



**DIFC COURTS' USERS' COMMITTEE**

**MEETING MINUTES**

**21 February 2017**

**DRA Offices, Level 3**

**Committee Attendees:**

Muna Dandan, DFSA

Adrian Chadwick, Hadeef & Partners

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

Faridah Sarah, Galadari Advocates and Legal Consultants

Graham Lovett, Gibson Dunn

Shane Jury (delegate for James Abbott), Clifford Chance LLP

James Lake, DFSA

Natasha Bakirci, Assistant Registrar, DIFC Courts

Cheryl Fernandes, Committee Secretary

**Apologies:**

Esam Sharaby, Hussain Lootah and Associates

Obaid Al Muhairi, DIFCA

Jacques Visser, DIFCA

Mark Beer, Registrar DIFC Courts (non-voting member)

Amna Al Owais, Deputy Registrar DIFC Courts (non-voting member)

1. **Welcome by Chairperson:**

Muna Dandan chaired the first Courts' Users' Committee meeting of the year in the absence of Amna Al Owais and welcomed all attendees.

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

The minutes of the Courts' Users' Committee meeting held on 7 December 2016 were approved.

3. **Courts' Activities:**

The Assistant Registrar Natasha Bakirci 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 (CFI, ARB, ENF & SCT) filed in 2016 were 335, compared to 295 cases filed in 2015. Total value of cases (CFI, ARB, ENF & SCT) in 2016 stood at USD 1,592,110,692, compared to USD 1,514,281,253 in 2015.

**Court of First Instance and Arbitration** had 40 cases in 2016 as compared to 38 cases in 2015, of which 14 were Arbitration cases filed in 2016 and 13 arbitration cases filed in 2015.

**The Enforcement cases** stood at 82 cases filed in 2016 as compared to 42 cases filed in 2015, with an average case value of USD 9,140,881 in 2016, and the average case value of USD 6,989,022 in 2015.

Members were keen on knowing the types of disputes, to which Assistant Registrar Natasha mentioned that the Enforcement Guide that the Court is working on will contain the relevant information.

**In the Small Claims Tribunal**, the number of cases filed in 2016 stood at 218, as compared to 216 cases in 2015. The average case value being USD 25,280 in 2016, as compared to USD 24,277 in 2015.

Members were keen to know as to how many Small Claims Tribunal (SCT) cases were transferred to the Court of First Instance, there were four cases transferred from the SCT to CFI in 2016 (out of 218 cases total). Two were transferred due to the amount in question exceeding the SCT's jurisdiction (one employment case and another contractual dispute). The other two were transferred based on the SCT Judge's consideration of elements detailed in RDC 53.37 (both to do with disputes regarding financial products).

### **The DIFC Courts representation and events:**

On 19 January 2017, Assistant Registrar Natasha Bakirci presented the DIFC Courts at the World Litigation Forum in Dubai, attended by a number of General Counsels from around the world.

Hon. Loretta A. Preska Chief U.S. District Judge, Southern District of New York attended the World Government Summit to speak on a panel about the future of law and justice under the title "Bringing Order to the Revolution" (being the Fourth Industrial Revolution) on 13 February 2017. It was moderated by DIFC Courts' H.E. Justice Shamlan Al Sawalehi.

The DIFC Courts' Annual Review 2016 was released on 16 February 2017 with a speech on the report which was delivered by Chief Justice Michael Hwang, followed by the overview of the 2017 Work Plan. This coincided with the launch the DIFC COMMENTARIES BOOK in association with DIFC Academy of Law and Lexis Nexis.

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

The DIFC Courts received the Korean Judicial Research & Training Institute (JRTI) on 4 January 2017, the delegation was addressed by Registrar Mark Beer. The JRTI were keen to get a greater understanding of the fast-growing economy and Islamic Law.

Assistant Registrar Natasha Bakirci and the Academy of Law's Director David Gallo met a delegation from the French Consulate on 17 January 2017 with a view to pursuing a Memorandum of Understanding with them.

Senior Case Progression Officer Lema Hatim met with the delegation from Repton Senior School for their 'Herbert Smith Freehills Repton Moot' on 26 January 2017.

### **Upcoming Events:**

Registrar Mark Beer is acting as a keynote speaker and his speech will highlight "The Future of Intentional Dispute Resolution Centres: The Garfield Principle" at the Kluwer Law Conference for In-house Counsel Dubai and Middle East on 21 February 2017.

Assistant Registrar Natasha Bakirci informed members of the various upcoming events. The Academy of Law's Lecture No. 1 2017 to be delivered by The Right Honourable Tun Arifin bin Zakaria, Chief Justice of The Federal Courts of Malaysia, scheduled on 5 March 2017, at the same time the signing of a Memorandum of Guidance between the Federal Courts of Malaysia and DIFC Courts.

H.E. Justice Ali Al Madhani will participate in the Global Pound Conference; "Access to Justice & the Future of Dispute Resolution" on 14 March 2017.

**Members were updated on various international collaborations:**

Malaysia: The signing of the Memorandum of Guidance with the Federal Courts of Malaysia to take place on 05.03.17.

India: Assistant Registrar Natasha Bakirci to pursue general Memorandum of Understanding (MoU) on cooperation / information sharing. Natasha Bakirci has sent a letter to the Prime Minister's Office in Delhi following the signing of 14 MoUs between India and the UAE on 25 January 2017 and is following up.

The others countries that the DIFC Courts are looking at for this year are: Germany, South Africa, France, Switzerland and Japan focusing on top trade partners. The DIFC Courts will sign a Memorandum of Guidance on Enforcement and information with the Zambian High Court, most likely to take place at the African Leadership Network (ALN) conference later this year.

4. **Fee Amendments:** Members were asked if they had feedback on the latest proposed Fee Amendments. Assistant Registrar Natasha Bakirci informed members that the draft of the latest fee amendments had been out for public consultation for a month and we did receive feedback from practitioners. Michael Black QC, Barrister from XXIV Old Buildings London made some useful comments. The main changes to the fees include; Reimbursement for unopposed applications for ratification of an arbitral award, Reimbursement for default judgment; and Reimbursement for immediate judgment. We are currently working on the reimbursement regime for ratification of arbitral awards in the arbitral fees section.
5. **Leave to Appeal Rules amendments:** Assistant Registrar Natasha Bakirci updated members on the leave to appeal rule amendments which she has been working on with Justice Roger Giles. These had been put out for consultation and we received some good feedback. We are still working on a few points such as the set deadline for parties to submit the skeletons in order that the judge has more time to read them. We hope to issue these shortly.

Some members felt that when permission to appeal is granted, there should be a requirement for a reason to be given as to why it has been granted, which would enable parties to focus on the areas of argument. After internal discussion, the following was decided - Reasons for giving permission have never been given. Save perhaps where the "other compelling reason" basis is stated, there is good reason for that. If permission is given it is because the judge thinks there are reasonable prospects of success, and says so, and it is quite inappropriate then to express a reasoned view on the merits, which is a matter for the appeal itself. It is otherwise when permission is refused, when there is not going to be anything more.

The judge giving permission should try to insist on reasonably precise grounds of appeal and if necessary limit the permission to specified grounds; if there are properly

formulated grounds, the arguments for the hearing should be those outlined in support of the grounds.

**6. Nomination of new members to the Courts' Users' Committee:**

A ballot was taken to select the two new members to the Courts Users Committee. Members from the two longest serving law firms, Faridah Sarah from Galadari Advocates & Legal Consultants and Alec Emmerson from Clyde & Co stepped down and were replaced by Adv. Ali Al Zarooni from Horizon & Co (UAE firm) and Stuart Paterson from Herbert Smith Freehills (International firm) respectfully.

Meeting closed at 3.30pm.

Next Meeting date 2 May 2017, 2.00pm – 4.00pm.