

# A NEW WAY TO RESOLUTION

*Big Project ME speaks to Mark Beer, chief executive of the DIFC Dispute Resolution Authority, to understand how the new DIFC Technology and Construction Division will change how construction disputes are handled in the UAE and beyond*

Last month, the Dubai International Financial Courts (DIFC) announced that the region's technology and construction companies can now choose to have their most complex commercial disputes resolved by a newly created special division. The Technology and Construction Division (TCD) will draw on specialist judges and a new set of industry-specific rules to fast-track dispute resolution and provide greater certainty to businesses in court, a DIFC statement said.

The division will only hear technically complex cases, it added. Examples in the construction sector would include complicated engineering disputes or claims arising out of fires. Technology-related cases would include liability for cybercrime incidents, disputes over the ownership and



**New ways to resolve disputes**

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use of data, and issues relating to emerging technologies such as AI or connected cars.

Parties located anywhere in the world are able to opt in to DIFC jurisdiction, if both parties agree in writing. However, requests to have claims heard by the TCD have to be made as part of the initial filing, with the Court's decision based on the written evidence provided.

"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," says Michael Hwang, chief justice, DIFC. "This new division is another foundation stone in our work to build the courts of the future, and an important new service for businesses operating in two key sectors of the UAE economy."

Mark Beer, chief executive at the DIFC Dispute Resolution Authority, explains that the TCD came about after he conducted an analysis of how other countries manage their construction disputes and realised there was a need to do things differently.

"I noticed these big hoardings going up around DIFC – the development of ICD Brookfield and the build-out of the Gate Avenue project. These were major pieces of construction going on in the DIFC, and it made me start thinking, as a service, as a court, whether we are equipped to handle complex construction disputes," he tells **Big Project ME** during an interview at his DIFC offices.

"The answer is, of course we are. We have judges capable of doing it. But why is it that other countries have chosen to apply slightly different rules to construction disputes? We looked into that and realised that within construction disputes there is a need to do things differently. The



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"When we started doing more and understanding the extent of the Expo 2020 development, it made us realise that the need for a specialist dispute resolution service that can make sure that projects are delivered on time is another need for the community," he adds.

In order to achieve this, the TCD was established following a month-long consultation with the region's legal community.



## Analysis

Their feedback and suggestions are reflected in the division's rules, which are scheduled to go live on October 1.

"We worked internally with lawyers around the world to pull together a concept of a technology and construction court," Beer says, revealing that the TCD is modelled on the Technology and Construction Court in London.

Having put together a body of rules that worked for Dubai and the types of projects being built in the emirate, Beer and his team at the DIFC Dispute Resolution Authority then went out to the local legal community for further consultation and to receive feedback.

"[Following that], we then went with our court users committee, our rules subcommittee, our general counsel forum and the legal community, and we helped to refine, develop and produce a set of rules and framework for the division that will deal with complex technical and construction disputes."

With construction a crucial sector of the local and regional economies, the establishment of the TCD is an important addition to the UAE's dispute resolution infrastructure. A recent BMI study found that the total value of building and construction contracts in the MENA region will touch \$300 billion by 2019.

"The opportunity to help projects around the region is really significant," says Beer. "What the world has seen with construction disputes is that it's really important to understand the nature of the dispute as soon as you can, and to get everybody focused as soon as you can."

Despite the DIFC being one of the most efficient commercial courts, he asserts that construction disputes need a court that is even



**An opportunity to help the construction industry**  
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more front-ended, which is how the TCD will operate.

"As soon as the claim is filed, the parties are expected to come to court to identify what the issue is and see if there's a way to solving it that doesn't delay the project, and see if it can be worked out in such a way that the project can continue while the dispute is being resolved."

While the TCD will be headed by Justice Sir Richard Field, a veteran of 20 years handling complex disputes in London courts, Mark Beer says there is tremendous scope to expand the reach and efficiency of the division.

"I think this is a big opportunity, and it's something that hasn't caught on yet, which is the dispute resolution board, or what's called TAP over in the UK. There the concept is the parties agree at the very beginning that if there's a problem, then they will go to experts that are either pre-appointed or appointed at the time. These experts then tell the parties what the answer is at that point, and they agree to

wait to fight it out until after the project is completed. For super time-sensitive projects, that tends to work out well," he explains.

"As the market gets more sophisticated, you put the building blocks in to support the process. At the moment, we've got the Technology and Construction Division, which will give a solid framework for efficiently resolving the dispute. What I think you'll then start to see in the future is the adjuncts that you see in other markets, like the Dispute Avoidance Board (DAB) and the Dispute Resolution Board (DRB). I think they'll start to come in."

A major concern of a DAB or DRB is that when experts are appointed early on, employers on construction projects will then have to bear the costs of retaining experts that they might never need. For a mega project like Expo 2020 this can lead to complications, as various situations can arise which may be outside the expertise of even the appointed panel of experts, meaning more have to be hired.

"[It's because of this] that the concept hasn't caught on here as much as people had expected. But now, with flexible DABs – which is when you agree to go to a Dispute Advisory Panel which is yet to be appointed – you have another body appoint the panel, based on the dispute. You start to build out the infrastructure for solving complex technology and construction disputes.

"But the starting point has to be the specialist technology and construction court, with a specialist judge running it. Sir Richard Field has sat on TCD courts in London and is a specialist judge who knows about and has been involved in some of the most complex disputes involving technology and arbitration for construction disputes," Beer concludes. ■



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