



INTERNATIONAL ASSOCIATION FOR COURT ADMINISTRATION

IACA Newsletter

Volume 1 Issue 3

July 2013



Important Dates to Remember

- Dubai Regional Conference December 2013
- International Conference Sydney Australia September 2014

Inside this issue:

Argentina Regional Conf	1
Justice Pharaon	3
Membership	4
International Associations	5
Update on Latin America	5
FJA Canada	6
Nigerian Courts	7
DIFC Courts Dubai	8

From the President

Richard Foster
IACA President



2013 is proving to be an eventful year for both courts administration internationally and IACA. The regional conference in Buenos Aires was a huge success and I would like to thank everyone who contributed to its success. I would also like to thank those IACA members who travelled to Buenos Aires to participate in what was an obviously interesting and productive few days.

The next regional conference is set to take place in Dubai from 9 – 10 December 2013 and will be hosted by His Highness Sheikh Maktoum Bin Mohammed Al Maktoum Deputy Ruler of Dubai and Chairman of the UAE Judicial Council. A memorandum of understanding has been signed between the Dubai Courts, the organisers of the Sheikh Maktoum Bin Rashid Al Maktoum Initiatives for Legal Excellence, the Dubai International Financial Courts (DIFC) and IACA. This conference will be a landmark event, and will

be the first of its kind to be held in the Middle East region. The theme, Courts' Excellence in a Changing World, will cover such issues as:

What is court excellence

- Leadership and change management;
- The role of strategic planning and performance management in raising the efficiency of courts;
- Best practices in technology to maximise efficiency and public confidence; and
- Managing the interests of stakeholders and their impact on achieving excellence in the work of courts.

I am pleased to announce that after considerable work the IACA membership system has

been upgraded and refurbished and is now ready for the membership drive. I would like to take this opportunity to encourage all current members to log in at the Member Centre and re-join IACA and ask that you do whatever you can to enlist new members

Lastly, just a reminder that the 2014 Sydney International Conference will be held from Tuesday evening 22 September to Friday 26 September at the Sydney Hilton.

IACA REGIONAL CONFERENCE IN BUENOS AIRES

Submitted by Vladimir Passos de Freitas
Vice-President of IACA for Latin America

Argentina is a South American country located between the Andes and the Atlantic Ocean with an area of 2,780,400 km² and a population of 41,281,631 inhabitants. Therein lies the charming city of Buenos Aires, its capital. Graced with French-style architecture and with sophisticated tea houses and restaurants on the banks of Rio de la Plata, Buenos Aires hosted the first regional meeting of IACA in Latin America. The preparations for the Conference, entitled "Administration of

Courts in a Changing World," lasted more than a year and included contacts, site visits, and discussions by members of IACA's South American Regional Board by telephone with the guidance of conference guru, IACA CEO Jeffrey Apperson. Other key planners included the tireless and dedicated Regional Delegate Luis Palma in Argentina, President Richard Foster and IACA organizers Cathy Hiuser, Vladimir Freitas, Linda Wade-Bahr, and Julia Ricketts.



All these efforts, with contributions from many people in IACA and the Attorney General's Office of the City of Buenos Aires, partner in the Conference, resulted in a Congress crowned with complete success. For three days, from 29 to 31 May, current and complex issues related to the administration of justice were discussed, with a focus on Latin America.

IACA REGIONAL CONFERENCE IN BUENOS AIRES cont.

The opening act was in the evening of the 29th, at the majestic Golden Hall of the Legislature of the Autonomous City of Buenos Aires. The rich architecture of the building equals the most sophisticated palaces of Italy, and the elegance of the decoration may be compared to the buildings of France. The Attorney General of the Autonomous City of Buenos Aires, Germán C. Garavano, myself on behalf of IACA, Justice Elena Highton de Nolasco, Vice-president of the Supreme Court of Justice of Argentina, Judge Luis Lozano, President of the Superior Court Of Justice of the Autonomous City of Buenos Aires and Judge Mario Fera, President of the Magistrates Council of Argentina, addressed the participants.

On the morning of the following day, in the traditional University of Buenos Aires, more than three-hundred people from eighteen countries registered for the Conference. Magistrates, professors, prosecutors, public defenders, and lawyers actively participated in the panels and discussions that followed.

The topics were chosen with a focus on the present moment of justice in Latin America. Topics included, "Courts Administration in a Globalized World", "New Models of Judicial Organization", "Challenges of the Judicial Reform in the Region", "Cybercrime and International Cooperation" and "Latin America: Specialized Environmental Courts of Law."

In parallel, during the breaks and moments of relaxation, the participants exchanged practical experiences, a rich opportunity to learn about innovations, challenges and successful experiences of neighboring countries. The entertainment was not left out. Cocktails and dinners were a great opportunity to bring the participants closer, to strengthen relationships, with the typical Latin- American cordiality.

At the end of the third day, with very positive results, the Closing Act was held, with the presence of Professor Monica Pinto, Dean of the UBA Law School. In the air and on everyone's face there was a mixture of joy and sadness. Joy, for

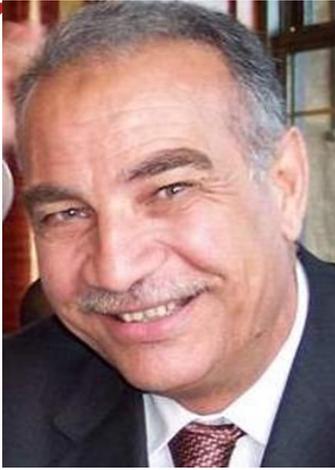


realizing that everything went well, the efforts rewarded, and the justice systems of the participating countries strengthened due to the excellent discussions. Sadness, for the end of moments of learning, cultural growth and happiness. In the Spanish language, "nostalgia;" in the Portuguese language "saudade."

IACA emerged strengthened with the Congress in Buenos Aires, spreading its goals and gaining new partners in Latin America. All this success would not have been possible without the collaboration of the Attorney General's Office of the Autonomous city of Buenos Aires, whose Attorney General Garavano and members of the Committee devoted themselves with enthusiasm to assure it would all go well.

It is necessary to record this historic event to stimulate the realization of many others around the world. With justifiable pride, we can all say at the end: mission accomplished.





IACA's Distinguished Advisory Council Member

Justice Abdul Karim M. Pharaon

On the 15th of January 1946, snow was falling in Bethany, a suburb of east Jerusalem, Palestine, as joyful parents welcomed what would be the first of four sons and one daughter into their young family. The son, Abdul Karim M. Pharaon spent his first seven years

there, including his first year of school. The following year, his late father, then employed as a mason who built residential properties, moved the family to the Hashemite Kingdom of Jordan, currently the home away from home of thousands of Palestinian and now Syrian refugees. Karim returned to his home city of Bethany many times in subsequent years, and he still owns valuable real estate there. During those years, the family's neighbors were persons of diverse ethnic backgrounds and religious beliefs, all living relatively simple lives together in love and peace. Karim recalls, "We never knew who was Muslim or Christian. We never bothered to ask; we celebrated both Muslim and Christian holidays and shared happiness and sadness. The Catholic cathedral was built on the wall of the Muslim mosque, which was built on the Tomb of Lazarus. I was born a few meters from that Tomb."

Jordan has never been a wealthy country, and there few schools for Palestinians to attend at the time Karim's father moved his young family there in search of construction projects. The living conditions in both East and West Jordan were disastrous; many Palestinians who sought refuge there after the 1948 war between the Arabs and the Israelis suffered from hunger and other deprivations, including lack of adequate shelter and sanitation.

Karim was fortunate to enroll in the UNRWA school until he reached the 8th grade, then transferred to the state high school from which he graduated with honors in 1964. He then matriculated into the Faculty of Law at the University of Damascus, Syria. Although the University of Jordan had been established in 1962, it was still in its infancy and had not yet established an accredited law faculty.

Syria at the time was a civilized country with a diverse population and tolerant society, a marked contrast to the current civil war as a consequence of which so many are suffering or have needlessly died. Karim views it as a tragedy of enormous proportions both for the country and its inhabitants. In 2003, he was able to purchase an apartment in one of the most beautiful places of Zabadani in Southwestern Syria. Curious about the building, he asked for information about it but never received any meaningful answer. Although Zabadani was the first city in the current Syrian civil war to fall to the Free Syrian Army, control of this important municipality has since shifted back and forth in ferocious fighting between government and Free Syrian Army troops.

Upon graduation as a young lawyer, Karim found employment first as a human resources manager, then a legal advisor in a corporation owned by the Jordanian Government. In 1975, he moved to Saudi Arabia to accept a position with

Bendix Field Engineering, an American firm, as Director of Legal Affairs. His responsibilities included managing corporate legal issues and providing legal advice and assistance for officers and employees in both Saudi Arabia and Yemen, frequently representing them in the indigenous courts in both civil and criminal matters. Such representation required Karim to serve in a dual capacity in diplomatic coordination and actual practice – defending Americans charged with violations ranging from public intoxication in countries where the consumption of alcohol was forbidden to vehicular homicide where he would handle the delicate negotiations that occasionally involved establishing appropriate compensation or "blood money" for the loss of a family member. Court hearings were conducted in Arabic and governed to varying degrees by Islamic Shari'ah law which left Americans completely dependent on his professional expertise and negotiating skills. It was for Karim a challenging period in his career but also one in which he learned a great deal and established professional contacts that have endured over time and helped to broaden his perspectives and build an international clientele.

Seven and half years later, Karim moved to Amman, Jordan's capital city, where he opened his own law office and practiced law for the next 18 years, developing a broad and diverse client base that included nationals as well as foreigners. During those years, Karim never seriously considered seeking a judicial appointment. That all changed when, in November 1999, he received a surprise call from the Chief Justice of Jordan informing him that he was to be appointed to a judgeship on Jordan's Court of Appeals for Amman. His career as a distinguished appellate court jurist commenced on the 5th of January 2000. Four years later, he was elevated to the Supreme Court of Jordan. In 2008, Jordanian government officials were approached by their counterparts in the government of the United Arab Emirates about granting Justice Pharaon an indefinite leave of absence to serve as a justice on the Court of Cassation, the court of final appeal for the small but wealthy Emirate of Abu Dhabi. Permission was granted, and for the past five years, he has served as a justice in the family affairs and administrative chambers of that court. Under the terms of the leave of absence, he retains his title and status as a justice on the Supreme Court of the Hashemite Kingdom of Jordan.

During his judicial career, Justice Pharaon helped draft a number of laws prior to their submission to Jordan's Parliament; he also was instrumental in drafting a number of by-laws for various international organizations. He also represented the Jordanian judicial system at judicial conferences and forums all over the world, including the annual Law and Religion symposia organized by Brigham Young University (BYU) from 2003-2006. In cooperation with BYU's Law School, he established a 20-year scholarship program for Jordanian judges, which annually admits two judges to earn a special LLM degree conferred by the Law School. Justice Pharaon also is invited from time to time to lecture at universities in various countries.

Justice Abdul Karim M. Pharaon cont.

Justice Pharaon previously served as a member of the Advisory Council of the CEELI Institute in Prague and currently serves in the following capacities.

- A. Member, IACA's Advisory Council since 2004
- B. Advisor, International Judicial Conference
- C. Lecturer, (part time) in the Abu Dhabi Judicial Academy
- D. Member, Board of Directors, Judicial Studies Journal, Abu Dhabi Judicial Academy
- E. Arbitrator as required and with the Judiciary Department's approval for the Commercial Chambers
- F. Member, Abu Dhabi Judges' Affairs Chamber, charged with reviewing and adjudicating allegations of judicial misconduct

- G. Vice president, Lawyers' Affairs Committee, charged with overseeing all matters relating to attorney registration, standards of conduct, penalties for violations, etc.
- H. Arbitrator in select legal magazines
- I. Occasional Contributor, World Justice Project and Rule of Law Index

Justice Pharaon and his wife have been married for 46 years and have two adult sons and three daughters, all of whom are professionals with advanced degrees.

IACA is proud and honored to have this distinguished jurist of international renown serving on its Advisory Council.

IACA Membership

**Submitted by Suzanne Stinson
Membership Chairperson**

Great news! The membership link on our website is now operational! It is the goal of our board of directors to aggressively reach out to prospective members and to let everyone know about the great benefits afforded to you by joining the International Association for Court Administration (IACA).

IACA regularly publishes a journal that is accessible electronically. The International Journal for Court Administration focuses on "contemporary court administration and management" from contributing authors around the world. The Journal's editors encourage IACA members and friends to submit articles about innovative practices and projects in their courts to inform others and to stimulate their thinking.

Additionally, IACA publishes a newsletter to help members stay apprised of the activities and events offered by IACA, as well as information about its members. International conferences are held in even-numbered years, with the 2014 conference scheduled to be held in Sydney, Australia, in September! Regional conferences are held more frequently. Upcoming regional conferences include Dubai Regional Conference on December 9-10, 2013.

The Member Center section of our website allows you access to our library and its wealth of information, as well as our Online Social Community. Other benefits of membership include access to the membership database, electronic delivery of the IACA newsletter, and the ability to attend IACA conferences at reduced rates.



The goal of IACA is "to promote improved court management and administration in all countries and foster professionalism and collegiality among those who serve in court systems throughout the world." In order for us to accomplish our goals, we need you to join and become active in our organization.

Please consider joining us by clicking on the following link: <http://www.iaca.ws/join-iaca.html> The link will guide you through the dues structure based on your income. Because the website has undergone changes, please do not "renew" your membership. If you have been a member of IACA, you will be required to join as a new member.

Join IACA

<http://www.iaca.ws/join-iaca.html>



International Associations

Submitted by Pamela Harris, USA

Vice President - International Associations

The National Association for Court Management (NACM) has been working closely with IACA to continue to assist court managers with their professional development and to provide added value to current and future members of both organizations.

The respective Boards of Directors of each association have agreed to enter into a dual partnership agreement by providing discounts for current and new members joining or renewing membership.

IACA members who are residents of the United States qualify for a \$25.00 discounted NACM regular member

membership rate. In turn, individuals who are members of NACM qualify for a \$25.00 discounted IACA membership rate.

ACA members who are not residents of the United States qualify for a \$25.00 eLimited membership where they receive all benefits of NACM membership with the exception that publications will be delivered electronically.

As always, the devil is in the details. We will be working with both associations to develop criteria to process the dual memberships for each organization. Indeed, we believe this partnership will benefit administrators and managers worldwide! We will keep you posted with details as we advance the partnership.

News From the Regions

Update on Latin America

Submitted by Vladimir Passos de Freitas

The Supreme Court of Justice from Honduras, aiming to be independent, impartial, efficient, transparent and accessible, gave to all the citizens the opportunity of appointing problems of the Judicial Power, such as corruption, impunity or traffic of influence, by phone and e-mail. The initiative is very important to give more respect and trust to the Judicial Power.

The National Council of Justice from Brazil organized a group with members of the Federal, State, Military and Labor Justice, in order to create a National Policy for capacity building and improvement of the servants of the Judicial Power. The first meeting happened on May 15, when a number of measures were decided.

The NCJ hopes that the services of the Judicial Power will become more efficient and respected.

Bolivia sued Chile at the International Court of Justice in April, 24, with the purpose of reaching access to the Pacific Ocean. Bolivia said that in the Pacific War, between 1879 and 1883, Chile took possession of 400 km of the coast, 120.000 km in total. Chile said that this issue was solved in 1904, with the Treaty of Peace and Friendship.

Federal Judicial Affairs International Division, Canada Submitted by Oleg Shakov



Oleg Shakov is the Canadian representative on the North American IACA board. Oleg is Director of the International Programs Division of the Office of the Commissioner for Federal Judicial Affairs Canada, a federal government department established to safeguard the independence of the judiciary and provide federally appointed judges with administrative services independent of the Department of Justice. He has worked as an advisor to both private and government sector on China's, Russia's and former Soviet Union countries' economic, political and legislative reforms. Since 1999, he has been managing multi-year justice reform projects around the world, in countries as diverse as Ukraine, China, Peru, Jamaica, Ghana, and Russia. Varying in size and duration these projects have all been designed with a view of advancing and strengthening judicial institutions and the rule of law in emerging democracies.

Contact Oleg at: Oleg.Shakov@fja-cmf.gc.ca

FJA International Programs Division - A Year in Review 2012/2013

The International Programs Division of the Office of the Commissioner of Federal Judicial Affairs (FJA) has had an extremely busy year with projects underway in Jamaica, Jamaica/Ghana/Peru, Maldives, West Bank, Ukraine, and Mexico funded by the Canadian International Development Agency (CIDA) and the Department of Foreign Affairs and International Trade Canada (DFAIT). Under the guidance and leadership of the Director of the International Programs Division, a staff complement of 5 people designed, organized, and implemented 18 missions in Canada and around the world under the auspices of various projects. These projects can be described as follows:

Jamaica (JUST): The overarching goal of the JUST Program is to address inefficiencies at all levels of the Jamaica justice system that contribute to court delays. FJA was selected by the Department of Justice Canada (DOJ) to implement certain components of the JUST Program including developing a governance framework for the Court Management

Services (CMS) in Jamaica, drafting commentaries for the Jamaican Judicial Conduct Guidelines, and identifying and implementing best practices in criminal case management and caseflow management to address case backlog and delays in judicial and administrative processes in Jamaican courts.

JUSTICE Partnership (Ghana, Jamaica and Peru): FJA designed and implemented the multi-year Judicial Systems Improvement for Commerce and Economy Project (JUSTICE) in partnership with the National Judicial Institute (NJI), with funding supporting from CIDA (Partnerships Branch). The purpose of this project was to strengthen the capacity of judges and judicial administrators in Ghana, Jamaica and Peru to effectively apply law and policy, enabling sustainable economic development in these countries. This was achieved through a range of activities in the three countries and Canada and the development of various manuals, training materials, papers, conferences, and seminars.

West Bank: The Capacity Development Needs Assessment Program, implemented by FJA and funded by CIDA, supports CIDA's Courthouse Construction Project under which well-functioning courthouse facilities in Hebron and Tulkarem and an efficient design for the courts complex in Ramallah (CIDA to design only) are anticipated to provide the infrastructure to house safe, accessible and user-friendly justice services in the West Bank. The project promotes efficient use of these facilities through its support of advances in court administration and facilities management.

Ukraine: FJA, in partnership with NJI, implements the Judicial Education for Economic Growth (JEEG) Project funded by CIDA. This project focuses on developing judge-led pre-trial settlement procedures in Ukraine, by building consensus on pre-trial for general jurisdiction and administrative courts; altering the mindset of court process which enhances access to justice; and relieving the burden of appellate level courts.

Maldives: FJA's Judicial Independence, Accountability and Professionalism Project (JIAPP), funded by DFAIT, had as its objective to respond to the need for enhanced institutional capacity to uphold judicial independence. The project's objective was achieved by engaging representatives from the Maldivian judiciary on relevant best practices and policy, legislative, and regulatory safeguards that are available in the judicial administrative context to enhance judges' position of independence.

Mexico: With funding from the Government of Canada's Anti-Crime Capacity Building Program (ACCBP), and through DOJ, FJA assisted Mexican judges with the implementation of the constitutional reforms in Mexico by helping them in the development of a judicial code of ethics and disciplinary process; exposing them to best practices in court administration and management; and providing insight into particular changes made to the Canadian criminal justice system and specialized courts created in order to address particular and complex issues (i.e. Mental Health Courts, Drug Treatment Courts, Aboriginal Persons (Gladue) Court and Domestic Violence Courts).

FJA International Programs Division

A Year in Review 2012/2013 cont.

During the outgoing missions, with FJA support, Canadian judges, court administrators, academics and experts traveled to other countries to offer Canadian expertise and best practices in the realms of case management, court governance, court administration, judicial ethics, courthouse facilities management, judicial independence, and judicial mediation and pre-trial settlement. During the incoming missions to Canada, International delegations of judges, court administration, and justice-sector officials met with Canadian judges, academics, and court administration experts, to gain exposure to the Canadian judiciary, judicial independence, and court administration models and processes.

This past year, FJA created the Judicial Advisory Committee on International Engagement (JUDACIE) with its members including judicial representatives from each province in Canada. JUDACIE held its inaugural meeting in February 2013. The impetus for creating JUDACIE was so that Canadian judges might assist FJA's Commissioner and FJA on specific international projects, but also more generally with regard to the international work of FJA.

FJA also hosted its first public conference in January 2013, entitled Justice in Development, under the auspices of the JUSTICE Project. Nearly 80 judges, court administrators, academics, government officials, and civil society representatives attended this full-day conference in Ottawa that provided participants with a forum in which to explore the valuable role that justice and judicial reform play in the realm of international development. The conference, launched by an incredible keynote speech from the Honourable Michel Bastarache, Retired Justice of the Supreme Court of Canada, addressed a range of topics including access to justice and human rights; judicial independence; and the rule of law and political stability. Speakers included Canadian judges, academics, government officials and experts, as well as international judges from Ghana, Jamaica, Peru and Mexico.

The Budding of the Nigerian Courts

Submitted by Collins E. Ijoma, Vice President for Africa

The organization of Nigeria's Judiciary is not entirely dissimilar to other nation-states around the world. It is headed by a supreme court and includes intermediate appellate courts, state-level courts, and several specialized courts and Tribunals. Apart from its overarching structure, the issues they confront reflect the same kind of matters that are prevalent in other court systems.

Extensive consultation within the court demonstrated the metamorphosis that it is undergoing as the country itself continues to evolve and develop as a democracy. Some of the areas that have been focused upon in recent years include change management, case flow management, infrastructure and security management, records management, and information technology such as e-filing and digital recording of court proceedings. For instance, the traditional method of making the record involved judges taking handwritten notes during court hearings and judicial proceedings. Digital audio recording was introduced and while there was some initial resistance to the technology, it eventually waned as the benefits manifested.

A variety of best practices have been adopted by the judiciary incorporating for example, the establishment of the National Judicial Council (NJC) as the supreme governing body, Com-

mittee for Judicial Conduct, and the establishment of the National Judicial Institute to Promote Judicial Education to name but a few. Improvements in caseload management ranging from the fundamentals such as evaluating key measures – time to disposition, trial date certainty, age of active pending, and clearance rates – to the more extensive and technological-advanced automated and electronic filing systems have made enormous strides in the organization of the court.

Perhaps the most significant change has resulted from their implementation of rule of law projects and the establishment of election tribunals which triage and handle election matters on a speedy trial basis. The ethnic tensions and widespread criminality in certain parts of the country particularly those involving terrorism have brought due process to the forefront of the judiciary and have made it the highest priority. Indeed, these developments have served as the basis for the credibility of the court (and more broadly the democratic system). It has allowed the nation to avoid extra-judicial solutions to the rampant ethnic and religious crisis and maintain law and order which would otherwise degenerate into vigilantism. In doing so, the country has been prevented from collapsing into anarchy.

COMMON LAW COMMERCIAL JUSTICE IN THE MIDDLE EAST

Pioneering English Language DIFC Courts in Dubai Serve the Region's Business Community and Enforce Judgments Across Borders

Submitted by Stefan Kemball
DIFC Courts – Dubai International Finance Center

The DIFC Courts are an independent English language common law judiciary, located in the United Arab Emirates (UAE) at the heart of Middle East trade and investment, and based in the Dubai International Financial Centre (DIFC). The DIFC forms the largest cluster of international financial services between London and Singapore, including 16 of the world's top 20 banks, four of the world's five largest insurance companies – and seven of the top ten international law firms.

The DIFC Courts' jurisdiction governs civil and commercial disputes nationally, regionally and worldwide and the DIFC Courts are part of the sovereign structure of the UAE Emirate of Dubai. More than 500 cases have been decided since the Courts began operations in 2006.

A commercial legal revolution in Dubai began in September 2004, when the late Sheikh Maktoum bin Rashid Al Maktoum, then Ruler of Dubai, announced legislation for the opening of the DIFC Courts, based on English language common law. The Courts were soon recognised as independent, transparent and cost-effective for disputants based in the DIFC.

In October 2011, Sheikh Mohammad bin Rashid Al Maktoum, Prime Minister of the UAE and current Ruler of Dubai, decreed in Dubai Law No 16 that the DIFC Courts should thereafter serve a **fully international commercial jurisdiction**, covering the UAE, the Middle East, and indeed the entire world.

The very concept of an English language common law court in the Middle East was unusual – and visionary. The establishment of the DIFC Courts was seen as pivotal to the development of the DIFC as a global financial hub and the Courts have since played a critical role in encouraging investment in Dubai. Dubai wished to attract overseas businessmen and investors (like many other countries). What would most appeal to them? Dubai planned beyond the obvious attractions – elegant office buildings and homes, good communications and top schools – and realized that offering international investors the comfort and certainty of common law in the English language would be a major draw.

A substantial element in the impact of the DIFC Courts lies in the experience of the judicial bench. This includes judges who previously served on the High Court and Commercial

Court benches in England & Wales, as well as distinguished judges from leading common law jurisdictions around the world. The Courts accordingly aim to be seen as 'the businessman's friend' for the resolution of often complex commercial legal disputes, as well as for regional and international enforcement of judicial decisions.



ENFORCING DIFC COURTS' JUDGMENTS

Perhaps the most important issue raised with the DIFC Courts by organisations which write the Courts into their cross-border contracts, is that of enforcement – now that the Courts serve a fully international jurisdiction.

The old adage 'justice delayed is justice denied' comes to mind when companies decide on a cross-border venture. It is at the precise moment when these contracts are being drawn up that the parties need to choose an appropriate forum for any future disputes. The ability to enforce judgments across borders is therefore crucial to the decisions of business, banks and investors when they decide where and how to develop their business overseas – and which jurisdictions offer them the best degree of legal security and certainty.

The DIFC Courts are fully equipped to deal with cross-border disputes. Article 5 A (3) of Dubai Amending Law No. 16 introduced the elective jurisdiction of the DIFC Courts in 2011, allowing parties with no geographical connection to the DIFC to opt for the DIFC Courts' English-language common law jurisdiction in the event of a dispute.

The DIFC Courts have accordingly produced a detailed 'Enforcement Guide' to explain procedures for lawyers, financiers and businessmen wishing to use the Courts for dispute resolution – professionals who often enquire as to how they might enforce eventual judgments or orders in their favour. The Guide clarifies where and how DIFC Courts' judgments are enforceable, based on extensive consultation and it sets out the legal framework applicable to the enforcement of DIFC Court judgments and orders: (i) Outside the DIFC and in Dubai; (ii) Outside Dubai but within other UAE Emirates; and (iii) Outside the UAE and internationally. The full document is available through the Courts' website: www.difccourts.ae

COMMON LAW COMMERCIAL JUSTICE IN THE MIDDLE EAST

continued



In Dubai

The Guide firstly describes the swift and effective procedures in place for the enforcement of DIFC judgments and orders in Dubai. These are provided for in Article 7 (3) of Amended Law No.16; DIFC Courts' judgments and orders are in effect "converted" into judgments of the Dubai Courts. Comments from the legal community attest to the relative ease with which judgments from the DIFC are being enforced in Dubai.

In Other UAE Emirates

Regarding the enforcement of DIFC Courts' judgments and orders in the UAE outside Dubai, the Guide explains how (following the coming into force of Amending Law No. 16) it has been argued that the earlier procedure of 'deputisation' provided under Article 221 of the Federal Civil Procedures Law is no longer necessary; DIFC Courts' judgments may now be sent directly to the local execution judge by the DIFC Courts themselves (reference being made in this context to Article 7 (2) of Amending Law No. 16).

'Deputisation' requires DIFC Courts' judgments to be sent to a Dubai execution judge, who would in turn refer them to the execution judge for the area in which execution was sought. However, the Guide suggests that parties might prefer to opt for this 'tried and tested' approach under Article 221. The Memoranda of Understanding (MOUs) signed in 2012 between the DIFC Courts, the UAE Federal Ministry of Justice and the Courts of the Emirate of Ras Al Khaimah all assist in the enforcement of DIFC Court judgments within the UAE.

Internationally

As for enforcement outside the UAE, the Guide explains that the procedure for enforcement of DIFC Courts' judgments and orders abroad is in principle the same as for any other Dubai court. Certain treaties entered into between the UAE and other countries governing the mutual recognition and enforcement of judgments are cited, namely: the GCC Convention (1996) between all the Gulf Cooperation Council member states (Saudi Arabia, Kuwait, Qatar, Bahrain, Oman and the UAE); the Riyadh Convention (1983) between all Arab nations; a further treaty with the Tunisian Republic; as well as the Paris Convention (1992) between the UAE and France

and Treaties between the UAE and India and China respectively.

Subsequent to the publication of the Enforcement Guide, legal and trade relations between Dubai and the UK were strengthened through a 'Memorandum of Guidance' (MoG) signed in London on 23 January 2013 between the DIFC Courts and the Commercial Court of England and Wales, one of the world's leading commercial courts. This Memorandum is designed to assist investors, businessmen and lawyers in the UK and the UAE who wish to develop closer trade and investment links. It clarifies existing arrangements between the two courts, and defines such issues as the mutual enforcement of judgments.

Michael Hwang, Chief Justice of the DIFC Courts, commented at the time: "This Memorandum brings clarity and confidence to the relationship between our two courts. Without a clear understanding of enforcement and judicial procedures across borders, businesses are unable to form and nurture the international trade relationships needed to fuel economic growth."

The Honourable Mr Justice Cooke, Judge In Charge of the Commercial Court of England & Wales, said: "A surprising number of people today are unaware of the reciprocity between courts. While reiterating the existing relationship between DIFC Courts and the UK Commercial Court, the Memorandum of Guidance sets out the basis upon which judgments of one court can be enforced in the other and helps to engender an atmosphere in which business can flourish."

Similar agreements are currently being discussed with other leading common law courts around the world.

CONCLUSION

The perception that the process of litigation in the Middle East is fraught with uncertainty is common. The root of this concern can be attributed to the fact that many individuals and companies conducting business come from countries with languages, systems and processes that are clearly different. Inevitably, most have little or no initial understanding of how national courts systems work in the region.

In the UAE and the wider Middle East, companies and individuals now have a clear choice: for the DIFC Courts are complementary to (though independent from) the UAE's and the region's established Arabic-language civil law system. This element of choice, in selecting the preferred jurisdiction for company contracts, strengthens both processes and ensures access to world-class justice for all.



IACA was created in 2004 by court system executives and managers. Its founding principles envision a global association of professionals collectively engaged in promoting the effective administration of justice. We do so by endeavoring to build and sustain well-managed, independently governed, effectively administered, and publicly accessible court systems.

We welcome your interest in IACA and urge you to consider joining us through one of our categories of membership and participating in our conferences. We also encourage all current and future members to actively involve themselves in IACA's future development and expansion through taking on leadership roles at the regional and national levels. We are a dynamic organization and perpetually interested in ideas and suggestions as to how we might improve and expand the services we provide.

[Join IACA](#)

www.iaca.ws

<http://www.iaca.ws/join-iaca.html>

2425 Wilson Blvd. Ste 350

Arlington, VA 22201-3320

