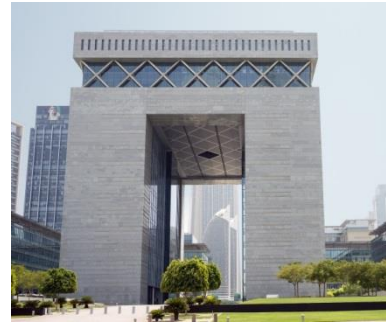


# Significant Precedents from the DIFC Courts



*Historic precedents from the DIFC Courts after Afridi & Angell successfully defended an anti-suit injunction, an application to exclude evidence and obtained a document production order.*

DUBAI – Monday 5 November 2018 – On 31 October 2018 Afridi & Angell obtained three favorable orders in CFI-015-2018 ((1) ED&F Man Capital Markets MENA Limited (2) ED&F Man Capital Markets Limited v (1) Sayyed Hussain (2) RJ O'Brien MENA Capital Limited (3) Stephen Ghallami) after successfully defending an anti-suit injunction, an application to exclude evidence and obtaining a document production order, all of which set important precedents for litigation in the DIFC Court.

The orders were obtained during the course of proceedings in CFI-015-2018 issued by Afridi & Angell on behalf of its client to enforce the restrictive covenants of an employee, preventing the employee from using confidential information of our client for the benefit of the new employer in the first “springboard injunction” proceedings before the DIFC Courts.

## **The anti-suit injunction**

Some of the Defendants in CFI-015-2018 issued an anti-suit injunction against the Claimants on the basis that the Claimants had initiated similar and parallel proceedings before the United States District Court (Northern District of Illinois).

By an order dated 31 October 2018, the DIFC Court dismissed the anti-suit injunction with costs and raised the bar for obtaining an anti-suit injunction against proceedings in foreign courts by insisting that the DIFC Court should be satisfied that the proceeding sought to be stayed be clearly “vexatious and oppressive” on the party seeking the anti-suit injunction. The Court further held that where the party seeking the anti-suit injunction has an option to obtain a stay of proceedings in the foreign court proceedings itself, the DIFC Court would have no “compelling reason” to grant an anti-suit injunction since doing so would not be in line with the overriding objectives of the DIFC Courts.

## **The application to exclude evidence**

In the same order, the DIFC Courts analyzed whether it should exclude evidence relied upon by the Claimants in the form of telephone recordings between employees and clients of a DFSA regulated financial services firm. The Defendants relied on Article 378 of the UAE Penal Code which makes it unlawful to record private conversations. However, the recordings were made pursuant to Rule 6.7.1 of the DFSA Rules which requires authorised firms to retain recordings of its voice and electronic communications in relation to transactions and instructions.

By its order, the Court held that an authorised firm may record such conversations during

work hours, at a place of work, whilst using work telephones since (a) such recordings were made pursuant to obligations under the DFSA Rules; and (b) there was due consent from the parties concerned.

### **The document production order**

The DIFC Courts also granted the Claimants' request for documents from the Defendants setting a precedent that a party's right to request documents under Part 28 of the DIFC Court Rules is not relinquished where the Court has not previously timetabled the dates within which a request for documents must be made. This order recognises that a party has a right to request documents in DIFC Court proceedings unless such right is expressly relinquished by a party.

Afridi & Angell represented the Claimants in all three applications. The Afridi & Angell team included Stuart Walker (partner), Haider Afridi (partner), and Sulakshana Senanayake (associate). Afridi & Angell instructed leading counsel Mr David Craig QC and Mr Edward Brown of Essex Court Chambers at the hearing of these applications.

More in-depth analysis of the orders to follow in Afridi & Angell updates.

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### **Note to editors:**

Founded in 1975, Afridi & Angell is one of the most established firms in the United Arab Emirates. The firm provides comprehensive legal advice and innovative business solutions in banking and finance; corporate and commercial Law; dispute resolution; projects; construction and real estate; employment; energy; project finance; transport; as well as doing business in the UAE and in the DIFC. The firm's clients range in size and sophistication from start-ups to some of the region's largest public and private companies, governments and quasi-government institutions. Afridi & Angell is the exclusive UAE member of a number of the world's top legal networks, including Lex Mundi and World Services Group.