

DIFC

Dubai International Finance Centre

A stock plotline for science fiction films is that of the planet created from scratch in a matter of moments. For lawyers, insurers and construction professionals doing business in Dubai this is an image with a certain resonance. Dubai is one of the fastest growing economies in the world. In less than two generations it has grown from a pair of fishing villages beside a creek to a city of 1.5 million with a rate of growth which borders on the frightening.

However, the very speed at which this expansion has happened has led to issues; an example being the field of dispute resolution. Until recently, disputes - or at least those which led to any sort of formal proceedings - were relatively uncommon within the Emirates. The pace of change has meant, sadly but inevitably, that this is changing which has brought problems of its own. The Dubai courts system, while highly technologically advanced, is perceived in some quarters as slow and it has not gained the confidence of international users of court services. Similarly, the Dubai International Arbitration Centre, while superbly appointed, is handicapped because to date Dubai has not acceded to the New York Convention on the enforcement of arbitral awards.

Enter the DIFC

These problems are, however, offset by a recent exciting development - the opening of the Dubai International Financial Centre (DIFC) and the creation of a new, separate and autonomous legal system for it. Thus, disputes between companies registered in the DIFC; or between a DIFC company and a non-DIFC company relating to a contract made in the DIFC area (which is something under two square kilometers); or even between two non-DIFC companies but entered into within the area of the DIFC are subject to the jurisdiction of the DIFC Courts rather than the Dubai Federal Courts. In addition, the DIFC has appointed as judges Sir Anthony Evans, a retired Judge of the English Commercial Court, and Michael Hwang, formerly of the High Court of Hong Kong.

To implement this new legal structure the DIFC has adopted a series of substantive laws closely modeled on its English counterparts. For example, the DIFC Companies Law is closely derived from the Companies Act 1985.

Procedural matters

Even more interesting, however, is the approach taken to procedural matters. Firstly, the DIFC has created its own court and is in the process of building a specially designed building to house it. Rather more importantly, it has appointed an English QC to draft the procedural rules, to be known as the RDC (or 'Rules of the DIFC Courts'). These rules, which are presently in draft form, are intended to blend all the best from English, Continental and American procedures while also borrowing heavily from the Middle Eastern legal systems. An example of the latter comes in the area of mediation where Arab and Middle Eastern dispute resolution systems have a provision for conciliation, which pre-dates the English or American method, and has proved to be extremely successful.

While the document is being finalised, the DIFC Interim Arrangement Order No. 1 of 2005 provides that disputes in the DIFC Courts shall be conducted in accordance with the English Civil Procedure Rules and use English forms suitably 're-badged'. On 25 May 2006, the first claim form was issued in DIFC Courts by Kennedys.

Misconceptions

The evolution of DIFC Courts will be watched with interest throughout the world. The instances where a new legal system is created are few and far between. Accordingly, it is worth correcting a few misconceptions. Firstly, it has been hinted that DIFC Courts will come to be the forum for commercial disputes throughout the Middle East. This is unlikely because the jurisdiction of the DIFC Courts will not extend beyond the confines of the DIFC

outlined above. In addition, it is not envisaged that commercial entities elsewhere in the Middle East will be able to confer jurisdiction on the DIFC Courts by agreement.

Understandably there is an anxiety that the newcomer will supplant the existing courts of the region and, until the precise relationship between the DIFC Courts and the domestic court structures of the Emirates and its neighbours has 'bedded in', this concern needs to be treated with some sensitivity. Secondly, there is the suggestion that DIFC Courts exist solely to deal with construction disputes arising out of the construction of the complex of buildings comprising the DIFC. This is simply wrong although there is no doubt that such disputes will be a source of business for some time to come.

Thirdly, it is suggested that the federal courts of the UAE will not uphold decisions if they do not like them. This idea is at odds with the basis on which the DIFC Courts were set up which included the clear understanding that Dubai courts would enforce DIFC judgments as of right subject to approved Arabic translations being provided. So, to paraphrase the old curse, we live in interesting times.

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