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An Innovative Matrix for Dispute Resolution:

The Dubai World Tribunal and the Global Insolvency Crisis

*Jayanth K. Krishnan**

*Harold Koster***

ABSTRACT

This study examines a legal experiment that occurred during the height of the global financial crisis. As markets from the United States to Europe to the Global South shook, one country – the United Arab Emirates (U.A.E.) – found itself on the brink of economic collapse. In particular, in 2009 the U.A.E.’s Emirate of Dubai (Emirate) was contemplating defaulting on \$60 billion of debt it had amassed. Recognizing that such a default would have cataclysmic reverberations across the globe, Dubai’s governmental leaders turned to a small group of foreign lawyers, judges, accountants, and business consultants for assistance. Working in a coordinated fashion, these external and internal actors soon imported into the Emirate a new regime of insolvency laws – and even an Anglo-American insolvency court –

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** Former Dean, University of Dubai, Faculty of Law and Deputy Judge, Court of Appeal, Amsterdam, Netherlands. For their assistance, the authors thank Vitor Dias, Ricardo Dixon, Lara Gose, Libby Pfotenhauer, and Priya Purohit. Special thanks to Ali Van Cleef who provided thorough, excellent, and first-rate research assistance; she was also responsible for compiling the materials in Appendix A, which the authors reviewed and approved. Appreciation is extended to those who gave feedback during the 2016 Law and Society Association annual meeting in New Orleans and at a conference hosted by the Times Higher Education group in New Delhi in 2015. Finally, the authors are grateful to the judges, lawyers, business and financial experts, Dubai World Tribunal (DWT) staff members, and Government of Dubai officials who gave their time educating the authors about the DWT. Unless otherwise indicated in the references below, the authors anonymize these respondents’ identities to protect their confidentiality. The University of Dubai College of Law, in 2015, applied for and received funding from the DWT to examine how insolvency tribunals function since the worldwide economic crisis of 2008-2009. The College invited Professor Krishnan onto the project because of his experience in the areas of comparative law, judicial institutions, and the legal profession, and because he was the senior author of the lead study on the Dubai International Financial Centre (DIFC) Courts published in 2014. (This previous study was funded by the National Center for State Courts, Virginia, USA). Professor Krishnan has no affiliation to either the DWT or the University of Dubai. The research focus here includes a review of the background to the establishment of the DWT and a legal analysis of the effectiveness of combining civil law disputes with common law procedures. Neither Professor Krishnan nor Dean Koster (who too has no affiliation with the DWT) received any salary or consulting fees in the undertaking of this research. The funding the College received went only towards covering research travel costs to conduct interviews of the above-mentioned stakeholders who have familiarity with the DWT. (No interviewee was paid for any interviews given.) The researchers interviewed both supporters and critics of the DWT, and the DWT did not have any veto power over data selection and collection, or on the reporting of data by the researchers.

to help resolve Dubai's financial troubles. Drawing upon elite theory scholarship, as well as on primary and secondary sources of data, this study argues that traditional ways of analyzing foreign influences on a domestic landscape need to be refined and further nuanced to consider such important comparative cases as Dubai.

I. INTRODUCTION

More than eight years have passed since Lehman Brothers filed for bankruptcy in the United States. The scale of Lehman's downfall in autumn 2008, and its effects on markets around the globe, has continued to intrigue scholars, policymakers, private sector stakeholders, and the media.¹ Escaping attention from many observers, however, is that about one year after Lehman collapsed, another global financial institution was on the brink of failing. The Dubai World Corporation (Dubai World), based in the United Arab Emirates (in the Emirate of Dubai), is a government owned holding company that by November 2009 had incurred nearly \$60 billion in debt.² During its peak, Dubai World employed more than 100,000 workers and had some 200 subsidiaries worldwide.³ Yet by the late fourth quarter of 2009, Dubai World informed its existing creditors that it would not be able to service its debts until the following year.⁴

This announcement caused massive waves. Markets in Europe, Asia, and the United States tumbled; investment agencies downgraded Dubai; and there was great fear that a default by the Dubai government would have lasting negative ramifications for the Middle East and other international markets.⁵ Furthermore, experts

1. For a sample of works on this subject, see generally KEN AULETTA, GREED AND GLORY ON WALL STREET: THE FALL OF THE HOUSE OF LEHMAN (2015) (discussing the history of Lehman Brothers and what led to its downfall after the 2008 financial crisis); Christian Hofmann, *Central Bank Collateral and the Lehman Collapse*, 6 CAPITAL MKTS. L.J. 256 (2011) (examining how the Lehman collapse had reverberating effects on European markets); PETER CHAPMAN, THE LAST OF THE IMPERIOUS RICH: LEHMAN BROTHERS, 1844-2008 (2010) (providing a narrative of how Henry and Emmanuel Lehman built their company); Charles Hines et al., *An Analysis of Lehman Brothers Bankruptcy and Repo 105 Transactions*, 26 AM. J. BUS. 40 (2011) (investigating how Lehman used Repo 105 transactions to continue leveraging the value of its business); Chitru S. Fernando et al., *The Value of Investment Banking Relationships: Evidence from the Collapse of Lehman Brothers*, 67 J. FIN. 235 (2011) (examining how firms that depended upon Lehman's services were affected by its collapse).

2. See Michael D. Nolan et al., *Leviathan on Life Support? Restructuring Sovereign Debt and International Investment Protection after Abaclat*, in YEARBOOK ON INTERNATIONAL INVESTMENT LAW & POLICY 2011-2012, at 532 (Karl P. Sauvant ed., 2013); TODD A. KNOOP, GLOBAL FINANCE IN EMERGING MARKET ECONOMIES 202 (2013).

3. Christopher Hall et al., *Shifting sands: Insolvency and restructuring law reform in the Middle East*, MONDAQ (May 29, 2012), <http://www.mondaq.com/x/179356/Insolvency,+Administration,+Bankruptcy+and+Liquidation/Shifting+Sands+Insolvency+And+Restructuring+Law+Reform+In+The+Middle+East>; REGULATING THE VISIBLE HAND?: THE INSTITUTIONAL IMPLICATIONS OF CHINESE STATE CAPITALISM 425 (Benjamin L. Liebman & Curtis J. Milhaupt eds., 2015) (chart of Dubai World subsidiaries).

4. Specifically, May of 2010. See Matt Smith & Enjy Kiwan, *Dubai seeks debt delay, some units cut to junk*, REUTERS (Nov. 29, 2009), <http://www.reuters.com/article/2009/11/25/us-dubai-economy-idUSTRE5AO4Z120091125#eK5PUSo4u0WZPySL97>.

5. See Laura Cochrane & Tal Barak Harif, *Dubai Debt Delay Rattles Confidence in Gulf Borrowers*, INDEP. (Nov. 26, 2009), <http://www.independent.ie/business/world/dubai-debt-crisis-rattles-confidence-in-persian-gulf-borrowers-26585888.html>.

made ominous comparisons between these events in Dubai with what had occurred during the Argentine economic crisis nearly a decade earlier.⁶

Fortunately, a few weeks later, Dubai's neighboring Emirate, Abu Dhabi, offered crucial financial assistance to Dubai World. A multi-billion dollar "lifeline"⁷ from the government of Abu Dhabi allowed Dubai World to meet critical short-term obligations, and it helped set the stage for the corporation to begin the process of seeking to re-structure its other debts.⁸ With Abu Dhabi coming to the rescue, Dubai's financial crisis had been temporarily averted, even though the terms of the deal for the latter placed it under intense scrutiny from its various creditors, including Abu Dhabi itself.⁹

What caused Abu Dhabi to inject this infusion of capital into Dubai? A combination of factors appears to have made the difference. First, although tacit economic and political competition had long existed between the two,¹⁰ both governments understood that if they did not work together to address the financial crisis, the entire federal republic was at risk of a major, long-term economic depression.¹¹ Second, both governments have deep familial connections. Each respective ruling family traces its roots to the Bani Yas clan, which came to the area that is now the U.A.E. in the 1700s.¹² Third, a decision undertaken by the Dubai government in November and December of 2009, when the financial crisis was at its peak, arguably was the most important development that occurred. During this two-month period, Dubai quickly brought together experts from abroad to develop a creative legal and insolvency-based framework aimed towards allaying the fears of creditors clamoring for their money. Included within this framework was an important alternative dispute resolution tribunal intended to resolve cases between such creditors and their corresponding debtors.

This study will focus on this last point. As the research below shall illustrate, the Dubai government affirmatively opted to look for external assistance to cope with its economic crisis. Rather than staying wedded to its traditional legal and financial regimes, the government brought in outside experts who had knowledge, talent, and experience in dealing with modern, complicated, cross-border insolvency emergencies. The narrative described below will support this paper's thesis that consultation with these external actors and the careful adoption of their ideas helped to provide crucial credibility to the government at a significant moment in its history.

To that end, Section II will set forth the theoretical frame within which the paper will operate. Section III will then provide the history of how such actors from

6. See *Experts Weigh In on Dubai Debt Crisis*, BLOOMBERG BUS. (Nov. 27, 2009) <https://www.bloomberg.com/news/articles/2009-11-27/experts-weigh-in-on-dubai-debt-crisis>.

7. Landon Thomas, Jr., *Abu Dhabi Tightens Its Grip as It Offers Help to Dubai*, N.Y. TIMES (Dec. 14, 2009), http://www.nytimes.com/2009/12/15/business/global/15dubai.html?_r=0.

8. Haris Anwar, *Abu Dhabi Bails Out Dubai World With \$10 Billion*, LEBANON WIRE (Dec. 14, 2009), <http://www.lebanonwire.com/0912MLN/09121410BB.asp>.

9. Thomas, Jr., *supra* note 7.

10. *Id.* (noting how Abu Dhabi, on the one hand, is wealthier, has large amounts of natural oil resources, and is the federal capital of the country, while Dubai has been the hub of foreign investment and is considered a more Western-friendly environment).

11. Margaret Coker, *Dubai's Rescue Boosts Others*, WALL ST. J. (Dec. 15, 2009), <http://www.wsj.com/articles/SB10001424052748703442904574594972353375760>.

12. Thomas, Jr., *supra* note 7. See also *History: Bani Yas*, HIS HIGHNESS SHEIKH MOHAMMED BIN RASHID AL MAKTOUM, <http://www.sheikhmohammed.com/vgn-ext-templating/v/index.jsp?vgnextoid=499b4c8631cb4110VgnVCM100000b0140a0aRCRD> (last visited Dec. 20, 2016).

overseas – namely in this case, foreign lawyers, foreign judges, and foreign financial advisors – worked with Dubai’s leaders to draft a decree that established an insolvency regime and accompanying adjudicatory tribunal that would serve as confidence-building measures for both international creditors and Dubai World. Section IV will evaluate how this judicial tribunal has functioned since its inception, as well as how its jurisdiction has expanded beyond what was originally conceived by the decree’s drafters. Section V will conclude by discussing what the situation is in Dubai today, five years after the economic crisis hit. As this concluding section will suggest, the cooperation between the external actors and Dubai’s government staved-off a disastrous outcome for the Emirate, the U.A.E, and international markets. In sum, this story lends further support to the argument that external actors, given the right conditions (and especially in the present globalized climate), can indeed provide important tangible relief, not to mention legitimacy, to a state that finds itself in need of both.

II. ESTABLISHING THE THEORETICAL FRAMEWORK

The above argument that external actors with special expertise can shape public policy agendas of domestic governments is grounded in a discourse that has a long tradition of academic scholarship. Frequently referred to as the “elite theory” school of thought, this perspective has seen contributions from a diverse array of scholars.¹³ The main principle guiding this theory is that those with a combination of experience, skills, resources, power, and connections can and do affect the policy choices made by government officials.¹⁴ Importantly, this literature emphasizes that these actors do not have to be always unified and can have diverse characteristics. Moreover, those with influence do not possess it indefinitely, and often new actors eventually enter the public policy space and seek to exert their influence on the state.¹⁵

In terms of foreign actors specifically affecting the legal systems and legal professions of countries that are not indigenous to them, the literature is replete with narratives. The impact of colonial rule is a paradigm that immediately springs to mind. For example, the exporting of common law jurisprudence, along with the

13. See generally FLOYD HUNTER, *COMMUNITY POWER STRUCTURE: A STUDY OF DECISION MAKERS* (1953) (describing how a small group of elites shape policy in a range of venues); CHARLES WRIGHT MILLS, *THE POWER ELITE* (1956) (arguing that those with power in politics, business, and the military prevent ordinary citizens from exercising meaningful influence in these spaces); ELMER ERIC SCHATTSCHNEIDER, *THE SEMISOVEREIGN PEOPLE: A REALIST’S VIEW OF DEMOCRACY IN AMERICA* (1960) (discussing how a small group of people in the upper class segments of society inhibit the masses from participating broadly); ROBERT D. PUTNAM, *THE COMPARATIVE STUDY OF POLITICAL ELITES* (1976) (focusing on the role of national politicians in a range of countries as being the main drivers in the formulation of public policy).

14. HUNTER, *supra* note 13; MILLS, *supra* note 13; SCHATTSCHNEIDER, *supra* note 13; PUTNAM, *supra* note 13; see also ROBERT MICHELS, *POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY* (1962) (focusing on the oligopolistic nature of political parties and trade unions); VILFREDO PARETO, *THE MIND AND SOCIETY: A TREATISE ON GENERAL SOCIOLOGY* (1963); GAETANO MOSCA, *THE RULING CLASS* (1966) (discussing the shifting nature of power between conservatives who he classified as “lions” and radicals that he saw as “foxes”).

15. Cristobal Rovira Kaltwasser, *Towards a Historical Analysis of Elites in Latin America* 25-26 (July 12-16, 2009) (Paper presented at the 21st World Congress of Political Science, Santiago, Chile), <http://paperroom.ipsa.org/papers/view/744>; PARETO, *supra* note 14.

training of solicitors and barristers who could then practice within the colonies, remains a significant legacy left by British imperialism.¹⁶ Continental European rulers also imparted their respective civil codes (together with the structural roles lawyers and judges should play) within their colonies – whether in Latin America or different parts of Africa and Asia.¹⁷

From the United States, several initiatives emerged throughout the 20th century. As early as 1913, entrepreneurial American lawyers traveled to places such as Brazil to work not just as lawyers who would advise on U.S. law but also as domestic practitioners.¹⁸ Dezalay and Garth note similar patterns of migration by American lawyers in Argentina, Chile, and Mexico.¹⁹ Abel and Lewis, too, have documented the journeys of U.S. lawyers abroad in various works,²⁰ as has Carole Silver who discusses how in France when regulations were lax, Americans served as *conseils juridiques*.²¹

In terms of non-governmental institutional influence, perhaps there is no more important example than the American-based Ford Foundation's efforts, beginning in the 1950s. Through the hiring of mainly American and British lawyer-consultants, Ford advised governments in Latin America, South Asia, and Africa on how

16. See generally Samuel Schmitthenner, *A Sketch of the Development of the Legal Profession in India*, 3 LAW & SOC'Y REV. 339 (1968-1969) (discussing the history of the profession during colonial and then post-colonial times); Marc Galanter & V.S. Rehki, *The Impending Transformation of the Indian Legal Profession* (1996) (unpublished paper) (on file with author) (discussing how legal practice in India changed with liberalization and reforms in legal education); YVES DEZALAY & BRYANT GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE* (2010) (describing how legal elites in the colonies of different European empires became leaders in the march for their respective national independence); Jayanth K. Krishnan, *Globetrotting Law Firms*, 23 GEO. J. LEGAL ETHICS 57 (2010) (outlining how Indian law firms evolved over the past three centuries).

17. Richard Abel, *Western Courts in Non-Western Settings: Patterns of Court Use in Colonial and New-Colonial Africa*, in THE IMPOSITION OF LAW 167-200 (Barbara E. Harrell-Bond & Sandra B. Burman eds., 1979); YVES DEZALAY & BRYANT GARTH, *INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* (2002) [hereinafter DEZALAY & GARTH, *PALACE WARS*]; M.C. MIROW, *LATIN AMERICAN LAW: A HISTORY OF PRIVATE LAW AND INSTITUTIONS IN SPANISH AMERICA* (2004); Jayanth K. Krishnan, *Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957-1977*, 52 AM. J. LEGAL HIST. 261, 263 (2012) [hereinafter Krishnan, *Academic SAILERS*]; Joaquim Falcão, *Lawyers in Brazil*, in 2 LAWYERS IN SOCIETY: THE CIVIL LAW WORLD 400 (Richard L. Abel & Philip S.C. Lewis eds., 1988); Frederico Almeida, *A Nobreza Togada: As Elites Jurídicas e a Política da Justiça no Brasil*, (unpublished Ph.D. dissertation, University of São Paulo, Department of Political Science) (on file with authors). During the 1800s, when many colonies gained independence from their European rulers, foreign influence continued, despite the absence of formal governmental rule. It was not uncommon for students from Latin America to spend time in Continental Europe for schooling or for tutelage under practicing lawyers. Similarly, following the Second World War, when many British and French colonies became free, students from these newly independent states traveled to study law in places such as London and Paris. Quintin Johnstone, *American Assistance to African Legal Education*, 46 TUL. L. REV. 657, 666 (1972); Jayanth K. Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*, 46 AM. J. LEGAL HIST. 447 (2004) [hereinafter Krishnan, *Professor Kingsfield*].

18. Jayanth K. Krishnan et al., *Legal Elites and the Shaping of Corporate Law Practice in Brazil: A Historical Study*, 41 LAW & SOC. INQUIRY 346 (2016) (noting how over the course of the next four decades, these Americans established offices in Brazil, partnered with domestic Brazilians, and helped to shape a Brazilian corporate bar with lasting remnants that are still seen today).

19. DEZALAY & GARTH, *PALACE WARS*, *supra* note 17.

20. RICHARD L. ABEL & PHILLIP S.C. LEWIS, *LAWYERS IN SOCIETY: THE COMMON LAW WORLD* (1988); Richard L. Abel & Phillip S.C. Lewis, *Putting Law Back into the Sociology of Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW* 281 (Richard L. Abel & Phillip S.C. Lewis eds., 1995).

21. Carole Silver, *Regulatory Mismatch in the International Market for Legal Services*, 23 NW. J. INT'L L. & BUS. 487, 531 (2003).

to initiate changes in legal education, the courts, and the legal profession.²² Ford's theory was that a society with good lawyers would be beneficial in multiple ways: these professionals would ideally serve as leaders in key sectors such as business, economics, civil society, and politics. In Latin America and South Asia, previous scholarship has discussed the mixed results of Ford's efforts.²³ Ford's work in Africa, however, has the most direct relevance for this study on Dubai.

Early on, Ford's astute Africa officers recognized that to influence the domestic legal landscape, they needed buy-in from the local bar, bench, and educational establishments in the countries in which they worked.²⁴ Ford thus affirmatively decided to take its lead from these domestic legal professionals. The lawyer-consultants Ford hired *worked together* with their African colleagues in trying to improve and develop the local legal systems.²⁵ Even though not all the legal programs that Ford established were successful during this time,²⁶ there was little resentment among either the Americans or Africans, or a sense that the former were on the continent for exploitative, instrumental purposes.²⁷

There are obvious political, socio-economic, and historical differences between Africa and Dubai. Yet, parallels exist between how Ford ran its Africa project and

22. JOHN S. BAINBRIDGE, *THE SAILER PROJECT: 1962-1967*, FORD FOUNDATION DOCUMENT 7 (July 1967) (on file with author) (outlining the origins of sending new American law graduates to Africa to teach in African law schools); David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development*, WIS. L. REV. 1062 (1974) (questioning the value of projects where Americans travel overseas to assist in legal reform); JAMES GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980) (describing and then criticizing efforts by American development organizations to improve law, legal education, and the legal profession in Latin America); Krishnan, *Professor Kingsfield*, *supra* note 17, at 449-468; Krishnan, *Academic SAILERS*, *supra* note 17, at 267-313.

23. In India, for example, during the 1950s and 1960s, Ford hired a series of consultants from the United States—mainly law professors—to provide input on how best to help the Indians improve their legal education system. The theory was that engaging in this endeavor would have a causal effect towards enhancing the quality of lawyering and legal representation for the millions who were not having their needs met. However, shortly after they arrived onto the scene, the American academics recognized that they knew very little about the local context. They advised Ford to pay more attention to what the actors on the ground were doing and to learn from these individuals as well. To its credit, as the years went on Ford reorganized its legal profession and legal education programs, and the lessons learned during this venture helped inform how it operated in other regions, such as Latin America. Krishnan, *Professor Kingsfield*, *supra* note 17, at 449-468; Marc Galanter & Jayanth K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L.J. 789, 795-798 (2004); Jayanth K. Krishnan et al., *Grappling at the Grassroots: Access to Justice in India's Lower Tier*, 27 HARV. HUM. RTS. J. 151, 154-157 (2014). Although, as it relates to Latin America, some years back, see generally GARDNER, *supra* note 22 (arguing that Ford wrongly encouraged Latin American law students and lawyers during the 1960s to be social welfare advocates and nation-builders, in the image of how many U.S. lawyers in this same period were acting and contending that Ford's imposing and imprudent initiatives fomented anti-Americanism and contributed to the rise in non-democratic regimes in many of these countries). However, Gardner's analysis has been seriously criticized by Faundez, who argues that Ford's efforts, while having some drawbacks, were not as negative as Gardner suggested. Faundez also contends that, like in India, Ford learned from its missteps. Julio Faundez, *James A. Gardner: Legal Imperialism. American Lawyers and Foreign Aid in Latin America*, 14 J. LATIN AM. STUD. 206, 206-208 (1982) (book review).

24. BAINBRIDGE, *supra* note 22; JOHN S. BAINBRIDGE, *STUDY AND TEACHING OF LAW IN AFRICA* (1972) [hereinafter BAINBRIDGE, AFRICA]; Krishnan, *Academic SAILERS*, *supra* note 17, at 278-313.

25. BAINBRIDGE, *supra* note 22; BAINBRIDGE, AFRICA, *supra* note 24; Krishnan, *Academic SAILERS*, *supra* note 17, at 278-313.

26. The time period being referred to here was from the late 1950s to the early 1970s.

27. Krishnan, *Professor Kingsfield*, *supra* note 17, at 278-319 (identifying only a single instance of resentment during the program).

what has occurred in Dubai over the past seven years. As the financial woes of Dubai World grew during 2009, experts from abroad who had sophisticated international skills and a deep knowledge of global insolvency practices came to Dubai to help repair the economic damage that was placing the Emirate on the verge of default.²⁸

But this point requires another layer. Although they were invited, it was imperative for these external actors to establish strong bonds within various sectors of the government. After all, the Emiratis were still in control of the state. They held power, and Dubai's Ruler was the one individual who had to approve any changes to the Emirate's legal structure. Furthermore, having good relationships with civil society Emiratis was also crucial, because they had the everyday pulse of the private sector. Thus, borrowing from a combination of Dezalay and Garth's work and Bourdieu's terminology, the external actors in this Dubai narrative possessed valuable *social capital*. Yet, this resource could only be effectively deployed if key local actors cooperated and were regarded as equal partners in the deliberations.²⁹ Otherwise put, to find a solution to the Dubai World crisis, the external actors needed to work together with their domestic counterparts. As the ensuing discussion illustrates, such a situation indeed occurred.

III. THE HISTORY OF THE DUBAI WORLD COMPANY CRISIS

A. Methodology

As indicated in the Introduction, the financial crisis of Dubai World reached its peak at the end of 2009. However, cracks within the company's financial situation began to show earlier that year. This Section describes the events that led to the near collapse of the company and what would have been a likely default of the Dubai government to its various creditors had emergency measures not been taken. Yet, before beginning this discussion, a brief explanation of how the authors acquired their information on this subject is needed.

During 2015, the authors were able to interview virtually all of the major stakeholders involved in Dubai's financial crisis.³⁰ The respondents included those foreign lawyers who played a significant role in drafting the decree that established the new legal regime for Dubai World's insolvency situation, as well as those who have litigated matters in the Dubai World Tribunal since. In addition, interviews were conducted with those foreign business consultants and foreign accountants who advised the Dubai government during the crisis. Members of the Dubai World Tribunal also were interviewed, as was the Tribunal's registrar, and a key Emirati government official agreed to meet with the authors as well. In sum, twelve foreign

28. See discussion *infra* Section III.C.

29. DEZALAY & GARTH, *PALACE WARS*, *supra* note 17, at 49 (for the Americans circulating into the Brazilian market; and discussing the "coming together of [Brazilian] local know-who with U.S. local know-how"); Pierre Bourdieu, *The Social Space and the Genesis of Groups*, 14 *THEORY & SOC'Y* 723, 723 (1985); Pierre Bourdieu, *The Forms of Capital*, in *HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION* 241 (John G. Richardson ed., 1986); See also DEZALAY & GARTH, *supra* note 16, at 1-19; F.M. Kay & J. Hagan, *Cultivating clients in the competition for partnership: Gender and the organizational restructuring of law firms in the 1990s*, 33 *LAW & SOC'Y REV.* 517, 527 (1999).

30. For most of the interviews, the authors conducted these together. However, where noted below, some took place where only one of the authors was present.

lawyers, three of the Tribunal's four judges, three business and financial advisors, the Tribunal's registrar, and an important figure from the Department of Finance all participated in the interview process.³¹

Finally, to supplement the interview data, the authors also relied on two other sources of information. First, business media reports, academic articles and books, law firm and accounting firm publications, and governmental papers were studied. Second, the authors analyzed all the published and available judgments rendered by the Tribunal – a total of 82 decisions. The docket, of course, includes all of Dubai World's insolvency cases. But as will be seen shortly, surprisingly the clear majority of cases involve other unrelated matters, thereby illustrating an important expansion of the Tribunal's powers.

B. *The Events of 2009 & Dubai World*

Dubai World was founded as a “[g]lobal holding company”³² by the Emirate's Ruler, Sheikh Mohammed Bin Rashid Al Maktoum, in 2006.³³ Then, and to this day, Dubai World's “portfolio contains some of the world's leading companies in their industries, including Drydocks World, Economic Zones World, Istithmar World and majority ownership of DP World.”³⁴ As of this writing, its current head is Sheikh Ahmed Bin Saeed Al Maktoum.³⁵ As stated above, Dubai World has investments, multiple subsidiaries, and a workforce that spans the globe.³⁶

A great deal of Dubai World's investments also has included real estate, which during 2006 and 2007 appeared to be a wise venture. However, towards the latter half of 2007 and in the years following, Dubai World suffered from the downslide in the real estate market. Within the Emirate, there was a catastrophic “local property crash.”³⁷ Consider that just between the third and fourth quarters in 2008 home

31. What is perhaps most intriguing about the respondents mentioned here is that their number appears quite small. It is true that these individuals had many colleagues and subordinates who followed their directions and worked diligently during this entire period. But the fact is that only a relatively tiny group of thought-leaders and experts formulated and then implemented the macro-policy measures that emerged at the end of 2009. Recall that during this time there was great anxiety and fear, but there remained two clear objectives: to ensure that the Emirate did not default, and to address the monetary and legal claims of global creditors against the debtor-Dubai World Corporation. Given the extreme pressures of those final months of 2009, for logistical purposes alone, it is understandable why the government tasked a small, sophisticated group of experts to solve the crisis. Also, the authors came to know that the individuals interviewed were among the key group of players in this story through a combination of means, including employing referral sampling and snowball sampling methods. The first author, through his prior work on the Dubai courts, knew the registrar of the DWT, Mark Beer, who was intimately involved in drafting the insolvency framework in 2009. Beer provided the names of others – lawyers, judges, and Dubai government officials – who also were significantly involved. And then these respondents provided names of others who they thought would be important to interview. Respondents were also identified from business news media accounts, which named key officials in and outside of government who were working on the new insolvency regime and its aftermath.

32. *Dubai World*, LINKEDIN, <https://www.linkedin.com/company/dubai-world> (last visited Dec. 10, 2016); DUBAI WORLD, <http://www.dubaiworld.ae/> (last visited Dec. 13, 2016).

33. LINKEDIN, *supra* note 32; DUBAI WORLD, *supra* note 32.

34. LINKEDIN, *supra* note 32; DUBAI WORLD, *supra* note 32.

35. *HH Sheikh Ahmed Bin Saeed Al Maktoum*, DUBAI WORLD, <http://www.dubaiworld.ae/hh-sheikh-ahmed/> (last visited Dec. 20, 2016).

36. See LINKEDIN, *supra* note 32; DUBAI WORLD, *supra* note 32.

37. Tom Arnold & David French, *Dubai World gets majority creditor backing \$14.6 billion debt deal*, REUTERS (Jan. 12, 2015), <http://www.reuters.com/article/2015/01/12/us-dubai-world-restructuring-idUSKBN0KL0R520150112#RwDA1zktUkXZfc>.97.

prices plummeted twenty-five percent, while “[h]igh-end apartments and villas were the worst-hit, with prices falling [on average] 35% in Q4”³⁸ Perhaps the most well-known of these elite complexes, the Palm Jumeirah properties (in which Dubai World had invested), sank to nearly two-thirds of their peak value.³⁹

According to experts, the bursting of the real estate bubble in Dubai was predictable. In March 2006, Dubai passed a law that loosened restrictions on foreign investors being able to purchase property within the Emirate.⁴⁰ Foreigners from around the globe poured money into Dubai, leading to “[e]xcessive short-term speculative activity”⁴¹ The result was that investors were willing to pay top-price for real estate. Many who successfully purchased property then subsequently leveraged these assets to make other investments.⁴²

Dubai World was among those who sought to benefit during these prosperous times. It and its subsidiaries engaged a range of investments, property purchases, and construction projects.⁴³ However, once the global financial crisis hit in 2008, foreign capital fled Dubai.⁴⁴ By February 2009, roughly “half of all the construction projects in the UAE [fifty-nine in total], worth around AED1.1 trillion (US\$582 billion) . . . [were] either put on hold or cancelled in response to falling demand and deteriorating market conditions.”⁴⁵ Table 1 illustrates those projects that were among the largest adversely impacted by the financial crisis; three of these major ones were part of Dubai World’s portfolio. (They are listed below as properties held by Nakheel, a key subsidiary of Dubai World.)

38. *UAE’s housing market crash*, GLOB. PROP. GUIDE (Feb. 25, 2009), <http://www.globalpropertyguide.com/Middle-East/United-Arab-Emirates/Price-History-Archive/UAEs-housing-market-crash-112>.

39. *See id.*

40. *See id.*; *See also New Law Encourages Foreign Ownership in Dubai Property Like Condo Hotels*, CONDO HOTELS DUBAI, <http://www.condohotelsdubai.com/articles/foreign-ownership.htm> (last visited Dec. 20, 2016). *See also The Foreign Ownership of Property in Dubai*, LOUVRE GROUP (Apr. 3, 2013), <http://www.louvregroup.com/the-foreign-ownership-of-property-in-dubai/>.

41. *UAE’s housing market crash*, *supra* note 38. *See also New Law Encourages Foreign Ownership in Dubai Property Like Condo Hotels*, CONDO HOTELS DUBAI, <http://www.condohotelsdubai.com/articles/foreign-ownership.htm> (last visited Dec. 20, 2016). *See also The Foreign Ownership of Property in Dubai*, LOUVRE GROUP (Apr. 3, 2013), <http://www.louvregroup.com/the-foreign-ownership-of-property-in-dubai/>.

42. *See UAE’s housing market crash*, *supra* note 38. *See also New Law Encourages Foreign Ownership in Dubai Property Like Condo Hotels*, CONDO HOTELS DUBAI, <http://www.condohotelsdubai.com/articles/foreign-ownership.htm> (last visited Dec. 20, 2016). *See also The Foreign Ownership of Property in Dubai*, LOUVRE GROUP (Apr. 3, 2013), <http://www.louvregroup.com/the-foreign-ownership-of-property-in-dubai/>.

43. For a history of Dubai World’s activities on this point, see DUBAI WORLD, www.dubaiworld.ae.

44. *UAE’s housing market crash*, *supra* note 38.

45. *Id.*

Table 146

PROJECT	LOCATION	DEVELOPER	VALUE (US\$)	STATUS
Jumeirah Gardens City	Satwa district, Dubai	Meraas Development	95 billion	On hold
Mohamed Bin Rashed Gardens	Between Al Khail Road and Emirates Road, Dubai	Dubai Properties	55 billion	On hold
Nakheel Harbour & Tower	Between Phase 2 of Ibn Battuta shopping mall and the 75-km Arabian Canal, Dubai	Nakheel	38 billion	On hold
Mudon Development	Dubailand	Dubai Properties	21 billion	On hold
Culture Village	Along Dubai Creek, next to Garhoud Bridge	Dubai Properties	13.6 billion	On hold
Palm Deira	Deirah coastal area, Dubai	Nakheel	12.5 billion	On hold
Al Salam City	City of Umm Al Quwain	Tameer Holding	8.3 billion	On hold
Al Burj Tower (The Tall Tower)	Near Jumeirah Lake Towers and Dubai Marina	Nakheel	8.2 billion	On hold
Universal City	Dubailand	Dubailand	2.2 billion	On hold
Emerald Gateway	Along Coast Road, between Abu Dhabi downtown and Abu Dhabi International Airport	Abu Dhabi Municipality	1.9 billion	On hold

46. UAE's housing market crash, *supra* note 38.

Aqua Dunya	Dubailand	Dubailand	1.8 billion	On hold
Dolphin City	Island near Abu Dhabi	Emirates German Group	1.7 billion	On hold
Nad El Sheba Race course	5-km south-east of Dubai	Meydan LLC	1.3 billion	Cancelled
Al Falah	Outskirts of Abu Dhabi	Aldar Properties	0.72 billion	On hold
Falcon City of Wonders	Dubailand	ETA Star	0.68 billion	Cancelled
Dubai Exhibition City	Within the Jebel Ali Airport City	n/a	0.45 billion	Cancelled

As Table 1 indicates, Dubai's finances were clearly in trouble. In fact, during February 2009, the U.A.E. Central Bank loaned \$20 billion to government-related entities of Dubai (including Dubai World) to meet their debt payment obligations.⁴⁷ But the problems for Dubai World continued to mount during that summer and into the fall. By late 2009, the Dubai government had accumulated \$80 billion in debt, of which 60 billion belonged to Dubai World.⁴⁸ On November 25, the government's Department of Finance declared, to the astonishment of many in the international markets, that Dubai World would be seeking a "standstill"⁴⁹ on any further payments to its creditors. Various observers referred to this decision as a "disaster,"⁵⁰ "shocking,"⁵¹ and "the biggest sovereign-related credit event since the start of the [2008 global economic] crisis."⁵²

It is unclear whether the government anticipated such a fierce response. Regardless, it had already been working on plans to reorganize the Emirate's insolvency regime precisely to calm the worries of Dubai World's global creditors. The developments that occurred are examined next.

47. The financial aid package, specifically, was in the form of bond relief. The Dubai government issued 20 billion dollars in bonds for its government related entities, of which Dubai World was a part, and whereby the U.A.E. Central Bank purchased half of the issued bonds, with two Abu Dhabi banks buying one-fourth, and the Abu Dhabi government buying the remaining amount. For a discussion of this point, see OXFORD BUSINESS GROUP, *THE REPORT: ABU DHABI 2010*, at 42 (2010).

48. See James Drummond & Andrew England, *Dubai World asks for debt 'standstill'*, FIN. TIMES (Nov. 25, 2009), <http://www.ft.com/cms/s/0/8a7a78e6-d9b9-11de-ad94-00144feabdc0.html#axzz3rCfrfTM2>. See also Smith & Kiwan, *supra* note 4.

49. David Teather, *Dubai World seeks debt standstill*, THE GUARDIAN (Nov. 25, 2009), <http://www.theguardian.com/business/2009/nov/25/dubai-world-debt-standstill>; Drummond & England, *supra* note 48.

50. Drummond & England, *supra* note 48.

51. Teather, *supra* note 49.

52. *Id.*

C. *The Lead-Up to Reform and Decree 57*

In 2004, the government opened the Dubai International Financial Centre (DIFC). Previous research has examined the DIFC and its purpose and framework,⁵³ but briefly, the Centre serves as the Emirate's main zone for international business.⁵⁴ The DIFC is a multi-acre campus that houses firms from a diverse array of sectors from around the globe.⁵⁵ Established under Dubai Law No. 9, the DIFC was created in order to make Dubai one of the leading commercial capitals in the world.⁵⁶ In addition, the DIFC has the authority to oversee matters involving business law, property law, and employment law.⁵⁷ There is a set of English-speaking common law courts that adjudicates matters not just between parties located within the campus but also between competing parties (within or outside of the Emirate), so long as they give consent.⁵⁸

In February 2009, as Dubai World and its subsidiaries were witnessing the beginnings of their financial woes, the prestigious American law firm of Latham & Watkins hosted a meeting on insolvency and restructuring practices.⁵⁹ The seminar brought experts from around the globe to the DIFC, including bankers, financial analysts, and members of the international press.⁶⁰ The European High Yield Bond Association, CNBC, and the Securities Industry and Financial Markets Association also were sponsors of the conference, and members of the Dubai government participated as well.⁶¹

After the conference concluded, these Dubai officials briefed a group of these experts on the serious financial situation that the government and Dubai World were facing.⁶² Specifically, one of the latter's key subsidiaries, Nakheel PJSC, was having difficulty fulfilling its obligations to a *sukuk* that it had issued to its creditors. Islamic law traditionally forbids "the charging or payment of interest."⁶³ While a *sukuk* is effectively a bond, it adheres to Islamic law, because it "grants the investor a share of an asset, along with the commensurate cash flows and risk."⁶⁴ *Sukuks*

53. Jayanth K. Krishnan & Priya Purohit, *A Common Law Court in an Uncommon Environment: The DIFC Judiciary and Global Commercial Dispute Resolution*, 25 AM. REV. INT'L ARB. 497, 497-98 (2014).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. Telephone Interview with Bryant Edwards, Middle East Offices Managing Partner, Latham & Watkins (Oct. 19, 2015).

60. *Id.* See also telephone interview with Aaron Bielenberg, former Latham & Watkins associate (Dec. 7, 2015). See also Program Agenda for the Middle East Restructuring and Turnaround Conference, (Feb. 3, 2009) (on file with authors).

61. Telephone interview with Bryant Edwards, *supra* note 59; Telephone interview with Aaron Bielenberg, *supra* note 60. See Program Agenda, *supra* note 60.

62. Telephone interview with Bryant Edwards, *supra* note 59; Telephone interview with Aaron Bielenberg, *supra* note 60.

63. *What is Sukuk?*, ISLAMIC DEV. BANK, <http://thatswhy.isdb.org/irj/go/km/docs/documents/IDBDevelopments/Internet/thatswhy/en/sukuk/what-is-sukuk.html> (last visited Dec. 20, 2016).

64. *Id.*

have been generously issued by companies and sovereign governments in the Middle East and Asia; and Dubai World, its subsidiaries, and the Emirate itself have followed suit.⁶⁵

Nakheel, unfortunately, could not afford to pay off a \$4 billion sukuk that was about to be due at the end of 2009.⁶⁶ Some weeks earlier, the government of Dubai contacted Latham to ask for help.⁶⁷ Latham had recently established offices in Dubai and Abu Dhabi, and it had lawyers there with extensive regional familiarity.⁶⁸ The American firm suggested that the Dubai government also call upon the acclaimed New York-based investment bank, Moelis & Company.⁶⁹ Together, Latham and Moelis began working towards a plan that would assist the Emirate, Dubai World, and Nakheel address the economic crisis in which they found themselves.⁷⁰

Almost immediately, Latham wanted to convince the outstanding creditors to restructure and extend the maturity of the debts.⁷¹ It advised the government to request a reduction in the interest rates on existing loans and to amend and extend the payment schedule on the debts to a timetable that would be easier to meet.⁷² In addition, an announcement from the Dubai government was released in November 2009, highlighting its economic woes and how it was considering defaulting on its debt obligations.⁷³ Latham recommended this move for two reasons. First, such a public proclamation signaled a transparency to the markets that the Emirate understood the seriousness of its financial situation.⁷⁴ Second, with the government stating that all options were on the table, including defaulting, the world would be placed on notice of this predicament and might even consider providing financial support to the Emirate.⁷⁵ Otherwise put, by openly acknowledging the problems it was enduring, Dubai sought to harness support from those willing to extend additional credit to the government as well as from existing creditors themselves.⁷⁶

65. See *id.*; See Bernardo Vizcaino, *As sovereign issues grow, pricing and design stymie corporate sukuk*, REUTERS (May 29, 2015), <http://www.reuters.com/article/2015/05/29/sukuk-companies-idUSL5N0YJ0O720150529#lt6wk7JECiXuga0E>; Frank Kane, *Dubai now leading hub for sukuk trading*, THE NAT'L (July 8, 2015), <http://www.thenational.ae/business/economy/dubai-now-leading-hub-for-sukuk-trading>. Also, telephone interview with Augusto Sasso, New York Managing Partner, Moelis & Company (Dec. 16, 2015).

66. Telephone interview with Bryant Edwards, *supra* note 59.

67. *Id.*

68. *Id.*

69. *Id.*; See Frank Kane, *Dubai debt adviser Moelis will list on Wall Street*, THE NAT'L (Apr. 15, 2014), <http://www.thenational.ae/business/industry-insights/markets/dubai-debt-adviser-moelis-will-list-on-wall-street>; see also *Markets take little comfort in Dubai World's plan to restructure \$26B in debt*, DAILY NEWS (Dec. 1, 2009), <http://www.nydailynews.com/news/money/markets-comfort-dubai-world-plan-restructure-26b-debt-article-1.432933>.

70. Telephone interview with Bryant Edwards, *supra* note 59.

71. *Id.*

72. *Id.*

73. IMF, *United Arab Emirates: 2009 Article IV Consultation-Staff Report; Public Information Notice; and Statement by the Executive Director for the United Arab Emirates*, Country Report No. 10/42, at 11-12 (Feb. 2010).

74. Telephone interview with Bryant Edwards, *supra* note 59.

75. *Id.*

76. *Id.*; See *Once high-flying Dubai World now meeting with creditor panel to deal with debt crisis*, DAILY NEWS (Dec. 2, 2009), <http://www.nydailynews.com/news/money/high-flying-dubai-world-meeting-creditor-panel-deal-debt-crisis-article-1.432956>; See also *Meeting of creditors is next test for Dubai World*, THE NAT'L (Dec. 15, 2009), <http://www.thenational.ae/business/economy/meeting-of-creditors-is-next-test-for-dubai-world>.

The strategy worked. Following the release of the press announcement, the Central Bank of the U.A.E. called a meeting where government officials from Dubai and Abu Dhabi, among others, were present.⁷⁷ At this meeting, the Abu Dhabi government agreed to provide a \$20 billion aid package to Dubai.⁷⁸ This assistance allowed Nakheel to pay-off the sukuk – due to mature in December 2009 – as well as some of Dubai World’s other debts.⁷⁹ Yet, Dubai World still had additional debt and thus was not completely absolved. Consequently, it and the Dubai government, through their American law firm, Latham, began the process of restructuring and negotiating an extension of the maturity dates of the other outstanding loans⁸⁰ (these other loans were to come due in 2009, or the following year; Latham successfully renegotiated their terms out to 2013).⁸¹

Abu Dhabi’s financial assistance alleviated Dubai’s immediate trouble, mainly as it related to those payments due in December 2009. Given Dubai World’s overall financial condition, though, the company’s staff, the government, and its external advisors all recognized there had to be systematic change to the Emirate’s insolvency process, including the need to draft an entirely new legal regime to govern future debtor-creditor disputes surrounding Dubai World.⁸² Remarkably, on December 13, 2009, a landmark order, written effectively by the government’s external advisors, was signed into law by Dubai’s Ruler, forever transforming the insolvency procedures to be applied to the Emirate’s largest multi-national conglomerate, Dubai World.⁸³

D. Decree 57

Dubai World Corporation was created as a “decree corporation” that came into existence through a mandate issued by the Emirate’s Ruler.⁸⁴ Because of this status, and the fact that it did not follow the country’s regular process for incorporation, Dubai World was unable to seek protection from the U.A.E.’s federal laws.⁸⁵ In fact, the external experts, together with the government’s officials, all believed that even if Dubai World could fall with the traditional insolvency regulations, it still would be unwise to do so because of the complexity of the financial crisis facing the corporation.⁸⁶ Experts needed to devise a new code. Enter Decree 57.

77. Telephone interview with Bryant Edwards, *supra* note 59. See also Telephone Interview with Augusto Sasso, *supra* note 65.

78. Telephone interview with Bryant Edwards, *supra* note 59. See also Telephone Interview with Augusto Sasso, *supra* note 65. See Dana El Baltaji, *Dubai Sukuk, Abu Dhabi TDIC Spread Narrows to Lowest Since 2009*, BLOOMBERG BUS. (Mar. 31, 2011), <http://www.bloomberg.com/news/articles/2011-03-31/dubai-sukuk-abu-dhabi-tdic-spread-narrows-to-lowest-since-2009>.

79. Telephone interview with Bryant Edwards, *supra* note 59; See also El Baltaii, *supra* note 78.

80. Telephone interview with Bryant Edwards, *supra* note 59; See also El Baltaii, *supra* note 78.

81. Telephone interview with Bryant Edwards, *supra* note 59.

82. *Id.*; Interview with Mark Beer, Registrar, DIFC Courts & DWT, in Dubai, U.A.E. (Sept. 2, 2015).

83. Latham & Watkins, *New Dubai Decree Relating to any Future Restructuring of Dubai World and its Subsidiaries*, CLIENT ALERT, Jan. 8, 2010, at 1. See also Telephone Interview with Augusto Sasso, *supra* note 65.

84. Latham & Watkins, *supra* note 83, at 1. See also Hall et al., *supra* note 3, at 27. See also Telephone Interview with Augusto Sasso, *supra* note 65.

85. Latham & Watkins, *supra* note 83, at 1. See also Hall et al., *supra* note 3, at 27. See also Telephone Interview with Augusto Sasso, *supra* note 65.

86. Latham & Watkins, *supra* note 83, at 4. See also Hall et al., *supra* note 3, at 27. See also Telephone Interview with Bryant Edwards, *supra* note 59; Interview with Mark Beer, *supra* note 82; Telephone

In crafting Decree 57's insolvency system, both the external experts and local Dubai officials agreed that the best course of action would be to build upon the laws already in place that governed companies within the DIFC.⁸⁷ But there was sentiment that additional aspects of English and American insolvency laws had to be included as well.⁸⁸ While there was overlap between the two, there was debate as to which model ought to be primarily followed.

English law heavily influenced the DIFC's insolvency regime; but the American experts did not believe that English law adequately protected debtor companies, such as Dubai World.⁸⁹ In particular, they felt that the rules under the English system for accessing moratorium protection from creditors were too harsh.⁹⁰ The American experts believed, and ultimately persuaded the Dubai government, that it was better policy to have a "voluntary arrangement process,"⁹¹ (VAP), whereby Dubai World would "continue to manage its affairs . . . and, with . . . [more easily accessible] protection of a moratorium, pursue and, if approved, implement a restructuring."⁹² Under this VAP system, which drew upon Chapter 11 of the American Bankruptcy Code, the corporation could propose a plan to restructure its debt obligations. So long as two-thirds "in value . . . of any class of creditors"⁹³ approved, all creditors would be bound.⁹⁴

The framers added another important feature to Decree 57, allowing for a fiduciary "to represent the company in foreign insolvency proceedings."⁹⁵ In practice, the process would work in the following manner: Dubai World would receive an order from a local court in Dubai approving of a moratorium on a set of creditors' claims; then the representative would take this order to the U.S.; finally, because of the presence of Chapter 15 in the American Bankruptcy Code,⁹⁶ there would be a

Interview with Aaron Bielenberg, *supra* note 60. See also Telephone Interview with Augusto Sasso, *supra* note 65.

87. Latham & Watkins, *supra* note 83, at 4; Telephone Interview with Bryant Edwards, *supra* note 59.

88. Latham & Watkins, *supra* note 83, at 1; Telephone Interview with Bryant Edwards, *supra* note 59.

89. Latham & Watkins, *supra* note 83, at 1-2; Telephone Interview with Bryant Edwards, *supra* note 59.

90. Telephone Interview with Bryant Edwards, *supra* note 59.

91. See Decree No. 57 of 2009 Establishing a Tribunal to decide the Disputes Related to the Settlement of the Financial Position of Dubai World and its Subsidiaries, § 2, arts. 9-16 (U.A.E.) [hereinafter Decree No. 57]; Latham & Watkins, *supra* note 83, at 1-2.

92. Latham & Watkins, *supra* note 83, at 1; Telephone Interview with Bryant Edwards, *supra* note 59.

93. Latham & Watkins, *supra* note 83, at 4.

94. Note, under the English system the ability to 'cram down' such a plan upon dissenting creditors was much more difficult, and a key reason the Americans saw the U.K. insolvency regime as unfriendly to debtors. See Decree No. 57, *supra* note 91, § 2, art. 14; Latham & Watkins, *supra* note 83, at 4; Telephone Interview with Bryant Edwards, *supra* note 59; Telephone Interview with Aaron Bielenberg, *supra* note 60; Telephone Interview with Augusto Sasso, *supra* note 65.

95. LINKLATERS, BRIEFING NOTE: DUBAI WORLD RESTRUCTURING DECREE NO. 57 OF 2009 4 (Dec. 2009), <http://www.linklaters.com/pdfs/Insights/DubaiWorldRestructuringDecree.pdf>.

96. Chapter 15 was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Its purpose is to provide procedures for insolvency cases between parties in more than one country. Chapter 15 cases are generally brought in the U.S. after a primary proceeding is brought in another country. See *Chapter 15 – Bankruptcy Basics*, U.S. CTS., <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics> (last visited Dec. 3, 2016) [hereinafter *Bankruptcy Basics*]. See also *Chapter 15 Database of U.S. Cross-border Cases*, GLOB. INSOLVENCY, <http://globalinsolvency.com/chapter15> (last visited Dec. 3, 2016) [hereinafter *Database of U.S. Cross-border Cases*].

strong presumption for enforcing the Dubai order within the U.S. courts.⁹⁷ Assuming enforcement occurred, creditors would be blocked from seizing the assets of Dubai World's (many) U.S. holdings.⁹⁸ Moreover, other potential creditors would be hard-pressed to defy such an American judgment, because of the respect U.S. courts hold in the area of insolvency. In other words, these creditors would likely refrain from challenging this order in the U.S. or from trying to seize assets of Dubai World in another jurisdiction, where a court there would no-doubt examine what its U.S. counterpart had done.⁹⁹

Of course, this above discussion is premised on Dubai World first receiving an order from a local Dubai court. However, the question for Decree 57's framers was: which local courts should govern? As already mentioned, because U.A.E. insolvency law would not apply, the domestic Arabic language courts could not have jurisdiction. Both the external advisors and Dubai government officials decided that a new court needed to be created to address the issues tied specifically to the corporation. Decree 57 thus established the Dubai World Tribunal (DWT), which was proposed to be located within the DIFC, although organizationally it was to be separate from the DIFC Courts.

Overlap between the two, however, was inevitable. Initially, Decree 57 provided that the DWT was to have three members, with all of the judges coming directly from the DIFC Courts: Sir Anthony Evans, Michael Hwang, and Sir John Chadwick.¹⁰⁰ Each of these judges was distinguished and respected. Each also had international commercial experience and great familiarity with the Dubai landscape.¹⁰¹ Understandably then, the external and Emirati drafters wanted to have these three judges on the DWT. In addition, the framers knew that time was of the essence, and, because the logistics were simple,¹⁰² it made sense to ask them to serve.

97. See *Bankruptcy Basics*, *supra* note 96; *Database of U.S. Cross-border Cases*, *supra* note 96. Telephone Interview with Bryant Edwards, *supra* note 59.

98. See Pedro A. Jimenez & Mark G. Douglas, *Chapter 15 Recognition Mandatory and Fully Encumbered Assets Are 'Property of the Debtor' Protected by Automatic Stay*, JONES DAY PUBLICATIONS (Nov./Dec. 2013), <http://www.jonesday.com/chapter-15-recognition-mandatory-and-fully-encumbered-assets-are-property-of-the-debtor-protected-by-automatic-stay-11-30-2013/>. See also Bruce Nathan & Eric Horn, *Demystifying Chapter 15 of the Bankruptcy Code*, BUS. CREDIT, June 2009, at 1; Telephone Interview with Bryant Edwards, *supra* note 59.

99. See Mark G. Douglas, *Cross-Border Bankruptcy Battleground: The Importance of Comity (Part I)*, JONES DAY PUBLICATIONS (Mar./Apr. 2010), <http://www.jonesday.com/cross-border-bankruptcy-battleground-the-importance-of-comity-part-i-03-31-2010/>. See Nathan & Horn, *supra* note 98, at 1. Interview with Bryant Edwards, *supra* note 59.

100. Decree No. 57, *supra* note 91, art. 2. *About the Tribunal: Tribunal Members*, DUBAI WORLD TRIBUNAL, <http://dubaiworldtribunal.ae/about-the-tribunal/members/> (last visited Dec. 3, 2016).

101. See *About the Tribunal: Tribunal Members*, *supra* note 100.

102. The DWT was able to use the world-class administrative facilities of the DIFC Courts, which enabled it to come into existence (and accept cases 24 hours a day, seven days a week) only three weeks after it was statutorily drafted.

Email from Mark Beer, DWT Registrar, to Jayanth K. Krishnan (June 17, 2016) (on file with author).

IV. THE FUNCTIONING OF THE DWT

A. *Jurisdiction and Composition*

Decree 57 set forth the vast powers of the DWT. For example, the DWT would have sole jurisdiction to hear “any demand or claim submitted by or against the Corporation.”¹⁰³ A judgment by the DWT would be final and binding, with no appeal possible,¹⁰⁴ and the cases within the DWT’s ambit would involve “any and all claims brought against Dubai World and its subsidiaries.”¹⁰⁵ Primarily, the DWT would be in charge of adjudicating and approving the voluntary arrangements on the restructuring of Dubai World’s debt, while taking into account the procedural and substantive interests of the corporation and the creditors.¹⁰⁶ As Dubai’s Director General of its Legal Affairs Department, Dr. Lowai Belhouli, declared, “Decree [57] establishes a clear, transparent and effective legal framework incorporating international best practices in restructuring.”¹⁰⁷

In 2013, the DWT brought another DIFC Court’s judge, Sir David Steel, on to the panel.¹⁰⁸ Now, several years have passed since the DWT came into existence. What has it done; how has it fared; and, most significantly, has it served its purpose? Interestingly, while important insolvency and restructuring matters have indeed come before it, those are relatively small in number compared to the explosion of other types of cases that have emerged, which neither the framers nor initial set of DWT judges originally anticipated.

B. *The Insolvency Cases*

Only two major insolvency cases have presented themselves to the DWT, although the role of the Tribunal in each has been different. The more complicated case involved “the largest [shipyard and shipbuilding] facility in the Middle

103. Decree No. (11) of 2010 Amending Decree No. (57) of 2009 Establishing a Tribunal to Decide the Disputes Related to the Settlement of the Financial Position of Dubai World and its Subsidiaries, DUBAI WORLD TRIBUNAL (Apr. 27, 2010), <http://dubaiworldtribunal.ae/decreed-no-11-of-2010-amending-decreed-no-57-of-2009-establishing-a-tribunal-to-decide-the-disputes-related-to-the-settlement-of-the-financial-position-of-dubai-world-and-its-subsidiaries/> (amending Decree No. 57 to include claims brought by Dubai World. Note the original Decree 57 only said that claims could be made “against the Corporation.” See Decree No. 57, *supra* note 91, § 2, art. 24.

104. See Decree No. 57, *supra* note 91, art. 5.

105. Email from Mark Beer, *supra* note 102. Beer also noted that: “A later amendment to Decree 57 extended it further to all claims brought by or against Dubai World and its subsidiaries.” *Id.* See Decree No. 57, *supra* note 91, art. 3(1)(a). See Decree No. (11), *supra* note 103.

106. See Decree No. 57, *supra* note 91, § 2, arts. 9-24.

107. LINKLATERS, *supra* note 95, at 9.

108. Sir Anthony Evans appointed Sir David Steel to this position, per the amending Decree of 2011, but effectively the appointment of the panel of DWT judges is subject to the will of the Ruler. See Decree No. 57, *supra* note 91, art. 2.

East,”¹⁰⁹ Drydocks World, which is among the most prominent subsidiaries of Dubai World. In business for more than thirty years, Drydocks has a global presence, and, historically, has been as a leader in the shipping industry.¹¹⁰

During the late summer of 2011, however, Drydocks experienced a series of financial difficulties. Namely, in August of that year, it decided that it could not meet its payment obligations on a \$2 billion plus loan it had secured in 2008.¹¹¹ Drydocks had intended to use the loan, “involving 15 lenders,”¹¹² to expand its investments in Singapore and other parts of Southeast Asia.¹¹³ Yet three years later, it concluded that it did not have the means to service this debt.¹¹⁴ As a result, Drydocks began talks with its creditors on restructuring possibilities.

For the most part, these negotiations proceeded amicably. But in the fall of 2011, one creditor – Monarch Alternative Capital, a New York-based hedge fund¹¹⁵ – argued against the restructuring. Monarch had purchased a portion of Drydock’s obligations (in the amount of \$45.5 million¹¹⁶), and subsequently filed suit in a London High Court seeking payment in full.¹¹⁷ In February 2012, Monarch received a

109. *About Us: Profile*, DRYDOCKS WORLD, <http://www.drydocks.gov.ae/en/portal/profile.aspx> (last visited Dec. 3, 2016); *See also* John Everington, *Drydocks World a positive test case for UAE bankruptcy reform*, THE NAT’L (May 19, 2014), <http://www.thenational.ae/business/economy/drydocks-world-a-positive-test-case-for-uae-bankruptcy-reform>.

110. *See, e.g., Drydocks World Receives Prestigious Business Award*, OFFSHORE ENERGY TODAY (Nov. 13, 2013), <https://www.offshoreenergytoday.com/drydocks-world-receives-prestigious-business-award/>; *See also Another Honour for Drydocks World*, ARABIAN INDUSTRY (Sept. 29, 2014), <http://www.arabianindustry.com/supply-chain/news/2014/sep/29/another-honour-for-drydocks-world-4830241/>.

111. *See* Everington, *supra* note 109. *See also* Simeon Kerr, *Dubai Drydocks looks to debt tribunal*, FIN. TIMES (Apr. 1, 2012), <https://www.ft.com/content/e9fe6d26-7bf2-11e1-9100-00144feab49a>; Simeon Kerr, *Dubai Drydocks takes \$2.2bn debt to tribunal*, FIN. TIMES (Apr. 2, 2012), <https://www.ft.com/content/11f91f2e-7c89-11e1-8a27-00144feab49a>. Note, the specifics of the loan were that “Drydocks World borrowed . . . \$1.7 billion for three years at 170 basis points, or 1.7 percentage points, over the London interbank offered rate, according to data compiled by Bloomberg. It borrowed another \$500 million for five years at 190 basis points over Libor, the data shows.” Arif Sharif, *HSBC, BNP Said to Agree on Profit-Sharing Loan for Drydocks*, BLOOMBERG BUS. (Sept. 4, 2012), <http://www.bloomberg.com/news/articles/2012-09-03/drydocks-said-to-pay-part-of-2-25-billion-loan-over-15-years>.

112. *Drydocks World in talks to restructure \$1.7bn debt*, CONSTR. WEEK ONLINE (June 1, 2010), <http://www.constructionweekonline.com/article-8497-drydocks-world-in-talks-to-restructure-17bn-debt/>.

113. *See Dubai’s Drydocks World pins hopes on Asia*, THE GULF (Jan. 2012), <http://www.thegulfonline.com/articles.aspx?artid=4218>; Arif Sharif & Stefania Bianchi, *Drydocks World Seeks 5-Year Loan Plan in Debt Restructuring*, BLOOMBERG BUS. (Mar. 8, 2012), <http://www.bloomberg.com/news/articles/2012-03-08/drydocks-world-seeks-5-year-loan-plan-in-debt-restructuring-1->; Everington, *supra* note 109.

114. CONSTR. WEEK ONLINE, *supra* note 112.

115. *See* Everington, *supra* note 109; Praveen Menon & Dinesh Nair, *Threats seen to Dubai World unit \$2.2 bln debt deal*, REUTERS (Nov. 27, 2011), <http://www.reuters.com/article/dubaiworld-drydocks-idUSL5E7MR0AB20111127>.

116. *See* Everington, *supra* note 109; John Everington, *Drydocks World restructuring talks unlikely to be impacted by Monarch lawsuit*, FIN. TIMES (Dec. 7, 2011), <http://www.ft.com/intl/cms/s/2/332e0ea4-20c5-11e1-816d-00144feabdc0.html#axzz3yyTfFXpv> [hereinafter Everington, FIN. TIMES].

117. Monarch filed this case in the U.K. because English law is thought to be more advantageous for creditors. The High Court had jurisdiction because Drydocks had holdings and assets in the U.K. Monarch Master Funding Ltd. v. Drydocks World – Dubai LLC, Drydocks World – Southeast Asia PTE Limited, and Drydocks World LLC [2012] EWHC (QB) (Comm) (Eng.). *See* Everington, FIN. TIMES, *supra* note 116; THE ASS’N OF INT’L CREDIT & TRADE FIN. PROF’LS, *Insolvency Laws in Germany, U.K. and the U.S.: A comparative Law Analysis for Trade Creditors*, SHUMAKER, LOOP & KENDRICK (2013),

judgment from the London court finding in its favor, ordering Drydocks to pay back the \$45.5 million, in addition to all legal fees.¹¹⁸

The ruling was a major setback for Drydocks. There was concern that some of its other creditors might be inspired by Monarch's actions and attempt to opt out of the joint agreement and instead pursue individual claims in a similar fashion.¹¹⁹ On April 1, 2012, though, Drydocks took a "landmark decision . . . to file for a *company voluntary arrangement* [*italics added*] (CVA) in the Dubai World Tribunal, using the legal framework [Decree 57] put in place in December 2009."¹²⁰ Recall that such a measure, if approved by the DWT, would allow Drydocks to move forward on the deal it had struck with the vast majority of its creditors, and importantly, "bind [any] holdout[s]"¹²¹ to the agreement, such as Monarch, as well.

Drydocks hired the well-regarded English barrister, Michael Crystal, to argue its case.¹²² According to Crystal, Monarch was ironically a beneficiary of the CVA. This agreement had set forth a partial payment schedule for Drydocks to make to its various creditors, including to Monarch.¹²³ Because the CVA was authorized under Decree 57 and fell within the DWT's jurisdiction,¹²⁴ Crystal contended that Monarch was estopped from now claiming that the decree's provisions did not apply to it. Moreover, Monarch's failure even to appear at the DWT to defend itself during oral arguments demonstrated contempt for the Tribunal and for a process from which it had clearly benefitted.¹²⁵

Ultimately, on August 28, 2012, the DWT formally approved Drydock's petition, thereby mandating that Monarch accept the restructuring arrangement made with 97.8% of creditors. Using the 'cram-down' method of securing compliance,¹²⁶ the DWT sided with Drydocks and went on to reject Monarch's counter-claim that the payments it received via the CVA were meant only to satisfy the English High

<http://www.slk-law.com/portale-source/DHC.Comparative%20Analysis%20of%20Insolvency%20Laws%20of%20US-UK-Germany>.

118. See *Monarch Master Funding Ltd. v. Drydocks World – Dubai LLC*. . See Praveen Menon, *U.S. hedge fund wins claim against Dubai's Drydocks*, REUTERS (Mar. 14, 2012), <http://www.reuters.com/article/us-emirates-drydocks-monarch-idUSBRE82D0P220120314>.

119. See also Simeon Kerr & Camilla Hall, *Dubai Drydocks protected in landmark case*, FIN. TIMES (Sept. 3, 2012), <http://www.ft.com/intl/cms/s/0/e6a4dbf8-f5bc-11e1-bf76-00144feabdc0.html#axzz3ykDGBjiP> (regarding the agreement negotiations, "Monarch declined to vote . . .").

120. Everington, *supra* note 109.

121. *Id.*

122. See Michael Crystal et al., *Thwarting dissenting creditors*, SOUTH SQUARE DIGEST, Nov. 2013, at 2-7, <http://www.southsquare.com/files/South-Square-Digest-November2013.pdf>; Frank Kane, *hedge fund's pursuit of Drydocks offers test case for Dubai*, THE NAT'L (Apr. 25, 2013), <http://www.thenational.ae/business/industry-insights/finance/hedge-funds-pursuit-of-drydocks-offers-test-case-for-dubai> (Note that the date on this article is April 25, 2013, but it should be 2012.).

123. See Kane, *supra* note 122; Michael Crystal et al., *supra* note 122, at 2-7.

124. See Kane, *supra* note 122; Michael Crystal et al., *supra* note 122, at 2-7. See also *Monarch Master Funding Ltd. v. Drydocks World – Dubai LLC* (DWT/VAN/0001/2012 – Reasons for Judgment) (July 15, 2013) [hereinafter *Reasons for Judgment*].

125. See Kane, *supra* note 122 (quoting Sir Anthony Evans).

126. Where, as discussed above, dissenting creditors are forced to adhere to the pact, so long as 75% or more of the creditors agree to a restructuring of the debt. See Chris Mallon, *Voting and cram-down*, in LEXIS PSL RESTRUCTURING & INSOLVENCY (June 2012), https://www.lexisnexis.com/uk/lexispsl/restructuringandinsolvency/document/393783/55MK-MBW1-F18D-T0DS-00000-00/Schemes_of_arrangement_voting_and_cram_down; Decree No. 57, *supra* note 91, § 2, art. 14. See also Interview with Ian Schneider, Price Waterhouse Coopers, in London, U.K. (Sept. 8, 2015).

Court ruling.¹²⁷ Rather, the DWT held that it had jurisdiction over Monarch and needed to protect the interests of the other creditors, which could only best be done by affirming the CVA and enjoining Monarch from further interference.¹²⁸ As Sir Anthony Evans wrote in his opinion, using “Decree 57 [in this manner] was a bold and imaginative step forward in the restructuring of the finances of Dubai.”¹²⁹ Soon thereafter, Drydocks and Monarch reached a settlement. Subsequently, although the specifics were not made public, one report from that time stated that Drydocks did eventually restructure its debts by taking out “a new loan of about between \$700m and \$800m to be repaid over five years, with another \$1.4bn to \$1.5bn being offered in 15-year ‘profit participation notes’ that could see debt transferred into equity after 10 years.”¹³⁰

Preceding Drydocks was another matter that involved Dubai World itself. This Dubai World restructuring was a massive, complicated project. Within Dubai World, there were more than 180 entities and several dozen different creditors.¹³¹ Recall from above, in late 2009 Dubai World notified its creditors that it did not have enough money on-hand to meet its debt obligations (approx. \$60 billion). Because the credit market was all but frozen, Dubai World had no way to access further capital.¹³² At the same time, many of these creditors wanted Dubai World to sell off assets immediately so that they could be paid. But had such a move occurred, analysts contend that these creditors would have only received 45 cents on the dollar on such sales.¹³³ Therefore, the crafting and subsequent invocation of Decree 57, these analysts suggest, while working to the obvious immediate benefit of Dubai World, also helped preserve asset-value for creditors—even if the latter did not recognize it. By facilitating a long-term restructuring that would lead to a renewed, healthy Dubai World, creditors would eventually be able to recover more than the projected 45 cents on the dollar (if not full value) for the loans they had made.¹³⁴ It would just take time, patience, and vision.

Following Dubai World’s announcement at the end of 2009 that it would suspend any further payments on its debt, the next several months involved highly intense negotiations between the conglomerate and its many creditors. By the fall of 2010, Dubai World had received approval on the restructuring of its immediate debt obligations, totaling \$25 billion, from nearly all its creditors.¹³⁵ There was just one

127. See Reasons for Judgement, *supra* note 124; see also Michael Crystal et al., *supra* note 122, at 7.

128. See Reasons for Judgement, *supra* note 124; see also Michael Crystal et al., *supra* note 122, at 7.

129. See Kerr & Hall, *supra* note 119.

130. *Id.*

131. Telephone interview with Augusto Sasso, *supra* note 65; see also Robin Wigglesworth, *US creditor snubs deal on Dubai World debt*, FIN. TIMES (Sept. 13, 2010), <http://www.ft.com/intl/cms/s/14fd5dfc-bea8-11df-a755-00144feab49a>.

132. Telephone interview with Augusto Sasso, *supra* note 65.

133. *Id.* See also Paul Tharp, *Dubai debt rescue sends stocks higher*, N.Y. POST (Dec. 11, 2009), <http://nypost.com/2009/12/11/dubai-debt-rescue-sends-stocks-higher/>; *Dubai debt concerns spread beyond Dubai World*, REUTERS (Dec. 9, 2009), <http://www.reuters.com/article/us-dubai-idUSTRESB82FI20091209>.

134. Telephone interview with Augusto Sasso, *supra* note 65.

135. Telephone interview with Augusto Sasso, *supra* note 65. See also Wigglesworth, *supra* note 131; *Dubai World gets creditors’ nod for debt restructuring plan*, THE TIMES OF INDIA (Sept. 10, 2010), <http://timesofindia.indiatimes.com/business/international-business/Dubai-World-gets-creditors-nod-for-debt-restructuring-plan/articleshow/6531095.cms>. Note that of this amount, “\$14.4bn [was] owed to financial creditors, [and] \$10bn [was] owed to the Dubai government . . .” Anousha Sakoui, *Dubai World secures \$25bn restructuring*, FIN. TIMES (Oct. 26, 2010),

hold-up. An American fund, Aurelius Capital Management, refused to approve the restructuring.¹³⁶ Aurelius held \$5 million of Dubai World's debt and sought repayment within the original timeline. Dubai World, of course, had the option of going to the DWT and seeking a cram-down enforcement measure against Aurelius, but because the Tribunal had not yet been used in such a manner, it was unclear as to how long this process would take.

Fortunately, for all parties involved, one of the creditors, Deutsche Bank came to the rescue. In June of 2010, Deutsche Bank had sold some of the debt it held in Dubai World "to several distressed debt funds, one of which was Aurelius."¹³⁷ While almost all of the creditors had approved the restructuring plan for Dubai World, as stated, one did not – Aurelius.¹³⁸ Subsequently, Deutsche Bank intervened, repurchased the debt back from Aurelius, and then gave its approval to the restructuring proposal.¹³⁹ By October 2010, with all the creditors on board, a restructuring deal was reached.¹⁴⁰ The particulars included a two-part scheme, with the first major repayment occurring in 2015, followed by another in 2018.¹⁴¹

In January 2015, Dubai World sought further restructuring of the 2018 payments to extend out until 2022.¹⁴² Unlike what occurred in 2010, Dubai World approached the DWT for assistance and invoked Decree 57, because while the two-thirds creditor-acceptance requirement had been met, it was unclear if unanimity would be achieved. For Dubai World, it was important to be ready to litigate a

<http://www.ft.com/intl/cms/s/0/a5ddfd68-e135-11df-90b7-00144feabdc0.html#axzz41TSenJHh>. Perhaps the most well-known was a "\$4 billion sukuk, or Islamic bond, of Dubai World's developer, Nakheel, which was especially known for the construction of the Dubai Palm Islands." Omar Salah, *Dubai Debt Crisis: A Legal Analysis of the Nakheel Sukuk*, 4 BERKELEY J. INT'L L. 19, 19 (2010). For other articles that discuss this specific Nakheel debt, see Simeon Kerr, *Nakheel signs agreement with trade creditors*, FIN. TIMES (Apr. 26, 2010), <http://www.ft.com/intl/cms/s/3c22df10-5157-11df-bed9-00144feab49a>; Asa Fitch, *Clock ticking on Nakheel debt*, THE NAT'L (Aug. 16, 2009), <http://www.thenational.ae/business/banking/clock-ticking-on-nakheel-debt>; Michael Rainey & Sara E. Carmody, *King & Spalding: Dubai World Restructuring – Decree No. 57*, KING & SPAULDING (Dec. 14, 2009), <http://www.kslaw.com/library/publication/DubaiWorldRestructuringDecreeNo57.pdf>. Note, in the next section of the paper, there will be further discussion of Nakheel, in particular, as it was the most frequent player in non-insolvency DWT cases. For the discussion here, however, because this insolvency-based restructuring involved Dubai World as a conglomerate, Dubai World will be the focus, rather than its subsidiaries.

136. See Wigglesworth, *supra* note 131. See also Sakoui, *supra* note 135.

137. Sakoui, *supra* note 135.

138. See *id.*

139. See *id.* Sakoui reports that Aurelius made a profit on the selling of this debt to Deutsche Bank. *Id.*

140. See Wigglesworth, *supra* note 131; Sakoui, *supra* note 135; Simeon Kerr, *Dubai World secures deal to restructure \$14.6bn debt*, FIN. TIMES (Jan. 12, 2015), <http://www.ft.com/intl/cms/s/0/7d8344dc-9a67-11e4-8426-00144feabdc0.html>; Telephone interview with Augusto Sasso, *supra* note 65.

141. See Kerr, *supra* note 140.

142. DWT/VAN/0001/2015 (1) Dubai World (2) Dubai World Group Finance Limited (3) Istithmar World Holdings LLC (4) Istithmar World PJSC (5) Port & Free Zone World FZE-VAN Directions Order, DUBAI WORLD TRIBUNAL ("DWT") (Feb. 15, 2015), <http://dubaiworldtribunal.ae/dwtvan00012015-1-dubai-world-2-dubai-world-group-finance-limited-3-istithmar-world-holdings-llc-4-istithmar-world-pjsc-5-port-free-zone-world-fze/>.

cram-down Decree 57 motion in the Tribunal, if necessary. As it turned out, however, later that month Dubai World achieved “100 percent support”¹⁴³ for the restructuring, resulting in the Tribunal issuing a final approval order on the new arrangement.¹⁴⁴

The Drydocks and Dubai World insolvency cases highlight the power that Decree 57 had in helping to bring about resolutions to both these complicated restructuring matters. Both cases settled,¹⁴⁵ but based on the information collected, it is clear that the various parties saw the DWT as a legitimate body that had the authority and power to make findings that would indeed need to be followed. Rather than risking an adverse judgment, the parties thus concluded that it would be in their respective interests to settle.¹⁴⁶

C. *The Non-Insolvency Cases*

At the time of this writing, a swath of cases, unrelated to the abovementioned insolvency issues has come before the DWT. Recall, the DWT had originally been conceived expediting the financial restructuring of Dubai World. But because the language of Decree 57 allowed for a broader interpretation of other Dubai World-related cases to be heard in front of the DWT, the Tribunal took this opportunity to serve as the arbiter of these separate disputes. Appendix A lists these other cases that have entered onto the DWT’s docket. As the data shows, 38 have seen the Tribunal issue a judgment, 16 settled before a formal order was made, 6 cases were dismissed, and 26 were discontinued.

Of these 38 cases that reached verdict, 31 involved Nakheel – Dubai World’s primary subsidiary, which had its own set of financial troubles after the collapse of the real estate market in the U.A.E. (Nakheel was a party to 9 of the 15 cases that settled and 18 of the ones in the remaining two categories.) Nakheel was “the biggest user of the DWT since its creation.”¹⁴⁷

In analyzing the cases in which Nakheel was a party, several interesting observations emerge. To begin, in those cases that went to judgment, Nakheel prevailed outright in only a relatively small number. These cases involved property development or contract for services. For example, in *Penguin Marine Boat Services LLC v. The World* (where Nakheel was the defendant), the Tribunal ruled in favor of the latter because of a lack of evidence that a sufficient contract even existed in the first place.¹⁴⁸ Similarly, in *Futtain Hussein Fares Al Baddad v. Palm Deira LLC* (where again Nakheel was the main defendant), the Tribunal sided with Nakheel because the claimant simply could not produce the agreement it sought to enforce.¹⁴⁹ In another dispute, Nakheel also was able to stave off a complaint by dissatisfied

143. *UPDATE 1-Dubai World’s debt restructuring gets 100 pct creditor backing*, REUTERS (Feb. 15, 2015), <http://www.reuters.com/article/dubai-world-restructuring-idUSL5N0VP06220150215>.

144. See DWT, *supra* note 142.

145. Albeit with Drydocks, the settlement occurred after the cram-down order, whereas with Dubai World it was before it. *Id.*

146. *Id.* Or as Mnookin and Kornhauser have classically argued, “bargain[...] in the shadow of the law.” Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 950 (1979).

147. Email from John Davidson, General Counsel, Nakheel, to Jayanth K. Krishnan (Sept 13, 2015).

148. *Penguin Marine Boat Services LLC v. The World*, DWT-0025-2010 (5/22/2011).

149. *Futtain Hussein Fares Al Baddad v. Palm Deira LLC*, DWT-0006-2010 (8/7/2011).

claimants from one of its construction projects,¹⁵⁰ and, Nakheel was permitted to retain the earnest money it collected after an investment company decided to cancel a construction project for which it had contracted.¹⁵¹

In three different cases, Nakheel served as the claimant, and it prevailed in each. In *The World LLC v. Al Memari Development Limited*, Nakheel received a default judgment because the defendant failed to meet its final payment on an installment contract.¹⁵² In *Nakheel PJSC v. Al Meraikhi*, though the parties had initially agreed to a financial restructuring, the defendant later sought to renege. The Tribunal refused to allow the defendant to do so and ruled in favor of Nakheel.¹⁵³ In a third case, Nakheel had signed a contract to receive a license fee from the defendant, but when it came time for payment, the defendant refused. Nakheel sued and subsequently won.¹⁵⁴

Yet in most of the remaining cases that went to judgment, Nakheel was on the losing end. The issue in several of these disputes involved claimants who argued that Nakheel simply refused to follow through on deals that it had made.¹⁵⁵ *Shokat Dalal v. Nakheel PJSC*¹⁵⁶ exemplifies this point. In this case, the claimant was planning to purchase a set of properties from Nakheel, but after the real estate market in Dubai collapsed, Nakheel no longer wished to sell.¹⁵⁷ The claimant was based outside of Dubai; during the course of the proceeding, Nakheel was able to secure an arrest notice against him, which deterred the claimant from wanting to return to the Emirate.¹⁵⁸ Nakheel, however, argued that it could not receive a fair hearing if the claimant was not present in person.¹⁵⁹ The Tribunal rejected this argument and

150. *City D Investments Limited v. The World LLC & Nakheel PJSC*, DWT-0024-2011 (9/19/2013).

151. *Arady Alaman Real Estate Investments LLC v. The World*, DWT-0036-2011 (9/26/2013).

152. *The World LLC v. Al Memari Development Limited*, DWT-0022-2011 (7/8/2014).

153. *Nakheel PJSC v. Al Meraikhi*, DWT-0028-2011 (9/21/2011).

154. *The World LLC v. Penguin Marine Boat Services LLC*, DWT-0008-2011 (2/6/2013).

155. *See, e.g., CDG FZE v. Nakheel PJSC*, DWT-0008-2010 (12/25/2014) (holding that the claimant was entitled to damages from Nakheel, plus interest on those delayed payments that Nakheel had not yet made); *Paramount International Trading Limited v. Nakheel PJSC*, DWT-0019-2010 (2/14/2011) (holding that Nakheel was bound to honor a contract that it had signed with the claimant); *Nurul LLC v. Nakheel PJSC*, DWT-0011-2011 (8/4/2011); (holding that Nakheel could not unilaterally cancel a contract it signed simply because it was convenient to do so); *Ahmed Butti Ahmed Almuhairei v. Nakheel PJSC*, DWT-0014-2011 (9/3/2013) (holding Nakheel to be bound to a discounted price on properties it had contracted with the claimant); *Proidea Contracting Interior Design LLC v. Nakheel*, DWT-0020-2010 (9/3/2013) (holding that Nakheel was bound to pay the claimant for services for which it had contracted); *Hedley International Emirates Contracting LLC v. Nakheel PJSC*, DWT 0017-2011 (9/13/2013) (holding that just because Nakheel faced financial difficulties it still owed the respective claimants money for services for which it (Nakheel) had contracted); relatedly, also see *Reaction Project Management v. Dubai Maritime City*, DWT-0039-2011 (9/3/2013) (holding Nakheel liable for consultancy fees it received from the claimant); *P & T Architects and Engineers LTD v. Nakheel PJSC*, DWT-0022-2010 (11/22/2011); *Technical Architects General Contracting Company LLC v. Nakheel PJSC*, DWT-0018-2010 (4/30/2013); *Far East Investment Holdings Limited v. The World LLC*, DWT-0027-2011 (11/11/2013) (holding Nakheel must pay a refund to the claimant for failure to build-up a plot in The World Development); *Gaber Nema Kenger v. The Palm Jebel Ali LLC*, DWT-0009-2011 (7/8/2014) and *Azia Holding Limited v. The World*, DWT-0040-2011 (12/25/2014) (holding in both cases that the respective claimants were entitled to cancel a contract it signed with the defendant because of the latter's failure to perform).

156. *Shokat Dalal v. Nakheel PJSC*, DWT-0023-2010 (1/23/2014).

157. *Id.*

158. *Id.* Also see Email from Mark Beer, *supra* note 102.

159. *Shokat Dalal v. Nakheel PJSC*, DWT-0023-2010; Email from Mark Beer, *supra* note 102.

said that so long as the claimant could appear via videoconference, Nakheel's interests would be safeguarded.¹⁶⁰ The claimant subsequently prevailed, but perhaps more noteworthy, the decision was important because it confirmed the Tribunal's commitment to allow parties to access its services from around the world in a timely and cost-savings manner.¹⁶¹

Then there are instances where Nakheel was accused of constructing properties with deficiencies¹⁶² or failing to build a project altogether,¹⁶³ and in both these types of matters it lost as well. In fact, regarding the latter, consider an interesting case that came before the Tribunal involving the intersection between property law, contract law, and religious liberty. In this matter,¹⁶⁴ the claimant was a trading company that had bought a parcel of land from Nakheel. After time passed and no construction had been done on the project, the claimant approached Nakheel for an explanation and was told that the site was classified as religiously holy.¹⁶⁵ As a result, Nakheel was barred from proceeding with the construction.¹⁶⁶ At trial, the trading company asked for restitution along with damages, and the Tribunal agreed,¹⁶⁷ holding that the religious prohibition on construction did not insulate Nakheel from liability.¹⁶⁸

Nakheel failed to prevail in another set of cases, this time involving high profile employment law disputes. In the first matter, Nakheel's former General Counsel, David John Nicholson, sued the company, claiming that he had been terminated with only one month's notice when his contract required a notice period of three months.¹⁶⁹ The Tribunal found in Nicholson's favor and awarded him more than \$200,000 USD in damages.¹⁷⁰ (Although Nakheel was able to lower "a legal fees bill claim by . . . [Nicholson] from AED 473,119 (\$128,803) to AED 132,000 (\$36,000) at a [subsequent] Dubai World Tribunal costs hearing."¹⁷¹)

In the second case, Nakheel's former Chief Executive Officer, Chris O'Donnell, sued the company in June 2011 on breach of contract grounds.¹⁷² O'Donnell had led Nakheel for five years before departing, and argued that the company owed him a set of incentive packages.¹⁷³ In response, Nakheel contended that O'Donnell

160. Shokat Dalal v. Nakheel PJSC, DWT-0023-2010; Email from Mark Beer, *supra* note 102.

161. Shokat Dalal v. Nakheel PJSC, DWT-0023-2010; Email from Mark Beer, *supra* note 102.

162. Vinod Kumar Dang v. Jumeirah Islands LLC, DWT-0003-2010 (3/9/2011).

163. Samer Farhan Farhat v. International City – Nakheel, DWT-0018-2011 (9/3/2013).

164. Greenfield Trading Company FZC v. Nakheel PJSC, DWT-0038-2011 (11/26/2015).

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. David John Nicholson v. Nakheel PJSC, DWT-0020-2011 (2/2/2012).

170. *Id.*; see also Shane McGinley, *Ex-Nakheel CEO's Legal Battle May Spur New Lawsuits*, ARABIAN BUS. (Dec. 4, 2011), <http://m.arabianbusiness.com/ex-nakheel-ceo-s-legal-battle-may-spur-new-lawsuits-433241.html>.

171. Duncan Hare, *Nakheel Lawyers Reduce Former Counsel's Bill*, CONSTR. WEEK ONLINE (Jan. 29, 2012), <http://www.constructionweekonline.com/article-15439-nakheel-lawyers-reduce-former-counsels-claim-bill/>. Note, there was a separate case, David John Nicholson v. Nakheel PJSC, DWT-0040-2014, (10/27/2014) that involved the claimant bringing a claim that he was owed an 80% discount on a piece of property he purchased from Nakheel. The parties discontinued the case jointly, and the Tribunal gave a consent order to that effect.

172. Chris O'Donnell v. Nakheel PJSC, DWT-0035-2011 (1/23/2014); Shane McGinley, *Former CEO Chris O'Donnell Sues Nakheel*, ARABIAN BUS. (June 23, 2011), <http://www.arabianbusiness.com/former-ceo-chris-o-donnell-sues-nakheel-406646.html#.V1WasbgrLDc>.

173. *Chris O'Donnell v. Nakheel PJSC*; McGinley, *supra* note 172.

had *simply* “decided to leave Nakheel following five years spent with the company”¹⁷⁴ before his contract had even expired; thus, he deserved no further pay-outs. Nakheel also questioned the jurisdictional authority of the Tribunal, saying that the case “should have been brought to the Ministry of Labour.”¹⁷⁵ Nakheel additionally cited O’Donnell’s poor performance as justification for not delivering the promised incentive packages.¹⁷⁶ In February 2012, the Tribunal issued its judgment. It held that the contract was clear on the covenants between the company and O’Donnell, and that Nakheel owed more than \$3 million in incentive payments to its former CEO, along with nearly a quarter of a million dollars in wages for days he had worked but had not received compensation.¹⁷⁷ The Tribunal also rejected the argument that it was not the proper venue to adjudicate this claim.¹⁷⁸ The case clearly involved a matter relating to a Dubai World subsidiary, and given the language of Decree 57 (broadly interpreted), the Tribunal found no issue rendering a verdict in this type of breach of contract dispute.¹⁷⁹

As demonstrated by the above analysis, the Tribunal has been instrumental in deciding a range of cases – both insolvency and non-insolvency based. In the concluding section, there will be an evaluation of what the Tribunal’s creation and its operations have meant for Dubai and, more generally, for those who study the interplay between external and local actors working within a domestic context – but a context which has definite global implications.

V. CONCLUSION

In more theoretical terms, this study has sought to reframe the old and rather tired debate over the extent to which outside legal experts who enter a domestic landscape cause more harm than good. Section II provided an in-depth account of

174. *Chris O’Donnell v. Nakheel PJSC*; McGinley, *supra* note 172; also for quotation, see Ben Roberts, *Nakheel’s Chris O’Donnell Quits as CEO*, CONSTR. WEEK ONLINE (June 9, 2011), <http://www.constructionweekonline.com/article-12737-nakheels-chris-odonnell-quits-as-ceo/>.

175. Shane McGinley, *Chris O’Donnell Wins \$3.7M Legal Battle with Nakheel*, ARABIAN BUS. (Feb. 9, 2012), <http://www.arabianbusiness.com/chris-o-donnell-wins-3-7m-legal-battle-with-nakheel-444453.html#.V1Wd-7grLDc> [hereinafter McGinley, *O’Donnell wins*].

176. *Id.*; see also *Chris O’Donnell v. Nakheel PJSC*, DWT-0035-2011 (1/23/2014).

177. McGinley, *O’Donnell Wins*, *supra* note 175; *Chris O’Donnell v. Nakheel PJSC*.

178. *Chris O’Donnell v. Nakheel PJSC*, DWT-0035-2011 (1/23/2014).

179. In fact, in a handful of other cases, the Tribunal asserted its jurisdiction where non-insolvency was at play. See, e.g. *Simon James Arrol v. Jumeirah Heights LLC*, DWT-0016-2011 (6/8/2012) (holding that the respondent, a Dubai World subsidiary, was required to pay the claimant an award issued by the Dubai International Arbitration Centre); *Hedley International Emirates Contracting LLC v. Nakheel PJSC*, DWT-0006-2011 (6/18/2012) (holding that based on an agreement between the parties, whereby Hedley had cancelled the contract, Nakheel was not entitled to any payment); *M/S Al Falak International Limited v. M/S Nakheel International Co.*, DWT-0025-2011 (1/23/2014) (holding that Nakheel was liable to the claimant who had paid to reserve a plot of land but where Nakheel did not follow through and complete the signing of the agreement and sale of the property); *Nakheel PJSC v. Souq Residence FZCO*, DWT-0021-2010 (2/23/2014) (holding against Nakheel for not following through on a contract). Several months later, this case was settled between the two parties. See *Nakheel and Souq Residences reach agreement on Palm Jumeirah’s Golden Mile*, NAKHEEL (Nov. 16, 2014), <http://www.nakheel.com/en/media/news/nakheel-and-souq-residences-reach-agreement-on-palm-jumeirahs-golden-mile>.

the literature that has focused on this subject. Although there are certainly important and valuable exceptions to the rule,¹⁸⁰ much of the extant research examines this topic from a binary perspective: either the arriving external actors help positively transform the society upon which they are working or they are neo-colonizers who exploit a new environment for instrumental purposes.¹⁸¹ In fact, several works that concentrate on this latter point often emphasize how it is actually indigenous actors who are far more significant in shaping the direction of policy, culture, rights, language, and governance of the domestic environment than the interloping external figures.¹⁸²

Yet the scholarship examining this issue, to-date, has paid far too little attention to the exciting developments currently occurring within one intriguing context – Dubai. Dubai is a setting that is heavily engaged with the international economy. It is a global marketplace with globally-sophisticated players who come from all over the world. Moreover, its domestic actors – lawyers, business leaders, civil society members, and government officials – are equally as sophisticated. These domestic actors recognize their city's privileged status not only within the region but around the globe as well. The narrative, therefore, of how the financial crisis of 2008 and 2009 affected Dubai is telling, namely because international and domestic stakeholders recognized the need to work in tandem from the outset. The actors from abroad did not have ambitions of colonizing Dubai; nor could they have succeeded even if they wished.¹⁸³ Similarly, the domestic actors did not view the foreign counterparts as engaging in unwanted encroachment.¹⁸⁴ The successful interplay between the external experts and their internal colleagues to create and successfully operationalize the Dubai World Tribunal adds a nuanced, as-of-yet untold story to the elite theory literature.¹⁸⁵

As this article demonstrates, lawyers, judges, business consultants, and accountants from abroad, together with a range of Dubai officials, cooperatively drafted a decree that ultimately met with the Emirate Ruler's approval. Moreover, these colleagues helped launch a key dispute resolution institution that provided immense confidence to local and international investors.¹⁸⁶ Consider what exists within this Arabic-speaking, Islamic-governed environment. There is a Western-based, non-appealable financial dispute resolution Tribunal that uses English, adheres to American and British legal principles, has foreign judges, and oversees all claims that relate to Dubai World and its subsidiaries, regardless of whether they

180. See DEZALAY & GARTH, *PALACE WARS*, *supra* note 17 (noting how sensitive globalized lawyers do take into account local context, culture, and actors); ABEL & LEWIS, *supra* note 20 (explaining how lawyers in common law countries can indeed be sensitive to domestic legal needs).

181. See discussion *supra* Section II.

182. *Id.*; see, e.g., Krishnan, *Professor Kingsfield*, *supra* note 17 (noting how many Indian legal academics, to the observations made by the Ford Foundation's American law professor consultants, were sophisticated in thinking about legal education and the legal profession); Krishnan, *Academic SAILERS*, *supra* note 17 (noting how the premise of Ford's legal education work in Africa was to rely greatly on local law professors and students for guidance).

183. See discussion *supra* Section III.D.

184. See discussion *supra* Section III.D.

185. See discussion *supra* Section III.D.

186. See discussion *supra* Section III.D and Section IV.

are insolvency-focused or not. Furthermore, the Tribunal has regularly and thoughtfully referenced, respected, and interpreted U.A.E. law. A forthcoming report by the Tribunal's staff outlines this point in detail.¹⁸⁷

Specifically, the report tracks how in several areas – civil procedure, real estate, commercial law, and labor law – various domestic statutory provisions appear relevant when combing through the facts of the cases that have come before the Tribunal. As the report discusses, the Tribunal indeed examines U.A.E. law and then analyzes its applicability before rendering a verdict.¹⁸⁸ The Tribunal's engagement in this manner clearly has helped it retain a strong sense of legitimacy and respect from the Dubai government, even though the government has been on the losing side of many cases. As the report concludes:[the] Tribunal's interpretations of UAE law show that the outcome in many cases will be the same under Civil and Common law principles. While the Tribunal may have a different thought process for interpreting UAE law, using many Common law principles, the end result is consistent with UAE law. The exercise of interpreting UAE law in the Dubai World Tribunal shows that Civil and Common law traditions share many aspects of substantive law. These traditions both seek to maximise justice and are thus not as different as they may seem.¹⁸⁹ It is worth pondering why the Tribunal has worked so well within a context that has never seen such an institution in the past. In part, the answer lies in how cataclysmic the financial crisis at the time was, which required the government to take unprecedented action or else risk the collapse of its entire economic system. Relying solely on nationalist means of remedying Dubai World's problems was not an option. The local Dubai courts were not equipped to handle these complicated cases; and the existing laws on the books could not fully address the monumental and diverse array of claims and defenses being made by creditors and debtors, respectively. These desperate times called for bold, creative, and global measures to confront a situation that the Dubai government had never witnessed. In Aristotelian terms, it was essential for Dubai to embrace a new approach for tackling the crisis if it wished to remain a relevant, sovereign, and economic player on the world's stage.

Another part of the story, however, is that those involved, from all sides, were not caricatures of stereotypical outsiders or insiders. Surely, each of the pivotal figures here had objectives and instrumental ends, but they were complex, with layered identities, motivations, and aspirations. And finally, globalization deeply influenced the way the Tribunal has functioned. The opportunities, knowledge, and information brought about by technology (not to mention the seamlessness of travel) have enabled easier communication between the external experts and Dubai officials, paving the way for a solution to the Emirate's crisis. In sum, all these experiences should serve as a model for scholars of dispute resolution and for policymakers in other markets seeking to build strong rule of law regimes – regimes

187. See DUBAI WORLD TRIBUNAL STAFF REPORT, DUBAI WORLD TRIBUNAL INTERPRETATIONS OF U.A.E. LAW (forthcoming 2016).

188. *Id.*

189. *Id.* at 13. This idea of British-style courts considering local laws before reaching an opinion has been documented in the literature in detail – namely during the colonial era. (See, e.g., Marc Galanter and Jayanth K. Krishnan, *Personal Law and Human Rights in India and Israel*, 34 ISR. L. REV. 98 (2000)). The situation here of the development of a “body of case law showing the Dubai World Tribunal's interpretations of UAE law” in this type of post-colonial context does appear novel. See DUBAI WORLD TRIBUNAL STAFF REPORT, *supra* note 187, at 1.

that can be viewed as legitimate and equitable by both international and domestic stakeholders for generations to come.¹⁹⁰

Appendix A

Settled / Judgment	Case Number	Parties	Date of Filing Final Judgment	Date Added to Docket	Summary	Is Nakheel involved?	Did the creditors / claimant prevail?
Judgment	DWT-0019-2010	<i>Paramount International Trading Limited v. Nakheel PJSC</i>	2/14/2011	10/10/2010	The Claimant believed they had a valid consolidation agreement for the purchase of property from Nakheel, but Nakheel said that the consolidation agreement had not been approved and thus they could not move forward with the deal.	Yes	Yes - The Tribunal found that Nakheel was contractually bound to continue with the consolidation.
Judgment	DWT-0003-2010	<i>Vinod Kumar Dang v. Jumeirah Islands LLC</i>	3/9/2011	6/13/2010	The contract was for the sale and purchase of a villa to be constructed in the Jumeirah Islands. The property was delivered to the Claimant, but it had deficiencies and the Claimant claimed damages from the Respondent. The Arbitral Tribunal awarded damages, and Respondent (Jumierah) submitted an application to	Yes	Yes - Respondent was out of time, so the Tribunal ruled that its application to nullify the award for the Claimant was invalid.

190. The authors received permission from the Registrar of the DWT to summarize and excerpt, from the DWT website and database, the information presented in the below Appendix. The Registrar oversees and is in charge of the management and compilation of the DWT cases in the database. Citations per case also are provided below.

					the DWT to nullify the award to the Claimant. The Tribunal determined that he was "out of time."		
Judgment	DWT-0026-2010	<i>Souq Residences FZCO v. Nakheel PJSC</i>	4/14/2011	12/20/2010	This was consolidated into DWT-0021-2010.	Yes	N/A
Judgment	DWT-0019-2011	<i>Al Mazaya Real Estate FZ LLC v. Limitless LLC</i>	5/9/2011	4/18/2011	Claimant entered a purchase and sale agreement with Defendant for property. Claimant paid for it, but there was a dispute with the Defendant. Defendant took title back. Claimant seeks to set aside or amend Orders of Arbitration.	No	No - Ruling for Defendant.
Judgment	DWT-0025-2010	<i>Penguin Marine Boats Services LLC v. The World LLC</i>	5/22/2011	12/20/2010	Penguin Boats claimed that it entered an agreement to provide services to The World, but the services were never required.	Yes	No - The evidence was not sufficient to prove that there was an agreement. Judgment for The World.
Judgment	DWT-0011-2011	<i>Nurol LLC v. Nakheel PJSC</i>	8/4/2011	3/2/2011	Claimant was supposed to develop property for Defendant, but Defendant canceled the contract for convenience.	Yes	Nakheel is not entitled to money under the Advance Payment Guarantee.
Judgment	DWT-0006-2010	<i>Futtaim Hussein Fares Al Baddad v. Palm Deira LLC</i>	8/7/2011	8/5/2010	Claimant paid Palm Deira 380,000 for property, but the purchase fell through.	Yes	No - The Claimant could not produce the Reservation Contract. Defendant prevails.

Judgment	DWT-0028-2011	<i>Nakheel PJSC v. Al Meraikhi General Contracting</i>	9/21/2011	6/8/2011	The parties entered into a contract, and later they entered into restructuring agreements. Defendant never executed the restructuring agreement.	Yes	Yes - Claimant is entitled to relief, and Defendant must execute the restructuring agreement.
Judgment	DWT-0022-2010	<i>P&T Architects and Engineers LTD v. Nakheel PJSC</i>	11/22/2011	12/12/2010	The information in the documents is vague, but this is a contractual dispute between the architects at a property and Nakheel.	Yes	Yes - The Tribunal upheld the arbitrator's judgment that Nakheel should pay the Claimant.
Judgment	DWT-0020-2011	<i>David John Nicholson v. Nakheel PJSC</i>	2/2/2012	4/19/2011	Claimant was an employee of Defendant who was terminated. Defendant withheld his benefits, and Claimant sues for these benefits.	Yes	Yes - The Claimant is entitled to these benefits.
Judgment	DWT-0016-2011	<i>Simon James Arrol v. Jumeirah Heights LLC</i>	6/18/2012	4/3/2011	Claimant wanted enforcement of a Dubai International Arbitration Centre final award.	Yes	Yes - Respondent must pay the final award and the costs of this action.
Judgment	DWT-0006-2011	<i>Hedley International Emirates Contracting LLC v. Nakheel PJSC</i>	1/27/2013	2/2/2011	Nakheel entered into an agreement with a contractor to do work. However, the contractor terminated the agreement, and Nakheel wanted money for the cancellation.	Yes	Yes - The contractor does not have to pay Nakheel.

Judgment	DWT-0008-2011	<i>The World LLC v. Penguin Marine Boat Services LLC</i>	2/6/2013	2/7/2011	Claimant was to provide logistics services for Defendant on a project. In the contract, Defendant was to pay Claimant a license fee. Defendant claimed Claimant was in breach of the contract, and Defendant refused to pay the license fee.	Yes	Yes - Defendant is required to pay Claimant AED 7,500,000.
Judgment	DWT-0018-2010	<i>Technical Architects General Contracting Company LLC v. Nakheel PJSC</i>	4/30/2013	10/7/2010	Breach of contract claim.	Yes	Yes - Nakheel must pay the Claimant a default judgment.
Judgment	DWT-0029-2010	<i>Said Ali S Alangari v. Limitless LLC</i>	6/3/2013	12/27/2010	The Claimant wanted to buy land from the developer, the Defendant. There was no purchase and sale agreement, but the Claimant paid 10% of the purchase price. The development never happened, and Claimant wants its money back.	No	Yes - Defendant must repay Claimant plus 1% interest.
Judgment	DWT-0020-2010	<i>Proidea Contracting and Interior Design LLC v. Nakheel</i>	9/3/2013	10/19/2010	The Claimant claims that Nakheel hired it as its contractor, but Nakheel claims they never reached an agreement. The Tribunal determined that Nakheel did inform the contractor that its quotation had been approved.	Yes	Yes - The Tribunal determined that the Defendant must pay the Claimant.

Judgment	DWT-0014-2011	<i>Ahmed Butti Ahmed Almuhairi v. Nakheel PJSC</i>	9/3/2013	3/23/2011	There was a contract between the parties that stated Claimant would receive a staff discount on properties. Defendant later stated that the Claimant was not entitled to this discount.	Yes	Yes - The Claimant is entitled to the discount.
Judgment	DWT-0017-2011	<i>Hedley International Emirates Contracting LLC v. Nakheel PJSC</i>	9/3/2013	4/5/2011	Claimant and Defendant had a contract for Claimant to do work for Defendant. Defendant faced financial troubles and had to cancel the contract.	Yes	Yes - The Defendant must pay the Claimant.
Judgment	DWT-0018-2011	<i>Samer Farhan Farhat v. International City – Nakheel</i>	9/3/2013	4/18/2011	Claimant bought a property that was to be built by Nakheel. Nakheel did not build the property, and Claimant wants his money back.	Yes	Yes - Judgment entered for the Claimant.
Judgment	DWT-0021-2011	<i>Auld Alliance Trading FZCO v. Drydocks World LLC</i>	9/3/2013	5/4/2011	The Claimant and Defendant entered into an agreement to work together. Defendant owed Claimant, and Defendant refused to pay.	No	Yes - The Defendant must pay the Claimant.
Judgment	DWT-0039-2011	<i>Reaction Project Management v. Dubai Maritime City</i>	9/3/2013	7/14/2011	Claimant provided consultant services to Nakheel on a project for the period of a year. Nakheel owes Claimant consultancy fees.	Yes	Yes - Defendant failed to file a brief, so the Tribunal ruled by default in favor of the Plaintiff.

Judgment	DWT-0001-2012	<i>Mohsin Investments Limited v. Limitless LLC</i>	9/10/2013	1/26/2012	The Claimant entered into an agreement with the Defendant to purchase plots of land. Defendant canceled the purchase and sale agreements, and Claimant claims it is entitled to damages.	No	Yes - Defendant must repay the amount paid for the plots of land.
Judgment	DWT-0024-2011	<i>City D Investments Limited v. The World LLC & Nakheel PJSC</i>	9/19/2013	6/2/2011	Claimant paid Defendant for plots of land on the islands. Defendant never built up this land to the satisfaction of the Claimant and the contract.	Yes	No - Claimants must pay for further costs on the property and must pay the Defendant's fees in this action.
Judgment	DWT-0036-2011	<i>Arady Alaman Real Estate Investments LLC v. The World LLC</i>	9/26/2013	7/3/2011	Claimant signed a reservation contract for a plot of land on an island to be developed. Claimant decided not to proceed with the acquisition, and it demands its money back from the Defendant.	Yes	No - The Tribunal found that the Claimant was not entitled to return of the money paid. Nakheel won.
Judgment	DWT-0027-2011	<i>Far East Investment Holdings Limited v. The World LLC</i>	11/11/2013	6/6/2011	The Claimant is a developer who reserved a plot in The World development through a reservation contract. Claimant requested a refund when the development was not happening.	Yes	Yes - Defendant must repay the Claimant.

Judgment	DWT-0023-2010	<i>Shokat Mohamed Dalal v. Nakheel PJSC</i>	1/23/2014	12/12/2010	Claimant was going to buy properties from Nakheel, but during the deal the market collapsed and Nakheel no longer wanted to sell. Claimant had already put money toward the properties.	Yes	Yes - The Tribunal determined that Nakheel must pay the Claimant.
Judgment	DWT-0025-2011	<i>M/S Al Falak International Limited v. M/S Nakheel International Co.</i>	1/23/2014	6/2/2011	Claimant paid to reserve plots of land. Claimant and Defendant were supposed to sign a purchase and sale agreement a few months later, but the Defendant never did.	Yes	Yes - Judgment in favor of the Claimant.
Judgment	DWT-0035-2011	<i>Chris O'Donnell v. Nakheel PJSC</i>	1/23/2014	6/22/2011	Claimant was an employee of Defendant. His contract expired, and he claims he is entitled to two Long Term Incentive packages.	Yes	Yes - The Tribunal determined that the Claimant was entitled to these packages.
Judgment	DWT-0021-2010	<i>Nakheel PJSC v. Souq Residence FZCO</i>	2/23/2014	11/11/2010	Nakheel considered buying property from the Claimant and made two advance payments. The parties did not move forward with the transaction, and the Defendant did not repay the Claimant.	Yes	No - The Tribunal held that Nakheel must pay the Defendant.
Judgment	DWT-0009-2011	<i>Gaber Nema Kenger v. The Palm Jebel Ali LLC</i>	7/8/2014	2/23/2011	Claimant wanted the purchase and sale agreements to be terminated since the Defendant had not started	Yes	Yes - The contracts become void due to non-registration, so the Claimant wins.

					work on the projects.		
Judgment	DWT-0022-2011	<i>The World LLC v. Al Memari Development Limited</i>	7/8/2014	5/19/2011	The Claimant and Defendant entered into a purchase and sale agreement, and Defendant never paid off the final installment.	Yes	Yes - Claimant's request for default judgment is granted.
Judgment	DWT-0008-2010	<i>CDG FZE v. Nakheel PJSC</i>	12/25/2014	8/19/2010	This case was brought because defendants had not begun payment after a judgment was made against them. Claimant now claims that interest is due on the delinquent payments. The DWT approved an interest rate of four percent per year from the date of the first judgment (September 2013) until the date of payment.	Yes	Yes - Defendants in earlier action must pay Claimant interest on judgment against them.
Judgment	DWT-0040-2011	<i>Azia Holdings Limited v. The World LLC</i>	12/25/2014	7/24/2011	Claimant invested in Defendant's World Island Plot. Defendant agreed to sell a plot to the Claimant under a Reservation Contract. Defendant has not met its obligations under the Reservation Contract.	Yes	Yes - Claimant is entitled to cancellation of the Reservation Contract.

Judgment	DWT-0002-2014	<i>Gulf Boats Trading v. Dry Docks World LLC</i>	3/12/2015	1/30/2014	Claimant parked its ship at Defendant's dock, and it sank twice. Claimant claims that Defendant is responsible for its ship sinking due to Defendant's negligence.	No	No - Defendant was not responsible for the ship sinking.
Judgment	DWT-0029-2011	<i>Nakheel PJSC v. Hedley International Emirates Contracting LLC</i>	10/19/2015	6/8/2011	Same facts as case directly above.	Yes	There are no other documents. This claim was likely settled outside of the Tribunal or consolidated into DWT-0028-2011.
Judgment	DWT-0007-2010	<i>Khalid Hassan A. Al Qahtani v. Limitless LLC and Pinnacle Business Towners Company Limited</i>	11/19/2015	9/21/2010	Claimant put money down for the purchase of property, but he later wrote to Defendant asking for a refund because he no longer wished to move forward.	No	Yes - Claimant was entitled to refund of the money plus interest.
Judgment	DWT-0038-2011	<i>Greenfield Trading Company FZC v. Nakheel PJSC</i>	11/26/2015	7/11/2011	Claimant purchased a plot from Defendant. After paying the purchase price, Claimant was notified by Defendant that this land was classified as a holy land and Claimant could not use it for its intended purpose. Claimant wants its money back plus damages.	Yes	Yes - Claimant is entitled to return of its money and damages.

Judgment	DWT-0005-2013	<i>M/S Platinum Services Company v. M/S Dubai Port World</i>	Ongoing - Most recent hearing on 10/21/15	12/4/2013	Claimant was a contractor who worked with Defendant. Claimant sent workers to Defendant's properties. After Defendant moved its location, Claimant claimed its workers went on strike and he had to close his business. Claimant wants damages from defendant.	No	There was a trial, but there is no document to determine who won in this case.
Settled	DWT-0016-2010	<i>Gulf Developers FZC v. The World LLC</i>	3/30/2011	10/6/2010	Claimant canceled the reservation contract and asks for a refund of the amount paid.	Yes	The parties entered into an agreement, and the Tribunal issued a consent order.
Settled	DWT-0017-2010	<i>Frontline Developers FZC v. The World LLC</i>	3/30/2011	10/6/2010	Claimant canceled the reservation contract and asks for a refund of the amount paid.	Yes	The parties entered into an agreement, and the Tribunal issued a consent order.
Settled	DWT-0014-2010	<i>Dalkia Middle East FZE v. Limitless LLC</i>	4/5/2011	9/1/2010	Breach of contract claim. No other information on website.	No	Case closed before judgment.
Settled	DWT-0012-2010	<i>Gulf Height Investments Holding v. The World LLC</i>	7/28/2011	9/30/2010	Claimant claims Defendant wrongfully canceled their contracts. The description was very vague.	Yes	The parties entered into an agreement, and the Tribunal issued a consent order.
Settled	DWT-0010-2010	<i>Jumeirah Islands LLC v. Vinod Kumar Dang</i>	8/4/2011	8/26/2010	No information on website.	Yes	Case closed after case management conference.

Settled	DWT-0005-2010	<i>Khalid Rangoonwala v. Al Nakheel Company</i>	11/22/2011	8/5/2010	A water pipe owned by Nakheel burst and flooded the street, also flooding Claimant's car. The parties entered into an agreement, and the Tribunal drafted a consent order.	Yes	Consent order – Nakheel will pay Claimant for damage to car.
Settled	DWT-0011-2010	<i>Bin Belaila Baytur General Contracting LLC v. Nakheel PJSC</i>	11/22/2011	9/30/2010	Claimant claims that Defendant has failed to make payments required by their contracts.	Yes	Parties entered into an agreement before judgment. The Tribunal issued a consent order.
Settled	DWT-0007-2011	<i>Wilbur Smith Associates Inc. v. Limitless LLC</i>	11/22/2011	2/7/2011	Claimant claims that Defendant owes Claimant for the costs of consultancy services performed during a construction project.	No	The parties settled outside of the Tribunal.
Settled	DWT-0002-2012	<i>Suha Mahmoud Salem v. Nakheel PJSC</i>	3/20/2012	2/6/2012	Claimant was hired by Defendant and claims that his employment was terminated arbitrarily.	Yes	The case was closed before reaching the Tribunal.
Settled	DWT-0015-2010	<i>Global Realty Partners FZC v. The World LLC</i>	9/3/2013	10/6/2010	Claimant canceled the reservation contract and asks for a refund of the amount paid.	Yes	The parties entered into an agreement, and the Tribunal issued a consent order.
Settled	DWT-0002-2011	<i>Limitless LLC v. Thani Rashid Eissa Al Muhairi</i>	9/3/2013	1/6/2011	Claimant and Defendant were both supposed to pay for a development project, but only the Claimant paid.	No	Respondent agreed to the terms of the Consent Order.

Settled	DWT-0005-2011	Limitless LLC v. Mohammed Marri	1/23/2014	1/26/2011	Claimant built a building for the Defendant, and Defendant never paid them for constructing the building.	No	There was a consent order, and both parties settled outside of the Tribunal.
Settled	DWT-0003-2014	Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft KG v. DP World Limited	12/22/2014	2/26/2014	Defendants damaged goods of the Claimant while operating a crane. Claimant wants Defendant to pay for the price of those goods.	No	The parties entered into a consent order before trial.
Settled	DWT-0001-2014	Regional Development Consortium LLC v. Drydocks World	4/15/2015	1/26/2014	Claimant entered into an Agreement with Defendant to be its sales agent. Claimant claims he is entitled to commission from the work done on the buildings.	No	There was a confidential settlement agreement.
Settled	DWT-0013-2011	Hedley International Emirates Contracting LLC v. Nakheel PJSC	10/19/2015	3/10/2011	Under settlement documents, Nakheel was to allow Hedley to complete a specific contract. Nakheel limited the scope of that contract, breaching the settlement document.	Yes	Settled after case management conference – no documents.
Settled	DWT-0001-2010	Asmaa Abd El Ghaffar Khalil v. Limitless L.L.C	11/8/2010	4/5/2010	Claimant had a 3-year contract to work for Dubai World, and Dubai World canceled the contract before it was over. After the reply was filed, the case was closed.	No	The claim was resolved and an order was issued on Nov. 1 2010. No further documents are available, because the order has been

							kept private as this is a small claim.
Discontinued	DWT-0024-2010	Rhoda Giga Developers Limited v. The World LLC	2/13/2011	12/15/2010	The Claimant entered into a purchase and sale agreement with The World. The Claimant wanted to consolidate the purchase of the properties, and The World approved the consolidation. A few months later, The World revoked the approval for consolidation.	Yes	The Claimant discontinued the action before the Tribunal made its judgment.
Discontinued	DWT-0004-2010	Mr. Raja Hani Ghanma v. Jumeirah Golf Estates LLC	4/14/2011	8/5/2010	Employment contract claim. No other information on website.	Yes	The Claimant discontinued the claim without any other information.
Discontinued	DWT-0027-2010	Limitless LLC v. Abdullah Khamees Jumma Hareb	5/15/2011	12/26/2010	The Claimant handed over this building after construction to the Defendant even though the Defendant had failed to pay the money he owed. The Defendant claimed he was gifted the land and building and thus owes no money.	No	Claimant filed a notice of discontinuance.

Dis-continued	DWT-0032-2011	The World LLC v. Asian Development Limited	6/12/2011	6/12/2011	Same facts as the case directly above.	Yes	No further documents available.
Dis-continued	DWT-0002-2010	Trinet Outdoor Advertising v. Nakheel	7/24/2011	5/23/2010	Breach of contract claim. No other information on website.	Yes	The Claimant discontinued the claim without any other information.
Dis-continued	DWT-0009-2010	Octopus Advertising LLC v. Ibn Battuta Mall LLC	8/4/2011	8/23/2010	Claimant provided advertising services to the Defendant, and the Defendant has not paid the invoices.	No	The Claimant discontinued his claim before judgment.
Dis-continued	DWT-0003-2011	Limitless v. Yousuf Mohamed Ameen Kazim	1/15/2012	1/6/2011	Same as directly above, but against another Defendant.	No	Consolidated with DWT-0027-2010 and DWT-0028-2010.
Dis-continued	DWT-0028-2010	Limitless LLC v. Abdulla Ali Abdulla Al Janahi	4/19/2012	12/26/2010	Same as case directly above.	No	Same as case directly above.
Dis-continued	DWT-0010-2011	Al Shafar General Contracting Co LLC v. Nakheel PJSC	2/26/2013	3/2/2011	This was an arbitration claim. Defendant hired the Claimant to do work, and Defendant gave Claimant an advance. Defendant canceled the contract, and Claimant did not pay back the advance.	Yes	The Claimant discontinued its claim.
Dis-continued	DWT-0033-2011	John Viola & Ian Charles Mathison v. Jumeirah Golf Estates LLC & Nakheel PJSC	4/3/2013	6/14/2011	Claimants entered into a purchase and sale agreement for properties from Defendant. Defendant was to draft new purchase and sale agreements but did not, and Claimants	Yes	The Tribunal discontinued the claim.

					were never granted access to the properties.		
Dis-continued	DWT-0023-2011	Jeroen Van Der Geer v. Nakheel PJSC	9/3/2013	6/2/2011	Defendant agreed to let Claimant pay a reduced price for a piece of property, but later Defendant changed its mind and said the price would not be reduced.	Yes	The case was closed before hearing in front of the Tribunal.
Dis-continued	DWT-0030-2011	Alalamiya Alalolla Contracting LLC v. Nakheel PJSC	9/3/2013	6/9/2011	Claimant carried out various construction projects for Defendant, and Defendant never paid Claimant for this work.	Yes	This claim was stayed by the Tribunal.
Dis-continued	DWT-0031-2011	The World LLC v. Kleindienst Properties Limited	9/3/2013	6/12/2011	Claimant and Defendant entered into a purchase and sale agreement for property. Defendant was to pay the entire purchase price, but has only paid 30% to the Claimant.	Yes	The claim was discontinued.
Dis-continued	DWT-0034-3011	CHI Development Group Limited v. Nakheel PJSC	9/3/2013	6/21/2011	Claimant entered into purchase and sale agreements with the seller, the Defendant. Claimant made substantial payments, but Defendant failed to deliver infrastructure on the project. Claimant was unable to hand	Yes	Claimant filed a notice of discontinuance.

					over the prop- erties to pur- chasers.		
Dis- con- tinued	DWT- 0002- 2013	Mouchel Middle East Limited v. Limitless LLC	5/8/2014	6/5/2013	Breach of con- tract claim. Claim form is sealed.	No	The claim was dis- continued.
Dis- con- tinued	DWT- 0043- 2011	Oxford Strategic Consulting v. Du- bai World	5/9/2013	8/2/2011	Breach of con- tract claim. There are no documents available.	No	The claim was dis- continued on Sept. 21 2011.
Dis- con- tinued	DWT- 0004- 2014	Reeyaz Moosa v. Jumeirah Golf Estates LLC	10/27/2015	6/8/2014	"Ratification of award" claim. The claim docu- ment is sealed.	No	The Par- ties agreed to discon- tinue the claim on Oct. 27 2015. The Tribunal issued a Consent Order.
Dis- con- tinued	DWT- 0041- 2011	David John Ni- cholson v. Nakheel PJSC	10/27/2015	7/31/2011	Claimant pur- chased prop- erty from Nakheel and paid 80% of the purchase price. Claim- ant was enti- tled to a dis- count on this purchase, but Defendant in- formed him that he would not receive this discount. Claimant wants this dis- count to be ap- plied to the purchase.	Yes	The Par- ties agreed to discon- tinue the claim on Oct. 27 2015. The Tribunal issued a Consent Order.
Dis- con- tinued	DWT- 0042- 2011	Dubai Multi Commodities Centre Authority v. Nakheel PJSC	11/30/2015	8/1/2011	Breach of con- tract claim. There are no documents available.	Yes	The case was closed by the Tribu- nal due to non-activ- ity of the Parties.

Dis-continued	DWT-0012-2011	Mr. Magdy El Raddaf & Mrs. Carmen El Raddaf v. Marina Residences LLC	11/30/2015	3/9/2011	Breach of contract claim. No documents available.	No	The case was closed by the Tribunal due to non-activity of the Parties.
Dis-missed	DWT-0001-2011	Gammon & Bill-moria LLC v. Nakheel PJSC	1/5/2011	1/4/2011	This dispute centered around a down payment on property and how much was to be paid in advance/how much should be credited to the eventual purchase.	Yes	No - The Claimant's application was dismissed.
Dis-missed	DWT-0004-2011	Paramount International Trading Limited v. Nakheel PJSC	5/3/2011	1/25/2011	Claimants claim that they were led by Nakheel to believe that they would receive zero-balance financial statements on their properties.	Yes	No - Claimants are not entitled to the declarations sought in this trial. The claim is dismissed.
Dis-missed	DWT-0026-2011	A.A.P.D. Real Estate Broker v. Nakheel	5/6/2013	6/2/2011	Defendant did not pay Claimant its commission fees for acting as a real estate broker for the Defendant.	Yes	No - The Tribunal dismissed the claim because AAPD did not act as a broker. Defendant wins.
Dis-missed	DWT-0037-2011	Mustafa Rasm Mustafa Al Khmash v. International City LLC	5/22/2013	7/4/2011	Claimant entered into a purchase agreement with Defendant. Defendant was to turn property over to Claimant by a certain date and failed to do so. The Claimant wants the Tribunal to cancel the contract.	Yes	Claimant's application was dismissed because this must be decided in DIAC arbitration.

Dis- missed	DWT- 0001- 2013	CDM Smith Inc. v. Nakheel PJSC	9/3/2013	1/2/2013	Defendant hired Claimant as a consultant, but it was una- ble to pay the consultancy fees. Defend- ant com- menced finan- cial restructur- ing. Claimant wants a declar- atory judgment that the Tribu- nal has juris- diction.	Yes	The Tri- bunal did not have jurisdic- tion to hear the claim. This is an arbitration claim.
Dis- missed	DWT- 0015- 2011	Sao Paulo Devel- opment Ltd v. Nakheel PJSC	10/22/2013	3/24/2011	Defendant ap- proved Claim- ant's consoli- dation agree- ment to con- solidate the is- land property and transfer the funds pre- viously paid towards differ- ent plots. De- fendant later disapproved the agreement.	Yes	No - Claimants did not prove that Nakheel was bound by the con- tract. The claim is dismissed.

