



Alsuwaidi & Company Legal Guide to the DIFC and ADGM Courts

Alsuwaidi & Company handles all matters before the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). The off shore legal system operates independently to the onshore system. This short guide aims to give you an overview of the various courts that operate in the DIFC and ADGM. For further information, please contact the author Robert Sliwinski at r.sliwinski@alsuwaidi.ae.

The Courts

DIFC Courts

The Dubai International Finance Centre Courts (DIFC Courts) are part of the sovereign state of Dubai, UAE following the establishment of the Dubai International Finance Centre (DIFC) under Dubai Law No.9 of 2004. At the same time the DIFC Courts of First Instance and Court of Appeal were established.

In 2006 the DIFC Courts began operations allowing parties to have their disputes considered and dealt with under an English Language common law system. This allowed for a common law legal system within a civil law legal system. Whilst initially limited to the free zone in Dubai the DIFC Courts have jurisdiction since 2011 to hear any local or international case where either parties or the contract come within the DIFC jurisdiction or where the parties have expressly agreed that the DIFC Courts should have jurisdiction over their contract and/or dispute. The DIFC Courts are made up of the Small Claims Tribunal, The Court of First Instance, and the Court of Appeal. In addition, the DIFC have established an Arbitration Centre to deal with both Domestic and International disputes.

Small Claims Tribunal (SCT)

The SCT has been set up within the DIFC Court jurisdiction to deal with claim that are less than AED 5000,00 in value.

The SCT can be used for all commercial contracts that are either within the DIFC Courts jurisdiction or have an express DIFC Courts jurisdiction clause within the terms of the contract. The SCT is set up so as to allow parties to represent themselves without the need for lawyers. The first part of the SCT process is for a consultation between the parties and the court with the intention of reaching a settlement. If this fails, then the matter proceeds to a hearing before judge.



The Court of First Instance

The Court of First Instance deals with all claims for civil or commercial matter and disputes are within the DIFC Courts jurisdiction or have an express DIFC Courts jurisdiction clause within the terms of the contract.

This allows the DIFC Courts to hear any local or international case and to resolve commercial disputes with the consent of all parties. At the time of entering into a contract the parties can decide to use either the local court system which is based on civil law procedures or the DIFC Courts under the common law procedure.

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Technology and Construction Division (TCD)

Within the DIFC Courts system is a specialist division that deals exclusively with matters and disputes related to technology and construction matters.

Part 56 of the DIFC Court Rules allows claims to be heard by the TCD if they involve the following types of claim:

1. building or other construction disputes;
2. engineering disputes;
3. claims by and against engineers, architects, surveyors, accountants and other specialised advisers relating to the services they provide;
4. claims by and against the DIFC or any DIFC Body relating to their statutory duties concerning the development of land or the construction of buildings;
5. claims relating to the design, supply and/or installation of computers, computer software and related network and information technology systems and services;
6. claims between landlord and tenant for breach of a repairing covenant;
7. claims between neighbours, owners and occupiers of land in trespass, nuisance etc.;
8. claims arising out of fires;
9. claims involving taking of accounts where these are complicated; and
10. challenges to decisions of arbitrators in construction and engineering disputes.

This list is not exhaustive.

The TCD is designed as a specialist court that is experienced in and capable of dealing with complex engineering and technical matters with a set of tailored rules allowing such disputes to be dealt with more effectively and efficiently than may be the case before the general court of first instance. As noted by Chief Justice Michael Hwang:

“The TCD has been designed around the particular characteristics of highly complex technology and construction disputes, which can be resolved much more speedily and efficiently with the oversight of specialist judicial expertise”.



The Court of Appeal

The Court of Appeal lays down the final orders and judgements of the DIFC Courts. This is the highest court from which there is no further appeal.

The only orders and judgements of the Court of Appeal that can be challenged are those that fall within ambit of the Judicial Tribunal where there is a question of conflicts of jurisdiction between the Dubai Courts and the DIFC Courts and decide which judgement should be enforced where conflicting judgements exist between the Dubai courts and the DIFC Courts.

ADGM Court

The Abu Dhabi Global Market Court (ADGM Court) was set up in 2015 following the Application of English Law Regulation 2015, as enacted under Article 6(1) of the Abu Dhabi Law No. 4/2013, and ADGM Courts, Civil Evidence, Judgements, Enforcements and Judicial Appointments Regulations 2015, as enacted under Article 10(3) and 13 of the ADGM Founding Law.

The regulation allowing the application of English law is specific to the Abu Dhabi Global Market and specifically allows English common law to be the applicable law in the ADGM. Additionally, certain English statutes have been codified so as to apply (in a modified form) including Contract Rights of Third Parties Act 1999, Partnership Act 1890 and matters related to real property as codified in the Real Property Regulations 2015 (Abu Dhabi Law No.3 of 2015).

The ADGM Courts comprise the Court of First Instance and Court of Appeal. Judgements of the Court of Appeal are final. The ADGM Courts do not have jurisdiction to deal with criminal or family matters.

As with the DIFC Courts parties either come within ADGM's jurisdiction or they may opt into the ADGM's jurisdiction where they choose their contacts to be governed by the ADGM Courts or by Arbitration.



The Court of First Instance

The Court of First instance is divided into three categories, The Commercial and Civil Division, The Employment Division, and the Small Claims Division for disputes where the claim does not exceed US\$100,000.

The Court of Appeal

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About the author

Robert Sliwinski is a Barrister, Chartered Arbitrator, Accredited Adjudicator and Mediator, Quantity Surveyor and Dispute Board Member.

Robert has over 35 years' experience of the construction industry with particular emphasis on all forms of alternative dispute resolution. Robert specialises in all aspects of the property and construction representing parties as well as undertaking appointments as arbitrator, adjudicator, expert determiner, mediator, and dispute board member.

As an arbitrator Robert has been involved in matters concerning professional negligence, property, delay analysis, costs, variations, defects, interpretation of contracts, repudiation, and many other aspects of contract in the areas of building, civil engineering, mechanical & electrical, waste-water treatment and process engineering. He has most recently been joint arbitrator on a multi-million dollar case between a joint venture contractor and national government in a dispute involving the construction of an airport runway and as a member of an ICC panel arbitration also between a joint venture and a national government involving the construction of a major road project.

Robert has received over 400 appointments from the CI Arb, CIC, AICA, CEDR, RICS and directly by the parties to act as the adjudicator. Robert has also worked as an expert determiner and mediator covering a wide range of issues within the arenas of construction and engineering, professional negligence, contract, and development agreements.