

## Why 'business-friendly' and 'no-nonsense' should be synonymous for commercial courts



*By Amna Al Owais & Mahika Hart, DIFC Courts*

The cost of dispute resolution has been rising worldwide, causing smart businesses to seek out the most efficient, consistent and cost-effective dispute resolution solutions available to them. For many, the solution has become arbitration, although costs are rising steadily in this area as well. Enter a new type of commercial court, proudly business-friendly and focused on using the latest tools to enhance efficiency and best serve businesses in their dispute resolution needs.

A feature of this new breed of courts is their international outlook and ability to serve business dispute companies worldwide. But why might a company in far-off China or Nigeria choose to opt-in to the jurisdiction of a court in Singapore, Dubai or New York? The answer is that these courts have become standard-bearers for business-friendly and innovative dispute resolution services, contributing to business certainty and reducing costs for businesses around the world with tools that enhance court efficiency, even for companies located some distance away.

Being business-friendly is more than simply offering an efficient process and access to top judges, however. It also means taking steps to stamp out frivolous claims and delay tactics to create certainty and finality in dispute outcomes and enforcement and save time and money along the way.

### **Combating frivolous claims and delay tactics**

Chief Justice Michael Hwang of the DIFC Courts coined the phrase 'guerrilla tactics' to describe those who seek to "exploit the procedural rules for their own advantage, seeking to delay the hearing and (if they get any opportunity) ultimately to derail the arbitration so that it becomes abortive or ineffective".

Acknowledging the rise of guerrilla tactics in both arbitration and litigation, many courts have spearheaded measures to keep guerrilla tactics out of proceedings. These mechanisms have been immensely successful in combating frivolous claims and delays.

One such tool is that courts will appropriately grant interim measures, such as freezing or attachment orders, against the relevant defendant's assets to keep the case on track. Urgent applications for interim measures, among other things, are often heard in less than a week, giving parties little opportunity to create additional delays. In cases for the recognition and enforcement of arbitral awards, the judge may require the judgment debtor to pay security into court in an amount up to the value of the arbitral award itself as a condition of granting a stay of proceedings. These interim tools are being used more worldwide to keep cases on track.

*This blog contains excerpts from an article published by Corporate Disputes Magazine. The full article can be*

*read at:* <https://www.difccourts.ae/wp-content/uploads/2018/09/CD.pdf>