



**DIFC COURTS' USERS' COMMITTEE**

**MEETING MINUTES**

**7 December 2016, 11am**

**DRA Offices, Level 3**

**Committee Attendees:**

Adrian Chadwick, Hadeef & Partners

Alec Emmerson, Clyde & Co

Faridah Sarah, Galadari Advocates and Legal Consultants

Graham Lovett, Gibson Dunn

Jacques Visser, DIFCA

James Abbott, Clifford Chance

James Lake, DFSA

Mark Beer, Registrar (non-voting member)

Amna Alowais, Deputy Registrar (non-voting member)

Cheryl Fernandes, Committee Secretary

**Guests:**

David Gallo, Director Academy of Law

Delvin Sumo, Legal Conduct Officer Academy of Law

Noor Al Khafaji, Senior Legal Officer at The Government of Dubai Legal Affairs Dept

**Apologies:**

Esam Sharaby, Hussain Lootah and Associates

Muna Dandan, DFSA

Obaid Al Muhairi, DIFCA

1. **Welcome by Chairperson:**

Deputy Registrar Amna Al Owais chaired the meeting and welcomed all attendees.

2. **Approval of the last minutes of meeting**

The minutes of the Courts' Users' Committee meeting held on 4 September 2016 were approved.

3. Registrar Mark Beer updated the members regarding the various points of discussion at the Annual Judges meeting held by the DIFC Courts in October 2016.

**Proposal to adjust fees:** There was a proposal to adjust fees for the ratification of arbitration awards. DIFC Courts were to consider implementing a 50% reduction of the filing fee for ARB ratification cases (eg retain Part 7 ad valorem fees with a cap of USD65,000).

A Revised Fees Practice Direction was put out for public consultation on 6 September 2016. The main changes to the fees included:

- Reimbursement for unopposed applications for ratification of an arbitral award (50% of filing fee);
- Reimbursement for default judgment (65% of filing fee); and
- Reimbursement for immediate judgment (65% of filing fee).

As regards enforcing DIFC Courts judgments or orders within the DIFC, no fee will be payable by the party filing for enforcement and 3% of the value of the judgment or order is to be settled by the party against whom enforcement has been filed.

Enforcing judgments or orders made outside of the DIFC Courts: 1% of the value of the judgment or order, with a minimum of USD 100 and a maximum of USD 20,000, is to be settled by the party filing for enforcement and 3% of the value of the judgment or order is to be settled by the party against whom enforcement has been filed.

An enforcement fee will not be payable in the event that an interim enforcement order does not become final. In practical terms, the receiving party's invoice will be issued upon application, whereas the paying party's fee will be invoiced and fall due once the enforcement order becomes final

This has been considered in the context of the Fees Practice Direction which was put out for public consultation until 9 October 2016. Registrar Mark Beer informed members that we will circulate another amended version of the fees order particularly on the point of arbitral ratification in the next few weeks.

Litigation funding: There is an expected increase in the use of litigation funding in the GCC. The concept of litigation funding is recognised in international arbitration and it has been successfully used in the DIFC Courts. The DIFC Courts are in the process of drafting formal guidance in relation to litigation funding in the jurisdiction. A Draft Practice Direction (PD) has been shared with key stakeholders in the DIFC legal community. Further to their comments, a revised and reduced draft has been produced and was circulated and discussed at the DIFC Court's Annual Judges Meeting. The draft PD aims to identify that the litigation funding agreements must be in writing, and the funded party should notify the other party in court that they are funded. It was suggested that the Academy of Law circulate an academic paper about litigation funding as a matter of public policy. The paper can offer guidance as to how lawyers should be approaching litigation funding and advise their clients. Registrar Mark Beer informed members that we have reached out to the executive members at DFSA to legislate litigation funding and we hope to hear from them soon.

**Production of Enforcement report:** The DIFC Courts plan to compile and publish historic enforcement related data so parties can see the jurisdictions in which judgments have been enforced and the speed of enforcement. This is expected in quarter 1 2017.

**Streamlining of appeals:** A system has been put in place to ensure that simple applications and costs assessments are assigned to the Judicial Officers (JOs) or a Registrar before they are put before a Judge, to speed up the time it takes for a decision to be made on these applications. In those instances parties may either seek *de novo* review within 3 working days (under PD no. 3 of 2015), or an appeal.

In our current rules one can either make an application for permission to appeal orally at a hearing if a judgment is delivered at the hearing or subsequently in writing to the Appeal Court. The proposed leave to appeal amendments will significantly change the system - so that all applications must first go to the trial judge: Under the proposed new regime applications for permission to appeal must be made to the trial judge. The lower court can refer to the Appeal Court for a decision or if the lower court refuses to give permission to appeal a further application can be made to the Appeal Court with an appellant's notice. The decision of the Appeal judge sitting alone is final. Assistant Registrar Natasha Bakirci is working on this along with Justice Roger Giles, Judge of the DIFC Courts and this was put into public consultation on 15 December 2016 until 19 January 2017 (see: <http://difccourts.ae/amended-part-44-rules-difc-courts-leave-appeal-open-public-consultation/>) .

**IT, plans to upgrade the Case Management System (CMS):** The search functionality on the DIFC Courts website has been upgraded making it easier to locate judgments, cases, Practice Directions using key words. There is a requirement to revamp the CMS system to make it more user friendly which we are looking at for next year.

**Looking at emails service for Small Claims Tribunal (SCT) at trial:** We are currently looking at having application of alternative service at the outset of SCT case where parties will use an active email address. Some members raised concerns over lack of awareness of Rules of how service has to be affected and suggested that these should be lectured at a Seminar or some training to be made available next year, alternately map out a flow chart for service like we have for CFI and Enforcement cases.

Registrar Mark Beer suggested that we request the Rules Sub Committee to look at Rules on Service with a view to adjusting them based on practice and to come up with a proposal.

**Construction and Maritime Rules:** Permission to proceed with drafting Construction Rules and permission to look at the possibility of drafting Maritime Rules is something that the DIFC Courts are looking into publishing for consultation in the early part of next year.

**Shorter Trial Scheme:** Recommendations were made to implementation of shorter trials schemes, Registrar Mark Beer informed members that we have to look at this again and we intend to start the process next year.

4. **Joint Judicial Committee:** Deputy Registrar Amna Al Owais updated members that a few applications submitted have been accepted. We hope decisions will be made shortly, this will be a joint decision between the Dubai Courts and DIFC Courts and the decision will be a final one. The next meeting is scheduled on 19 December 2016.

At the previous meetings decision were more on procedures, and how to deal with applications, where both parties need to be served. Deputy Chief Justice Sir David Steel has worked on a practical guide for procedures that has been shared with the Committee members if they agree it and make it public we will share it with you.

5. **Caseload Statistics:**

The Deputy Registrar Amna Al Owais shared case statistics covering the period from January to November 2016. Between January and November 2016, the total value of Court of First Instance (CFI) cases, including arbitration-related cases and counter claims handled by the DIFC Court's was approximately AED3 billion.

There was a significant increase in the number of enforcement cases before the DIFC Courts, the total number of enforcement cases grew by 124 per cent, from 34 in 2015 to 76 in 2016.

The workload of the SCT increased in the period of 2016 as compared to 2015, from 192 cases filed in 2015 as compared to 2010 cases filed in 2016 during the same period.

6. **Courts' Activities – Deputy Registrar update:**

The Deputy Registrar Amna Al Owais gave an update on various Courts' activities and media coverage which the Courts continue to receive both in Arabic and English:

Members were updated on various international collaborations:

- Memorandum of Understanding between Dubai International Arbitration Centre (DIAC) and Dubai International Financial Centre (DIFC) Dispute Resolution Authority (DRA); On 20 September 2016, the DIAC and DIFC DRA – which comprises both the DIFC Academy of Law and the DIFC Courts signed a MoU to promote their mutual co-operation, including in particular the recognition and enforcement of DIAC awards by the DIFC Courts.
- Memorandum of Understanding between Jebel Ali Free Zone (Jafza) and DRA; On 16 October 2016, Jafza and DRA has signed a MoU giving its member companies and people living, working and investing in the Free

Zone access to a suite of dispute resolution services, including the Small Claims Tribunal of the DIFC Courts. Jafza and the DRA will work together to develop initiatives to encourage greater cooperation between dispute resolution and mediation services provided by the two authorities. It will also promote the services of DRA, including the use of DIFC Courts.. The agreement will provide Jafza member companies with a more efficient means of resolving disputes.

- Memorandum of Understanding Strengthening Judicial Exchange and Cooperation between Shanghai High People's Court and DIFC Courts; October 27, 2016: The Shanghai High People's Court, the foremost business court in the commercial and financial centre of mainland China, and the DIFC Courts have agreed to work together to achieve shared strategic objectives, provide the basis for future judicial exchanges, and deliver legal excellence with the signing of a landmark cooperation agreement between two courts. The DIFC Courts are the first foreign commercial court to cooperate closely with the Shanghai High People's Court, with the agreement designed to reinforce commercial links between the two cities by bringing certainty to businesses through enabling them to trade securely.
- SCT campaign and the Smart SCT hearings: Deputy Registrar Amna Al Owais informed the members about the launch of the SCT campaign in September, 2016. This is to promote the opt in jurisdiction for the DIFC Courts as well as SCT especially to SMEs. We have a total of 176 downloads of the DIFC Courts jurisdiction clause since 22nd September 2016. The newly introduced Smart SCT hearings is fully equipped with video conferencing technology that enables individuals or small- and medium-sized enterprises (SMEs) to participate in hearings from anywhere in the world virtually.

According to the current court procedures, the parties in dispute along with a judge have to be present at SCT during hearings. With the new technology, however, all parties concerned, such as business owners both in and out of Dubai can resolve their disputes by remotely attending their consultations and hearings.

#### **Delegations received at the DIFC Courts:**

- DIFC Courts were pleased to welcome a delegation from the Republic of Honduras, who discussed advancing a consultancy agreement. They were met by Registrar Mark Beer, Deputy Registrar Amna Al Owais and Assistant Registrar Natasha Bakirci, on 19 September 2016.

- Deputy Registrar Amna Al Owais met and briefed delegation from Jiangsu Provincial People's Government about the DIFC Courts legal frame work on 27 October 2016.
- Law students from the American University in the Emirates briefed by H.E. Justice Shamlan Al Sawalehi on 10 November 2016.
- Deputy Registrar Amna Al Owais met and briefed SME delegation from Shenzhen, China about the DIFC Courts legal frame work on 13 November 2016.

**The DIFC Courts participated in various conference opportunities;**

- H.E. Justice Ali Al Madhani spoke at the Abu Dhabi Conference about Managing Justice Electronically on 24 October 2016.
- H.E. Justice Ali Al Madhani and Deputy Registrar Amna Al Owais spoke at the Global Law Conference on 3 November 2016.
- 2nd IBA Litigation Committee Conference on Private International Law; The 2005 Hague Convention on Choice of Court Agreements: New Perspectives in International Commercial Dispute Resolution: attended by Assistant Registrar Natasha Bakirci in Milan, Italy on 17–18 November 2016.
- H.E. Justice Shamlan Al Sawalehi attended the second Justice Innovation Forum hosted by UAE Ministry of Justice 23 November 2016.

**Upcoming Events:**

- Global Pound Conference; "Access to Justice & the Future of Dispute Resolution"; H.E. Justice Ali Al Madhani will participate, March 2017.
- Academy of Law's Lecture No. 1 2017; To be delivered by The Right Honourable Tun Arifin bin Zakaria, Chief Justice of The Federal Courts of Malaysia. Lecture topic TBC shortly, scheduled in March 2017.
- Possible signing of a Memorandum of Guidance between the Federal Courts of Malaysia and DIFC Courts, March 2017.
- Possible signing of a Memorandum of Guidance between the DIFC Courts and the Courts of Zambia later next year at the African Legal Network event. Registrar Mark Beer also added that we are trying to connect with courts in South Africa and Germany to which members

agreed. A greater focus on the top ten trading markets with UAE would be given in 2017.

7. **Gala Dinner updates by David Gallo Director Academy of Law (AOL):**

Nearly 700 members of the UAE legal community and beyond and over 50 VIP's attended the 5<sup>th</sup> annual Legal Gala on 20<sup>th</sup> October at the Johara Ballroom in Madinat Jumeirah. A positive response was received from members about the event but members felt that the event should have less legal content and a varied entertainment to keep the audience entertained throughout the evening. Members also felt that the voting process should be improved, this will be given a thought for the next event. An after party was strongly recommended by all members. David Gallo explained to the members that the 2017 event is planned to be bigger and better, incorporating a Majilis area and inviting more VIP's from across the GCC and beyond.

The Gala Committee met on 21<sup>st</sup> November for the first meeting to discuss areas where the planning fell short and ways in which to improve, as well as the positive feedback received from those who attended. David Gallo informed members that the planning for the 2017 Gala taking place on 2<sup>nd</sup> November 2017 will begin early and we are looking at venues that would be able to provide us with an after-party room. Members suggested that we should look at room deals at the venue for those who want to stay back after the Gala.

The funds raised at the Gala will go into the Pro Bono fund, which will be used to provide Scholarship assistance as well as other projects within the Pro Bono Programme. Four law schools around the UAE have been approached to allow for participation in the Academy's Scholarship program granting AED 10,000 each towards tuition. Two students will be selected from each of the 4 schools with strict criteria to ensure that at least one woman and one Emirati is selected to benefit from the scholarship scheme. LexisNexis will be awarding \$500 worth of cash for books towards each successful scholarship student.

AOL and LexisNexis co-host unique courses specifically designed to help Emirati and expatriate lawyers, legal advisors and consultants gain an in-depth understanding of the DIFC Courts laws and procedures. The programme consists of two parallel courses: "Certificate in DIFC Laws" and "Certificate in DIFC Courts Procedures".

Vol 1 of the Commentaries on Laws of the DIFC was published. The AOL will conduct a conference and panel discussion in early 2017 to officially launch the book.

BARBRI: Marketing campaign has been released for the BARBRI courses on New York Bar Review and Legal English. New York Bar Review courses will

begin in February 2017. Legal English course structure is currently being redesigned and courses will be offered by the AOL in conjunction with BARBRI in Spring 2017.

BPP University Law School: AOL and BPP have announced a joint collaboration to offer the Graduate Diploma in Law (GDL) to individuals who wish to pursue a career in law. The two organisations are in the final stage of the contract and courses are set to begin in the first quarter of 2017 if all is approved by KHDA.

8. **Overseas Lawyers:** Noor Al Khafaji Legal Counsel, Head of Legal Consultants Affairs Section at the Government of Dubai Legal Affairs Department (LAD) was invited as a guest speaker to provide an update to members about the LAD bylaws concerning the Registration of Legal Consultants in the Emirates of Dubai (Administrative Resolution No. (234) of 2015), specifically article 15. The final draft of the guidelines has been issued and it is expected to be ready first quarter of 2017. One of the focus areas of the discussion was about the overseas lawyers practice in Dubai. The process has not been finalised yet however as of now visiting lawyers need to obtain certificates before they come to Dubai to practice. For practice before the DIFC Courts a lawyer must state the upcoming hearings and the different time periods and length of stay. The LAD is developing a system so visiting lawyers (or firms) can submit applications for an authorisation letter online. The application can be submitted by the visiting lawyer or by a company / authority on behalf of him/her.

Members were informed that the bylaws cannot be amended, however the LAD is trying to make the implementation as easy as possible.

As for now, it is important that the AOL requests for the professional indemnity insurance of visiting lawyers in order to align the registration requirements with that of the LAD. The AOL is working closely with the LAD to streamline and enhance the process so we have similar arrangements and not duplicate efforts.

#### **Any other Business:**

1. Some members enquired about the current length of time taken from hearings to issuance of orders/judgments to which Deputy Registrar Amna Al Owais responded that the KPI's indicate that judgements were issued on an average within the 3 months. The KPI's also indicate that it is 3 months for judgments to be issued from the date of the hearing, and it can be up to six months for more complex matters with longer hearings or trials.
3. Members were keen to know if the DIFC Courts had a set time frame to deal with applications either simple or ex parte on paper or via short hearings, and if we had KPIs for the same. Deputy Registrar to revert to members with regards to this. Deputy Registrar Amna Al Owais will be on maternity leave

second half of January 2017, and with consensus from all members has appointed Muna Dandan, General Counsel from Dubai Financial Services Authority who is also a member of the Courts' Users' Committee to chair the meetings in her absence. Amna to continue as chair for another year as well. Deputy Registrar Amna Al Owais also informed members that an email will be sent out to all registered law firms and practitioners inviting nomination for new members to join the committee as the longest standing law firms, one local and one international will stand down. All nominees will be circulated to the Courts' Users' Committee members and new members will be elected to the committee at the first Courts' Users Committee meeting to be scheduled in February 2017.

Meeting closed at 1.15pm.

Next Meeting date 21 February 2017, 2pm - 4pm.