



DIFC COURTS' USERS' COMMITTEE

MEETING MINUTES

5 June 2016, 11am

DRA Offices, Level 3

Committee Attendees:

Adrian Chadwick, Hadeef & Partners

Faridah Sarah, Galadari Advocates and Legal Consultants

Graham Lovett, Gibson Dunn

James Lake, DFSA

Keith Hutchison (delegate for Alec Emmerson), Clyde & Co

Obaid Al Muhairi, DIFCA

Shane Jury (delegate for James Abbott), Clifford Chance

Mark Beer, Registrar (non-voting member)

Amna Alowais, Deputy Registrar (non-voting member)

Cheryl Fernandes, Committee Secretary

Guests:

Clifford Lewis, Academy of Law

Edward Armitage, Intern at the Academy of Law

Maha Al Mehairi, Judicial Officer

Natasha Bakirci, Assistant Registrar, DIFC Courts

Nilofer Dsouza, Academy of Law

Tim Walmsley, Director – Marketing and Communications

Apologies:

Esam Sharaby, Hussain Lootah and Associates

Jacques Visser, DIFCA

Muna Dundan, DFSA

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 21 March 2016 were approved.

3. Caseload Statistics:

The Deputy Registrar Amna Al Owais provided case statistics from January to May 2016. The DIFC Courts have seen a 40% increase in the number of CFI and ARB cases lodged this year. Total case values in the CFI are up by 50%, increasing by AED500m to AED1.3bn, with the average value per CFI case increasing to AED74m. The number of Enforcement cases filed increased by 422% during the first half of the year.

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

Total number of Court of First Instance & Arbitration: 13 in 2015
Total number of Court of First Instance & Arbitration: 18 in 2016.

Total number of Enforcement: 9 in 2015
Total number of Enforcement: 47 in 2016

Total number of Small Claim Tribunal: 87 in 2015
Total number of Small Claim Tribunal: 60 in 2016

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:

- Justice Sir David Steel was appointed as the new Deputy Chief Justice of the DIFC Courts after 5 years of service. Justice Sir John Chadwick stepped down upon reaching the statutory retirement age. Justice Chadwick, who served the DIFC Courts for eight distinguished years, will retire once his current roster of cases is complete.
- Justice Sir Jeremy Cooke was sworn in by the HRH The Ruler of Dubai onto the DIFC Courts' bench in April 2016;
- Resident judges of the DIFC Courts to take on broader job roles. H.E. Justice Omar Al Muhairi has been named Senior Resident Judge and will serve as a judicial liaison with government and judicial bodies throughout the UAE. H.E. Justice Ali Al Madhani will become the principal liaison for the DIFC Courts with the Saudi Arabian judiciary. H.E. Justice Shamlan Al Sawalehi will take on additional teaching work in the UAE to Arabic speaking students and will also liaise directly with Gulf courts outside of Saudi Arabia.

DIFC Courts representation at various conferences both within U.A.E. and Overseas:

- Justice Sir David Steel, H.E. Justice Shamlan and Registrar Mark Beer presented to the Young Presidents' Organisation about the value of the DIFC Courts in the region & beyond on 13 April 2016.
- Deputy Registrar Amna Al Owais attended the Corporate Counsel Middle East on 11 May 2016.
- Registrar Mark Beer spoke at the International Bar Association (IBA), Arab Regional Forum which took place on 16 -17 May 2016.
- H.E. Justice Ali Al Madhani and Registrar Mark Beer participated at the International Association for Court Excellence (IACA) on 18 – 20 May 2016.
- Justice Sir David Steel attended the St. Petersburg International Legal Forum on 19 -20 May 2016.

Delegations received at the DIFC Courts: The DIFC Courts continued to host delegations;

- Bloomberg visited the DIFC Courts to cover the story about latest technology used in the Courtroom; briefed by Director -Marketing and communications, Tim Walmsley.
- H.H Prince Dr. Bandar bin Salman AlSaud visited the DIFC Courts and was met by H.E. Justice Ali Al Madhani.
- Sharjah University visited the DIFC Courts, addressed by Deputy Registrar, Amna Al Owais.
- Egypt's Ambassador H.E. Wael Jad visited the DIFC Courts and was met by H.E. Justice Ali Al Madhani, and Director and Registrar DIFC-LCIA Arbitration Centre, Mohammed ElGhatit.
- Columbia Business School addressed by Assistant Registrar, Natasha Bakirci.
- University of Charleston, SC addressed by Assistant Registrar, Natasha Bakirci.

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

- Academy of Laws' Third Lecture Series of 2016; Lecture will be delivered by The Rt Hon the Lady Justice Gloster on 18 October 2016.
- Legal Gala Dinner 2016 on 20 October 2016.
- Dubai week in China, Shanghai on 26th – 30th October 2016.

Industry awards

The Academy of Law received the 2016 "In-House Innovation Award" from the Association of Corporate Counsel (ACC) in May 2016.

5. Enforcement Statistics:

Judicial Officer Maha Al Mehairi provided members with an update of the Enforcement (ENF) statistics, the DIFC Courts saw a huge increase in Enforcement cases in 2016, up by 422%. In 2009 there were 20 ENF cases filed, lowest number of cases filed being in 2012 and in the year 2015 the DIFC Courts saw 49 cases being filed. There were various outcomes of the enforcement cases; Maha Al Mehairi informed members that some of the enforcement cases were discontinued, some settled, others ongoing and many being enforced.

6. **Small Claim Tribunal Media Campaign:**

Director Marketing and Communications Timothy Walmsley provided members with the marketing plans for the Small Claim Tribunal Media campaign. The objective of this marketing campaign is to raise awareness as to how businesses and employment contracts can opt-in to DIFC Courts Jurisdiction. This in turn will create greater certainty and security by parities choosing the DIFC Courts system for business and employment contracts.

We are looking to partner with various Free Zones and Small and Medium-sized Enterprises (SME), legal advisors and intend using agency support to achieve this. Members were happy with the media campaign plans and had no comments apart from whether this is a campaign more focused on SMEs rather than the Small Claims Tribunal.

7. **2016 KPIs and objectives:**

Registrar Mark Beer informed members that the DIFC Courts were constantly tracking and monitoring the KPI's and that we are well on track. The DIFC Courts are currently working on the revising and implementing Court of Appeal Rules, which will be rolled out shortly.

Registrar Mark Beer also informed members that we are possibly looking at signing a memorandum with the Shanghai Courts, and are aiming for a date later in the year.

The DIFC Courts are looking into revising the court fees which is still under consideration, once the draft is ready it will be circulated to members of the courts users committee and for public consultation as well. The Assistant Registrar Natasha Bakirci is taking a lead on revising the court fees. As well as producing a comparison with the Abu Dhabi Global Market Courts (ADGM) fee.

8. **Bundling of services:**

The Academy of Law (AoL) is considering offering a bundle of services to all Part I and Part II registered individuals which was discussed with members. The AoL proposed different fees and services for Part I and Part II practitioners as well different offers for The Government of Dubai Legal Affairs Department (LAD) Registered Practitioners and Non-LAD Registered Practitioners.

Offers such as a free rule book, 20% off on AoL product /services and few hours of free AOL training courses (which is mandatory) along with the registrations/ renewal fees is something that the AOL has proposed for Part II registered individuals who are registered with the LAD where as a free rule book and 20% off on AoL product /services was being offered to Non-LAD registered practitioners. Lawyers practising in Dubai have to do 16 hours as CLPD a year and if they are practising in the DIFC two of those hours have to be DIFC related.

It was suggested that the AoL should offer bundling of 2 hours of mandatory training for Part I registration, for each practitioner listed under the firm's registration and have a separate fee for Part II registered individuals. Although the AoL had different offers for LAD registered lawyers and non-LAD registered lawyers, it was thought best to not differentiate between the two. The Deputy Registrar Amna Al Owais will share the feedback from members with the AoL who will roll the services once finalised.

9. **Academy of Law Training Programmes and Events:**

Clifford Lewis, the Training and Development Officer gave updates on the Academy of Law's training programmes. The Academy of Law was accredited by the KHDA as a training provider, paving the way for it to get full Federal accreditation, in addition to its Legal Affairs Department accreditation. The Academy of Law received the Legal Affairs Department accreditation for its two collaborative conferences with Middlesex University Law School.

The charter for the newly formed "Academy of Law's Learning & Development Advisory Board" has been prepared and distributed to Board members, including representatives from the Legal Affairs Department, LexisNexis, private law firms, and the Dispute Resolution Authority. The Academy of Law has also finalised its collaboration agreement with LexisNexis covering publications and training program support.

The Academy of Law presented a marketing outreach overview of its learning & development programs to a group of 25 training officers from Dubai law firms. These individuals are responsible for ensuring their lawyers are earning the continuing legal education credits required by the Legal Affairs Department.

The Wills and Probate Registry (WPR) and Academy of Law have developed new courses on "Will Drafting for the WPR" and on the "WPR Rules". The course will enable practitioners to draft wills in line with the rules of the DIFC WPR. Successful completion of the course assessment will also enable the practitioner to be included on the DIFC WPR's list of approved will draftsmen, provided that they also comply with all other requirements set out by the DIFC WPR Practice Direction.

The Academy of Law is working with the Legal Affairs Department to collaborate on their agreement with the service provider in order to take Academy of Law offerings online in the form of simulcast and on-demand training products. Currently, the filming of selected courses and conferences are being undertaken in order to produce the content for online offerings.

The Academy of Law will provide oral advocacy training in line with similar accredited programs in the UK and the US. There will be three levels of advocacy training: Beginner, Intermediate, and Advanced Commercial. The Beginner and Intermediate programs will be based on materials developed by Jones Day, and the Advanced and program will be based on the National

Institute of Trial Advocacy (NITA) method and materials, and can be taught by Jones Day.

The DIFC Courts Rules are available for purchase in hard copy as a ring-bound loose-leaf publication, which was offered at a reduced price, 50% discount for the first 100 copies. All registered practitioners, Part I and Part II would receive the Rules book at a 25% discount after the offer for the first 100 copies runs out.

The first "round" of certificate courses is drawing to a close with the approach of Ramadan. After Ramadan, both certificate courses will run for a second time, commencing in August 2016.

Clifford Lewis went on to add that nearly 60% of practitioners who need to attend the Legal Affairs Department DIFC mandatory course have been trained. Additional training opportunities for this course are coming up in June, July and August 2016 so practitioners have opportunities to complete the mandatory courses. Members were interested to know if the mandatory courses would change next year.

10. Annual Legal Gala 2016:

Nilofer Dsouza, Department Coordinator from the Academy of Law updated members of the annual gala dinner plans, which is scheduled to take place on 20 October 2016. Tickets are on sale at an early bird rate and have requested members to reserve tables and encourage their clients to make use of the early bird rate.

The Academy of Law will organise a Pro Bono event, during this event staff will provide booklets on the UAE labour law and the DIFC Employment Law to the labourers during the holy month of Ramadan. This will be done using the Pro Bono funds that were raised at the Gala Dinner last year.

11. Other matters:

1. Registrar Mark Beer requested members for their feedback on the suggestion that the DIFC Courts establish a construction list. Members highlighted that the DIFC Courts should only go ahead if the courts can demonstrate judicial expertise in construction cases and have a judge with such background. At this stage members agreed it would be premature to recruit a specialist construction judge and perhaps the courts could use assessors as the caseload develops to such a point as we need a specialist construction judge. This is a matter to be discussed internally before exploring further.
2. Registrar Mark Beer shared the idea of running a joint programme with on Chinese law between the DIFC's Academy of Law and the East China University of Political Science and Law (ECUPL). The joint programme aims to provide Dubai legal practitioner knowledge of Chinese law, legal and commercial

environment in China and practical experience shared by Chinese lawyers. Members felt that there will be not much appetite for such a programme.

3. Some members suggested that the DIFC Courts should re-look at the restriction in RDC 53.52 on lawyers representing a party before the Small Claim Tribunal (SCT). This according to members creates an irregularity especially in employment cases where a company has the option to use in-house counsel (pursuant to RDC 53.53) whilst an individual cannot use a lawyer. Members think that a party should be allowed to have legal representation by a non-lawyer or lawyer subject to SCT jurisdiction. Assistant Registrar Natasha Bakirci to look into alternative changes to the Rules of the DIFC Courts which relate to parties' legal representation at an SCT hearing.
4. Members enquired about the enforceability of DIFC Court Freezing Orders in Dubai. Members felt that the recognition of freezing orders is not consistently applied in the Dubai Courts. A reference was made to article Article 7(3)(a) that states that: "Any interim orders issued by either the Dubai Courts or the DIFC Courts shall be enforced by the same methods as described in the relevant section above", which was not included in Law No. 16 of 2011. This would question if the DIFC Courts have no authority to issue an execution letter to the Dubai Courts in respect of a Freezing Injunction and similarly the Dubai Courts have no authority to issue an execution letter to the DIFC Court. Members felt that the Law No. 12 of 2004 needs to be amended to permit enforcement of interim orders such as freezing injunctions and precautionary attachments. That said the current practice is smooth and all freezing injunctions to Dubai Courts and vice versa are taking effect. Members were also interested to know as to how many judgments have been enforced by the DIFC Courts, Maha Al Mehari informed members that DIFC Courts are working on the statistics which will be shared with the members as well as published in the DIFC Courts Annual Report.
5. Members expressed concern as regards the reference to the UAE Agreement on Juridical Cooperation in Civil and Commercial Matters with India (2000); as "implemented into UAE Law by Federal Decree No. 33 of 2000, however it appears that the Agreement has not been ratified in India" in the DIFC Courts Enforcement Guide.

Assistant Registrar Natasha Bakirci informed members that the DIFC Courts are in touch with Senior Officials from the Supreme Court of India to seek their opinion on the enforcement of UAE judgments in India. It has been communicated to DIFC Courts that the said Agreement, had been signed between the Republic of India and the United Arab Emirates on 25th October, 1999 however, even though it has been signed, it has not yet been ratified.

As a matter of Indian law, a treaty does not automatically become part of the domestic legislation. The executive power of the Government of India to enter into international treaties does not mean that international law, ipso facto, is enforceable upon ratification. This is because the Indian Constitution follows the dualistic doctrine with respect to international law (a short note on execution of a decree passed in UAE in India has been attached for ease of reference).

Meeting closed at 1.00pm.

Next meeting date proposed:

4th September 2016, 11am - 1.00pm