



DIFC COURTS' USERS' COMMITTEE

MEETING MINUTES

4 September 2016, 11am

DRA Offices, Level 3

Committee Attendees:

Adrian Chadwick, Hadeef & Partners

Faridah Sarah, Galadari Advocates and Legal Consultants

Esam Sharaby, Hussain Lootah and Associates

Graham Lovett, Gibson Dunn

Alec Emmerson, Clyde & Co

James Abbott, Clifford Chance

Tania McCaskie, DFSA

Jacques Visser, DIFCA

Mark Beer, Registrar (non-voting member)

Amna Alowais, Deputy Registrar (non-voting member)

Cheryl Fernandes, Committee Secretary

Guests:

Arul Vigin, IT Operations Manager, DIFC Courts

Mahika Hart, Postgraduate Law Fellow

Natasha Bakirci, Assistant Registrar, DIFC Courts

Apologies:

Muna Dundan, 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 5 June 2016 were approved.

It was agreed that that the minutes for meetings would become more detailed.

3. Caseload Statistics:

The Deputy Registrar Amna Al Owais shared case statistics covering the period from January to August 2016. The number of cases continue to increase strongly. It was noted that in the same period there is a significant increase in the number of enforcement cases (28 in 2015 to 65 in 2016). Between January and August 2016, the total value of Court of First Instance (CFI) cases, including arbitration-related cases and counter claims, and enforcement cases, handled by DIFC Courts, was approximately AED 4.22 billion.

A comparative table of the total number of cases filed from January to August 2015 against the same period in 2016 was also provided as below;

Total number of Court of First Instance & Arbitration: 20 in 2015
Total number of Court of First Instance & Arbitration: 26 in 2016.

Total number of Enforcement: 28 in 2015
Total number of Enforcement: 65 in 2016

Total number of Small Claim Tribunal: 159 in 2015
Total number of Small Claim Tribunal: 123 in 2016.

Members requested for a copy of the case statistics to be shared with them. The case statistics are published on DIFC Courts Newsletter each quarter.

4. **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:

Delegations received at the DIFC Courts:

- H.E. Paul Malik US Consul General of the U.S. Consulate Dubai visited the DIFC Courts.
- H.E. Mohamed Al Maawadah Bahrain Ambassador visited the DIFC Courts.
- Moroccan General Counsel Dr. Mohammed Al Barnousi visited the DIFC Courts and was briefed about the Courts by H.E. Justice Ali Al Madhani.
- Students from the Pinsent Masons Internship Programme visited the DIFC Courts for a briefing and observed Sir David Steel's online hearing on 28 July 2016.
- Head of the Ras Al Khaimah Courts, Dr. Ahmed Al Khateri and his team, visited the DIFC Courts. H.E. Justice Ali Al Madhani, David Gallo and Sean Hird received.

The DIFC Courts will be participating in various upcoming conference opportunities;

- **Academy of Law's Lecture No. 3 2016;** 18 October 2016, delivered by Lady Justice Gloster, judge of the Court of Appeal of England and Wales. She will speak about the "Trends in global commercial litigation, how digital are we really?". This lecture will also be available as a live streamed session online using existing IT capabilities.
- **The 2016 Annual Gala Dinner;** This will be held on 20 October 2016 at Madinat Jumeirah in Dubai and members were encouraged to book their tables if not already done so.
- **Global Pound Conference; "Access to Justice & the Future of Dispute Resolution";** Taking place on 8 November 2016, H.E. Justice Ali Al Madhani will participate and represent the Courts at the conference.
- **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;** Scheduled on 17–18 November 2016, in Milan, Italy: Assistant Registrar Natasha Bakirci to participate in this conference.

5. **Joint Judicial Committee, Decree 19 of 2016:**

Registrar Mark Beer spoke to the members about the new Joint Judicial Committee (JJC) established by the Dubai Government to resolve intra-Emirates conflicts of jurisdiction between Dubai Courts and the DIFC Courts. Applications to the Committee can be made by the parties, with decisions on application to be made in 30 working days and there will be no appeal.

The Judicial Committee comprises of the President of Dubai Court of Cassation, three judges from the Dubai Courts and three judges from the DIFC Courts.

Registrar Mark Beer gave an explanation on the reasoning behind the creation of the JJC, which has been created to enhance the Judicial system in Dubai and of attempting to provide clarity and certainty about situations of conflict of judgements between the two Courts in Dubai. It shall also protect the legal community from bad practices of attempting to delay cases and enforcement. This supports Chief Justice's work plan to stamp out guerilla tactics.

Though at this moment the DIFC Courts have little clarity on how this Committee will work, an update to all members would be provided as soon as possible or at the next CUC meeting.

6. **DIFC Courts Technology updates:**

Senior IT Operations Manager Arul Vigin updated members regarding technology upgrade for 2017.

The DIFC Courts are using Skype for Business technology as part of its unified communication plans. From this single communication platform, it gives the ability to set up the Smart Small Claims Tribunal (SCT) project which will enable tenants, employees and others making claims amounting to AED 1 million or less to have their cases heard remotely. At present, all parties in an SCT case must be present at a hearing, including the judge. DIFC Courts aims for the Smart SCT system to enhance the user experience and create a 5-star service.

In addition, Registrar Mark Beer explained that if DIFC Courts receive a call from a law firm, the identifying number is the switch board number which makes it difficult to know who called. It is requested that callers leave a clear voice message with contact details in order for staff of the courts to call back.

He also explained that we are looking at ways for enhancing the current case management system or investing in a new case management system, if it was to give us more flexibility and modern upgrades. Members raised concerns about the search functionality on the DIFC Courts website especially when searching for judgments. Arul Vigin informed members that this is something that we are looking into and will be resolved as soon as possible.

He explained that the search functionality under the existing version of the website does not allow for the drop down menus in the appeal forms to include the respondent rather than the defendant, this will be rectified with the new upgrade scheduled to take place soon.

Another member also raised concerns when completing the online forms, Registrar Mark Beer advised that by changing the keyboard settings to English rather than Arabic this would prevent the issue.

7. **International Collaborations:**

Assistant Registrar Natasha Bakirci updated members on various international collaborations:

Memorandum of Guidance between DIFC Courts and Shanghai Courts; It is hoped that we will sign a Memorandum of Guidance (MOG) in October during the Dubai Week in China which Chief Justice Michael Hwang and Registrar Mark Beer will attend. Registrar Mark Beer explained that DIFC Courts with King & Wood Mallesons have developed an MOG setting out the principles and procedures for the mutual enforcement of judgments in each respective jurisdiction.

India: Assistant Natasha Bakirci explained to the members the current situation in India, although the 2000 Agreement on Juridical Cooperation in Civil And Commercial Matters between India and the UAE has been signed by India, it has not yet come into effect as they have to list the UAE as a reciprocating territory under Section 44A of the Indian Civil Procedure Code, confusion has occurred due to the fact that the UAE has been listed as a reciprocating territory in respect of judicial summons but not in the context of enforcement of judgments. Therefore, we are currently pushing for the DIFC Courts to be nominated as the designated Courts in the UAE through the Ministry of Foreign Affairs.

Germany; Assistant Registrar Natasha Bakirci is connecting with appropriate commercial courts in Germany, with a view to signing a potential MOG on Enforcement.

South Africa; The DIFC Courts are to pursue talks regarding a potential future MOG with the South African courts and are in contact with the Ministry of Justice in South Africa.

Japan; Assistant Registrar Natasha has been in contact with the Japanese Supreme Court who have expressed an interest in developing the relationship between our courts, and we are looking at signing a memorandum.

8. **The Hague Convention:** Assistant Registrar Natasha Bakirci updated the members regarding the 2005 Hague Convention on Choice of Court Agreements. The Hague Convention entered into force on 1 October 2015 as between the EU member states (excluding Denmark) and Mexico. Singapore ratified The Hague Convention most recently on 14 April 2016. The United States and Ukraine have

signed the Convention but have not yet ratified it. Assistant Registrar Natasha Bakirci informed members that DIFC Courts have been in contact with the Supreme Legislation Committee (SLC) in Dubai since March 2016, and had a meeting to discuss the possibility of the UAE signing The Hague Convention, which would necessitate the SLC's cooperation as a conduit to the Federal Ministry of Foreign Affairs. We are following up on this and an update will be provided to all members once we hear from the SLC.

9. **DIFC Courts Rules Amendments, New Orders, & Practice Directions:**

Leave to Appeal amendments; Assistant Registrar Natasha Bakirci discussed the Leave to Appeal amendments which she has been working on with Justice Roger Giles, Judge of the DIFC Courts. This is in draft and Natasha Bakirci is working on it.

DIFC Rules of Court Order No. 2 of 2016 on Legal Representation in SCT hearings; members had expressed concern over representation at a hearing. Assistant Registrar Natasha Bakirci has been working on a draft Order amending the relevant RDC provisions which has been prepared in consultation with the Courts' Users' Committee. This will allow for individuals to be legally represented where corporate parties have legal representation, with no costs recovery (see RDC 53.70)

PD 4 of 2016 - DIFC Courts Fees Amendment; The draft DIFC Courts Practice Direction No. 4 of 2016 was shared with all members. Some of the fees are as below;

The Part 7 claim (money and/or property claims) in the Court of First instance a reimbursement shall apply where the parties successfully settle the claim filed in the DIFC Courts in full:

- For claims settled before the Case Management Conference takes place, 65% of the filing fee shall be reimbursed.
 - For claims settled between the Case Management Conference and the Pre-Trial Review, 35% of the filing fee shall be reimbursed.
 - For claims settled after the Pre-Trial Review has taken place, no reimbursement shall be applicable.
- (a) For applications to recognise and/or ratify arbitral awards where the recognition and/or ratification is unopposed, 50 % of the relevant fee will be reimbursed once the award is recognised and/or ratified;
- (b) For claims in which judgment is given in default of the filing of an acknowledgement of service or defence, 65% of the filing fee will be reimbursed upon application following the expiry of a period of 1 month after the judgment creditor has advised the Court that the judgment debtor has been made aware of the default judgment. The fee will be payable again should the judgment debtor apply successfully to set aside the default judgment in question (see RDC 14.1 to 14.4); and

- (c) For claims which are the subject of a successful immediate judgment application (even after a disputed jurisdiction hearing), 65% of the filing fee will be reimbursed upon application following the expiry of 1 month after the judgment creditor has advised the Court that the judgment debtor has been made aware of the immediate judgment [in the event that the order for immediate judgment was made against a respondent who did not appear at the hearing of the application, or after the period within which the judgment debtor can apply to appeal the immediate judgment, where the respondent was present at the hearing.] .

Enforcing DIFC Court judgments or orders: No fee will be payable by the party filing for enforcement and a 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 a 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.

The draft Practice Direction will be open for one-month public consultation next month.

Dependant on the feedback during the consultation this may result in changes to the fees.

Alec Emmerson raised the issue of taking the fees for arbitration hearings and refunding 50%, felt that it was not logical to take the full fee upfront knowing that 50% would be refunded. Question of when the money would be returned?

Third party funding planned to come into effect in May – not officially out for consultation, key players have given comments. Working internally to pair it back, a revised draft is currently in progress based on the feedback received. Aiming for this to be in draft form for consultation early 2017.

10. **Abu Dhabi Global Markets Courts Procedural developments:**

Mahika Hart, Postgraduate Law Fellow at the DIFC Courts provided a comparison between the DIFC Courts founding legislation, regulations and rules and the ADGM founding legislation, regulations and rules as recently released. The comparison found that the set-up, structure, and procedures between the two courts are substantively similar with a few key areas of difference.

Structurally, there are key differences in how judges for the two courts are appointed, the powers of the registrar, opt-in jurisdiction, choice of underlying

substantive law, and reciprocity for recognition and enforcement of foreign judgments.

As for procedural differences, the courts differ in their use of practice directions, their requirements regarding particulars of claims, the rules for permission to appeal and the overall procedure for small claims.

Finally, as regards the fee structures, the ADGM provides no settlement refunds of fees, charges separately for hearings, provide for maximum fees in more circumstances and generally has lower fees than the DIFC Courts. Still, the DIFC Courts' fees are more inclusive of relevant procedures.

Mahika will update the Committee further as relevant developments in the ADGM progress, as there are a number of areas where the ADGM Courts will likely update their rules and regulations in the near future.

Registrar Mark Beer explained that the Legal Affairs Department (LAD) has recently set a new regulation for visiting lawyers from outside Dubai. CUC members were urged to send comments or feedback to LAD about this new regime.

Meeting closed at 1.00pm.

Next meeting date proposed:

07 December 2016, 11.00am – 1.00pm followed by lunch from 1.00pm – 2.00pm.