



## Claim Form - Court of First Instance

### Claimant(s)

Name * :	CFI-008-2020 Dubai International Financial Centre Authority
Are you resident of UAE?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Emirates ID:	
Address Line 1:	Level 14, The Gate Building,
Address Line 2:	DIFC, Dubai UAE
Postal code / PO Box:	PO Box 74777 Dubai UAE
Location *:	Level 14, The Gate Building, DIFC, Dubai, UAE
Email * :	Tanuja.paramasivam@difc.ae

### Defendant(s)

Name * :	N/A
Are you resident of UAE?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Emirates ID:	
Address Line 1:	
Address Line 2:	
Postal code / PO Box:	
Location *:	
Email *:	

  
**30 JAN 2020**  
**RECEIVED**  
By: 

### Claim Type

Type of Claim * :	<input type="checkbox"/> P7 <input type="checkbox"/> This claim should be referred to the Technology and Construction Division <input checked="" type="checkbox"/> P8
Court Fee (US\$)	<input type="text" value="US\$5.000"/>



### If P7 Claim Value

Currency *:	AED <input type="checkbox"/> USD <input type="checkbox"/>
Amount *:	
Court Fee (US\$)	
Payable now (35%) US\$	(35% of the relevant filing fee shall be paid within 7 days from the date of filing the Claim)
Payable at CMC Stage (35%)US\$	(The next 35% of the filing fee shall be paid within 10 days from the date of listing the CMC (the 'CMC Portion'))
Payable at PTR Stage (30%)US\$	(The final 30% of the filing fee shall be paid within 10 days from the date of listing the Pre-Trial Review (the 'Pre-Trial Portion'))

### Particulars of Claim

<input type="radio"/> <input type="radio"/> <input type="radio"/>	<p>x Included below</p> <p>Will follow if an acknowledgment of service is filed that indicates an intention to defend the claim</p> <p>○ Attached</p>
Brief Details of Claim *:	<p>The Claimant seeks in accordance with the request by the Chief Justice pursuant to Article 5(B)(1)(b) of <i>Dubai Law 12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre as amended</i> the interpretation by the Court of Appeal of the provisions of the <i>DIFC Trust Law 2018</i> and the <i>DIFC Foundations Law 2018</i> specified below.</p>

### Law

Law governing the Dispute *:	<p><i>DIFC Trust Law 2018</i> <i>DIFC Foundations Law 2018</i></p>
Law giving Rise to the Jurisdiction of the DIFC Courts* :	<p><i>Dubai Law 12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre as amended</i></p>

### Remedy Sought

Remedy Sought:	<p>The issues which the DIFCA seeks to have determined by the Court of Appeal in respect of the <i>DIFC Trust Law, Law No.</i></p>
----------------	--

4 of 2018 (the “Trust Law”) and the *DIFC Foundations Law, Law No. 3 of 2018* (the “Foundations Law”), and the answers which the DIFCA proposes should be given to the questions raised in respect of those issues, are as follows:

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?

Proposed answer: Yes

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?

Proposed answer: Yes

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;

Proposed answer: Yes

- (b) is limited to the common law of trusts and principles of equity as understood under the law of England and Wales?

Proposed answer: No

Whilst the Court will place great weight on the jurisprudence of the Courts of England and Wales in determining the content of the common law of trusts and principles of equity, its approach to those issues will follow its approach to the application of common law generally, which permits the Court to also have

regard to the jurisprudence of other significant common law jurisdictions.

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 jurisdictions specified in the provision to have an interest in the trust or foundation property or derive any benefit under the trust or foundation?

Proposed answer: No

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?

Proposed answer: Yes

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 DIFC Laws 2004;

Proposed answer: If the waqf has legal personality in its place of establishment, no. In all other cases, yes;

- (b) be recognised as a foundation under Article 62 of the Foundations Law;



Proposed answer: If the waqf has legal personality in its place of establishment, yes. In all other cases, no;

- (c) be continued as a foundation under Article 56 of the Foundations Law?

Proposed answer: If the waqf has legal personality in its place of establishment and is permitted by the law of that place to change its corporate domicile to the DIFC, yes. In all other cases, no.

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?

Proposed answer: Yes

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?

Proposed answer: No

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?

Proposed answer: Nothing in the Trust Law or Foundations Law has the effect that such a transfer will necessarily attract the operation of that Article.

10. Whether an Order made in proceeding 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?

Proposed answer: There is no distinction between

Orders of the Court pursuant to the Trust Law or the Foundations Law and any other Orders of the Court for the purposes of Article 7 of the Judicial Authority Law and the Court will follow the procedures set out in that Article in respect of any such Orders.

11. Whether a settlor of a trust may be a shareholder or a director of a company which is trustee of the trust?

Proposed answer: There is no legal reason why a settlor of a trust may not 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?
- (b) pursuant to Article 40(8)(a) of the Trust Law vary the terms of the trust so that they are Shari'a compliant?

Proposed answer: In both (a) and (b) above, the Court has power in appropriate circumstances to make such Orders.

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?

Proposed answer: No

Service of the claim form will be \*  within Dubai  Outside Dubai

## SUPPORTING DOCUMENTS\*

Witness Statement of Jacques John Visser to be filed

\*\* Remember to attach all the required documents with this.

## STATEMENT OF TRUTH

I believe that the facts stated in this claim form are true.

I am a Litigant in Person      Yes  No

Full name \*:

Signature \*:

## LEGAL REPRESENTATIVE

Firm:	Dubai International Financial Centre Authority
Court Registration No:	
Address:	Level 14, The Gate Building, DIFC, Dubai
Email:	<a href="mailto:Tanuja.paramasivam@difc.ae">Tanuja.paramasivam@difc.ae</a>
Telephone No.:	04 362 2601
Your Reference:	