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THE NEW ADVENTURES OF THE COMMON LAW

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Abstract:

One of the arguably unexpected legal developments during the first decade of this century has been the emergence of new common law jurisdictions in a region with a very different legal heritage – the Arabian Peninsula. These young jurisdictions have been created specifically to foster the growth of new hubs for banking and finance. This article will examine these new adventures of the common law.

I. INTRODUCTION

The spread of English common law¹ from England² to Ireland by the Normans³ has been described as being the “first adventure of the

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¹ Here I use the term “common law” in a broad sense to refer to the English legal tradition as a whole. Hence, in this article, I generally ignore technical distinctions between categories like case law versus statutory law or the common law versus equity. For a similar usage of the term common law as representing a type of legal system or a family of jurisdictions, see RENE DAVID & JOHN E.C. BRIERLEY, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW 307-08 (3d ed. 1985).

² Today in the United Kingdom of Great Britain and Northern Ireland (UK), England and Wales, despite a measure of constitutional devolution, together form essentially one common law jurisdiction. However, Northern Ireland is a separate common law jurisdiction while Scotland has retained its own legal system with historical roots in

common law.”⁴ In other words, some eight centuries ago, Ireland became the first overseas common law jurisdiction.⁵ Of course, this first adventure of the common law was really the result of English expansionism that ultimately came at the expense of the native Irish legal system known as the Brehon laws.⁶ Over time, the common law spread far beyond the British Isles to various parts of Africa, the Americas, Asia, Australia, the Caribbean, and the Pacific mostly, albeit not entirely, due to formal colonialism.⁷ However, to varying degrees, the common law

Roman law rather than English law. *See, e.g.*, STANLEY DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW 60-67 (Harry Street & Rodney Brazier, eds., 5th ed. 1986) [hereinafter DE SMITH]. The devolution of certain powers from London to Wales resulted in the creation of a Welsh Assembly originally brought about by the Government of Wales Act 1998 (c. 38). Under devolution, Scotland has enjoyed an even greater degree of local autonomy than Wales by gaining a tax-raising parliament rather than a mere assembly. Scotland Act 1998 (c. 46). Likewise, this wave of devolution also reached the troubled province of Northern Ireland. Northern Ireland Act, 1998, c. 47. The Channel Islands (bailiwicks of Jersey and Guernsey) along with the Isle of Man are dependencies of the Crown and geographically parts of the British Isles, but legally they are not parts of the United Kingdom. DE SMITH, *supra*, at 68-73.

³ Anglo-Saxon England had a localized legal system based on local customs that varied from place to place. CLIVE R. NEWTON, GENERAL PRINCIPLES OF LAW 7 (3d ed. 1983). The very name common law points to the centralization of the English legal system that slowly developed after the Norman Conquest of England in the year 1066. *Id.*; *see also* PHILIP S. JAMES, INTRODUCTION TO ENGLISH LAW 15 (8th ed. 1972).

⁴ ALFRED GASTON DONALDSON, SOME COMPARATIVE ASPECTS OF IRISH LAW 3 (Duke University Commonwealth-Studies Centre, Publication No. 3, 1957). This expression has been traced to W.J. Johnson, a county court judge and later a judge of the High Court of the Irish Free State.

⁵ Although the Normans entered Ireland in 1170, English law only seems to have begun to have taken root with the visit of King John in 1210, which was initially limited to English settlers in the Pale, namely the area in and around Dublin. BRIAN DOOLAN, PRINCIPLES OF IRISH LAW 3 (5th ed. 1999) [hereinafter DOOLAN]. In other words, much as the development of the common law in England was a gradual process, the reception of the common law in Ireland was also slow as the English influence spread throughout the island.

⁶ DOOLAN, *supra* note 5, at 2.

⁷ DOOLAN, *supra* note 5, at 2. *See also* HELENA H.M. CHAN, THE LEGAL SYSTEM OF SINGAPORE 4 (1995). The Republic of Singapore is a good example of a former British colony that has retained the common law as the basis for its legal system. Application of English Law Act, (1994) Cap. 7A, § 3. (Sing.) Likewise, the former British colony of Hong Kong, now a Special Administrative Region of the People’s Republic of China, remains a common law jurisdiction whereas Mainland China has a legal system based on elements of civil law and Socialist law. Hong Kong Basic Law, (1990) Art. 8. However, an example of the common law spreading to a place that was not under direct colonial control would be Hawaii, which was still an independent kingdom when reception took place. HAW. REV. STAT. § 1-1 (2009). *See also* L 1892, c 57, § 5 (Haw.). A brief sketch of the old kingdom can be found in a joint resolution regarding the 100th Anniversary of the Overthrow of the Hawaiian Kingdom that was passed by the United States Congress and signed by then President Bill Clinton, which is popularly known as the “Apology Resolution.” S.J. Res. 19, 103rd Cong. (1993) (enacted); Pub. L. No. 103-150, 107 Stat. 1510. For a theoretical examination of the phenomenon of legal borrowing, *see* Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 AM. J. COMP. L. 163 (2003).

would adapt to local conditions in each place.⁸ Moreover, certain aspects of indigenous legal traditions manage to coexist alongside the common law.⁹

The first decade of the 21st century has witnessed an arguably unexpected legal development in the form of voluntary borrowings of the common law by certain governments in a region with a very different legal heritage – the Arabian Peninsula. These “new adventures of the common law” are the subject of this article.

Despite the spread of the common law to many countries, the Arab World¹⁰ essentially remained outside of the orbit of the common law.¹¹ Today, Arab jurisdictions can be generally described as mixed legal systems¹² based on secular laws codified broadly in the civil law tradition of Continental Europe¹³ and religious laws¹⁴ based on Islam.¹⁵ Perhaps

⁸ For instance, the common law underwent a transformation when it came to North America. *See generally* WILLIAM E. NELSON, *AMERICANIZATION OF THE COMMON LAW: THE IMPACT OF LEGAL CHANGE ON MASSACHUSETTS SOCIETY, 1760-1830* (1975) (describing the development of Anglo-American common law using the judiciary of Massachusetts as a case study in the decades before and after the American Revolution). *See also* GRANT GILMORE, *THE AGES OF AMERICAN LAW 8-11* (1977) (comparing American and English approaches to the common law). From a British imperial perspective, the North American colonies were generally viewed as being “settled colonies” implying that the common law was brought to them by English settlers. DE SMITH, *supra* note 2, at 660. In this particular scheme, other territories were classified as having been conquered or ceded (from another colonial power or an indigenous ruler) or else annexed without settlement, conquest, or cession. *Id.* In those territories that were conquered from another colonial power, the pre-existing legal system often survived as in the province of Quebec where French law was retained by the British. *Id.*

⁹ For example, Hawaiian usage is recognized as one of the various sources of law in Hawaii today. HAW. REV. STAT. § 1-1 (2009). Likewise, Islamic law and various customary laws along with English common law are all found together in Malaysia. WAN ARFAH HAMZAH & RAMY BULAN, *AN INTRODUCTION TO THE MALAYSIAN LEGAL SYSTEM 6-7* (2003).

¹⁰ The Arab World can be subdivided into at least three different regions: the Arabic speaking countries of North Africa, the Levant, and the Gulf States (Arabian Peninsula). AAMIR A. REHMAN, *DUBAI & CO.: GLOBAL STRATEGIES FOR DOING BUSINESS IN THE GULF STATES 19-35* (2008) [hereinafter REHMAN].

¹¹ *See generally* GEORGE N. SFEIR, *MODERNIZATION OF THE LAW IN ARAB STATES: AN INVESTIGATION INTO CURRENT CIVIL CRIMINAL AND CONSTITUTIONAL LAW IN THE ARAB WORLD* (1998) (describing the mixed legal systems of the Arab World); and C.G. WEERAMANTRY, *ISLAMIC JURISPRUDENCE: AN INTERNATIONAL PERSPECTIVE* (The Other Press 2001) (1988), for an overview of Islamic law.

¹² Kenneth G.C. Reid, *The Idea of Mixed Legal Systems*, 78 TUL. L. REV. 5 (2003) (discussing the concept of mixed legal systems or jurisdictions). *See also* William Tetley, *Nationalism in a Mixed Jurisdiction and the Importance of Language*, 78 TUL. L. REV. 175 (2003) (providing general characteristics of mixed jurisdictions).

¹³ This is what David and Brierley call the “Romano-Germanic Family.” DAVID & BRIERLEY, *supra* note 1, at 33-154. *See also* JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* (2d ed. 1985) (explains major characteristics of civil law jurisdictions); and Julian D.M. Lew & Laurence Shore, *International Commercial Arbitration: Harmonizing Cultural Differences*, in AMERICAN ARBITRATION ASSOCIATION HANDBOOK ON INTERNATIONAL ARBITRATION & ADR 37-45 (Thomas E. Carbonneau &

surprisingly, this pattern holds true even in those Arab countries that were once under British control.¹⁶

As will be explained below, a few years ago the situation began to change with the creation of specialized jurisdictions in a couple of the Gulf States¹⁷ to support emerging financial hubs in the region.¹⁸ The new financial hubs have been designed as common law jurisdictions. As such, they can be viewed as being new adventures of the common law set in exotic locales.

II. UNITED ARAB EMIRATES

A. *Dubai*

Dubai¹⁹ is one of the seven emirates that comprise the federation known as the United Arab Emirates (UAE).²⁰ The UAE is a member of

Jeanette A. Jaeggi eds., 2006) (compares certain general features of European civil law and Anglo-American common law approaches to both arbitration and litigation).

¹⁴ The Kingdom of Saudi Arabia is a special situation because religious law plays a greater role in its legal system than in other parts of the Arab World. AHMED AL-SUWAIDI, FINANCE OF INTERNATIONAL TRADE IN THE GULF 24-26 (1994).

¹⁵ DAVID & BRIERLEY, *supra* note 1, at 455-83; WILLIAM M. BALLANTYNE, ESSAYS AND ADDRESS ON ARAB LAWS 210-19 (2000).

¹⁶ Before gaining political independence in the 1960s and 1970s, the Gulf States were generally British protectorates rather than full-fledged crown colonies, and Saudi Arabia, which is by far the largest Gulf State by population and territory, never came under direct British control. AL-SUWAIDI, *supra* note 14, at 8-9. Although most of the Gulf States were once British protectorates, none of them are presently members of the Commonwealth. Commonwealth Secretariat, Member States, <http://www.thecommonwealth.org/Internal/142227/members/> (last visited July 26, 2009). During the time of the protectorates in the Gulf, the common law was applied only to a limited extent on an extraterritorial basis to non-Muslims while Islamic law was applied to Muslims. AL-SUWAIDI, *supra* note 14, at 24-25, 39. As the Gulf States became independent, British extraterritorial jurisdiction was naturally removed, the common law was largely rejected partly due to the wave of Arab nationalism, and the new governments turned towards the civil law which had developed in other Arab states such as Egypt whose codes were ultimately inspired by the French Civil Code. AL-SUWAIDI, *supra* note 14, at 25, 39; ESSAM AL TAMIMI, PRACTICAL GUIDE TO LITIGATION AND ARBITRATION IN THE UNITED ARAB EMIRATES 5 (Arab & Islamic Law Series vol. 26, 2003) [hereinafter PRACTICAL GUIDE].

¹⁷ For a quick overview of the new hubs, see Syed Hussain, *Desert Economics*, GULF BUSINESS, Oct. 2008, at 80. See also Chris Wright, *Three Hubs to Serve a Thriving Market*, EUROMONEY, Aug. 2008, at 11-12 (comparing the new common law hubs in Dubai and Doha with the older, non-common law hub in Bahrain) [hereinafter Wright, *Three Hubs*]; *A bouquet of desert flowers*, ECONOMIST, Sept. 15, 2007, at 13.

¹⁸ What is happening in the Gulf is part of a larger trend in which New York has been losing much of its dominance in global financial services to London as well as hubs in Asia and the Middle East. *International Financial Centres: Big Apple Turnover*, BANKER, Nov. 1, 2007, at 4-6.

¹⁹ For a general introduction to Dubai from a business perspective, see JEFFREY SAMPLER & SAEB EIGNER, SAND TO SILICON: ACHIEVING RAPID GROWTH LESSONS FROM DUBAI (2003). Among other things, Sampler & Eigner's book contains comparisons of Dubai's approach to economic development with the experiences of both Silicon Valley

various international intergovernmental organizations including, but not limited to, the United Nations (UN),²¹ the World Trade Organization (WTO),²² the Organization of Petroleum Exporting Countries (OPEC),²³ and the Gulf Cooperation Council (GCC).²⁴

Most of the UAE, including Dubai, is located along the southern shores of what is ultimately an extension of the Indian Ocean known variously as the Persian Gulf, the Arabian Gulf, or simply The Gulf. The east coast of the UAE lies on the Gulf of Oman, which is another extension of the Indian Ocean.²⁵ The climate of the UAE, like that of much of the region, is subtropical with inland areas being arid, while coastal areas can be humid, yet still experience little annual rainfall.²⁶ Currently, Dubai is the second largest emirate in the UAE in terms of territory after Abu Dhabi.²⁷

The seven emirates are: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Ras Al Khaimah, and Fujairah.²⁸ Each emirate²⁹ has its own government that retains considerable autonomy.³⁰ This is especially true for Dubai and Ras Al Khaimah, which have both kept their own court

and Singapore. For a more recent view on Dubai's growth, *see* Edmund O'Sullivan, *Dubai: The Rise of the New Gulf*, THE BANKER, Oct. 1, 2008, at 100-04.

²⁰ U.A.E. CONST. pmbl., art. 1.

²¹ Press Release, United Nations Member States, U.N. Doc. Org/1469 (July 3, 2006), available at <http://www.un.org/News/Press/docs/2006/org1469.doc.htm>.

²² Understanding the WTO: The Organization, *Members and Observers*, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Oct. 4, 2009) [hereinafter *Members and Observers*]. *See also* HASSAN ABOUTAHIR & S.P. PARASHAR, WTO AGREEMENTS ON FINANCIAL SERVICES: IMPLICATIONS FOR UAE BANKS (2002) (examining the potential impact of the WTO on the UAE's financial sector); VICTOR MURINDE & CILLIAN RYAN, GULF BANKING AND THE WTO'S GENERAL AGREEMENT ON TRADE IN SERVICES (The Emirates Occasional Papers, No. 49, 2003) (similar study but focuses on the entire GCC and not just the UAE).

²³ United Arab Emirates Facts and Figures, ASB 2008, <http://www.opec.org/aboutus/member%20countries/uae.htm> (last visited Oct. 4, 2009).

²⁴ *See* The Cooperation Council for the Arab States of the Gulf (GCC), <http://www.gcc-sg.org/eng/index.php?action=GCC> (last visited July 26, 2009) [hereinafter GCC], for list of GCC member states. The other members are the Kingdom of Saudi Arabia, the State of Kuwait, the Kingdom of Bahrain, the State of Qatar, and the Sultanate of Oman. *Id.*

²⁵ AL-SUWAIDI, *supra* note 14, at 6.

²⁶ CROSS BORDER LEGAL PUBLISHING FZ LLC, UAE FREE ZONE INVESTMENT GUIDE 13 (2005) [hereinafter INVESTMENT GUIDE].

²⁷ *Id.* at 17.

²⁸ U.A.E. CONST. pmbl., art. 1.

²⁹ Each individual emirate is headed by a hereditary emir, but in the UAE, the emir of a particular emirate is normally referred to in English as the "Ruler" rather than the emir. *See, e.g.*, REAL PROPERTY LAW, DIFC Law No. 4 of 2007, § 2 (U.A.E.).

³⁰ U.A.E. CONST. arts. 116-23.

systems.³¹ By contrast, the courts of the other five emirates have been integrated into a national judiciary.³²

Dubai has had a significant history of being an entrepot.³³ Although oil revenues have helped fund the development of Dubai's infrastructure, Dubai's economy has become increasingly diversified with various non-oil sectors such as: tourism, information technology, media production, financial services, construction, and emerging real estate.³⁴ The neighboring emirate of Abu Dhabi is the main oil producer in the UAE.³⁵

B. *Free Zones*

In recent years, "free zones"³⁶ have been rapidly growing in popularity in Dubai, other parts of the UAE, and elsewhere in the Middle East.³⁷ These zones, which typically enjoy a special legal status, have become important primarily because they represent a more open environment for foreign investors than what is found in the otherwise regular economy of the UAE.

Some of these zones are similar to the traditional free trade zones that can be found in the region and beyond.³⁸ The industrial and logistical

³¹ AL-SUWAIDI, *supra* note 14, at 29-32; SABAH M.A. MAHMOUD, UAE COMPANY LAW AND PRACTICE 2-3 (4th ed. 2008) [hereinafter MAHMOUD].

³² AL-SUWAIDI, *supra* note 14, at 29; MAHMOUD, *supra* note 31, at 3. The UAE lacks the sort of parallel state and federal court system found in the United States.

³³ Dubai has become a major re-export center along the lines of Hong Kong and Singapore. CONCEPT MEDIA FZ LLC, INVEST & LIVE IN DUBAI 17 (2006) [hereinafter INVEST & LIVE IN DUBAI].

³⁴ ESSAM AL TAMIMI, SETTING UP IN DUBAI 3 (4th ed. 2006) [hereinafter SETTING UP IN DUBAI]; UAE AT A GLANCE 2008, at 52 (Ibrahim Al Abed et al. eds., 2008). *See also* Stephen Timewell, *UAE -- Getting on With the Neighbours*, BANKER (London), Sept. 1, 2007, available at LEXIS (discusses economic diversification away from a reliance upon oil and cooperation between Dubai and Abu Dhabi); Stephen Timewell, *Gulf's New Energy: Finance is Taking Over From Oil as the Fuel that Drives the Engine of Economic Growth in the Gulf Region*, BANKER (London), Nov. 1, 2007, available at LEXIS (discusses the impact of the recent oil boom and the expansion of banking and finance in the region).

³⁵ *See generally* ATEF SULEIMAN, THE PETROLEUM EXPERIENCE OF ABU DHABI (2007) (describing legal, economic, and political aspects of Abu Dhabi's energy policy and the achievements of the emirate's oil and gas industries). For a more personal account of the dramatic transformation brought about by hydrocarbon wealth to Abu Dhabi and other parts of the UAE during the past few decades see MOHAMMED AL-FAHIM, FROM RAGS TO RICHES: A STORY OF ABU DHABI (Makarem 2007) (1995).

³⁶ The term "free zone" can cover "export processing zones" and "special economic zones." *See generally* THE GLOBAL NETWORK OF FREE ZONES IN THE 21ST CENTURY (Richard L. Bolin ed., 1998).

³⁷ *See, e.g.*, Gopal Bhattacharya, *City Scope 2007: GCC Free Zones*, GULF BUSINESS, July 1, 2007 (Magazine), at 82.

³⁸ A "free-trade zone" is also known as a "foreign trade zone" or a "free port." A traditional zone would be located near a seaport or an airport. Legally, it is located within a country but outside the customs territory. *See, e.g.*, BLACK'S LAW DICTIONARY 648, 665-66 (6th ed. 1990).

Jebel Ali Free Zone [hereinafter “Jafza”] is a good example.³⁹ Jafza essentially began as a foreign trade zone based around a large artificial port that was constructed on the southwestern edge of Dubai, near the border with Abu Dhabi.⁴⁰ Yet, free zones are no longer limited to international trade in goods. The free zone concept has been expanded to include various types of economic activity especially in the service sector; this is particularly true in the UAE.⁴¹ For instance, Dubai Healthcare City functions as a free zone for medical services.⁴² Another example would be the Dubai Technology and Media Free Zone [hereinafter “TECOM”], which is a free zone dedicated to information technology, media, education, and related services.⁴³ Thus, a free zone dedicated to financial services would be a logical part of the overall picture.

C. *Dubai International Financial Centre*

During 2003 and 2004, a legal framework was established for setting up the UAE’s first financial free zone in Dubai.⁴⁴ This free zone is the Dubai International Financial Centre [hereinafter “DIFC”].⁴⁵ The DIFC opened for business in 2004.⁴⁶

Thus far, the DIFC has attracted hundreds of financial institutions and other businesses from around the world.⁴⁷ The main areas of financial activity in the DIFC are: banking services,⁴⁸ capital markets,⁴⁹ asset

³⁹ Jafza, Jebel Ali Free Zone, <http://www.jafza.ae> (last visited July 26, 2009).

⁴⁰ INVEST & LIVE IN DUBAI, *supra* note 33, at 41, 97-98; INVESTMENT GUIDE, *supra* note 26, at 23-40, 277-80; SETTING UP IN DUBAI, *supra* note 34, at 144-50.

⁴¹ See generally INVESTMENT GUIDE, *supra* note 26; SETTING UP IN DUBAI, *supra* note 34; INVEST & LIVE IN DUBAI *supra* note 33.

⁴² Dubai Healthcare City, A Unique Healthcare Environment, <http://www.dhcc.ae/EN/Pages/Default.aspx> (last visited Jan. 9, 2010).

⁴³ TECOM is further divided into Dubai Internet City, Dubai Media City, Dubai Knowledge Village, Dubai Outsource Zone, Dubai Studio City, Dubai Biotechnology and Research Park, and the International Media Production Zone. INVESTMENT GUIDE, *supra* note 26, at 67-116.

⁴⁴ At the federal level, the framework includes an amendment to Article 121 of the UAE Constitution. Federal Law No. 8 of 2004 (concerning financial free zones), Cabinet Resolution No. 28 of 2007 (supporting regulations), and Federal Decrees No. 35 of 2004 (establishing the DIFC). At the emirate level, the framework includes the Law of the Dubai International Financial Centre, Dubai Law No. 9 of 2004 and the Law of the Judicial Authority at the Dubai International Financial Centre, Dubai Law No. 12 of 2004, *translated at* DIFC, DIFC Laws & Regulations, http://difc.ae/laws_regulations/index.html (visited July 26, 2009).

⁴⁵ AL TAMIMI & COMPANY, SETTING UP IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE 4-5 (2d ed. 2008).

⁴⁶ AL TAMIMI & COMPANY, *supra* note 45, at 5.

⁴⁷ DIFC, Company Register, <http://difc.ae/registers/companies/index.html> (last visited July 26, 2009).

⁴⁸ This would include underwriting, advising on mergers and acquisitions, venture capital, private equity, private banking, trade finance, and brokerage services. AL TAMIMI & COMPANY, *supra* note 45, at 20. However, there are still restrictions on retail banking.

management and fund registration,⁵⁰ insurance and reinsurance,⁵¹ Islamic finance,⁵² business process outsourcing,⁵³ and ancillary services.⁵⁴

By setting up in the DIFC, financial institutions can operate in an open environment that is physically within the UAE, but is not subject to some of the legal restrictions found elsewhere in the UAE. Benefits for foreign investors operating in UAE free zones, like the DIFC, include complete (100%) foreign ownership, no (zero) corporate taxes or income taxes for a guaranteed period of time, no foreign exchange controls, and a special regulatory framework.⁵⁵ The issues of ownership and taxation are especially important. Currently, in the UAE, outside of the free zones, there are restrictions on foreign majority ownership of businesses.⁵⁶ Although the UAE is generally a low tax country, it is not entirely tax-free due to taxation methods outside of the free zones; most notably the relatively high corporate taxes on both foreign oil companies and foreign banks.⁵⁷

The DIFC has a President and a Governor. The President of the DIFC is His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, who is also the Deputy Ruler of Dubai.⁵⁸ His Excellency Dr. Omar Bin Sulaiman is the Governor of the DIFC.⁵⁹

⁴⁹ The DIFC has its own exchange in the form of NASDAQ Dubai, formerly known as The Dubai International Financial Exchange (DIFX). NASDAQ Dubai, <http://www.nasdaqdubai.com/home/home.html> (last visited July 26, 2009). NASDAQ Dubai is both a stock market and a bond market: it currently lists shares, Islamic bonds (Sukuk), conventional bonds, and structured products. *Id.*

⁵⁰ AL TAMIMI & COMPANY, *supra* note 45, at 21.

⁵¹ *Id.*

⁵² *Id.* Islamic finance remains something of a mystery to most lawyers in the West. See Theodore Karasik, Frederic Wehrey, & Steven Storm, *Islamic Finance in a Global Context: Opportunities and Challenges*, 7 CHI. J. INT'L L. 379 (2007), for a short overview. See MAHMOUD A. EL-GAMAL, *ISLAMIC FINANCE: LAW, ECONOMICS, AND PRACTICE* (2006), for a longer introduction to the subject.

⁵³ AL TAMIMI & COMPANY, *supra* note 45, at 21-22.

⁵⁴ *Id.* at 22. This category includes law firms.

⁵⁵ See generally INVESTMENT GUIDE, *supra* note 26; SOPHIA QASRAWI, FOREIGN DIRECT INVESTMENT IN THE UAE: DETERMINANTS AND RECOMMENDATIONS 39-40 (The Emirates Occasional Papers, Series No. 57, 2004) [hereinafter QASRAWI]; MINISTRY OF ECONOMY, UNITED ARAB EMIRATES, INVESTOR'S GUIDE TO THE UAE 76 (2007).

⁵⁶ For example, when it comes to limited liability companies, UAE nationals must hold at least 51% of the shares. MOHAMMED A.J. AL FAHIM, THE GUIDE: HOW TO SET UP A SUCCESSFUL BUSINESS IN THE UAE 22 (3d ed. 2007) (hereinafter THE GUIDE); MAHMOUD, *supra* note 31, at 72-73.

⁵⁷ QASRAWI, *supra* note 55, at 45-52.

⁵⁸ Dubai International Financial Centre: Statement from HE Dr Omar Bin Sulaiman, Governor of the DIFC, http://difc.ae/press_centre/archive/2009/662.html (posted June 2, 2009).

⁵⁹ Dubai International Financial Centre: Statement from His Excellency Dr. Omar Bin Sulaiman, Governor of the DIFC, http://difc.ae/about_difc/structure/difc_governor/ (last visited July 26, 2009).

In addition, the DIFC has three independent bodies that serve different functions: the DIFC Authority [hereinafter “DIFCA”];⁶⁰ the Dubai Financial Services Authority [hereinafter “DFSA”];⁶¹ and the DIFC Judicial Authority.⁶² The DIFCA runs the zone as a whole, while the DFSA is the government regulator of financial and related services provided in the zone.

In particular, the DIFCA is in charge of the zone’s Registrar of Companies, which is the body responsible for the incorporation or registration of companies operating within the DIFC. It is also worth mentioning that the DIFCA is ultimately responsible for the zone’s securities market, NASDAQ Dubai.⁶³ In this connection, NASDAQ Dubai should not be confused with the Dubai Financial Market [hereinafter “DFM”].⁶⁴ The DFM is Dubai’s original stock exchange,⁶⁵ and predates the NASDAQ Dubai. The DFM, however, is not technically a part of the DIFC, despite the fact that it is located in a building close to the DIFC.⁶⁶ Nevertheless, NASDAQ Dubai and the DFM are under the same government-backed holding company, Borse Dubai.⁶⁷

The DFSA is an independent regulator of financial and ancillary services in the DIFC.⁶⁸ Businesses outside of the zone are regulated by different governmental bodies such as the Central Bank of the UAE.⁶⁹ The DFSA’s aim is to have high standards based on international best practices.⁷⁰

⁶⁰ Dubai International Financial Centre: DIFC Authority, http://difc.ae/about_difc/structure/difca/ (last visited July 26, 2009).

⁶¹ Dubai Financial Services Authority, <http://www.dfsa.ae/Pages/default.aspx> (last visited July 26, 2009).

⁶² Dubai International Financial Centre, DIFC Judicial Authority, http://difc.ae/about_difc/structure/courts/ (last visited July 26, 2009).

⁶³ NASDAQ Dubai, Regulation – Overview, <http://www.nasdaqdubai.com/regulation/index.html> (last visited July 26, 2009).

⁶⁴ Dubai Financial Market, <http://www.dfm.co.ae> (last visited July 26, 2009).

⁶⁵ For the record, nearby Abu Dhabi has its own capital market in the form of the Abu Dhabi Securities Exchange (ADX), which was formerly known as the Abu Dhabi Securities Market (ADSM). Abu Dhabi Securities Exchange, <http://www.adx.ae/English/Pages/default.aspx> (last visited July 26, 2009).

⁶⁶ The DFM is located in the original office tower of the Dubai World Trade Centre. That is the building shown on the back of the one hundred UAE dirham (AED 100) banknote. The same building also happens to be home to the Consulate General of the United States in Dubai.

⁶⁷ Borse Dubai, <http://www.borsedubai.ae> (last visited July 26, 2009).

⁶⁸ The DFSA appears to have been loosely based on the UK’s Financial Services Authority (FSA). *See, e.g.,* Wright, *Three Hubs*, *supra* note 17. Financial Services Authority, <http://www.fsa.gov.uk> (last visited July 26, 2009).

⁶⁹ Central Bank of the UAE, <http://www.centralbank.ae/index.php> (last visited July 26, 2009).

⁷⁰ Dubai Financial Services Authority: Who We Are, <http://www.dfsa.ae/Pages/AboutUs/WhoWeAre/WhoWeAre.aspx> (last visited July 26, 2009).

The DIFC has been designed as a common law jurisdiction.⁷¹ Presently, a modest number of statutes have been enacted, as DIFC laws are distinct from regular Dubai laws.⁷² All DIFC laws have been enacted in English rather than in Arabic.⁷³ Moreover, a number of DIFC laws have been based to some extent on UK statutes. For example, certain provisions in the DIFC's Implied Terms in Contracts and Unfair Terms Law⁷⁴ are either identical or very similar to the corresponding text in the UK's Unfair Contract Terms Act.⁷⁵ Other DIFC laws codify general principles of the common law, like the body of tort law that forms a part of the DIFC's Law of Obligations.⁷⁶ Additionally, certain American legal influence can be found as well. For example, the proposed DIFC Electronic Transactions Law⁷⁷ is based upon the Uniform Electronic Transactions Act of 1999, which was developed in the United States by the National Conference of Commissioners on Uniform State Laws.⁷⁸

This is all in contrast to the rest of the emirate of Dubai, which is a mixed legal system based on civil law and Islamic law, with Arabic being the official language.⁷⁹ Hence, Dubai may be said to have a high degree of legal pluralism.⁸⁰ Furthermore, this represents a twist on the pattern found in other places like Louisiana, Puerto Rico, or Scotland, where an essentially civil law jurisdiction is part of a larger legal system within the

⁷¹ Dubai International Financial Centre: DIFC Laws and Regulations - Law on the Application of Civil and Commercial Laws in the DIFC, DIFC Law No. 3, pt. 2, §8(2)(e) (2004) (referring to "the laws of England and Wales" as a source of law for the DIFC), *available at*

http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=8586.

⁷² Dubai International Financial Centre: Enacted Laws, http://difc.ae/laws_regulations/laws/enacted_laws.html (last visited July 26, 2009).

⁷³ Dubai International Financial Centre, Disclaimer, http://www.difc.ae/base/disclaimer_arabic/ (last visited July 26, 2009).

⁷⁴ Dubai International Financial Centre: DIFC Laws and Regulations - The Implied Terms in Contract and Unfair Terms Law, DIFC Law No. 6 of 2005.

http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=8375.

⁷⁵ Unfair Contract Terms Act of 1977, 1977, c. 50 (Eng.). To get a good sense of how close the two statutes are, one can compare the provisions on negligence liability.

⁷⁶ Dubai International Financial Centre: DIFC Laws and Regulations - Law of Obligations, DIFC Law No. 5 of 2005, *available at* http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=8176. By way of illustration, examine the definition of the tort of passing off. The definition in Section 38 of the DIFC Law of Obligations appears to draw upon the opinion of Lord Oliver in the English case of *Reckitt & Coleman Prods. v. Borden Inc.*, [1990] 1 All E.R. 873. In American law, passing off is often referred to as unfair competition. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U.S. 169, 184 (1896).

⁷⁷ At the time of writing, this proposed law was awaiting enactment.

⁷⁸ Uniform Electronic Transaction Act, §§ 1-21 (July 23-30, 1999), *available at* <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ueta99.pdf>.

⁷⁹ SETTING UP IN DUBAI, *supra* note 34, at 21, 34.

⁸⁰ Even before the creation of the DIFC, there was some indirect common law influence on the practice of commerce law in Dubai due to the large number of international contracts drafted by foreign lawyers trained in the common law. *Id.* at 21.

common law tradition.⁸¹ In other words, here a common law jurisdiction is found within a civil law/Islamic law mixed legal system.⁸²

The designation of the DIFC as a common law jurisdiction was visionary. Clearly, adopting a legal system that would be essentially familiar to many foreign investors was a landmark meant to help the financial free zone to meet its goal of being in the same league as more traditional financial hubs like New York, London, and Hong Kong.⁸³ Furthermore, by being a common law jurisdiction with laws written in English, overseen by both an independent judiciary and an independent regulatory body, the DIFC could be viewed as being world-class and, at the same time, stand out from certain other financial hubs in the Middle East.⁸⁴

D. *DIFC Courts*

To support the DIFC's legal status as a jurisdiction distinct from the rest of Dubai, a separate judiciary has been set up for the free zone.⁸⁵ This judiciary is known as the DIFC Courts.⁸⁶

It can be said that the DIFC Courts are based, with some variation, on the general pattern found in England/Wales and other leading common

⁸¹ A jurisdiction like Louisiana is still part of a broader legal system based on the common law because, of course, the United States Constitution applies in Louisiana as it does in other states.

⁸² It should be noted that the DIFC Courts, which will be discussed later, do not have any jurisdiction over criminal cases. DIFC Courts, About the DIFC Courts, http://www.difccourts.ae/about_the_courts/ (last visited July 26, 2009). In other words, a crime committed within the DIFC would be prosecuted in the regular Dubai Courts.

⁸³ These three hubs are specifically mentioned in the introductory section of the DIFC's website. Dubai International Financial Centre Homepage, <http://difc.ae/> (last visited July 26, 2009).

⁸⁴ Bahrain is one such rival. REHMAN, *supra* note 10, at 120-22. Building upon its past experience as the host of numerous offshore banking units, Bahrain has established an entity called the Bahrain Financial Harbour (BFH) in Manama. Unlike the DIFC, the BFH is governed by the regular Bahraini legal system, which is a mixed legal system of civil law and Islamic law with laws written in Arabic. AL TAMIMI & COMPANY, *supra* note 45, at 11; Welcome to the Bahrain Financial Harbour, <http://www.bfharbour.com/html/index.php> (last visited July 29, 2009). The regulator for the BFH is the Central Bank of Bahrain, formerly known as the Bahrain Monetary Agency. Central Bank of Bahrain, <http://www.cbb.gov.bh> (last visited July 29, 2009). Nevertheless, Bahrain has generally welcomed foreign direct investment especially in the financial sector. *See, e.g.,* AL-SUWAIDI, *supra* note 14, at 11-12, 28. *See also* KAMEL ABU SAQR, BRIDGING THE GULF: THE AUTHORITATIVE GUIDE TO AGENCY, JOINT VENTURE & SPONSORSHIP IN THE ARABIAN GULF 109-11 (2000). Moreover, Bahrain and the United States entered into a free trade agreement (FTA) that took effect in 2006. Office of the United States Trade Representative, <http://www.ustr.gov/trade-agreements/free-trade-agreements> (last visited July 26, 2009).

⁸⁵ *See* The Law of the Judicial Authority at Dubai International Financial Centre, DIFC Law No. 10 (2004); Court Law, DIFC Law No. 12 (2004), *available at* http://difc.ae/laws_regulations/laws/enacted_laws.html.

⁸⁶ DIFC Courts, Independent Administration of Justice in the DIFC, <http://www.difccourts.ae> (last visited Feb. 9, 2008).

law jurisdictions like New York, Hong Kong, and Singapore. More precisely, the English Commercial Court provides a model.⁸⁷ In England, the Commercial Court is a part of the Queen's Bench, which is, in turn, a division of the High Court.⁸⁸ Judges serving on the Commercial Court typically have expertise in commercial, banking, and insurance matters.⁸⁹ The existence of the Commercial Court is arguably one of the reasons behind London's role as a global business hub.

The DIFC Courts consist primarily of a trial court, known as the DIFC Court of First Instance, and an appellate court, known as the DIFC Court of Appeal.⁹⁰ Hence, there are only two levels. By contrast, however, the regular Dubai Courts⁹¹ consists of three levels: the Dubai Court of First Instance, the Dubai Court of Appeals, and the Dubai Court of Cassation.⁹² Incidentally, a Small Claims Tribunal has been established in the DIFC Courts for claims amounting to less than one hundred thousand UAE dirhams (AED 100,000).⁹³

The Chief Justice of the DIFC Courts is British and a former High Court Judge while the Deputy Chief Justice is a Senior Counsel from Singapore.⁹⁴ Both Justices have also had extensive experience as arbitrators.⁹⁵ In 2008, six additional judges were appointed to the DIFC Courts including four foreign judges from various common law jurisdictions and two local judges designated to sit on the DIFC Small Claims Tribunal.⁹⁶

Unlike in the United States, there is no provision for a jury system in the DIFC Court of First Instance. The lack of a jury system could be due to a number of factors including the lack of juries anywhere in the

⁸⁷ Sara Hamdan, *DIFC Court Ready for Business*, NATIONAL (Abu Dhabi), Oct. 9, 2008.

⁸⁸ GARY SLAPPER & DAVID KELLY, *THE ENGLISH LEGAL SYSTEM* 99-100 (5th ed. 2001) [hereinafter SLAPPER & KELLY]. See also Her Majesty's Courts Service, Commercial Court, http://www.hmcourts-service.gov.uk/infoabout/admiralcomm/commercial_court.htm (last visited July 26, 2009).

⁸⁹ SLAPPER & KELLY, *supra* note 88, at 107.

⁹⁰ See The Law of the Judicial Authority at Dubai International Financial Centre, DIFC Law No. 12 (2004), art. 1, available at http://www.difc.ae/laws_regulations/laws/enacted_laws.html.

⁹¹ There is a bilingual (Arabic and English) website for the Dubai Courts. Government of Dubai, Dubai Courts, <http://www.dubaicourts.gov.ae/> (follow "English" hyperlink; then follow "About Courts" hyperlink) (last visited July 26, 2009).

⁹² PRACTICAL GUIDE, *supra* note 16, at 10-17.

⁹³ DIFC Courts, Small Claims Tribunal, <http://www.difccourts.ae/index.html> (follow "Small Claims Tribunal" hyperlink) (last visited July 26, 2009).

⁹⁴ DIFC Courts, About the Courts: Judges, http://www.difccourts.ae/about_the_courts/structure/judges/ (last visited July 26, 2009).

⁹⁵ *Id.*

⁹⁶ *Id.*

regular Dubai Courts.⁹⁷ It should be noted, however, that even in England juries are rarely used for civil cases.⁹⁸

Impressive modern courtroom facilities⁹⁹ have been opened in DIFC Building Number 4 in a part of the DIFC known as the Gate District.¹⁰⁰ The DIFC Courts are supported by a Registrar's office.¹⁰¹ The DIFC Courts have established a registry for legal practitioners.¹⁰² This registry, although clearly inspired by legal profession in England, to some extent resembles the court bar systems of the various federal courts in the United States.¹⁰³ Individual legal practitioners registered with the DIFC Courts consist of lawyers from various jurisdictions including American attorneys.¹⁰⁴ However, English barristers and solicitors¹⁰⁵ form a very large number of the registered legal practitioners.¹⁰⁶ Law firms can also be registered with English firms having a significant presence.¹⁰⁷

So far, the caseload of the DIFC Courts has been relatively light.¹⁰⁸ As of the date of this writing, only a few cases have been decided by the

⁹⁷ In the regular Dubai Courts, cases are heard either by a single judge or else by panels of either three or five judges. SETTING UP IN DUBAI, *supra* note 34, at 26.

⁹⁸ In England, juries are used more in criminal trials. SLAPPER & KELLY, *supra* note 88, at 462-67.

⁹⁹ The courtroom is well equipped with flat screen TVs, video cameras, computers, and other similar technologies.

¹⁰⁰ DIFC Courts, Contact Us, <http://www.difccourts.ae/base/contact/> (last visited July 26, 2009).

¹⁰¹ DIFC Courts, About the Courts: Officers of the Court, http://www.difccourts.ae/about_the_courts/structure/officers/ (last visited July 26, 2009).

¹⁰² DIFC Courts, Attending Court: Registration of Practitioners, http://www.difccourts.ae/about_the_courts/attending/ (last visited July 26, 2008).

¹⁰³ Consider, for instance, the rule for admission to practice before the United States Court of International Trade. CT. INT'L TRADE R. 74. That court is a specialized federal court based in New York. 28 U.S.C. §§ 251-258 (West 2009). It is an Article III court being a court established by Congress. U.S. CONST. art. III.

¹⁰⁴ DIFC Courts, About the Courts: Register of Practitioners, http://www.difccourts.ae/about_the_courts/attending/register_practitioners/ (last visited July 26, 2009) [hereinafter Register of Practitioners].

¹⁰⁵ Although historically the English legal profession has been divided into barristers and solicitors, the lines between the two branches have blurred in recent decades with barristers no longer having a monopoly on court appearances. SLAPPER & KELLY, *supra* note 91, at 498-99.

¹⁰⁶ Register of Practitioners, *supra* note 104.

¹⁰⁷ *Id.*

¹⁰⁸ The case load for the DIFC Courts is likely to increase over time due to various factors including the new arbitration body that has been set up at the DIFC, which is discussed later in this article. Also, of course, the economic downturn might generate some new cases for the DIFC Courts. Jonathan Ames, *Registered for Action*, BRIEF: MIDDLE E.L. FOR BUS. PROF., Nov. 2008, at 46. There has also been some suggestion that eventually disputes from the various other free zones in Dubai might be handled by the DIFC Courts. *Id.* See also Jonathan Ames, *Too Broke to Sue*, BRIEF: MIDDLE E.L. FOR BUS. PROF., Feb. 2009, at 20. Arbitration, at least, is said to be growing dramatically in Dubai as a whole with many of the disputes being related to construction and real estate. Ryan Harris, *Opening the Floodgates*, BRIEF: MIDDLE E.L. FOR BUS. PROF., July 2009, at 33.

DIFC Court of First Instance¹⁰⁹ and only one case has been decided by the DIFC Court of Appeal.¹¹⁰ Decisions of the DIFC Small Claims Tribunal are not reported.¹¹¹ Therefore, it may be a bit premature to comment in detail on the overall jurisprudence of the DIFC Courts, but the somewhat experimental setting could eventually result in a number of interesting opinions.

E. *Arbitration and Mediation at the DIFC*

Parties to a dispute related to the DIFC may choose arbitration or mediation over litigation in the DIFC Courts. To facilitate alternative dispute resolution, the DIFC has its own legislation on arbitration.¹¹² The statute presently in force replaces the earlier DIFC Arbitration Law.¹¹³ The current DIFC Arbitration Law, like its predecessor, has been influenced by the work of the United Nations Commission on International Trade Law [hereinafter “UNCITRAL”]. Specifically, many of the provisions of the UNCITRAL Model Law on International Commercial Arbitration of 1985 (as amended in 2006) have been incorporated with only slight modification of the DIFC Arbitration Law.¹¹⁴ This makes the DIFC Arbitration Law readably understandable for both experienced arbitrators and lawyers representing parties in arbitration from various jurisdictions.¹¹⁵

It is worth noting that in 2006, the UAE joined the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is

¹⁰⁹ DIFC Courts, Legislation & Rules: Judgments, Orders & Decrees, http://difccourts.complinet.com/en/display/display_main.html?rbid=2725&element_id=3464 (last visited July 26, 2009) [hereinafter Judgments, Orders & Decrees].

¹¹⁰ *Ithmar Capital Ltd. v 8 Investment, Inc.*, Jan. 31, 2008, (C.A.) (Dubai), http://difccourts.complinet.com/en/display/display_main.html?rbid=2725&element_id=3467 (last visited Dec. 15, 2009).

¹¹¹ Judgments, Orders & Decrees, *supra* note 109.

¹¹² DIFC Law No. 1 (2008), *available at* http://difc.complinet.com/en/display/display_viewall.html?rbid=2618&element_id=8998. This statute replaces the earlier DIFC Arbitration Law, DIFC Law No. 8 (2004). The current DIFC Arbitration Law, like its predecessor, has been influenced by the work of the United Nations Commission on International Trade Law (UNCITRAL) in creating suggested legislation in this field. Specifically, many of the provisions of the UNCITRAL Model Law on International Commercial Arbitration of 1985 (as amended in 2006) have been incorporated with slight modification into the DIFC Arbitration Law.

¹¹³ DIFC Law No. 8 (2004), *available at* http://difc.complinet.com/en/display/display_main.html?rbid=2618&element_id=9004.

¹¹⁴ For example, compare the “grounds for challenge” provisions in Article 12 of the UNCITRAL Model Law with Section 18 of the DIFC Arbitration Law.

¹¹⁵ For a list of jurisdictions that have enacted legislation based on the UNCITRAL Model Law, *see* United Nations Commission on International Trade Law, Status: 1985 – UNCITRAL Model Law on International Commercial Arbitration, http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_stat us.html (last visited July 26, 2009).

popularly known as the New York Convention.¹¹⁶ Not only does this facilitate the enforcement of foreign arbitral awards in the UAE, joining the New York Convention should make it easier for parties with arbitral awards from the UAE to enforce those in the other contracting states in view of reciprocity.¹¹⁷

In February 2008, the DIFC opened a new arbitral institution in Dubai in cooperation with the London Court of International Arbitration [hereinafter “LCIA”]¹¹⁸ named the DIFC-LCIA Arbitration Centre.¹¹⁹ Although it is an arbitral institution,¹²⁰ the DIFC-LCIA can also provide mediation services.¹²¹ This is also true of the LCIA in London.¹²² However, this joint venture should not be confused with an older body in Dubai namely, the Dubai International Arbitration Centre (DIAC).¹²³ The DIAC is entirely separate from either DIFC or the LCIA.¹²⁴

The DIFC-LCIA Arbitration Centre has two potential advantages over other arbitral institutions in the region.¹²⁵ One is the reputation of the

¹¹⁶ United Nations Commission on International Trade Law, Status: 1958 – Convention on the Recognition and Enforcement of Foreign Arbitral Awards, http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html (last visited July 26, 2009).

¹¹⁷ At least that is how things should work in theory. Sometimes, however, serious difficulties arise when a party attempts to actually enforce an arbitral award overseas even in a country that is a contracting state to the New York Convention. *See, e.g.,* Noah Rubins, *The Enforcement and Annulment of International Arbitration Awards in Indonesia*, 20 AM. U. INT’L L. REV. 359 (2005). Somewhat similar problems have occurred in Saudi Arabia. Salah Deeb, *Kingdom of Saudi Arabia*, in ESSAM AL TAMIMI, THE PRACTITIONER’S GUIDE TO ARBITRATION IN THE MIDDLE EAST AND NORTH AFRICA 137-47 (2009).

¹¹⁸ London Court of International Arbitration, Arbitration and ADR Worldwide, <http://www.lcia-arbitration.com> (last visited July 29, 2009) [hereinafter LCIA].

¹¹⁹ Dubai International Financial Centre, Press Centre: The Launch of the DIFC/LCIA Arbitration Centre, Feb. 17, 2008, http://difc.ae/press_centre/archive/2008/460.html.

¹²⁰ DIFC-LCIA Arbitration Centre, <http://www.difcarbitration.com/> (last visited July 29, 2009).

¹²¹ The DIFC-LCIA has published a set of mediation rules, which are available on its website. *Id.*

¹²² The LCIA has its own mediation procedure that is described on its website. LCIA, *supra* note 118.

¹²³ Dubai International Arbitration Centre, <http://www.diac.ae/idias/> (last visited July 29, 2009). *See also* ESSAM AL TAMIMI, THE PRACTITIONER’S GUIDE TO ARBITRATION IN THE MIDDLE EAST AND NORTH AFRICA 183 (2009) [hereinafter PRACTITIONER’S GUIDE TO ARBITRATION].

¹²⁴ The DIAC has a historic connection with the Dubai Chamber of Commerce and Industry, which is now known simply as the Dubai Chamber. The DIAC is still located in the Dubai Chamber building alongside the Dubai Creek. Yet another Dubai-based arbitral institution worth mentioning would be the International Islamic Centre for Reconciliation and Arbitration (IICRA). Bilal Ahmad Khan, *Reconciling under Shari’a*, BRIEF: MIDDLE E.L. FOR BUS. PROF., Dec. 2007, at 32; International Islamic Centre for Reconciliation and Arbitration (IICRA), <http://www.iicra.net/English/indexe.htm> (last visited July 29, 2009).

¹²⁵ The DIFC-LCIA Arbitration Centre has a number of rivals in the region. Most notably, less than a year after the DIFC-LCIA Arbitration Centre was established, the

LCIA itself, which has been involved in commercial arbitration for more than a century.¹²⁶ Another advantage is the existence of the DIFC Courts. Specifically, the DIFC, as a separate common law jurisdiction, could be chosen as the legal seat of the arbitration (arbitral situs) rather than simply Dubai. Under the DIFC Arbitration Law, the DIFC Courts can provide the functions of arbitration assistance and supervision.¹²⁷ Having an English common law judiciary available for such functions is something that is currently missing from other bodies in the region.

Despite having great potential, the DIFC-LCIA Arbitration Centre is still a very young institution. Although a set of arbitration rules¹²⁸ and recommended arbitration clauses¹²⁹ are now available, due to their sheer newness, they remain largely untested in terms of usage in actual disputes. Naturally, it will take some time before lawyers and their clients become comfortable with the new body.

In this connection, it remains to be seen how awards would be enforced by courts in jurisdictions outside of the DIFC and Dubai.¹³⁰ Even within the UAE there could possibly be some reluctance to enforce an award if neither party is from the UAE.¹³¹ Moreover, enforcing an award outside of the UAE might prove to be problematic in actual practice, notwithstanding the New York Convention.¹³²

III. QATAR

A. Doha

Doha is the capital¹³³ of the State of Qatar.¹³⁴ Qatar is an independent country¹³⁵ that belongs to various international

Ministry of Justice & Islamic Affairs of the Kingdom of Bahrain signed a Memorandum of Understanding with the American Arbitration Association (AAA) to establish an entity to be called the Bahrain Chamber for Dispute Resolution-AAA. Press Release, Kingdom of Bahr. & Am. Arbitration Ass'n Partner to Establish Domestic & Int'l Mediation & Arbitration Ctr. (Dec. 2, 2008), *available at* <http://www.adr.org/si.asp?id=5612>. This body might prove to be especially attractive to American businesses operating in the Middle East that already familiar with the AAA.

¹²⁶ A brief history of the LCIA can be found on the organization's website. LCIA, *supra* note 118.

¹²⁷ DIFC Law No. 1, sec. 11 (2008), *available at* http://www.difc.ae/laws_regulations/laws/files/DIFC_Law_No_1_of_2008.pdf.

¹²⁸ DIFC-LCIA Arbitration Rules. These rules are patterned after the LCIA rules. They can be found on the DIFC-LCIA Arbitration Centre's website. DIFC-LCIA Arbitration Centre, *supra* note 120.

¹²⁹ DIFC-LCIA Recommend Clauses can be found on the website. *Id.*

¹³⁰ Press Release, Fulbright & Jaworski LLP, Launch of the DIFC LCIA Arbitration Centre in Dubai (Feb. 18, 2008), *available at* <http://www.fulbright.com> (follow "publications" hyperlink). *See also* Habib Al Mulla, *Implications of all new DIFC Centre for Arbitration*, GULF NEWS (Dubai), Nov. 20, 2008, at 52.

¹³¹ *Id.*

¹³² *See generally* Rubins, *supra* note 117.

¹³³ QATAR CONST. art. 2.

intergovernmental bodies such as the UN,¹³⁶ WTO,¹³⁷ OPEC,¹³⁸ and the GCC.¹³⁹ Qatar is located on a peninsula off of the larger Arabian Peninsula.¹⁴⁰ In 2001, a rather long-running border dispute between Qatar and Bahrain was finally decided by the International Court of Justice at The Hague.¹⁴¹

While Qatar is an oil exporter, its main energy resource is natural gas.¹⁴² In particular, Qatar has become a key exporter of liquefied natural gas.¹⁴³ Nonetheless, like the UAE, Qatar has been diversifying its economy away from too much reliance upon hydrocarbon wealth.¹⁴⁴ Financial services are part of Qatar's strategy.¹⁴⁵

B. *Qatar Financial Centre*

The Qatar Financial Centre [hereinafter "QFC"] in Doha was established in 2005 and after the DIFC.¹⁴⁶ Like the DIFC, the QFC seeks to attract foreign direct investment by financial institutions. Fields for the QFC include commercial banking, asset management, project finance, bond issuance, insurance and reinsurance, private banking, and general business support services.¹⁴⁷

Although similar to the DIFC in many respects, the QFC offers investors the chance to be physically based anywhere in Doha, rather than in a particular district.¹⁴⁸ In a sense, the QFC is not necessarily a free

¹³⁴ For an overview of Qatar, see REHMAN, *supra* note 10, at 117-20.

¹³⁵ QATAR CONST. art. 1.

¹³⁶ United Nations Member States, *supra* note 21.

¹³⁷ *Members and Observers*, *supra* note 22.

¹³⁸ Organization of Petroleum Exporting Countries, Qatar facts and figures, <http://www.opec.org/aboutus/member%20countries/qatar.htm> (last visited July 26, 2009).

¹³⁹ GCC, *supra* note 24.

¹⁴⁰ Central Intelligence Agency, The World Factbook: Qatar, <https://www.cia.gov/library/publications/the-world-factbook/geos/qa.html> (last visited July 2, 2009).

¹⁴¹ Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahr.), 2001 I.C.J. 40 (Mar. 16). For an analysis of the decision, see GIOVANNI DISTEFANO, BORDER DISPUTES AND THEIR RESOLUTION ACCORDING TO INTERNATIONAL LAW: THE QATAR-BAHRAIN CASE (Emirates Lecture Series No. 59, 2005).

¹⁴² Sudip Roy, *Qatar Seeks Diversification from Energy Wealth*, EUROMONEY (Dec. 2007).

¹⁴³ REHMAN, *supra* note 10, at 118.

¹⁴⁴ Roy, *supra* note 142.

¹⁴⁵ *Id.*

¹⁴⁶ AL TAMIMI & CO., *Qatar: Making the Rules*, LAW UPDATE, Apr. 2006, at 6 (on file with author); Sundip Roy, *Qatar's Grand Ambitions*, EUROMONEY, Apr. 2006; *Insurers' New Favourite Destination*, REACTIONS (U.K.), Apr. 2007; Stephen Timewell, *Qatar: Good Omens of Upheaval*, BANKER, June 1, 2007. See also Qatar Financial Centre, <http://www.qfc.com.qa> (last visited July 29, 2009).

¹⁴⁷ AL TAMIMI & COMPANY, *supra* note 45, at 12.

¹⁴⁸ Qatar Financial Centre (QFC) Authority, Why QFC, http://www.qfc.com.qa/output/Why_QFC.aspx (last visited Apr. 20, 2009). See also

zone which might make the QFC somewhat more attractive to certain investors although a number of financial institutions and related businesses would consider having a presence in both the DIFC and QFC regardless of such differences. Nonetheless, the QFC has attracted a number of well-known financial institutions and related businesses.¹⁴⁹

Legally, the QFC was established by the QFC Law,¹⁵⁰ which was declared by His Highness Sheikh Hamad Bin Khalifa Al-Thani, the Emir of Qatar, in March 2005.¹⁵¹ The QFC has been structured similarly to the DIFC in that the QFC is operated by the QFC Authority and regulated by the QFC Regulatory Authority,¹⁵² but this might change.¹⁵³ The regulations¹⁵⁴ and rules of the QFC are being modeled after those of London and other major financial capitals.¹⁵⁵

C. QFC Judiciary

Like the DIFC, the QFC has its own judiciary in the form of a trial court known as the QFC Civil and Commercial Court¹⁵⁶ and an appellate court known as the QFC Regulatory Tribunal.¹⁵⁷ Currently, seven foreign judges have been appointed to serve on the trial court while an additional three foreign judges, known as “members,” have been appointed to serve

Philip Thorpe, *Building Better Markets*, TRENDS: INT’L MAG. ON ARAB AFF., Mar. 2008, at 146-50.

¹⁴⁹ To search for licensed firms, see QFC, Public Register, <http://www.qfc.com.qa/output/public-register.aspx> (last visited July 26, 2009).

¹⁵⁰ See Qatar Financial Centre (QFC), Law No. 7 (2005) (codified as amended at QFC Law No. 2 (2009)), available at http://www.complinet.com/net_file_store/new_rulebooks/q/f/QFC_Law-V3-Oct09.doc.pdf.

¹⁵¹ For an English version of this law, see QFC Legislation, http://www.complinet.com/qfcra/display/display.html?rbid=1557&element_id=2 (last visited Oct. 19, 2009).

¹⁵² The QFC Regulatory Authority is separate from the QFC Authority. QFC, Regulatory Authority, <http://www.qfc.com.qa/output/regulatory-authority.aspx> (last visited Apr. 20, 2009).

¹⁵³ Media reports have suggested that Qatar might begin to consolidate its regulatory bodies into a single regulator. *Qatar to unify Financial Regulations*, ARABIAN BANKING & FIN., Aug. 2007, at 12; *Qatar: Good Omens of Upheaval*, BANKER, June 1, 2007; *Doha Sets the Pace with Standard Reforms*, BANKER, Sept. 1, 2008.

¹⁵⁴ The term “regulations” is used rather than “laws” for the QFC. QFC, QFC Legislation, <http://www.complinet.com/qfcra/display/index.html> (last visited July 26, 2009). The QFC’s regulations occupy a position similar to that of the DIFC’s laws while the QFC’s rules roughly correspond to the DIFC’s regulations. However, at this point in time, the QFC has a smaller amount of legislation than the DIFC.

¹⁵⁵ QFC, About the QFC, *supra* note 148.

¹⁵⁶ QFC Civil and Commercial Court, QFC Civil and Commercial Court, <http://www.qfccourt.com/> (last visited July 26, 2009).

¹⁵⁷ QFC Regulatory Tribunal, QFC Regulatory Tribunal <http://www.qfctribunal.com/index.php> (last visited July 26, 2009). Previously, these bodies were called the QFC Tribunal and the Appeals Body, respectively. AL TAMIMI & COMPANY, *supra* note 45, at 12; *QFC Pushes on with New Legal System*, EUROWEEK, May 26, 2006, at 16.

on the appellate court.¹⁵⁸ The judges mostly come from England and all appear to be very experienced individuals.¹⁵⁹

The QFC's Civil and Commercial Court and the QFC Regulatory Tribunal are even younger than the DIFC Courts.¹⁶⁰ The Civil and Commercial Court's first decision was recently published.¹⁶¹ Thus, it is too early to tell how exactly this new judiciary will function in practice. Perhaps the global recession will generate some cases for the QFC judiciary. Be that as it may, the stated model for the QFC judiciary, just like with the DIFC Courts, is that of the English Commercial Court.¹⁶²

D. *Arbitration at the QFC*

The QFC has an arbitration law of its own, albeit in the form of the QFC Arbitration Regulations of 2005.¹⁶³ The QFC can thus serve as the seat of arbitration.¹⁶⁴ The QFC Civil and Commercial Court would be the supervising court.¹⁶⁵ Unlike DIFC, there does not appear to be a formal arbitral institution within the QFC at this time. However, the Qatar Chamber of Commerce is developing a body called the Qatari International Center for Arbitration.¹⁶⁶

IV. OTHER DEVELOPMENTS

A. *Ras Al Khaimah Financial City*

In June 2007, it was announced that the UAE's northernmost emirate of Ras Al Khaimah [hereinafter "RAK"] would be establishing its own financial free zone to be named RAK Financial City.¹⁶⁷ This planned

¹⁵⁸ QFC Civil and Commercial Court, QFC Civil and Commercial Court Judges, <http://www.qfccourt.com/members.php> (last visited July 26, 2009); QFC Regulatory Tribunal Members, <http://www.qfctribunal.com/members.php> (last visited July 26, 2009).

¹⁵⁹ Some have previously worked elsewhere as judges. Others are Queen's Counsels or appear to have achieved a comparable level of distinction in their legal careers. The most famous would have to be the President of the QFC Court, Lord Woolf, who served as Master of the Rolls and Lord Chief Justice of England and Wales. *Id.*

¹⁶⁰ Richard Harding, *Court Conundrum*, BRIEF: MIDDLE E.L. FOR BUS. PROF., Aug. 2008, at 14; Kathryn Young, *The Rule of Law: Qatar Law Forum*, BRIEF: MIDDLE E.L. FOR BUS. PROF., June 30, 2009, at 14.

¹⁶¹ Qatar Fin. Ctr. Auth. v. Silver Leaf Capital Partners L.L.C., June 1, 2009, No. 0001/2009 (Civ. Comm. Ct. QFC), *translation available at* <http://www.qfccourt.com/Judgement.php>.

¹⁶² QFC Civil and Commercial Court, About the Qatar Financial Centre Civil and Commercial Court, <http://www.qfccourt.com/who.php> (last visited July 26, 2009).

¹⁶³ Arbitration Regulations 2005, QFC Regulation No. 8, *available at* http://www.complinet.com/qfcra/display/display.html?rbid=1557&element_id=3.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Qatar Chamber of Commerce and Industry, Arbitration Center, http://www.qcci.org/English/Qa_Int_Ar_En/Pages/default.aspx (last visited July 26, 2009). *See also* PRACTITIONER'S GUIDE TO ARBITRATION, *supra* note 123, at 127.

¹⁶⁷ *Ras Al Khaimah launches Financial City*, GULF BUS., July 2007, at 14.

financial hub is a project of the RAK Investment Authority.¹⁶⁸ Presumably, RAK Financial City would complement the existing Ras Al Khaimah Free Trade Zone [hereinafter “RAK FTZ”].¹⁶⁹ RAK FTZ promotes itself as a low-cost free zone¹⁷⁰ and aims to attract enterprises to the RAK FTZ from a wide range of sectors with its system of three “parks:” the Business, Industrial, and Technology Parks.¹⁷¹ This can be viewed as an example of the subtle competition between the various emirates in the UAE.¹⁷²

Assuming the project is actually realized, it is currently unclear as to what extent RAK’s planned financial hub would either complement or compete with similar entities in the region. Indeed, the GCC could face a glut of financial hubs. Among other things, the recession has already had an impact on the Gulf economies.¹⁷³ Of course, the crisis has also weakened many of the same banks and financial institutions that would otherwise invest in the hubs.¹⁷⁴

Also, at this point it is unclear as to what sort of dispute resolution system, if any, might operate in RAK Financial City. Yet, it is worth recalling that RAK, like Dubai, has retained its own local courts separate from the federal court system of the UAE. Thus, it is possible that a specialized judiciary might be established for RAK Financial City along the lines of the DIFC Courts. Moreover, a dedicated arbitral institution might also be set up. Alternatively, parties could presumably use the services of the new arbitral body being set up by the RAK Chamber of Commerce and Industry.¹⁷⁵

B. *Projects in Saudi Arabia*

Saudi Arabia has the largest economy in the GCC and, indeed, in the entire Arab World.¹⁷⁶ Outside of the Middle East, Saudi Arabia is perhaps best known primarily as a major oil exporter, but even Saudi

¹⁶⁸ RAK Investment Authority, RAK sets up Financial City, <http://www.rak-ia.com/News.aspx?id=21> (last visited July 26, 2009).

¹⁶⁹ RAK FTZ, Ras Al Khaimah Free Trade Zone, <http://www.rakftz.com/en> (last visited July 26, 2009).

¹⁷⁰ *Id.*

¹⁷¹ THE GUIDE, *supra* note 56, at 37-41.

¹⁷² For thoughts on this phenomenon, see REHMAN, *supra* note 10, at 110-11.

¹⁷³ *Global Financial Crisis Reaches the Gulf* (Al Arabiya News Channel Nov. 21, 2008), <http://www.alarabiya.net/articles/2008/11/21/60501.html>.

¹⁷⁴ A number of the institutions impacted by the crisis already had a presence in the region. For example, Lehman Brothers once had an office in the DIFC. *DFSA Sees No Early Resolution to Lehman Fiasco* (Sept. 16, 2008), http://www.gulfnews.com/business/Banking_and_Finance/10245440.html.

¹⁷⁵ AL TAMIMI & CO., *RAK Sanctions Charter for Commercial Arbitration Centre*, LAW UPDATE, Sept. 2008, at 10, available at <http://www.tamimi.com/files/law%20updates/lu-210sep08.pdf>.

¹⁷⁶ REHMAN, *supra* note 10, at 111-17.

Arabia has been trying to diversify its economy.¹⁷⁷ This drive towards diversification includes promoting financial services. For example, a so-called “Financial Island” is planned for the massive King Abdullah Economic City [hereinafter “KAEC”], which is a joint project between the Saudi Arabian General Investment Authority and Emaar, a property developer based in Dubai.¹⁷⁸ The KAEC site is located on the shores of the Red Sea near Jeddah.¹⁷⁹ Assuming the project does not fall victim to the recession, it is not yet clear whether there would be any separate arbitration body or court system for either the Financial Island or KAEC as a whole.¹⁸⁰

Another significant project in Saudi Arabia is the King Abdullah Financial District to be located in Riyadh.¹⁸¹ However, creating a special jurisdiction based largely on Western laws for any entity within a society as traditional as Saudi Arabia appears rather unlikely at the present time.¹⁸²

V. CONCLUSION

Over time, the common law has developed in response to new conditions and adapted to novel surroundings. The recent rise of specialized common law jurisdictions in parts of the Arabian Peninsula is based upon voluntary borrowings of English law as a pragmatic approach towards attracting foreign direct investment in the wholesale financial services sector. As English law takes root in desert sands, we are witnessing a new chapter in the world history of the common law.

Aside from economic opportunity, a jurisdiction’s legal framework is certainly a factor in either attracting or inhibiting foreign direct

¹⁷⁷ *Id.*

¹⁷⁸ Fadi Fahem, *King Abdullah Economic City to be Largest Saudi Private Sector Investment*, KHALEEJ TIMES, Dec. 21, 2005, available at http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/business/2005/December/business_December435.xml§ion=business&col=. See also Khalil Hanware & P.K. Ghafour, *King Abdullah Opens Key KAEC Projects*, ARAB NEWS, June 12, 2008, available at, <http://www.arabnews.com/?page=6§ion=0&article=110828&d=12&m=6&y=2008>.

¹⁷⁹ KAEC, King Abdullah Economic City, <http://207.5.46.159/en/Home/index.html> (last visited July 26, 2009).

¹⁸⁰ For instance, there is no relevant information on the English version of the project’s official website. *Id.*

¹⁸¹ The King Abdullah Financial District, The King Abdullah Financial District, http://www.kingabdullahfinancialdistrict.com/html/english/home_en.aspx (last visited July 26, 2009). See also Press Release, The King Abdullah Financial District, Saudi Arabia Approves Master Plan for Middle East’s Biggest Financial District (Mar. 7, 2007), available at <http://www.ameinfo.com/112946.html>.

¹⁸² Saudi Arabia is more conservative than the UAE in general and Dubai in particular. The relatively more tolerant social atmosphere in Dubai has helped attract tourists and foreign workers as well as investment. Moreover, the larger role of religious law in Saudi Arabia could result in resistance towards any common law jurisdiction being set up in the kingdom. AL-SUWAIDI, *supra* note 14, at 24-26.

investment.¹⁸³ The widespread use of the English language in a jurisdiction can also encourage such investment because English has become the main language of international business.¹⁸⁴ Therefore, having or establishing a new jurisdiction based on what would be familiar legal concepts for many and also operating in a widely spoken language should help to attract foreign direct investment.

The decision to use not only English as the official language for the DIFC, but also the common law as the legal basis for the DIFC has resulted in a new legal model of establishing a specialized common law jurisdiction in an otherwise non-common law environment to quickly develop the wholesale financial sector. Already this model seems to have inspired the QFC. Other planned financial hubs in the region like RAK Financial City may follow this model during the next few years. Indeed, the model could even spread beyond the region to other emerging markets although progress on this front might be slowed by current economic realities.

¹⁸³ QASRAWI, *supra* note 55, at 24-28.

¹⁸⁴ *Id.* at 63.