



DIFC COURTS' USERS' COMMITTEE

MEETING MINUTES

12 September 2017

DRA offices, DIFC

Committee Attendees:

Amna Al Owais, Co - Chief Executive and Registrar

Mark Beer, Registrar General DIFC Courts

Adrian Chadwick, Hadeef & Partners

Adv. Ali Al Zarooni, Horizons & Co

Graham Lovett, Gibson Dunn

James Abbott, Clifford Chance LLP

Muna Dandan, DFSA

Obaid Al Muhairi, DIFCA

Stuart Paterson, Herbert Smith Freehills LLP

Suraya Turk, Hussain Lootah and Associates

Cheryl Fernandes, Committee Secretary

Apologies:

Jacques Visser, DIFCA

Guests:

Deputy Chief Justice Sir David Steel

James Lake, DFSA

Robert Stephen, Registrar, DIFC-LCIA Arbitration Centre

David Gallo, Director, Academy of Law

Sean Hird, Director, DIFC Wills and Probate Registry,

Lema Hatim, Assistant Registrar, DIFC Courts.

1. Welcome by Chairperson:

Co - Chief Executive and Registrar Amna Al Owais chaired the third Courts' Users' Committee meeting of the year, and thanked Muna Dandan for chairing the first two meeting in her absence.

2. Approval of the last minutes of meeting

The minutes of the Courts' Users' Committee meeting held on 2 May 2017 were approved.

3. Joint Judicial Committee: Deputy Chief Justice Sir David Steel informed members about the latest decisions of the Joint Judicial Committee (JJC). The Judicial Tribunal for the Dubai Courts and DIFC Courts was established in June last year by Decree 19 of 2016, to rule on conflicts of jurisdiction and conflicts of judgements between the two courts. The seven-member Tribunal consists of the head of the Dubai Court of Cassation, who sits as chairman Dr Ali Ibrahim Al Imam, in addition to two judges of the Dubai Courts, secretary general of the Dubai Judicial Council and and from the DIFC Courts three members Chief Justice Michael Hwang, Deputy Chief Justice Sir David Steel and HE Judge Omar Al Muhairi.

Most of the applications received by the Committee are in respect of proceedings which have started in the DIFC Courts. There is an underlying dispute among the members of the committee on how they should be considering the applications, or how they should determine the existence of conflicts and on which court is preferred. The approach of the Dubai Courts members of the committee has been to accept that wherever there is an application in Dubai Courts and an application relating to the same dispute in the DIFC Courts, then Dubai Courts should have priority.

We have 12 cases so far, of which about half have remained within the DIFC Courts, the rest have been transferred to the Dubai Courts and it is those which are significant.

Deputy Chief Justice informed members that the reason of dissents of all the cases are posted on the DIFC Courts website.

The Chief Justice of the DIFC Courts has written to the Supreme Legislation Committee proposing ways in which the Decree can be improved or amended.

4. **Courts' Activities:**

Co - Chief Executive and 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. Case load statistics were shared with members as below:

Caseload Statistics:

- The total number of cases which include Courts of First Instance (CFI), Arbitration, Enforcement and Small Claim Tribunal (SCT), filed with DIFC Courts from January 2017 to August 2017 increased by 29% compared to number of cases filed in the same period last year.
- Total claim value of cases filed with the DIFC Courts decreased by \$635m in 2017 compared to same period last year. The decrease is driven mainly by drop in the claim value of CFI cases. The average claim value decreased from \$5.5m/case to \$1.7m/case.
- The SCT cases filed increased by 92 and the average claim value also increase from \$25.9k/case to \$29.8k/case compared to same period last year.
- The above statistics excludes an arbitration case with claim value of \$ 2.0 billion filed on May 22, 2017. It was excluded so that it does not skew the numbers when comparing with 2016 statistics.

Members were keen to know what sort of Small Case Tribunal cases are dealt by the DIFC Courts, to which they were informed that majority were employment, banking claims, and tenancy.

The DIFC Courts representation and events:

Deputy Chief Justice Sir David Steel and Justice Sir Richard Field attended the Standing International Forum of Commercial Courts held in London on 4 – 5 May 2017. The meeting was the first occasion on which commercial courts from across the world have gathered. 58 judges attended, including 16 Chief Justices, from 24 countries. The meeting as a whole was chaired by the Lord Chief Justice of England and Wales. The meeting affirmed the importance and feasibility of cooperation and collaboration between all jurisdictions.

H.E. Justice Shamlan Al Sawalehi participated in the Kuala Lumpur International ADR Week (KLIAW 2017), and was also appointed by Decree as an Appeal Judge of the DIFC Courts in July 2017.

The IACA Conference in Washington DC in July 2017; H.E. Justice Ali Al Madhani and Registrar General Mark Beer together with Chief Operating Officer Reem Al Shihhe attend the IACA Conference. The DIFC Courts' new Smart SCT, which enables parties to access justice from anywhere in the world, was selected as a one of the year's Top 10 Court Technology Solutions at the annual National Association for Court Management (NACM) awards in Washington, DC. In parallel with the IACA Conference Mark Beer and Brad Smith, President and Chief Legal Officer, Microsoft, signed the Memorandum Of Understanding in the presence of H.E. Justice Mohammed Al Suboosi, Chief Justice of Commercial Court of Dubai and H.E. Justice Ali Shamis Al Madhani of the DIFC Courts.

Delegations received: The DIFC Courts continue to receive delegations both from within the UAE and internationally.

Mr. Pham Binh Dam, Ambassador of the S.R. of Vietnam and Mr. Pham Trung Nghia, Commercial Counsellor, Head of Vietnam Trade Office in Dubai visited the DIFC Courts on 8 May 2017. He met with Natasha Bakirci, Assistant Registrar of DIFC Courts and Executive Director, DRA Andreas Baumgartner, to discuss potential enforcement cooperation.

Shanghai High Courts: A delegation from the Shanghai High Courts visited the DIFC Courts on 21 – 23 May 2017.

Koji Adachi the new Deputy Consul, Consulate General of Japan in Dubai visited the DIFC Courts. Koji Adachi is happy to assist in arranging any meetings with the courts and Ministry of Justice in Tokyo. Natasha Bakirci has agreed to make a presentation on the DIFC Courts and Wills and Probate Registry (WPR) to the Japanese Business Community.

Upcoming Events:

Memorandum of Guidance between The DIFC Courts and The Courts of Zambia: Wednesday, 4 October 2017. The signing ceremony will take place at the Africa Legal Network Conference in the presence of Chief Justice of the republic of Zambia The Hon. Mrs Justice Irene C. Mambilima, and Chief Justice of the DIFC Courts Michael Hwang.

The DIFC Courts have received an invitation to speak at eWTP (Electronic World Trade Platform) DR Conference in Hangzhou, China: 26 –27 October, Registrar General Mark Beer to attend.

Future Investment Initiative Forum 2017: 24 –26 October 2017, H.E. Justice Ali Al Madhani to attend.

The Academy of Law Annual Legal Gala 2017: Thursday, 2 November 2017.

CIArb's Dispute Appointment Service Convention in London: 8 November 2017, Registrar General Mark Beer to attend.

5. Collaborations:

Registrar General Mark Beer informed members of the committee about our commitment to connect to the various courts in the UAE. We first signed a Memorandum of Understanding with Dubai Courts in 2009. DIFC Courts then reached out to the Ministry of Justice and Ras Al Khaimah Courts in 2010. We finally signed the missing part at a UAE level and now we have a Memorandum of Understanding with the Abu Dhabi Judicial Department (ADJD) which was signed on 20 April 2017.

DIFC Courts continue to work closely with Courts of Ras Al Khaimah. we are running two tests one on the enforcement of probate order and enforcement of an arbitral award. Any judgement coming out of DIFC Courts go directly to Ras Al Khaimah to see if we can produce an expedited enforcement process.

The DIFC Courts continue their focus very strongly on building the international reputation of DIFC Courts. DIFC Courts are the only commercial court in the world that are connected to the Peoples Republic of China with the signing of a Memorandum with the Shanghai Courts as well as a Memorandum that sets out an enforcement mechanism for the decisions of the DIFC Courts into the Peoples Republic of China Courts directly. We are also working closely with the Hangzhou Courts, which are one of the most technologically advanced courts in the world, having recently launched the 'Courts of the Internet'. Alibaba which is the world's biggest and most valuable retailer have built an online court system for the Hangzhou Courts, this system is one of the most sophisticated online dispute platform, which has interested us. We are also working closely with the courts in Shenzhen, and hope to sign with them in the coming months.

India continues to be a challenge, so the DIFC Courts will work with a law firm to develop a memorandum for recipient enforcement which sets out the mechanisms of which decisions can be enforced in India and vice versa. We have found a respected law firm in India which has no operations in the UAE to help the DIFC Courts connect with India. We will also use the same approach through a leading law firm to connect with Japan and we are also looking at Ireland in the coming months.

Registrar-General Mark Beer travelled as part of the Dubai Government delegation to Canada. Key meetings were with the Chief Justices of Quebec and Ontario and we hope to progress collaboration during the next few months. Also, very positive meetings with McGill University's Law Faculty, the leading academic institution for research of transsystemic law and the plan is to launch a clerkship programme with them in the coming year.

6. **Technology and Construction Division Rules, new fees and the e-service:** Assistance Registrar Lema Hatim informed members that the DIFC Courts will published the new fees by October 2017, and updated members of the most significant changes which are set out below:

Fees for arbitration claims are no longer payable in full upfront. The Registry will now charge only 50% upfront, and 50% subsequently if and when the claim is opposed.

The Registry used to have a concept of reimbursement for settlement. This has now been extended, and parties can get 65% refunds: (i) if the case goes to the Joint Judicial Committee and is dismissed in the DIFC Courts; (ii) if default judgment is granted; (iii) if immediate judgment is granted.

Applications with short hearings will now be invoiced as one lump sum, rather than a separate application and hearing fee.

Applications to enforce DIFC Courts judgments in the DIFC will now be chargeable, albeit the fee being very low (USD 100).

The requirement for the judgment debtor to pay 3% whenever a case is filed in the enforcement department against them has been removed.

Application fees in the SCT have been reduced from USD 300 to USD 50. A provision has been incorporated in the SCT where parties can get a 65% reimbursement of their filing fee if the case is one other than employment and the value is over USD 25,000, and default judgment is granted.

E service Memo: Assistant Registrar Lema Hatim updated members about the new Registrar's Direction (x) of 2017 - Guidelines to be used by Small Claims Tribunal (SCT) Judges and parties with regard to methods of service. RDC 53.13, which provides that "The SCT will serve the claim form on the defendant, unless otherwise directed by the Registry." and also allows for service to be effected by the claimant, if directed by the Registry. RDC 53.7, which provides that RDC 9.6 applies to small claims. RDC 9.6 states that in the event that the Court serves a document, it is for the Court to decide which of the methods of service specified in RDC 9.2 is to be used. RDC 9.31 provides for the Court to make an order authorising service by a method not permitted by these Rules (defined as 'alternative method of service'), where it appears to the Court that there is a good reason to authorise service by alternative methods (such as unsuccessful service through other initially used methods described in RDC 9.2).

In light of recent technological developments, the SCT wishes to clarify which alternative methods of service may be used by the parties to a claim, and to describe

the verification standards which the SCT Registry shall rely on, when deciding whether to allow service by alternative methods. “eService” for the purposes of RDC Part 53 shall be taken to encompass email, social media and instant messaging applications, such as, but not limited to, Facebook, LinkedIn, and Whatsapp.

Technology and Construction Division Rules: with effect from 1st of October 2017. Members were informed that if a claim may be brought as a Technology and Construction Division (TCD) Claim if it involves issues or questions which are technically complex. A party who intends to issue a TCD Claim must make an application within the claim form for determination by the Court as to whether it should be issued in the Technology and Construction Division. The written evidence in support of such an application must state that the proposed claim is a TCD Claim.

New Case Management System (CMS): The DIFC Courts are working on having a new and improved CMS launch in October 2017. One of the features of the new version will include the use of electronic bundles. The bundles submitted will be updated on the system by the parties to which the judges will have access. The judges to have their own viewing panel in the Court room, limiting the use of hard copies being submitted as we aim to work towards being a paperless court. Assistant Registrar Lema Hatim also assured members that a fully functioning search function for all judgements and orders issued will be available. When a new case is generated, an option for case plan will automatically update itself and remind parties of when documents are to be filed. Deadlines will be linked to outlook for reminders for people to set up, as an option.

The SCT section will be online with the new CMS, currently filing for SCT claims is not fully automated.

As part of the launch, the DIFC Courts will conduct training for law firms and run them through the new system. We will also contact our main users and request them to do demo test runs so that they can test the system and inform us should they face issues during these test runs.

7. Revised Rules book to include MoG’s and MoU’s:

Director of the Academy of Law David Gallo updated members on several initiatives that are in progress or being planned and provided an overview of the AOL and upcoming courses.

In February 2017, the Academy partnered with BARBRI International, a leading US based provider in Bar exam preparation, to offer new fast-track courses for GCC law graduates and lawyers to become qualified New York attorneys. AOL has expanded its US bar exam prep collaboration with BARBRI to include Jordan residents who aspire to become New York or California lawyers. Following meetings with the Solicitors

Regulatory Authority (SRA), Law Society of England and Wales, and BARBRI International in London, the AOL is accelerating the development of offering a path for lawyers to pursue qualification as solicitors in England and Wales by preparing them to sit the Qualified Lawyers Transfer Scheme (QLTS).

As part of a commitment stemming from the inaugural Joint Committee meeting between the Dispute Resolution Authority (DRA) and Ras Al Khaimah in March, the Judicial Excellence Programme launched a series of six workshops by DIFC Academy of Law and Ras Al Khaimah Courts Department. Held over the course of six weeks, from April to May, Judge Ali Al Madhani of the DIFC Courts led the knowledge transfer seminars in Ras Al Khaimah. Judge Al Madhani shared his professional background as both a common law and civil law practitioner, and a judge of the DIFC Courts. Real-life practical experiences in areas such as case management, judicial efficiency, communications with lawyers, and how to better allocate court resources

In keeping with the AOL's strategic objective in its Learning & Development business unit of cross training lawyers in different legal systems, the AOL delivered three lectures in a new series of courses designed to bridge the knowledge gap between the UAE Federal Civil Code, and the DIFC Common Law among legal practitioners. The UAE Federal Civil Code is a foundational cornerstone of the country's legal system.

The Academy of Law Annual Legal Gala 2017: The 2017 Legal Gala will take place at the JW Marriott Marquis Dubai on Thursday November 2, 2017. One of the most coveted events for the international legal community, the Academy of Law Annual Gala will present awards, award Categories to include, "Young Lawyer of the Year", "Pro Bono Law Firm" to celebrate the achievements that resonated for 2017.

Publications: The AOL is looking at publishing the commentaries volume 2 in October 2017 or November 2017. The AOL has secured various authors, DIFCA's Head of the Legal Department, Jacques Visser, has written a draft Introduction to planned volume 2, and has provided valuable input on policy and legislative developments.

Rules book: The AOL issued the first updated Rule book, members were asked if they felt the need to include the Memorandum of Guidance specially MoG that relate to the reciprocal enforcement of judgments across judiciaries. Members felt that there wasn't a need to make a hard copy publication of MoGs, and reference to them to be made online.

8. **Free Zone Company Will and Financial Asset Wills:** Director of the Wills and Probate Registry Sean Hird gave an over view of the Wills and Probate Registry's latest developments. We have about 3,000 Wills registered and more than 60 lawyers advising on the drafting and registration of DIFC Wills.

In September 2016, DIFC Wills & Probate Registry (WPR) announces the launch of the Property Will, an online facility that provides eligible resident and non-resident property owners with a simple, cost-effective way to pass on their assets. Property

owners can complete a template will online that is specifically limited to real estate. Due to its success, we then re-launched the Property Will in March 2017 with the option of online templates enable eligible persons to complete and submit for registration a DIFC Will which is specific to their real estate property only.

In May 2017, we saw the launch of the Free Zone Company Will, providing an online facility that enables eligible persons to complete and submit for registration a DIFC Will which is specific to their free zone and RAK International Corporate Centre ('RAKICC') registered companies.

We are in discussions with various leading banks in the region, working on offering interest free easy payments for Will registration fees. We are also working on the Financial Assets Will portal development which we plan to launch in October 2017, giving people choices on how they want to register their Will.

9. **No other matters raised by committee members.**

Meeting closed at 3.30pm.

Next Meeting date:

- Sunday 10 December 2017, 11.00am – 12.30pm, followed by lunch.