

The court of the future

The DIFC's Digital Economy Court paves the way for the resolution of emerging disputes with a new set of specialised rules that seamlessly blend expertise and technology. William Prasifka of BSA elaborates.

The DIFC has recently established a new specialised court for the digital economy. The court is intended to cover a wide variety of fields including big data, blockchain technologies, artificial intelligence, cloud services, unmanned aerial vehicles, 3D printing technologies, and robotics. This article looks at the new court in the context of the DIFC as a whole and examines what differences practitioners can expect in the years to come.

BACKGROUND

The DIFC Courts were established in 2004 to resolve disputes involving entities established in the DIFC. Such disputes would be resolved in accordance with "DIFC Law", a codified version of English common law. At the time of its inception, a large portion of DIFC entities were financial institutions subject to regulation by the newly established DIFC Financial Services Authority. In 2011, the DIFC Courts expanded to allow for an "opt-in jurisdiction". The reforms allowed any parties worldwide, should they so choose, to have their disputes resolved by the DIFC Court. This was attractive as the DIFC provides a neutral venue governed by English common law principles.

In 2017, the DIFC established a specialist technology and construction division. The Rules of the DIFC Courts ("the RDC") were amended by the inclusion of Part 56 which provided for specialist rules in claims which were technically complex. At present, most claims handled by this division are construction related.

The new court for the digital economy should be seen in this context. Part 58 of the RDC, which came into force on December 14, 2022, establishes the Digital Economy Court ("DEC"). The DEC operates as a division of the DIFC Courts meaning that the general DIFC court rules continue to apply to all Digital Economy Court Claims ("DEC Claims").

For a claim to be admitted into the DEC, a party must establish that it meets the criteria contained in Part 58 of the RDC. DEC Claims are defined broadly with Part 58.7 outlining a "non-exhaustive list" including claims involving:

- (1) fintech;
- (2) digital assets, including the digital environment, platform or system in which a digital asset exists or may exist;
- (3) distributed ledger technology and blockchains including applications based on blockchain technology;
- (4) substantial or complex databases;
- (5) artificial intelligence and any devices or components of devices whether integrated or not that are dependent on or controlled by artificial intelligence;
- (6) data stored digitally including on cloud or other remote platforms, including distributed ledger technology;
- (7) e-commerce, online intermediaries, digital payment platforms or marketplaces which include virtual asset service providers in relation to exchange between virtual currencies; exchange between virtual and fiat currencies; the safe-keeping or administration of virtual assets; or, enabling participation in financial services connected to the offer or sale of virtual assets;
- (8) interactions and transactions within virtual reality and the Web3 economy, including digital peer-to-peer transactions;
- (9) the application of automatic dispute resolution processes;
- (10) decentralised autonomous organisations (DAOs), decentralised finance vehicles (DeFi) and decentralised applications (DApps);
- (11) the validity of digital signatures and digital identification and verification systems;
- (12) the design, supply and /or installation of computers, computer software and related network and information technology systems and services;
- (13) cyber-physical systems such as unmanned aerial vehicles, 3D printing technologies, and robotics;



(14) intellectual property claims arising out of or in relation to any of the above claims; (15) insurance claims arising out of or in relation to any of the above claims; and (16) claims under the DIFC Data Protection Law (Law 5 of 2020).

Part 58 of the RDC makes clear that other claims may fall within the scope of the Digital Economy Court should a court so decide.

CONSUMER DEC CLAIMS

Part 58 distinguishes between “DEC Claims” and “Consumer DEC Claims”. A consumer DEC Claim is defined as a DEC Claim that has a value of less than AED500,000. There is no requirement for a consumer to be involved.

Consumer DEC Claims will be held in private with any judgments issued anonymised before publication. If Consumer DEC Claims are valued at less than AED100,000, the default position is that the “paper determination procedure” will be used. This allows a court to make a determination without a hearing.

It follows that the Consumer DEC Claims procedure is intended to offer parties a speedy resolution to their disputes.

HOW WILL DEC CLAIMS DIFFER FROM REGULAR DIFC PROCEEDINGS?

The new rules make explicit provision for the use of technology both at hearing and while filing documents before the court. As well as having the power to conduct proceedings digitally, the Court is empowered to use smart forms and decision tree software. Practice directions are to be issued setting out the scope of such powers.

The DEC is also expressly empowered to allow the service of documents by email or through social media. Indeed, parties are obliged to nominate an email

address when filing a claim form and/or an acknowledgement of service. All subsequent documents must be served by use of the email addresses provided.

Furthermore, Part 58 of the RDC provides that a case management conference will be automatically scheduled within seven days of the filing of an acknowledgement of service or order transferring a case into the DEC. This contrasts with regular claims where a case management conference is not scheduled until an application is made by either party. It follows that DEC claims will be closely case managed by the court.

Finally, Part 58 provides for the appointment of a judge in charge of the DEC. Parties to a DEC Claim can therefore expect that a specialised judge will be assigned to their case. This has considerable value in disputes that require technical expertise.

CONCLUSION

The establishment of the DEC should be welcomed by practitioners. It showcases Dubai’s commitment to become a hub for emerging technologies and establishes a clear legal framework in which disputes involving such can be resolved. 🇦🇪



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