



# DIFC Courting Technology

Mariam Deen of the DIFC Courts explains how the establishment of a new Court division in the DIFC Courts should help those with specialist technology disputes.

On 17 September 2017, the DIFC Courts launched its Technology and Construction Division (TCD) which will hear technically complex technology and construction disputes. This is a welcome development for dispute resolution in the UAE and wider region and is the DIFC Courts' first specialist division.

The DIFC Courts have always embraced the use of technology as a key enabler for efficiency and innovation while seeking to improve access to justice for parties bringing their claims to the Courts. A great example of this is the new Smart Small Claims Tribunal (SCT) which was named one of the Top 10 Court Technology Solutions of the year at the US National Association for Court Management Awards in Washington DC and was

recognised for its ground-breaking application of technology in October 2017, at the Computer News Middle East's (CNME) ICT Achievement Awards. Launched in 2016, the Smart SCT is equipped with video conferencing and case management technology which enables individuals or small and medium-sized enterprises to participate in hearings via smartphones from anywhere in the world. The DIFC Courts have also received praise for its pioneering commitment to furthering global justice using technology and its continued efforts to stay ahead of the technological curve which has resulted in the establishment of the specialist TCD as well as the 'Courts of the Future Forum'. This initiative is led by the DIFC Courts and Dubai Future Foundation and set to launch in November 2017 – leading experts in law, technology, IT

and business will gather to evaluate the implications of emerging technologies and trends, and tackle the legal ramifications of disruptive technology, in particular.

### THE BASIS OF THE TCD

The TCD is the DIFC Courts' version of the UK's successful Technology and Construction Courts (TCC) and similar equivalents in other common law jurisdictions. The aim is to offer a further choice of forum for the resolution of complex disputes.

Part 56 of the Rules of the DIFC Courts are industry specific and apply to TCD claims. The TCD rules were issued in a month long public consultation in March 2017 and feedback and suggestions from the legal community have been reflected in the rules which came into effect on 1 October 2017. These rules are in line with, and largely based on, the structure of the UK's TCC and are intended to fast track a wide range of claims involving 'technically complex' issues, such as:

- building or other construction disputes;
- engineering disputes and disputes involving other consultants;
- claims by and against the DIFC and DIFC bodies which relate to the development of land and construction of buildings;
- claims relating to the design, supply and/or installation of computer software and related network and IT systems and services.

### ARBITRATION ALTERNATIVE

Up until now those faced with construction and technology disputes in the UAE and the wider region have tended to prefer arbitration to court proceedings due to the ability to select a tribunal with specialist technical expertise and because of the certainty of the process involved. However, arbitration can become drawn out and expensive, and the enforcement of the resulting arbitral awards can be inconsistent in the Middle East. The DIFC Courts' regime offers certainty and efficiency to litigants and aims to combine this with the provision of the technical expertise which is ordinarily only offered by an arbitral tribunal. The TCD is a milestone development for the DIFC Courts, changing the UAE legal landscape and encouraging parties to bring complex legal disputes to the DIFC Courts.

### JURISDICTION

The TCD will provide an English language alternative to the local UAE courts, which conduct proceedings in Arabic only. However, as with all cases heard by the DIFC Courts, the TCD must have jurisdiction to hear the claim. The TCD may have exclusive jurisdiction over DIFC-related cases, however, in cases which originate outside of the DIFC parties will need to 'opt-in' by expressly agreeing to submit their dispute to the jurisdiction of the DIFC Courts. The TCD can be specifically elected as the forum for dispute resolution where it falls within the rules of the TCD. The TCD rules also state that the Court may order proceedings to be transferred from the TCD as appropriate. Therefore, it is important for parties to consider the drafting of their dispute resolution provisions in relevant contracts to ensure that the DIFC Courts' new division can be adopted as a possible venue for dispute resolution.

### CONFIDENTIALITY

DIFC Court proceedings are generally open to the public, so, TCD proceedings will lack the confidentiality offered with arbitral proceedings.

However, this potential disadvantage should be offset by what is hoped will be a cheaper and more streamlined process offered by the TCD. Although, another advantage of the public nature of the DIFC Courts' forum is that comprehensive written judgments are published, forming a body of binding case law. Therefore, TCD case law is likely to develop, providing parties with greater guidance and certainty of outcome, which may even help them avoid proceedings in some circumstances. This is unlike arbitration, where awards are rarely published and are never binding.

### EXPERIENCE

The DIFC Courts' Sir Richard Field will lead the TCD and has over 20 years of experience dealing with similar complex cases in the London courts. Suitably experienced and qualified judges have always been appointed to the DIFC Courts' bench and specialist TCD judges will be experienced in hearing, managing, and deciding technically challenging construction and technology disputes. This will be comforting for parties who would ordinarily turn to an arbitral tribunal to ensure an informed decision is made. In addition, the DIFC Courts have a well-deserved reputation for effective case management which will help ensure the resolution of complex disputes in an efficient and timely manner.

### ENFORCEMENT

Alongside the UAE's treaties for the mutual enforcement of court judgments, the DIFC Courts have implemented a framework (using memoranda of understanding and various other agreements) to ensure enforceability of its judgments in the onshore UAE courts and internationally. As the TCD's decisions will be court judgments from the outset, a successful party is likely to face fewer recovery challenges with a TCD judgment than they may do following an arbitral award. In addition to this, cases which are deemed to be 'technically complex' are expected to be transferred from the DIFC Court of First Instance to the TCD. Due to the number of large-scale, high value development projects planned for Dubai in the near future and the prevalence of building and construction disputes in the UAE and the wider region, the TCD is a timely addition to the DIFC Courts' offerings and will be a viable alternative to arbitration. This is a significant and positive step in the UAE for dispute resolution, which will provide a forum which is better equipped to deal with a wide range of technically complex issues in disputes, which can be managed and resolved by judges who have the appropriate expertise. With the quick pace of technological advancement and increasing popularity of areas such as Blockchain technology, and the Internet of Things, it will be interesting to see what types of cases the new TCD resolves in the future. ■

