



Jumeirah Islands development

Dubai World tribunal confirms DIAC award

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The Dubai World tribunal - created to hear disputes arising from the government investment group's restructuring - has ratified the award of a Dubai International Arbitration Centre tribunal, in line with indications that it would respect awards rendered in other proceedings.

The special tribunal required a subsidiary of government-owned real estate developer Nakheel Properties – the creator of the Palm Island among other developments – to pay an investor in the nearby Jumeirah Island project more than US\$750,000 damages, plus interest and costs, as ordered by a DIAC panel in May 2010.

Nakheel is one of the companies that was funded by Dubai World, but the DIAC arbitration began before the establishment of the special tribunal.

The decision of the Dubai World tribunal was signed by its president, **Sir John Chadwick**, and endorsed by its other members: the former chief justice of the Dubai International Financial Centre, **Sir Anthony Evans**, and current chief justice and international arbitrator **Michael Hwang SC** of Singapore. **Kaashif Basit**, counsel to the award creditor and a partner at KBH Kaanuun in Dubai, calls the decision "precedent-setting".

When Dubai's ruler, Mohammed bin Rashid Al Maktoum, established the special tribunal by royal decree in 2009, jurisdiction for all matters relating to Dubai World companies was transferred to it. The tribunal has since suggested that it would be prepared to enforce awards rendered elsewhere: its first practice direction in 2010 said that it would "respect and enforce arbitration agreements" and expected "pending arbitration proceedings" to continue "in accordance with their contractual obligations".

In light of this indication, **Christopher Mainwaring-Taylor**, counsel at Allen & Overy in Dubai, says he regards the latest ruling as unsurprising. The tribunal has indicated an 'avowedly pro-arbitration stance', adds Herbert Smith partner **Craig Tevendale**, who regularly appears in cases in Dubai. 'This development will hammer home to commercial clients that the slate has not been wiped clean with the formation of the Dubai World Tribunal.'

Sources in the Gulf think that the decision will increase acceptance of the Dubai World tribunal among investors. At the time of its establishment there were fears that the tribunal would not provide impartial justice, but **Tariq Baloch**, an associate at Freshfields Bruckhaus Deringer in Dubai, says this 'perception of bias does not ring true'. He believes that the tribunal has proved to be an 'effective, fair and high quality forum', noting that Dubai World entities have had judgments against them as well as in their favour. For example, last December the tribunal issued another award against Nakheel, ruling that it was obliged to comply with a settlement agreement requiring it to return downpayments of some US\$7.7 million to three investors in the Jumeirah development.

The tribunal is also able to 'respond quickly to developing situations,' Baloch says, as shown in a recent case in which the tribunal considered an application for an emergency injunction. Sir John Chadwick issued a reasoned judgment within a day.

The fact that decisions of the tribunal are not subject to review in the courts also provides a clear advantage for users, Baloch notes.

At a recent 'Hot Topics' event organised by SJ Berwin, Dubai-based partner **Mark Hoyle** noted that the special tribunal's workload is currently 10 times that of the DIFC courts. He said that it remains to be seen whether other Arab states will prove willing to enforce awards of the tribunal - but predicted they would because of the 'uniformity of desire' to make dispute resolution in the region work.

The damages ordered in the latest case covers construction defects in a villa the investor had acquired on one of 50 islands that comprise the Jumeirah Islands complex, built around an artificial lake. Many developers halted construction in the wake of Dubai's housing market crash in 2008.

Reaching the enforcement decision was not easy for the special tribunal because of the fusion of laws under which it operates, according to Basit. He says the tribunal accepted in the proceedings that the parties had incorporated aspects of the law of the DIFC freezone into their arbitration agreement - with the effect that the applicable procedural law shifted from that of Dubai to that of the DIFC. Lawyers for Nakheel had unsuccessfully argued that, despite this, local Dubai law applied to all aspects of the enforcement claim.

However, Basit notes that any challenge to the validity of the law would require the application of the substantive laws of the UAE and Dubai, as the arbitration clause specified Dubai as seat.

Dubai World Tribunal

- **Sir John Chadwick** (UK)
- **Michael Hwang SC** (Singapore)
- **Sir Anthony Evans** (UK)

Counsel to Vinod Kumar Dang

- KBH Kaanuun

Partner **Kaashif Basit** in Dubai

Counsel to Nakheel

- Dalmook Mohammed Dalmook in Dubai
- Clifford Chance

Partner **Graham Lovett** in Dubai

In the Dubai International Arbitration Centre

Tribunal

- **Hashem M Jaber** (President)
- **Ahmed M Al Maqtari**
- **Victor Leginsky**

Counsel to Vinod Kumar Dang

- KBH Kaanuun

Partner **Kaashif Basit** in Dubai

Counsel to Nakheel

Did not appoint external counsel