

DIFC Courts Annual Review 2012



محاكم
DIFC
COURTS

DIFC Courts

Ground Floor, Building 4
The Gate District, PO Box
211724
Dubai, UAE

Tel +971 4 427 3333
Fax +971 4 427 3330
Web www.difccourts.ae





HH Sheikh Mohammed bin Rashid Al Maktoum
Vice President and Prime Minister of the UAE and Ruler of Dubai



HH Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum
Deputy Ruler of Dubai, President of the Dubai International Financial Centre (DIFC) and Chairman of the Dubai Judicial Council



HE Abdullah Mohammed Saleh
Governor of the Dubai International Financial Centre (DIFC)

Contents



Page 6	DIFC Courts at a Glance
Page 8	Foreword by the Chief Justice
Page 10	Foreword by the Registrar
Page 12	A Global Court
Page 14	The DIFC Courts' Bench
Page 20	Judicial Officers, DIFC Courts
Page 21	Management

Page 23	Users' Committees
Page 24	Awareness and Understanding
Page 26	The Community Approach
Page 28	Working in Partnership
Page 30	Raising the Bar: Operational Excellence
Page 32	Combining National and International Talent
Page 34	Significant Cases in 2012
Page 38	Outlook 2013: Engagement, Excellence and Efficiency

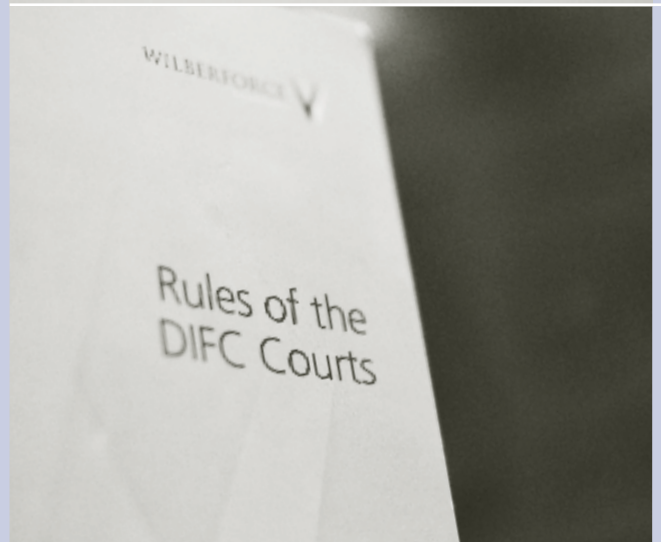


DIFC Courts at a Glance

The DIFC Courts are an independent English language common law judiciary, located in the United Arab Emirates (UAE) and based in the Dubai International Financial Centre (DIFC).

The DIFC Courts' jurisdiction governs civil and commercial disputes nationally, regionally and worldwide. The DIFC Courts are part of the sovereign structure of the UAE Emirate of Dubai and more than 500 cases have been decided since the Courts began operations in 2006.

Based on international best practice, the Courts are an important resource for international businessmen seeking to resolve commercial legal disputes, as well as the enforcement of national and cross-border judicial decisions. The DIFC Courts' official Enforcement Guide was created in 2012 to provide details on the enforcement of DIFC Courts' judgments in Dubai, the UAE, the Middle East and across the world. The document is available on our website www.difccourts.ae



Who we are

DIFC Courts were established under Dubai Law No.12 of 2004 (as amended by Law No.16 of 2011) to ensure the highest international standards of legal procedure and to provide the certainty, flexibility, and efficiency expected by global institutions that do business in Dubai and the UAE.

DIFC Courts are independent from, but complementary to, the UAE's Arabic-language civil law system – offering a choice that strengthens both processes while ensuring public access to world-class justice.

What we do

DIFC Courts administer an English-language common law system – offering swift, independent justice to settle local and international commercial or civil disputes.

The Courts, based at the Dubai International Finance Centre, provide certainty through transparent and enforceable rulings from

internationally-recognised judges who adhere to the highest global legal standards. DIFC Courts' successful record supports Dubai's growing status as an international business hub.

How we do it

DIFC Courts' jurisdiction extends to any civil or commercial case in which both parties agree to DIFC Courts ruling on their dispute, irrespective of their domicile.

Recognition of DIFC judgments outside the country brings a large level of certainty to the legal community and enables lawyers to reassure clients that the pursuit

of justice need not end at the UAE's borders.

The growing popularity of DIFC Courts as a transparent and reliable means of achieving legal resolution is evident in the rapidly increasing case load, especially as the jurisdiction has extended geographically as well as by the nature of matters heard.

Foreword by the Chief Justice - Challenge and Opportunity



Michael Hwang
Chief Justice

*"The year 2012 was historic
for the DIFC Courts..."*

The year 2012 was historic for the Dubai International Financial Centre (DIFC) Courts, as we completed our first 12 month period as a Court that is fully accessible to business worldwide.

In 2011, Dubai Law 16 decreed that we were able to hear any commercial cases for which we had been selected as the judicial forum of choice. This strategic change in our role – to that of a fully international commercial Court – has presented as many challenges as opportunities, while we have remained focused on cooperation, education and community issues of increasing importance.

Our first steps were to strengthen relations with the other Court systems in the United Arab Emirates (UAE) – particularly Dubai Courts, with whom we have been working very closely in the past 12 months. His Excellency Justice Ali Al Madhani also visited the Courts in Kuwait, Saudi Arabia, Bahrain, Qatar and Oman as part of bridge-building within the context of the International Association of Court Administration (IACA).

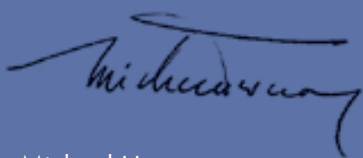
Perhaps the best example of our cooperation with Dubai Courts was the joint launch in September of the first-ever "Initiatives for Legal Excellence Programme", under the auspices of His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, Deputy Ruler of Dubai, President of the DIFC and Chairman of the Dubai Judicial Council. I was honoured to address the meeting, alongside His Excellency Dr Ahmed bin Hazeem, Director General of Dubai Courts, and to introduce our own special initiative – the DIFC Courts' Academy – which is covered on page 24.

As a further contribution to ethical standards, I have been working in recent months on developing a new "Code of Best Legal Professional Practice," which will be launched in the first half of 2013, following consultation with the local legal community. The new Code will extend to all aspects of legal practice, both in contentious as well as non-contentious cases and will initially be non-binding; however, the provisions which deal with contentious work will eventually be incorporated into the current mandatory Code of Conduct applicable to lawyers' conduct in cases before our Courts and will then become binding.

One initiative in which I take great pride has been our Pro Bono Programme, the first in the Middle East. In January, we began a unique Pro Bono Clinic initiative where potential DIFC-related litigants could meet Pro Bono volunteer lawyers for legal advice. Six clinics helped more than 60 people – offering "access to justice for all." The initiative will be expanded to monthly sessions in 2013.

To raise funds for the programme, we hosted the first Pro Bono Gala Dinner ever held in the UAE. More than 200 members of the legal community subscribed to attend and the inaugural Access to Justice Awards were given to four firms and one individual, in recognition of their support for the programme.

I end by expressing my gratitude to our bench of distinguished international and Emirati judges and our highly competent registry team – backed up by excellent (and constantly improving) electronic and administrative infrastructure. I thank them and all our staff for their commitment to our high standards of justice and efficiency, a commitment which will always underpin our daily tasks.



Michael Hwang
Chief Justice



Foreword by the Registrar - Guiding Expansion - Leading by Example



Mark Beer
Registrar

"The ability to enforce judgments across borders is central to the decisions of business, banks and investors..."

In 2012 the DIFC Courts have demonstrated their ability to measure up to the highest international standards of Court excellence as our jurisdiction and caseload have expanded. Echoing the Chief Justice's introduction to our Annual Review, I am proud of the contributions made by the DIFC Courts' team as we have continued to extend our services to regional and global business. Some highlights of our year follow: further details can be found on the later pages in this report.

The number and value of our cases have increased for the sixth year in succession as our Court of First Instance (CFI) handled a 40% growth in caseload. More significant, perhaps, has been the rise in case value from \$33 million in 2011 to just over \$169 million in 2012: a reflection of the increasingly important and complex commercial cases that are coming before our Courts. Meanwhile our settlement rate for CFI cases continues to reach a satisfactory level of over 90% – saving parties involved the delay and expense of a trial.

Perhaps the most important issue raised with us in 2012 – now that we are a fully international Court – by those who write us into their contracts, has been that of international enforcement of our judgments. The ability to enforce judgments across borders is central to the decisions of business, banks and investors when they decide where and how to develop their business overseas – and which jurisdictions offer them the best degree of legal security and certainty.

Accordingly, we produced a detailed 'Enforcement Guide' to help businesses understand the enforcement of our judgments in Dubai, the wider UAE, the GCC and worldwide. This document clarifies where and how DIFC Courts' judgments are enforceable, based on extensive professional consultation. It has been widely welcomed throughout the world.

In June, we took the stage at the global conference on Court excellence organised by the International Association for Court Administration (IACA). This was held in The Hague, the international city of justice, for 350 delegates from 45 countries. His Excellency Justice Ali Al Madhani and Reem Al Shihhe, Head of Human Resources and Business Excellence, were panelists for the session on 'The International Framework for Court Excellence'. There, Reem presented concepts for improved customer engagement and higher service standards worldwide – the first female UAE Courts' professional to be invited to do so.

A source of particular pride was to achieve high rankings in two different customer satisfaction surveys: one global, one national. We received a total weighted score of 900 points out of 1,000 when measured against the International Framework for Court Excellence, rating us alongside the best Courts in the world. The UAE survey, by an external consultancy, rated us as high as 96% in core service categories.

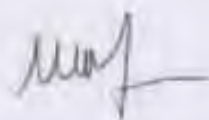
A firm commitment to swift, transparent and independent justice, and consistent engagement with lawyers, litigants and other Court users, is central to our philosophy. Justice should be efficient, accessible and delivered with the highest standards of business excellence and customer service – this is our approach to the delivery of justice, which is changing the way other commercial Courts in the world are interacting with their users.

In this context, I emphasise our continuing commitment to listening and reacting to the legal community, especially our Courts' Users' Committee (CUC), Rules Sub-Committee and registered practitioners.

We also continue to value our solid relationship with the DIFC Authority; the Dubai Financial Services Authority (DFSA); government organisations; the Dubai Courts and our growing number of partner Courts – and the legal professionals and litigants whose cases we hear.

As trade becomes ever more global, the world is being seen, in dispute resolution terms, as divided between three zones: the Europe-USA nexus, the Asia-Pacific region – and the Middle East. The DIFC Courts are steadily emerging as the forum of choice for English language international dispute resolution in our region. We are fully committed to meeting our responsibilities in this role – and to demonstrating the benefits that an English language, common law Court can bring to regional and global business from bustling Dubai, at the heart of the Middle East's expanding economy.

In closing, I want to recognise the consistent support received from our CUC and Rules Sub-Committee – and to express my gratitude for the commitment and flair shown by the strong professional team that we have assembled to take the DIFC Courts forward in 2013 and beyond.



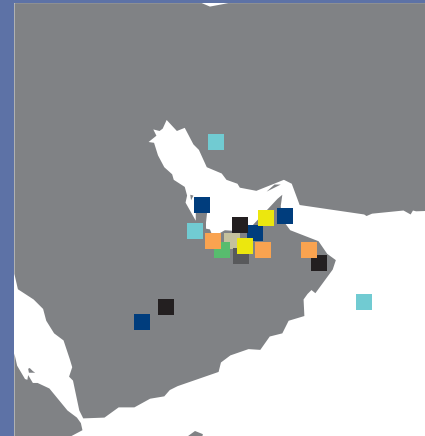
Mark Beer
Registrar

A Global Court Serving the Middle East

Located equidistantly between the flourishing commercial Courts of London and Singapore, the DIFC Courts have consolidated their role as the global English-language common law Court of choice in the Middle East.

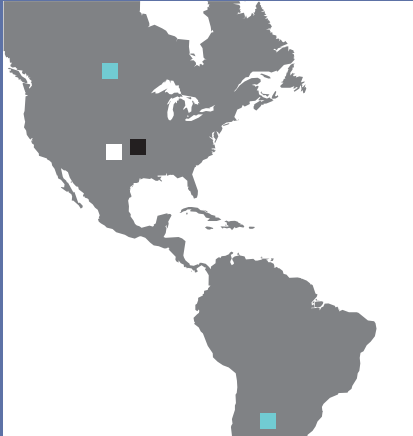
After our jurisdiction was opened to the world in 2011, the year 2012 was one of extensive development activity across the region and internationally. Our justices and senior management spoke at major legal and business conferences worldwide – giving delegates detailed insights into the benefits and practicalities of writing the DIFC Courts into their contracts and using the Courts for the settlement of their regional disputes.

As detailed elsewhere in this Review, activities included partnering with the Dubai Courts on an important legal education initiative; recommending new standards of excellence at an important Court administration event in The Hague – and receiving numerous delegations from developed and developing nations curious to learn more about our unique role in the Arabian Gulf.



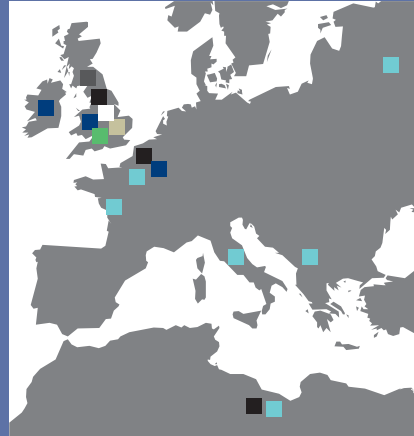
Middle East

- Presentations made
Abu Dhabi, Dubai, Kuwait, Oman, Saudi Arabia
- Judges' Experience
Bahrain, Iraq
- Training courses attended
Dubai
- MoUs in existence
Dubai Courts, Jordan, Ras Al Khaimah, UAE Ministry of Justice
- Delegations received from
Ajman, Bahrain, Saudi Arabia
- Courts' delegations to
Abu Dhabi, Dubai
- Intern secondments from
Dubai
- Justices and staff from
UAE
- Registered practitioners' network
Lebanon, UAE



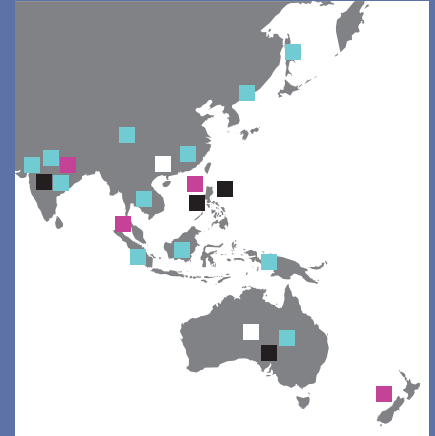
United States and Canada

- Judges' Experience
Argentina, Bermuda, Canada, St Kitts, Trinidad & Tobago,
- Delegations received from
USA
- Registered practitioners' network
Canada, USA



Europe

- Presentations made
Ireland, Netherlands, UK
- Judges' Experience
Egypt, France, Italy, Russia, Switzerland, Turkey
- Training courses attended
UK
- Delegations received from
Denmark, Egypt, UK
- Intern secondments from
UK
- Justices and staff from
UK
- Registered practitioners' network
UK



Asia and Pacific

- Judges' Experience
Australia, Bangladesh, Brunei, China, Guam, Hong Kong, India, Indonesia, Japan, Korea, Macau, Malaysia, Pakistan, Philippines, Sri Lanka, Taiwan, Thailand, Vietnam
- Delegations received from
Australia, Brunei, India, Malaysia
- Justices and staff from
Bangladesh, Malaysia, New Zealand, Singapore
- Registered practitioners' network
Australia, Hong Kong, Pakistan, Singapore

Also

- Judges' Experience
Mauritius, Tanzania, Seychelles
- Justices and staff from
South Africa

International Experience, Local Understanding



Michael Hwang
Chief Justice

Current positions

- Member of the Special Tribunal Related to Dubai World
- Elected Member of the American Law Institute
- Council Member of the International Council of Arbitration for Sport at Lausanne



Sir Anthony David Colman
Deputy Chief Justice

Current positions

- Commissioner of Enquiry to the Republic of Trinidad and Tobago
- Member of the London Court of International Arbitration
- Member of the Panel of Arbitrators of The Singapore Arbitration Centre
- Member of the Panel of Arbitrators of The Kuala Lumpur Regional Centre for Arbitration
- Member of the Singapore Chamber of Maritime Arbitration
- Honorary President of the Italian Society for Mediation and Principal of the Faculty of Mediation, London
- Vice-President of the Academy of Experts, London
- Fellow of the Chartered Institute of Arbitrators



HE Omar Juma Al Muhairi
Justice

Current positions

- Court of Appeal, Court of First Instance and Small Claims Tribunal Judge
- Member of the Education Council of the Judicial Committee of Dubai
- Member of the Joint Committee of the Dubai Courts and the DIFC Courts
- Enforcement Judge

Previous positions

- Trustee of the Dubai International Arbitration Centre
- Adjunct Professor of the National University of Singapore
- Singapore's Non-Resident Ambassador to Switzerland
- Commissioner of the United Nations Compensation Commission (UNCC), Geneva
- Member of the Permanent Court of Arbitration in The Hague
- Court Member of The London Court of International Arbitration
- Vice-President of the International Council for Commercial Arbitration
- Vice Chairman of the International Court of Arbitration of the International Chamber of Commerce
- President of The Law Society of Singapore
- Visiting Professor to the National University of Singapore
- Judicial Commissioner of the Supreme Court of Singapore
- Head of Litigation and Arbitration and Partner at Allen & Gledhill, Singapore
- One of the first 12 Senior Counsel of the Supreme Court of Singapore

Previous positions

- Co-founder and Member of the Management Committee of the European Commercial Judges Forum
- Judge in Charge of the Commercial Court in the High Court, London
- Chairman of Inquiry of the re-opened investigation into the Loss of MV Derbyshire
- Special Adviser to the Ministry of Justice of the Czech Republic on Civil Procedure
- Consultant to the European Commission on Czech Republic's accession to the EU and Slovakia's accession to the Union
- Queen's Counsel and Master of the Bench of Gray's Inn
- Chairman of The Commercial Bar Association (COMBAR)

Previous positions

- Co-founder of the Small Claims Tribunal
- Senior Judicial Officer
- Adviser to the Dubai Financial Services Authority
- Member of the 2004 committee that established the DIFC Courts
- Founding Member of the Joint Committee of the Dubai Courts and the DIFC Courts
- Judge of the Dubai Courts
- Public prosecutor for Dubai Public Prosecution
- Member of the committee set up to review and implement changes to the Dubai Judicial Institute

International Experience, Local Understanding *continued*



HE Ali Shamis Al Madhani
Justice

Current positions

- Court of Appeal, Court of First Instance and Small Claims Tribunal Judge
- Member of the Joint Committee of the Dubai Courts and the DIFC Courts
- Enforcement Judge
- Chairman of the Middle East Board for IACA
- Member of the UAE Judicial Sector Strategic Planning Team



Tan Sri Siti Norma Yaakob
Justice

Current positions

- Eisenhower Fellow and Vice-President of the Eisenhower Fellows Association of Malaysia
- Pro-Chancellor, University of Malaya
- Board Member of four corporates, Malaysia
- Chair of two charitable foundations, Malaysia
- Honorary Bencher, Gray's Inn



Sir John Murray Chadwick
Justice

Current positions

- President of the Court of Appeal, Cayman Islands
- Member of the Special Tribunal Related to Dubai World

Previous positions

- Co-founder of Small Claims Tribunal
- Senior Judicial Officer of the DIFC Courts
- Member of the committee to establish the DIFC Courts
- Advisory role at the Dubai Financial Services Authority
- Judge of the Dubai Courts
- Public Prosecutor for Dubai Public Prosecution

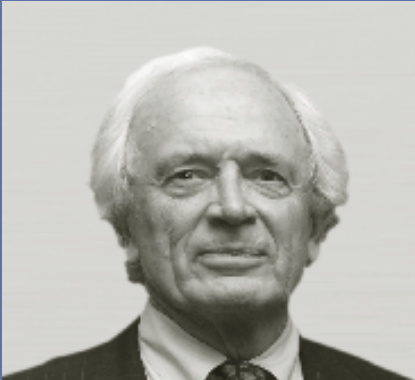
Previous positions

- Chief Judge of Malaya
- Barrister, London
- Senior Assistant Registrar, Kuala Lumpur High Court
- President of the Sessions Court, Kuala Lumpur
- Chief Registrar of the Federal Court, Malaysia
- High Court Judge, Malaya
- Judge of the Court of Appeal, Malaysia
- Judge of the Federal Court, Malaysia
- President of the Association of Women Lawyers
- President of the Judicial and Legal Service Officers' Association
- Council Member and Regional Vice-President of the Commonwealth Magistrates' Association
- Secretary, Governing Council Member and Executive Council Member of the Asean Law Association
- Member of the Judicial and Legal Service Commission

Previous positions

- Judge of the Court of Appeal, England and Wales
- Judge of the High Court, England and Wales (Chancery Division)
- Judge of the Courts of Appeal, Jersey and Guernsey
- Queen's Counsel, UK
- Standing Counsel to the Department of Trade and Industry, UK

International Experience, Local Understanding *continued*



David Williams
Justice

Current positions

- International Arbitrator, Bankside Chambers, Auckland and Singapore
- Judge of the Court of Appeal of the Cook Islands
- Member of the International Council for Commercial Arbitration
- Honorary Professor, University of Auckland



Sir David Steel
Justice

Current positions

- Member of Chartered Institute of Arbitrators
- Supporting Member of the London Maritime Arbitrators Association
- Member of The London Court of International Arbitration - Lloyd's Salvage Appeal Arbitrator
- Bencher of Inner Temple
- Younger Brother of Trinity House



Previous positions

- Judge of the High Court of New Zealand
- Member of the International Court of Arbitration of the International Chamber of Commerce, Paris
- Board Member of the American Arbitration Association
- Member of The London Court of International Arbitration
- Chief Justice of the Court of the Cook Islands

Previous positions

- Judge of the Commercial and Admiralty Courts, London
- Judge in charge of the Commercial and Admiralty Courts - Chairman of European Commercial Judges Forum
- Chairman of inquiry into loss of trawler Gaul-Presiding Judge of the Western Circuit
- Member of the Advisory Committee on Legal Education
- Head of Chambers at 2/4 Essex Court
- Junior Counsel to the Treasury
- Associate of Coudert Brothers, New York

Chief Justice Michael Hwang (centre) is shown at the Annual Judges Meeting in Dubai during October, together with (from left):

Small Claims Tribunal Judge Shamlan Al Sawalehi and Justices Sir Anthony Colman, Sir David Steel, HE Omar Al Muhairi, HE Ali Al Madhani, Tan Sri Siti Norma Yaacob, Sir John Chadwick and David Williams.

Judicial Officers, DIFC Courts



Shamlan Al Sawalehi
Judicial Officer and Small Claims Judge

Current positions

- Member of Chartered Institute of Arbitrators
- Member of The London Court of International Arbitration
- Member of Dubai International Arbitration Centre
- Member of GCC Commercial Arbitration Centre
- Member of International Council for Commercial Arbitration
- Member of ICC UAE, UAE National Committee to the International Chamber of Commerce
- Member of International Centre for Dispute Resolution
- Member of The International Islamic Centre for Reconciliation and Arbitration

Previous positions

- Founder and Managing Partner of The Shamlan Law Firm
- Director of Strategic Affairs at the Executive Office of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, UAE Vice-President, Prime Minister and Ruler of Dubai
- Member of the Dubai Labour Affairs Committee
- Member of the Ministry of Interior Special Committee
- Manager of Enforcement at the Dubai Financial Services Authority
- Public Prosecutor for Dubai Public Prosecution



Nassir Al Nasser
Judicial Officer

Qualifications

- Law Graduate of University of Middlesex, UK
- Trained with Dubai Courts and Dubai Office of Public Prosecution



Maha Al Mehairi
Judicial Officer

Qualifications

- Bachelor's Degree in Law, University of Sharjah
- Master's Degree in Business Administration, Canadian University of Dubai

"Particular efforts were made to recruit promising young UAE national lawyers..."

Supporting Efficient Court Administration



Mark Beer
Registrar

Current positions

- Registrar at the DIFC Courts
- Small Claims Tribunal Judge
- Chairman of the Courts' Users' Committee
- Member of the Rules Subcommittee
- Registrar of the Special Tribunal Related to Dubai World
- Vice President for the Middle East of the International Association for Court Administration



Amna Sultan Al Owais
Deputy Registrar

Current positions

- Deputy Registrar at the DIFC Courts
- Deputy Registrar of the Dubai World Tribunal
- Registrar, Judge and Co-founder of the Small Claims Tribunal
- Project Leader on the eRegistry and eCase management programme
- Founder and Leader of the Pro Bono Programme



Rita Engelbrecht
Judicial Coordinator

Current positions

- Judicial Coordinator
- Manager of DIFC Courts' Register of Legal Practitioners
- Manager of eRegistry
- Secretary of the Courts' Users' Committee
- 2012 UAE Customer Service Award – Employee of the Year

Supporting Efficient Court Administration *continued*



Reem Al Shihhe
Head of HR and Business Excellence



Stefan Kemball
Head of Communications



Natasha Bakirci
Judicial Clerk



Mandi Matthysen
Executive Assistant to the Registrar



Shila Katira
HR Coordinator



Toni Cox
Customer Support Officer



Javeiria El Edroos
Case Progression Officer

Positions

(January – June 2012)

- Pro Bono Programme Deputy Leader
- eRegistry Management Coordinator
- Website Coordinator
- Marketing Assistant

Users' Committees

The DIFC Courts' Users' Committee is a liaison body between the DIFC Courts and the users of the Court. The Committee assists the Courts to provide an efficient, economical and professional service to all users. The Committee holds regular quarterly meetings each year, the minutes of which are available online.

The Rules Sub-Committee reviews the Courts' rules and regulations from time to time under the chairmanship of the Deputy Chief Justice.



Courts' Users' Committee Members

Chairman

DIFC Courts

Mark Beer, Registrar

Committee Members

Bin Shabib & Associates

Imran Shafiq, Barrister & Senior Associate

DFSA

Michael Ridgeway, General Counsel

DIFCA

Roberta Calarese, Chief Legal Officer

Fulbright & Jaworski

Philip Punwar, Partner

Global Advocates

Ali Al Hashimi, Partner

Hadef & Partners

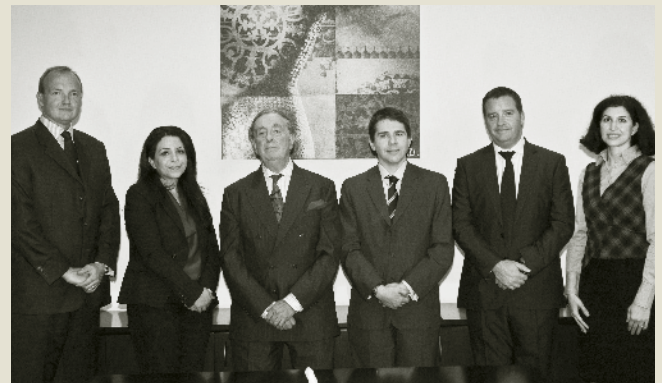
Adrian Chadwick, Partner

Norton Rose

Patrick Bourke, Partner

SNR Denton

Peter Shaw, Senior Consultant



Rules Sub-Committee 2012

Chairman

DIFC Courts' Deputy Chief Justice

Sir Anthony Colman

Committee Members

Fulbright & Jaworski

Philip Punwar, Partner

Fichte & Co

Jasamin Fichte, Managing Partner

Fichte & Co

Ghada Audi, Head of Dispute Resolution

Al Tamimi & Co

Rita Jaballah, Partner

Norton Rose

Patrick Bourke, Partner

Clifford Chance

Graham Lovett, Partner

DIFC Courts

Mark Beer, Registrar

Awareness and Understanding



Carrying the “awareness” message to audiences of all types... speakers included our Deputy Chief Justice Sir Anthony Colman (*below*) who addressed professional audiences in London and Dubai on the benefits of our common law jurisdiction, and HE Justice Ali Al Madhani (*above*) who gave the opening lecture for the new DIFC Courts’ Academy.



Our ability to hear cases from all over the world offers wonderful opportunities for engagement with the wider legal and business community in the region and in the world's leading centres of business.

It also offered challenges. Our team has met these by a rigorous approach to developing new projects and promoting our services to growing audiences everywhere – through publications, education and conference presentations.

An essential element in encouraging regional lawyers and business people to use the services of the DIFC Courts was the 'Enforcement Guide' that we published in June. The enforcement of contracts underpins global business and the DIFC Courts are now fully equipped to deal with domestic and cross border disputes as and when these arise. The Enforcement Guide provides details about enforcing the DIFC Courts' judgments everywhere. The Guide is essential reading for all interested parties, so as to know where they stand in relation to enforcement of our judgments in the Middle East and beyond, including key growth markets in Asia. The document is based on extensive consultation with leading international and regional law firms.

In recent years, the UAE has entered into a number of treaties with other countries which govern the reciprocal enforcement of Court judgments, such as the GCC Convention (1996) and the Riyadh Convention (1983), which cover respectively the GCC and the Arab World, the Paris Convention (1992) and agreements with India (2000) and the Republic of China (2004).

One of the DIFC Courts' major projects of 2012 was announced in September – the DIFC Courts' Academy. It provides practitioners, including those with a civil law background, with enhanced knowledge and understanding of international common law and Court procedures that are applied in the DIFC Courts. This is seen as an important contribution to assisting English-speaking Emirati and expatriate advocates to practice in our Courtroom.

The Academy was launched as part of HH Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum's "Initiatives for Legal Excellence" Programme, announced at a joint presentation with Dubai Courts. The meeting was addressed by His Excellency Dr Ahmed bin Hazeem, Director General of Dubai Courts, and Chief Justice Michael Hwang. It was attended by over 300 UAE-based lawyers.

Academy registration opened in October and the Academy's first course consisted of ten sessions, running from 11 November 2012 until 10 February 2013. The course was almost immediately fully subscribed. Certification is offered to successful participants, who benefit from lectures by leading common law practitioners, many of whom regularly appear before the DIFC Courts. An expanded range of courses will be held during 2013.

Four public lectures were given in 2012, notably presentations in February to explain the Courts' new jurisdiction (230 delegates) and a March event for 180 Emirati lawyers where the UAE Minister of Justice was guest of honour (see also page 31).

The third lecture in September was given by Her Excellency Sheikha Haya Al Khalifa, Chair of the Bahrain Centre for Dispute Resolution (BCDR), about dispute settlement in communities with mixed legal traditions. The final event was a panel discussion on 'Which Case – which Court?' which featured His Excellency Justice Ali Al Madhani, Registrar Mark Beer and locally based civil and common law experts.

Spokespeople for the Courts took part in 29 major international conferences during the year in such diverse locations as Abu Dhabi, Dubai, Ireland, Kuwait, Netherlands, Oman, Saudi Arabia and the UK. Audiences varied from the International Bar Association, in-house counsel and regional lawyers to investor and business groups. Official delegations were received – and briefed – from Australia, Bahrain, Brunei, Denmark, Egypt, India, Malaysia, Morocco, Saudi Arabia, UK and USA.

The Community Approach

Since the DIFC Courts opened, we have administered justice from the heart of a business community that now consists of more than 17,000 people working for over 1,000 organisations. From the end of 2011, we have also been able to serve the wider Dubai community (and, indeed, a worldwide jurisdiction).

Our roots in the Dubai community are therefore strong – and the concept of ‘access to justice for all’ is never forgotten in our delivery of justice.

“...the concept of ‘justice for all’ is never forgotten in our delivery of justice”

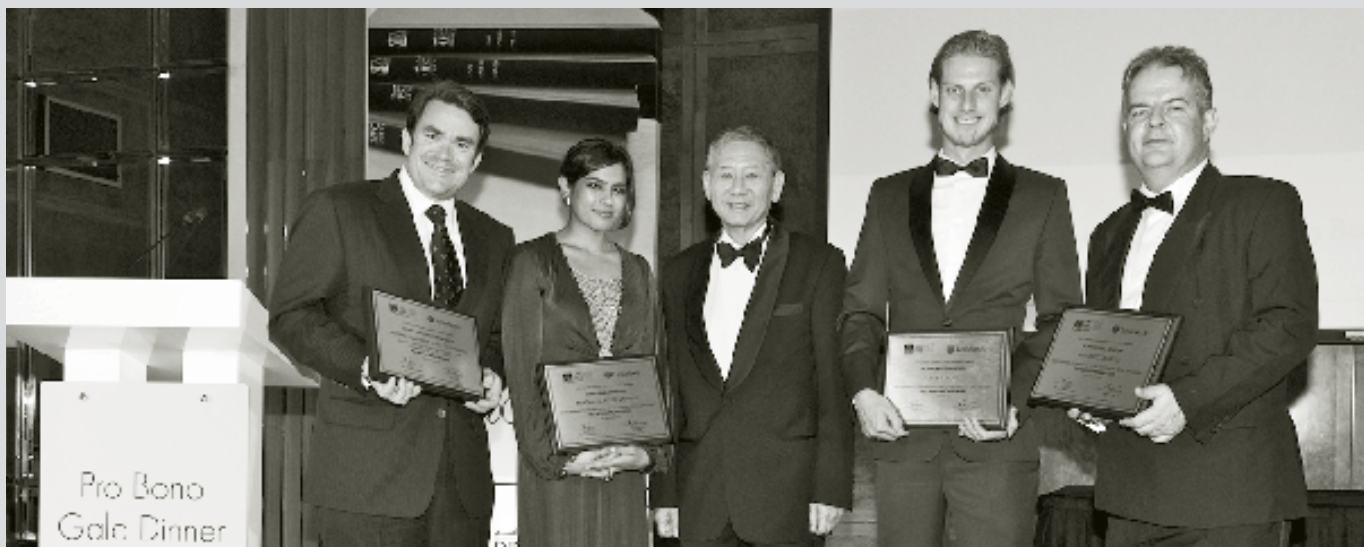
The DIFC Courts launched the first Pro Bono Programme in the Middle East in 2009, and since then we have built a volunteer register of over 30 firms – a mix of both international and UAE law practices. The Programme offers legal services free of charge to eligible individuals, from basic advice to full case management and representation in proceedings. Since 2011 a Pro Bono Fund has facilitated a more proactive approach to those in need.

In January 2012, the Courts’ Pro Bono Programme was literally ‘taken to the community’ through a unique Pro Bono Clinic initiative. At the Clinics, potential litigants have made confidential appointments to meet with Pro Bono volunteer lawyers for legal advice (either in-house counsel or practitioners from legal firms based in the UAE). Six clinics were held during the year, serving over 60 people.

To raise funds for the Programme, Amna Al Owais arranged for the DIFC Courts to host the first Pro Bono Gala Dinner ever held in the UAE. In October, more than 200 members of the legal community attended the glittering event, and a solid start was accordingly given to the Pro Bono Fund. The inaugural Access to Justice Awards were given to four firms and one individual, in recognition of their support for the Programme.

Another important community initiative is the Small Claims Tribunal (SCT). The SCT was established in 2007 as a Tribunal of the DIFC Courts and has power to hear and determine claims up to the value of AED 500,000, subject to various regulations that are detailed on our website. Lodging a case is simple and more than 90% of cases are resolved within three weeks – a record maintained since the beginning.

The DIFC Courts meanwhile maintain community contact through a 24/7 emergency contact number, interactive website, friendly user guides and a growing ‘Twitter’ account.



The DIFC Courts' Pro Bono Gala Dinner on October 11 was the first such event to be held in the region. After an introduction by the Chief Justice (*below*) an entertaining fund-raising evening was enjoyed by all present, including those receiving awards.

(*Lower right*) What the fund-raising supports: volunteer lawyers at a Pro Bono Clinic – assisting a visitor in need of confidential advice.



Working in Partnership



(Top left) HE Abdullah Mohammed Saleh, Governor of the DIFC *(Second right)*, Justices and distinguished guests at the signing of the MoU with the UAE Institute of Training & Judicial Studies.



(Middle left) Chief Justice Michael Hwang and HE Justice Omar Al Muhairi *(Left)* called on the President and Chief Justice of the UAE Supreme Court, HE Dr Abdulwahab Abdul, in October. *(Below left)* The Chief Justice welcoming HE Sheikha Haya Al Khalifa of Bahrain's BCDR to the Courts.



Working in collaboration with national and regional Courts has been an essential element in the development of the DIFC Courts. The past year was only our first with a fully international jurisdiction: we concentrated on deepening and developing existing relationships, while we explored closer links worldwide.

It was a privilege in March to welcome the UAE Justice Minister, His Excellency Dr Hadeef bin Jua'an Al Dhaheri, at a special Arabic language gathering for 180 senior UAE national judges and lawyers. The event highlighted long-term opportunities available to UAE advocates at the DIFC Courts.

Immediately before this event, a Memorandum of Understanding (MoU) was signed by the DIFC Courts and the UAE Institute of Training and Judicial Studies. The MoU outlines a mutual agreement to collaborate on developing UAE national lawyers within the common law system. It is in line with the Government's mission to strengthen the competitiveness of national lawyers within the UAE's international legal community.

The Minister of Justice commented at the time: "The importance of Dubai offering two judicial systems, one Arabic language civil and one English language common law, should not be underestimated. The choice that is now offered to businesses operating here must be celebrated. There are many opportunities for UAE national advocates in both systems."

The DIFC Courts and Dubai Courts worked in partnership again on 18 September, when we jointly hosted the inauguration of the "Maktoum bin Mohammed bin Rashid Al Maktoum Initiatives for Legal Excellence". The event was held under the patronage of His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum, Deputy Ruler of Dubai, President of the DIFC and Chairman of the Dubai Judicial Council, and over 300 national and international judges and lawyers were present.

The initiatives are the first of their kind in the Middle East. Through Dubai Courts, they include a 'Moot Court' competition, as well as research and scholarship projects to advance the knowledge and skills of those working in the Emirate's judicial system. The initial success of our initiative, the 'DIFC Courts' Academy,' is covered in our report on page 24. On the same occasion, a presentation was made on 'Dispute Settlement in Communities with Mixed Legal Traditions' by the Chairperson of the Bahrain Centre for Dispute Resolution (BCDR), Her Excellency Sheikha Haya Bint Rashid Al Khalifa.

The DIFC Courts and Dubai Courts continue to cooperate closely. We also appeared together (alongside the Dubai International Arbitration Centre) at the Dubai Chamber of Commerce in March and at an Indian Business & Professional Council seminar in December.

In the autumn, His Excellency Justice Ali Al Madani held meetings with Courts in Saudi Arabia, Kuwait, Bahrain, Qatar and Oman, with the aim of establishing a regional committee for the International Association for Court Administration (IACA).

A trilateral meeting was held in Doha, Qatar in December between the DIFC Courts, the Qatar International Court and Dispute Resolution Centre (QICDRC) and Bahrain's BCDR. They discussed areas of mutual interest including case management, enforcement of judgments, the promotion of alternative dispute resolution, legal education and the rule of law.

Raising the Bar: Operational Excellence

The DIFC Courts have received further recognition for their operational excellence and efficiency during 2012. These achievements have been hard earned – built around a focus on customer engagement that has been independently assessed and tested.

Operationally, we have continued our alignment with the Customer Service Charter introduced in 2011 by His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai.

In June, the Courts played a leading role at the 2012 global conference on Court excellence in The Hague, organised by the International Association for Court Administration (IACA). His Excellency Justice Ali Al Madhani and Reem Al Shihhe, Head of Human Resources and Business Excellence, were panellists for the session on 'The International Framework for Court Excellence'.

In giving the first-ever IACA presentation by a UAE female, Reem recommended methods for improved community engagement and higher service standards worldwide. She spoke about our recent efforts to collect Court users' feedback, in order to improve our quality of service in a transparent fashion, as we continuously assess our monitoring mechanisms.

"The DIFC Courts achieved consistently high ratings for Court services..."

As a result of Reem's presentation to the International Consortium for Courts' Excellence, the DIFC Courts' recommendations are being built into the new 'International framework for Courts Excellence.' Both His Excellency Justice Al Madhani and Registrar Mark Beer represent the DIFC Courts on working committees of IACA – the global non-profit organisation that promotes improved Court management, administration and collaboration between international Court systems.

Towards year end, the DIFC Courts achieved consistently high ratings for Court services from different international and UAE-based surveys.

The international survey is used by leading judiciaries across the globe. The 'International Framework for Courts Excellence' shows that the DIFC Courts' systems and processes are rated alongside the best commercial Courts worldwide. We received a 'total weighted score' of 900 points out of 1,000, based on criteria such as public trust and confidence, client needs and satisfaction, Court resources and Court leadership.

The UAE survey was conducted by a market research consultancy in Dubai and focussed on customer service and engagement. Through various mechanisms – including the use of 'mystery shopping', as well as telephonic and direct contact – lawyers and other Court users shared their perceptions. The DIFC Courts scored as high as 96% in areas related to Court appearance, courtesy, helpfulness and knowledge of staff, as well as the overall experience.

The first eRegistry training for practitioners was undertaken during the year, following the launch of our 'paperless Court' in 2011. Two courses were organised specifically for lawyers who use the system and more than 90 people attended overall. The system's designers came from London to carry out the training and introduced various new functions to speed future document processing.



(Above) eRegistry training has been an essential element in bringing lawyers 'up to speed' on our constantly developing paperless Court administration systems.

Meanwhile *(Bottom left)* HE Justice Ali Al Madhani and Reem Al Shihhe promoted new ideas for improved Court management practices at the IACA Conference in The Hague during June.



Combination of National and International Talent



(Top left) Nassir Al Nasser (centre) was welcomed as a new Judicial Officer by the Chief Justice and by Small Claims Tribunal Judge Shamlan Al Sawalehi.

(Below) the Chief Justice handing the Star Customer Service Skills Award for 2012 to Judicial Coordinator Rita Engelbrecht.



Developing the best talent has involved promotion for those showing ability – combined with recruitment of able new staff – in order to meet the increasing demands of our new international jurisdiction.

Particular efforts were made to recruit promising young UAE national lawyers: two joined our ranks and both had performed so capably by year end that they were each promoted to the post of Judicial Officer.

Nassir Al Nasser is a graduate of the University of Middlesex in England (UK) with a Bachelor's Degree in Law: he is the first Emirati to join the DIFC Courts whose primary legal training has been in English common law.

He previously undertook training programmes with the Dubai Courts and Dubai Public Prosecutor's Office.

Maha Al Mehairi previously worked as a Legal Consultant at Emirates Advocates in Dubai. She holds a Bachelor's Degree in Law from the University of Sharjah, plus a Higher Diploma in eBusiness Management and a Master's Degree in Business Administration from the Canadian University of Dubai.

Maha is working alongside Nassir to provide judicial support to the Courts' bench by undertaking legal research, sitting on Small Claims Tribunal (SCT) proceedings and attending case management conferences and application hearings. The appointments of Nassir and Maha accord with the announcement of 2013 as the 'Year of Emiratisation' by His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai.

The new Judicial Clerk is Natasha Bakirci, who joined the Courts in February. She oversees daily case progression and is responsible for dealing with procedural enquiries. Natasha has recently established the DIFC Courts' Academy, in conjunction with Thomson Reuters, and also co-wrote the Courts' Enforcement Guide. She has an LLB from the University of London and an LLM in Public International Law from the London School of Economics. Natasha previously worked for five years with the European Court of Human Rights in Strasbourg.

Stefan Kemball joined the DIFC Courts as Head of Communications in May. His role is to develop and manage the Courts' communications strategy: additionally he provides guidance, advice and support to the Judges and Registry about communications issues. Stefan is a graduate of Cambridge University in English and French. He was previously Head of Communications for the Emirates Foundation and Senior Communications Advisor to Dolphin Energy in Abu Dhabi.

Xavier Zawisza joined us as a Case Progression Officer since March 2012. Xavier has a BA in Commercial Law from Curtin University in Western Australia and joined the Courts following various management roles in that state.

Training continued to play a major role. Their Excellencies Justices Omar Al Muhairi and Ali Al Madhani, and SCT Judge Shamlan Al Sawalehi, attended the National Judicial Orientation Programme of Australia's National Judicial College in May and SCT Judge Shamlan also attended training in arbitration and Islamic finance in the UAE. Reem Al Shihhe, Head of Human Resources and Business Excellence, accompanied by Case Progression Officer Javeiria El Edroos, attended workshops in the UAE and Singapore related to compensation, job evaluation, 'mystery shopping' and related issues.

The Courts' intern programme welcomed 12 selected interns: eight from the UAE and four from overseas. They helped with research on legal procedures, case progression and enforcement, as well as supporting our Arabic website, pro bono initiatives and eRegistry workshops.

The DIFC Courts were honoured to win another Customer Service Week Award, for the third consecutive year in a row. This year, Judicial Coordinator Rita Engelbrecht took home the STAR Customer Service Skill Award (see left), which acknowledged her outstanding customer service skills and knowledge. Internally, Reem Al Shihhe received the Chief Justice's Award for her 'Project of the Year' – the development of our Courts' Excellence service programme.

A Crisis Management Handbook was also developed and issued in December to all staff, to enable everyone working at the DIFC Courts to handle every type of emergency.

Significant Cases in 2012

National Bonds Corp PJSC v Taaleem PJSC and Deyaar Development PJSC *Court of Appeal – CA 001/2011*

The two parties had entered into a Murabaha Agreement to record a funding arrangement; under it they agreed that “the Courts of Dubai” would have jurisdiction to determine any action or dispute arising out of the agreement.

The Court held that the reference to “the Courts of Dubai” in the jurisdiction clause in the Murabaha Agreement should be construed as a reference to the DIFC Courts. The National Bonds Corp v Taaleem and Deyaar Development clause had to be interpreted by reference to all the circumstances material to ascertaining the parties’ mutual intention at the time when they entered into the agreement. Given that the property underlying the tripartite agreement was located in the DIFC and that the function of that agreement was to regulate the relationship between the beneficiaries under a trust, a legal institution unknown to the civil law administered in the non-DIFC Courts of Dubai but fully applicable under the law administered in the DIFC Courts, it was to be inferred that the reference to the laws of Dubai in the tripartite agreement was intended to refer to DIFC law rather than non-DIFC law.

Intelligent commercial parties advised by an English solicitor would not have entered into an agreement in respect of the regulation of interests under a trust and incorporated into it a governing law provision which made it subject to a body of law to which the concept of a trust was unknown. It was therefore to be concluded that DIFC law was the putative proper law of the alleged novation agreement. Against that transactional background, it was highly improbable that the parties to the Murabaha Agreement would have mutually intended that it should be governed by non-DIFC Dubai law. Further, the DIFC Courts had jurisdiction under Law No.12 of 2004 art. 5A (1)(b). That transaction had been at least in part, namely the tripartite agreement, entered into inside the DIFC and therefore was a transaction which had been concluded in part in the DIFC within the meaning of art. 5(A)(1)(b).

International Electromechanical Services Co LLC v Al Fattan Engineering LLC and Al Fattan Properties LLC *Court of First Instance – CFI 004/2012*

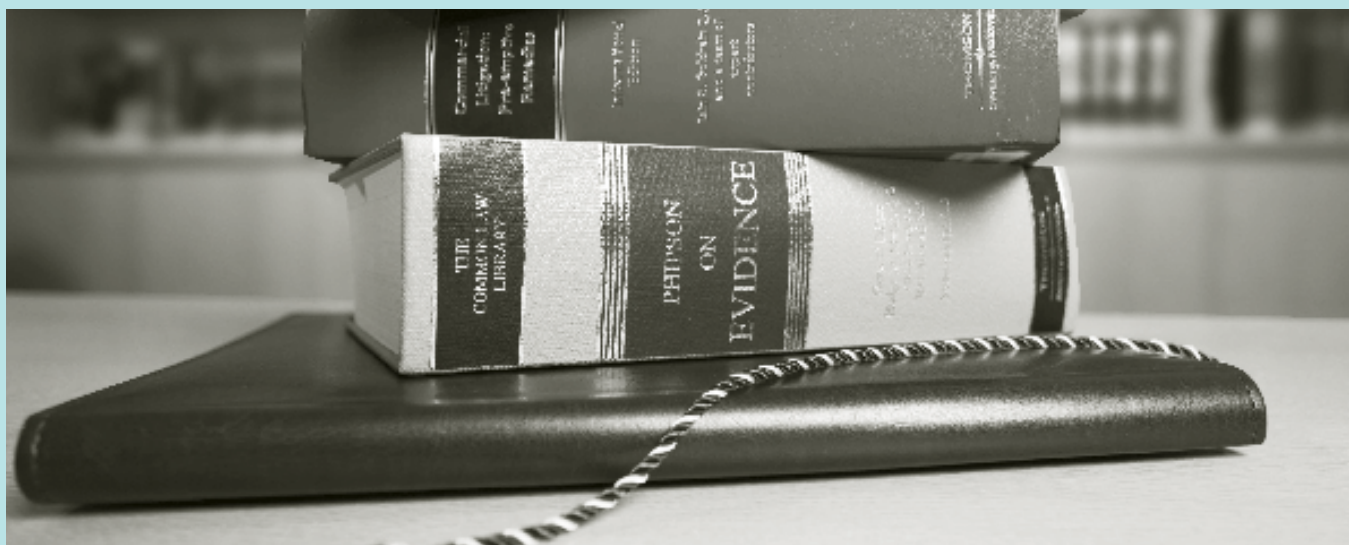
The Court held that although the first and second defendants (D1 and D2) had sought an order, under the Rules of the DIFC Courts, declaring that the Court did not have jurisdiction to decide the Claimant’s (C’s) claim, the development was within the physical bounds of the DIFC, and the contract was signed and to be performed in the DIFC. Thus the DIFC Courts clearly had prima facie jurisdiction over the dispute under DIFC Law No.10 of 2004. The application would therefore be treated as if D1 and D2 were seeking a declaration under r.12.1 that the Court should decline to exercise the jurisdiction that it possessed.

The validity and scope of the arbitration agreement had to be determined on the basis of Dubai law. The general effect of the UAE Civil Procedure Code art. 203 was that the arbitration agreement had to be in writing and there had to be a clear intention of the parties to submit any dispute to arbitration. There was no doubt that the arbitration agreement was evidenced in writing. Moreover, several factors unequivocally indicated that the arbitration agreement was incorporated into the nominated subcontract. Among other things, the arbitration agreement was physically part of it. Moreover, the arbitration agreement evinced an intention on the part of both C and D1 to be bound to arbitrate disputes of the present kind. The back-to-back clause supported that interpretation.

In summary, under Dubai law a prima facie arbitration agreement existed to the effect that there was a binding contractual agreement between C and D1 to resolve any disputes by means of arbitration rather than litigation. By that agreement, the parties validly opted out of the jurisdiction of the DIFC Courts to decide the dispute. However, there was no evidence that the arbitration agreement operated as between C and D2. D2 was not a party to the nominated subcontract and did not sign the arbitration agreement attached to it.



Significant Cases in 2012 *continued*



The stay provisions of DIFC Arbitration Law No. 1 of 2008 art. 13 were inapplicable, as the seat of the arbitration was not the DIFC. However, the Court had an inherent jurisdiction to grant a stay, *Injazat Capital Ltd and Anor v Denton Wilde Sapte & Co DIFC* (CFI 019/2010) not followed. DIFC Law No. 10 of 2004 art. 33 provided that the DIFC Courts could, if considered appropriate, “stay any ... proceeding”. It was appropriate to stay the proceedings against both defendants. An interpretation of the DIFC Arbitration Law which prohibited the DIFC Courts from staying Court proceedings brought in breach of non-DIFC arbitration agreements would thwart the promotion of the DIFC as a jurisdiction supportive of arbitration as an expeditious and cost-effective dispute-resolution process. Application for stay of proceedings granted.

Technical Architects General Contracting Company LLC v Nakheel PJSC

Court of First Instance - CFI 029/2012

Application for judicial review of decision of Dubai World Tribunal

The Court held that Law No. 16 of 2011 art. 5(A)(1) (a) concerned jurisdiction over civil and commercial disputes involving the DIFC or any of the DIFC’s Bodies, Establishments or Licensed Establishments. That could only avail the Claimant if the Dubai World Tribunal (DWT) could properly fall within one of those descriptions. It did not even arguably fall within them.

The problem was that each category was either part of the DIFC itself or subject to the DIFC’s control under DIFC law. That could not be said of the DWT, which, although located within the DIFC and administered by and in receipt of operational support from the DIFC, was neither an emanation of the DIFC nor subject to control by the DIFC: it was a unique body inasmuch as, although it operated within the DIFC, it was an enclave within an enclave, being outside the control of the DIFC.

As to art. 5(A)(1)(e), that provision gave jurisdiction over applications or cases which provisions of the DIFC law or regulations required to be determined by reference to DIFC laws and regulations. However, there were no DIFC laws or regulations which prescribed the tribunal as bound to apply DIFC law. Accordingly, the Claimant’s case faced jurisdictional obstacles which were insurmountable.

Decree No. 57 of 2009 (establishing the DWT) art. 5(4) stated that decisions and orders of the Dubai World Tribunal should be final, irrevocable and not subject to any appeal or review. “Review” being wide enough to cover judicial review, it was clear that judicial review was excluded by art. 5(4). There was no realistic prospect of success were there to be a full hearing. Application dismissed.

- *To read the judgments in their entirety, as well as other seminal judgments issued by the DIFC Courts – please see the following link:*

www.difccourts.complinet.com/en/display

Outlook: Engagement, Excellence and Efficiency

As this Annual Review indicates, the DIFC Courts have made notable progress in 2012 and we remain committed to continuing improvement. Feedback from the recent Courts Users' satisfaction survey is leading to specific developments in core areas, including speed of handling applications and releasing judgments.

We remain dedicated to the provision of justice that is both accessible and transparent, under our three watchwords for 2013.

"...we remain committed to continuing improvement"

Engagement

Memorandum of Guidance:

Legal and trade relations between Dubai and the UK will be strengthened through a 'Memorandum of Guidance,' developed during 2012 (and signed in London on 23 January 2013) between the DIFC Courts and the Commercial Court of England and Wales, the world's leading commercial Court. The Memorandum will assist UK investors, businessmen and lawyers who wish to develop closer links with the UAE – and vice versa.

Pro Bono Expansion and Second Gala Dinner:

We shall further develop the pro bono scheme with a view to enhancing accessibility. We aim to attract in-house lawyers to join the clinics, which will allow us to run them more often, and should avoid the repeat of occasional conflict-of-interest issues. We also aim to implement a scheme which will allow approved pro bono litigants to avoid liability for costs, even if their claim or defence has been unsuccessful.

We shall be repeating our Gala Dinner in 2013, with the pro bono element as a key part of our theme: date, Thursday, 24 October. This year's venue is the Mina Al Salam Hotel Ballroom at Madinat Jumeirah, enabling the Gala to be bigger and better than ever!

UK Corporate Counsel Consultative Panel:

The DIFC Courts have established an informal consultative panel in the UK for the general counsel of companies which have interests in the Middle East. The intention is to exchange views on common issues of importance, such as regional risk management, dispute resolution and enforcement.

Excellence

Year Two of the DIFC Courts Academy:

The success of the DIFC Courts Academy has led to the launch of a second course, to begin on 15 April 2013.

We are currently exploring a twin-track approach. We will hold the second programme of our established course, "An Overview of DIFC Courts' Law and Procedures" – however, a separate new module is being researched for lawyers who have little or no experience of common law, under the title: "An Introduction to Common Law and DIFC Courts' Procedures." The possibility of offering certain common law training in Arabic, as well as introductory courses on the DIFC Courts themselves, is also being discussed.

Code of Best Legal Professional Practice:

A new "Code of Best Legal Professional Practice," is in preparation by the Chief Justice. This will be launched in 2013, following consultation with the local legal community.

Our current Code of Conduct is mandatory: however, it was a first step and it now needs more development. The new Code is intended to cover conduct not yet dealt with in our existing Code, and it will also extend to non-contentious (transactional) work. The provisions in the new Code which deal with Court work will eventually be migrated into our current mandatory Code of Conduct (after an initial period of public feedback).

IACA International Conference in Dubai:

The International Association for Courts' Administration (IACA) will hold its first international conference in the Middle East in December 2013, jointly hosted by Dubai Courts and DIFC Courts. Some 300 delegates from 50 countries will meet at the Grand Hyatt Hotel, under the auspices of the Sheikh Maktoum Bin Mohammed Bin Rashid Initiatives for Legal Excellence. Ministers, Chief Justices, Court CEOs and their teams from around the world will debate and network during two full days of presentations and seminars on 9 and 10 December.

Efficiency

Enforcement:

We understand how important enforcement is to those using the Courts and are delighted that all enforcement requests made by the DIFC Courts throughout the UAE and beyond have been successful.

The year 2013 will see the formalisation of an enforcement section within the Courts, and the development of practical guidelines and protocols for enforcement. Our new Judicial Officer, Nassir Al Nasser, will be working alongside his judicial colleagues to develop enforcement protocols with other Courts in the GCC.

Active Case Management:

The DIFC Courts' Registry will reinforce its commitment to active case management in 2013. The Registry will now ensure that the majority of CFI cases are listed for trial within six months of the date of the relevant case management conference – and will send out a procedural timetable (with the sealed claim form) to ensure efficient case progression by lawyers and their clients.

Additionally, the Registry will require that any extension requests from lawyers be accompanied by letters from their client(s) confirming that the client(s) understands that the Court is ready to progress the matter and that the requested extension is likely to delay case resolution.

Training in eRegistry and Advocacy:

The DIFC Courts will hold further eRegistry training courses for practitioners and administrators. We will also introduce Advocacy training in response to many expressions of interest received during 2012.

*“...supporting Dubai’s growing status
as an international business hub”*

