



EXPLORING THE COURTS OF THE FUTURE IN DUBAI

The “Courts of the Future” initiative at the Dubai International Financial Centre (DIFC) seeks to design the rules that will govern our courts, as technology changes the way commerce and trade flow around the world. Forum caught up with Mark Beer, chief executive of the DIFC’s Dispute Resolution Authority, to catch a glimpse into an exciting future.

FORUM: *Do the same pain points and inefficiencies commonly crop up in courts regardless of where they are around the world?*

MARK BEER: The pain points and inefficiencies of a court, or more positively, the leadership and innovation demonstrated by a court, are often a reflection of the vision and energy of the chief justice. If he or she is innovative, the court tends to invest the majority of its resources in ensuring the “litigation journey” for the parties is as good as it can be, which tends to lead to higher settlement rates and happier users. In global commerce, choice-of-jurisdiction clauses in contracts trend toward judiciaries that are progressive, forward-thinking and as committed as the parties to help resolve, not fuel, any dispute.

The data from the Middle East (mirrored by research from the Singapore Academy of Law for disputes in Asia) shows that in 2015, 52% of English-language commercial contracts in the MENA region chose London as the location to resolve disputes. By the end of 2016, that reduced to 25% and the Dubai International Financial Centre (DIFC) Courts had risen to 42% – the leading choice in percentage terms. The choice of English law as governing remains the preference for 73% of M&A deals and 70% of joint venture (JV) transactions. International commercial courts around the world can apply and interpret the laws of England and Wales – many of the judges in those courts are retired English judges – and business is starting to vote with its feet as to where it wants its disputes resolved.

FORUM: *What are the barriers to common standards and procedures that can operate anywhere worldwide?*

BEER: The biggest stumbling block is the parochial views of jurisdictions that don’t want to connect and pool expertise and knowledge to support the global movement of goods and services. Until judiciaries collaborate and share best practices, the ability to unify standards and procedures will be frustrated.

Going forward, this will become an ever-greater issue for commercial courts that refuse to connect. The future of courts will be one of supporting supply chains operating virtually, with dispute resolution encoded into the blockchain, with virtual currency and with the most likely dispute being one of coding.

FORUM: *How does enforcement fit into this?*

BEER: At the moment, the enforcement of international judgments and awards is moribund: There are so many intermediaries between the courts in country A and the courts in country B, and they make the process for execution long and complex. The leading commercial courts – chief among them, DIFCs – have worked hard to clarify and smooth the international enforcement processes. They have signed memoranda and built strong relationships with their counterparts around the world. But even with treaties and memoranda, international enforcement is still an inefficient process crying out for disintermediation.

FORUM: *How might we do it better?*

BEER: It will be exciting when we don't have to rely on paper pathways between courts, created hundreds of years ago, moved by diplomatic pouches with wax seals. Judgments passing between the world's courts should move with the click of a mouse and a secure connection. Accelerating the process for international enforcement of court judgments and arbitral awards will require the leading commercial courts to come together and say, "We're going to do enforcement in a different way, at the click of a mouse, authenticated and executed quickly." Once we get to a world in which we have swift globalized enforcement, we have a world in which the courts truly support global business.

If that doesn't happen, we'll see business disintermediating the courts and encoding contract terms, regulations and laws within the global supply chain so that the courts won't be involved in dispute resolution or enforcement, because they will be done by the supply chain itself. If the courts of the world don't look to reform, connect and become more efficient, the blockchain – public or private – will do it for them.

FORUM: *Is this about making sure courts adhere to legal design and put users first?*

BEER: It's about mind-set. Is a court there to serve the community or to serve its own judges and administrators? The DIFC Courts have been designed around principles of customer excellence with the court user in mind, and we remain the first and only court in the world to be accredited under the International Standard for Service Excellence.

FORUM: *How does "Courts of the Future" fit in with Belt and Road?*

BEER: China's Belt and Road Initiative represents the largest and most exciting supply chain the world has ever seen – the infrastructure element alone is worth US\$900 billion. As goods and services travel across the world along the Belt and Road, they will seamlessly cross borders so we need a seamless judicial platform that can do the same.

If one takes a jurisdiction-focused approach to disputes on the Belt and Road supply chain, where payments may be virtual, we know the traditional judicial and arbitral models won't support that supply chain efficiently. The answer is to make sure that when the dispute comes into the "real world," the court system can understand that virtual supply chain and deliver a decision that can be executed around the world. That's what we're trying to develop here in the DIFC Courts.

FORUM: *Will specific technologies play a part in reimagining our courts?*

BEER: The new technologies come together beautifully to support our vision for the "Courts of the Future." We'll see even more commerce on private blockchains, especially in automotive and maritime fields, supported by a virtual currency. Those supply chains will develop and advance to the point that smart contracts will replace traditional contracts, and we'll see them become ubiquitous even for small- and medium-sized enterprises (SMEs) operating on a public blockchain. Soon we'll see not only the contract encoded into the supply chain, but also the applicable laws and regulations. At that point, it will be the blockchain itself which resolves most contractual disputes.

This allows companies to scale up faster than ever, with suppliers and customers knowing disputes can be resolved (and decisions enforced) in seconds versus months or years – and without the need for human intervention, with AI and machine learning making the system smarter and smarter. For example, Alibaba reported that last year it resolved over 400,000 disputes on its current platform!

FORUM: *What about appeals?*

BEER: Most people will be happy with that first judgment, but sometimes there will be an appeal. There's a view (to which I subscribe) that an appeal will either be resolved by the owner of the relevant blockchain or by using democratized decision making such as PeopleClaim or Rhubarb. Either way, it won't be resolved at that stage by a traditional court or arbitration center. The issue will pop out to the "real world" only if a party is unhappy with that appeal decision.

If that's right, commercial courts become the senior appellate courts for computer-based decisions, with the blockchain taking the place of the first-instance courts and the court of appeal. At that point, in my view, the "real world" court is more likely to face issues of miscoding than the quality of goods delivered – i.e., did the coding of the smart contract reflect what the parties agreed to? The question is – how many courts are actively thinking about recruiting or training judges in coding and smart contracts? ●



Mark Beer, OBE is chief executive, Dispute Resolution Authority (DRA). He is also a judge of the Courts' Small Claims Tribunal, a member of the Rules Subcommittee and registrar of the Special Tribunal Related to Dubai World.