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David Russell QC
Outer Temple Chambers
London, Abu Dhabi and Dubai
TRUSTS IN THE MIDDLE EAST AND ELSEWHERE

NEW PERSPECTIVES AND OPPORTUNITIES
Outline and scope

• The concept of the Trust
• Categories of Trusts
• Analogues of Trusts
• The great de-offshorisation
• The Gulf opportunities
• Trusts and property outside the Trust jurisdiction
• The role of the Courts
• Enforcement
  • inside the Trust jurisdiction
  • outside the Trust jurisdiction
• Further reading
The concept of the Trust
The origin of the Trust

- The common law historical background
- The civil law approach contrasted
- The crusades and the first trusts – the role of the Chancellor and the development of equity
The concept of the Trust
The nature of the Trust

Compared to contract

Compared to agency

Compared to companies
The concept of the Trust
Core conclusions

• A trust is a relationship, NOT an entity

• The critical question, therefore, is whether a Court has jurisdiction to supervise the trustee’s performance of the terms of the trust AND enforce its judgments. Equity acts *in personam*

• In principle, the location of the trust assets is irrelevant

• The major risk in a non-trust jurisdiction is that trust assets could be applied to satisfy trustee’s private debts – avoidable by use of standalone trustee
## Categories of Trusts

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Analogues of Trusts
The Islamic analogue - Awqaf

- Historical precedent
- Waqif, Mutawalli and Qadi
- Decline and fall in the Ottoman Empire
- A precursor to the Common law Trust?
Analogues of Trusts
The Civil law foundation

Legal basis

A corporation without corporators

Purpose, charity and private benefit

Now available in common law countries (Jersey)
Analogues of Trusts
The Civil Law Foundation

• Share attributes with both trust and company
• Foundations have a comparable outcome to trusts – rights of parties inter se determined in accordance with governing law in courts of domicile, but more difficult to redomicile a foundation
• Some uncertainty as to tax treatment in common law countries, but such little authority as exists supports corporate treatment: Sommerer
Use of Trusts
The Hague convention

No requirement of reciprocity

Settlor autonomy principle
Use of Trusts
Sham: the elephant in the kitchen

- Applicable to companies, trusts and foundations but in different ways
- For companies and foundations, question is whether they acted beneficially or as agent/nominee
- For trusts the question is whether or not they exist at all, and the consequence of their non-existence
- Sham will usually involve tax evasion (as could non-compliance with attribution regimes where no sham)
- Revenue authorities likely to be looking for indications of sham – see Credit Suisse
Fiscal consequences

Determined by national law

- Fiscally transparent (cf partnership) or opaque (cf company)?
- Treatment of trust rearrangements, e.g. change of trustee
- Treatment of establishment and distributions
Fiscal consequences
Absent specific provision

Settlement and distributions as gifts

Declaration is not a taxable event

Income taxable to trustee as ordinary taxpayer, aggregated with other income of not standalone
Fiscal consequences
Usual provision

• Trust fiscally transparent where a distribution but not otherwise
• Gift tax (if any) once only on gift and distribution
• No tax consequence on change of trustee
Fiscal consequences
Attribution

A tax on residents for income of related foreign taxpayers – liability and disclosure issues

Typically shareholders for controlled foreign corporations, settlors and beneficiaries for trusts
Use of Trusts
Offshore structures

Is an offshore structure appropriate to client needs?

• Does client understand legal consequences of structure?
• Is client prepared to accept these consequences and live with them?
• Do those involved in its establishment understand legal consequences of structure?
• Are they prepared to comply with and implement them, even if client prefers otherwise?
• Is everyone prepared to give evidence about it?
• Will there be scrupulous onshore compliance?
The Great De-offshorisation

The Client Categories

1. Those who want to wind up existing structures and repatriate the assets;
2. Those who want to maintain the existing structures for asset protection purposes, but seek no tax advantage;
3. Those who want to maintain existing structures and, if possible, not attract liability to tax in relation to them, but are prepared to do that on the basis of full disclosure to the authorities and are prepared if necessary to alter existing structures to that end;
4. Those who want to maintain existing structures and, if possible, not attract liability to tax in relation to them, but wish to avoid the need for disclosure to the authorities and are prepared if necessary to alter existing structures to that end;

5. Those who wish to set up a new structure of the type referred to in 2, 3 or 4; and

6. Those who propose to maintain existing structures without disclosure or prudential review irrespective of the risks involved.
Professional Responses:

Client category 1:
• Winding up procedures – validity
• Choices to limit tax in local and home jurisdictions
• Redomiciliation?

Client category 2:
• Tax consequences of offshore structure in home jurisdiction
• Variation to tax efficient model

Client Category 3
• Will disclosure result in legislative change? Conflict issues
Professional Responses (cont.)

Client Category 4
• Is disclosure avoidable, consistent with laws of home jurisdiction
• Note possible width of tests – e.g. cheque signatures (US)

Client Category 5
• Exchange controls or other prohibitions of foreign transactions
• “Abus de droit” issues in civil law jurisdictions

Client Category 6
• Self protection on managed relationship severance
OECD’s BEPS initiatives target

• Artificial structures;
• Unco-operative and poorly regulated jurisdictions; and
• Transactions lacking economic substance

BUT

• UAE well regulated (particularly in DIFC and intended ADGM)
• Artificial structures generally difficult to establish; and
• UAE is home to significant economic activity
In addition

• UAE a significant economic hub in its own right and likely to continue as such;
• Active income exemptions from CFC rules in high tax jurisdictions likely to continue;
• UAE an acceptable place of residence if (or where) they don’t;
• Automatic exchange of information problematic if there isn’t any;
• UAE not as susceptible to pressure as traditional offshore jurisdictions; and
• UAE easy to relocate to (particularly for trusts)
The fallacy of DIFC law as foreign law:

“The DIFC Courts form part of the legal system of the United Arab Emirates…”

DIFC Courts – UK Commercial Court Memorandum (2013)

(UAE Federal, Dubai, Abu Dhabi, Qatari and Bahraini laws)

Should apply with equal effect to the proposed ADGM Courts
The Gulf options

Dubai International Financial Centre
*Trust Law* (DIFC Law No.11 of 2005)

Bahrain
*Financial Trust Law* 2006

Qatar
*QFC Trust Regulations* (QFC Regulation No.12 of 2007)

Abu Dhabi Global Market
*Application of English Law Regulations* (Draft) CP1 of 2015
In the UAE

Federal Law

• UAE Federal Constitution Article 121
• Federal Law No. 8 of 2004 *Regarding the Financial Free Zones* Article 3(2)
• Federal Decree Number 35 for the year 2004 *To Establish Financial Free Zone in Dubai*
• Federal Decree Number 15 for the year 2013 *To Establish Financial Free Zone in Abu Dhabi*
In Dubai

**Dubai Law**
- *The Law of the Dubai International Financial Centre* No. (9) of 2004 Article (13)(h)

**DIFC Law**
- *DIFC Regulatory Law* 2004
  - Article 41 – Financial Services Prohibition
  - Article 44 – Ancillary Services Prohibition
- *DIFC Single Family Office Regulations*

**DFSA Rulebook**
- Definition of “Financial Services” GEN Rules 2.2.1 and 2.3
- “Providing Trust Services” GEN Rules 2.2.2(t), 2.3,.5 and 2.23
In Abu Dhabi

• Abu Dhabi Law No (4) of 2013

• *Application of English Law Regulations* (Draft)

• *Operating Regulations* (Draft) –
  • general prohibition (section 1)

• Three independent authorities to be established:
  • The Financial Services Regulator
  • The Registration Bureau; and
  • The Courts
English Statutes proposed to be adopted in modified form include:

- *Trustee Act* 1925 (Chapter 19)
- *Variation of Trusts Act* 1958 (Chapter 53)
- *Trusts of Land and Appointment of Trustees Act* 1996 (Chapter 47)
- *Trustee Delegation Act* 1999 (Chapter 15)
- *Trustee Act* 2000 (Chapter 29)
- *Perpetuities and Accumulations Act* 2009 (Chapter 18)

Many of these provisions are replicated in the DIFC and Qatari laws discussed below.
In Qatar

**Qatar Financial Centre Law**

- Article 18(3) – QFC Law applies to the contracts, transactions and arrangements of QFC entities

- Schedule 3 item 9: “the business of acting as legal trustees” a permitted, but regulated, activity

**QFC Trust Regulation**

- Conventional Trust Law with QFC Tribunal (Court?) as supervisor
In Bahrain

- *Bahrain Monetary Agency Law 1973*

- *Financial Trust Law 2006*
  - Requires registration (Articles 4A, 33)
  - One trustee must be licensed (Article 10A)
  - Agency has certain powers, e.g. Articles 29B, 30
  - Audit generally required (Article 31)
  - No provision for Trust Transfer
  - Judicial supervision by Dispute Settlement Committee (Articles 35 and 36)
  - No provision for judicial advice to trustee
Part of domestic law?

“… where at the moment of contracting the parties select the Laws of Dubai as the governing law they intend to select either Civil Law Dubai Law, as applied in the non-DIFC Courts, or Common Law Dubai Law, as applied in the DIFC Courts.”

DIFC Court of Appeal in National Bonds Corporation v. Taaleem CA 001/2011 at [38]
The critical questions

1. Is the Trust a valid trust under applicable Trust Law if property outside the jurisdiction is involved?

2. What is the supervisory role of the relevant Courts?

   1. Will those Courts make orders for its enforcement, even where the trust property (or part of it) is outside their local area? and

   2. Will those orders be enforced outside their local area?
DIFC Trust Law Article 14:

(1) Subject to Article 14(2), all matters arising in regard to a trust which is for the time being governed by the laws of the DIFC or in regard to any disposition of property upon the trust thereof shall be determined in accordance with the laws of the DIFC.

Cf Qatar Trust Regulations Article 11(1)
Use of Trusts
Innovations in Trust Law

- Perpetuities (*DIFC Trust Law* Art. 26, QFC Article 23 cf Bahrain Article 3 and UK provisions)
- Settlor control (*DIFC Trust Law* Arts. 30, 68(2), cf Bahrain Articles 7,11)
- Trust asset management
- Letters of Wishes
- *Hastings-Bass* provisions
- Forced heirship and creditor protection enhancement (*DIFC Trust Law* Arts. 15, 16 and 17, QFC Arts 13, 14 and 15)
DIFC Article 23: Creation of a trust

– (1) A trust may be created by:
   • (a) transfer of property to another person as trustee during the settlor’s lifetime or by will or other disposition taking effect upon the settlor’s death;
   • (b) the transfer of property from one trust to another;
   • (c) declaration by the beneficial owner of property that the legal owner holds identifiable property as trustee; or
   • (d) exercise of a power of appointment in favour of a trustee.

– (2) A trust shall come into existence by an instrument in writing including a will or codicil.

Cf QFC Article 20
Two points to note, and an opportunity:

(a) Paragraph 23(1)(c) and its QFC counterpart proceeds on a false premise: *DKLR Holding Co (No.2) v. Commissioner of Stamp Duties* (1982) 149 CLR 431

(b) Companies sometimes have limited powers so capacity to make a gift doubtful – cf Article 24 of DIFC Companies Law (cf ADGM sections 28 and 35, QFC ~rticle 15(2)) so caution necessary with gratuitous corporate declarations of trust

(c) Consultation paper released on 16 November re DIFC Wills and Probate Registry (cf Article 23(2))
DIFC Article 14(2), cf QFC Article 11(2)

Subject to Articles 15, 16 and 17, Article 14(1) shall:
(a) …
(b) not validate any trust or disposition of immovable property situated in a jurisdiction other than DIFC in which such trust or disposition is invalid according to the laws of such jurisdiction;
(c) …
(d) not affect the recognition of foreign laws in determining whether the settlor is or was the owner of the settled property or is or was the holder of a power to dispose of such property;
DIFC Article 15, cf QFC Article 12:

Without limiting the generality of Article 14(1), no trust governed by the laws of the DIFC and no disposition of property to be held in trust that is valid under the laws of the DIFC is void, voidable, liable to be set aside or defective in any manner by reference to a foreign law; nor is the capacity of any settlor in relation to the trust or disposition to be questioned nor is the trustee or any beneficiary or any other person to be subjected to any liability or deprived of any right, by reason that:
(a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust; or

(b) the trust or disposition voids or defeats any rights, claims or interest conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule of foreign law or any foreign, judicial or administrative order, arbitration award or action intended to recognise, protect, enforce or give effect to any such rights, claims or interest.
DIFC Article 16 (cf QFC: Article 13)

An heirship right conferred by foreign law in relation to the property of a living person shall not be recognised as:
(a) affecting the ownership of *immovable property in the DIFC* and *movable property wherever it is situated* for the purposes of Article 14(2)(a) and (b) or for any other purpose; or
(b) constituting an obligation or liability for any purpose.
*(italics supplied)*
DIFC Article 17 (cf QFC Article 14)

Foreign Judgments

A foreign judgment shall not be recognised or enforced or give rise to any estoppels insofar as it is inconsistent with Articles 15 and 16.
The Firewalls (cont.)

- In terms do not apply to protect a trust where the settled property was not owned by the settlor, as opposed to cases where claims based on community of property of forced heirship may arise – *Slutzker v. Haron Investments Ltd* [2013] EWCA Civ 430
- Also may not protect invalid lifetime gifts if attacked on grounds other than personal relationship or heirship
- Dispositions of immovable property outside the DIFC not protected – Articles 14(2)(b) and 16(a), but note generality of Article 15 which may support contrary view – position comparable in Qatar
- Does not attempt to override Public Policy requirements
No firewall in Bahrain

Unless legislated in ADGM, no firewall for ADGM Trusts either.
DIFC Trust Law Article 10(2), QFC Article 24(20)

The terms of a trust prevail over any provision of this Law, except:

(c) the requirement that … the trust have a purpose that is lawful, not contrary to public policy in the DIFC, and possible to achieve;

DIFC Trust Law Article 69(2), QFC Article 22(2)

A foreign trust shall be unenforceable in the DIFC:

(a) to the extent that it purports:

(i) to do anything which is contrary to DIFC Law; or

(ii) to confer any right or power or impose any obligation the exercise of which is contrary to DIFC Law; or

(b) to the extent that the Court declares that the trust is … contrary to policy in the DIFC.
Bahrain Financial Trust Law Article 5

• In each case in DIFC, the relevant Public Policy is DIFC Public Policy not a wider Dubai or UAE Public Policy – not so clear with QFC
• Public Policy cannot be contrary to the terms of the Law (including the firewall provisions where applicable)
• Public Policy requirements would operate to invalidate the terms of the Trust at the outset, not by reason of a subsequent act on the part of the Trustee
• Unlikely to affect issue of property ownership in places outside the trust jurisdiction
foreign property as trust property

No need to note on register, so no registration issues

Problems most likely to be:

tax (transfer charge on change of trustee, creation of trust, and transfer to beneficiary); and

property not separately held from personal property, so potentially not protected in cases of insolvency
Solution is private trustee company which acts solely as trustee, or a wholly owned company whose shares are the trust property.

Tax issues which would make that unattractive in most jurisdictions not present in UAE due to absence of tax.

Issue may be to find a suitably qualified company in UAE context if UAE land is involved.

_Federal Implementing Regulation No 28 of 2008 regarding Law No 8 of 2004_
Risk minimisation

- Settled property should be either movable property in DIFC or immovable property in a jurisdiction which does not limit power of disposition.
- If acquiring immovable property in UAE (or other tax free jurisdiction) incorporate company with shares on register in a trust jurisdiction.
- Ensure evidence of donor’s capacity and compliance with shari’a rules on lifetime gifts is recorded and retained.
- As far as possible structure and operate trusts so as (in case of Moslem settlor) to avoid unintentional conflict with shari’a requirements.
- Comply with intent of local real property ownership rules.
DIFC 19. Role of the Court in administration of trust

- (1) The Court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by Law.

- (2) A trust is not subject to continuing judicial supervision unless so ordered by the Court.

- (3) A judicial proceeding involving a trust may relate to any matter involving the trust’s administration, including a request for instructions and an action to declare rights.

Cf QFC Article 16
20. Jurisdiction of the Court (DIFC – cf QFC Article 17)

The Court has jurisdiction where:

– (a) the trust is a DIFC trust;
– (b) a trustee of a foreign trust is resident in the DIFC;
– (c) any trust property of a foreign trust is situated in the DIFC but only in respect of property so situated; or
– (d) administration of any trust property of a foreign trust is carried out in the DIFC.
11. **Common Law and Principles of Equity DIFC – cf QFC Article 8**

The common law of trusts and principles of equity supplement this Law, except to the extent modified by this Law or any other DIFC Law or by the Court.
DIFC 21. Application to and certain powers of the Court – cf QFC Article 18)

– (1) A trustee may make an application to the Court for direction, opinion or advice concerning the manner in which he may or should act in connection with any matter concerning the trust and the Court may make such order, if any, as it thinks fit.
Role of Court (cont.)

(2) The Court may if it thinks fit:
(a) make an order concerning:
   _ (i) the execution or the administration of any trust;
   _ (ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the conduct of the trustee and payments, whether payments into Court or otherwise;
   _ (iii) the vesting of trust property;
   _ (iv) a beneficiary or any person having a connection with the trust as the Court may determine; or
   _ (v) the appointment or removal of an enforcer in relation to any non-charitable purposes of the trust;
(b) make a declaration as to the validity or the enforceability of a trust; or
(c) rescind or vary any order or declaration made under this Law, or make any new or further order or declaration.
Role of Court (cont.)

**DIFC 22. Payment of costs QFC Article 19**

The costs and expenses of and incidental to an application to the Court under this Law shall be paid out of the trust property or be borne and paid in such other manner or by such other person as the Court may order.
30. Variation and revocation of a trust (DIFC – QFC Article 27(6))

(6) The Court may vary the terms of a trust:

– (a) even if unambiguous, to conform the terms to the settlor’s intention if it is provided by clear and convincing evidence that both the settlor’s intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement;

– (b) if, because of circumstances not anticipated by the settlor, modification will further the purpose of the trust; or
(c) if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust’s administration;

(7) An application under Article 30(6) may be made by the settlor, the trustee, the beneficiary or the guardian or representative of a beneficiary who is a minor, incapacitated, unascertained or unborn.
32. Termination of a trust

(2) The Court may terminate a trust:

- (a) because of circumstances not anticipated by the settlor, if termination will further the purposes of the trust; or

- (b) if the value of the trust property is insufficient to justify the cost of administration.

(3) An application to the Court under this Article may be made by a settlor, a trustee or a beneficiary as the case may be.
33. **Distribution of property**

... 

(3) The Court may, on the termination of a trust or at any time thereafter, upon an application made by a trustee or any beneficiary as the case may be:

- (a) require the trustee to distribute the trust property;
- (b) direct the trustee not to distribute the trust property; or
- (c) make such other order as it thinks fit.
38. Creditors claims in relation to a discretionary trust

   (1) In the case of a discretionary trust, whether or not such trust contains a protective provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion, even if:

   • (a) the discretion is expressed in the form of a standard of distribution; or
   • (b) the trustee has abused the discretion.
– (2) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

• (a) a distribution may be ordered by the Court to satisfy a judgment or Court order against the beneficiary for support or maintenance of the beneficiary’s child, spouse or former spouse; and

• (b) the Court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.
40. Vacancy in trusteeship; appointment of a new trustee

... 

(2) Where the terms of a trust contain no provision for the appointment of a new trustee, the trustee for the time being may appoint a new trustee or failing that the Court may appoint a new trustee.

...

(4) A trustee having power to appoint a new trustee who fails to exercise such power may be removed from office by the Court and the Court may appoint a new trustee.
DIFC 42. Removal of trustee by Court or under the terms of a trust QFC Article 39

– (1) The settlor, an enforcer, a co-trustee, or a beneficiary may request the Court to remove a trustee, or a trustee may be removed by the Court on its own initiative.

– (2) The Court may remove a trustee if:

  • (a) the trustee has committed a breach of trust;
  • (b) lack of cooperation among co-trustees substantially impairs the administration of the trust;
Role of Court (cont.)

(c) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust, the Court determines that removal of the trustee best serves the interests of the beneficiaries; or
(d) there has been a substantial change of circumstances or removal is requested by all of the beneficiaries, the Court finds that removal of the trustee best serves the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available.
52. Duty to inform and report DIFC – QFC Article 49

– (3) Notwithstanding the terms of the trust:
  (a) the Court may on application made to it declare that in particular circumstances of the trust its terms do not render the trustees sufficiently or appropriately accountable to the beneficiaries or any of them; and
  
– (b) the Court may pursuant to such declaration extend or restrict the rights of all or any beneficiaries to information regarding the trust or may make such other order as it thinks fit.
DIFC 59. Remedies for breach of trust – QFC Article 56

To remedy a breach of trust that has occurred or may occur, the Court may:
(a) compel the trustee to perform the trustee’s duties;
(b) restrain the trustee from committing a breach of trust;
(c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
(d) order a trustee to account;
(e) appoint a special fiduciary to take possession of the trust property and administer the trust;
(f) suspend the trustee;
(g) remove the trustee as provided in Article 42;
(h) reduce or deny compensation to the trustee;
(i) subject to Article 67, invalidate an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
(j) order any other appropriate relief.
61. Legal fees and costs DIFC – QFC Article 58

In a judicial proceeding involving the administration of a trust, the Court, as justice and equity may require, may award costs and expenses, including reasonable lawyers’ fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.
17. Recognition of trusts

(1) A trust which is:

(a) expressly constituted under the law of another jurisdiction; or
(b) created by the law of another jurisdiction.

shall be recognised as a trust.

(2) The existence, validity and interpretation of a trust constituted in accordance with Article 17(1)(a) shall be determined by the law under which the trust is constituted.

(3) For the purpose of this Article, the law under which a trust is constituted shall be:

(a) in the case of a trust recognised under Article 17(1)(a) the law set out in the instrument constituting the trust; and
(b) in the case of a trust recognised under Article 17(1)(b) the law of the jurisdiction by whose law the trust is created.
DIFC 69. **Enforceability of a foreign trust QFC Article 66**

(1) Subject to Article 69(2), a foreign trust shall be regard as being governed by, and shall be interpreted in accordance with its governing law.

(2) A foreign trust shall be unenforceable in the DIFC:

- (a) to the extent that it purports:
  - (i) to do anything which is contrary to DIFC Law; or
  - (ii) to confer any right or power or impose any obligation the exercise of which is contrary to DIFC Law; or

- (b) to the extent that the Court declares that the trust is immoral or contrary to policy in the DIFC.
DIFC SCHEDULE

DIFC trust means a trust whose governing law is DIFC law.

foreign trust is a trust whose governing law is the law of a jurisdiction other than DIFC.

QFC SCHEDULE similar
Enforcement of Court Orders

Will Court orders in trust matters be enforceable -

(a) In the jurisdiction;
(b) In non-jurisdiction parts of same Emirate;
(c) In other UAE Emirates;
(d) In *Hague Convention* jurisdictions;
(e) In *Riyadh Convention* jurisdictions;
(f) In other common law jurisdictions; and
(g) In other civil law jurisdictions?

Suggested answer to all but (g) is “yes”, based on DIFC Courts precedent likely to be followed within UAE by ADGM Courts
Enforcement within non-DIFC Dubai

- Dubai Courts and DIFC Courts Joint Committee established in January 2011
- Enforcement Protocol
- DIFC Judicial Authority Law 2004 as amended Article 7(2)
  a. They must be final and executory;
  b. They must be legally translated into Arabic;
  c. They must be certified by the DIFC Courts for execution and have a formula of execution affixed by the Courts[8].
- Procedure for enforcement - Article 7(3)
Enforcement in other Emirates

Federal Civil Procedure Law Article 221:
- Referral by “competent execution judge” to judge in area in which enforcement is sought
- Local enforcement judge to act in execution
- Upon execution, proceeds to be returned to referring judge
- Formal advice required if execution not possible

Identity of “competent execution judge” for DIFC – referral to Dubai Courts first?
Enforcement outside UAE

Pursuant to Treaty

a. The GCC Convention (1996);

b. The Riyadh Arab Agreement for Judicial Cooperation ("the Riyadh Convention" 1983);

c. The Agreement on Judicial Cooperation, Execution of Judgments and Extradition of Criminals between the United Arab Emirates and the Tunisian Republic (1975);

d. The Convention on Judicial Assistance, Recognition and Enforcement of Judgments in Civil and Commercial matters signed between France and the UAE ("the Paris Convention" 1992);

e. The Agreement on Juridical Cooperation in Civil and Commercial Matters with India (2000); and

Arbitration as an alternative

DIFC Trust Law Article 10(2)(k) QFC Article 7(2)(k)

DIFC Arbitration Law Articles 12, 13 and QFC Arbitration Regulations Articles 10 and 11

*Rinehart v Welker* [2012] NSWCA 95 (20 April 2012)

*Rachal v. Reitz* [2012]
http://www.supreme.courts.state.tx.us/historical/2013/may/110708.pdf

DIFC/LCIA and QFC Arbitration Centres and *New York Convention*
Non – treaty jurisdictions

(a) Hague Convention jurisdictions

(b) Other Common Law jurisdictions:
   Guidance papers with England and Wales, Australia
   (with others to come)

(c) Other Civil Law jurisdictions
Further reading


• DIFC Courts: *Enforcing DIFC Court judgments and orders outside the DIFC* (2012)


• Bromley B, Russell D and Stibbard P: *Understanding the Waqf in the world of the Trust* (2012) Trusts & Trustees Vol.18 No.8 785


• Russell, D.: *Alice in Switzerland or the fiduciary as common informer* (2014) Trusts & Trustees (online)
Thank you for your attention!