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Court Administration: The Roles of the Judge and the Court Administrator

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The DIFC Courts: The Roles of the Judge and Court Administrator in Case Management

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As legal costs rise worldwide, the roles of Judge and Court Administrator as active case managers have become increasingly important. This article explores one international example of how the DIFC Courts ensure that Judges and Court Administrators include case management as a priority amongst their responsibilities to minimize delay and optimize case progress for parties in dispute.

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Introduction

Courts and legal practitioners around the world are seeking improved case management techniques and tools for progressing cases from one stage to the next, including mechanisms for setting deadlines and relevant “checkpoints” throughout the case. Until the introduction of the Civil Procedure Rules in the UK, parties or solicitors were historically responsible to regulate the pace of litigation. Now, many courts actively participate in case management and endeavor to administrate cases more efficiently. Case management tools can often be more effective when explicitly provided for in court rules and regulations, but often they must be tailored to each case with active attention from the Judge and Court Administrators.

Thus, in a world of rising legal costs, the roles of the Judge and Court Administrator must shift to include a deeper focus on active case management. The DIFC Courts are no exception to this quest for increased emphasis on case management. The Rules of the DIFC Courts (RDC) are designed to provide case by case solutions to manage progress efficiently by drawing on the intertwined roles of the Judge and the Court Administrators (formally referred to in the DIFC Courts as the “Registrar” and “Registry” team) and by requiring certain case checkpoints where the Judge and

Court Administrators liaise with the parties to ensure sufficient progress. This article will briefly detail a few of the ways the roles of Judges and Court Administrators in the DIFC Courts are carefully tailored to maximize efficient and effective case management.

Brief Background on the DIFC Courts

The Dubai International Financial Centre (DIFC) is a free zone located within the Emirate of Dubai, in the United Arab Emirates and is subject to its own commercial laws based on a common law tradition. Thus, the DIFC is exempt from Dubai and UAE civil commercial law, although other types of law are still applicable. The DIFC has its own judicial system, the DIFC Courts, which adjudicate cases relevant to the DIFC or disputes between parties who have agreed to the DIFC Courts’ jurisdiction. The creation of the DIFC, a common law island in a civil law country, encourages international best practices in Dubai and gives international parties the option to choose an English language, common law Court to administer their disputes. Additionally, the common law judgments of the DIFC Courts are enforceable around the world, an important factor for many parties. For these and numerous other factors, the DIFC Courts are a model

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for judicial systems of the future, combining business-friendly structures with active case management and technology to provide parties with flexible, efficient and swift justice.

Intertwined Case Management Responsibilities of the Judge and Court Administrator

The case management roles of Judge and Court Administrator in the DIFC Courts cannot be completely separated; both must prioritize the principles of case management if either is to succeed. This is due to the complementary responsibilities assigned to the Judge and the Court Administrator according to the Rules of the DIFC Courts (RDC), which are designed to provide case by case solutions to manage progress. First and foremost, the RDC provide an overriding objective applicable to both Judges and Court Administrators who are tasked to enable the courts to deal with cases justly, with an eye towards expedient, fair and cost-effective resolution of disputes, with the RDC articulating a further duty to actively manage cases.

The RDC gives Judges and Court Administrators commensurate and appropriate powers to implement the principles of case management while still ensuring that parties are treated fairly. Notably, the RDC sets out an extensive and non-exhaustive list of case management powers including the powers to change timetables, require attendance of various stakeholders, receive evidence remotely, stay part or whole proceedings, consolidate or separate proceedings, determine the order or exclude issues and order filings as to estimated costs. Of particular note is the additional power to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, even orders of the Courts' own initiative. Failure to comply with the Rules or a Court Order can also result in adverse costs consequences, giving parties further incentive to move the case along. Both Judges and Court Administrators are thus equipped with appropriate flexibility to fulfil their role of case manager in a transparent manner.

Further tools for case management are sprinkled throughout the remaining Rules, including the setting of mandatory deadlines and the allowance of sanctions for failure to meet those deadlines without following

specific procedures. These case management tools are spread between the Judge, tasked to make more substantive decisions about how the case will progress, and the Court Administrators, tasked with setting and following-up on deadlines, accurate filings and administrative cooperation between the parties. These complementary and dual roles, in combination with the general case checkpoints described below, ensure that cases stay on track and cannot be unduly delayed due to mismanagement or bad faith.

Life of a Case: Checkpoints with both Judge and Court Administrator

Upon filing a case, the Court Administrators provide parties with a Case Plan listing estimates for the timeline moving forward including dates relevant to important case "checkpoints" such as the filings of pleadings, a Case Management Conference, production of documents, witness statements, expert reports, pre-trial review, trial bundles, reading lists, skeleton arguments, opening statements, chronologies and trial. While these checkpoints are often subject to change as the case progresses, this initial Case Plan gives parties general insight into the timetable moving forward and expected interaction with both the Judge and Court Administrators. This Case Plan also defines the Court Administrator's role as the first point of contact before a Judge gets involved with case management issues.

Most requests to adjust the case timeline or procedure are filtered through the Court Administrators, and collated such that Judges can deal with all necessary issues together. One of the most useful checkpoints is the Case Management Conference (CMC), an opportunity for parties to adjust the case timeline in collaboration with both the Judge and Court Administrators. In advance of a CMC, parties are required to comply with certain disclosure mandates, proving information regarding anticipated document production, document requests, admissions, witnesses, experts, alternative dispute resolution, pre-trial timetables, rights of audience and notably, the use of third party funding in the case.

At the CMC the Judge and Court Administrator will endeavor to issue a Case Management Order including a manageable timetable incorporating the information

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provided by the parties in advance of and during the hearing. The Judge will also address appropriate legal issues, interim or urgent measures and applications. After the CMC, if appropriate, the parties will likely be required to participate in progress monitoring and/or attend a Pre-Trial Review so the Judge and Court Administrators can assess whether the parties are on track. These further checkpoints allow proper adjustments considering any pending or new issues. Both the Judge and the Court Administrators may impose various sanctions for failure to comply with case management directives including costs and refusal to adjust dates should parties seek to create delay. Throughout, the Judge will generally act as a guide, seeking to settle contentious issues, while the Court Administrator will coordinate the timetable with the parties and Judge where there are no legal issues in conflict.

The above checkpoints relate primarily to the DIFC Courts' Court of First Instance and the Court of Appeal. In the DIFC Courts' Small Claims Tribunal (SCT), cases are concluded in an average of four weeks from valid service largely due to active case management provided by the Court Administrators in the SCT Registry in conjunction with the informal and flexible rules relevant to the SCT. These rules include the ability for the SCT Registry and Judges to set deadlines and conduct proceedings in the manner most suitable to the case at hand, especially considering most parties before the SCT are not represented. This flexibility and focus on proactive communication from the SCT Court Administrators contributes significantly to the overall speedy resolution of cases in the SCT.

In addition, the DIFC Courts also provide other tools to ensure that the Judge and Court Administrator can fulfill their roles as active case managers. One such suite of tools is the advanced technology available in the DIFC Courts' facilities which allow smoother access to information and communication with Court Administrators and between parties. This includes video and teleconferencing for parties, legal representatives and Judges as necessary, online filing and rapid communication with parties, legal representatives and the DIFC Courts' Registry via email and phone. A technologically advanced case management database allows parties easy access to case

related documents, schedules and updates from any device or location. Ultimately, these tools contribute to the Court Administrators success in active case management and interaction, in conjunction with the other mechanism mentioned.

Conclusion

Many of the above-mentioned case management tools implemented in the DIFC Courts have been adopted by the UAE Ministry of Justice in the Civil Procedure Code, further proof that adjusting the roles of both Judges and Court Administrators towards more active case management is a continuing trend. The administration of active case management is undergoing development in many courts around the world, including adjustments in how both Judges and Court Administrators interact with parties to ensure sufficient progress. Legal proceedings in court have the international reputation of being both slow and expensive, riddled with increasing delays and uncertainty. This reputation is evidenced by the general increase in parties choosing arbitration and the growing number of Arbitration Centres worldwide. However, key adjustments in the understanding of the important responsibilities of both Judges and Court Administrators in ensuring the efficient and effective administration of justice through case management can serve to repair some of the negative assumptions about litigation in national courts. The DIFC Courts are working to combat this negative reputation through the assumption of active case management responsibilities by both Judges and Court Administrators combined with key structural and procedural features that allow parties assurance that their case will be handled efficiently and consistently to reach justice via the quickest path possible. This effort will certainly serve to improve the speedy administration of justice and will continue to act as an example as this trend continues around the globe. 

