

English judiciary establishes a specialist court for the financial markets

Conscious of the international competition for contentious business, the High Court in England is setting up a specialist Financial List, in which disputes will be determined by judges with expertise in the financial markets. The Financial List will also offer the possibility of deciding test cases of importance to the financial markets even though there is no live dispute. The English courts are also setting up a Shorter and Flexible Trials Pilot Scheme pilot scheme to see if litigation procedures can be abbreviated so as better to meet the parties' needs.

The English courts have a long history of deciding disputes in the international financial markets, not least because of the dominance of London, English law and the English language in those markets.

But success in attracting litigants cannot be taken for granted. Other courts and tribunals across the world are seeking to entice away some of the dispute resolution work that would traditionally have come to London. In response to this increasing competition, on 1 October 2015, the High Court in London will establish the Financial List, a specialist court that will be staffed by judges with particular experience of financial disputes.

The criteria for inclusion in the Financial List are set out in the box on the next page but, in summary, the Financial List will cover financial markets transactions where over £50 million is in issue, disputes that require particular expertise in the financial markets, and disputes that

raise issues of general importance to the financial markets.

The Financial List will straddle the existing Commercial Court and Chancery Division of the High Court. A claim appropriate for the Financial List can be started in either the Chancery Division or the Commercial Court, but the procedures followed will be the same (essentially those of the Commercial Court). Features of the procedure include that each case will be allocated to a designated judge, who will decide interim matters as well as being the trial judge.

Test cases

English courts generally refuse to decide hypothetical issues. A major innovation in the Financial List will be a two year pilot under which the court will be able to depart from this general rule and determine "issues of general importance to the financial markets in relation to which immediately relevant authoritative English law guidance is needed". If this test is met, there need not be a present cause of action

Key issues

- The Financial List will open for business on 1 October 2015
- Experienced judges will determine a broad range of financial claims
- The Financial List will be able to decide hypothetical test cases

between the parties to the proceedings. A hypothetical issue affecting the markets will be enough.

Test cases will only be possible with the consent of both parties, who must be "actively engaged in the relevant market". However, to ensure that all arguments will be put to the court, a trade body can be represented in the proceedings. Contrary to usual practice, the court will not order the losing party to pay the successful party's costs.

Shorter and Flexible Trials

Another initiative, also spanning the Commercial Court and the Chancery Division, as well as certain other courts, is a two year pilot for Shorter and Flexible Trials.

The Shorter Trials pilot is intended for cases that can be resolved through a trial of no more than four days. All hearings will be heard by a designated judge, and will follow an accelerated procedure. So, for example, pleadings must be accompanied by a bundle of core documents, and there will be no general disclosure obligation. Instead,

the approach often used in arbitration will be followed, namely each party can request disclosure of particular documents, classes of documents or documents relating to particular issues. Interim applications will generally be dealt with on paper, without an oral hearing, and the parties will not be required to file costs budgets.

Either party can ask the court to include a case within the Shorter Trials pilot. In contrast, the Flexible Trials pilot requires the parties' consent. The pilot encourages parties to agree procedures, whether for disclosure, witness evidence, expert evidence or the conduct at the trial, that are suitable for the resolution of their dispute even if not in line with the court's usual steps.

Conclusion

The Financial List and the Shorter and Flexible Trials pilot are initiatives that have come from the judiciary. They show that the English courts are aware of the greater international competition for dispute resolution work and that they will seek to adapt to meet the needs of the international financial community in order to preserve their international status.

Financial List Claims

A claim may be brought in the Financial List if it:

"(a) principally relates to loans, project finance, banking transactions, derivatives and complex financial products, financial benchmark, capital or currency controls, bank guarantees, bonds, debt securities, private equity deals, hedge fund disputes, sovereign debt, or clearing and settlement, and is for more than £50 million or equivalent;

(b) requires particular expertise in the financial markets; or

(c) raises issues of general importance to the financial markets." (CPR 63A.1(2))

The "financial markets" for these purposes "include the fixed income markets (covering repos, bonds, credit derivatives, debt securities and commercial paper generally), the equity markets, the derivatives markets, the loan markets, the foreign currency markets, and the commodities markets." (CPR 63A.1(3))

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