



**DIFC Courts' Rules Sub-Committee**

**MEETING MINUTES**

**19 May 2015 at 3pm**

**DIFC Courts, Library Meeting Room**

**Committee Attendees:**

Adrian Chadwick, Hadeef & Partners

Ghada Audi, Ahmed Seddiqi & Sons

Phillip Punwar, Baker Botts

Robert Karrar-Lewsley, Al Tamimi

Sheila Shadmand, Jones Day

Teresa Starr, Fichte & Co

Mark Beer, Registrar DIFC Courts

Natasha Bakirci, Assistant Registrar DIFC Courts

Lema Hatim, Senior Case Progression Officer DIFC Courts

Cheryl Fernandes, Committee Secretary DIFC Courts

**Apologies:**

Patrick Bourke, Norton Rose Fulbright LLP

Graham Lovett, Clifford Chance

1. **Welcome by Registrar Mark Beer:**

Registrar Mark Beer chaired the meeting and welcomed all attendees

2. **Progress of RDC Commentary & Publication of Hardcopy:**

Assistant Registrar Natasha Bakirci gave updates on the Progress of the hardcopy version of the RDC and Commentary which were originally planned for publication in October 2014. Phillip Punwar from Baker Botts informed all members that the response from Thomson Reuters (TR) has not been very positive.

Members suggested that we should look at other publishers such as Lexis Nexis to do the formatting, printing and editorial work. This is something that we will explore in the future, however it was decided that it would be best to remain with TR for the publication of the current Rule book.

The RDC hardcopy will be published with the new DIFC DRA Academy of Law logo after 30 June 2015. It was agreed at the meeting that Law books should be marketed by 1<sup>st</sup> October 2015.

The new RDC 53.2 and DIFC Courts Rules Order No. 1 of 2015, PD no. 3 of 2015 and amended Court fees to be added into the hard copy appendices as well.

Assistant Registrar Natasha Bakirci is in the process of scheduling a meeting with the editor at TR along with Phillip Punwar.

3. **New Practice Directions & Orders providing for i) *de novo* reconsideration of Registrar, Judicial & Court Officer decisions, (ii) extension of jurisdiction of Small Claims Tribunal and (iii) Amendments to Court fees:**

Assistant Registrar Natasha Bakirci updated members about the new Practice Direction providing for *de novo* reconsideration of Registrar, a Judicial & Court Officer decision which was inspired by practice in Singapore. When Judicial officers, case progression officers and Registrars of the DIFC Courts issue a decision which is judicial in nature in respect of applications lodged before the Courts, a party to the application may request that the matter be reconsidered *de novo* by a judge of the DIFC Courts. This offers an efficient protective mechanism to parties.

A request for a *de novo* review should be submitted by way of application, be it Part 23 or simply by letter. Unless the Court orders otherwise, such a request should be filed and served within 3 working days after the Court Officer's or Registrar's decision sought to be reviewed has been issued, accompanied by brief reasons for the application. Following which the Court shall endeavour to issue a decision within 5 working days. Each party to the request is to file and serve statements of costs within 2 working days of the filing of any reply.

The judge shall in no way be bound by the preceding decision of the Court Officer or Registrar. It is open to the judge to either: (i) confirm; or (ii) quash and replace the decision against which a *de novo* review has been sought.

**DIFC Courts Rules of Court Order No. 1 of 2015:** The Small Claims Tribunal (SCT) will now hear and determine claims within the jurisdiction of the DIFC Courts: where the amount of the claim or the value of the subject matter of the claim does not exceed AED 500,000 or where the claim relates to the employment or former employment of a party; and all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims). The SCT will also hear claims where the amount of the claim or the value of the subject matter of the claim does not exceed AED 1,000,000; and all parties to the claim elect in writing that it be heard by the SCT, and such election is made in the underlying contract (if any) or subsequent to execution of that contract or such other claims as may be ordered or directed by the Chief Justice to be heard by the SCT from time to time."

A member however re-iterated his comment that restriction on lawyers representing a party before the SCT should be removed especially in high value employment cases, as a company can use in-house counsel (albeit under a different title) whilst an individual cannot use a lawyer. A party should be allowed to have legal representation by a lawyer especially now that disputes up to AED 500,000 are compulsorily subject to SCT jurisdiction and allowing representation by a lawyer may also persuade a party to agree to SCT jurisdiction where a claim exceeds AED 500,000. The Order (now issued and in effect) has been amended to reflect this concern, which was the main critique received during consultation.

**Amendments to Court Fees:** The new fees update was provided to members by Senior Case Progression officer Lema Hatim. For a Part 7 Claim: Where a claim of up to and including USD 500,000 is submitted a fee of 5% of the value of the claim and /or the property with a minimum of USD 1,500.

There is a change to Application fees and a clear distinction between applications that are heavy and ordinary: Heavy applications like contesting jurisdiction, strike out or application for immediate judgment which would require a long hearing will now be charged at USD 2,000.

For hearings that are shorter or applications likely to require an oral hearing lasting 2 hours or less – these will be charged USD 300.

A late filing fee of USD 200 will apply for every day that any and all documents to be filed, are filed late with the Courts. There is also a provision which says the Registrar or a Judge of the DIFC Courts shall have the discretion to vary, suspend or waive any and all late filing fees that are applied should there be any discrepancies.

Hearing fee of USD 1,000 will apply for a hearing up to 1 day and for each half day of a hearing after the first a fee of USD 500 will apply. If the parties were to

proceed with the use of video conferencing facilities, the fee would be USD 1,000 per hearing.

Enforcement fee: No fee will be payable by the party filing enforcement of DIFC Courts judgment/ order. But a fee of 3% of the value of the judgment/ order is to be paid by the party against whom enforcement is being sought.

To enforce judgments or orders made outside the DIFC Courts a 1% of the value of the judgment/ order, with a minimum of USD 100 and a maximum of USD 20,000. This is to be settled by the party filing for enforcement.

A 3% of the value of the judgment or order, this is to be settled by the party against whom enforcement has been filed.

An update on Business visit visa cost was also provided which is now available online. Members enquired if DIFC Courts were receiving requests for Business visit visa applications and were informed that many overseas practitioners are now enquiring and applying for this service.

A question was raised about Small Claims Tribunal claimants, if they wanted to enforce a judgment would they have to pay the fee for filing - to which the answer provided was that there will be no fees if the judgment was issued by SCT at the DIFC Courts.

The consultation phase is over and new fees are implemented from Monday 25 May 2015.

Members questioned about the Part 23 application, if applications can be made by way of letters. The application can be made via letter with a fee payable. This has been noted and Part 23 application to be replaced by way to letter.

4. **Proposed Leave to Appeal Amendments:** Assistant Registrar Natasha Bakirci is working with Justice Roger Giles on proposed Leave to Appeal amendments. She updated the members that in our current rules one can either make an application for permission to appeal orally at a hearing if a judgment is delivered at the hearing or subsequently in writing to the Appeal Court. The proposed leave to appeal amendments will significantly change the system - so that all applications must first go to the trial judge: Under the proposed new regime applications for permission to appeal must be made to the lower court. The lower court can refer to the Appeal Court for a decision or if the lower court refuses to give permission to appeal a further application can be made to the Appeal Court with an appellant's notice.

The number of days for appeal will be extended from 14 days to 21 days.

A draft of the same will be circulated to all members for feedback within a few weeks and then forwarded to the judges for their comments.

5. Other matters arising from the committee:

**Guidance in relation to Skeleton arguments:** It was suggested by a member of the Rules Subcommittee that skeleton arguments are to be restricted to 25 pages for trials and heavy applications and 15 pages for normal applications. There should be a need for permission before longer skeletons are filed. This was discussed at the meeting and all members agreed. Natasha will work on a Practice Direction regarding the skeletons for trials and heavy applications and will circulate the draft amongst the RSC members.

**Rules pertaining to supervising Legal Representatives:** a member suggested that we should look at providing some rules on supervising legal representatives, in the context of search orders. Phillip Punwar from Baker Botts to share some guidance notes on this for DIFC Courts to consider.

6. **Next meeting proposed dates:**

Monday 23 November, 2015 3pm - 4pm