



The DIFC Court



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The Dubai International Financial Centre (“DIFC”) is a 45 hectare free zone in Dubai for banking, insurance, trading and other financial services. According to the Centre’s website² it will eventually comprise some 40 towers of offices, flats and hotels with a built up area (including parking) of 4 million square metres and a gross floor area of 2 million square metres. The plan is to accommodate over 45,000 office workers and 32,600 cars.

The aim of the DIFC is to create in Dubai a financial services industry on the same scale as London and New York. According to KPMG the DIFC is well on the way to achieving that aim. In its *International Financial Centres Competitive Assessment*³ KPMG ranked the DIFC seventh in the world behind Singapore, London, New York, Hong Kong and Tokyo but ahead of Frankfurt and Paris and the other financial centres in the Gulf Doha, Manama and Riyadh.

One of the reasons for the DIFC’s success identified by KPMG was the special jurisdiction for the resolution of business disputes in the Centre:

“In a region characterised by civil law codes, DIFC introduced a common-law framework designed to offer the optimal environment for business growth. All business activity within DIFC is governed by this legal framework with the exception of criminal issues, which are governed by UAE’s federal criminal law (including anti-money laundering law).”⁴

The report continues:

“The DIFC Courts, the independent judicial system within the financial district, is another

critical offering to the financial services industry. The rules of the DIFC Courts were designed specifically to deal with sophisticated financial transactions conducted within DIFC. Furthermore, the DIFC Courts worked extensively to ensure the highest international standards of legal procedure in order to provide the certainty, flexibility and efficiency expected by global institutions operating within DIFC. The DIFC Courts have developed a bench of internationally renowned judges well versed in commercial disputes.”⁵

This DIFC model has been followed by Qatar which has established a Civil and Commercial Court for the Qatar Financial Centre⁶.

The DIFC was established by art 3 (1) of The Law Establishing the Dubai International Financial Centre, No (9) for the year 2004⁷. This is a Dubai law enacted pursuant to a constitutional amendment of the United Arab Emirates⁸ and federal legislation⁹. Art 3 (2) and (3) of Law No (9) of 2004 provides for a number of bodies for governing and regulating the DIFC¹⁰, including a judicial authority known as the “Dubai International Financial Centre Judicial Authority”¹¹. Art 8 further provides:

“(1) The DIFC Courts shall be formed and shall carry out their functions in an independent manner, in accordance with the provisions of this Law, the other Centre’s Laws and the Centre’s Regulations.

(2) Unless otherwise provided by any other Centre’s Laws, the Centre’s Courts shall have exclusive jurisdiction to hear and

⁵ *Ibid*

⁶ See the Court’s website at <http://www.qfccourt.com/index.php>

⁷ http://dific.complinet.com/en/display/display_main.html?rbid=2618&element_id=9415

⁸ Constitutional Amendment No (1) of 2004 at http://dific.complinet.com/en/display/display_main.html?rbid=2618&element_id=3520

⁹ Federal Law No. (8) of 2004 Concerning Financial Free Zones

(http://dific.complinet.com/en/display/display_main.html?rbid=2618&element_id=3523), Federal Decree Number 35 for the year 2004 To Establish Financial Free Zone in Dubai

(http://dific.complinet.com/en/display/display_main.html?rbid=2618&element_id=3534) and Cabinet Resolution No. 28 of 2007 On the Implementing Regulations of Federal Law No. 8 of 2004 Concerning Financial Free Zones

(http://dific.complinet.com/en/display/display_main.html?rbid=2618&element_id=9274)

¹⁰ Known as “the Centre’s Bodies” (art 2 of Law No (9) of 2004.

¹¹ http://dific.complinet.com/en/display/display_main.html?rbid=2618&element_id=9417

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² “Facts and Figures” at <http://www.difc.ae/difc-district/facts-figures/>

³ International Financial Centres Competitiveness Assessment Report, KPMG, Dubai 22 Dec 2009 downloadable from <http://www.difc.ae/press-centre/press-archives/2009/22-december-2009/>

⁴ Page 10 *ibid*



determine any claims in which the Centre, the Centre Establishments or any of the Centre's Bodies is party to and also to hear and determine any dispute, arising out of any transaction carried out in the Centre or an incident which took place therein. The President may also establish such juristic committees and arbitration panels as are necessary.

- (3) The courts of the Emirate shall entertain the prosecution of any crimes that take place within the Centre.
- (4) The Centre's Courts shall have exclusive competence to interpret this Law, the Centre's Laws and the Centre's Regulations.
- (5) The Government shall provide the Centre's Courts with sufficient funds necessary to discharge their powers and perform their functions.
- (6) The Centre's Courts may appoint and employ persons on terms they deem necessary to exercise their powers and perform their functions."¹²

Save for criminal law (including money laundering) which is reserved to the UAE federal courts¹³, the DIFC's institutions and other entities carry on business in accordance with laws made for the DIFC by the ruler of Dubai (known as "**the Centre's Laws**") and regulations pursuant to the Centre's Law made by a president¹⁴ appointed by the ruler¹⁵ (known as "**the Centre's Regulations**").

The provisions of Law No (0) of 2004 relating to the DIFC Courts are implemented by Law No.12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre¹⁶. Art 3 (1) of that Law establishes in the DIFC a Court of First Instance and the Court of Appeal¹⁷. The Court of First Instance consists of a single judge. The Court of Appeal comprises a presiding judge and two judges. The Court of First Instance has exclusive

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http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=9422

¹³ Art 3 (1) and (2) of Cabinet Resolution No. 28 of 2007 On the Implementing Regulations of Federal Law No. 8 of 2004 Concerning Financial Free Zones at

http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=9277

¹⁴ The President per art 3 (2) of Law No (9) of 2004 and

http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=9417

¹⁵ Art 13 (1) of Law No (9) of 2004

http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=9427.

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http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=3562

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http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=3564

jurisdiction over civil or commercial cases and disputes involving the DIFC, any of the Centre's Bodies or any entity doing business in the Centre¹⁸. It also has exclusive jurisdiction over civil or commercial cases and disputes arising from or related to a contract that has been executed or a transaction that has been concluded, in whole or in part, in the Centre or an incident that has occurred in the Centre¹⁹.

As for the Centre's Laws and the Centre's Regulations, the ruler of Dubai has enacted a vast body of legislation specifically for the DIFC and these are supplemented by a formidable body of secondary legislation made by the President. These laws and regulations are in English. In many cases they are modelled on UK statutes. They cover such matters as companies, partnerships, employment, real and personal property, contract, implied terms, unfair contract terms, obligations and data protection. Some of those laws codify common law rules. For instance, art 37²⁰ of the Law of Obligations of 2005 codifies the law of confidence and art 38²¹ the law of passing off. Interestingly, the Contract Law 2004 contains no express reference to consideration²². The Rules of the Dubai International Financial Centre Court 2007 seem to be based on the English Civil Procedure Rules and adopt many of the same concepts²³ and terminology²⁴. Judgments are published in full on the DIFC Courts website.

The Chief Justice of the DIFC Courts is Michael Hwang, SC, a distinguished Singapore lawyer. The other judges are Sir Anthony Colman and Sir John Chadwick from England, Tan Sri Siti Yaakob from Malaysia, David Williams QC from New Zealand and H.E. Justice Ali Al Madhani and H.E. Justice Omar Al Muhairi from Dubai. Most counsel and solicitors from England and Wales and other common law countries can register to practise as advocates and litigators before the DIFC Courts without difficulty or delay.

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¹⁸ Art 5A (1)(a) of Law No (12) of 2004 at http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=3566

¹⁹ Art 5A (1)(b) of Law No (12) of 2004

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http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=8222

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http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=8223

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http://difc.complinet.com/en/display/display_viewall.html?rbid=2618&element_id=8670

²³ For instance, rule 1.5 of the Rules incorporates the overriding objective.

²⁴ For instance, a person bringing a claim is referred to as a "claimant" rather than a "plaintiff".