains they strike with one another over it.[16]

This basic instinct to interpret "every domain of life as subject to the capacity of human beings to shape that domain by the bargains they strike with one another over it" has allowed for extraordinary plasticity in the legal makeup in the Middle East that has routinely gone unnoticed.

For example, westerners are usually frightened when they hear that Islamic populations living within their countries choose to live and operate by *shari'ah* law. These acts are viewed as the population's failure to assimilate and an explanation as to why countries in the Middle East have been unable to climb the economic ladder. What westerners forget is that while Islamic populations may prefer to litigate their disputes via *shari'ah* law, the idea of "legal structure by consent" irrespective of geographical boundaries is consistent with the innate Islamic concept in which consent and contract are central to society.

For centuries, Islamic empires allowed communities (*dhimmi*) of Christians and Jews to operate and adhere to their own laws and customs.[17] In effect, as long as an individual chose to remain in either of these faiths, the individual was (for the most part) choosing a distinct legal system. This allowed the Islamic legal practice, for more than a thousand years, to become adept at adjudicating disputes arising in different legal systems or a combination of legal systems.

Thus, it is apparent that when considering *dhimmi* communities and Islamic approaches to contract, the practice of intersecting legal jurisdictions has a well-dated precedent. The most recent examples of this can be seen in Dubai. In Dubai they have created a model which other Middle East states wishing to increase development and FDI would be well advised to follow after.

For centuries and until not too long ago, Dubai was only a small fishing village that resided on the western coast of the Persian Gulf. Its population was small and its industry was even smaller. Throughout the 18th and 19th centuries its main source of industry was trade, because of its close proximity to Iran, easily accessible port, and pearl diving.[18] In the mid 1800's a notable family, the Al-Maktoum family, withdrew from Abu Dhabi and took over rule in Dubai. Under the leadership of Al-Maktoum family, Dubai has grown dramatically and become one of the world's largest ports and financial centers of the modern era.

It was not until the mid-1900s, when British and American oil companies discovered and tapped into some of the largest oil and natural

16. LAWRENCE ROSEN, THE ANTHROPOLOGY OF JUSTICE: LAW AS CULTURE IN ISLAMIC SOCIETY 11–12 (1989).

17. *Id.*

18. JULIA WHEELER & PAUL THUYSBAERT, TELLING TALES: AN ORAL HISTORY OF DUBAI (2005).

gas reserves in the world, that the modern day emirates of the United Arab Emirates (UAE) became relevant. Shortly after the discovery of the vast oil and gas reserves several of the emirates joined together to form the UAE.

With the formation of the UAE and the discovery of natural resources the region began to receive increased amounts of FDI. Unfortunately, for Dubai and most of the emirates, the majority of the FDI and natural resource wealth was sent to the emirate of Abu Dhabi. This was due to the fact over 95% of the UAE's oil and gas reserves resided within the boundaries of Abu Dhabi.[19] For Dubai, a state that has great economic ambition, something had to change. The leaders of Dubai were concerned that: (1) its limited natural resource reserve was not enough to develop the state; and (2) its limited wealth would not last very far into the future. The resulting solution was that Dubai reinvested its wealth into various projects in order to diversify its economy and solidify its future. Many of the initial investments were in what are called "free zones." The genius behind this movement was the Al-Maktoum family. They also pursued ambitious projects such as the Palm (*i.e.*, artificial islands), the Burj Khalifa (the world's tallest building), and the Mall of the Emirates, which contains an indoor ski slope.

To many westerners, the shock and awe that have accompanied these projects has drawn similarities to that of Las Vegas or Orlando. However, when one digs deeper and takes a more academic approach, it's easy to see that there's much more to it. For example, recently Dubai was rated as having the fifth highest GDP compared to other large metropolitan economies.[20] For a place consisting of nothing but sand and extremely hot temperatures it has proven the effectiveness of free zones. From the Jebel Ali Free Zone which houses manufacturing businesses to the Internet City Free Zone which houses internet companies, Dubai has charmed millions of FDI and workers to the region. By the early twenty first century Dubai' GDP was totaling almost $18 billion.[21]

In 2004, Dubai made one of the most innovative developments (the Dubai International Financial Centre) the world had ever seen. This development resulted in Dubai becoming one of the top 25 states in FDI. In 2009, after the economic recession, Dubai, like most of the world took a very hard financial hit. It lost roughly 30% of its real estate values and began losing investors at a rapid rate.[22] However, unlike most of the world this downturn was short-lived. The reasons for the recession being

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19. *About Abu Dhabi & UAE*, BENELUX BUSINESS COUNCIL, http://www.beneluxbc.com/portal/index.php/uae-benelux/about-the-united-arab-emirates (last visited Sept. 11, 2014).

20. JOSEPH PARILLA ET AL., THE BROOKINGS INSTITUTION, GLOBAL METROMONITOR 2014: AN UNCERTAIN RECOVERY 8 (2015).

21. *Id.*

22. *Id.*

so short: the free zones, Dubai International Financial Centre, and independent arbitration facility.[23]

II. FREE ZONES

The term free zone often refers to free economic zones or free trade zones. Free economic zones are physical geographical areas where companies are able to operate tax free or at a lower tax rate than outside the zone. Likewise, free trade zones are areas where products may be manufactured, received, transported, remade, and exported without being subject to the state's typical custom laws. The Dubai free zones discussed below are a mixture of the two.

A. *Jebel Ali Free Zone Authority*

In 1979 Dubai, in an attempt to increase FDI, made the decision to setup a free zone within its borders. In 1985 its first free zone[24] known as the Jebel Ali Free Zone Authority, otherwise known as "JAFZA," opened its doors.[25] For foreign companies JAFZA was a dream come true. Located roughly 35 kilometers southwest of the city of Dubai, the free zone, setup in the Jebel Ali District, consists of approximately 100 square kilometers situated around the world's largest man-made port.[26] Here, businesses specific to manufacturing, trade, textiles, and distribution are able to setup shop without the restrictions found in Dubai. To be specific, businesses outside the JAFZA are required by Commercial Law[27] to have a local owner(s) who owns at least 51% of the business and its profits. However inside of JAFZA businesses are free to operate (trade, manufacture) as 100% foreign owned, able to repatriate 100% of their capital and profits, subject to zero corporate and personal income taxes, and do not have to pay import duties.[28] The success of JAFZA was immediately evident in Dubai's FDI numbers.

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23. Miguel Forbes, *Dubai has Recovered Faster Because of Zero Tax, Economic Free Zones*, FORBES (Oct. 22, 2012, 4:18 PM) http://www.forbes.com/sites/miguelforbes/2012/10/22/dubai-has-recovered-faster-because-of-zero-tax-economic-free-zones/.

24. A free zone in Dubai typically refers to geographical areas where businesses are able to operate tax free, trade without tariffs or restrictions, and operate without ownership requirements.

25. DUBAI, UNITED ARAB EMIRATES, WHO IS IN THE JEBEL ALI FREE ZONE: OVER 640 COMPANIES HAVE TAKEN ADVANTAGE OF THE BENEFITS AVAILABLE (1994).

26. *Id.*

27. *Id.*

28. Wis. Project on Nuclear Arms Control, *What is the Jebel Ali Free Zone?*, 2 THE RISK REP. 8 (Mar. 1996) [hereinafter Wis. Project], *available at* http://www.wisconsinproject.org/countries/dubai/jebelali.html.

Table 1. Inward Flows of FDI in Dubai/UAE in the Years Leading Up to and Immediately After the Creation of the Jebel Ali Free Zone.

	1983*	1986*	FDI Percentage Increase
United Arab Emirates	$45.5	$110.2	142.19%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

Table 1 reveals that the JAFZA played an immediate role in boosting Dubai's FDI. The years 1984 and 1985 were intentionally omitted because the JAFZA opened at the later end of 1985 making 1985 not reflective of its effect and 1984 was a negative FDI year for most if not all Middle East states. Table 2, shown below, offers a comparison of a similarly situated (*i.e.*, resources, legal system, location) state in the region during the same year.

Table 2. Inward Flows of FDI in Qatar in the Years Leading Up to And Immediately After the Creation of the Jebel Ali Free Zone.

	1983*	1986*	FDI Percentage Increase
Qatar	$.95	-$1.4	-247.36%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

The data represented in the tables suggests that Dubai, at least in regards to a similarly situated neighbor, was more attractive to foreign investors than in years past. Qatar and Dubai had similar sources of revenue, were Islamic/civil law legal systems, and are located in the same region of the world. The only major difference between the two was the Jebel Ali Free Zone. Even compared to one of Dubai's most notable neighbors, Saudi Arabia, the increases Dubai experienced were far greater. Table 3, shown below, demonstrates that even Saudi Arabia, a state with the most natural resources in the region, didn't experience the kind of FDI growth Dubai did.

Table 3. Inward Flows of FDI in Saudi Arabia in the Years Leading Up to and Immediately After the Creation of the Jebel Ali Free Zone.

	1983*	1986*	FDI Percentage Increase
Saudi Arabia	$4943.9	$965.9	-80.46%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

Similar to what has already been shown, and perhaps most revealing, is that of the remaining Gulf Cooperative Council (GCC) states, Dubai is the only state that showed increases in its FDI. Table 4 gives a breakdown of each of the remaining states.

Table 4. Inward Flows of FDI in Bahrain, Kuwait, and Oman in The Years Leading Up to and Immediately After the Creation of The Jebel Ali Free Zone.

	1983*	1986*	FDI Percentage Increase
Bahrain	$64	-$31.9	-149.84%
Kuwait	$.04	-$14.5	-36350%
Oman	$154.6	$140.3	-9.24%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

The rest of the GCC states were negative in their FDI increases arguably revealing the effects of the Jebel Ali Free Zone. Some of the decreases in FDI could possibly be attributed to businesses leaving these GCC states and setting up in Dubai. Academic Bruce Blonigen pointed out in a study done on the behavior of multi-international businesses, that increases in FDI in one state often means decreases in neighboring states.[29] However, he also pointed out that this was not always true and that the results were possibly dependent on whether the neighboring states were less business friendly.[30] Unlike any other place in the region, the Jebel Ali Free Zone came with move-in ready facilities. The zone was outfitted with the state of the art office, factory, and warehouse space.[31] It also came equipped with excellent support services and a state of the art infrastructure in

29. Bruce A. Blonigen, *Foreign Direct Investment Behavior of Multinational Corporations*, NBER REPORTER (2006), *available at* http://www.nber.org/reporter/winter06/blonigen.html.

30. *Id.*

31. *Id.*

terms of communications and technology.[32]

Table 5. Number of Businesses Registered and Operating in the Jebel Ali Free Zone During the First Year of Operations and at Two Intervals After That.

	1985*	1996*	2011*
Jebel Ali Free Zone	16	724**	6,812**

*Sources: Wisconsin Project[33] and the Arabian Business News.[34]
** Approximate numbers.

Table 5 reveals, in clearer detail, the effectiveness of JAFZA in attracting FDI. When businesses set up in a state, multiple benefits are reaped by the state. Specifically, when a business sets up operation within a state, the state receives FDI in its best form. Initially businesses invest large amounts of wealth into the state through various business expenses, education (employee training), and jobs. Most importantly, businesses reinvest their wealth on a yearly basis making the FDI the state receives more reliable than other sources. The annual reinvestment of this wealth is key for a state wishing to move up the economic ladder.

The United Nations has noted in several of its publications and seminars the importance of building the private sector. For example in one publication the United Nations noted:

> By successfully locating core operations and supply chains in developing countries, in a responsible manner, companies can create jobs, generate income and contribute to the transfer of knowledge and technology in these locations. Companies that take a long-term perspective to doing business in such locations will typically have a more significant and lasting effect on societies as they invest in physical infrastructure, educate the workforce and build capacity for local research and development. To help reach UN goals, investment and business growth in developing countries is needed on a much larger scale. This is especially the case for the Least Developed Countries, which are generally characterized by a small and enervated private sector.[35]

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32. *Id.*
33. *Id.*
34. *See* Wis. Project, *supra* note 28; Andy Sambidge, *Dubai's Jafza Sees 111 New Firms in Q3*, ARABIAN BUS. (Dec. 18, 2012, 4:55 PM), http://www.arabianbusiness.com/dubai-s-jafza-sees-111-new-firms-in-q3-483247.html#.U10rzV6Kz1o.
35. *How Business Can Support Development*, U.N. GLOBAL COMPACT,

Dubai noticed this impact immediately after the creation of the Jebel Ali Free Zone. Its leaders, likely not wanting to waste a good thing, decided to build more than twenty additional free zones in and around Dubai in the following two decades. Arguably the most notable of these were Dubai Internet City and Dubai Media City.

B. *Dubai Internet City*

In 1999, Dubai announced the creation of a free zone known as Dubai Internet City (DIC).[36] The free zone, like the Jebel Ali Free Zone, targeted a specific industry, the Internet and Communications Technology industry.[37] The DIC, much like the free zones before it, is defined by a physical geographical area which lies roughly twenty-five kilometers south of city of Dubai. The facilities themselves offer over one and a half million square feet of commercial office space. In the zone, companies can operate outside Dubai's current legal system. Specifically, companies in the Dubai Internet City operate 100% tax free, may be 100% foreign owned, and receive other free zone specific benefits.[38] The legal freedoms, businesses were able to enjoy, were immediately felt and noticed by Dubai. Within a few short years major technology firms such as Microsoft, Intel, Dell, Cisco, IBM, and General Electric had set up major branches in the free zone.[39] Most importantly, after the DIC opened its doors to businesses in late 2000, Dubai saw noticeable increases in FDI.

Table 6. Inward Flows of FDI in Dubai/UAE in the Years Leading Up to and Immediately After the Creation of the Dubai Internet City.

	2000*	2001*	FDI Percentage Increase
United Arab Emirates	-$506.3	$1,183.8	333.81%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

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http://www.unglobalcompact.org/Issues/partnerships/how_business_can_support_development.html (last updated Apr. 20, 2013).

36. *History*, DUBAI INTERNET CITY, http://www.dubaiinternetcity.com/history (last visited Apr. 30, 2014).

37. *Id.*

38. *Why DIC*, DUBAI INTERNET CITY, http://www.dubaiinternetcity.com/join-dic/why-dic (last visited Apr. 30, 2014).

39. *Id.*

Table 6 suggests that the DIC was for responsible for dramatically increasing the FDI inflows in Dubai. It should be noted that the year 2000 should not be considered the DIC's first operating year. This is because the DIC did not open its doors until late October of 2000. When comparing Dubai's FDI increases to its other GCC neighbors, the DIC's impact on the state begins to come into light. Dubai's most notable GCC neighbor, Qatar, offers the best comparison.

Table 7. Inward Flows of FDI in Qatar in the Years Leading Up To and Immediately After the Creation of the Dubai Internet City.

	2000*	2001*	FDI Percentage Increase
Qatar	$251.6	$295.5	17.44%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

Table 7 reveals that the FDI of Dubai's most similar neighbor state increased only a fraction of the amount Dubai's did. This arguably indicates that the DIC played an important role in the increase. In fact, the increases Dubai experienced in the first year of the DIC were unparalleled by any of its immediate neighbors.

Table 8. Inward Flows of FDI in Bahrain, Kuwait, and Oman in The Years Leading Up to and Immediately After the Creation of The Dubai Internet City.

	2000*	2001*	FDI Percentage Increase
Bahrain	$363.5	$80.3	-77.90%
Kuwait	$16.2	-$111.5	-114.52%
Oman	$82	$5.2	-93.65%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

The remaining neighbors of Dubai did not increase but actually decreased in FDI. Some scholars have attributed the decline in FDI among most of the GCC states during 2001 to market reactions regarding natural resources.[40] As mentioned earlier, other scholars have pointed out that when one state makes significant enough changes, FDI will naturally

40. TOM ANDERSSON, NATURAL RESOURCE DEPENDENCY AND INNOVATION IN THE GCC COUNTRIES (2012).

decrease from surrounding states and go into the state making the changes. What Table 8 does reveal is that the addition of the free zone, known as the DIC, dramatically helped increase Dubai's FDI. It should be noted that the year 2002 was intentionally omitted. In that year, FDI dramatically decreased in all GCC states. This was due to the events of September 11 and the resulting U.S. legislation targeting Middle East states. Since 2001, the DIC has grown to include more than 1200 businesses and high-powered names such as Nokia, QUALCOMM, and McAfee.[41] It has also come to be known as the "Silicon Valley" of the Middle East.

C. *Dubai Airport Free Zone*

Located on the western end of Dubai is one of Dubai's most notable free zones known as Dubai Airport Free Zone Authority (DAFZA). The DAFZA, like the other Dubai free zones, is a defined geographical area located within the Dubai International Airport. There, a number of companies in key industry sectors—including electronics, construction, aviation, and logistics—operate without the legal restrictions placed on business outside free zones.[42] It, like the previous free zones, allowed businesses to operate outside Dubai's local laws. Rather than be subject to unfavorable ownership, tax, and regulatory environments, those businesses that set up in the DAFZA may be 100% foreign owned, operate tax free, be subject to no currency restrictions, and receive access to a variety of services.[43] The DAFZA also comes with a prebuilt infrastructure stretching over 700,000 square meters and consists of thirteen office buildings and 256 company warehouses.[44] It also includes services such as 24-hour security, housekeeping and building maintenance, travel agencies, government offices, and employee sponsorship.[45] The DAFZA opened for operation in 1996 but, unlike Dubai's other free zones, got off to a slow start in attracting FDI.

41. Ed Attwood, *135 Firms Set up Shop in DIC Last Year*, ARABIAN BUS. (Jan. 10, 2010, 12:33 PM), http://www.arabianbusiness.com/135-firms-set-up-shop-in-dic-last-year-27245.html.

42. DUBAI FREE ZONES COUNCIL (DFZC), http://www.dfzc.ae/dubai-freezones/industrial-logistics/dubai-airport-free-zone-dafz/ (last visited Apr. 30, 2014).

43. *Benefits and Incentives*, DUBAI AIRPORT FREE ZONE, http://www.dafz.ae/en/benefits (last visited Feb. 1, 2015).

44. *Id.*

45. DFZC, *supra* note 42.

Table 9. Inward Flows of FDI in Dubai/UAE in the Years Leading Up to and Immediately After the Creation of the Dubai Airport Free Zone.

	1996*	1997*	FDI Percentage Increase
United Arab Emirates	$300.5	$232.4	-22.66%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

Table 9 reveals that unlike the free zones previously discussed, Dubai did not experience a noticeable increase in FDI. This is not as alarming when Dubai's FDI rates for 1996 and 1997 are compared to its GCC neighbors.

Table 10. Inward Flows of FDI in Bahrain, Kuwait, Oman, and Saudi Arabia in the Years Leading Up to and Immediately After The Creation of the Dubai Airport Free Zone.

	1996*	1997*	FDI Percentage Increase
Bahrain	$2,048.1	$329.2	-83.92%
Kuwait	$347.3	$19.7	-94.32%
Oman	$60.6	$64.5	6.43%
Qatar	$338.8	$418.3	23.46%
Saudi Arabia	-$1,127.4	$3,039.4	369.59%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

Table 10 reveals that some of Dubai's neighbors experienced similar downward trends in FDI while others, especially in the case of Saudi Arabia, experienced increases in FDI. On the surface this might provide evidence that free zones are not effective in boosting FDI at all. However, when one looks at the surrounding details accompanying those years, the FDI numbers come into better focus. As previously stated, the most important factor influencing FDI is always the "business opportunity." Business opportunities can come in a variety of forms, but in terms of the GCC the main business opportunity has and will always be natural resources. In this case the increases experienced are explained by natural resources. In 1997, Qatar began exporting liquefied natural gas to western states.[46] As of 2009, Qatar was the world-leading exporter in liquefied natural gas.[47] Likewise, Saudi Arabia in 1997 formed a diversified mining company known as Ma'aden (Saudi Arabia Mining Company).[48] The company was created to help facilitate the extraction and development of Saudi Arabia's natural resources.[49] Investors own half of the company's stock.[50]

These two events were enough to draw FDI away from Dubai. However, despite DAFZA's slow start, Dubai received large amounts of FDI because of the free zone in the following years. Since the DAFZA's creation it has grown to house more than 1600 multinational companies.[51] In 2012, *fDi Magazine* named it the number one free zone in the world.[52] It placed second in 2010 in a similar study and was named in 2011, 2012, and 2013 as the top free zone in the Middle East and Africa by *fDi Magazine*.[53]

III. LEGAL SYSTEM REFORM

The success of Dubai's free zones helped boost Dubai from an undeveloped state to a developing state. However, despite Dubai's success in boosting FDI through free zones, it wasn't enough to bring Dubai into the next stage of development and classification as a developed state. Arguably, developed states are characterized by the service industry. When a state's economy moves from the manufacturing industry to the services industry, it has likely reached developed status. In order to achieve "developed" status, state leaders must make a change that will attract businesses in the services industry and ensure FDI for long into the future. Achieving this has been a problem for several states over the last half century. This is especially true for Middle East states.

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46. Joel Kukemelk, *Qatar–The Biggest Exporter of Liquid Gas in the World*, LHV PERSIAN GULF FUND, http://persiangulffund.com/qatar-the-biggest-exporter-of-liquid-gas-in-the-world/ (last visited Aug. 21, 2014).

47. *Id.*

48. MAADEN, SAUDI ARABIAN MINING COMPANY, http://www.maaden.com.sa/en/about/history (last visited Apr. 30, 2014).

49. *Id.*

50. *Id.*

51. *Dubai Airport Freezone Ranked 1st in the Middle East by FDI*, ARABIAN GAZETTE (June 20, 2013), http://www.arabiangazette.com/dubai-airport-freezone-ranked-1st-middle-east-fdi-20130620/.

52. *Id.*

53. *Id.*

A. *The Dubai International Financial Centre*

Shortly before 2004, Dubai's leaders, realizing that free zones would not be enough to boost the state into developed status, decided to hatch an unprecedented plan. The first part of the plan was to create a free zone specifically for the financial service industry. In 2004, Dubai opened this free zone near the heart of the city of Dubai and called it the Dubai International Financial Centre (DIFC).[54] Like the free zones before it, the DIFC is a defined geographical area, where businesses in the financial and business sectors may operate 100% tax free and be 100% foreign owned.[55] Specifically, the DIFC was created to be "the financial and business hub connecting the region's emerging markets with the markets of Asia, the Americas and Europe . . . [and was] a purposely built financial free zone . . . committed to encouraging economic growth and development in the region through its strong financial and business infrastructure."[56] The goal behind the DIFC was to create a global financial hub that would rival the world's top three (based on the Global Center's Financial Index): New York, London, and Hong Kong.[57]

The effects of the DIFC were immediately noticeable.

Table 11. Inward Flows of FDI in Dubai/UAE in the Years Leading Up to and Immediately After the Creation of the Dubai International Financial Centre.

	2003*	2004*	FDI Percentage Increase
United Arab Emirates	$4,225.9	$10,003.5	136.71%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

The creation of the DIFC dramatically helped increase FDI within the state. The level of FDI received that year was higher than in any previous year.[58] Other GCC states in the same year likewise increased in their inflow of FDI.

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54. DUBAI INTERNATIONAL FINANCIAL CENTRE (DIFC), http://www.difc.ae/ (last visited Apr. 30, 2014).

55. *Id.*

56. *Id.*

57. *Who's on Top in the Money Trade?*, BUS. WK., http://images.businessweek.com/ss/08/03/0305_financial_centers/index_01.htm (last visited Aug. 21, 2014).

58. *Id.*

Table 12. Inward Flows of FDI in Bahrain, Kuwait, Oman, Qatar, and Saudi Arabia in the Years Leading Up to and Immediately After the Creation of the Dubai International Financial Centre.

	2003*	2004*	FDI Percentage Increase
Bahrain	$516.7	$865.3	67.52%
Kuwait	-$67.1	$23.7	135.32%
Oman	$24.9	$111	345.78%
Qatar	$624.9	$1,198.9	91.85%
Saudi Arabia	-$586.5	-$334.3	156.99%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

Table 12 reveals that all of the GCC states increased FDI during the same time frame from 2003 to 2004. However, only a couple of the states saw their FDI increase at or above the rate of Dubai's FDI percentage increase. There are several reasons for the region's rise in FDI during this time: natural resources and market changes. Other scholars have adequately written on this subject.[59] Most notable is the fact that the level of FDI Dubai received in that year was unmatched by any other GCC state. Among the GCC states, Dubai is one of the smallest in population, land, and natural resources. Therefore, its ability to significantly outpace its neighbors in FDI is a remarkable feat.

B. *Dubai International Financial Centre Courts*

The second part of the plan came to fruition in 2006 with the opening of the DIFC courts. The groundwork of the DIFC courts was laid in 2004 with the creation of the DIFC in Federal Decree No. 35 of 2005, an amendment to the UAE Constitution, and the passing of 3 laws, including UAE Federal Law No. 8 of 2004, UAE Federal Decree No. 9 of 2004, and Dubai Law No. 12 of 2004.[60] These laws allowed the DIFC to set up its own independent legal system and courts separate from those of Dubai and the UAE, with jurisdiction over civil and commercial matters.[61] Specifically, a separate judiciary was organized for the free zone in order

59. *See, e.g.*, Jordan E. Toone, *Mirage in the Gulf?; Examining the Upsurge in FDI in the GCC and its Legal and Economic Implications for the MENA Region*, 26 EMORY INT'L L. REV. 677 (2012).

60. *DIFC Courts—Legal Framework*, http://difccourts.ae/legal-framework/ (last visited Feb. 1, 2015).

61. *DIFC Courts—Dubai International Financial Centre*, http://www.difc.ae/difc-courts-0 (last visited Apr. 30, 2014).

to support the DIFC's legal status as a jurisdiction separate from the rest of Dubai.[62] To those familiar with the system, the judiciary is known as the "DIFC Courts."[63]

The courts are modeled on the English Commercial Court.[64] In the United Kingdom, the English Commercial Court is part of what is known as the Queen's Bench,[65] which itself is a division of the High Court.[66] The judges who are asked to serve on this court usually have expertise in insurance, commercial, and banking matters.[67] This setup is arguably one of the main reasons why London is a global financial hub.

Likewise, the DIFC Courts are primarily made up of two levels: a trial court, known as the DIFC Court of First Instance, and an appellate court, known as the DIFC Court of Appeal.[68] In contrast, the local Dubai Courts[69] are made up of three levels. The lowest is the Dubai Court of First Instance, the appellate is the Dubai Court of Appeals, and the supreme is the Dubai Court of Causation.[70] The DIFC also has a Small Claim Tribunal for claims involving less than one hundred thousand United Arab Emirate dirhams.[71]

The personnel makeup of the Courts is mostly composed of judges from common law jurisdictions.[72] For example, the Deputy Chief Justice of the DIFC Courts is a former British High Court Judge while the Chief Justice is a former Chief Judge from Singapore.[73] Each judge has also had

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62. *See* THE LAW OF THE JUDICIAL AUTHORITY AT DUBAI INTERNATIONAL FINANCIAL CENTRE (DIFC Law No. 10/2004) (Dubai); COURT LAW (DIFC Law No. 12/2004) (Dubai), *available at* http://difc.ae/laws_regulations/laws/enacted_laws.html.

63. *DIFC Courts—Legal Framework*, *supra* note 60.

64. Sara Hamdan, *DIFC Court Ready for Business*, NATIONAL (Oct. 9, 2008), http://www.thenational.ae/business/difc-court-ready-for-business.

65. GARY SLAPPER & DAVID KELLY, THE ENGLISH LEGAL SYSTEM (2004).

66. *Queen's Bench Division*, U.K. MINISTRY OF JUSTICE, https://www.justice.gov.uk/courts/rcj-rolls-building/queens-bench (last visited Feb. 6, 2015).

67. *See, e.g.*, *Senior Presiding Judge-Lord Justice Gross*, U.K. MINISTRY OF JUSTICE, http://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/biographies/biography-spj/ (last visited Feb. 6, 2015); *Biography of President of the Queen's Bench Division*, U.K. MINISTRY OF JUSTICE, http://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/biographies/pqbd-biography/ (last visited Feb. 6, 2015).

68. The Judicial Authority at Dubai International Financial Centre, DFIC Law No. 12 of 2004, art. 3(1).

69. Essam Al Tamami, PRACTICAL GUIDE TO LITIGATION AND ARBITRATION IN THE UNITED ARAB EMIRATES 4 (2003).

70. *Id.*

71. *Small Claims Tribunal*, DUBAI INT'L FIN. CTR. COURTS, http://difccourts.ae/small-calims-tribunal/ (last visited Feb. 6, 2015).

72. Michael Hwang, SC, Chief Justice of the Dubai Int'l Fin. Ctr. Courts, *The Courts of the Dubai International Financial Centre—A Common Law Island in a Civil Law Ocean* (Nov. 1, 2008), *available at* http://difccourts.ae/the-courts-of-the-dubai-international-finance-centre-a-common-law-island-in-a-civil-law-ocean/ (last visited Feb. 6, 2015).

73. *Deputy Chief Justice Sir John Murray Chadwick*, DUBAI INT'L FIN. CTR. COURTS,

extensive experience as an arbitrator.[74] Six additional judges were appointed in 2008 to the DIFC Courts including four foreign judges from foreign common law jurisdictions and two local judges selected to sit on the DIFC Small Claims Tribunal.[75]

For decades the international development community has clamored that in order to attract and maintain FDI a state must revamp its legal system to fit the expectations of western investors.[76] This has usually meant the complete overhaul of a legal system and the implementation of a common law legal system. The problem is, as mentioned earlier in this Article, most states are ill-equipped to make such changes. With the creation of the DIFC Courts, Dubai gave the world an effective alternative. The numbers prove its effectiveness.

Table 13. Inward Flows of FDI in Dubai/UAE in the Years Leading Up to and Immediately After the Creation of the Dubai International Financial Centre Courts.

	2005*	2007*	FDI Percentage Increase
United Arab Emirates	$10,899.9	$14,186.5	30.15%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

Initially, Table 12 reveals only a moderate increase in FDI, at least according to the percentage. However, when one looks at the overall FDI inflow Dubai/UAE had, we see that the amount of FDI received is more than all of its neighbors combined, excluding Saudi Arabia.

http://difccourts.ae/about-the-courts/courts-structure/judges/sir-john-murray-chadwick/ (last visited Feb. 6, 2015); *Chief Justice Michael Hwang*, *SC*, DUBAI INT'L FIN. CTR. COURTS, http://difccourts.ae/about-the-courts/courts-structure/judges/hwang/ (last visited Feb. 6, 2015).

74. *See, e.g.*, *Justice Sir David Steel*, DUBAI INT'L FIN. CTR. COURTS, http://difccourts.ae/about-the-courts/courts-structure/judges/justice-sir-david-steel/ (last visited Feb. 6, 2015).

75. Press Release, Dubai Int'l Fin. Ctr. Courts, DIFC Courts Appoint New Judges (Jan. 28, 2008), *available at* http://difccourts.ae/28-january-20080difc-courts-appoint-new-judges/ (last visited Feb. 6, 2015).

76. *See* Hewko, *supra* note 9, at 3.

Table 14. Inward Flows of FDI in Bahrain, Kuwait, Oman, and Qatar in the Years Leading Up to and Immediately After the Creation of the Dubai International Financial Centre.

	2005*	2007*	FDI Percentage Increase
Bahrain	$1,048.6	$1,756.3	67.48%
Kuwait	$233.9	$111.5	-109.77%
Oman	$1,538.3	$3,332.1	116.60%
Qatar	$2,500	$4,700	88%

*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

The fact is that high levels of FDI are necessary for state development. If a state is unable to routinely receive high levels of FDI, then a state's economy will never fully develop.[77] Developed states are typically described as states whose populations are well trained and whose economies are more dependent on the service sector than the industrial sector.[78]

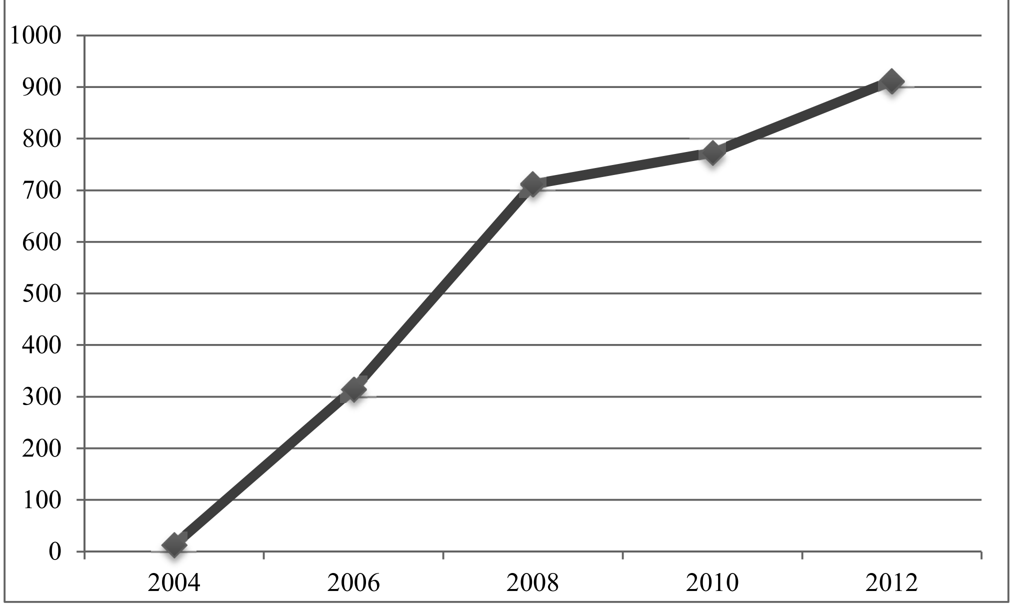
In order for a state's population to be well trained and developed, a state must attract businesses that will both train or at least encourage the education of the local population and invest in the state's economy.[79] The DIFC has done exactly that. The number of service-oriented businesses operating in the DIFC evidences this.

77. *See generally* Nadil Md. Dabour, *The Role of Foreign Direct Investment (FDI) in Development and Growth in OIC Member Countries*, 21 J. ECON. COOPERATION 3, 27–55 (2000).

78. *See, e.g.*, *Developed Economy*, INVESTOPEDIA.COM, http://www.investopedia.com/terms/d/developed-economy.asp#axzz1legO8olO (last visited Feb. 6, 2015); *Service Sector*, INVESTOPEDIA.COM, http://www.investopedia.com/terms/s/service-sector.asp (last visited Feb. 6, 2015); Brent Radcliffe, *How Education and Training Affect the Economy*, INVESTOPEDIA.COM, http://www.investopedia.com/articles/economics/09/education-training-advantages.asp (last visited Feb. 6, 2015).

79. *See* ORG. FOR ECON. CO-OPERATION & DEV., FOREIGN DIRECT INVESTMENT FOR DEVELOPMENT 5, 12, 14 (2002).

Figure 1: Registered Businesses in the DIFC



* Sources: Dubai International Financial Centre Reports

Figure 1 reveals that service-oriented businesses have flocked to the DIFC since its creation. A huge jump was particularly noticeable in the year (2006) the DIFC Courts opened.

Since 2006, Dubai and its leaders have continually conducted reviews of what is and is not working in the DIFC. Specifically, in the past eight years they have made changes to several laws in order to improve the DIFC Court system and increase FDI. The most notable example of this is Dubai Law No. 16 of 2011, "which will allow any parties, even those not incorporated within the DIFC free zone, to use the DIFC Courts to resolve commercial disputes."[80] Prior to the passing of this law only businesses registered in the DIFC or businesses that had a dispute related to the DIFC could use the DIFC Courts. Now businesses, regardless of what the dispute is about or where they are registered, may have their disputes heard in the DIFC Courts if both parties agree.

Unfortunately, the effect of such law in terms of FDI is still unclear. The United Nations Conference on Trade and Development doesn't have FDI numbers from 2012 to the present year. However, the caseload figures are available and give significant insight into the level of comfort

80. Arti Sangar, *Dubai Expands Jurisdiction of DIFC Courts*, DIAZ REUS (Jan. 19, 2012), http://diazreus.com/dubai-expands-jurisdiction-of-difc-courts/ (last visited Feb. 6, 2015); Clare Raven, *Choice of Jurisdiction*, HADEF & PARTNERS (Oct. 1, 2012), http://www.hadefpartners.com/News/pageid/120-137/default.aspx?mediaid=212.

foreign businesses have with the DIFC Courts. In 2012, the number and value of the cases the DIFC Courts handled rose for the sixth consecutive year.[81] As one news source pointed out

> The value of cases rose more than 400 percent in the year, from $33 million to just over $169 million, reflecting the increasing complexity of commercial cases coming before the Courts. This growth in caseload was also reflected in the number of DIFC Courts' registered lawyers – a figure which grew by almost fifty percent to 349 at the year end.[82]

The effects of the DIFC Courts cannot be understated. Not only has it increased FDI in the state, but it also allowed foreign investors to "fully invest" in the state by trusting the legal system. This is arguably the reason Dubai routinely ranks as one of the top twenty-five states in the world in attracting FDI.[83] It is also arguably the reason Dubai was able to recover more quickly than every western state after the 2008 recession.

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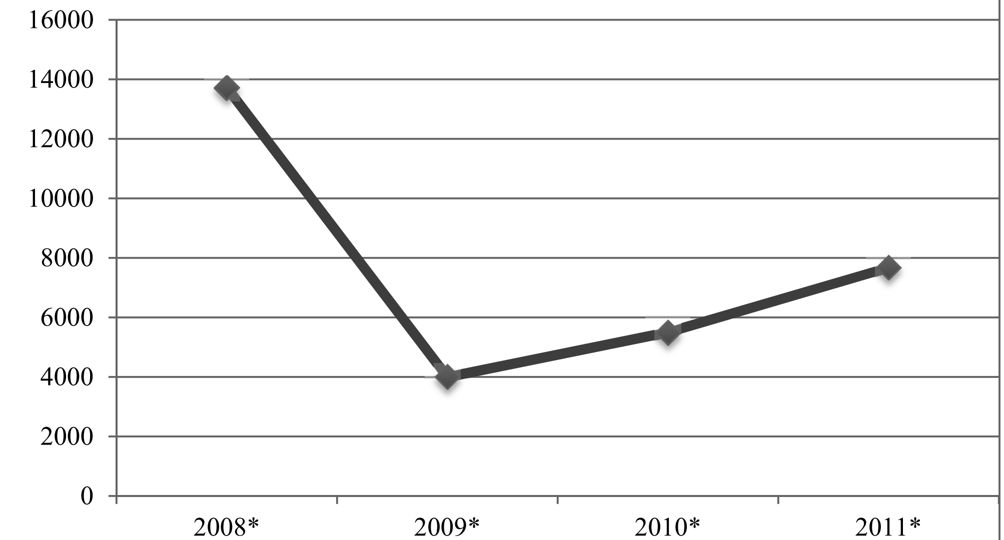
81. *DIFC Courts Cases up 40%*, EMIRATES 24/7 (May 5, 2013), http://www.emirates247.com/markets/stocks/difc-courts-cases-up-40-2013-05-05-1.505260.

82. *Id.*

83. Paul A. Laudicina et al., *Foreign Direct Investment (FDI) Confidence Index*, A.T. KEARNEY, http://www.atkearney.com/research-studies/foreign-direct-investment-confidence-index (last visited Feb. 6, 2015).

Figure 2: FDI in Dubai/UAE in the years immediately before and after the 2008 Recession.



*Measured in millions of U.S. Dollars. Source: U.N. Conference on Trade and Development, Foreign Direct Investment Online database.

Figure 2 reveals that Dubai began recovering at a rapid rate only one year after the recession. For most western states the recovery has been much slower and more painful.

C. *Dubai International Financial Centre Alternative Dispute Resolution*

However, for some states the creation of an independent legal system is not an option due to funding and/or cultural reasons. These states still have an option in the form of an alternative dispute resolution center. An alternative dispute resolution center, like the DIFC Courts, gives investors the ability to resolve their disputes in a forum they feel comfortable in without the hassle of a separate legal system.

In 2008 Dubai encouraged the use of alternative dispute resolution by passing investor friendly arbitration laws.[84] The most recent arbitration law, like previous arbitration laws, was heavily modeled after the UNCITRAL model law (United Nations Commission on International Trade Law).[85] Most of the provisions found in the DIFC Arbitration Law

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84. *See generally* HABIB AL MULLA ET AL., COMPARISON OF MENA INTERNATIONAL ARBITRATION RULES (2011).

85. *Arbitration Law*, DUBAI INT'L FIN. CENTRE—LONDON CT. INT'L ARB. ARB. CENTRE, http://www.difcarbitration.com/arbitration/arb_law/ (last visited Feb. 6, 2015).

are almost verbatim with those written in the UNCITRAL Model Law. The similarities have allowed all parties (*i.e.*, lawyers, arbitrators, foreign investors) involved in a dispute to comfortably understand the rules and have realistic expectations.

In 2006, after the creation of the DIFC, the UAE joined the New York Convention, which gives recognition to foreign arbitral awards.[86] Its membership in the convention not only allows for enforcement of foreign awards within the UAE, but also allows awards granted in the UAE enforcement in other states.

Later, in 2008, the DIFC in conjunction with the London Court of International Arbitration (one of the oldest and most well-known arbitration establishments in the world) founded a new arbitration establishment named the DIFC-LCIA Arbitration Centre.[87] Here, businesses not only can arbitrate disputes but also have access to services such as mediation.[88]

Prior to the conjunction "[A]rbitrations conducted in the DIFC were limited to disputes only connected with the DIFC."[89] However, this changed with the conjunction and 2008 amendment to the Dubai Arbitration law. DIFC arbitration was given a wider jurisdictional reach by being able to arbitrate disputes regardless of the parties' locations. In short, by expressly agreeing to the jurisdiction of the DIFC Arbitration Tribunals, any party, foreign or domestic could arbitrate their dispute in the DIFC.[90] The scope the arbitration reaches was clarified in *Al Khorafi v. Bank Sarasin & Co.* when the court stated that the Tribunal might claim jurisdiction notwithstanding the parties having a prior agreement to an unambiguous foreign selection clause.[91] Notably, Dubai Courts are bound by the New York Convention and "awards made within the jurisdiction of the DIFC are enforced by the Dubai courts without further review of the tribunal's decision."[92]

Enforcement of arbitral awards has been key in helping foreign investors invest in Dubai. After the creation of the DIFC-LCIA Arbitration Centre it became common for DIFC courts to ratify a DIFC arbitration award or convert the award into a DIFC Court judgment that is automatically endorsed by the Dubai courts.[93] The first example of this

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86. Hwang, *supra* note 72.

87. *FAQs*, DUBAI INT'L FIN. CENTRE—LONDON CT. INT'L ARB. ARB. CENTRE, http://www.difcarbitration.com/base/faqs/index.html (last visited Feb. 6, 2015).

88. *Id.*

89. Phil Appenzeller & Steve Harr, *An American in Dubai—An Overview of Dubai's Arbitration System*, TERRALEX CONNECTIONS (Aug. 16, 2011), http://www.terralex.org/publication/p653857f06d/an-american-in-dubai-an-overview-of-dubai-s-arbitration-system.

90. *FAQs*, *supra*, note 87.

91. Al Khorafi v. Bank Sarasin & Co., May 30, 2014 (CFI 026/2009).

92. *Arbitration Law*, *supra* note 85.

93. Essam Al Tamimi, Note, *The Enforcement of Foreign Arbitration Awards in the UAE*,

streamlined ratification process was in *Property Concepts FZE v. Lootah Network Real Estate & Commercial Brokerage*.[94]

While the DIFC-LCIA Arbitration Centre did not come into full force until the 2008 Recession, its effect on FDI in Dubai should not be mistaken. Arbitrations in Dubai have increased and have given foreign investors the comfort needed to make investments in the state. Like the DIFC Courts, the Arbitration Centre is arguably a key reason why Dubai was able to pull so quickly out of the 2008 Recession.

CONCLUSION

For states outside the West, particularly those in the Middle East, the challenge in attracting FDI is real.[95] Without FDI, a state will never be able to fully develop.[96] However, according to the developmental world, the solution is simple: a complete overhaul of the legal system.[97] The problem is a complete overhaul of any state's legal system is unrealistic.[98] Most states cannot afford the cost or persuade its people to support the overhaul.[99]

The solution: a common law island. Dubai has created and displayed over a period of time that this is a realistic alternative, particularly for resource poor Middle East states. These states are ideally suited for the changes this Article proposes because of their history with contract and independent legal systems. If states create business opportunities through free zones, then this will bring in the needed initial FDI for establishing a legal framework for long term FDI.

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15 ARB. INT'L 393, 397–98 (1999).

94. Abdul Hamid El-Ahdab & Jalal El-Ahdab, *Arbitration in the United Arab Emirates*, *in* ARBITRATION WITH THE ARAB COUNTRIES 777, 786 n.76 (3d ed. 2011).

95. *See* Mina Toksoz, *Book Review*, 40 MIDDLE E. STUD. 179, 180 (2004) (reviewing MERIH CELASUN, STATE-OWNED ENTERPRISES IN THE MIDDLE EAST AND NORTH AFRICA, PRIVATIZATION, PERFORMANCE AND REFORM (2001)).

96. *See generally* Prakash Loungi & Assaf Razin, *How Beneficial is Foreign Direct Investment for Developing Countries?*, 38 FIN. & DEV. 2 (2001).

97. *See* THE WORLD BANK, INITIATIVES IN LEGAL AND JUDICIAL REFORM 2002, at 1 (2002).

98. *See* Hewko, *supra* note 9, at 4.

99. *Id.*