The Story of the Dubai International Financial Centre Courts: A Retrospective

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Since the 1990s, international commercial arbitration has been the go-to resolution method for cross-border commercial disputes. However, international commercial arbitration has become procedurally complicated, costly, and has encountered difficulties in recovering the assets of responding parties outside the seat of arbitration. For these reasons, there is a new player in international commercial dispute resolution: international commercial courts in the form of the Dubai International Financial Centre (DIFC) Courts. Whereas the Commercial Court in London has, for some time, acted as an international commercial dispute resolution forum, the DIFC Courts break new ground in the establishment of such institutions. How does an Arabic-speaking religious monarchy establish an English-language court that uses English common law procedural rules to attract international business to Dubai, the financial “hub” of the Middle East? In this fascinating account, Professor Jayanth Krishnan skilfully describes the story of the DIFC Courts. Positioning the DIFC Courts in the literature on law and globalisation, he explains the remarkable collaborations that led to its founding, the legislative and regulatory mechanics that facilitated its operation, how the DIFC Courts function within the UAE judicial hierarchy, and the jurisdictional innovations of the DIFC Courts. Professor Krishnan further discusses recent challenges to the DIFC Courts and pushback from the onshore courts, illustrating that the role of the state has hardly been erased in economic and legal globalisation. At once detailed and accessible, this book will be of wide interest to a number of audiences including practitioners and academics, furnishing paths to the study of international dispute resolution in the most unlikely of places.
‘We can be proud that Professor Krishnan has followed his authoritative study of the Dubai World Tribunal with this comprehensive and highly readable account of the DIFC Courts from their inception in 2005 to their prominent international position today. Rightly he pays tribute to the vision of those who have brought this about, and he will inspire those who take it forward in future.’

– Sir Anthony Evans
Founding Chief Justice of the DIFC Courts

‘Professor Krishnan weaves together insights gleaned from interviews with key players and case law to tell a compelling story of the creation and development of the Dubai International Financial Centre (DIFC) Courts. All too often we assume courts to be static institutions. But the DIFC Courts have evolved over time to take a more expansive, but not unlimited, position regarding their jurisdiction. Much as their creators anticipated, foreign investors have come to rely on these courts. They have also assumed a critical role in the local legal landscape, complementing the Dubai Commercial Courts. Professor Krishnan’s analysis ought to be equally appealing to practitioners and scholars, making the book essential reading for both groups.’

– Professor Kathryn Hendley
William Voss-Bascom Professor of Law and Political Science at the University of Wisconsin-Madison

‘This very well presented book offers a unique and thorough, yet concise, account of the history of the DIFC Courts through its first decade. The book explores the evolution of the DIFC Courts from their initial conservative approach to a bolder stance which helped them to integrate into the existing Dubai and UAE judicial system, as well as having their judgments recognised and enforced on a global scale. Of course there have been, and remain, tensions and challenges that exist for the DIFC Courts and Professor Krishnan also offers insight into those in his very readable style. Overall, Professor Krishnan’s narrative of the DIFC Courts provides us with an important reminder of their significance as one of the key pillars of Dubai’s legal system today.’

– Essam Al Tamimi
Founding Partner of Al Tamimi & Company

‘In this impressive study of law and globalisation, Professor Krishnan provides a panoramic perspective on the origins and early evolution of the Dubai International Financial Center Courts. He skillfully shows the court’s early achievements and its looming challenges, as the UAE continues the process of constructing the critical legal infrastructure for an economy and society in transition. This deeply empirical and interdisciplinary book is sociolegal scholarship at its finest.’

– Professor Ajay K. Mehrotra
Executive Director and Research Professor at the American Bar Foundation, Professor of Law and History at the Northwestern University
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A RETROSPECTIVE

Jayanth K. Krishnan
ACKNOWLEDGEMENTS

This monograph would not have been possible without the support of a number of people. First, I wish to thank the DIFC Courts’ personnel for the time they gave to me and for providing me with access to cases, articles, and other literature and materials that were invaluable for this study. In addition, the staff, lawyers, and justices who sat with me to teach me about how the judicial process works at the DIFC were absolutely instrumental for my understanding of this subject. In particular, I would like to thank Chief Justice Michael Hwang, Sir Anthony Evans, Deputy Chief Justice Sir David Steel, Sir John Chadwick, Justice Roger Giles, Justice Judith Prakash, Justice Tun Zaki Bin Azmi, Justice Sir Jeremy Cooke, His Excellency Justice Omar Juma Al Muhairi and His Excellency Justice Ali Shamis Al Madhani. There were others as well who assisted me greatly, including Amna Al Owais, David Gallo, Natasha Bakirci, Cheryl Fernandes and Hayley Norton. One person, in particular, Mark Beer, deserves special thanks. Mark was an incredibly helpful respondent not just for this study, but also for two earlier studies that I led—a pilot project on the DIFC Courts in 2014 and another on the Dubai World Tribunal in 2016. He was the first to introduce me to how the DIFC Courts operate, and without his patience in educating me about this institution, none of my DIFC work could have been completed.

I also need to thank the Dubai government, and particularly the Dubai Courts, for their kind assistance in providing me access to data, literature, personnel and their facilities during my time in Dubai. I appreciate the government’s willingness to welcome me to the local Dubai Courts, and everyone with whom I met there was generous with their time.

In addition, I am grateful to the number of lawyers who I interviewed for this project. Each of them provided me with thoughtful assessments on their perceptions of the DIFC Courts, and how, more broadly, globalisation has influenced Dubai’s hopes to be one of the world’s leading commercial hubs.

I am also appreciative of the support I received from my deans at Indiana University-Bloomington’s Maurer School of Law: Austen Parrish, Donna Nagy, and Christiana Ochoa. I wish to thank my colleague at our IU Stewart Center on the Global Legal Profession, Lara Gose. Priya Purhoit and Harold Koster were important colleagues and co-authors, respectively, on my two previous Dubai-based projects. I also appreciate the research assistance that was provided to me by Vitor Dias, Anirudh Konda Reddy, Ali Van Cleef, and Alyssa Gerstner.

Finally, I wish to thank Motivate Publishing, which had the aspiration of publishing an independent research assessment of the DIFC Courts at this momentous time in the Emirate’s history, and specifically, Charlie Scott and Aswathy Sathish, who were instrumental as my editors. The publisher funded this project and gave me complete academic freedom to write what hopefully will be seen as a fair, rigorous, and comprehensive assessment. I am grateful for having this opportunity.
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Twenty years ago, the government of Dubai made a decision that would forever alter its future. In 1998, the ruling family announced that it wanted to transform the Dubai economy into one of the world’s leading financial centres.\(^1\) The plan was, in a sense, audacious. True, Dubai had resources and capital, and its leaders had the will to make this initiative a reality. Furthermore, within the Arab Middle East, Dubai was seen as an oasis by many foreigners who did not view the Emirate with the same trepidations as they did other potential competitors. If any place in the region could be the new global hub for trade, business and economic development, surely Dubai stood at the top of the list.

At the same time, however, there were certain facts that could not be ignored, especially by foreign investors. For one thing, the local language of Arabic was one that most investors from Europe, the United States and Asia did not speak. There was also the reality that these investors were unfamiliar with the local culture of Dubai. Consider, for example, that although Sharia law was ‘relegated to a secondary role,\(^2\) it still had an important presence in the daily life of those living in the Emirate. In addition, while Dubai was culturally more progressive than other Arab cities, it retained a more traditional milieu where social practices that existed in the West simply were not permitted by the Emirate’s authorities.

Yet, there was another looming issue that worried foreign investors during this period in the late 1990s. Dubai’s legal system, these investors feared, was not equipped to handle the complexities of cross-border, international commercial transactions. The local courts were run in Arabic and followed a civil law system that had not encountered the types of legal matters that were inevitably to come, if Dubai began the economic liberalisation process. To the government’s credit, it recognised these deficiencies as well. Between 1998 and 2003 it sought the counsel of two elite London-based law firms, Clifford Chance and Allen & Overy. The purpose was to determine what the government needed to do—in terms of legal infrastructure—in order to make Dubai an attractive place for foreign investment.\(^3\)

Ultimately, in 2004 the federal government of the United Arab Emirates authorised Dubai to pass Law No. 9, which created a global, cosmopolitan business campus. The DIFC—or Dubai International Financial Centre—was established in order to attract foreign investment and to make the Emirate an international hub for commercial transactions. The government restated its objective but now with greater clarity: to promote Dubai’s geographic position in the Gulf as a significant strategic advantage for international investors—a gateway bridging those working in South and East Asia, the Middle East, Europe, Africa and the Western Hemisphere.\(^4\)
Dubai’s Law No. 9 outlined that there were to be three components to the DIFC: (a) an authorising agency that would be the regulatory body overseeing employment law, corporate law, commercial law, and real estate; (b) a regulatory agency that would oversee all financial matters involving the DIFC; and, most interestingly, (c) a set of common-law courts. For the first several years, the DIFC Courts served as the adjudicatory forum for all commercial disputes within the DIFC. In 2011, following the passage of Law No. 16, the DIFC Courts additionally were granted jurisdiction over any commercial matter (domestic or international) so long as all parties gave consent.

Since that time, Dubai’s government leaders have promoted the DIFC Courts with great enthusiasm. Western common law and Western legal principles are used, as is English, in order to make the DIFC Courts accessible to global professionals. Furthermore, the judges of the DIFC Courts (on both the Court of First Instance and Court of Appeal) are internationally respected. (The current Chief Justice is Dr Michael Hwang, an Oxford-educated Singaporean lawyer who headed the litigation and arbitration department of the firm Allen & Gledhill.) The goal is to have the DIFC Courts be efficient, just, and legitimate. They are to serve as an accessible Western-style judicial system within this Arab-Gulf monarchy. Indeed, the arrangement of the DIFC Courts within the UAE is just another example of how globalisation is reconfiguring the relationship between legal institutions and political systems in the twenty-first century.

The focus of this book is on the DIFC Courts and how they have operated since coming into existence. There will be an examination of the reception the Courts have received both domestically and internationally, as well as how effective they have been in delivering adequate legal remedies, as seen by those who have participated in the process. The underlying question that this book asks is whether a Western-style, common law judiciary can be exported to a country such as the UAE.

The answer, this book argues, is yes. Although, as will also be discussed (and as the various stakeholders realise), constant vigilance is required in order to ensure that such courts remain independent. Moreover, as the end of this story reveals, the DIFC Courts are facing particular challenges of which they have not seen to-date. And as this book goes to press, it is uncertain as to what the outcome of this situation will be.
The emergence of the DIFC Courts adds another layer to the broader scholarly discourse on how law and legal actors operate in this era of globalisation. Mark Massoud has surveyed the literature, concentrating specifically on how such states procure foreign investment and ensure to investors that there will be judicial fairness, reliability, efficiency, and predictability.7 Massoud describes governments inviting investment from abroad by embracing foreign legal practices, such as international arbitration, within its borders. Others have also conducted parallel research.8 For example, scholars focusing on Africa, Asia and Latin America have demonstrated the ways in which governments use judicial institutions to maintain control, to govern, and to enhance political capital.9 Simultaneously, these studies show that judiciaries can, at times, also serve as institutional outlets for those aggrieved by their respective regimes.10 A separate wave of scholarship focuses not so much on courts but on the actions of legal professionals in such systems. Dezalay and Garth’s work on rights lawyering during transitional times in Latin America argues that such legal activity shaped, and was shaped by, state policy.11 Meili’s research, also on Latin America, shows that social justice lawyering ironically was able to thrive in non-democratic periods and declined during transitions.12 Michelson’s studies on civil and criminal lawyers in China, however, are more cautionary—demonstrating that occasionally these lawyers are able to make modest social justice strides, but that more frequently, success at navigating the legal system depends upon: how embedded the lawyers are within the state apparatus, the political nature of the issue, and guanxi, or the networks and connections of the lawyers themselves.13

Perhaps the most relevant set of works that apply to this study involve those that have examined the personal and conflicting emotions of lawyers and judges seeking to operate within globalising societies. Often such professionals ‘face an intractable dilemma’.14 On the one hand, they can be viewed as a potential challenge to the existing order. At the same time, they may be susceptible to unwanted pressure. Additionally, these legal professionals can be seen as potential saviours or as people who can bring about legitimacy and prosperity to a society. Yet, when they are unable to meet these high expectations, which is not uncommon, they quickly see their social capital diminished as well as their effectiveness.15 Failing to live up to the many pressures and demands by various stakeholders can take an emotional toll on this group, leading them to scale back their involvement in the development of the society and even to question their own professional relevance.

The scholarship described above leads to a question that has a clear tension within it: How can state leaders who wish to attract foreign capital yet lack a history of providing judicial services for foreign investors, strengthen their legal infrastructure, while not altering the character and sovereignty of their society? With the introduction of the DIFC Courts, Dubai has affirmatively and boldly introduced American and British-style common-law courts into its mainstream judiciary. Since its first sitting in 2005, the DIFC Courts have seen their docket grow and their impact on international commercial law disputes increase. As this book will demonstrate, this experiment has been an overall success, mainly because of the cooperation between the Dubai government and the foreign actors involved.

Concomitantly, however, there have been unexpected ramifications of this decision to establish the DIFC Courts. The purpose of this book, therefore, is to provide a comprehensive and nuanced assessment of this institution. While the Courts have been in operation now for thirteen years, this year—2018—serves as a significant milestone. Ten years ago, Sir Anthony Evans, the DIFC Courts’ inaugural Chief Justice, gave a speech where he noted that 2008 marked the first time that the Courts had a complete panel of judges, a full-time registrar to oversee administrative operations, a finalised set of rules outlining the parameters of the Courts’ authority, and an official courtroom and offices.16 It thus seems appropriate to provide a careful retrospective—a full decade on—regarding how the Courts have fared, noting the accomplishments, challenges and critiques they have faced.
The presentation of this book spans across the next four chapters. Chapter One will provide a history on how the DIFC Courts emerged. There will be a discussion of relationships that were forged between Dubai’s government leaders and the foreign lawyers and judges who were primarily from Britain. In addition, Chapter One will describe the organisation of the DIFC Courts, as well as their workload over the years and the manner in which their jurisdiction has expanded. Finally, peppered throughout this chapter will be brief biographies of the main figures who were involved in the formation of the Courts themselves.

Chapters Two and Three will then turn to the matters that the DIFC Courts faced in the early and subsequent years of operation. The issues here revolved around whether judgments delivered by the Courts would be enforceable, and to what extent their jurisdiction and authority would be respected within Dubai and internationally. Also consider that the emergence of the DIFC Courts onto the dispute resolution scene posed a challenge to an established practice in which many foreign and domestic commercial lawyers working in Dubai engaged: arbitration. The Courts argued that their venue was cheaper, more efficient, and had as adjudicators some of the most globally renowned judges in the world. Why, therefore, would clients opt for arbitration when the DIFC Courts were a better alternative to resolve disputes? These two chapters set forth the ensuing debate between the advocates championing the DIFC Courts’ effectiveness and those who were more sceptical, along with providing an analysis of a subsequent development that occurred in 2016. As the discussion highlights overall, the rebuttals and evidence offered by the Courts’ supporters eventually fended-off the serious assertions from the critics.17

Finally, the Conclusion examines the implications of importing a Western-style, common law judiciary into states that are seeking to enhance their global market presence but which have not had past experience with such courts. Dubai, of course, voluntarily and affirmatively adopted the DIFC Courts into its jurisdiction. The government accepted the proposition that foreign investors should have a choice in the legal systems under which they work. Yet, certain tensions have now arisen, and additionally, other questions have emerged, including whether the DIFC Courts need to remain primarily staffed by judges from abroad. Initially, the response by the Courts’ framers was yes—that foreign judges were a prerequisite if international investors were to have confidence in Dubai. But for how long will the Courts continue to operate in this manner is now a question more frequently being discussed.

Furthermore, is this DIFC Court-experience only applicable to the Dubai context? Can it, and the lessons from this experiment, be exportable to other jurisdictions? And what are the broader consequences of incorporating foreign laws and a foreign judicial system into a sovereign country? Answering these questions will be of immense importance for scholars, lawyers, judges, investors, clients and policymakers who are eager to understand how best to transition an economy from one that is local or regional to one that is global. As this book will argue, having a stable and predictable rule of law system firmly in place is essential for facilitating such a successful transition.18
The data collection for this study occurred in two waves. During the summer of 2014, I was granted permission to spend time with personnel and the head registrar of the DIFC Courts. Through these interviews and interactions, I learned first-hand how this institution functioned. Also, because a certain number of cases from the DIFC Courts are published online, these matters were analyzed in order to understand the types of issues heard, parties involved and rulings rendered.

In addition, in 2014 I interviewed twenty-six experienced commercial lawyers from across the seventy international law firms located in Dubai, in order to gauge their views on the DIFC Courts. Interviews were also conducted with local Dubai Emirati lawyers who work in this field and with in-house lawyers from different multinational corporations. Also, I spent time in the two other major competing dispute resolution settings for commercial matters—the local Dubai District Court and the Dubai International Arbitration Centre (DIAC), the latter being a forum established under the auspices of the Dubai Chamber of Commerce and Industry (DCCI). Interviews were conducted with officials from each of these respective institutions.

While an initial pilot study was issued in 2014, in the fall of 2017, I returned to take stock of the DIFC Courts since that publication—especially given the passage of Decree 19 in 2016. A second round of in-depth interviews were conducted during this phase of the research, including with eight past and present judges from the DIFC Courts. (Currently, there are a total of ten judges sitting on the bench.) Also as part of this second wave were interviews with: (a) the staff of the DIFC Courts, many of whom I met in 2014, (b) lawyers who I met with in 2014, (c) a new set of lawyers, and (d) government policymakers. And in November of 2017, I was invited to a major annual function hosted by the DIFC’s Academy of Law, where more than 700 of Dubai’s most influential lawyers, judges, corporate leaders, clients and state officials were present. During this several-hour affair, I had the opportunity to interview attendees who spoke candidly about their sentiments towards the DIFC Courts.

Along with the collection of this primary sourced material, I also relied on the minimal secondary sources that exist on the DIFC Courts and dispute resolution in Dubai. In particular, I performed content analysis of newspaper accounts, practitioner and bar-journal reports, and the few scholarly pieces that make mention of these issues. In sum, relying on multiple methods of inquiry provided me with a fuller picture of how the DIFC Courts have fared and are perceived, in comparison to the other competing institutions that exist within the Emirate.

Finally, I should mention that this book will not be focusing on the Dubai World Tribunal (DWT), which was a separate institution that emerged out of the DIFC following the global financial recession of 2008 and 2009. The DWT’s panel of adjudicators came from the DIFC Courts, and the tribunal’s physical facility was the same as the courtroom used by the DIFC Courts. But the DWT was a unique forum that occurred at a unique moment in Dubai’s history, and it was established primarily to deal with insolvency proceedings against a government corporation known as ‘Dubai World’. In 2016, Harold Koster and I published a detailed article on the DWT and how this judicial tribunal functioned, as well as how its jurisdiction expanded beyond what was originally conceived by the decree’s drafters. (The paper appeared in the Journal of Dispute Resolution.)

That the DWT involved the same personnel and infrastructure as the DIFC Courts and adopted a Western legal framework (here, key aspects of American and English insolvency laws) to guide it, certainly is evidence of the DIFC Courts’ positive reputation, particularly among government officials. However, the evolution of the DIFC Courts is its own story. Especially in light of the recent developments since 2016, it deserves its own independent treatment. For that reason, the work of the DWT will not be repeated during the telling of the DIFC Courts account—the narrative which we turn to next.
In early November 2017, I was granted a two-day interview to meet the founding Chief Justice of the DIFC Courts, Sir Anthony Evans. Sir Anthony, as he is known, provided an historical account of how he was appointed to this inaugural posting, as well as the details of how the DIFC Courts came to be. Born in 1934, Sir Anthony was educated at St. John's College, Cambridge, receiving three degrees (BA, MA and LLM) between 1957 and 1960. He was called to the bar (Gray's Inn) in 1958, named a Queen's Counsel in 1971, and proceeded to serve as a judge in England and Wales, first on the High Court in 1984 and then on the Court of Appeal beginning in 1992, for eight years. Before his time on the bench, Sir Anthony established himself as a highly reputed maritime and commercial barrister for twenty-six years, beginning in 1958. And in addition to his work in this area, he was also an engaged arbitration lawyer, ‘including [participating in] two major ICC [International Chamber of Commerce] arbitrations’ in Paris between 1982 and 1984.

As it was discussed in the Introduction, and as Sir Anthony explained, the idea for creating the DIFC complex emerged during the late 1990s. It was not until a few years later, however, where plans for the Courts began to gain steam. One of the key people in this process with whom Sir Anthony worked was Dr Omar bin Sulaiman, a well-known business executive who was recruited to the DIFC in 2004 with the expectation of transforming the Centre into a first-rate global financial complex. According to Sir Anthony, ‘Dr Omar was [significantly] responsible for developing and establishing the Courts.’ The reason was because Dr Omar was pivotal in securing funding for the infrastructure of the DIFC, including the building that would eventually house the judiciary itself.

Dr Omar’s initial appointment (2004–2006) was as the Director General of the DIFC Authority (DIFCA), a statutory body tasked ‘to oversee the strategic development, operational management and administration of [the] Dubai International Financial Centre.’

Dr Omar had the task of consolidating personnel and raising the reputation of the DIFC so the international-investor community could have confidence and assurance that the Emirate, and particularly the Centre, was a safe place to do business. As part of this process, he recognised that having an unimpeachable judiciary was crucial. Accordingly, recruiting top global talent to be part of the DIFC Courts became a priority.
HH Sheikh Ahmed bin Saeed Al Maktoum, Chairman and Chief Executive of Emirates Group, and Dr Omar bin Sulaiman, former Governor of DIFC, opening the DIFC Courts in 2008.
Sir Anthony, in particular, had visited Dubai in 2003, when, at the time, there was no commercial campus but instead ‘only sand and construction’. He officially took up his post the following year upon the appointment by Dubai’s then ruler, the late Sheikh Maktoum bin Rashid Al Maktoum. As Sir Anthony remarked at a ceremony some years later regarding Dr Omar and the Emirati officials who brought him to the DIFC:

'[they] enabled us to open these magnificent court premises as early as April 2007. I should also place on record that they and the Government of Dubai at all times have scrupulously observed the principles of judicial independence and the constitutional concept of the separation of powers. The Courts are truly independent, and I express my gratitude to them. This has made it possible for us to live up to the ancient Arabic inscriptions which reads, in translation, “do not be afraid to ask for justice.” The English equivalent “Access to Justice” is more prosaic.’

There were other key appointments made early on as well. For example, the DIFC Courts’ first Consultant Registrar was John Waterston, a decorated Commander of the British Empire (CBE), who had served as the Registrar of the Privy Council until his retirement there in 2005. Sir Anthony lauded Waterston’s contributions; however because Waterston was not a UAE resident and thus was present only part-time, the Courts needed an on-the-ground person to coordinate their day-to-day activities. Sunita Johar aptly served in this role as Acting Registrar, and together she and Waterston facilitated the Courts’ operation in those early years.

A significant move made by this pair was to bring aboard savvy Emirati staff, particularly the hiring of Amna Al Owais in 2006. Al Owais was a key addition because she had been a respected domestic lawyer with a prestigious law firm and before that had worked in the Ministry of Justice, practising in the local and federal UAE courts. Additionally, she had earned an LLM in international commercial law from Kingston University in the UK. Al Owais and her colleagues recognised the importance of respecting and working closely with the local population. If the Courts were to succeed as an international hub for resolving commercial disputes, there had to be domestic ‘buy-in’.

For the DIFC team, executing on this philosophy meant developing close ties with the local Dubai courts who were led then by Director General Dr Lowai Al Shaibani, a significant move made by this pair was to bring aboard savvy Emirati staff, particularly the hiring of Amna Al Owais in 2006. Al Owais was a key addition because she had been a respected domestic lawyer with a prestigious law firm and before that had worked in the Ministry of Justice, practising in the local and federal UAE courts. Additionally, she had earned an LLM in international commercial law from Kingston University in the UK. Al Owais and her colleagues recognised the importance of respecting and working closely with the local population. If the Courts were to succeed as an international hub for resolving commercial disputes, there had to be domestic ‘buy-in’.

The Establishment, Development, and Growth of the DIFC Courts

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The LAD offers training programs to legal domestic lawyers and foreign legal consultants. The LAD offers training programs to legal professionals, along with publishing legal research and opinions on matters affecting the government. In the past it drafted model legislation and regulations, and significantly for this study, today it supervises all legal matters concerning the Government of Dubai, including the DIFC Courts. That officials from the LAD fully the DIFC Courts’ mission indicated their global vision as well as the deep ties that were forged between themselves and their counterparts from the Centre. As Dr Lowai stated in an interview from some time back:

‘... the regulatory framework for the legal profession in Dubai is still developing, and is very much in a nascent stage. The intention of the Department is to gradually introduce regulations in order to build a robust regulatory regime based on sound and internationally tested and tried best practices with similar professional obligations, standards and requirements as may be found in other jurisdictions.’

Therefore, for promoters of the DIFC Courts, having this domestic support was indispensable. In fact, between 2005 and 2009, the work of the Courts continued steadily, mainly because of a number of critical steps put into place by the Dubai government. For example, to demonstrate its commitment to seeing the Courts start as soon as possible and to ensure confidence amongst attuned international investors, the government authorised the judiciary to hold its first sitting as early as October of 2005. Even though a dedicated courthouse building had yet to be constructed, two earlier-mentioned jurists, Sir Anthony and Justice Michael Hwang from Singapore, began hearing cases. (Justice Hwang initially served as Deputy Chief Justice and then became Chief Justice in 2010 and will be of central focus in Chapter Three.)

Indeed, from 2005 until 2008, Sir Anthony and Justice Hwang were the only two judges to hear cases at the Court of First Instance and Court of Appeal levels—a further indication of the government’s desire to showcase to the world the independence and international bona fides of the DIFC Courts. It was not until 2008, when
Michael Hwang SC and Sir Anthony Evans attend a swearing-in ceremony for new DIFC Courts judges by HH Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai, in 2008.
more cases started to enter the Courts, that the number of judges was increased. Two Emiratis—Justices Ali Al Madhani and Omar Al Muhairi—and a Malaysian, Justice Tan Sri Dato’ Seri Siti Norma Yaakob (the first woman on the DIFC bench and the first female judge in the UAE) were sworn into office. (Note: Justices Omar and Ali were Senior Judicial Officers before their appointment, and they played an important role in establishing the Courts from the early days. In addition, they were chosen for their commitment to the Dubai government, mainly due to their own social capital, which only helped further strengthen the reputation of the DIFC Courts as an institution.

In addition, upon the urging of people like Sir Anthony Evans (as well as lawyers from those UK firms representing the Dubai government), two prominent English barristers—Michael Black, QC and Tom Montagu Smith—had been brought in to finalise the rules of the DIFC Courts. This procedural framework was based primarily on the rules of the UK’s Commercial Court, and it was embraced by the Dubai government, mainly due to how respected these rules were held in the eyes of practitioners around the globe. (The rules are divided into fifty-six parts and are available on the Courts’ website, https://wwwdifcourts.ae/court-rules/.)

Furthermore, defining the tenets for how the Courts should operate—procedurally, substantively and jurisdictionally—gave a formality and ‘official-ness’ to the institution. Moreover, the Courts adopted a sophisticated technological system, allowing lawyers, parties and even, where necessary, judges to be ‘virtual’ and to be ‘beamed in from’ outside of the Emirate, were they not available to be in Dubai. Such a situation thereby enabled the government to make the case that the DIFC Courts were accessible, reliable, and ready-to-go at a moment’s notice if, for example, an ‘urgent application [needed to] be made’ by a claimant or defendant.

Perhaps the last important piece put into place, administratively, during these early years occurred in 2008 with the naming of Mark Beer as the judiciary’s full-time, Dubai-based Registrar. In many ways Beer’s appointment helped further elevate the global presence, power and prestige of the DIFC Courts. Beer was an Oxford-trained lawyer and former Vice President and Legal Counsel at MasterCard Corporation. (Before MasterCard, he worked as a commercial lawyer for the law firm of Clyde & Company and prior to that with the firm of Edge & Ellison.) Over the years, Beer’s reputation within the legal and business community—among both those supportive of the DIFC Courts and those who have had questions—has been stellar. He is thought of as brilliant, honest, charismatic, and eloquent, and someone who is seen as having boundless, optimistic energy. His work on behalf of the DIFC Courts has earned him the prestigious Officer of the Most Honourable Order of the British Empire Award in 2013 from the Queen of England. Sir Anthony too has sung his praises, noting how: ‘I cannot even begin to say how fortunate the Courts were to recruit him or to describe the efficiency and above all the vision and flair he has brought to the office of Registrar. Under his leadership the Courts’ staff has become an effective team, and he is a powerful ambassador for the Courts in Dubai and the UAE and internationally. Allow me a nautical metaphor—his talents are now in full flood, and I simply commend him for what he has done and what he will certainly achieve in the future.’

To reiterate, these developments that began in 2005 highlight a government that was determined and enthusiastic about opening a new, global judiciary that would be functional and seen as legitimate by the commercial-investor world. The strong bonds that developed between the Courts and domestic officials proved to be especially vital beginning in the spring of 2009. That year, Dr Omar departed from his post, especially vital beginning in the spring of 2009.

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There is also a Court of Appeal that hears matters ‘filed against judgments and awards made by the Court of First Instance.’ This appellate body may also provide an interpretation of any article of the DIFC’s laws based upon the request of any of the DIFC’s bodies or the request of any of the DIFC’s establishments .... The Court of Appeal is the court of last resort within the DIFC; it has discretionary jurisdiction and sits in panels of at least three judges (whereas the Court of First Instance has single-judge benches).

An ancillary arm of the DIFC courts is the Small Claims Tribunal (SCT), which was created in 2007. This forum is intended to deal with cases of relatively smaller monetary value. Currently, there are seven eligible DIFC Courts’ staff members who can sit as tribunal adjudicators, although only one official is needed per bench to hear cases. The jurisdiction of the SCT is that it hears cases where the monetary value ‘does not exceed AED 500,000 or ... where the claim relates to the employment or former employment of a party; and all parties elect in writing that it be heard by the SCT.’ Further, the SCT operates as a ‘smart-court’, where the technology that it possesses allows parties to access the proceedings remotely, thereby further facilitating the resolution of disputes in a timely fashion.

Alongside the SCT, there is an important pro bono programme involving staff and external volunteer lawyers who counsel financially needy clients on issues related to the DIFC. Initiated as a pilot project in 2009, in 2012 it evolved into a full pro bono clinic with DIFC Courts’ staff seeking advice from lawyers and judges from different parts of the world on how best to provide this service. In 2014, there was a revamping of the framework under which the pro bono program functioned. This point will be further discussed in the concluding chapter, but briefly, through passage of Dubai Law No. 7 the programme was placed under a newly created body known as the Dispute Resolution Authority (DRA). In fact, the scope of the DRA, as we will see, has been much broader than administering pro bono services. The DRA reconfigured the entire governance structure of the DIFC judicial system, and it remains in place to this day.

The ensuing section of this chapter delves into the organisation and workload of the DIFC Courts, followed finally by abridged biographies of the judges who have sat on the two main benches.
Chief Justice Michael Hwang SC.
Finally, during the earlier-mentioned pilot study, Mark Beer stated that from its inception until 2014, the DIFC judiciary had heard approximately 600 cases across the various courts ranging from significant and complex cross-border commercial disputes to property disputes and employment disputes. Beer noted that in the Court of First Instance, where the most complex of cases are heard, on average 92 per cent are settled before trial. (A good percentage of the other cases were heard in the private Small Claims Tribunal or in arbitration-related litigation, which the Courts treat as confidential.)

Breaking down the analysis a bit further, consider that in examining the first three years of the Courts’ docket (2005–2007), on the publicly searchable DIFC website there are only ten judicial orders and three judgments available, even though the Courts heard more matters than these figures indicate. Again, the reason, according to officials, is because often a case has been settled without the need for a determination, or alternatively, a judgment has been given extempore. Similarly, over the last three years (2015–2017), there have been on average approximately 200 cases heard per year by the Court of First Instance, and roughly ten cases heard per annum by the Court of Appeal. Yet again, the number of final judgments that are shown on the Courts’ website from the Court of First Instance and the Court of Appeal is low because of the high settlement rate of the cases.

As to the judges who have heard these matters, the final section of this chapter provides annotations of the corps of adjudicators who have sat alongside, or subsequent to, Sir Anthony. Sir Anthony retired from the bench in 2010, and because a description of his background was provided above, his biography is not included here. Furthermore, from the outset judges were recruited from common law countries who would also be familiar with the operation of the Commercial Court in London, given that it served as the key institutional influence on the DIFC Courts. As the discussion below demonstrates, this cadre has been highly talented, sophisticated, and diverse—geographically, educationally, and professionally.


The biographies are listed chronologically and then alphabetically.

CURRENT CHIEF JUSTICE
MICHAEL HWANG

He was the first Deputy Chief Justice of the DIFC Courts beginning in 2005. Born in Australia, he was educated at Oxford, served as a partner at the Singaporean firm of Allen & Gledhill, and became Chief Justice of the DIFC Courts in 2010, upon the retirement of Sir Anthony. In Singapore, Chief Justice Hwang is a Senior Counsel (the Singaporean equivalent of Queen’s Counsel) who practises as an international arbitrator with a selective practice as Counsel. He has served as President of the Law Society of Singapore (2008–2010), a faculty member at the University of Sydney and a part-time Visiting (and later Adjunct) Professor at the National University of Singapore as well as a senior office holder or member of numerous international arbitration committees, including the International Council for Commercial Arbitration, the International Bar Association’s Arbitration Committee, the London Court of International Arbitration, and the Permanent Court of Arbitration at The Hague. The Chief Justice is set to retire in 2018.

HIS EXCELLENCY JUSTICE ALI SHAMIS AL MADHANI

He was appointed to the DIFC Courts in January of 2008. He serves as a judge on the SCT, Court of First Instance, and Court of Appeal. He has had experience in the local Dubai judiciary, first as a Public Prosecutor (1994–1998) and then as a judge in the local Dubai courts beginning in 1998. Justice Ali attended the School of Oriental and African Studies (London) and has also been highly involved in the International Association for Court Administration, where he presently is the Chair for the Middle East Board for Courts Administration.
**LATE DEPUTY CHIEF JUSTICE SIR ANTHONY COLMAN**

He was appointed to the DIFC Courts in 2008 and as Deputy Chief Justice from 2010 until 2013. He served on the Courts till his retirement in 2013. From 1992 until 2007, Sir Anthony was a judge on the English Commercial Court in London. After studying law at Trinity Hall, Cambridge, he was called to the bar (Gray’s Inn) in 1962 where he practiced as a barrister and then subsequently as a Queen’s Counsel, primarily in the areas of commercial and business law and arbitration. Sir Anthony passed away on 27 July 2017.

**RETIRED DEPUTY CHIEF JUSTICE SIR JOHN CHADWICK**

He was appointed in 2005 to the DIFC Courts as a judge on the Court of First Instance and Court of Appeal. Prior to joining the DIFC, he served on the Court of Appeal for England and Wales from 1997–2007 and before that appointment he was a judge on the Chancery Division of the High Court in England from 1991–1997. While as a judge on the DIFC Courts, Sir John also simultaneously presided as President of the Court of Appeal of the Cayman Islands from 2008 until November 2015. As a practitioner, Sir John was called to the bar in 1966 (Inner Temple) and became a Queen’s Counsel in 1980; his main practice areas were in the fields of commercial and business law and matters relating to insolvency. He served as Deputy Chief Justice of the DIFC Courts from 2013 until 2016 when he retired.

**RETIRED JUSTICE TAN SRI DATO’ SERI SITI NORMA YAAKOB**

She was the first female appointed judge of the DIFC Courts in 2008. Malaysian by nationality, she studied law in London and was called to the bar (Gray’s Inn) in 1962. In 2005, she was the first woman to be appointed as Chief Judge of Malaya. She has held many positions during her long legal career, including President of the Sessions Court in Kuala Lumpur, Senior Federal Counsel in the Attorney General’s Chambers in Kuala Lumpur, Judge on the High Court of Malaya, Judge on the Federal Court of Malaya, and currently she is the Pro-Chancellor of the University of Malaya. She retired from the DIFC Courts in 2013.
He was appointed to the DIFC Courts in 2007 and retired in 2013. He is a prominent commercial lawyer in New Zealand and keeps chambers at Bankside (Auckland, New Zealand), Maxwell (Singapore) and Essex Court (London). He received his LLB from the University of Auckland and his LLM from Harvard, and then he practiced as a litigator at the firm of Russell McVeagh McKenzie Bartleet & Co, Auckland from 1969–1984. He became a barrister at law in 1985 and subsequently a Queen’s Counsel in 1987. Justice Williams served on the High Court of New Zealand from 1991–1994 and has also served as Chief Justice (and later President) of the Court of Appeal of the Cook Islands Courts.46

He was appointed to the DIFC Courts in 2011 and since 2016 he has served as the Deputy Chief Justice. He was called to the bar in 1966 and then practiced commercial law from 1968 until 1998. From 1998 until 2011 he served as a judge in the Commercial and Admiralty Courts in London, and he was also chairman of the European Commercial Judges Forum from 2009 until 2011. Sir David also has an international reputation as an admiralty judge, and he holds a master’s degree from Oxford University and he has been both a barrister and Queen’s Counsel, as well as a Bencher of the Inner Temple (1995) and head of chambers at 2/4 Essex Court (1995–1998). He retired as Deputy Chief Justice in May 2018 upon reaching the statutory retirement age of 75.49

He was first appointed to the Court of First Instance in 2014 to hear interlocutory applications and was promoted in 2017 to be a full member of the Court of First Instance and the Court of Appeal. He is a law graduate (with distinction) of the UAE University, and he also holds a master’s degree (with merit) from Westminster University in the UK. His first introduction to the DIFC Courts was as a judicial officer in 2010, where he subsequently became a SCT judge. Justice Shamlan also holds an advanced diploma from the Dubai Judicial Institution.50

He was appointed to the DIFC courts in 2013 and serves on both the Court of First Instance and the Court of Appeal. He is a former Chief Justice of Malaysia, serving from 2008 until 2011. Prior to this appointment he was a Federal Court Judge and then President of the Malaysian Court of Appeal. Justice Zaki Azmi was called to the bar in London in 1969 (Lincoln’s Inn) and then returned to practice law in Malaysia, working in both the public and private sectors, until his appointment onto the federal bench.51
He was appointed to the DIFC Courts (on both the Court of First Instance and Court of Appeal) in 2016. Australian by nationality, he holds degrees from Sydney and Oxford, and prior to his time with the DIFC, he was a judge on the Supreme Court of New South Wales beginning in 1988, then rising to become Chief Judge of that court’s commercial division in 1994. From 1998 until 2011, Justice Giles was a member of Australia’s Court of Appeal. Prior to his judicial experience, he was called to the bar of New South Wales in 1971 and was a long-time practitioner of business and commercial law.

He was appointed to the DIFC Courts (on both the Court of First Instance and Court of Appeal) in 2013. He is a graduate of the University of Bristol where he earned his LLB and the London School of Economics where he received his LLM. British by nationality, he was called to the bar in 1977 and became a Queen’s Counsel in 1987. Prior to joining the DIFC, he was a judge on the High Court in England (Commercial Court Division) from 2002 until 2014. Between 2008 and 2012, he served on the Western Circuit and became the Judge in Charge of the Commercial Court in 2014. As a practitioner, Sir Richard was a distinguished lawyer of commercial law and an experienced arbitrator who has had significant experience in the fields of international trade, banking, and commodities.

A national of Singapore, she was appointed to the DIFC Courts (on both the Court of First Instance and Court of Appeal) in 2017. She currently also sits as a Judge of Appeal on the Supreme Court of Singapore, to which she was appointed in 2016. Justice Prakash first entered the Singaporean judiciary in 1992 as a judicial commissioner, and thereafter she was named as a judge in 1995. She is a 1974 graduate (with first class honours) from the University of Singapore, and she practised business, shipping, and commercial law in the private sector as an advocate and solicitor before entering the judiciary.
CHAPTER TWO

DIFC Judgments and the Debate Over Enforceability: Jurisprudence and the Challenges in the Early Years

Based on my review of the available case law, along with media searches, interviews with lawyers, claimants and court personnel, the below section provides a brief survey of those major rulings by the Court of First Instance and Court of Appeal since the DIFC’s founding. (An important note to emphasise: the discussion of the case law in this chapter, for the most part, stays clear of the DIFC Courts’ decisions on arbitral awards and their recognition and enforcement. That material and a detailed analysis are saved for Chapter Three.)

Following this discussion, there is then a shift in focus—from a doctrinal examination to one that early on involved a question that many interested observers were asking: to what extent are judgments from the DIFC Courts actually enforceable? As we will see, the debate over this issue has been of major significance to the stakeholders who participated—or have considered participating—in this novel experiment.
The first set of leading judgments by the DIFC Courts illustrates an institution that was contemplating how best to situate itself within its new environment. Several of the cases the judiciary heard initially dealt with questions relating to conflict of laws, jurisdiction, regulations, banking, employment law, and enforcement of judgments. In fact, in this first era of significant decisions, these issues often overlapped in the cases that came before the judges.

For example, consider the 2009 Rasmala Investments Limited case. That matter centred on an employment dispute with a group of claimants arguing that they had been unfairly dismissed. The case was appealed to the Court of First Instance and heard by Justice Tan Sri Siti Norma Yaakob. Two years prior, the Court of First Instance, with then Deputy Chief Justice Michael Hwang presiding, was asked by liquidators in a case known as Forsyth, to use either UAE law or English law to determine how best to prioritise outstanding debt claims. Justice Hwang refused and instead applied the governing DIFC Insolvency Law, which did not provide for such prioritisation. Basing her ruling on Forsyth, Justice Tan Sri Siti Norma Yaakob stated that the claimants here similarly could not 'contract out of the DIFC Law ... and resort to relying on a right that is present' elsewhere. In Rasmala, the DIFC Employment Law also referenced regulations that could be issued to cover unfair dismissal cases, but the DIFC Authority had not enacted such supplementary regulations at the time of the case. And Justice Tan Sri Siti Norma Yaakob was unwilling to impute the UAE's (non-DIFC) Labour Law in this case. As such, the SCT judgment was overturned.

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Other decisions during this first era highlight a similar sensitivity. Take the interesting case involving the law firm, Denton Wilde Sapte (DWS). We will return to this case in Chapter Three, but briefly, here, the claimant, Injazat Technology Fund (ITF), sued the firm contending that the lawyers did not represent them adequately and 'negligently failed to advise ITF in regard to the existence or exercise of the option' it had, whereby it could request that third-party guarantors of a financing deal ‘repurchase all of ITF’s shares for 125 per cent of the amount actually invested,’ if the terms of the original contract had not been met. DWS argued that its agreement with ITF mandated that any dispute between the parties be handled by arbitration in front of the London Court of International Arbitration (LCIA), and thereby moved to dismiss ITF’s case. Justice Sir David Steel, however, declined DWS’s motion.

Following the rationale of both Forsyth and Rasmala, Justice Steel strictly applied the DIFC’s Arbitration Law No. 1 of 2008, which he stated required that the case be able to proceed. For Justice Steel, his options were limited, and so he followed the law as he was obliged to do, noting at the close of his opinion, 'I would have granted a stay if there were jurisdiction to do so.'

(As Chapter Three discusses, a subsequent Court of First Instance case written by Justice David Williams, known as Al Fattan, chose not to follow this decision in favour of a more arbitration friendly approach. The difference between the two cases was finally settled in the direction of Al Fattan by an amendment to the Arbitration Law in 2013 where it was decided that the Courts could ‘stay proceedings in favour of an agreement to arbitrate, irrespective of what seat, if any, is stated in the agreement.’)

Forsyth, Rasmala and DWS each illustrate the DIFC Courts employing a very literal method of interpreting DIFC laws and questions relating to jurisdiction. However, in what might be viewed as ‘jurisdictional creep’, there was a subtle change in approach in 2011 with a Court of Appeal decision in National Bonds Corporation PJSC v T aaleem PJSC and Deyaar Development PJSC. This case involved a Murabaha—or a type of loan that allows a ‘straw’ or middle person to procure title to property without any encumbrances. In the agreement between the parties, there was a clause (section 14.1) stating that disputes would be settled within the 'courts of Dubai.' The Court of Appeal held that reference to such courts could necessarily include the DIFC Courts. To hold otherwise, the Court concluded, would denigrate the status of the DIFC Courts and go against the government’s intent when it created this institution.

In sum, through 2011 it would be fair to suggest that the DIFC Courts, for the most part, adhered strictly to their mandate and jurisdictional domain. The next section examines how the case law evolved in what might be seen at the ‘Second Era’ of DIFC Courts jurisprudence.
On 12 January 2012, the DIFC Court of Appeal issued a significant ruling in a case called Corinth Pipeworx S.A v Barclays Bank PLC. The matter involved a Greek steel company, Corinth, which had sold its products to an Emirati company located in Jebel Ali, Dubai. The Emirati company owed Corinth some USD 24 million, and it had used Barclays Bank to hold its assets. After not receiving payment from the buyer or having the money transferred from Barclays to it, Corinth sued alleging that both parties conspired against it and engaged in fraud and false representation.

The case was presented to the DIFC Court of First Instance, with the late Deputy Chief Justice Sir Anthony Colman presiding. Justice Colman dismissed Corinth’s claim for lack of jurisdiction. In referencing Article 5(A) of Dubai Law No. 12 of 2004, he stated that because the actions between Corinth and the buyer and Barclays occurred outside of the DIFC, his Court did not have jurisdiction to hear this case. Deputy Chief Justice Colman pointed to the statute, which has any ostensible connection to the DIFC, to opt into the DIFC Courts’ jurisdiction in the context of civil and commercial matters. It took a bit of time for this law to have an effect, but eventually the Court of First Instance and the Court of Appeal saw a noticeable rise in the number of matters on their dockets. During 2015 and 2016, for example, the Court of First Instance and Court of Appeal heard a total of 108 cases. (The former heard thirty-nine and forty-seven cases each year, respectively, and the latter had nine and thirteen cases on its docket, respectively.)

Given this increase in the caseload, a confidence took place within the DIFC Courts, and the judges did not miss this opportunity to leave their mark. For instance, the Court of Appeal reheard the above-mentioned, National Bonds Corporations case, but this time on a different issue. In the subsequent matter, the Court ruled that it had the authority to interpret what it called the ‘Sharia Standards’ provided within the existing Murabaha agreement. For the first time the ‘case serve[d] to highlight that the DIFC Courts may also be used as a forum for litigation in applications involving Islamic banking and related services.’

The Court of Appeal in Fidel v Felecia ventured further. Since the foreign judges of the DIFC were internationally renowned and had years of expertise in multiple jurisdictions, the Court ruled that even in matters involving UAE law alone, so long as one of the three judges on the appellate bench was an Emirati, it had the competency to adjudicate without needing to adhere to the classic English procedure of relying on external experts for insight.

Two other significant cases during this second era also showed a judiciary that was willing to assert its strength. In Investment Group Private Ltd’s Standard Chartered Bank, the Court of Appeal importantly rejected a party’s motion to have this case removed to another jurisdiction (namely, to the Emirate of Sharjah). The Court opined that the DIFC’s judiciary was every bit as equivalent and capable as the domestic UAE courts to hear the matter. Extending this argument beyond the UAE’s border, the Court similarly held in 2016, that so long as a competing court—here, a court in Saudi Arabia—was not any more competent in adjudicating on an issue, then the DIFC’s Courts had no reason to decline hearing the case on forum non conveniens grounds.

But the issue most salient during the 2015–2016 term revolved around how foreign judgments would be treated. It is important to note that there is a difference between the enforcement of foreign judgments, which is addressed in this chapter, and foreign arbitral awards, which will be the focus of Chapter Three. Regarding the former, in what has come to be known as the pivotal DNB Bank case, the Court of Appeal was confronted with a straightforward question: to what extent could it recognise and thereafter seek to enforce a foreign judgment?

DNB had argued that an English court judgment it had received should be seen as legitimate and enforceable within the DIFC. The Court of Appeal agreed with this position, as well as with DNB’s follow-up argument that such an affirmation would make the English ruling ‘no longer a “recognised foreign judgment”’ but would simply be a “judgment” within the meaning of Article 7(2) of the [Dubai] JAL [Judicial Authority Law], thus available for referral to and enforcement by the Dubai Courts. This willingness to serve as a “conduit” to the domestic bench marked a significant proclamation by the DIFC Courts that it was taking its raison d’etre to heart—namely that the Courts existed in order to promote and facilitate international commercial activity within the Emirate.
It would not be unreasonable to assert that the Court in DNV Bank felt empowered because of what had happened thousands of miles away in a courtroom in Australia. In 2014, the DIFC’s Court of First Instance ruled in favour of a claimant in the case of Graciela Ltd v Giacobbe.31 Here, the claimant had argued that the defendant had damaged the former’s information technology system. Because of where the defendant’s assets were located, the claimant sought to enforce the judgment in the New South Wales Supreme Court. The decision to approach the Australian court was based on a Memorandum of Guidance signed between it and the DIFC Courts. Although non-binding, the agreement set out clear procedures for recognition and enforcement. To the great delight of not just the prevailing party but also to those at the DIFC Courts, the Australian court adhered to these principles and affirmed and enforced the Court of First Instance’s ruling.32

These developments highlight what we might see as the two-way internationalisation of the DIFC Courts. On the one hand, the judges were keen to provide their counterparts abroad—as well as well as foreign lawyers and foreign parties—the assurance that Dubai and the DIFC Courts were open, fair, transparent and globally attuned to the norms and practises of the international commercial community. At the same time, in order to have global legitimacy, it was vital that the Courts’ rulings would be seen as valid—abroad. The events that occurred regarding the Graciela Ltd case were a major step forward in this direction.

A series of important decisions were handed-down by the DIFC Courts in 2017. In several of these matters, the cases had started some years prior, with initial judgments rendered—only then to have the same parties return to the Courts for subsequent hearings on other issues. For example, the Standard Chartered case reappeared on the Court of First Instance’s docket. This time, the issue involved whether the defendant, Investment Group Private Limited, which had taken a loan from Standard Chartered, could restructure or set-off its debt because of its inability to pay. The Court of First Instance refused to acquiesce and ‘granted [Standard Chartered] an immediate judgment.’33 The noteworthy aspect of this ruling was its tone. As Deputy Chief Justice Sir David Steel stated:

‘The lengthy reference to the chronology of these proceedings supports the clear view that I have formed that IGPL [the defendant] had expended an enormous amount of time and money to disrupt and delay the proceedings. Those efforts have included the pursuit of a wide range of misconceived propositions of law. The determination to avoid the resolution of the claim leads to the clearest inference in my judgment that to the knowledge of IGPI the defence and counterclaim lack any credibility.’34

There were other important cases that the Courts encountered during the 2017 term. In DIFC Investments LLC v Mohammed Akbar Mohammad Zia, the claimant argued that the defendant’s failure to pay on the sale of seventy-two properties necessarily voided the entire deal. The Court of First Instance agreed and terminated the contract, per the claimant’s request.35 In Theron Entertainment LLC v MAG Financial Services, the Court of First Instance ruled against a defendant for failing to live-up to the contractual obligations in a lease agreement. Per the Court’s order, the claimant was permitted to terminate the lease.36

The Court of First Instance was active in another contracts-related matter as well. In an intriguing case involving how the legal term ‘consideration’ ought to be defined, the Court held that the meaning could extend to good will and positive reputation rather than the exchange of actual money.37 In this case, the claimant argued that he transferred 10 million shares to the defendant in consideration for USD 10 million. Curiously, at a later moment, the claimant’s company hired the defendant as its chairman. The defendant then argued that his acceptance of this leadership position entitled him to the aforementioned 10 million shares, and that the consideration was the ‘providing [of] his name and contacts to the company, as well as his ability to raise funds.’38 Because of the lack of any convincing evidence from the claimant to the contrary, Justice Ali, who was presiding, stated that he was ‘persuaded by the Defendant’s argument that the actual consideration for the shares was intended to be his involvement in the Claimant company; [and] that his name and efforts would be used to increase the number of customers and investors for the Claimant.’39 Accordingly, he dismissed the complaint.
Perhaps not surprisingly, the issues of jurisdiction and enforcement emerged in two cases during the 2017 term as well. In Barclays Bank PLC et al. v. Essar Global Fund Ltd, the Court of First Instance forcefully stated that the UAE’s Constitution would not be violated by having the DIFC Courts enforce a foreign judgment within the Emirate.40 Instead, he took a broader approach, arguing that the DIFC Courts were the improper forum to enforce a foreign judgment within the Emirate.40 In analysing this case, the Court’s decision broke from how recent cases had been decided and resembled the approach used in Forsyth and Rasmala.

The Court, similarly, exercised restraint in a case involving the Gibson Dunn law firm. In this matter, the firm had terminated the employment of Peter Gray, who sought to have the DIFC serve as the venue for arbitration. The Court, however, in examining the agreement between the parties, noted that the language was silent on this point. The only reference made was to California, USA, possibly serving as the seat for the arbitration. In upholding the Court of First Instance’s decision, the Court of Appeal ruled that, in the absence of precise terms dictating where the arbitration should be held, California—and not the DIFC—should serve as the default jurisdiction.41

And, one of the most well-known cases of the entire DIFC Courts’ history occurred at the Court of Appeal during the 2017 term. The David Haigh-case, as it is known, requires some background before discussing the appellate court’s ruling. Haigh today is a British lawyer and financier in Dubai for GFH Capital.42 One of his most noted accomplishments while at this company involved Haigh brokering a deal whereby GFH acquired an English football club, Leeds United, in 2012. Haigh served on the board of Leeds in 2013 and 2014 until the club was purchased by the Italian businessman, Massimo Cellino.43

In April of 2014, Haigh resigned from GFH and left for England, but he returned to Dubai a month later in hopes of seeking a new opportunity with GFH. (According to Haigh, he was lured back to Dubai by the above-mentioned lawyer from Gibson Dunn, Peter Gray, who had worked with officials from GFH. Haigh subsequently brought a private claim of action against this group in England on human trafficking grounds, but his case was ultimately dismissed.)44 On 18 May 2014, Haigh was arrested by the Dubai police and charged with embezzlement of USD 6.45 million. He was accused of a range of crimes, but they centred on claims that he fraudulently manufactured invoices and had GFH pay out the expenses of these deals into accounts that Haigh controlled. For fourteen months, Haigh was imprisoned awaiting charges. In August 2015, he was formally convicted of financial misappropriation. He was sentenced to two years in prison but was given credit for time served and was set to be released in November 2015. However in November, Haigh was charged with ‘cyber-slander’ and accused of verbally abusing officials from GFH. The accusation stemmed from tweets he was alleged to have made from his Twitter account in March 2015, which Haigh denied, saying he was in prison then and had no access or ability to commit this crime. In March 2016, Haigh was acquitted of the slander charge and thereupon returned to Britain after spending a total of twenty-two months behind bars.45

In setting aside the ruling below, the Court went on to say ‘that these factors are special circumstances which warrant at least a further and final opportunity to the Appellant to adduce oral evidence in his defence before final judgment is rendered by a trial judge.’46 In November 2017, that it had a ‘certain element of doubt in [the] granting [of an] Immediate Judgment’47 as the lower court had done. Moreover, the Court of Appeal appeared to acknowledge ‘the financial and physical difficulties [that had] allegedly befal[l] the Appellant which he contends have prevented him from filing a full defence to the charges against him.’48 In July 2018.

Notwithstanding these criminal charges, GFH continued to press its civil claim in the DIFC Courts for indemnification of the money it argued was lost because of Haigh’s activity. In November 2016, the DIFC Court of First Instance issued an immediate judgment in favour of GFH, finding that a trial was not necessary because the evidence against Haigh was overwhelming.49 Haigh took the case to the Court of Appeal, which decided, in November 2017, that it had a ‘certain element of doubt in [the] granting [of an] Immediate Judgment’47 as the lower court had done. Moreover, the Court of Appeal appeared to acknowledge ‘the financial and physical difficulties [that had] allegedly befal[l] the Appellant which he contends have prevented him from filing a full defence to the charges against him.’48 In setting aside the ruling below, the Court went on to say ‘that these factors are special circumstances which warrant at least a further and final opportunity to the Appellant to adduce oral evidence in his defence before final judgment is rendered by a trial judge.’46 The Court remanded the case for trial, which is to begin in July 2018.
The above discussion highlights the evolution of the DIFC Courts’ jurisprudence over the last decade. Clearly, the Courts have not been shy to tackle difficult issues and to do so boldly. The next chapter discusses the most recent development that has emerged regarding the DIFC Courts. However, before moving to that discussion, the early years saw another serious challenge emerge, which dealt with whether judgments from the DIFC Courts were really, in fact, enforceable. The below section addresses this debate.

THE ENFORCEABILITY OF DIFC COURTS’ JUDGMENTS

BACKGROUND

There are a significant number of international law firms in Dubai, which has a population of slightly over 2 million. The Legal Affairs Department of the Government of Dubai maintains records of the firms that exist in the Emirate. As of this writing, the link to that site has been down, so in order to generate a preliminary list, I used multiple sources to triangulate, verify and then compile an extensive directory of my own. Appendix A, at the end of this chapter, lists the foreign firms that currently have a presence within the Emirate.

The vast majority of these foreign firms are from Britain and the United States, although there are those that come from other places such as Lebanon, Saudi Arabia, East and South Asia, and Continental Europe. The lawyers from these foreign firms are permitted to provide advice on matters related to international law and on the laws of their home jurisdiction. Additionally, the UAE allows foreign lawyers to practice domestic law, with the only stipulation being that to appear as a lawyer in court, the individual must be an Emirati national. From the outset, the objective of these foreign lawyers entering Dubai has been to make money on high-end, transactional commercial deals. It is in such situations that access to a reliable legal process—one with which they are acquainted—is of key import. The question then is whether the DIFC Courts satisfy this wish. For many of these lawyers, the answer in the early years of the DIFC Courts’ operation was no.
Mark Beer, Registrar General of DIFC Courts, and Dr. Ahmad Saeed bin Hazeem, former Director General of the Dubai Courts, discuss cooperation during a visit to the DIFC Courts in 2009.
Initially, the above sentiment stemmed from the lawyers’ views that judgments from the DIFC Courts were potentially unenforceable outside of the DIFC complex. This concern had three layers to it. Consider the first scenario where one party is from within the DIFC but the other is not—although it is still based in Dubai. Assume both parties consent to a case being brought to the DIFC Courts and a judgment is rendered against the non-DIFC side. If the losing party’s assets are located within the Emirate (but again, outside the DIFC), then the prevailing party would need to pursue an enforcement action within the local Dubai courts.

Since 2009, there has been a ‘protocol of enforcement’ between the DIFC Courts and the local Dubai courts. In 2011, this agreement was enacted into law by the Emirate. The steps for enforcement are straightforward. The prevailing party must apply for an ‘execution letter’ from the DIFC Courts, which then is sent to the local Dubai court. Under Section 7(2) of the 2011 statute, the judgment is translated into Arabic. Then, provided that the DIFC judge has described specifically how the order should be enforced, it thereafter becomes a judgment of the local Dubai court. Furthermore, this new Dubai Court ruling is deemed ‘final and executory.’

While the above procedure appears to be clear and simple, there was the notion among some that there can be competition between the local bench and its DIFC Court counterpart, which might lead to varying results.

A second concern by international lawyers related to enforcing DIFC Court judgments in other Emirates within the UAE—particularly Abu Dhabi. So, for example, where a party sought to enforce a DIFC Court judgment against a defendant who held assets in Abu Dhabi, would the Abu Dhabi local court automatically endorse this judicial order? In theory, there was a multi-step procedure, as provided for within Article 221 of the UAE’s federal civil code, which needed to be followed.

First, the DIFC Court formally had to refer its judgment to the local court of the other Emirate. Specifically, this meant that the DIFC judge had to file a set of papers that outlined the case and then state the rationale for the decision rendered. Once the local court of the other Emirate received the paperwork, it then had the prerogative to review the case for procedural defects. (It was not supposed to offer an opinion on the substantive merits of the DIFC Courts’ case.) Furthermore, a decision by the local court (as it related to procedural matters) was subject to that jurisdiction’s appellate body.

DIFC Courts officials and others who wanted to expedite execution orders in the other Emirates saw this Article 221 practice as time consuming and rife with potential delay. There were also concerns regarding the unwillingness of local courts in the other Emirates to cede their jurisdiction and ability to review, de novo, matters...
The passage of the 2011 Dubai reform statute sought, in part, to remedy these issues. The law mandated that a DIFC Courts order ‘shall be executed by the competent entity having jurisdiction outside [the] DIFC in accordance with the procedure and rules adopted by such entities in this regard …’ In other words, the local courts within the other Emirates were obliged to carry out DIFC orders. Moreover, DIFC Courts officials formally signed memoranda of understanding with their Emirati court counterparts as a means of further solidifying the intent of the legislation. It would seem that these steps would have quelled any concern lawyers had regarding enforcement of a DIFC judgment outside of Dubai but within the UAE. Yet, given the actual rarity of an Emirati court outside of Dubai being asked to enforce a DIFC judgment (at least since the 2011 statute was passed), to-date, it has been hard to know for sure. What is known is that these lawyers also had concerns when it came to enforceability outside of the UAE altogether. This point is discussed next.

Seeking Enforcement beyond the UAE

During the initial years, international lawyers had a persistent question: Would judgments rendered by the DIFC Courts be enforced in other countries? Given their global clientele, this question was of utmost importance for the foreign bar working within Dubai. Recall, in principle the DIFC judiciary was not a foreign entity within Dubai, but rather parallel courts integrated within the country’s judicial system. That they were courts of the state, therefore, meant that they ought to enjoy the benefits from treaties the UAE had signed with other countries, as they related to the enforcement of commercially based judicial orders.

Regionally, the UAE is a party to the 1983 Riyadh Arab Agreement for Judicial Cooperation, as well as to the 1995 Gulf Cooperation Council (‘GCC’) Convention. The Riyadh Agreement has twenty signatories, and of importance there is Article 25(b), which states that ‘each contracting party shall recognise the judgments made by the courts of any other contracting party in civil cases including … commercial’ cases. Moreover, this provision deems that, when needed, each of the countries shall ‘implement’ judicial orders from one signatory’s jurisdiction to another’s, and that such matters will have ‘the force of res judicata.’ The GCC Convention involves six parties, and its pertinent provision provides that they ‘shall execute the final judgments issued by the courts of any member state in civil, commercial and administrative cases …’ In addition, the UAE has a series of bilateral treaties on judicial enforcement, including those with Tunisia, India, China and France.

Several international lawyers stated these agreements theoretically should be of value and serve as important instruments that they can employ on behalf of their clients. Yet the aforementioned impasse, of trying to enforce judgments in other Emirates within the UAE, materialises here as well. Specifically, each of the above conventions has ‘procedural outs’ within them that allow courts in the non-originating jurisdiction to review the case at hand. It is true that these reviewing courts are not supposed to perform a substantive merits evaluation, but the lawyers who work in this area noted that the lines are often blurred between what is a procedural and substantive analysis. As such, judges retain the ability to review matters in more than just peripheral ways, especially if they decide to take an aggressive approach to their jobs as adjudicators—a troublesome possibility for practicing international lawyers.

Therefore, given these various hurdles that international lawyers saw as hindering enforcement of DIFC Court judgments (abroad and domestically), during the early years they offered a strategic piece of advice to their clients on matters of commercial dispute resolution: use arbitration.
From the time that they were established, the DIFC Courts had a set of supporters within the UAE who challenged the depiction detailed above. The first, perhaps most unlikely group, were officials working within the local Dubai courts. In my multiple trips to the Emirate, I spent time at the main courthouse in Dubai and met with influential figures there. The complex itself is a marvel of infrastructural and technological innovation. Contrary to the views presented by the international lawyers, the courthouse is neither chaotic nor haphazardly run. It is true, Arabic is the language of use, but there are also many placards with English translations and all of the court staff with whom I met spoke English as well. Upon entering, one sees a main entry foyer with administrative desks on both the left and right sides. In the middle is an area for people who are sitting and waiting their turn before being called by a staff official to proceed to the relevant stall to discuss the reason for their presence.

Past this main central area, there are courtrooms on the same floor and other administrative offices. Additional courts are located on higher-level floors. Particularly relevant is that since 2008 there has been a specialised ‘commercial court’ tasked with the expeditious handling of business-related cases. Its jurisdiction covers ‘trade issues ... [including] commercial contracts, banking, companies, intellectual property, stocks, arbitration, bankruptcy, air and maritime matters, and commercial agencies [and] attachments cases ... ’ Single judges will hear cases in which plaintiffs bring forth claims of AED 100,000 (USD 27,000) or less; for claims surpassing this amount, a three-judge panel is required. Furthermore, this court hears matters using the traditional civil-law approach: lawyers and parties can appear in person and submit required documents upon which the judge and an assigned court-expert deliberate. But there are also deliberations online, where the court can receive documents via its website and provide notifications, interim orders, and even final judgments electronically.

The reason that local court officials value the DIFC judiciary is because they perceive it as a nice complement to what they are doing. Consider Table 1, which draws on information given to me during my first trip to Dubai in 2014. It shows that for each type of case that it hears, not one category took more than one month before receiving a first hearing.

Table 1

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Average (in number of days)</th>
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<tbody>
<tr>
<td>Attachments</td>
<td>30</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>21</td>
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<tr>
<td>Air and Maritime</td>
<td>28</td>
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<tr>
<td>Commercial Power of Attoracy</td>
<td>33</td>
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<tr>
<td>Arbitration</td>
<td>26</td>
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<tr>
<td>Intellectual Property</td>
<td>29</td>
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<tr>
<td>Companies</td>
<td>29</td>
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<tr>
<td>Commercial Papers</td>
<td>27</td>
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<tr>
<td>Banking</td>
<td>30</td>
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<tr>
<td>Commercial Contracts</td>
<td>26</td>
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During my most recent research collection, Dubai officials provided me with supplemental data showing that as of the end of 2016, the average wait time had increased only slightly for commercial cases—to 44.3 days. Furthermore, the 2016 statistics also indicate that 17,639 cases have entered the commercial court since its creation, but that it takes just a little over three months (111.4 days) on average for a judgment to be rendered after the first hearing, with 93.2 percent of cases resolved without being appealed.76

Although they cannot show causality, local court officials certainly believe that having another forum, such as the DIFC Courts, which hears matters like those listed in Table 1 and prides itself on efficient resolution, assists in projecting the image that Dubai is a world-class hub for commercial activity. An Arab commercial law lawyer who works at prestigious regional firm also held similar sentiments. This individual conveyed how he and his colleagues routinely advise their foreign clients to opt in to the DIFC Courts as a forum to resolve disputes, whereas with their Arab clients they recommend using the Dubai commercial court. He added that it is incorrect to suggest that the latter only hears petty matters and is unsophisticated or unfamiliar with how to handle complicated issues. ‘The court can hear cases worth many millions of dollars,’ he stated.77

Ultimately, local Dubai officials are keenly interested in seeing the Emirate’s economy thrive. In part, for that to happen, their view is that there has to be continued, deep, and sustained investment from abroad. Given that the DIFC Courts seek to facilitate legal predictability, transparency and certainty for overseas investors in much of the same way that the local commercial court does for its clientele, the DIFC Courts’ presence in Dubai increases the likelihood that foreigners will see the UAE as a welcoming place to do business.

For businesses and multinational companies, the legal professionals on the front lines are in-house counsel. These lawyers, however, often see a disconnect between their needs and those of the outside law firms they hire for legal representation. One main disagreement that can occur is on how best to settle disputes.

According to the in-house counsel interviewed, the protracted nature of the tactics and strategies used by law firm lawyers with whom they engage is the cause of much frustration. In particular, the insistence by law firm lawyers on employing arbitration as the main vehicle for resolving disputes was questioned.78 One in-house lawyer even went so far as to claim ‘this whole arbitration thing is a scam.’ While other in-house colleagues see that view as extreme, for several reasons there is a belief that arbitration is not necessarily the only means of dealing with conflict.

To begin, the possibility (and potential pitfalls) of arbitration arises when a company enters into a deal with another party and the contract calls for provisions on how best to resolve future disputes.79 On basic deals, in-house lawyers will routinely handle such negotiations. While they will frequently include an arbitration clause within the contract, it is also not uncommon for them to incorporate a ‘split provision’, with the court chosen for litigation to be the DIFC Courts. On more complicated transactions, however, in-house lawyers will turn to their staple of law firms for consultation, and it is in these situations where tensions can emerge.80

Specifically, in-house lawyers stated that they felt unsatisfied by the heavy reliance law firm lawyers placed on arbitration. ‘What does it even mean to prevail in arbitration?’81 asked the legal counsel interviewed, the protracted nature of the tactics and strategies used by law firm lawyers with whom they engage is the cause of much frustration. In particular, the insistence by law firm lawyers on employing arbitration as the main vehicle for resolving disputes was questioned.82 While other in-house colleagues see that view as extreme, for several reasons there is a belief that arbitration is not necessarily the only means of dealing with conflict.

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experiences, experiences of others, or upon general perceptions they have formed, in-house lawyers have a favourable impression of the DIFC Courts. The expediency that the Courts can provide is perhaps the most attractive feature. Specifically, the DIFC Courts can and do regularly issue summary judgment orders. The procedure allows cases to be resolved quickly and without the laborious, unnecessary hassle (in the eyes of in-house lawyers) of prolonged litigation.85

In addition, rulings by the DIFC Courts can have precedential value for future cases and are thus useful for in-house lawyers to consider as they make legal decisions on behalf of their employers. In-house lawyers believe that being able to insert the DIFC Courts option as the forum for recourse within a contract provides another benefit as well. Because parties know that the DIFC Courts place a premium on resolving matters expeditiously and definitively—and that the loser of litigation is required to pay legal costs for both sides—they work hard to avoid being in court. Hence, the parties have an incentive to execute the terms of the contract, and where they cannot, they tend to settle rather than resorting to the DIFC Courts. Both the presence and legitimacy of the DIFC Courts, therefore, serve as motivation for the parties to adhere to the agreement they signed and as a deterrent to parties who are considering not fulfilling their contractual obligations.86

There is a corps of lawyers who work in international law firms but who do not have to the conventional views of dispute settlement. As one of these respondents stated, ‘The majority of international lawyers are sceptical of anything except for arbitration.’57 This individual and a minority of others stated that they are sympathetic to the views of the in-house lawyers. Moreover, although these international lawyers used arbitration and felt that it had important benefits and advantages, they also conceded that it can be an expensive method of dispute resolution—especially when compared to the DIFC Courts. A final reason cited for why these lawyers value the DIFC Courts relates to their admiration for the sitting judges.58 As discussed in the last chapter, the DIFC bench is comprised of judges from different parts of the world, including Australia, Britain, Malaysia, Singapore, and the UAE, and they are well-reputed. Their experience is deep, and the questions they ask during proceedings illustrate they have studied the cases beforehand and care about the justice being administered. In fact, some lawyers stated that they had actually appeared before certain judges in those judges’ respective home jurisdictions. ‘In my experience, they are every bit as good here as they were there,’ one lawyer remarked. Other lawyers echoed this sentiment, and as for the Emirati judges on the DIFC Courts, lawyers familiar with them also commented positively on their legal acumen.59

In the previous chapter, Sir Anthony commented on Mark Beer’s role in shaping the DIFC Courts into a global institution. Within the DIFC, Beer’s staff respects him greatly and, like him, they too are strong champions of the DIFC Courts. Beer and his colleagues are resolute in presenting not just a rebuttal but also a powerful, affirmative case for why the DIFC Courts are necessary and vital to the strength of Dubai’s growth as an international business hub.

First, Beer flatly rejects the point that DIFC Courts’ judgments are difficult to enforce in Dubai, the greater UAE, or abroad. ‘Suggestions that DIFC Courts’ decisions are any harder to enforce in the Middle East than other UAE courts’ decisions or arbitral awards are simply misguided and, sadly, on occasion, intentionally misleading so as to steer unsuspecting clients into a more expensive, time-consuming and opaque process with little chance of effective enforcement,’ says Beer.60 As previously stated, it is a requirement that DIFC Courts’ judgments are enforced through the Dubai Courts, in accordance with the Federal Civil Procedures Law61 and Dubai Law 16 of 2011.62 Beer’s office keeps a running tally of how ‘[t]here are a number of cases where DIFC Courts’ orders have been enforced by the Dubai Courts ... [even now including] interim orders, such as freezing orders (Mareva injunctions),’63 and arbitration ratification decrees.64 According to Beer, the DIFC Courts are integrated within, and are part and parcel of, the Dubai and UAE judicial system.65

Given this approach, then, the second area of concern—relating to whether DIFC judicial orders are enforceable in another Emirate, such as Abu Dhabi—should be alleviated. (The DIFC Courts have also recently signed a MOU with the Abu Dhabi Judicial Department regarding cooperation and the issue relating to enforcement.) A basic element of the UAE’s judicial system is that court orders from one Emirate are respected and enforced in another. II DIFC Courts’ judgments are recognised and enforceable by (and on par with) the local Dubai court rulings, then it only follows that DIFC judicial orders should be recognised within the other Emirates as well.66 While some international lawyers may question this proposition, not all do, and there are those who have issued legal opinions or written articles affirming this contention.67

Moreover, this type of excessive worrying about enforcement misses a key point discussed earlier on the DIFC Courts’ workload. Recall that over 90 per cent of all of the cases that come before the DIFC Courts settle before there is a final judgment. In fact, ‘[t]he DIFC Courts are set up to promote settlement. Settlement not only saves parties time and money but it allows them to work together in the future and to continue doing business.’68 The notion that there is somehow a flood of judgments emerging from the DIFC Courts that are in need of enforcement in other

Supportive Foreign Lawyers

Advisors Inside the DIFC
Emirates is not the reality. That it has not been common for a DIFC judgment’s enforceability to be routinely tested in a place like Abu Dhabi is not indicative of a fear of using the DIFC Courts, but rather, and less dramatically, merely symptomatic of the absence of a situation in which this issue has arisen. This is because, as Beer reiterated, parties typically settle—a key for why they deeply value the process.100

This rebuttal by Beer also relates to another issue that he believes is an improper metric by which to evaluate the DIFC Courts. Some observers discussed above wondered how busy the Courts really are, and whether, given how few cases go to trial, the DIFC judiciary makes a substantive difference in the lives of businesspeople working in the region. For Beer, this is a spurious point, because as he remarked, judging a court by how many cases are on a docket is similar to evaluating a hospital based on the number of patients that are in sickbeds or are dying.101 If a court is doing its job, and its judgments are perceived as legitimate, efficient, final, and enforceable, then rational parties (many of whom will have contracted for the DIFC Courts as the forum to settle disputes) will not need the Court to tell them the outcome, or that the outcome will be effectively enforced. Put another way, the greater the certainty and trust that the DIFC Courts will deliver justice consistently and in accordance with the law, the more able a law firm is to advise its client on the probable outcome of any claim—and so the greater the likelihood of a pre-filing settlement.

Regarding enforcement beyond the country’s borders, since the DIFC Courts are on equal footing with the Dubai local courts, there is no issue with enforcing DIFC judgments in countries that are parties to the GCC Protocol or the Riyadh Convention, or within states with which the UAE has a bilateral treaty. For other countries, the memoranda that Beer has facilitated between the DIFC judiciary and the courts in Britain, the US, Singapore and Australia, for example, do matter and clearly signal these judges’ respect for DIFC Court judgments and vice versa. Beer, of course, knows that these memoranda are not binding treaties. But judges, judicial organisations and even bar associations from different geographic locations regularly enter into cooperative arrangements and memorialise them by signing MOUs. Moreover it is not so remarkable that judges from different jurisdictions: a) see the positive work from the DIFC Courts; b) recognise that the Courts have the endorsement of the UAE government; and c) are willing to respect and enforce judgments that emerge from the DIFC judiciary. If the Courts were not held in such high regard, and if enforcement was going to be a problem, then why would eminent jurists from different jurisdictions even meet, let alone sign cooperative agreements that impact their own reputations?103

In sum, Beer’s charge is to do what is best and just for parties engaging in commercial transactions. This attitude also explains his decision to meet with members of the Dubai legal community, including arbitration lawyers, to discuss ways of “convert[ing] a DIFC Courts judgment into an arbitral award [and] providing greater enforcement internationally under the provisions of the New York Convention of 1958,” an idea originally proposed by Tim Taylor, QC but then subsequently developed by Chief Justice Hwang.104 The choice between opting for the DIFC judicial process or arbitration is not a zero-sum game. As Chapter One discussed, the DIFC Courts regularly work with arbitration lawyers (particularly those using DIFC-LCIA arbitration), namely when arbitral awards need to be ratified. Therefore, Beer welcomes opportunities to work with the arbitration bar—especially since his ultimate objective remains providing the business community with the comfort of knowing that the DIFC Courts operate in a collaborative, efficient, and commercially friendly manner.106

***
As we have seen, initially the Courts started with an approach that might be deemed as conservative and strictly interpretive in matters involving statutory construction—even where they acknowledged that the outcome might be unfair or wrong. As the years went on, however, the Courts then became bolder, leading to decisions such as *Corinth* and the series of judgments that followed. Yet, as the discussion of the 2017 cases illustrate, particularly at the Court of Appeal level, there has recently been a slight twist to this narrative. The Court of Appeal’s decisions in two key employment cases involving Asif Hakim Adil and Peter Gray, respectively, showed a judiciary returning to more of its pre-*Corinth* tendencies. At the same time, however, the decision in the David Haigh case, where Haigh was allowed to move ahead with his defences in spite of his criticisms towards the process, showed a Court that was tolerant and willing to permit a case to proceed in order to ensure the protection of a defendant’s rights.

What might have prompted the Court of Appeal to decide these employment matters in these particular ways? One theory is that during 2016 and 2017 the climate surrounding—and domestic attitudes toward—the DIFC Courts became increasingly more circumspect. (Chapter Three delves further into this issue.) Perhaps then the Courts wanted to carefully position themselves in a fashion so that there could be no question that they were, first and foremost, a neutral decision-making institution that had to faithfully follow the law, even if that meant ceding jurisdiction in a Peter Gray-type case on the one hand, while allowing a litigant who had castigated them the right to proceed with his array of defences at trial, on the other.

The second objective of this chapter has been to discuss whether these Court-rulings are being translated from judgments on paper into tangible relief for the winning side. This issue, during the early years, was of major concern to different stakeholders who expressed scepticism that such judgments meant anything substantive outside of the DIFC’s boundaries. But as the rebuttals to this perspective demonstrate, various Court judgments have been recognised and enforced in different jurisdictions—onshore in Dubai, within the UAE, around the region, and in different parts of the world. Given these developments, supporters have good reason to feel positive about all that the DIFC Courts have accomplished in such a short period of time.

However, as Chapter Three will next detail, these sentiments have had to be placed in check due to a significant development that has recently occurred and has remained unresolved as of this writing. As several of the judges have remarked, the DIFC Courts’ experiment could be seriously tested because of tensions that have emerged with the local Dubai judiciary. We turn to this issue now.
APPENDIX A

(* = Firms Registered At The DIFC)

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<tr>
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This is an updated version from what the pilot study in 2014 compiled. The list of firms relied on the following databases: DIFC Client Directory [http://www.difc.ae/browse-directory/indexUAE]; The International Law Office Directory [http://www.internationallawoffice.com/directory/]; Linked In [http://www.linkedin.com]; and The Legal 500 [http://www.legal500.com/c/united-emirates/directory]. The Appendix also includes names of some firms from observers who know the Dubai market, and then these firms were contacted to verify their presence and years they were founded. Though Diane Hamade, has suggested that there are closer to 100 international law firms operating in Dubai, the 2014 pilot study and this updated version are only able to definitively locate the firms within this table. (Duma Hamade, Lack of Regulation Leads to a Free-for-All in Legal Practice, THE NATIONAL, Oct. 26, 2011, http://www.thenational.ae/thenationalconversation/comment/lack-of-regulation-leads-to-a-free-for-all-in-legal-practices) There were a number of firms listed only in Abu Dhabi, or in other Emirates outside of Dubai, meaning that the number of total firms in the UAE may be closer to 100. There are also a few firms that have started in Dubai, but now have offices outside of the UAE. Furthermore, a few firms that were registered at the DIFC in the years immediately preceding the global financial crisis in 2008 closed their offices following the crisis. In 2012 and 2013, however, there seems to have been a slight uptick in major international firms establishing offices in Dubai. The Government of Dubai Legal Affairs Department was emailed, but a confirmation of the number of international firms currently practicing in its Emirate was not received.

* Clifford Chance established its office in the UAE in 1975.
* This firm sees its Europe and UAE office as co-equals and does not designate one as a home office over the other. See http://www.davidson-legal.com/.
* This firm was known as Dumon & Arago, but it no longer exists in Dubai because its founder, Bertrand Dumon, opened an eponymous firm (Dumon & Partners) that now operates in Dubai (and Lusanne and Paris). It is difficult to ascertain whether the new firm consisits itself as having been established in Dubai, or in France, as it refers to itself as an ‘independent law firm.’
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* This firm sees its Saudi and UAE offices as co-equal. See http://www.houranisassociates.com/home.html.

† This firm was a merger between King & Wood Mallesons & SJ Berwin in 2013 and sees its strength as having hubs in the UK and Hong Kong.

‡ Note, this firm has changed its formal name to Wragge & Co., but the change is not yet reflected on the DIFC website.

§ This firm has law offices in Europe but it is a business consultancy in Dubai, and does not dispense legal advice.

∥ In their Dubai practice, Morgan, Lewis & Bockius operates in association with Mohammed Buhashem Advocates & Legal Consultants.
### THE STORY OF THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

**DIFC Judgments and the Debate Over Enforceability: Jurisprudence and the Challenges in the Early Years**

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<td>White &amp; Case</td>
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11. This firm is a merger between Norton Rose, which was based in the UK, and Fulbright & Jaworski, which was based in the US.

12. Though Simmons & Simmons has been operating in the Middle East for over three decades, their first Dubai office was established in 2005. In 2007, they shifted to the DIFC complex.

13. The firm Squires Sanders & Dempsey merged with Patton Boggs in 2014. The DIFC lists the firm as Patton Boggs, but that is likely because it has not been updated.
Mark Beer, Registrar General of DIFC Courts, addresses a delegation from Beijing.
This year, 2018, marks a momentous year in the history of the DIFC Courts. Namely, it serves as the ten-year anniversary of Sir Anthony’s commemorative 2008 speech as well as Dr Michael Hwang’s tenure as Chief Justice. Chapter One has already provided a brief biography of Chief Justice Hwang. In an effort to examine what a decade as Chief Justice has meant to him, I had the opportunity to spend four days with Dr Hwang, interviewing him extensively for two of the days as well as accompanying him to events, meetings, and dinners on the others. Beyond his elite credentials and impressive professional experiences, the Chief Justice, personally, is a warm, engaging, curious, and deeply contemplative person. He is soft-spoken and humble, yet he is clearly a strong-minded and strong-willed individual who commands respect from his peers and the lawyers and parties who appear in front of him.1

Chief Justice Hwang explained to me the recent developments that have occurred regarding the DIFC Courts and the local Dubai judiciary. Specifically, on 9 June 2016, HH the Ruler of Dubai signed ‘Decree 19’, which set forth ‘the establishment of a Judicial Tribunal for the Dubai Courts and DIFC Courts’.2 Michael Black, QC and Tom Montagu-Smith, QC, the drafters of the rules for the DIFC Courts, have written a thoughtful analysis on the implications of this decree.3 As their paper indicates, Decree 19 was passed in the context of a DIFC judiciary that had not shied away from exercising its jurisdictional authority, along the lines of what was discussed in Chapter Two. Citing the powers granted under Article 7 of the Judicial Authority Law [JAL] and several of the cases discussed earlier (e.g., Corinth, National Bonds, and Standard Chartered)—where the Courts affirmatively exhibited their reach—Black and Montagu-Smith argue that it was inevitable that tensions between the DIFC Courts and the local Dubai judiciary would emerge.4

Yet, the conflict was accentuated even more when it came to ‘the enforcement of arbitration awards ...’5 Recall from Chapter Two that the DIFC Courts had established that they could serve as a conduit, in order to allow a party to enforce a foreign judgment onshore—or outside the parameters of the DIFC’s borders. As Black and Montagu-Smith point out, the JAL also mandates that the local Dubai courts and the DIFC Courts act reciprocally towards one another when it comes to recognising and executing arbitration awards, including those that are foreign-based. Otherwise put, ‘the JAL permits a party to enforce a foreign arbitration award in the DIFC Courts and then seek execution in the Dubai Courts.’6 Moreover, Articles 42-44 of the DIFC Arbitration Law (2008, amended in 2013) were intentionally written to empower the DIFC Courts in arbitral award cases and to be read together with the JAL.7
Given the explicit language of these statutes, it should not be surprising that the DIFC Courts would seek to apply them to the cases that emerged. For example, in two key decisions the Courts held that they could enforce a foreign award irrespective of whether there was a nexus to the DIFC itself. In Egan v Eava, the Court of First Instance dealt with a case involving claimants who looked to have a foreign arbitration award enforced against a company that was headquartered onshore in Dubai but that had no connection to the DIFC. In denying the defendant’s contention that the DIFC Courts had no jurisdiction to hear this matter, Sir John Chadwick stated that the reading of the DIFC Arbitration Law, together with the JAL, precisely gave the Courts the power to adjudicate. Building upon this decision, the Court of Appeal in Banyan Tree Corporate Pte Ltd v Meydan Group LLC held that it could enforce a foreign arbitration award even where neither party was based in the DIFC and where the arbitral seat was onshore, or, in other words, outside of the DIFC but still in Dubai.

The DIFC Courts have also been willing to concede that there are constitutional or public policy problems when interpreting the JAL and the Arbitration Law together. Such an argument was indeed made by the defendants in Fiske and Firmin v Eiraeche. For the Court of First Instance, which heard this case, the intentions of the drafters of both laws were clear, and as such it held that any claims that recognition and enforcement by the DIFC Courts would be against UAE public policy... [or against] the DIFC Arbitration Law must fail. In addition, the Courts have taken other steps to enhance their power in arbitration matters. First, they have stated that they have the right to interpret contracts that reference local Dubai Courts or onshore Dubai law for arbitration purposes to necessarily include the DIFC Courts and DIFC laws. Second, the DIFC Courts also see themselves as being able to issue “an order enforcing interim measures granted by the arbitral tribunal... [upon request] (from the tribunal).” This power is critical because a losing party during an arbitration may seek to hide reachable assets before an award is provided; thus such an order by the DIFC Courts can block this effort.

And third, the DIFC Courts have decided to ‘stay’ a DIFC judicial matter while a foreign arbitration is pending—thereby illustrating their respect for the proceeding taking place abroad, as well as the belief that the foreign outcome can subsequently be brought to the DIFC for recognition and enforcement. Recall that in Chapter Two, the DWS’s case was discussed, where the Court of First Instance allowed a case to continue in the DIFC despite a foreign arbitration that was occurring in London at the LCIA. However, as later cases show, DWS was an anomaly. This precedent has not been followed, including in the important case of International Electromechanical Services Co. LLC v (1) Al Fattan Engineering LLC and (2) Al Fattan Properties LLC, which held that a DIFC-case should indeed be stayed where an arbitration outside of the DIFC was ongoing. The reason is because of the risk that an ongoing foreign arbitration would create conflicting decisions and duplicative costs unnecessary to the resolution of the case.

These decisions on arbitration matters and foreign judgments illustrate that the DIFC Courts are a global, international institution, which understands, respects and enforces commercial law outcomes that occur outside of Dubai, within Dubai. And for a moment, the local Dubai courts were on board as well. Consider the case of Oger Dubai LLC v Daman Real Estate Capital Partners Ltd. Here, an arbitration award went against Daman, and Oger wanted to enforce the decision in the DIFC, because of where Daman’s assets were located. Because the seat of the arbitration was onshore at the Dubai International Arbitration Centre, Daman asked the local Dubai Court, and then subsequently the Dubai Court of Appeal, to nullify the arbitral judgment. Subsequently, Daman also asked the DIFC Courts to suspend or adjourn its decision on enforcement until the local Dubai courts had completed their review. The DIFC Courts agreed to do so temporarily so long as Daman “post[ed] security in the amount of the award and the costs.” The local Dubai judiciary ultimately refused to interven, stating that they had no jurisdiction and holding that this matter needed to be settled by the DIFC Courts. It would seem as though this case would thus be resolved. But with the introduction of Decree 19 in 2016, the story had only just begun. The Judicial Tribunal [JT], which was established by Decree 19 became an important institution in this case. The JT was comprised of seven members—three from the DIFC (Chief Justice Hwang, Deputy Chief Justice Sir David Steel, and Justice Omar Al Muhairi), three from the Dubai Courts (Chief Justice of the Dubai Court of Cassation, Dr Ali Ibrahim Al Iman, Justice Essa Mohammed Sharif, and Chief Justice of the Dubai Court of First Instance, Justice Jassim Baqer), and the Secretary General of the Dubai Judicial Council (Chancellor Khalifa Rashid bin Demas), Chief Justice Al Iman served also as the President of the JT, thus giving him effectively two votes in the event of a deadlock. (Note: The Decree did not mandate that all members sit together at one time in order to hear a case. Instead, it stated that “[d]ecisions of the Judicial Tribunal will be carried [out] by a majority of the voting members in attendance”).

Returning to the case, Daman decided to appeal to the Dubai Court of Cassation. At the same time, Daman also filed a motion in the JT, asking it “to decide which of the two courts [the DIFC Courts or the local Dubai Courts] is competent to determine this case” in full. In its first official ruling, the JT issued a split judgment, with the President casting the deciding vote and the DIFC Courts’ justices comprising the dissent. For the
majority, the case was clear: that both sets of courts were capable of rendering a valid lawful judgment. The case on nullifying the award was first brought to the local Dubai Courts, and consequently it could remain within this track. Moreover, given that the Dubai Court of Cassation still had not reached a decision, the JT held that it would be unwise to allow the DIFC Courts to continue proceeding with enforcement orders, especially if the Cassation Court came back with a judgment saying that the entire matter should stay within the local Dubai judiciary. As such, the majority ruled that the ‘DIFC Courts should cease from entertaining the case.’

In a short dissent led by Chief Justice Hwang, the three DIFC Courts’ members disagreed. According to the dissent, the JT went beyond its mandate. In one thing, he notes, the case started in the local Dubai Courts and thus there is a logical argument for it should have remained there. (He does offer counter-arguments to this point, though.)

Still, even with this nuanced perspective, the overall effect of Decree 19, the creation of the JT and the Oger decision left many who had been working-in or supportive of the DIFC Courts to wonder. Add to this that in December 2017, the local Dubai Courts again found ‘that both the Dubai Courts—and not the DIFC Courts—were the proper venue to decide on ratifying or annulling the arbitral award. In contrast, Liu answered by contending that only the DIFC Courts had jurisdiction on these issues."

The dissent, citing the first three points from Oger into its opinion, expressed its disagreement. Chief Justice Hwang then added an important line by stating that ‘[e]ach Court is ... free to deal with the pending applications before it in accordance with the laws applicable to such applications.’

Given its specific facts, Dubai Waterfront presented the JT ‘with a true conduit jurisdiction case’, whereby there was an opportunity to defer to the line of precedent from the DIFC Courts. Yet, the majority’s ruling did not take this approach. (Note: As of this writing, the Dubai Court of Cassation has recently ruled in favour of Liu and sent the case to the DIFC Courts for a rehearing. That decision, to be made by Sir David Steel, is currently pending.)

Concerning this case within its jurisdiction according to the relevant governing its jurisdiction."

What was the effect of this decision by the JT insofar as the jurisdictional relationship between the DIFC Courts and the local Dubai jurisdiction was concerned? Gordon Blanke, an arbitration expert based in Dubai, has argued that the judgment ‘may not have [had] as far-reaching implications as may appear at first sight.’ For one thing, he notes, the case started in the local Dubai Courts and thus there is a logical argument for it should have remained there. (He does offer counter-arguments to this point, though.) But perhaps more importantly, Blanke points out that the language of the majority opinion gives room for a distinction between one court dealing with nullification or ‘annulment’ and another addressing the enforcement issue.

The facts of this case mirrored Oger, in that an onshore arbitral award was issued by the Dubai International Arbitration Centre that went against Dubai Waterfront, which was a Dubai-based company. Dubai Waterfront moved to annul the award in the Dubai Courts, while the respondent, Chenshan Liu, petitioned the DIFC Courts to recognise and enforce the award, which occurred. Subsequently, Dubai Waterfront asked the JT to declare that the Dubai Courts—and not the DIFC Courts—were the proper venue to decide on ratifying or annulling the arbitral award. In contrast, Liu answered by contending that only the DIFC Courts had jurisdiction on these issues.

In another split decision from the JT (again with the President casting the deciding vote), the judges from the Dubai Courts again found ‘that both courts had concurrent jurisdiction to entertain this case.’ [stating]: ‘The DIFC and all its institutions were not adversary parties in this dispute. The arbitration did not concern a transaction or a contract of sale concluded or to be performed within the boundaries of the DIFC. Also there was no agreement between the parties on jurisdiction to the DIFC Courts to decide this case.’

As such, the JT ordered a stoppage to all proceedings within the DIFC and ruled in favour of Dubai Waterfront.
This trend of narrowing the DIFC Courts’ purview continued beyond the JT with what prominent English QC Rupert Reed referred to as a ‘shock decision of the Dubai Courts’ shortly thereafter. On 15 February 2017, the Dubai Court of First Instance ruled that the key, above-mentioned Banyan Tree decision by the DIFC’s Court of Appeal had been wrongly decided. In fact, the Dubai Court took aim at three separate aspects of Banyan Tree, voiding each of them. Reed, together with co-author Amr Abdelhadi, dissected the Arabic-written opinion of the Dubai Court and summarised the judgment in the following manner:

A). The domestic courts should be considered the ‘default’ venue for cases of concurrent jurisdiction.

B). The DIFC Courts should retain jurisdiction over matters within the DIFC or where parties ‘opt in’, but for all other cases outside of it, they lacked jurisdiction to entertain hearings or to offer opinions; and

C). Whenever a holding by a court ‘lacks the fundamental qualities of a valid judgment, ... it shall be considered a nullity.’

As Reed and Abdelhadi explain, the implication was that:

(i) ‘there is no need for ... [a DIFC] judgment to be challenged by way of appeal; [because]

(ii) it has no binding force [but nevertheless]

(iii) it does not prevent any party from referring the matter to the [domestic] courts of ordinary jurisdiction.’

Otherwise put, the Dubai Court’s ruling had two consequences. First, it placed into question judgments that had been, or were going to be, issued by the DIFC Courts. Second, it allowed for parties to challenge an outcome from the DIFC Courts in a local Dubai Court, thus vitiating the long-held understanding that the two sets of courts existed as parallel institutional partners.

Reed and Abdelhadi argue that not only did this rationale allow the Dubai Court to strike down the pivotal DIFC Banyan Tree case, but that it also did more. Namely, it enabled the Dubai Court affirmatively to reference and interpret the 2009 Protocol of Enforcement (which set forth a mutual understanding of reciprocity between the two judiciaries) in a new way: to permit the Dubai Court ‘to determine whether a judgment presented to it for enforcement was within the jurisdiction of the DIFC Courts.’ According to Reed and Abdelhadi, such an interpretation was contrary to the intent of the JAL (Article 5A(1)(e)), which gave the DIFC Courts sole control to decide whether they could hear a matter under either Article 24 of the DIFC Court Law or Article 42 of the DIFC Arbitration Law. As of this writing, it is unclear if or when this unprecedented decision will be considered by the Dubai Court of Appeal.
Dr Ahmad Saeed bin Hazeem, former Director General of the Dubai Courts, and Sir Anthony Evans, former Chief Justice of DIFC Courts, sign a Protocol of Enforcement in 2009.
In the first case of 2017, the Gulf Navigation party appeared against Jinhai Heavy Industry Company. And once again, the case involved the enforcement of a foreign arbitral award, issued originally by the London International Maritime Arbitrators Association (LMAA), which found in favour of Jinhai Heavy in the amount of USD 14.55 million. (The LMAA held that Gulf Navigation had breached a shipbuilding contract by failing to make good on a second instalment-payment of a vessel that Jinhai Heavy had built.) Gulf Navigation moved to vacate the award in the London Commercial Court, which rejected this motion, and then subsequently, Jinhai Heavy sought to enforce it in the DIFC Courts in November 2015. Less than a month later the DIFC Courts issued a judgment recognising and enforcing this award, which Gulf Navigation never challenged—even though it had a right to do so. In January 2016, Gulf Navigation sought a postponement of the arbitral enforcement, arguing that before this order had been issued, it had asked an onshore Dubai Courts body—the Amicable Settlement of Disputes Centre (ASDC)—to rehear the case. The question for the JT was whether Gulf Navigation could proceed with its claim in the ASDC. In an extraordinary opinion, the majority, led by the set of judges from the Dubai Courts, said yes. Ruling that the ASDC ‘had been established by the [Dubai] Law No. 16/2009 … [which] provides that this Center is attached to the [Dubai] courts … [and that any] settlement rendered by the Center is to be confirmed by the [Dubai Courts] judge,’ the majority concluded that ‘the Center is an integral part of the Dubai Courts.’ The JT then proceeded to hold that the DIFC Courts could no longer be involved with this case, justifying its decision by saying that it wanted to promote harmony and avoid potential contradictory opinions coming out of two different judiciaries. In fact, it concluded that ‘[a]ccording to the general principles of laws embodied in the procedure laws[,] and since [the] Dubai Courts have the general jurisdiction, they are the competent courts to entertain this case.’
The DIFC-bloc issued a dissent. To begin, it noted that not once had Gulf Navigation objected to the jurisdiction of the LMAA while that arbitration was ongoing. After the English Commercial Court refused to set aside the award, protocol dictated that all signatories to the 1958 New York Convention (which includes the UAE) recognise and enforce it. In fact, it is important to reproduce portions of the dissent that systematically rebut what it believed were the majority’s ‘incorrect statement of international law’.51 To begin, the dissent noted that ‘part of Dubai law … provided for in Article II:3) of the New York Convention (“NYC”) which has been acceded to by the UAE,’52 holds that where ‘parties agree to refer a dispute … to the courts … or to other proceedings, [the] DIFCC has exclusive jurisdiction to hear this case.’53

The dissent then went on to say that Article 42 also gives the DIFC Courts the power to enforce awards. And it finally concluded by citing Article 8(2)(7) of Dubai Law No. 9 of 2004 (as amended by Law No. 7 of 2011), as well as Article 4 of Decree 19 of 2016, to state it ‘respectfully disagree[d] with’ the majority’s rationale.54

For the dissent, in sum, the majority’s ruling left great unpredictability for future parties. Recall, the application by Gulf Navigation to have this case be heard by the ASDC came after proceedings to recognise and enforce the award in the DIFC Courts had commenced, which should have quashed any subsequent hearing in any other court within the Emirate. Moreover, Gulf Navigation had never raised a jurisdictional objection to the DIFC Courts until the matter came before the JT. Instead, when it originally approached the DIFC Courts it had asked for a stay, which the dissent observed showed Gulf Navigation ‘expressly recognizing that [the] DIFCC has jurisdiction to hear the case, and was asking the DIFCC to exercise its jurisdiction in [its] favour …’55

In fact, the dissent replicated these points in a second case during the 2017 term where the respondent, Sweet Homes Real Estate LLC, had won an onshore arbitration award in the Dubai International Arbitration Centre, against a one

Ramadan Mishmish.56 Mishmish applied to the Dubai Courts to set aside the award; thereafter, Sweet Homes moved to have the award recognised and enforced in the DIFC Courts, which was eventually issued. Mishmish then filed a motion in the Union Supreme Court, which ruled that the JT was best able to determine the jurisdiction of this matter. The JT held that the local Dubai Courts were the proper venue for all of the reasons stated in its Gulf Navigation decision. And similar to before, the dissent reiterated its position that Dubai’s own law and the DIFC Arbitration Law mandated that it could recognise and enforce this DIAC award.57

And in Endofa DMCC v D’Amico Shipping Italy, the majority votes from the JT held that an English commercial court judgment could not be enforced by the DIFC Courts. The respondent had sued and won a judgment in London against the appellant for the latter’s failure to pay for the shipping of crude oil it had transported from Ghana to Germany. The appellant argued that there had been delays in the delivery that negated its obligation to pay, and in the alternative that even if a judgment had been rendered in England, the DIFC Courts did not have jurisdiction over it because it was an onshore Dubai company that did not have any connection with the DIFC … [and] neither assets … nor any business connection with the DIFC’.58

The majority was persuaded by the appellant’s argument and thereafter prohibited the DIFC Courts from continuing with any further proceedings on the matter. It then held that where a case is present in both sets of courts, it does not matter when either was filed, so long as the JT had not yet delivered a judgment. Otherwise put, after Endofa it would appear that a party could use the onshore courts at any time (prior to a JT verdict) as a means of halting what otherwise would be a legitimate procedure in the DIFC Courts. As the dissent stated, such behaviour by a party would be an ‘abuse of process’.59

At the same time, it is important to note that the remainder of the cases from the 2017 term were all unanimous. In Emirates Trading Agency LLC v Rocimar International, N.V., the JT unanimously dismissed the appellant’s challenge to a DIFC recognition and enforcement judgment of a London Commercial Court ruling.60 This was a relatively easy case. There was no competing case in the local Dubai Courts and the appellant had “waived … objection”61 to the DIFC Courts to hear the matter originally. Note, the Endofa dissent entered into this decision in terms of the Emirates Trading appellant’s motion that the DIFC Courts were unconstitutional. However, the JT rejected this plea outright—and drew directly upon additional language of the previous dissent led by Chief Justice Hwang.62 As the Tribunal in Emirates Trading stated, only the Federal Supreme Court could adjudicate on this question, and it was improper and “groundless”63 for the appellant to expect anything otherwise.
Indeed, the final three cases of the 2017 term continued this trend of unanimity, leading some to speculate recently that the ‘[p]endulum [has] swung back in favour of the DIFC Courts’. In *Assas Investments Limited v Fius Capital Limited*, the JT unanimously upheld the enforcement of a DIFC-LCIA arbitration award by the DIFC Courts. Even though the respondent was concurrently pursuing a claim against the appellant in the local Dubai Courts, the JT unanimously found no conflict or problem of jurisdictional confusion. The reason was because each of the ‘parallel execution proceedings’ involved the respondent seeking to reach separate assets of the appellant—one set located within the DIFC and the other located onshore.

The Tribunal then heard a follow-up to its 2016 case involving IGP and Standard Chartered. Recall that in 2016 the JT sided with the respondent in allowing the DIFC Courts to continue to proceed with the case it was hearing because of the appellant’s earlier acknowledgment that the matter was in the proper venue. In this 2017 case, IGP wanted to make counterclaims in the DIFC Courts, which the Courts were willing to allow so long as IGP ‘abandon[ed] its petition before the Union Supreme Court [that the DIFC was the improper venue] and that ... [it] settle[d] the costs ordered in the ... [earlier] proceedings.’ IGP refused and brought this second case to the JT asking it to nullify these pre-conditions. The Tribunal adamantly refused to do so, citing the independence of both the DIFC Courts and the local Dubai Courts to administer their own procedural affairs.

In the final case of 2017, a Cayman Island company, VIH, contracted with Assas OPCO Limited to manage a hotel that the latter owned. Assas cancelled the agreement with VIH after accusing it of hiring employees without correct documentation and not having a valid license to operate in Dubai. Thereafter, VIH sought a stay within the DIFC Courts, while Assas went to the local Dubai Courts to invalidate the entire agreement. The DIFC Courts granted the stay while an arbitration (which was provided for in the original agreement) was to commence in order to resolve the dispute. Assas argued that strictly based on past case law the JT ought to send the matter to the local Dubai Courts as the venue of ordinary jurisdiction. Instead, a unanimous Tribunal held that even though both sets of courts had pending cases before them, because neither had issued a substantive ruling, there was no need to disrupt the interim measure that had been issued by the DIFC Courts. As the panel held, ‘at this stage, there is no conflict of jurisdiction between the two courts ... [and as such the Tribunal] should not intervene.’

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To review, we have seen that 2016 was a pivotal year for the DIFC Courts. Decree 19 was passed and the JT came into existence, which thereafter issued split-judgments in Oger and Dubai World. However, the JT followed up these cases, per endnote 38 above, with unanimous decisions in Marine Logistics Solutions LLC, Gulf Navigation Holding and Investment Group Private LTC. Subsequently, the JT then split again on three early cases of 2017, but the last four cases that it heard during this term all resulted in unanimous judgments.

For some observers, the split opinions in 2016 and 2017 may raise two related questions. First, did the JT seek to curtail the DIFC Courts’ authority in the areas of recognising and enforcing foreign judgments and foreign arbitral awards? Otherwise put, as the DIFC Courts’ jurisdiction has expanded over the years, might the local judiciary (and thereby the judges from the local Dubai Courts sitting on the JT) have felt as though there had been unnecessary encroachment on certain matters that the latter thought should be left to it?

Although it may be attractive to answer these questions in the affirmative, upon reflection a more measured analysis is needed. Consider that a good number of the JT’s cases—particularly those at the end of its 2017 term—were unanimously decided. While it may be tempting to accentuate the differences between the JT’s justices from the local Dubai Courts and those from the DIFC, in reality overall there was mutual agreement among the members of the Tribunal in the majority of the matters that were heard. Particularly in these latter unanimously held cases, there was consensus among the JT justices as to the DIFC Courts’ jurisdictional, recognition and enforcement powers—as well as to its constitutionality.

Still, it is important to ask, especially as we enter the tenth year of Chief Justice Hwang’s tenure, what the developments of Decree 19 and the JT mean for the DIFC Courts. As this book goes to print, the DIFC Court of First Instance, in the spring of 2018, issued a ruling that Gordon Blanke has described as providing ‘encouraging sobriety and ... breath[ing] life back into the DIFC Courts’ status as a conduit jurisdiction.’ But overall, in the years ahead, what will the Courts look like and will they continue to be able to thrive? Are reforms to Decree 19 on the horizon, and if so, when, and what might these amendments be? The concluding chapter of this study will attempt to address these queries. It then will set forth what the broader lessons of this experiment have been for Dubai as well as for other jurisdictions that are contemplating establishing similar types of courts of their own, or are already in the process of doing so.
CONCLUSION

The preceding chapters have outlined how the DIFC Courts first emerged and then evolved into the institution they are today. The Introduction placed the DIFC Courts narrative into the larger literature of foreign legal actors operating in this era of globalisation. Also within this chapter, the argument was made that the oft-provided, binary description of foreign legal actors being either the ‘good guys’ or ‘bad guys’ was too simplistic and did not offer texture or nuance to what is more frequently a complicated story.

From there, Chapter One detailed the mechanics of how the DIFC Courts came into existence. There was a focus on both the legislative and regulatory frameworks that helped establish the Courts, along with a discussion of the visionaries who initiated the plans of formation. This chapter also included an overview of how the DIFC Courts are structured, and how there have been changes over time in their operation. It concluded with a discussion of the Courts’ caseload and brief biographies of the judges who have served.

Chapter Two then moved into a two-part discussion. Part one focused on the evolution of the Courts’ jurisprudence; part two concentrated on the high-stakes debate over the actual enforceability of the judgments from the Courts. In terms of the former, in the early years the Courts were restrained in how they addressed matters of statutory and regulatory interpretation along with questions relating to their own jurisdictional authority. As time progressed, however, and the Courts gained more institutional maturity, this attitude shifted and led to greater boldness and a willingness to play a more expansive role both within and outside of the Emirate. But as was explained, beginning in 2015, the Courts, sensing resistance, carefully and strategically scaled back this intentional, purposive approach. In terms of the enforceability debate, extensive interview data from a range of stakeholders were presented, followed by a powerful articulation from DIFC officials as to the significant advances that have been made on this front.

BRIEF SUMMARY
Finally, Chapter Three offered a detailed analysis of the events that have occurred since the government’s enactment of Decree 19 in 2016. There was an examination of the case law from the Judicial Tribunal (JT), which emerged in 2016 and was tasked with resolving jurisdictional conflicts between the DIFC Courts and the local Dubai Courts. Initially, as was discussed, in Oger and Dubai World, the JT sided with the Dubai Courts. In response, the judges representing the DIFC Courts penned two respective dissents emphasizing the importance of considering the existing precedent that had interpreted DIFC law, Emirati law and international law, which they argued should have led to opposite results. However, as was also noted in Chapter Three, notwithstanding three other split decisions, in the majority of matters heard by the JT, unanimity was reached by the judges, including in the last set of crucial cases of 2017. Regarding these cases, for the JT, the facts, circumstances and contexts of them were distinguishable from the decisions, for example, in Oger and Dubai Water. Therefore, a binary analysis on whether the JT has been starkly positive or starkly negative for the DIFC Courts is not likely to capture the full picture of the Tribunal’s actions or its jurisprudence. In other words, the story is complicated.

Moreover, as this book is being completed during the first quarter of 2018, it is too early to know whether the consensus-based approach that was witnessed at the end of the last term will continue, or whether cases will split once again along the lines of Oger, Dubai World or the three other non-unanimous rulings in 2017. This question may even be rendered moot in the months ahead. Several lawyers with whom I spoke stated that Decree 19 is soon likely to witness amendments. In fact, one of Dubai’s most prestigious domestic firms, Al Tamimi & Company, published a careful evaluation of the Decree and noted that while the original version offered some new ‘welcome requirements’ to the administration of justice on commercial law matters, overall it still needed ‘greater clarity’ in order for the legal system as a whole to ‘operate more efficiently ... ’ As of this writing, the only such version of the law is in Arabic, which means that the DIFC Courts, foreign lawyers and foreign clients must rely on unofficial translations, which do not carry the same force of law within the Emirate.

In addition, Al Tamimi & Co. has noted that procedural ambiguities have been present within the Decree from the start. For example, when the Decree was passed, there was no mention of how respondents were to be notified that a proceeding within the JT had been launched against them. Nor was there guidance on how and by what deadline respondents were to rebut such charges. Furthermore, it was uncertain as to whether, according to the Decree, the decisions of the JT were to have prospective or retroactive effect. Various lawyers also worried that the language of the Decree would enable parties to use the JT as an omnibus appellate forum, which then would allow for protracted delays—the exact opposite intention of the Decree itself.

As stated, plans for amending Decree 19 appear to be underway. One senior, prominent lawyer even noted to me that such changes were going to occur this year. The reason, according to this individual, was because future uncertainty or a lack of consensus from the JT has the potential to spark unwanted consequences. Namely, Dubai wishes to remain a friendly environment for foreign investors. Furthermore, it is keen to consolidate the globalisation enterprise that it has worked so hard to build over the last two decades. In order to facilitate such continuity, the Emirate’s institutions, including the JT, want a clear remit on how best to accomplish this objective while also being able to maintain and uphold the rule of law. Many of the important stakeholders in this conversation have these goals in common, and they thus await word on what changes will be made to the Decree in the future.
The Dubai Courts and the DIFC Courts sign a Memorandum of Understanding in 2009.
Assuming that Decree 19 is eventually reformed in the manner that the above advocates so wish, there is an even larger issue that confronts Dubai —namely, ensuring that its legal system is capable of accommodating the opportunities, pressures and challenges that come with competing within a global economy. The Emirate is keen to make the case to the international investor community that the lawyers who work within it have the skills to service what can often be complicated demands of sophisticated clients, especially in front of a global commercial court. The architects of the DIFC Courts, from their inception, were keenly aware of this point. And so, perhaps not surprisingly, dating back to 2004, the Courts were engaged in more than just their ‘core responsibilities of managing cases and issuing judgments.’

The Courts’ framers believed that because Dubai did not have a formal bar association, it was incumbent to help nurture and develop its legal profession and broader legal ecosystem. In particular, during the first decade of their existence, the Courts provided a series of ‘ancillary services’ to those working within the DIFC Courts. These activities included legal aid to the needy, serving as a disciplinary body for lawyers, promoting professional responsibility to practitioners, conducting training and continuing legal educational programmes, and producing relevant literature pertaining to the DIFC Courts and DIFC law. As time progressed and the number of cases entering the Courts was increasing, which limited the time that could be spent on those ancillary matters, there was growing consensus among Courts personnel that these services required further institutionalisation and administrative independence.

In 2015, under the leadership of Chief Justice Hwang, a major change occurred. As eluded to in Chapter One, a year earlier, the Chief Justice had received enhanced powers, under Dubai Law No. 7 of 2014 (amending Law No. 9 of 2004), which officially established a body known as the Dispute Resolution Authority (DRA). The DRA was to serve as the umbrella structure overseeing ‘a. the Centre’s Courts; the Arbitration Centre; and any other tribunals or ancillary bodies in accordance with Article 8(5)(b) of this Law.’ The Chief Justice was also deemed to be the ‘Head’ of the DRA, which allowed him to address issues relating to the operations of the legal profession within the DIFC. In this capacity, Chief Justice Hwang (in May of 2015) issued Dispute Resolution Authority Order No. 2, in which he declared: ‘By this Order, in my capacity as Head of the DRA and Chief Justice of the DIFC Courts, I hereby transfer to the DIFC DRA Academy the following ancillary legal services currently provided by the DIFC Courts, namely: (i) the Pro Bono Programme; (ii) the Registration of Practitioners and observance of the DIFC Courts Mandatory Code of Conduct and the DIFC Courts Code of Best Legal Professional Practice; (iii) all current DIFC Courts training programmes such as the DIFC Courts Certificate in Laws and Procedures, Advocacy Training, Lecture Series and Arabic Language Seminars on the Laws and Practices of the DIFC Courts; (iv) the publication of DIFC Courts related literature such as the DIFC Courts Rules (RDC), legal textbooks and articles, Law Reports and newsletters; (v) the Education Sub-Committee (ESC); and (vi) the Annual Legal Gala Dinner, as well as other networking events between DIFC Courts and members of the legal profession.

The DRA Academy will act as an independent entity separate from the Courts.

The main aims and activities of the DRA Academy shall include but not be limited to: the dissemination of information and provision of training on DIFC Courts Laws and Procedures; the registration of practitioners before the DIFC Courts and the promotion and maintenance of access to justice and legal professional ethics; and the hosting of events for the benefit of the legal community.”

THE LEGAL PROFESSION AND THE DIFC COURTS’ ROLE IN CREATION OF THE AOL
The aspirations of the AOL were similar. As David Gallo, Director of the AOL has stated, there are multiple goals of this organisation. To begin, the AOL is centred on operationalising the Chief Justice’s above-stated directive by working on three main areas: Learning and Development (L&D); Corporate Social Responsibility (CSR); and Legal System Development (LSD). Under L&D, there is a two-prong focus: a). an emphasis on the publication of practice-oriented literature and b). the teaching of lawyers on how to enhance cross-jurisdictional legal knowledge. For the CSR and LSD areas, three objectives are priorities: a). registering and regulating DIFC Courts’ practitioners; b). providing pro bono legal services; and c). fostering networking opportunities that allow for the ‘shar[ing] of professional knowledge’ among participating stakeholders.

Consider that in two years (2016 and 2017), and with just a five-member staff (including Gallo), there has been a wide range of activities. For example, the AOL has a register of over eighty law firms and approximately 283 individual lawyers. There have been intensive training sessions on the common law to Emirati lawyers, which Gallo sees as a productive way to engage the domestic bar. Conversely, the AOL has held seminars on civil law practice for foreign common law lawyers unfamiliar with this system. Approximately 100 separate educational events have been held with nearly 2,000 total participants attending. The AOL has facilitated pro bono legal clinics with over 130 lawyers participating, which have helped around 1,200 people. And various publications have been issued, such as legal commentaries, court reports, and court rules.

Relatively, there has been an array of partnerships with institutions such as City University of London, American University in the Emirates, New York University and Middlesex University, along with collaborations with the Dubai Legal Affairs Department. These relationships have promoted continuing legal education for practitioners as well as courses for law students that emphasise global legal practice. Included as part of these initiatives is a special AOL-coordinated course hosted by the American company Barbri, which prepares enrolees to take the California and New York bar exams. (Thus far, forty-four students have registered for this course.) And the AOL is working with Barbri International, London, along with the Law Society of England and Wales and the Solicitors Regulatory Authority, on a plan that would eventually permit lawyers from the Emirate and other Gulf Cooperation Council states to qualify as English solicitors.

Finally, in an effort to provide further dispute resolution services and varied types of assistance to the community, the AOL has also sought to serve two other units that were created: the Arbitration Institute and the Wills and Probate Registry. Regarding the former, a bit of background is perhaps required. In 2008, the DIFC established a joint venture with the London Court of International Arbitration (LCIA) within its campus. Over the years, this DIFC-LCIA office saw its workload stagnate, to the point where up until 2014 it could almost be viewed as moribund. Since November 2015, the Arbitration Institute has been in charge of the management and administration of arbitrations in which the parties had selected DIFC-LCIA Rules, [effectively] leading to the relaunch of DIFC-LCIA. The result has been that “[t]he case load of the DIFC-LCIA has seen a significant surge in the past 12 months.”

In terms of the DIFC Wills and Probate Registry (now known as the Wills Service Centre), this office “was established to provide non-Muslims with assets and/or children in Dubai with the option to choose the DIFC Courts through which to enforce their inheritance wishes as an alternative to other judicial routes.” Since the Registry has only been in operation for less than two years, it is difficult to know how this office will perform in the long-term, but the aspirations are high as indicated by the hiring of a former Clifford Chance solicitor, Sean Hird, as its Director. In fact, according to Hird, there were already 1,245 registrations filed with the office in 2016 and 1,481 in 2017.

Both these initiatives highlight an overarching theme that traces its roots back to the founding of the DIFC Courts. Recall, the Courts were originally established to help attract foreigners to invest in Dubai. If there was going to be a surge of commercial interest, the theory was that there needed to be a stable, transparent judicial institution that would adhere to rule of law standards upon which these investors could feel secure. The AOL’s work with the Arbitration Institute and Wills Service Centre, therefore, is simply an extension of this idea, whereby services are provided—whether in the form of providing legal education on alternative dispute resolution, instilling confidence in the probate process, or developing commentaries on laws—so that legal professionals are equipped with the necessary skills to carry out the overall mission of the Academy.
Thus, it is clear that the goal of the AOL—and the DIFC Courts before it—has been to educate and train students and lawyers to be globally sophisticated actors who can participate in Dubai’s growth as an economic hub for the region and beyond. The theory under which the leaders of the AOL are working relates back to parts of the literature discussed in the Introduction—namely that where there are professionals in a country who promote a legal system that values open borders, globalisation, transparency and the rule of law, commercial growth for that country will likely follow. As such, reforming Decree 19 is only one part of the equation for those who are hoping that Dubai will remain a key destination for the international investor community. Developing and maintaining a sound legal profession—that has its roots in the principles that are promoted by the AOL—is another central aspect of this process. Fortunately, the early signs are positive (and the efforts are certainly sincere) that this body has made a substantive impact thus far.
The DIFC Courts experiment has spawned other jurisdictions—both within and outside the UAE—to consider whether they too should establish global commercial courts of their own. It is worth noting that in 2015 the ‘Abu Dhabi Global Market Courts’ (ADGM) were built within a campus similar to that of the DIFC’s.20 These ADGM Courts are:

‘broadly modelled on the English judicial system ... [Furthermore], [t]he foundation of the civil and commercial law in [the] ADGM is provided by the Application of English Law Regulations 2015. Those Regulations make English common law (including the rules and principles of equity) directly applicable in [the] ADGM. In addition, a wide ranging set of well-established English statutes on civil matters are also made applicable in [the] ADGM.’21

**IMPLICATIONS:**

**WHAT LIES AHEAD**

The ADGM Courts are relatively new and the number of judgments posted on their website, from either the Court of First Instance or Court of Appeal level, is limited. But the personnel of the Courts are impressive. The Right Honourable Lord David Hope sits as the Chief Justice, which has been seen as a noteworthy appointment because of his decades of experience in the UK as a lawyer, judge and Member of Parliament.22 Alongside Lord Hope are seven other judges who have worked in jurisdictions including England, Scotland, Hong Kong, Australia and New Zealand.23 And the Registrar of the ADGM Courts is Linda Fitz-Alan who was appointed in 2015. She hails from Australia where she previously held the position of CEO and Principal Registrar of the New South Wales Supreme Court. (Before that posting, she was a respected private practitioner in Sydney.)24 As the years progress, it will be interesting to see how the ADGM Courts develop and what the parallels, similarities, and differences are with the DIFC Courts.

Then there has been another international commercial court that has sprung-up in Chief Justice Hwang’s home jurisdiction, Singapore, which established its forum under the Singapore High Court in 2015.25 Other jurisdictions are contemplating doing the same—including in Australia, Belgium, China (with three international commercial courts of their own being developed), France, the Netherlands and Kazakhstan.26 Indeed, 2018 will mark the official opening of both the Netherlands Commercial Court and the Astana International Financial Centre Court (AIFCC). With the former, the plan is to operate in English while using Dutch procedural law. The theory is that such a combined approach has the benefits of employing the ‘lingua franca’ of ‘global commercial business’ with the ease of relying on civil law remedies that ‘can be quite difficult to secure in English speaking common law jurisdictions.’27 As for the AIFCC, interestingly it will have Lord Harry Woolf from the UK serving as its first Chairman and Chief Justice,28 and he ‘will be joined by eight others [from the UK] to run the first commercial court of its type in Eurasia.’29

With all of these developments, what impact might there be on the longer-standing commercial courts that have existed in places such as Delaware (US), New York (i.e. the commercial division of the Supreme Court of New York), London, Hong Kong and New South Wales? It seems hard to believe that given their reputation, the older, more established commercial courts will be substantively or adversely affected, in terms of the amount of cases they see coming before them.

Yet can the same be said for the DIFC Courts? What might this new competition mean for them? From the above it can be seen that the DIFC Courts are not alone in this competition. If anything, the competition is likely to increase as many jurisdictions, both within and outside the UAE, are considering establishing their own global commercial courts. The DIFC Courts will need to adapt and evolve to remain competitive in this new environment.28

The story of the Dubai International Financial Centre Courts...
Not surprisingly, there is a counter to this argument—from not just foreigners but from various local stakeholders as well. To begin, Dubai has long had judges and staff from other jurisdictions (mainly Arabic-speaking countries) who have served in its judiciary. More specifically, the foreign professionals of the DIFC Courts never entered Dubai in an effort to exert domination. Instead, from the start and throughout the process, they were, and continue to be, invited. Furthermore, these actors have sought to work cooperatively with the Dubai government in order to establish and consolidate the DIFC Courts into a globally respected institution.

According to this perspective, it is also important not to forget that Dubai has only recently begun to recover from the 2008–2009 global financial crisis. These advocates claim that having Dubai’s global commercial courts continue to be staffed with highly reputed, experienced professionals who are intimately familiar with English commercial law is essential for there to be stability in the system. Additionally, judges from abroad provide judicial independence and the necessary assurance to international investors that Dubai will stay true to its commitment on those protocols to which the UAE has signed—especially as it relates to the recognition and enforcement of foreign judgments and foreign arbitral awards.

So to reiterate, what then is the future of the DIFC Courts? Jurisdictions contemplating establishing their own commercial courts are astutely watching the events in Dubai to see how developments will play out, as well as for lessons that they can apply to their own respective contexts. To be sure, the framers who imagined and boldly established the Courts clearly deserve commendation, and it would be unfortunate if all of the good work that has been done to date does not continue well into the future. Of course, as we have seen, there have been various challenges that have emerged over the years. And new ones certainly are to follow. How the Courts—and the other important, relevant stakeholders—respond to existing and future hurdles will likely determine what becomes of this institution. Otherwise put, until we know what exactly will transpire over the next few years regarding the DIFC Courts, this story cannot yet be fully completed. For now, therefore, we will simply have to wait and see.
HE Justice Ali Shamis Al Madhani (UAE), Justice Roger Giles (Australia), former Deputy Chief Justice Sir David Steel (England and Wales), HE Justice Omar Juma Al Muhairi (UAE), Chief Justice Michael Hwang SC (Singapore), former Deputy Chief Justice John Chadwick (England and Wales), Justice Tun Zaki bin Azmi (Malaysia), Justice Sir Jeremy Cooke (England and Wales), Justice Sir Richard Field (England and Wales) and HE Justice Shamlan Al Sawalehi (UAE).
NOTES

INTRODUCTION


3 See author interview with Sir Anthony Evans, Nov. 1, 2017.

4 Portions of this paragraph are excerpted, with permission from the publisher, Juris, from Jayanth K. Krishnan and Priya Purohit, supra note 4 at 499. (For further references and footnotes, see original article.)

5 See id at 498. (For further references and footnotes, see original article.)

6 See id. (For further references and footnotes, see original article.)

7 See Mark F. Massoud, International Arbitration and Judicial Politics in Authoritarian States, 39 LAW & SOCIAL INQUIRY 1, 6 (2014) (discussing the means by which a government would attempt to align its economic interests with those of its foreign investors to mitigate any risk factors associated with investment).


See OKECHUKWU ORO, PROBLEMS AND CHALLENGES FOR LAWYERS IN AFRICA: LESSONS FROM NIGERIA (2007) 221.


This chapter will draw upon excerpted pages from Krishnan and Purohit, supra note 4. Permission provided by the publishers, Juris.

13 The DIFC was created in 1994 as the Centre for Commercial Conciliation and Arbitration, and then evolved into the institution it is now, in 2004. See Dubai International Arbitration Centre, http://www. dubaichamber.com/wp-content/uploads/2008/01/diac.pdf.

14 See Krishnan and Purohit, supra note 4.

15 Parts of this paragraph draw upon excerpted pages from Krishnan and Purohit, supra note 4 at 499-500. Permission provided by the publishers, Juris.

16 See id at 300-301.

The listing of these firms is placed in Appendix A of Chapter 2, because of its direct relevance to the discussion in that chapter. Also note, that while there were 70 firms in 2014, Appendix A now lists only 60 firms because of the updating that has been done to that table as of 2018. To determine the experience level of the lawyers selected for interviews, an examination of their biographies was conducted and there was consultation with several of the sources listed in Appendix A. There was also reliance on the social science method of ‘snowballing’ whereby several experienced lawyers were selected based on recommendations made by initial lawyers contacted.

The DIFC Courts, https://www.difccourts.ae/about/difc-authority.

CHAPTER ONE

The Establishment, Development, and Growth of the DIFC Courts...


Information from this paragraph comes from an author interview with Sir Anthony Evans, Nov. 1, 2017.

See author interview with Sir Anthony Evans, Nov. 1, 2017.

See id.

See DIFC Authority Website, https://www.difc.ae/about/difc-authority.

Author interview with Sir Anthony Evans, Nov. 1, 2017. Also see 17 April 2007 – Sir Anthony Evans, the Chief Justice of the DIFC Courts Speech During the Inauguration of the DIFC Courts, https://www.difccourts.ae/2007/04/17/17-
Watherston established the Courts share a commitment to justice and the rule of law, and it is open to anyone who feels that the business, in seeking a swift and effective resolution to commercial disputes.

Also, author interview with Amna Sultan Al Owais, Oct. 29, 2017.


Note, the concluding chapter picks-up on this point by discussing, in particular, the work of the Academy of Law, which has taken on the role of organizing, educating, and training lawyers interested in working in the DIFC Courts.

The information for this paragraph and the one following it draws upon the following sources: Author interview with Sir Anthony Evans, Nov. 1, 2017; Webpage for Q.C. Tom Montagu Smith, https://xxiv.co.uk/barrister/tom-montagu-smith/; Author interview with Essam Al Tamimi, (Partner, Al Tamimi & Company) and a well-connected Emirati lawyer who works closely with the government, Nov. 1, 2007; Speech of Sir Anthony Evans, Dispute Resolution in the DIFC, Oct. 2008, https://www.difccourts.ae/2008/10/01/dispute-resolution-in-the-difc-2/?print=print (although also noting his worry about these technological developments posing problems. For instance, he refers to the possible circumstance of neither the judge nor lawyer being in the courtroom in Dubai as being ‘ludicrous’ and possibly becoming ‘an issue under international law.’ For this reason, he believed that having a formal courtroom in Dubai was crucial and that judges and parties needed to be physically present whenever possible.)

Portions of this paragraph are excerpted, with permission from the publisher, Juris, from: Jayanth Purohit, 'The DIFC as a forum for resolving commercial disputes: A model for the future?' (2007). Also see supra note 21 at 918b-00144feab49a.

See Krishna and Purushot, supra note 21 at 501-504. (For further references and footnotes, see original article.)

P. 26


The sources for which this paragraph draws from include: author interviews with Sir Anthony Evans, Nov. 1, 2017 and Nov. 2, 2017; Simon Kent, Dubai Settles Lawsuit as Recovery Beckons, FINANCIAL TIMES, Oct. 11, 2011, https://www.ft.com/content/5a3930d6-cfd4-11e0-91b0-00114afca49a.

See Krishna and Purushot, supra note 21 at 501-504. (For further references and footnotes, see original article.)

See Alejandro Carballi, ‘The DIFC: Dubai International Financial Centre: Common Law Oasis or Mirage within the UAE, 21 ARAB LAW QUARTERLY 91 at 93-94 (2007). Also see id.

See DIFC Website, https://www.difccourts.ae/
The members of the Small Claims Tribunal are: H.E. Justice Omar Juma Al Mehairi, Registrar General Mark Beer, Co-Chief Executive and Registrar Anna Sultan Al Owais, SCT Judge and Registrar Nasir Al Nassir, and Judicial Officer, Maha Khalid Al Mehairi. See https://www.difccourts.ae/about-the-courts/courts-structure.

See id at both cites. Note, portions of this paragraph are excerpted, with permission from the publisher, Juris, from: Krishnan and Purohit, supra note 21 at 502-504. (For further references and footnotes, see original article.)

See id at all cites.

For background on the DIFC courts’ structure, see its website at http://difccourts.ae/about-the-courts/courts-structure.

Note, portions of this paragraph are excerpted, with permission from the publisher, Juris, from: Krishnan and Purohit, supra note 21 at 502-504. (For further references and footnotes, see original article.)


Id. Also see https://www.difccourts.ae/about-the-courts/courts-structure.


Note, portions of this paragraph are excerpted, with permission from the publisher, Juris, from: Krishnan and Purohit, supra note 21 at 502-504. (For further references and footnotes, see original article.)


Note, portions of this paragraph and the next are excerpted, with permission from the publisher, Juris, from: Krishnan and Purohit, supra note 21 at 503-504. (For further references and footnotes, see original article.)

See correspondence from Sir Anthony Evans, Apr. 4, 2018.

The information for this paragraph draws from author interview with Sir John Chadwick on two different occasions: Nov. 2, 2017; Sept. 7, 2015 (in preparation for research on the Dubai World Tribunal). Also see, Sir John Chadwick Retires, Cayman Islands Judicial Administration (N.D.), https://www.judicial.ky/sir-john-chadwick-retires;, MONDOVISONE, supra note 44.


The information for this paragraph draws from H.E. Justice Omar Juma Al Mehairi’s homepage, which can be accessed, https://www.difccourts.ae/about-the-courts/courts-structure/judges/.

The information for this paragraph comes from the author’s interview with Justice Zaki Ameen, Oct. 30, 2017.

The information for this paragraph draws from the author’s interview with Justice Zaki Ameen, Oct. 30, 2017. Also see DIFC Courts’ website, https://www.difccourts.ae/about-the-courts/courts-structure/judges/.

The information for this paragraph draws from the author’s interview with Justice Zaki Ameen, Oct. 30, 2017.

The information for this paragraph comes from H.E. Justice Omar Juma Al Mehairi’s homepage, which can be accessed, https://www.difccourts.ae/about-the-courts/courts-structure/judges/.

The information for this paragraph draws from H.E. Justice Omar Juma Al Mehairi’s homepage, which can be accessed, https://www.difccourts.ae/about-the-courts/courts-structure/judges/.

The information for this paragraph comes from the author’s interview with Justice Zaki Ameen, Oct. 30, 2017. Also see DIFC Courts’ website, https://www.difccourts.ae/about-the-courts/courts-structure/judges/.

The information for this paragraph comes from the author’s interview with Justice Zaki Ameen, Oct. 30, 2017.

The information for this paragraph draws from the author’s interview with Justice Zaki Ameen, Oct. 30, 2017.
CHAPTER TWO

DIFC Judgments and the Debate Over Enforceability: Jurisprudence and the Challenges in the Early Years


3. See id. Note, the DIFC Insolvency Law could have engaged in prioritising what the DIFC Authority issued appropriate regulations (which at the time it had not, although such regulations were issued subsequently).

4. See id.

5. See id. Although note, the DIFC Authority did issue supplemental regulations subsequent to the case.


7. See id.

8. See id.

9. See id.

10. See id.

11. See id.


13. See id.

14. The information for this section draws from a report provided to the author by Natasha Bakirci. See Bakirci, supra note 16.

15. See id.

16. See id at 3; also see Deyaar Development P.J.S.C v Taaleem P.J.S.C. & National Bonds Corporation P.J.S.C. [2015] DIFC CA 010. Also see, supra id.

17. See Bakirci, supra note 16 at 3.

18. See id at 4; also see Fidex v Melco [2015] DIFC CA 002.

19. See id at 1; also see Investment Group Private Ltd v Standard Chartered Bank, [2015] DIFC CA 004.

20. See Bakirci, supra note 16 at 3-5; also see Proietiti Member Firm (Middle East) Ltd v Al Maiil and another [2016] DIFC CA 003.

21. See Bakirci, supra note 16 at 2; also see DNB Bank ASYA v Gulf Eyadah Corporation & Gulf Navigation Holding PJSC CA/008/2015.

22. The information for this paragraph draws from the author’s interview with Justice Giles, Oct. 30, 2017. Also see DIFC Courts’ website, https://www.difccourts.ac.ae/court-structure/judges/.

23. The information for this paragraph draws from his One Essex Court website, http://www.oeclaw.co.uk/bar-stories/fullstory/thedon-steven-richard-smith/; as well as the DIFC Courts’ website, https://www.difccourts.ac.ae/court-structure/judges/.


25. The information for this paragraph comes from the author’s interview with Justice Prakash on Oct. 30, 2017, as well as from the DIFC Courts’ website, https://www.difccourts.ac.ae/court-structure/judges/.

26. The information for this paragraph comes from the author’s interview with Justice Prakash on Oct. 30, 2017, as well as from the DIFC Courts’ website, https://www.difccourts.ac.ae/court-structure/judges/.

27. As Bakirci has noted: ‘In the earlier case of Bocimar International NV v Emirates Trading Agency LLC, [2013] DIFC CFI 008, Deputy Chief Justice John Chadwick held, in the context of proceedings under Part 8 of the Rules of the DIFC Courts (RDC) for entry of a judgment in respect of judgment debts arising under two orders made in the Commercial Court of England and Wales, that once judgment is entered in the DIFC Courts, it becomes a judgment of the DIFC Courts.’ See Bakirci, supra note 16 at 2.


29. For a discussion of this episode, see Bakirci, supra note 16 at 2.


Se id at paragraph 16.


See the premises was occupied.)


See Veluthedath (3) RAG Foodstuff Situated Case, see Ilyas Gaffar:

See id at paragraph 7.


to the GCC Convention in 1996.


65 Se id.

66 Se id.

67 Se Gulf Cooperation Council Convention 1993. The parties are: UAE, Qatar, Oman, Bahrain, Saudi Arabia, and Kuwait. See also DIFC COURTS Enforcement Guide, supra note 60. Also note these other bilateral treaties: (a) the Agreement on Legal and Judicial Cooperation with Somalia (1972); (b) the Agreement on Legal and Judicial Cooperation with Jordan (1999); (c) the Agreement on Legal and Judicial Cooperation with Egypt (2000); (d) the Agreement on Legal and Judicial Cooperation with Syria (2002); (e) the Treaty on Mutual Legal Assistance in Criminal Matters, Extradition of Offenders, Cooperation in Civil, Commercial and Personal Matters, Service of Judicial and Extra-Judicial Documents, Obtaining Evidence, Commissions and the Recognition and Enforcement of Foreign Judgments and Arbitral Awards with Sudan (2005); (f) the Treaty on Judicial Cooperation in Criminal Matters, Extradition of Offenders, Cooperation in Civil, Commercial and Personal Matters with Morocco (2006), (See Michael Black, Dubai: A Regional Arbitration Centre? An Introduction to the Legal Systems in Dubai and the UAE, Arbitration Law and the Need for Reform, Paper Presented at the Midwinter Meeting, Advanced Legal Concepts Learned from Complex Construction Projects, Feb 2-3, 2012, at 8, http://clients.squareeye.net/uploads/sxiv/documents/American_Barl_Association_Feb_2012_Michael_Black.pdf).

68 See, e.g., author interview with respondent on June 9, 2014. Echoing this sentiment were lawyers during author interviews on June 2, 2014 and June 5, 2014.

69 See id. at all cites.

70 See id. at all cites.

71 Again, like above, much of this section and the subsequent paragraphs are excerpted, with permission from the publisher, Jutris, and come from, Krishnan and Purdiah, supra note 54 at 507-520 (2014).


73 For a follow-up email correspondence, Aug. 3, 2014 and then telephone interview with a Dubai local courts official, telephone interview with a lawyer on July 4, 2014.

74 The information for Table 1 and for the data in these paragraphs come from: Commercial Court, supra note 75 at 70. Also see, Annual Report, Pioneers of Happiness for Dubai local courts 2016 at 20-21, http://www.dubaicourts.gov ae/jimage/files/annual_report_2016_EN_01.pdf.


76 As a lawyer on July 4, 2014.

77 See author's post-fieldwork interview with a lawyer on July 4, 2014.

78 See e.g., author interview with respondent, June 5, 2014.

79 See id.; see also author interview with respondent, June 6, 2014.

80 See author interview with respondent, June 5, 2014.

81 See id.

82 This paragraph and the next are drawn from author interview with respondent, June 4, 2014; author interview with respondent, June 7, 2014.

83 See id at both cites.

84 This paragraph draws upon id at both cites.
affirming this point. 

See e.g., author interview with respondent, June 8, 2014; also see author interview with two separate respondents, June 8, 2014; affirming this point. See id at all cites.


See author interview with Mark Beer, June 8, 2014. Also see, DIFC COURTS Enforcement Guide, supra note 60.

See DIFC COURTS Enforcement Guide, supra note 60.

See Rupert Chout, Slava Kiryushin, & Sarah Frech, Enforcement of Judgments between the English Commercial Court and Dubai’s DIFC Courts, LEXOLOGY, Feb 21, 2013, http://www.lexology.com/library/detail.aspx?g=51513c7b-439a-4276-975c-3386d6055429 [noting that where a DIFC Court’s judgment is to be enforced outside of Dubai in another emirate, enforcement will proceed in accordance with the relevant civil procedure rules and procedures that apply with respect to the enforcement of Dubai Court judgments in other emirates (e.g. Abu Dhabi, Ras Al-Khaimah, etc.)].


See id.

See id.

See author interview with Mark Beer, June 8, 2014. judgment, there nevertheless can be the practical problem of asset-tracing within Dubai, thereby making the physical seizure of assets from a defendant difficult. See e.g., DIFC ARB 001/2010.

See correspondence from Mark Beer, August 18, 2014 (noting, based on his studying of other arbitration centres’ websites and in discussions with other arbitration lawyers, ‘that the claimant using the DIFC Courts typically spends 100,000 AED or approximately $27,255 on court fees on a U.S. $6.5m dispute, in comparison to: a) SIM [Singapore International Arbitration Centre] where the costs would be roughly AED 90,000 or approximately $245,000; b) LCIA where the costs would be roughly AED 1.2 million or approximately $326,000. (However, note that the LCIA charges on an hourly basis so its fees can vary dramatically based on the complexity of the dispute); and c) the ICC where the fees would be roughly AED 1.6 million or approximately $435,000’).

This paragraph is based on information provided from author interview with Mark Beer, June 8, 2014.


This paragraph is based on information provided from author interview with Mark Beer, June 8, 2014.

See Dubai Decree No. 19 2016.


See id at paragraphs 7-18 (noting, in addition, that there were other cases that also highlighted this tension. Allianz Risk Transfer AG Dubai Branch v. Ali Amin Ahlia Insurance Company PJSC, [CFI-012-2012] (30 Apr 2013); Azam v Deyaar Developments, [CFI-024-2013] (9 December 2013); Brookfield Multiplex v DIFC Insolvencies, [CFI-026-2014] (28 July 2016)).

See id.

This sentence and paragraph draws directly from Barkici and Hart, supra note 7.

See id.

See id for this sentence and for the information from this paragraph. Also see, International Electromechanical Services Co. LLC v. (1) Al Fattan Engineering LLC and (2) Al Fattan Properties LLC, CFI 004/2012, judgment of 14 October 2012.


See [1] Egan (2) Eggert v (1) Esaa (2) Eln - judgment of 28 November 2014. For important background material and discussion of this case, see id and see Black and Montagu-Smith, supra note 3 at paragraph 21.

See Banyan Tree Corporate Pte Ltd v Meydan Group LLC, CA 003-2014. Also see Black and Montagu-Smith, supra note 3 at paragraph 23-22 and Barkici and Hart, supra note 7.

See [1] Fiske (2) Firmin v Fisch [2014] DIFC ARB 001. Also see Black and Montagu-Smith, supra note 3 at paragraph 22-23.

This sentence and paragraph draws directly from Barkici and Hart, supra note 7.

See id.

See id at paragraph 20. The preceding sentences also draw upon paragraph 20 of their article.
14 See Black and Montague-Smith, supra note 3 at paragraph 25.

15 This paragraph draws upon id. Also see Oger Dubai LLC v Daman Real Estate Capital Partners Limited, CH 03/2016.

also-for-helpful-guidance-on-the-
JT's-opinion;-see-Julian-Bailey-
et-al.,-Is-the-Oasis-Now-a-Mirage?--
Dwindling-the-Scope-of-the-DIFC-
Courts-'Conduit-Jurisdiction.'-

17 See id. Also see, Bodnar and Kenney, supra note 11 at 131.

dubai-djf-cl-tribunal-
also-for-helpful-guidance-on-the-
JT's-opinion;-see-Julian-Bailey-
et-al.,-Is-the-Oasis-Now-a-Mirage?--
Dwindling-the-Scope-of-the-DIFC-
Courts-'Conduit-Jurisdiction.'-


21 See id. Also see, Bodnar and Kenney, supra note 11 at 131.


the-full-decision-of-the-dubai-difc-judicial-tribunal-part-1/

24 See note 18 at 1. Also see, Bodnar and Kenney, supra note 11 at 131.

25 See Reed, supra note 30. (Note, the article itself was written by Reed and Amir Abedlahdi, however the headline referenced in supra note 30 is specified as being written only by Reed.)


27 See id.


29 See id.

30 Quoted from id.

31 See id. at 1-2 of dissenting opinion.

32 The authors’ emphasis of this point cannot be undermined. In fact, they also note that the Dubai Court relied on what they call ‘controversial jurisprudence,’ which did not comport to the UAE’s own Civil Procedures Law. See id.

33 Interestingly, three other decisions by the JT in 2016 were unanimously decided, highlighting how there was perhaps more unanimity between the two sets of courts that might have been expected. See e.g., Marine Logistics Solutions LLC and Others v. Wadi Wayza LLC and Others, Cassation 3/2016, https://www.difccourts.ae/wp-content/uploads/2017/10/Cassation-No-3-of-2016.pdf.

34 The quotes in this paragraph come from id at 3 of the majority opinion.

35 See id at 4-5 of the dissenting opinion.


38 The quotes in this paragraph come from id at 3 of the majority opinion.

39 See id.

40 See id.

41 This paragraph draws on both the majority and dissenting opinions from id in summarising the facts of this case.

42 The quotes in this paragraph come from id at 3 of the majority opinion.

43 See id at 4-5 of the dissenting opinion.

44 See id.

45 See id.

46 See id.

47 So id.

48 So id.

49 So id.

50 So id.

51 So id.

52 So id.

53 So id.

54 So id.

55 So id.

56 So id.

57 So id.

58 So id.

59 So id.

60 See id.

61 So id.
C O N C L U S I O N


2. See id; also see, Bodnar and Kenney, supra note 18 at 3-5.

3. This paragraph draws upon information provided in Smith, supra note 1, as well as from the interviews conducted with those in id. See also, *Judicial Tribunal for the DIFC Courts and Dubai Courts*, CLYDE & CO, June 29, 2016, see https://www.clydes.com/magazine/article/ new-judicial-tribunal-for-the-difc-courts-and-dubai-courts/Note, per these sources, even though the Decree mandated that the JT issue a ruling within 30 days of the submission of an application, the concern was that there would be multiple or subsequent submissions related to that one case, which would invariably prolong a final outcome.

4. Author interview with senior private sector lawyer who has connections within, and often advises, the government on such related issues, Nov. 1, 2017.

5. Also see author interview with David Gallo, May 7, 2018. In addition, Gallo provided a range of sources to the author that highlight these different points. See *The Oudit Middle East Legal Awards*, 2017 [on file with author], Academy of Law Overview Presentation [on file with author], DIFC Courts Bulletin of the Academy of Law [January-March; April-June; July-September; October-December] all (on file with author). Also see Local Learning, supra note 5. Also, over 90 law firms and approximately 285 individual lawyers have registered with the AOK.

6. This paragraph and the preceding one draw upon all of the sources cited in supra note 12. Also, according to data from the Academy of Law Overview Presentation, supra note 12, the AOK has provided scholarships to eight students from four universities over the last two years. And the annual networking event, known as the Legal Gala, which the author attended in 2017, has seen an increase by 18% in terms of attendees. In 2016, 632 people attended compared to 746 in 2017.


8. See id.


10. See id. Also see: author interview with Mark Berg, Chief Executive of the Dubai International Financial Centre’s Dispute Resolution Authority, Consultant Regitina, Small Claims Tribunal judge of the DIFC Courts, and Registrar to the Dubai World Tribunal May 2, 2018. Also see, author interview with David Gallo, Director of the Academy of Laws, May 7, 2018.

11. See id. Also see author interview with Mark Berg, May 2, 2018; author interview with David Gallo, May 7, 2018.

12. Also, according to data from the preceding one draw upon all of the sources cited in supra note 12. Also, according to data from the Academy of Law Overview Presentation, supra note 12, the AOK has provided scholarships to eight students from four universities over the last two years. And the annual networking event, known as the Legal Gala, which the author attended in 2017, has seen an increase by 18% in terms of attendees. In 2016, 632 people attended compared to 746 in 2017.

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14. See id.

15. See id.

16. See id.

17. See id.

18. See id. Also see, Bodnar and Kenney, supra note 18 at 132.

19. See generally id. Also see, Bodnar and Kenney, supra note 18 at 132.


21. See id at 4.

22. See id at 5.

23. See at 5-10.


25. See id at 3.

26. See id at 4.

27. The remaining portion of this paragraph draws on id at 3-5.

28. See id at 5. Also see, Bodnar and Kenney, supra note 18 at 132.

29. For an important analysis, see Blanke, *The DIFC Courts’ Conduct Jurisdiction*, supra note 32 (arguing that while ‘the body of JT case law precedent appears to ring the death knell for the DIFC Courts’ acquired status as a conduit jurisdiction... the time for a post mortem has not quite yet arrived, but it may do... sooner than you think!’ That said, there is a chance that, going forward, the general jurisdiction assumption which presently forms the basis of the JT’s support for the attribution of preferential jurisdiction onshore may be substituted with a first-seized rule.)


31. See id.

32. See note 18.


34. See note 16.

35. See note 12. The Wills and Probate Registry concentrates on assisting non-Muslims who are interested in investing in Dubai (and Ras Al Khaimah) by allowing them ‘the option to pass on their assets and/or appoint guardians for their children, in accordance with the instructions in their Will.’ [See https://difcwills.ae/].


23 See id. These justices include: The Right Honourable Lord Mark Saville (Experience – UK), the Honourable Kenneth Hayne (Experience – Australia), The New Honourable Sir Peter Blanchard (Experience – New Zealand), QC William Stone (Experience – Former Judge of the High Court’s Commercial List - Hong Kong), The Honourable Lord James McGhie (Experience – UK, notably Scotland); Sir Michael Burton (Experience – UK), and The Honourable Adam Smith (Experience – UK).


26 For both of these quotations, the Dutch law firm, Blenheim Advocaten, has produced a website on the Netherland Commercial Court, https://netherlands-commercial-court.com/#, and note that ‘Dutch freezing/Mareva injunctions ... can be attained with relative ease to prevent assets located in the Netherlands from being removed from the jurisdiction or otherwise disposed of pending the completion of proceedings.’

27 For background on the Astana International Financial Centre Court, see its website, http://aifc-court.kz. And for information on the judges, including the chairman, see http://aifc-court.kz/chief-justice.

28 For background on the Astana International Financial Centre Court, see its website, http://aifc-court.kz. And for information on the judges, including the chairman, see http://aifc-court.kz/chief-justice.
