



DIFC COURTS
ANNUAL REVIEW 2014



2014 has been another successful year for the DIFC Courts with a number of major milestones reached. The total value of claims and counterclaims filed with the DIFC Courts crossed the AED 1 billion mark for the first time, increasing by 81% to reach AED 1.76 billion. In addition, the size and complexity of cases continued to rise, with the average claim amount in the CFI increasing by 25% from AED 33.5 million per case in 2013 to AED 42 million in the following year.

Our ceaseless efforts to ensure the enforceability of the DIFC Courts' judgments across the world has garnered considerable success. Through a series of memoranda, the DIFC Courts have established one of the world's most comprehensive enforcement frameworks, having arrangements in place with leading commercial centres across the globe and throughout the Middle East. The DIFC Courts' money judgments can be enforced internationally through agreements such as the GCC Protocol and Riyadh Convention, treaties with China and France, and reciprocal arrangements with many common law courts overseas.

In line with our goal to offer an advanced world-class judicial system, we constantly explore potential areas for improvement. In the last year, we are proud to have streamlined our processes to the extent that half of our written judgments are produced within a month and, on average, judgments are delivered within two and a half months. In 2014, we settled 90% of Small Claims Tribunal cases in less than three weeks.

The most significant development in the area of dispute resolution in 2014 came in the second quarter of the year when His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice-President and Prime Minister of the UAE and Ruler of Dubai, issued a decree establishing a new Dispute Resolution Authority (DRA) within the DIFC, comprising the DIFC Courts, an arbitration institute, and other institutions. The DIFC has become a preeminent international financial centre thanks in no small part to its fast, fair and enforceable dispute resolution

facilities, which continue to evolve to meet the needs of local, regional and global commerce. The creation of the DRA builds on these achievements and creates a trusted one-stop shop for dispute resolution.

By allowing businesses in the Emirate and worldwide to choose how best to resolve their disputes – through litigation, arbitration or mediation – the DRA will increase confidence and promote growth in Dubai and the UAE, representing another important step in the journey to make the UAE one of the best places in the world to do business.

My appointment to head the DRA is a great personal honour and also a reflection on the outstanding work of the entire DIFC Courts' team. We are excited about working with our partners and associates in the legal community to further grow Dubai's reputation for international dispute resolution excellence under the umbrella of the DRA.

A handwritten signature in black ink, appearing to read 'Michael Hwang', written in a cursive style.

Michael Hwang
Chief Justice



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Of the 36 cases heard by the Court of First Instance in 2014, two were of particular significance to the wider business community.

Al Khorafi v Bank Sarasin (CFI 026-2009)

In August 2014, the DIFC Courts delivered their judgment in the long-running case of Al Khorafi v Bank Sarasin. The First Defendant, Sarasin-Alpen, was a company incorporated in the DIFC and regulated by the Dubai Financial Services Authority (DFSA). The Second Defendant, Bank Sarasin, was a company incorporated in Switzerland. In the course of 2007 and early 2008, on the introduction of Sarasin-Alpen, the Claimants had purchased structured financial products from Bank Sarasin. The purchases were funded by loans made to the Claimants, in part by Al Ahli Bank Kuwait (ABK) and in part by Bank Sarasin. The total amount laid out by the Claimants in those purchases was USD 200 million. The Court of First Instance (CFI) found Sarasin-Alpen liable to pay compensation under Article 94(2) of the DIFC Regulatory Law (which imposes liability for non-compliance with DFSA regulations) for breaches of the DFSA's Conduct of Business Rules (COB Rules) in force at the time. The Court held that Sarasin-Alpen had failed to carry out sufficient investigations to ascertain whether Mr. Al Khorafi and his family members were "Clients" or "retail customers" under the COB Rules. The Claimants were in fact retail customers and therefore the contracts they

had entered into with the defendant were unlawful. Moreover, the Al Khorafi family would not have invested in the structured products but for these breaches of the COB Rules.

As regards to the Second Defendant, the CFI held that Bank Sarasin, incorporated in Switzerland and with no registered place of business in the DIFC, had provided financial services in or from the DIFC in contravention of the Financial Services Prohibition (the general prohibition in Article 41(1) of the DIFC Regulatory Law on the provision of financial services in or from the DIFC without DFSA authorisation).

Ultimately, it was ordered that both Bank Sarasin and Sarasin-Alpen pay compensation to the Claimants in respect of the losses which they had sustained. The order against Bank Sarasin was made under Article 65(2)(b) of the DIFC Regulatory Law and that against Sarasin-Alpen was made under Article 94(2) of that Law. This case is presently under appeal in the Court of Appeal.

Meydan Group LLC v Banyan Tree Corporate PTE (CA 005-2014)

In *Meydan Group LLC v Banyan Tree Corporate PTE*, the Appellant, a company incorporated in the UAE engaged in real estate development, appealed against the Court of First Instance (CFI) judgment of HE Justice Al Muhairi. The appeal related to the question of whether the CFI had jurisdiction (or should exercise any jurisdiction) to recognise and enforce a domestic arbitration award made within the Emirate of Dubai but outside the DIFC in favour of the Respondent, a company incorporated in Singapore engaged in the management of hotels and resorts.

The Court of Appeal upheld the decision of HE Justice Al Muhairi that there was jurisdiction and that there were no good grounds for not exercising that jurisdiction. As regards to jurisdiction, the Court rejected the submission of the Appellants that there was a requirement for the presence of the Respondents or their assets within the DIFC as a pre-requisite to recognition. The Court of Appeal also rejected the submission that the application for recognition should be stayed on *forum non conveniens* grounds because the DIFC Courts had exclusive jurisdiction and thus there was no alternative forum for the determination of the issue.

Lastly, the Court of Appeal rejected the submission that the application for recognition constituted an abuse of process. It had been argued that the purpose of the application was to use the judgment of the DIFC Courts to enforce the award by application to the execution judge of the Dubai Courts who would be unable to consider the judgment on the merits. Thus, the argument ran, the Appellants would or might be forced to challenge the award in the DIFC Courts in circumstances where the court of the seat was the Dubai Courts. Either the problem would not arise because the Appellants could challenge the validity of the award in the Dubai Courts by direct proceedings or, if that could not be undertaken until the Respondents sought to enforce the award in the Dubai Courts, any ensuing conflict was a matter for the Dubai Courts to resolve. An application to enforce an award in the DIFC made to the DIFC Courts which had exclusive jurisdiction could not by definition constitute as abuse.