

An introduction to the DIFC Courts by Michael Black QC and Tom Montagu-Smith

Dubai is one of the most vibrant economies on the planet. It is the home of the world's most luxurious hotel; the world's tallest building, the Burj Dubai, is under construction; new islands have been created in the form of palms and the countries of the world; there are plans to build the world's largest airport and a staggering 20% of the world's tower cranes are currently in use in Dubai.

The success of this tiny desert Emirate (its population is less than that of Leeds) is a tribute to the vision of its Ruler, His Highness Sheikh Mohammed Bin Rashid Al Maktoum. Without the oil and gas reserves of its neighbours Dubai has had to focus on trade and tourism for its growth, but Sheikh Mohammed also realised that Dubai was ideally placed to become one of the world's leading financial hubs.

With the massive financial investment and the "can do attitude" that characterises so many projects in Dubai, in 2004 the Dubai International Centre ("the DIFC") was established. Occupying a 110 acre site in the centre of Dubai's new financial district between the iconic Emirates Towers and the Burj Dubai, the DIFC will house 45,000 workers in financial services in 40 towers on a shared podium including residential towers and hotels. The DIFC will have a kilometre long air conditioned Retail Spine, and an internal Personal Rapid Transit System linked to the Dubai Metro. It will also have what must be one of the largest underground car parks in the world at 32,600 spaces.

It was Sheikh Mohammed's father, Sheikh Rashid bin Saeed Al Maktoum who said, "We will build the infrastructure and the rest will follow" and the infrastructure of a financial centre is not just to be found in buildings and transportation systems. The DIFC's stated aim is to develop the same stature as New York, London and Hong Kong serving the vast region between Western Europe and East Asia.

The DIFC also contains the Dubai International Financial Exchange ("DIFX"). A capital market designed to fuel economic growth in the region.

The DIFC is an integral part of Dubai's future, but it cannot succeed unless it is able to attract international investors. To this end, the DIFC provides a dollar denominated environment in which 100 percent foreign ownership is permitted with no tax on income and profits and no restrictions on foreign exchange or capital/profit repatriation.

Within the DIFC, UAE and Dubai laws in relation to civil and commercial matters do not apply. Instead the DIFC has its own laws, the official language of which is English, based on concepts largely derived from English law. If the DIFC laws do not deal with a particular point, the ultimate fall-back is the law of England and Wales.

There is also a detailed regulatory structure that would be familiar to anyone who has an acquaintance with the English FSA Rulebook.

The regulatory structure is administered by the Dubai Financial Services Authority (“DFSA”) which has its own enforcement procedures and tribunals. The legal structure is administered by DIFC Court and the remainder of this article will focus on the Court and its procedures.

The Court, which held its first sitting on 25 October 2005, got off to a flying start. A number of substantial disputes have already come before the Court. The first trial was heard by the Deputy Chief Justice in January. The case is a shareholders’ dispute concerning a large construction project within the DIFC. The Claimants (a European consortium of investors) are represented by Michael Black QC instructed by the Dubai office of Kennedys.

The DFSA has also sought a number of injunctions. The most recent was to restrain a fraudulent internet investment scheme. The application was made by video link to the Chief Justice who was in London. Tom Montagu-Smith acted as deputy acting registrar in London.

The DIFC Court is probably the most luxuriously appointed court to be found anywhere. It is housed in purpose built premises approached through sliding glass doors and granite hallways. Litigants are greeted with tea and coffee and the morning papers. The court-room itself is a magnificent space with studded brown leather walls, dark wood benches and white leather Eames chairs. Video and audio conferencing is possible from the almost any point in the room. There are facilities for both video and audio recording of proceedings and projecting documents and other output to large plasma screens on the walls and monitors on the bench and desks.

The Court is presided over by the Chief Justice, Sir Anthony Evans, formerly a Lord Justice of Appeal. The deputy Chief Justice is Michael Hwang SC, a commercial arbitrator from Singapore of considerable international renown and a former Judicial Commissioner of the Supreme Court of Singapore, a status equivalent to that of a High Court Judge in England. The intention is to appoint two more judges in the near future. The bench of four judges will hear both first instance cases and appeals.

The Rules of the DIFC Court (“*the RDC*”) have been drafted by Michael Black QC with the assistance of Tom Montagu-Smith and are based on the Commercial Court Guide and the English Civil Procedure Rules albeit with a number of significant changes designed to give the Court a more international feel. For example, English rules of disclosure have been replaced by a system based on the IBA Rules on the Taking of Evidence in International Commercial Arbitrations. The process of drafting the RDC involved extensive consultation with likely Court users from many different

legal cultures. The Rules are due to be published shortly - until they are published the English CPR apply.

The jurisdiction of the Court is not limited to commercial transactions or regulatory appeals, but includes all disputes arising out of any contract concluded, or any incident that occurs, in the DIFC. Thus, this will include personal injury actions, employment claims, landlord and tenant issues and any number of other smaller civil disputes.

Tribunals will be established for claims of lower value. Two Dubai Court Judges, Ali al Madhani and Omar al Muhairi have been appointed as Senior Judicial Officers to preside over these tribunals. Both have recently completed 2 years of common law training in London. To date, one employment claim has been started and has been resolved without the need for a trial.

Any advocate who has rights of audience in the highest courts of his home country and has sufficient fluency in English may appear before the Court.

Judgments of the Court can be enforced as Dubai judgments and so become enforceable throughout the UAE and other Gulf Cooperation Council countries.

The DIFC has succeeded in attracting some of the world's most prestigious financial institutions. No doubt the Court will develop along with it from its English roots to a truly international court with a regional flavour. It will be an exciting and fascinating process.

Michael Black QC and Tom Montagu-Smith are barristers practising at 2 Temple Gardens in London. They would be delighted to answer any queries about the DIFC Courts and can be contacted at clerks@2tg.co.uk.