PREFACE

We are delighted to present this new edition of the *DIFC Courts Practice*. It builds substantially on the 2010 to 2016 editions of an earlier commentary, the Rules of the DIFC Courts, that had previously been published privately.

This new edition has the benefits not only of professional copy-editing and a new index but also, in its Part A, of a detailed review of recent developments in the core areas of DIFC law. Earlier editions of the Rules of the DIFC Courts sought to give a relatively broad overview of those developments. In this edition, we seek to give the reader a more detailed survey of the decisions on both sides of any continuing debate.

We are delighted to introduce a very distinguished team of contributors with real expertise and experience of DIFC law in practice. We hope that you will find their analysis of recent developments in DIFC law as interesting and engaging as we have done in editing it.

We are very grateful to one of that team of contributors, Matthew Watson, for all his work after the delivery of proofs in bringing the text up to date as at 1 February 2020. We are further grateful to the DIFC Courts Registry for bringing to our attention a small number of rule amendments. Any rule number followed immediately by an ‘A’ in Part B is the relevant rule as amended pursuant to what will be Rule Amendment No. 1 of 2020.

The legal landscape of the DIFC has changed significantly since 2016 and there have been a number of noteworthy decisions, in particular in extending the jurisdiction of the DIFC Courts.

The case load of the DIFC Courts has increased significantly and the Courts have seen a number of high-value cases in which the disputes have gone beyond the traditional diet of jurisdiction and enforcement issues. Of the new emerging international commercial courts, the DIFC Courts are by far the busiest.

At the same time, as the caseload of the DIFC-LCIA Arbitration Centre has continued to grow, there has been a commensurate increase in arbitration-related claims in the DIFC Courts.

There is a sense that the jurisdiction is maturing and seeing increasing numbers of substantive disputes reflecting the wider economic activity within the DIFC, as well as the choice of parties to submit their disputes to its jurisdiction.

The DIFC Courts have considered cases and issued judgments on issues as disparate as sovereign immunity, the susceptibility of the DFSA to Subject Access Requests under the Data Protection law, the extent of the doctrine of *res judicata* in DIFC private international law, the contempt jurisdiction of the DIFC Courts, and the international management of complex, multi-jurisdictional fraud claims.
We hope that our discussion of these developments will convey to readers the real interest we and many other practitioners have experienced in DIFC Court litigation, in particular its interface with judges, advocates, legal cultures and languages of so many other jurisdictions.

We are aware that the decisions of the DIFC Courts are increasingly of interest to lawyers, academics and courts across the globe. The influence of those decisions is only likely to increase as the jurisdiction continues to mature and the model is replicated in other states, most recently in Kazakhstan, in the shape of the Astana International Financial Centre Courts.

Our ambition is that our blue book may one day be as useful to judges and practitioners as the ‘White Book’ used in civil litigation in the Courts of England and Wales. Readers may still, however, want themselves to refer to:

(i) the White Book for its convenient commentary on the analogous provisions in the English Civil Procedure Rules (the ‘CPR’), which the DIFC Courts may be required to follow and to which they may have regard: Art 30(2) of the Court Law (DIFC Law No. 10 of 2004; RDC 2.10; Ithmar Capital v. 8 Investments Inc [2007] CFI 008 (24 November 2008); Vannin v. Al Khorafi [2014] CFI 036 (11 February 2016);
(ii) the English Admiralty and Commercial Courts Guide, presently in its 2014 edition, as updated on 8 January 2018, which takes precedence over the CPR in default of provision in the RDC: RDC 2.10(2)–(3); and
(iii) insofar as the rules on the standard production of documents are derived from the IBA Rules on the Taking of Evidence in International Arbitration (the ‘IBA Rules’), the 2010 edition of the IBA Rules issued in 1999 and the IBA’s own Commentary on the IBA Rules also in its 2010 edition.

We would like to thank all of our friends and colleagues in the Dubai legal community for sharing their views on decisions of particular importance in which we and they have been involved. Any comments on the legal analysis in this DIFC Court Practice will be very much appreciated. Any errors in this work are of course our own.

Particular recognition is owed to Registrar Amna al Owais, Deputy Registrar Nour Hineidi and their team at the Registry, not only for their efficiency in managing cases, but for their support in this venture in publishing a definitive guide to DIFC substantive and procedural law.

We would also like to thank Chief Justice Tun Zaki Bin Azmi and Justice Sir Richard Field for kindly agreeing to write forewords to this work, and the publishers and editorial staff at Edward Elgar Publishing for their help and support in bringing this new edition to publication.

We are further grateful to Jonathan Chew and Simon Atkinson for their former contributions to the development of the earlier commentary on the Rules of the DIFC Courts.

Finally, we wish to thank our wives, Anna and Athena, both eminent commercial practitioners, for being so understanding of our periods of absence while working in
the DIFC. We hope they may draw some consolation from knowing that at least some of these cases have played a part in the development of the substantive and procedural jurisprudence of the DIFC.

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25 February 2020