

## Decision of Registrar M. Beer in the complaint against Al Safar & Partners

This decision relates to a complaint filed on 26<sup>th</sup> January 2015 by Hadeb & Partners (the "Complaint").

The Complaint is against Al Safar & Partners (the "Respondent"). The Complaint was associated with proceedings in the DIFC Court of First Instance in 2014 involving an order of H.E. Justice Ali Al Madhani issued on 24<sup>th</sup> September 2014 which provided "The Claimant's legal representatives shall be liable for the costs of both applications (Application Notice CFI-xxx-xxxx and Application Notice CFI-xxx-xxxx) as Wasted Costs, to be assessed by the Registrar if not agreed, occasioned as a result of their conduct in the proceedings."

On 11<sup>th</sup> January 2015 a Default Costs Certificate in the amount of USD 38,127.79 was issued against the Respondent, ordering payment by 4pm on 25<sup>th</sup> January 2015 (subsequently reissued on 20<sup>th</sup> January 2015).

The Complaint made by Hadeb & Partners (the "Complainant") is that *"Al Safar & Partners have acted in breach of the Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts and the Supplementary Code of Conduct...Specifically, it is our view that Al Safar & Partners have breached SPD E-17 (x) by failing to comply with an order of the Court requiring that they pay XYZ USD 38,127.79 by no later than 4.00 pm on Sunday 25 January 2015."*

The relevant section of the Supplementary Code of Conduct is:

*"A Practitioner must comply with any order of the Court requiring him to do or refrain from doing something; equally, a Practitioner is bound to honour his undertakings given to the Court."*

On 27<sup>th</sup> January 2015 the Registrar wrote to the Respondent saying:

*"Dear Sirs,*

*I have received the attached complaint against Al Safar & Partners (the "firm").*

*In accordance with numbered paragraph 28 of the Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts I cannot, at this stage, say on reasonable grounds that the complaint is frivolous or vexatious, so am forwarding it to you on behalf of the firm.*

*Please would you cause the firm to provide a written response to the complaint by no later than 4pm on February 8th, 2015. In addition, in that response, please would the firm let me know if it wishes for the complaint to be investigated and decided upon by me alone or jointly by me and two independent assessors chosen by me from the Register of Practitioners."*

Later that day the Respondent replied:

*"We refer to our below e-mail and your e-mail dated January 27, 2015 which was sent in response to Mr. Jamie Liddington's e-mail dated January 26, 2015.*

*Apart from your said response to Mr. Liddington's e-mail, we will be replying to it separately. However, we have failed to understand the Registrar's ignorant behavior towards our comprehensive e-mail which still remains un-answered, despite the fact that it was sent on January 25, 2015.*

*Needless to assert, it seems that the Registry is pushing the Claimant to deal with the people who have no concern with the case as they do not hold any valid and/or duly authorized Power of Attorney on behalf of the Defendant hence requires justifiable explanation with equitable findings.*

*Please note that all the records are available with the DIFC Registry hence the Registrar was under obligation to look into the legal defects before referring the same to the Court. Therefore, due to lack of legal Authorization of Hadeef & Partners, the subject case and its contents being highly confidential should not be revealed to any party which is incompetent to act or represent on behalf of the defendant including Hadeef & Partners in light of the rules and code of conduct prescribed by DIFC Courts as well as UAE Federal Laws.*

*The tolerance to the aforesaid fact by the DIFC Registry has created suspicion and has somehow broken the trust of the Claimant which shall also effect the believes of the people at large, if investigated by the higher/competent authorities.*

*Therefore, the Claimant requires attention and immediate response as the matter is under adjudication without deciding the main legal issue which nullifies the entire pleadings/submissions made by Hadeef & Partners in order to defend the Defendant in the subject case."*

*A subsequent letter that day from the Respondent said:*

*"We refer to your below e-mail and our email sent to you on January 25, 2015 and today's e-mail reminer [sic] in respect of the same.*

*We highlight the following as stated in e-mail below:*

*"In accordance with numbered paragraph 28 of the Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts I cannot, at this stage, say on reasonable grounds that the complaint is frivolous or vexatious, so am forwarding it to you on behalf of the firm".*

*It is surprising that the DIFC Registry does not maintain its record in respect of the ongoing proceedings such as the subject case. All along we Al Safar & Partners raised objections regarding the invalidity of representation of the Hadeef & Partners on behalf of the Defendant out of which most were either un-replied or declined by the DIFC Registry.*

*It is reiterated that it was an admitted fact by Mr. Jamie Liddington during the CMC meeting held on January 12, 2015 in respect of lack of his Legal Authorization/Power of Attorney.*

*Despite objecting to the above fact, the DIFC Court has declined to take the issue on record and informed that it will be issuing its order in this respect but till date we have not received any directions from the Court.*

*However, it is further unbelievable that the DIFC registry is unaware of the legal Authorization of Hadeef & Partners (Mr. Jamie Liddington) and since we have lodged a complaint before the competent authorities with regard to the same, the Registry has finally realized to reply to our previously unresponded objections against violation of law, legal procedures and justice.*

*Therefore, we completely negate the discriminatory behavior of the DIFC Registry and seek and require an explanation, being respectable and law abiding law Office seeking justice.*

*In light of the aforesaid, the Claimant further reiterates that she is not bound to communicate or deal with any person(s) who has failed to prove his authorization/Power of Attorney to represent and/or act on behalf of the Defendant.*

*Further, the subject matter is confidential and expect that the Registry will maintain the secrecy of the Claimant's case hence should not reveal any document(s)/contents to the incompetent party any further. Moreover, the Claimant reserves a right to take action against the acts of misconduct before all available competent forums and will not be afraid of raising the issue as and when required and asked for.*

*We look forward for your cooperation in the matter and hope that the registry will immediately remove the name of Hadeef & Partners from the case & further cease the access of the incompetent parties from the Court website in relation to the instant Claimant's case.*

*We look forward for your earliest response. Otherwise, it will be evident that the registry is not willing to comply with the Legal procedures and wish to continue to protect the people acting in violation of law and justice."*

*The referenced email of 25<sup>th</sup> January 2015 read as follows:*

*"We refer to above mentioned matter and our several complaints, e-mails and objections in respect of unlawful representation made by Hadeef & Partners and who have failed to produce a proof of duly constituted Letter of Authorization of any of the officer to act on behalf of the Defendant.*

*It is being observed that the DIFC Court is deliberately avoiding to take any action against the aforesaid illegal acts of the Defendant as well as the lawyers representing them against the norms of Legal Ethics and in violation of Federal Laws of UAE.*

*It is evident that despite our objections to the wasted costs, the costs were allowed to Hadeef & Partners, who has no proof of its representation or legal Authority to act on behalf of the Defendant.*

*It is further being noted that as per DIFC Rules, wasted costs should not be allowed unless an opportunity of being heard is given to the party concerned. It is provided in DIFC Rule 38.84 that:*

*The Court must give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make such an order.*

*Despite the aforesaid, the wasted costs order was granted by Sub-Judicial Officer instead of by the Court itself for the reason that the Claimant had objected to Hadeef & Partner's invalidity to appear in the*

*subject case due to lack of Power to Attorney on behalf of the Defendant. It is reiterated that the said application was made to the Court and it should be decided only upon notice and hearing the Claimant.*

*Regardless of the fact that the wasted costs should not be allowed in Pro Bono Trial. Please note that the Claimant was referred to us by the Pro Bono Committee itself. However, the DIFC Court charged all official costs which are being paid by the Claimant, knowing fully well that the Claimant has been facing financial losses as stated in our several e-mails sent to the DIFC Registry. The said order of the wasted cost was in violation of DIFC Rules 38.88, 38.89 & 38.90 respectively.*

*Further, as per prescribed DIFC Rule 38.97, the Court could have waited until the final hearing of the case in order to evaluate wasted cost. Apparently, DIFC does not seem interested to adjudicate upon the invalidity of the Legal representation of Hadeef & Partners (Mr. Jamie Liddington) which would have been decided together with the main case. As it is well known to the parties concerned and the DIFC Court that once the invalidity of representation is proved then the Defendant has no locus standi to defend the instant claim and further are liable for strict action for their aforesaid illegal act.*

*Needless to assert that during a CMC meeting held on January 12, 2015 at 10:00am at DIFC and in presence of H.E. Justice Ali Al Madhani, Mr. Jamie Liddington has admitted the fact that he could not get Power of Attorney/Authorization from the Defendant.*

*Moreover, we have failed to understand the silence on part of the Registrar and surprised not to receive any response with regard to the same.*

*It is noted that the wasted cost was granted and calculated on the basis of the lawyer's fees which is itself contradictory to the fact of invalidity to represent the Defendant.*

*The Claimant further confirms that she reserves a right to take action against any factor which may jeopardize her claim before any other competent authority for justice.*

*Moreover, please note that the Claimant is not bound to answer or to communicate with Hadeef & Partners in relation to her claim pending before DIFC unless the Defendant as well as the Legal representatives provide an evidence of their Legal Authority in accordance with UAE laws.*

*We hope that the DIFC Court will respond to our instant e-mail with proper justification and not merely on the basis of discrimination.*

*It is further expected that the DIFC Court will respect the secrecy of the Claimant's case and shall not reveal any document(s) or information related to the subject case to any party further."*

*No further response to the Registrar's email of 27<sup>th</sup> January 2015 was received by the deadline, so he wrote on 9<sup>th</sup> February 2015:*

*"Dear Sirs,*

*Although I saw your first response to the below I was under the impression you intended to submit a more substantive response to the complaint.*

*The deadline for a response was 4pm yesterday and I cannot locate your response. If you have sent it already please would you let me know when."*

On 10<sup>th</sup> February 2015 the Respondent wrote:

*"Please find enclosed herewith our replies dated January 25 & 27, 2015 which have completely been ignored by you."*

To which the Registrar replied on 11<sup>th</sup> February 2015:

*"I am grateful for your email of 10th February 2015 and the emails attached to it. However, none of those emails deal with the substance of the complaint or answer my question, namely "would the firm let me know if it wishes for the complaint to be investigated and decided upon by me alone or jointly by me and two independent assessors chosen by the me from the Register of Practitioners." The emails deal with a separate issue which is unrelated to the complaint. In their tone they would not appear to comply with provision B(1) of the Mandatory Code of Conduct.*

*I will allow you until 4pm tomorrow afternoon to respond specifically to the complaint and to answer the abovementioned question. If you do not respond as such I shall assume that you admit the complaint and wish me to proceed, alone, to deliver my written decision.*

*I would ask that you take this complaint seriously as there are important consequences attached to a breach of the Mandatory Code of Conduct."*

On 12<sup>th</sup> February 2015 the Respondent wrote:

*"We refer to Hadeff & Partner's letter to you therein complaining and requesting to take action against Al Safar & Partners, our e-mails dated January 25, 27 of 2015 to the Registrar, and our several objections raised through various submissions before the Registry as well as the Court.*

*Although it was communicated and requested several times to the Registry that neither Hadeff & Partner holds a valid Power of Attorney on behalf of the Defendant nor any of the officer of the defendant has ever produced evidence in relation to their authority to act on behalf of the Defendant itself.*

*Needless to assert, that the submission made by the Claimant in respect of the wasted costs was decided by the Registry instead of the Court without giving an opportunity of being heard.*

*Please note that the said Registrar's order dated January 11, 2015 was not sent to the Claimant's duly authorized Legal Representatives who were surprised to receive the said order of the Registrar from Hadeff & Partner instead of receiving the same from the DIFC Registry.*

*Thereafter, it was suddenly revealed that Hadeff & Partner was allowed to submit Statement of Costs despite our objections sent via several e-mails, submissions (as per DIFC Rules), and correspondence with the DIFC Registry and further without giving an opportunity of being heard to the Claimant's Legal Representatives.*

*In addition to the above, the wasted cost was assessed without considering our objections in respect of Hadeef & Partner's lack of legal Authority to appear on behalf of the Defendant.*

*It is being observed that the steps taken so far are not only in violation of DIFC Rules but also negate the Federal Laws of the UAE. Such as:*

*1- DIFC Rule 38.84 that: The Court must give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make such (wasted cost) an order.*

*2- Mandatory code of Conduct- Part B Clause 3- Practitioner shall ensure that they are familiar with such DIFC laws and Dubai Law establishing the DIFC as may be relevant to the matter before the Court.*

*However, the DIFC Court might have overlooked the Federal Law No. 8 of 2004 regarding implementation of the Regulation of the Financial Free Zones which includes DIFC and states under Article 3 sub clause 2 that:*

*"All financial free zones and activities shall be subject as well to the provisions of the Federal Laws.."*

*As such, the Federal Law No. 23 of 1991 regarding regulation of Legal Profession which is pursuant to the perusal of the Provisional 2 Constitution provides a mandatory code for all the Courts functioning within UAE including Free Zones and establishes that: Article 25 - The lawyer shall submit his certified power of attorney to the court on the first session attended thereby on behalf of his Principal. Should such power of attorney be Special, it shall be deposited in the case file.*

*In light of the aforesaid laws and present fact, Hadeef & Partner has failed to prove his Authority by not producing a duly notarized Power of Attorney which consequently not only invalidates his right to claim a sum awarded towards legal services but also make him liable for breach of Federal Laws, Mandatory Code of Conduct of DIFC Courts, Practice Direction No. 2 of 2009 DIFC Courts' Code of Professional conduct and further should be penalized in order to secure the ends of justice.*

*Further, it has been observed that all the objections raised or submitted by the Claimant through DIFC website have not only been overlooked but have been refused to entertain. On the contrary, every single request and complaint submitted by Hadeef & Partner has always been taken seriously with immediate action.*

*The Claimant has somehow always tried to get justice hence continuously objecting the invalidity of Hadeef & Partner to represent the Defendant. Being a part of legal Profession and well acquainted with the universal law of equity and justice, the defendant claim has become infructuous due to non-production of duly notarized Power of Attorney on behalf of the Defendant despite several requests of the Claimant before the Court as well as the DIFC Registry.*

*The Claimant has however failed to understand the ignorance of DIFC Registry/Court towards such violation of law and justice by Hadeef & Partners who has no locus standi to represent the Defendant.*

*In light of the aforesaid facts, laws, rules and mandatory codes, the Claimant still wishes to believe to get redressal of her grievance from the Court and further believes that the wasted cost shall only be assessed and granted after Hadeef and Partner provides a duly notarized power of Attorney issued by a duly authorized officer of the Defendant.*

*We hope that the Registrar will consider all the facts and circumstances should not only give a reasonable opportunity to discuss the matter but also provide justice. We look forward to meet with the Registrar himself."*

In an attempt to advance the complaint the Registrar requested that the Complainant and the Respondent appear before him on 26<sup>th</sup> February 2015. During that meeting the Respondent raised a number of concerns including:

1. the Complainant had no power of attorney from its client to represent it in the DIFC Courts;
2. their client, a pro-bono litigant within the DIFC Courts Pro-Bono Programme, was entitled to a waiver of court fees;
3. the order of H.E. Justice Al Madhani imposing wasted costs was flawed; and
4. that the default costs certificate was invalid because the Respondent had not received the notice of commencement.

The Registrar addressed these points in an email that day saying:

*"Thank you for your time this morning and for coming to meet to discuss the progress of this case. As discussed, I have checked with HE Justice Al Madhani as well as Judicial Officer Al Mehairi regarding the question of whether an order was made by HE Justice Al Madhani during the recent hearing, such order dealing with the concerns raised on behalf of the Claimant that Hadeef & Partners had not evidenced a power of attorney from XYZ. It has been confirmed to me that an order was made, in terms that this preliminary point was to be pursued by way of an application from the Claimant, or was not to be continued. Those are my words and should you wish the court to confirm that order in writing please liaise with the Registry (although please note that the order took effect from the moment it was given by the judge).*

*Another point raised by counsel for the Claimant was that a pro-bono litigant is entitled to have all court fees waived and, although I am not involved directly with the pro-bono programme, my preliminary review of the pro-bono guidelines indicated that:*

*"12. A pro bono litigant can at any time apply to the Programme Leader to have the court fees suspended until the end of the case. The Programme Leader has absolute discretion in determining whether court fees are to be suspended and to what extent."*

*This would indicate that waiver of court fees is not automatic.*

*Counsel for the Claimant also mentioned, after Messrs Liddington and Chadwick had left, that they felt it was within the remit of the pro-bono rules to charge a client. I make no comment on that but suggest*

*counsel for the Claimant seek clarification on this point as a matter of urgency from the Pro-Bono Programme Leader, Ms. Al Owais.*

*With regard to the contention made by counsel for the Claimant that the DIFC Courts' order of 24th September 2014 was subject to challenge, should the Claimant wish to pursue that, an appropriate route is to follow the mechanism for appeals set out in the Rules of the DIFC Courts.*

*With regard to the suggestion that the default costs certificate in respect of the wasted costs should be overturned because counsel for the Claimant had not received the notice of commencement purportedly served by email, this matter requires urgent attention of counsel for the Claimant. The mechanism for applying to overturn a default costs certificate is set out in the rules of the DIFC Courts.*

*Thank you again for your time and explanations this morning and should you have any questions regarding the above please let me know."*

*On 1<sup>st</sup> March 2015 the Respondent submitted its own set of minutes of the meeting and on 2<sup>nd</sup> March 2015 it sent an email as follows:*

*"We refer to your below e-mail [of 26<sup>th</sup> February 2015] and wish to inform you that the conversation held between the Claimant's Legal Representative and the Registrar was confidential. However, to our surprise you have included in the below comments which states "Counsel for the Claimant also mentioned, after Messrs Liddington and Chadwick had left, that they felt it was within the remit of the pro-bono rules to charge a client. I make no comment on that but suggest counsel for the Claimant seek clarification on this point as a matter of urgency from the Pro-Bono Programme Leader, Ms. Al Owais".*

*Despite of lack of cooperation from DIFC Registry in respect of issues in hand, the Claimant tried to cooperate in order to proceed with the subject matter in accordance with prescribed rules and laws.*

*However, it has been observed during the meeting held on February 26, 2015 that neither the Registrar had questioned Hadeef & Partners nor attempted to resolve the legal issue. Instead, the Registrar had ignored all the objections raised by the Claimant in respect of proof of lawful authority to represent the Defendant.*

*Rather asking Hadeef & Partner, the Registrar asked the Claimant whether they believe Hadeef & Partners are legally authorized by the Defendant or not. If not, then under which law the Claimant has been raising such question.*

*We were surprised to note further that it is a simple legal question which can be answered by providing proof of such authorization by Hadeef & Partners. The present legal representatives are the registered legal practitioners with the Department of legal Affairs Dubai hence are bound to comply the Regulation enforced within the jurisdiction of the Emirate of Dubai which includes but not limited to the Federal Law No. 23 of 1991.*

*We feel that the mistake has been made by not complying with the prescribed laws and procedure which should be rectified in the interest of justice and fair trial.*

Moreover, the said question is the main legal issue in the case. As per prescribed rules, only a schedule of further proceedings has to be decided and not any substantive order has to be issued in CMC hearings. But for the reason unknown, the Claimant has failed to understand the actions of the Registry to quickly follow up with the Judge and get the order negating such production of document in favour of Hadeef & Partners while ignoring all the factual and legal position which under law tantamount to overriding object hence not permissible under the Mandatory Code of Conduct.

#### *Part E – General Duties*

17. Practitioners shall not engage in conduct that undermines the Overriding Objective or which may otherwise result in procedural unfairness.

Further, if the error has been made by the practitioner, the code provides:

SPD B-6 (i) A Practitioner who, after being engaged by a client, realises that he [1] is or will be in breach of Part B-6 and/or Part B-8, Part C-15, SPD-C7, SPD-C9, SPD-C15 or any other provision of the Mandatory Code and Supplement if he continues to act for that client, shall discharge himself from the representation of that client without prejudice to the representation being taken over by another member of his firm to whom Part B-6 is inapplicable. In discharging himself, the Practitioner shall take all reasonable steps to ensure that his client's interests are not in any way jeopardized.

With regard to the comments of the registrar therein mentioning that : "With regard to the contention made by counsel for the Claimant that the DIFC Courts' order of 24th September 2014 was subject to challenge, should the Claimant wish to pursue that, an appropriate route is to follow the mechanism for appeals set out in the Rules of the DIFC Courts". The Claimant specifically showed the DIFC Registry/Court website extract where it is appearing the said order was passed by the Court (with hearing). It is an admitted fact that the hearing was not conducted in respect of the wasted cost. However, the Registrar refused to take the same on record.

It is reiterated that the Registrar neither had asked a single question relating to Power of Attorney from Hadeef & partners during the meeting nor presented any proof of authorization from the Defendant since Hadeef & Partners has described to be as listed legal representatives of the defendant in DIFC.

In light of the aforesaid, the Claimant reserves a right to claim for the said authorizations in accordance with UAE federal laws and also in compliance with DIFC registration criteria with regard to representing a corporate client.

We hope that Hadeef & Partners shall cooperate instead of prolonging the legal issue which will not only save time but also the excessive costs incurred by both the parties.

We look forward to hearing from you soon."

On March 5<sup>th</sup> 2015 the Complainant wrote:

"We refer to the meeting on 26 February (the "Meeting") and your subsequent email (below).

*During the Meeting, Ms Salim of Al Safar & Partners claimed not to have received two emails from Hadeef & Partners sent to multiple (8) Al Safar email addresses on 5 November 2014.*

*As a result, you invited Al Safar & Partners to check whether those emails had been received and you confirmed that if they were not received, Al Safar & Partners were at liberty to make an application to have the Default Costs Certificate dated 11 January 2015 set aside. It was clearly explained to Ms Salim that until such time as an application to set aside was submitted, the Defendant was at liberty to enforce the wasted costs award and that, accordingly, an application to set aside should be submitted (including confirmation that the 5 November emails had not been received and supported by a statement of truth) without further delay. To our knowledge, no such application has been submitted by Al Safar & Partners since the Meeting (one week ago).*

*Accordingly, in the absence of any application to set aside the Default Costs Certificate or to appeal the Order of H.E. Justice Ali Al Madhani dated 24 September 2014, we now invite you to resume dealing with the Defendant's complaint under the Courts' Mandatory Code of Conduct.*

*To date, Al Safar & Partners have been provided with two opportunities to state whether they elect for you to decide the complaint acting alone or whether they elect that you must appoint two assessors to jointly determine the complaint. In the absence of any response to that question, we submit that you should now proceed to reach a decision acting alone*

*We look forward to hearing from you in due course."*

*In relation to the minutes drafted by the Respondent, the Registrar responded on 18<sup>th</sup> March 2015:*

*"Regarding the below, they are not an accurate reflection of the meeting from my recollection, particularly point 7. However, unless Hadeef & Partners wishes to undertake an exercise in adding its recollection of the meeting into the below, which will then allow me to consider both perspectives and send both parties a version which matches my recollection as well, the minutes serve no further purpose. The options available to Al Safar & Partners with regard to the wasted costs order of HE Justice Al Madhani remain those in the Rules of the DIFC Courts, as are the options in relation to the default costs certificate."*

*On 18<sup>th</sup> March 2015 the Respondent wrote:*

*"We refer to below e-mail and would be obliged if the Respected Registrar hold the subject matter until the final decision of the Complaint filed before the competent higher authorities.*

*Please note that the Claimant has requested the Pro Bono Program leader to grant a cost-free trial. However, the subject matter is related to the issue which can be resolved at the time of final hearing as discussed during our meeting.*

*Therefore, it is prayed that the Respected Registrar can exercise his power under the RDC Rules and grant stay till the final hearing of the case as the subject issue does not require urgent consideration but the Claimant's/Pro Bono Litigant matter requires immediate attention. Therefore, the Claimant's*

*representatives are required to concentrate on the preparation of documents and main proceedings despite incurring continuous costs and expenses for the Pro Bono Claimant.*

*We shall be highly obliged for your cooperation in the matter and shall look forward to hearing from you soon."*

On 19<sup>th</sup> March 2015 the Registrar wrote:

*"I understand from my colleagues in the Registry that Al Safar & Partners no longer represent the Claimant in these proceedings. This leaves us with the matter of the wasted costs order, which I understand remains outstanding against the Al Safar & Partners, and the code of conduct complaint.*

*In light of the change of circumstances I should be grateful if Hadeef & Partners would let me know if it wishes to maintain its complaint under the code of conduct.*

*I should also be grateful to hear from Al Safar & Partners how it intends to address the wasted costs order, whether by way of seeking a stay and permission to appeal, or to honour the terms of the order."*

On the same day the Complainant wrote:

*"I refer to your emails dated 18 March (attached) and 19 March (below).*

*I share the view that the "minutes" prepared by Al Safar & Partners (dated 1 March 2015) are not an accurate reflection of the meeting. We have no interest in correcting the minutes as they (a) were not required in the first place, and (b) serve no purpose.*

*Turning to your email this morning, it is my view that, with respect, the onus ought to be placed on Al Safar & Partners to take one of the options which were explained in detail at the meeting on 26 February and that the appropriate action should be taken by 31 March failing which the Code of Conduct complaint ought to be automatically reinstated. In the absence of any clear indication from Al Safar & Partners, we suggest that the Registrar should determine the complaint alone with reference to the submissions provided by Al Safar & Partners in emails dated 27 January (attached)."*

On May 12<sup>th</sup> 2015 the Registrar wrote to the parties:

*"I understand there are no further submissions to add to the existing Code of Conduct complaint and as I have heard nothing from the Respondents, I will now proceed to determine the complaint alone."*

On May 13<sup>th</sup> 2015 the Respondent wrote:

*"We refer to your below e-mail and would like to submit that we have lodged a Complaint against M/s Hadeef & Partners before the Ruler's Court, Dubai in respect of their invalid legal representation of XYZ without a lawful Authority.*

*It is most respectfully submitted that the said complaint no. LAWYERS\_2014\_262 was filed on November 25, 2014 and is pending for the final decision of the Ruler's Court. It is further submitted that Hadeef &*

*Partners have replied to the said complaint thereby joining the proceedings on February 05, 2015 but failed to produce any valid documents in support of its defense till date.*

*Therefore, we would appreciate if the decision can be postponed until the final adjudication by the Ruler's Court.*

*We would also kindly request for a meeting to be scheduled for further clarification and to enable us to submit all the related documents for your review."*

On May 21<sup>st</sup> 2015 the Registrar responded:

*"I should be grateful if you could let me know the author of the below email and who will be representing the firm in this complaint.*

*I do not see the connection between the filing you have made with the Legal Affairs Department and the complaint against your firm on 26th January 2015, nor can I see the benefit of a further meeting when your firm has had ample opportunity to respond substantively to the complaint and would appear to have chosen not to do so.*

*I will allow you a further period of one week (until 4pm on May 28th) to deal with the points made in my February 11th 2015 email, namely to respond substantively to the complaint and to indicate whether you would prefer for it to be investigated by me alone or sitting with assessors."*

On May 28<sup>th</sup> 2015 the Respondent replied:

*"We refer to your below e-mail and would like to submit that since we have had a meeting in respect of the said complaint, it was clearly stated that the claimed legal representatives of the Defendant, XYZ, that is, Hadeef & Partners have failed to provide any proof of their legal authority to act on behalf of the XYZ.*

*Moreover, it was also highlighted that the Defendant (XYZ) has also failed to provide any authorization letter which verifies the representation of the concerned officers of the XYZ.*

*Despite the aforesaid, the wasted cost was allowed although it was provided in the website that the said order of September 24, 2014 was announced "with hearing" and Al Safar & Partners had clearly proven the fact by producing the extract of website and submitted before the Respected Registrar that no hearing was conducted in respect of the said application of wasted cost which is against the rule as contemplated under the DIFC rules.*

*During the said meeting and several other objections and e-mails & complaints, Al Safar & Partners received no positive response with regard to its grievance(s) which has jeopardized a lawful right of the Claimant. (Minutes of meeting sent via e-mail are annexed herewith for your ready reference).*

*Due to the aforesaid reasons, Al Safar & Partners was left with no other option but to seek redressal of its grievance from the higher authorities for the same.*

*Therefore, we proposed the Registry for the meeting in order to submit all documents in relation to the complaint no. LAWYERS\_2014\_262 which was filed on November 25, 2014.*

*However, if the Registrar wishes to supersede the authorities of the Ruler's Court, he may conclude the matter as he feels appropriate. The e-mails sent by us have already been deleted from below chain of correspondences. However, as a matter of record we attach herewith all the e-mails for your ready reference and record that includes minutes of the meeting which was held for the purpose of investigation.*

*We are hopeful that the Respected Registrar will fairly determine the facts in light of our all previous and present submissions."*

On June 25<sup>th</sup> 2015 the Registrar wrote:

*"I have reviewed this matter and am ready to proceed with a determination in relation to the complaint made on 26th January 2015 including the conduct of Al Safar & Partners throughout the investigation of the complaint. However, before doing so I would like to check 2 points:*

- 1. Has Al Safar & Partners complied with the Wasted Costs order of HE Justice Al Madhani in the amount of AED [sic] 38,127.79;*
- 2. Did Al Safar & Partners receive the notice of commencement for the bill of costs purportedly served on them by email on 5th November 2014."*

To which the Respondent replied on 30<sup>th</sup> June 2015:

*"We refer to your below e-mail and would appreciate if the respected Registrar includes all the costs & legal professional fees of Al Safar & Partners incurred in respect of the Employment Case No. CFI-004-2014 which was filed against XYZ.*

*Please note that Ms. Amna Al Owais had agreed to grant all payments towards the aforesaid costs & fees which was pending to be requested by the DIFC Registry. However, for the reasons unknown to Al Safar & Partners, it has been postponed and ignored completely.*

*Moreover, it is being observed that all our requests made to disregard and disqualify the representation made by Hadeef & Partners to XYZ on the grounds of lack of a lawful Authority/Power of Attorney and further their failure to provide a letter of Authorization by the officer(s) of XYZ, have completely been disregarded.*

*Needless to assert, it was suggested by the DIFC Registry during our meeting that Al Safar & Partners should not highlight the same even during the pendency of the proceedings of the matter concerned and till date continues to proceed with the complaint filed by Hadeef & Partners without being a valid/lawful Attorneys' of XYZ.*

*Therefore, in light of the aforesaid facts and observations, Al Safar & Partners would prefer to defend its position before the Ruler's Court in its Complaint no. LAWYERS\_2014\_262 filed on November 25, 2014*

*and would further plead for the justice against the unfair practice and inconvenience caused to Al Safar & Partners."*

And the Complainant replied on 1<sup>st</sup> July 2015:

*"I refer to your email below.*

*The Defendant has not yet received any payment from Messrs Al Safar & Partners. On that basis, it is our view that Messrs Al Safar & Partners have not complied with the Wasted Costs order of H.E. Justice Al Madhani."*

## **Findings**

It is a fact that at the date of filing of the Complaint the Respondent was in breach of the Code of Conduct by having failed to comply with an order of the DIFC Courts.

The Respondent has put up a number of defences during the investigation of this complaint which can be loosely grouped as follows:

1. The Complainant did not have a valid power of attorney.

This issue has been consistently raised by the Respondent throughout proceedings, including prior to the filing of the Complaint. It has been made clear to the Respondent that for the DIFC Courts it is not necessary for a law firm to hold a power of attorney to act for their clients in the same way that it is a requirement in the Dubai Courts.

On October 21<sup>st</sup> 2014 Judicial Officer Ms. Al Mehairi wrote to the Respondent "Kindly be advised that Hadeef and Partners are the official legal representatives on our records, there is no need for them to provide a power of attorney to prove their representation under the RDC."

Again, on October 26<sup>th</sup> 2014 the Deputy Registrar of the DIFC Courts wrote "As a matter of moving the case forward we reiterate that in the DIFC Courts jurisdiction we do not require for the need of issuing a POA when a client is being represented by a law firm"

Again, on January 4<sup>th</sup> 2015, Ms. Al Mehairi wrote "Kindly be advised that a POA is not needed, kindly submit an agreed bundle to save costs for both parties."

This was further reiterated during the meeting on 26<sup>th</sup> February 2015 and it was confirmed later that day by email that when the Respondent had raised the same issue with H.E. Justice Al Madhani, His Excellency had given directions to the Respondent about how to deal with the point.

2. The order of H.E. Justice Al Madhani was flawed.

The appropriate way in which to challenge an order would have been to file an appeal. No appeal of the order of H.E. Justice Al Madhani has been filed.

3. The default costs certificate was invalid because the Respondent was not properly serviced.

Despite having been given the opportunity to do so, the Respondent has not confirmed to the Courts that it did not receive the notice of commencement. Nor has it applied to overturn the default costs certificate as provided for in the rules of the DIFC Courts.

4. This code of conduct complaint should be stayed until the decision of the Government of Dubai Legal Affairs Department ("LAD") is issued in relation to a complaint made by the Respondent against the Complainant.

No grounds have been provided to suggest that an investigation by the DIFC Courts should be stayed pending the outcome of a separate complaint with the LAD.

In addition to the prima facie breach of the Code of Conduct, the conduct of the Respondent during the proceedings (including the conduct during the hearing before H.E. Justice Al Madhani which occasioned the wasted costs order) and in relation to the investigation of the complaint falls well below that expected of a firm registered with the DIFC Courts. Practitioners should deal with the DIFC Courts and its staff honestly, co-operatively and with civility. They must be familiar with the rules of the DIFC Courts and, whether acting pro-bono or not, be able to handle proceedings promptly and with competence. The Respondent has fallen short of this standard.

### **Sanctions**

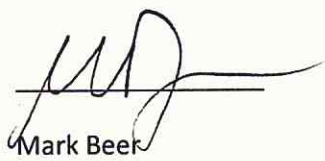
In accordance with the Code of Conduct, the above represents the reasoned written decision made by the Registrar following the further investigations which he considered appropriate.

The decision of the DIFC Courts, acting through the Registrar, is to impose the following sanctions based on his findings that the Respondent has acted in breach of the Code of Conduct:

- (i) Public Admonition;
- (ii) A fine of US\$2,000; and
- (iii) Suspension from the Register of Practitioners until such time as the above fine and the amounts due pursuant to the wasted costs order are settled in full. If, after three years from the date of this decision, any amounts remain outstanding the Respondent shall be removed from the Register of Practitioners.

It is further decided that this decision should be published with the identity of the firms' respective clients redacted.

Issued on 17 September 2015

A handwritten signature in black ink, appearing to be 'Mark Beer', written over a horizontal line.

Mark Beer

Registrar