

27 January 2020

To the Judges of the Court of Appeal

**A request by the Chief Justice made under Article 5(B)(1)(b) of the Judicial Authority Law**

I write to you regarding a letter that was sent to me on 2 January 2020 by the Chief Legal Officer of the DIFC Authority (the "**Authority**"), Jacques Visser, on behalf of the Authority. The letter is an application by the Authority, as a DIFC Body, to me, in my capacity as Chief Justice of the DIFC Courts (the "**Application**"), to request the Court of Appeal to provide interpretations of two DIFC Laws (the "**Interpretations**"), namely Law No. 4 of 2018 (the "**Trust Law**") and Law No. 3 of 2018 (the "**Foundations Law**"). The Interpretations that are sought by the Authority are appended to this letter in Schedule 1.

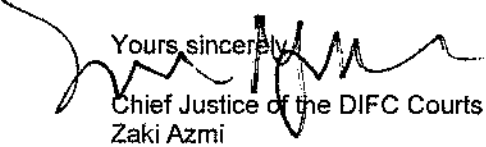
The Application was made pursuant to Article 5(B)(1)(b) of Dubai Law No. 12 of 2004 (as amended) (the "**Judicial Authority Law**") ("Article 5(B)(1)(b)"), which provides:

*The Court of Appeal shall have exclusive jurisdiction to hear and determine:*

...  
*(b) request[s] of interpretation by the Chief Justice of the Courts of any article of the DIFC Laws and DIFC Regulations upon an application submitted to him from any DIFC Body, DIFC Establishment or Licensed DIFC Establishment; such interpretation shall have the same authority as the interpreted legislation.*

I have considered the Application and, under Article 5(B)(1)(b), I hereby formally request the Court of Appeal to provide the Interpretations. In making this request, the jurisdiction of the Court of Appeal to hear and determine the matter is accordingly enlivened.

Yours sincerely,

  
Chief Justice of the DIFC Courts  
Zaki Azmi

## SCHEDULE 1

### The Requested Interpretations

1. Whether the property referred to in Article 34(1)(d) of the Trust Law can include property located in a jurisdiction which does not recognise trusts.
2. Whether, having regard to the terms of Article 12(2) of the Foundations Law, a DIFC foundation may hold property (other than property of the foundation as defined in the Foundations Law) in trust under the Trust Law.
3. Whether the reference in Article 10 of the Trust Law to the common law of trusts and principles of equity:
  - a. includes the common law of trusts and principles of equity as understood under the law of England and Wales; and
  - b. is limited to the common law of trusts and principles of equity as understood under the law of England and Wales.
4. Whether, if a trust instrument or foundation charter contains an irrevocable provision of the type referred to in Article 40(11) of the Trust Law or Article 19(10) of the Foundations Law, it is possible for a person other than a national of the jurisdiction specified in the provision to have an interest in the trust or foundation property or derive any benefit under the trust or foundation.
5. Whether, if one or more suitably qualified expert(s) in Shari'a law has or have been appointed an advisory trustee or trustees pursuant to Article 57 of the Trust Law, the responsible trustee may, subject to Article 57(3)(c), rely and act upon the advice of the advisory trustee(s) in respect of any matter related to Shari'a compliance which is relevant to the administration of the trust or the exercise of any discretion vested in the responsible trustee.
6. Can a *waqf* that has been validly constituted according to the law of the place of its establishment, subject to compliance with the formalities of the Trust Law or Foundations Law as applicable:
  - a. be recognised as a trust under Article 17 of the Law Relating to the Application of the DIFC Laws 2004;
  - b. be recognised as a foundation under Article 62 of the Foundations Law; and
  - c. be continued as a foundation under Article 56 of the Foundations Law?
7. Can a foundation, if approved by another jurisdiction for continuance as a *waqf*, transfer to that other jurisdiction from the DIFC under Articles 59, 60 and 61 of the Foundations Law?
8. Does any provision of the Trust Law prevent recognition of a DIFC trust under the laws of another jurisdiction for the purposes of those laws?
9. Will the transfer of property by a Muslim to a trust or foundation necessarily attract the operation of Article 361 of the Law of Personal Status of the United Arab Emirates?
10. Whether an order made in proceedings in the Court under the Trust Law or the Foundations Law can be the subject of execution pursuant to Article 7 of the Judicial Authority Law.
11. Whether a settlor of a trust may be a shareholder or a director of a company which is trustee of the trust.

12. Whether, if a Muslim settlor expressly desires to establish a trust which is Shari'a compliant but inadvertently includes in the trust instrument a provision which is not Shari'a compliant, the Court can:
  - a. pursuant to Articles 24(2)(c) and 25(2)(a) of the Trust Law, determine that the disposition shall have effect on terms which are Shari'a compliant; and/or
  - b. pursuant to Article 40(8)(a) of the Trust Law vary the terms of the trust so that they are Shari'a compliant.
13. Whether anything in public policy in the DIFC referred to in Article 9(2)(c) of the Trust Law precludes the establishment of a trust by a person who is not and has never been a Muslim, notwithstanding that it may contain terms which would not, if the trust were established by a Muslim, be Shari'a compliant.