



**DIFC COURTS' USERS' COMMITTEE**

**MEETING MINUTES**

**10 December 2017**

**DRA offices, DIFC**

**Committee Attendees:**

Adrian Chadwick, Hadeef & Partners

Jacques Visser, DIFCA

James Abbott, Clifford Chance LLP

Muna Dandan, DFSA

Amna Al Owais, Co - Chief Executive and Registrar, DIFC Courts

Mark Beer, Consultant Registrar, DIFC Courts

Cheryl Fernandes, Committee Secretary, DIFC Courts

**Apologies:**

Adv. Ali Al Zarooni, Horizons & Co

Graham Lovett, Gibson Dunn

Obaid Al Muhairi, DIFCA

Stuart Paterson, Herbert Smith Freehills LLP

Suraya Turk, Hussain Lootah and Associates

**Guests:**

James Lake, DFSA

Natasha Bakirci, Assistant Registrar, DIFC Courts.

1. **Welcome by Chairperson**

Chief Executive and Registrar Amna Al Owais chaired the fourth Courts' Users' Committee meeting of the year.

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

The minutes of the Courts' Users' Committee meeting held on 10 September 2017 were approved.

3. **Courts' Activities**

Chief Executive and Registrar Amna Al Owais gave members an update on Caseload Statistics until the end of November 2017, summarised below;

- The total number of cases filed with DIFC Courts increased by 129 compared to same period last year. The highest increase was in number of Small Claim Tribunal (SCT) cases filed, 337. The largest drop has been in the Enforcement cases 10 compared to same period last year.
- Total claim value of cases filed with DIFC Courts decreased by \$ 334m in 2017 compared to same period last year, almost 24% drop. The decrease is driven mainly by drop in the claim value of Court of First Instance (CFI) cases. The average claim value decreased from \$ 4.9m/case to \$ 2.5m/case.
- The number of SCT cases filed increased by 135 cases and the average claim value also increased from \$27.6k/case to \$28.5k/case compared to same period last year. Chief Executive and Registrar Amna Al Owais informed members that there were two employment cases filed with the DIFC Courts where the value of the claim exceeded the SCT cap, and hence were transferred to the CFI. Besides, there were two breach of contract cases that were transferred to the CFI as they were too complex in nature for the SCT.

4. **Courts of the Future**

Mark Beer, Consultant Registrar of the DIFC Courts informed members that the DIFC Courts and Dubai Future Foundation are creating the Courts of the Future Forum, which will consider new ways to oversee disruptive technology such as driverless cars, drones, blockchain and cyber security within the jurisdiction of DIFC. The Forum's brief will be to design guidelines and prototype a commercial court that can operate anywhere worldwide. This initiative will help create certainty for businesses, investors and entrepreneurs currently unsure of the legal implications of rapid technological change. Under consideration will be issues such as ownership and use of data; liability for cybersecurity incidents and data breaches; licensing standards for technology like autonomous cars, drones, 3D printing and blockchain; insurance claims relating to active technology industries; the liability of intermediaries, including online platforms; and micro-payments and micro-disputes. The launch of Part 40,000 of the Rules took place on November 12, 2017. The "Rules of the Future" were also shared with the members which are available on the website <http://www.courtsofthefuture.org/>

## 5. **Practice Directions and Registrars Directions**

Assistant Registrar Natasha Bakirci discussed with members the new Practice Directions, and Registrars Directions that she is working on, summarised below:

### **Practice Direction No. 3 of 2017 – DIFC Courts Fees Amendment – September 2017**

The main amendments are: - 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.

### **Practice Direction No. 4 of 2017 – Interest on Judgments**

This Practice Direction will come into effect on the date of signature. It may be cited as Practice Direction 4 of 2017 – Interest on Judgments and may be abbreviated to PD 4/2017. It replaces Practice Direction 1 of 2009 – Interest on Judgments (Clarification) and Practice Direction 1 of 2009 – Interest on Judgments.

#### Interest on Judgments

1. This Practice Direction should be read in conjunction with DIFC Law No. 10 of 2004; the Rules of the DIFC Courts and in particular Rule 45.26 (Interest on Judgment Debts); PD 1/2009 (Clarification) and PD 1/2009.
2. Any judgment of the DIFC Courts issued on or prior to the date of this Practice Direction shall carry interest, from the date the judgment is entered, at the rate of 1% over the Emirates Interbank Offer Rate (“EIBOR”) or such other rate as the judge may prescribe in the judgment. Reference to EIBOR is to the EIBOR three months’ reference rate as at the date of judgment.
3. Any judgment of the DIFC Courts issued after the date of this Practice Direction shall carry simple interest, from the date the judgment is entered, at the rate of 9% or such

other rate as the judge may prescribe. This has been implemented to encourage faster payment of judgments.

### **Practice Direction No. 5 of 2017 – Service of a Record of Hearing for Ex Parte Interim Relief in the DIFC Courts**

This Practice Direction will come into effect on the date of signature. It may be cited as Practice Direction 5 of 2017 – Service of a Record of Hearing for Ex Parte Interim Relief in the DIFC Courts – and may be abbreviated to PD 5/2017.

1. In cases in which an Order for ex parte (without notice) interim relief has been made in accordance with Part 25 of the Rules of the DIFC Courts (RDC), the Applicant must, together with the Order, serve on the Respondent and any other person affected by the Order a digital recording or transcript of the hearing of the application for that Order. The judge shall determine whether a digital recording or transcript is most appropriate in the circumstances.
2. The legal representative of the Applicant shall, on any application for such an order, take a detailed note of the hearing of the Application and, if a digital recording or transcript is unavailable from the Court, shall serve that note, with any such Order, on the Respondent and any other person affected by the Order.
3. The fees for the digital recording and transcript referred to in this Practice Direction are set out in the DIFC Courts Fee Schedule.

### **Registrar’s Direction No. 2 of 2017 – TCD Pre-Trial Review – September 2017**

Based on suggestion during public consultation that we should provide more guidance as to what will be considered at the DIFC Courts Technology and Construction Division (TCD) Pre-Trial Review (PTR), and drafted with reference to English TCC Guide. Includes a requirement that the parties provide the Judge at the PTR with an agreed up-to-date list of the main issues for the trial (and where appropriate, a separate list of technical issues to be covered by the experts), as well as the manner in which expert evidence is to be presented.

### **Registrar’s Direction No. 3 of 2017 - Expert Evidence of Shari’a Law**

Pursuant to the Rules of the DIFC Courts (RDC) the giving of expert evidence is regulated in the manner prescribed by Part 31. This may be relevant for example in the context of the DIFC Trust Law, Law No. 11 of 2005, as amended. Under the DIFC Trust Law, the DIFC Courts may be asked to give their opinion, advice and direction about any matter concerning a trust (Article 21(1)), and the Court may if it thinks fit make Orders concerning, inter alia, the execution or administration of a trust and the correctness or propriety of the conduct of trustees (Article 21(2)).

Issues requiring identification of the relevant Shari’a principles may arise where the trust instrument requires Shari’a compliance in such matters as the exercise of the trustee’s investment powers, or allocation of trust income or corpus.

## **Direction**

Where the requirements of Shari'a law are relevant to a matter before the DIFC Courts, these are to be established as a matter of expert evidence and RDC Part 31 applies to the parties who seek to place such evidence before the Court in any particular hearing. Parties are referred to Part 31 in this regard. Should there be any issues arising as to its application in this context, an application should be made to Court for directions.

## **SCT REGISTRAR'S DIRECTION NO. 1 of 2017**

### **Citation**

After having reviewed the applicable provisions of the Rules of the DIFC Courts (RDCs), in particular:

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 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. This shall include service via some social media platforms. In addition to this the Courts will be exploring whether email service will be added to the methods of service for the CFI as a matter of right.

Assistant Registrar Natasha Bakirci also updated members on the various collaborations. DIFC Courts recently signed a Memorandum of Guidance (MOG) with Zambia Courts in November 2017.

We are working with Nishith Desai Associates ("NDA"), one of the leading law firms in India with a view to signing an MOG. Natasha Bakirci is currently working on preparing the draft MOG with NDA. Natasha Bakirci and Andreas Baumgartner, Executive Director of the Dispute resolution Authority are also participating in a working group led by the lawyer Hari Krishna to petition the International Cooperation Department ("ICD") of the UAE Ministry of Justice with a request to notify the UAE Ministry of Foreign Affairs of its intention to notify the relevant UAE courts (hopefully the DIFC Courts) as "Superior Courts" under the Treaty on Cooperation in Civil and Commercial Matters between India and the UAE.

We have also approached the Netherlands Commercial Courts (NCC), regarding potential cooperation/consultancy between NCC and DIFC Courts, and we continue discussions with France and Ireland as well.

## 6. Various projects and events planned for 2018

- Continue to enhance the Smart SCT initiative and build upon streamlining the experience for users. Within the new Case Management System, the SCT process is fully automated. A new dedicated App, acting as a portal for SCT litigants needs to be developed, tested and launched throughout 2018.
- A Memorandum of Understanding with Saudi Arabia is something that the DIFC Courts will continue to pursue in 2018.
- Planning for the future replacement office space has not been considered until later this year. Given the new expansion of the DIFC geographical scope to include Emirates Towers and surrounding developments including the new ICD Brookfield (the to be the tallest tower in the DIFC) we are considering the possibility of acquiring space. We may conduct a feasibility study as to whether we should acquire space within the newly developed expansion of DIFC or not. If we do so, we plan to appoint a third party to work on such study in 2018 and will report back on the outcomes at the next Annual Judges' Meeting. Another outcome of this is whether we request the DIFC Court building to be granted to us as we are offering a public service.
- We plan to host the International Consortium for Courts Excellence (ICCE) conference around the second half of the 2018 in the UAE. We plan to host this in parallel with the Annual Judges Meeting 2018 scheduled on 6th and 7th November 2018 and Academy of Laws' Gala on 8th November 2018. We also plan to launch the DIFC Courts' 10th year anniversary book around the same time.
- Creation of a DIFC Dispute Adjudication Board to support work on construction related disputes. Partnership with RICS.
- Explore the possibility of a Family Mediation Service to support the DIFC's wealth management and trusts strategy. Both of which are envisaged to operate under the DRA rather than under the Courts as they offer alternative dispute resolution mechanisms.
- Achieving 6 Star rating.
- Working on a project with SMART Dubai and Dubai Courts (or another court) to implement a blockchain enforcement project for Dubai.

Members enquired as to when the Chief Justice and Deputy Chief Justice retire and if the DIFC Courts know who their successors are, to which Chief Executive and Registrar Amna Al Owais responded saying that this is currently with the Rulers Office, and we hope to get an update which will be shared with members and the legal community in the right time.

7. **Dubai Law No. (15) of 2017:** Chief Executive and Registrar Amna Al Owais discussed the Dubai Law No. (15) of 2017 Concerning Administration of Non-Muslim Estates in Dubai and Execution of their Wills. The law is applicable to the wills and assets of non-Muslims based in Dubai, including the Dubai International Financial Centre (DIFC). The law facilitates the creation of a 'Non-Muslim Wills and Probate Registry' in both Dubai Courts and DIFC Courts. The heads of Dubai Courts and DIFC Courts are authorised to develop the regulations, policies and procedures for the registry. The law prescribes the legal requirements for wills and probate for non-Muslims; liabilities and obligations of the beneficiaries of wills; responsibilities and limitations of will executors; regulations governing inheritance and the distribution and management of the estate; as well as appeal procedures. Disputes arising from wills and probate for non-Muslims will be adjudicated by Dubai Courts or DIFC Courts, depending on the place where the wills are registered.

8. **Other matters**

Nomination of new members of the Courts' Users' committee (CUC): Chief Executive and Registrar Amna Al Owais ran through the nomination process with members as the two longest standing law firms Hussain Lootah Law and Associates (UAE firm) and Clifford Chance (International firm) step down next year. The CUC Secretary Cheryl Fernandes will send an email to all Registered Law firms seeking nominations for new members. Once nominations are received, the new members will be elected at the first CUC meeting of the year to be held in February 2018.

Members agreed for Ms Amna Al Owais to continue as the Chair of the CUC through 2018.

Meeting closed at 12.20pm.

Next Meeting date:

- February, Tuesday 6, 2018
- or
- February, Tuesday 20, 2018