



WHY CHOOSE HFW?
OVERVIEW OF OUR DIFC AND ADGM COURTS EXPERIENCE





The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are special financial free zones in the UAE that serve as hubs for international business and finance in the region.

Both the DIFC and ADGM have established specialised common law commercial courts, which operate in English and independently of the civil law onshore courts of the UAE and have jurisdiction over certain civil and commercial disputes.

Litigation in the DIFC Courts and the ADGM is not reserved only for companies and businesses that operate in the DIFC or ADGM (as applicable). Litigants also have the ability to “opt in” to DIFC and ADGM court’s jurisdiction no matter where in the world they are based and are free to elect to have their disputes resolved in the DIFC and ADGM Courts subject to DIFC/ADGM law, or any other governing law.

Both the DIFC and ADGM Courts offer parties the ability to resolve their disputes ranging from smaller value claims to real estate matters employment disputes, to complex commercial claims valued at tens, if not hundreds of millions of dollars.

Why choose HFW?

HFW is one of the world’s leading litigation-focused law firms. We have over the past 100 years acted for some of the most well-known cases in the commercial courts around the world, including for Mareva Compania Naviera SA in the now infamous 1975 case¹ which gave rise to the Mareva Injunction, now known in most common law jurisdictions as a “Freezing Order”. Such English and other common law jurisprudence, in which HFW’s DIFC and ADGM Courts litigators are fluent, also underpins DIFC and ADGM law and court procedure.

HFW has been operating in the UAE since the opening of its office in Dubai in 2006 and, most recently, its office in Abu Dhabi in 2018, although many of our lawyers have been in the region for much longer.

Many of our common law qualified lawyers come from a variety of common law backgrounds including England & Wales, Australia, South Africa and the USA, and have rights of audience in both the DIFC Courts (as Part II registered practitioners) and the ADGM Courts whilst also maintaining rights of audience in their home jurisdictions.

¹ [1975] 2 Lloyd’s Rep 509 (C.A. 23 June 1975), [1980] 1 All ER 213.

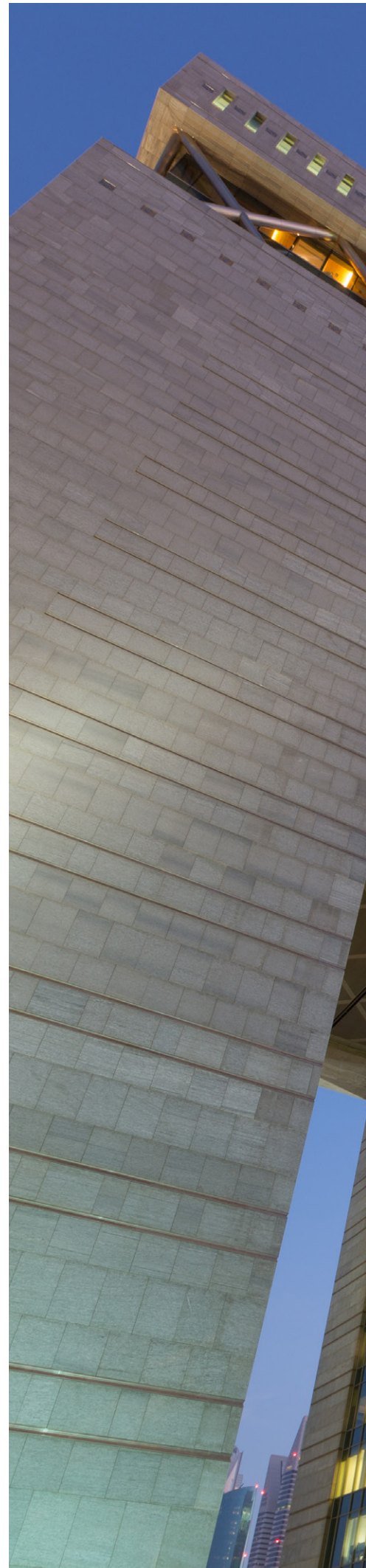
Since 2017, HFW has handled over AED 518 million worth of civil and commercial claims before the DIFC and ADGM Courts including financial services, shareholder and joint venture, real estate, employment and re/insurance disputes, and fraud, insolvency and enforcement matters.

HFW has experience in all aspects of dispute resolution in the DIFC and ADGM including:

- Litigation of large scale commercial disputes before the Courts of First Instance and Courts of Appeal.
- Advising clients who are considering whether to “opt in” to DIFC and ADGM Courts’ jurisdiction by choosing DIFC or ADGM law and jurisdiction in their commercial agreements.
- Enforcement of foreign court judgments and arbitration awards against assets located in the DIFC or ADGM or against assets located in mainland UAE or the wider GCC region.

- Applications to the Joint Judicial Committee which has been established to determine conflicts of jurisdiction between the Dubai or DIFC Courts;
- Claims before the DIFC Court’s specialist Technology and Construction Division, established for construction disputes and technically complex issues or questions.
- Advising client on pursuing or defending claims before the Small Claims Tribunal in the DIFC or the Small Claims Division in the ADGM
- DIFC Wills and Probate.
- DIFC-LCIA and ADGM-ICC arbitration including mediation of disputes under the DIFC-LCIA Mediation Rules.

We have detailed knowledge of DIFC and ADGM Courts practice and procedure having seconded one of our junior lawyers to the DIFC Courts Registry on two separate two-month periods in 2018.



**HFW has one of the largest teams of DIFC/
ADGM registered lawyers in the UAE.**



Our DIFC & ADGM Courts litigation experience

Financial services disputes

- Acting for an Irish-based lender in proceedings in the DIFC Court to (a) successfully obtain a default judgment against a defaulting borrower and two guarantors under a loan facility agreement subject to English law; and (b) successfully enforce the DIFC Court judgment against the judgment debtors both in Dubai and Abu Dhabi through the local “onshore” courts. As far as we are aware, this is the first case in which a judgment of the DIFC Court (in respect of a claim originally issued in the DIFC Court rather than a foreign arbitral award/judgment which has been converted to a DIFC judgment) has been successfully enforced in Abu Dhabi.
- Advising a UAE commercial bank in respect of intended litigation in either the DIFC Court or the ADGM Court against a borrower in respect of a AED 1.1 billion default under loan facility agreements.
- Advising a major Dubai-based financial institution on the prospects of obtaining a freezing injunction in the DIFC Courts (which at that time would have been the first time such an order had been sought) in connection with the sale and purchase of commercial office space in the DIFC with a dispute value in excess of AED 500 million.
- Advising a UAE company on the compromise of email systems by a malicious third party, and initiating proceedings against the DIFC branch of an Indian bank in the DIFC Courts to recover USD c.2 million of stolen funds (which had been further dissipated beyond recovery before we were instructed) on the basis of, amongst other things, a breach of a Quincecare style duty, as well as establishing a breach of various regulatory and contractual obligation
- Advising one of the largest commercial banks in the UAE in relation to the strategy for the recovery of a debt arising from a loan default including the commencement of insolvency proceedings under the new UAE Bankruptcy Law or litigation (in either the DIFC or the ADGM) including options available for enforcement.
- Advising a client on a possible application to the DIFC Courts for an order to enforce a Dubai Court order to compel the Dubai Financial Services Authority (DFSA) to produce information and documents relating to the transfer of a reinsurance business and compliance with regulatory requirements.

Shareholder/joint venture disputes

- Acting for a Dubai-based real estate developer in a dispute before the DIFC Courts related to a Joint Venture Agreement with an Indian joint venture partner in respect of the development of land in Dubai, and also in respect of share certificates held subject to an Escrow Agreement.
- Advising a DIFC registered and DFSA (Dubai Financial Services Authority) regulated investment bank in respect of potential causes of action and remedies available to it under DIFC law against its joint venture partner and/or its directors personally under a shareholders agreement and separate agreements governing the operation of the joint venture’s business in the DIFC.

Professional negligence disputes

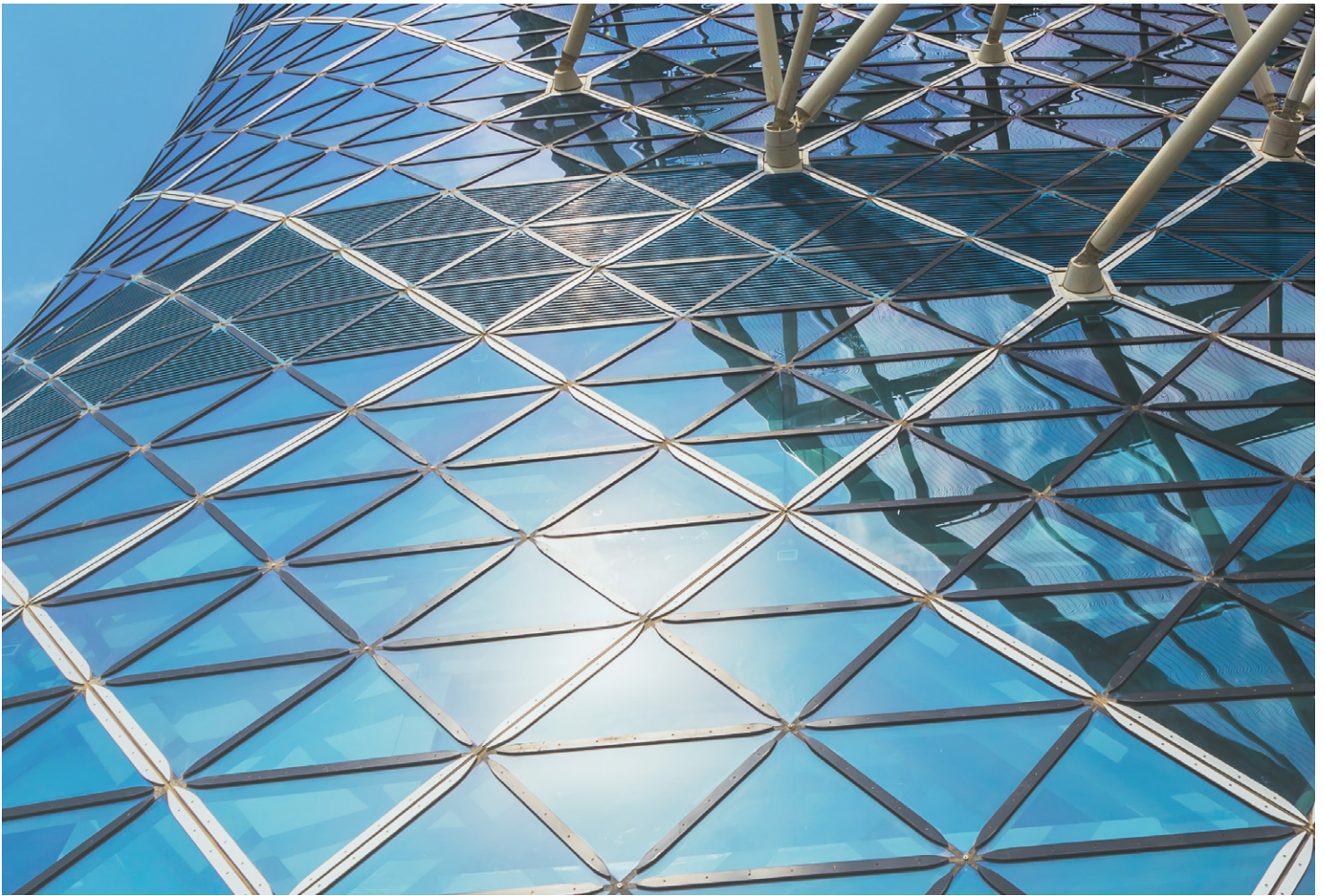
- Advising a DIFC registered and DFSA (Dubai Financial Services Authority) regulated investment bank in respect of the implications of ongoing DIFC Court proceedings brought against the bank’s DIFC registered financial services advisory arm

and a related Swiss private bank. The claims involved alleged breaches by the DIFC entity of DFSA regulations (failure to act with regulatory authority) and negligence in providing investment advice and allegations of carrying on unauthorised business in the DIFC, breach of contract and vicarious liability for the negligence of the DIFC entity.

- Acting for a UAE Islamic bank in a US\$ 3.5+ million claim in the DIFC Court for alleged professional negligence against its former DIFC-based legal advisors arising from the law firm’s alleged failure to advise our client adequately on securitisation issues under UAE law during the commercial restructuring of a AED 50 million debt.

Insurance/Reinsurance disputes

- Advising UAE insurers in relation to claims under an energy quota share treaty, including on issues relating to disclosure, cessions, payment of premium and reporting, involving entities in Kuwait, onshore UAE and the DIFC. Acting in subsequent proceedings additionally involving multiple fora and jurisdictional challenges.
- Acting for a UAE insurer in respect of a reinsurance dispute in the DIFC Court against the DIFC branch of a European reinsurer arising from damage to shopping malls in Egypt during the Arab Spring and associated business interruption claims. The case included a challenge to jurisdiction which raised issues of forum non conveniens between the DIFC Court and the Abu Dhabi (local) Court and also the jurisdiction of the Union Supreme Court, which resulted in appellate court authority on those issues. This was the first reinsurance dispute heard by the DIFC Court which proceeded to a two-week trial of the substantive issues.



Fraud and insolvency matters

- Acting for an insolvency practitioner appointed as the liquidator of a DIFC company in proceedings in the DIFC Courts to prevent creditors initiating proceedings following a company voluntary arrangement.
- Advising one of the largest commercial banks in the UAE in relation to the strategy for the recovery of a debt arising from a loan default including the commencement of insolvency proceedings under the UAE Bankruptcy Law or litigation (in either the DIFC or the ADGM) including options available for enforcement.
- Acting for a UAE-based bank in multi-party proceedings before the DIFC Court and parallel ICC arbitration proceedings in respect of significant trade credit insurance claims worth US\$ 12.1 million following alleged fraudulent transactions by a businessman relating to international commodities trading deals for chemical products across Asia, India and the Middle East.
- Acting for a European investment firm regarding an apparently fraudulent bond transaction in proceedings in the DIFC Courts against the Abu Dhabi company, and a large UAE bank, in whose accounts the bonds were transferred. This was an important case where the jurisdiction was extended to cover UAE financial institutions that were not established in the DIFC. Consequently the jurisdiction was further extended to include the Abu Dhabi company and proprietary injunctions and freezing orders were issued to prevent the dissipation of assets.
- Advising an international insurer in relation to three separate claims in the DIFC Court and the local UAE courts arising under a Directors & Officers insurance policy relating to alleged inducements to buy shares in a number of financial institutions in the DIFC.

**We are one of the few
firms able to provide a truly
seamless end-to-end service
when it comes to enforcing
or executing DIFC/ADGM
Court judgments and orders
in mainland UAE.**



Our DIFC & ADGM enforcement experience

We are highly experienced in proceedings before the DIFC and ADGM Courts for the recognition and enforcement of foreign judgments and arbitral awards, including where the DIFC/ADGM Courts are utilised as a “conduit jurisdiction” for onward enforcement into mainland UAE and the wider GCC region.

We are also one of the few firms able to provide a truly seamless end-to-end service when it comes to enforcing or executing DIFC/ADGM Court judgments and orders in mainland UAE. Once we have obtained a judgment or order from the DIFC Court our in-house Arabic litigation team can, through our formal association with Salam Al Maadfa Legal Consultant, act directly in the execution proceedings before the UAE local courts.

DIFC & ADGM enforcement

- Acting for one of the largest commercial banks in the Middle East in a claim in the DIFC Court for recognition and enforcement of a US\$ 32 million judgment issued by the English Court and subsequently ratified by the New York Court against a well-publicised Saudi Arabian trading company for onward enforcement in the wider GCC region under the Riyadh and/or GCC Conventions.
- Advising on the enforcement of a LCIA arbitration award in the ADGM Courts as a conduit jurisdiction to initiate enforcement in the onshore UAE Courts. Ultimately following our advice, this enforcement action did not proceed, and other options were pursued.
- Acting for a UK bank, US bank and DIFC-branch of a US bank in respect of a claim for recognition and enforcement of a US\$171+ million judgment issued by the New York Court against a Cayman Islands investment fund.
- Advising an arbitral award creditor in respect of a possible application to the DIFC Court for the recognition and enforcement of a London LCIA arbitration award for c. US\$ 20 million arising from a dispute under a settlement agreement entered into between the parties following a charterparty dispute. The intended application concerned the use of the DIFC Court as a “conduit” for the onward enforcement of the award against an “onshore” Dubai registered company in the local Dubai Courts.
- Representing a Chinese ship-builder in proceedings in the DIFC Courts, the Dubai Courts and the Joint Judicial Committee to enforce two LMAA arbitration awards resulting in successful recovery of USD 20 million from a GCC based listed company;
- Acting in an application before the DIFC Court for the recognition and enforcement of a US\$ 23 million London LCIA arbitration award, and successfully obtaining an order converting the foreign award to a DIFC judgment for onward enforcement before the local courts in Dubai. This was the first case brought in the DIFC Court for recognition and enforcement of a foreign arbitral award and was fully defended by the respondent, including on (a) points of constitutionality which was referred to the UAE Supreme Court; and (b) the jurisdiction of the DIFC Court to determine the enforcement application, which were the subject of appeals to the DIFC Court of Appeal.
- Acting for UK-based liquidators of a UK company to recover funds into the insolvent estate through an application to the DIFC Court for the recognition and enforcement of a US\$ 35 million English Court judgment against various entities and individuals domiciled in the UAE in respect of their participation in a fraudulent scheme. The action utilises the DIFC Court’s conduit jurisdiction for onward enforcement into mainland UAE.
- Acting on behalf of a London headquartered bank, who successfully sought to recognise and enforce under DIFC law, 22 London arbitration awards with a combined value of US\$ 26.5 million, via the DIFC Court, despite the defendants having no assets in the DIFC.
- Advising an Australian managed Dubai based entity in respect of an application to the DIFC Court for the recognition and enforcement of a AED 4.8 million judgment obtained from the local Dubai Court against the UAE and/or Australian branches of a US private military contractor following a dispute under a contract for the supply of equipment and ground handling services at airports in Afghanistan. In this instance we advised our client in respect of the (then) untested use of the DIFC Court as a “conduit” for the enforcement of local UAE Court judgments outside the UAE.



Litigation Funding in the DIFC and ADGM Courts

At HFW we recognise that financing litigation is a major consideration for clients when deciding whether to bring an action or resist a claim, no matter the size of the organisation, or merits of the claim. This is especially relevant in the DIFC and ADGM Courts.

The DIFC Courts promote and facilitate litigation funding, especially following the issuance of Practice Direction No. 2 of 2017 - Third Party Funding, which now expressly permits various forms of third party funding but also imposes various obligations on the funded parties and the funders. There are also obligations on the legal practitioners following recent amendments to the Mandatory Code of Conduct.

Similarly, in April 2019, the Litigation Funding Rules of the ADGM Courts came into effect. The rules provide a comprehensive framework for third party litigation funding, regulating funders, funded parties and litigation funding agreements in proceedings before the ADGM Courts. The Litigation Funding Rules prescribe minimum requirements for litigation funding agreements (including relating to scope, amount and timing of funding) to ensure that they are enforceable.

Litigation funding options may include:

- Conditional fee arrangements;
- Damage based agreements;
- Third Party Funding;
- Legal costs insurance.

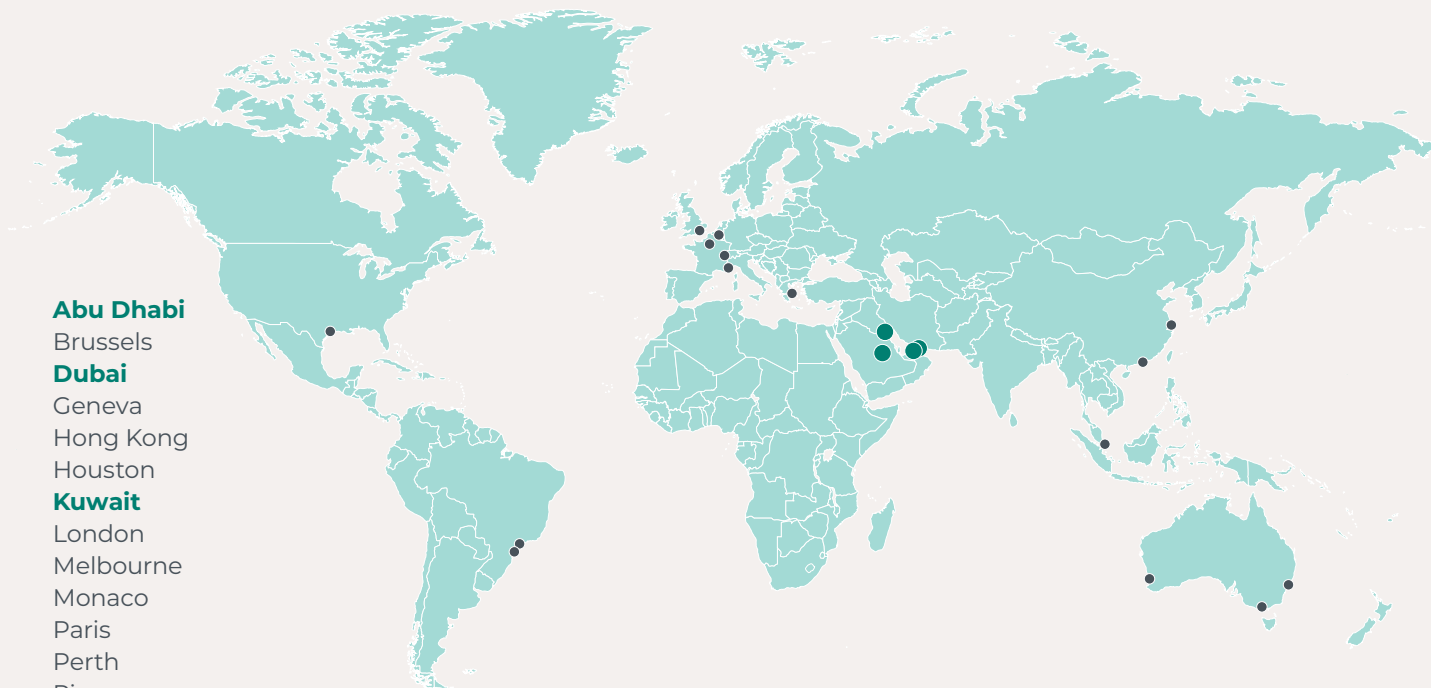
Indeed, depending on the nature of the case, it may be appropriate to consider and implement a combination of these options. It is important to cover the risk of adverse costs orders and/or security for costs applications.

At HFW, we have an internal Funding Committee to advise on the best approaches to funding and ensure that we are able to offer a seamless and efficient service through the established relationships we have with both brokers and funders. Nick Braganza is also the local litigation funding champion with experience of funding in the DIFC Courts.

Our global reach

We have scaled ourselves to an optimum size: big enough to provide the right level of support and resources globally; lean and flexible enough to adjust to our clients' needs and maintain a collaborative, personal approach.

We have 19 offices around the world and also work with top local firms and experts in their sectors.



Abu Dhabi

Brussels

Dubai

Geneva

Hong Kong

Houston

Kuwait

London

Melbourne

Monaco

Paris

Perth

Piraeus

Rio de Janeiro

Riyadh

São Paulo

Shanghai

Singapore

Sydney

Our DIFC/ADGM registered lawyers

Should you require any further information or guidance with any of the issues dealt with here, please do not hesitate to get in touch with Nick Braganza or any of the other contacts below:



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HFW has over 600 lawyers working in offices across the Americas, Europe, the Middle East and Asia Pacific. For further information about our dispute resolution capabilities, please visit [hfw.com/Dispute-Resolution](https://www.hfw.com/Dispute-Resolution)