



DIFC Courts' Rules Sub-Committee

MEETING MINUTES

15 DECEMBER 2016 at 3pm

DRA OFFICES

Attendees:

Adrian Chadwick, Hadeef & Partners

Ghada Qaisi Audi, Ahmed Seddiqi & Sons

Philip Punwar, Baker Botts

Sheila Shadmand, Jones Day

Tarek Shrayh, Al Tamimi & Company on behalf of Rita Jaballah

Teresa Starr, Fichte & Co Legal Consulting

Natasha Bakirci, DIFC Courts

Mahika Hart, DIFC Courts

Cheryl Fernandes (Committee Secretary), DIFC Courts

Apologies:

Graham Lovett, Gibson Dunn

Patrick Bourke, Norton Rose

Mark Beer, DIFC Courts



1. **Welcome:** Adrian Chadwick chaired the meeting and welcomed all members in the absence of the chairman Patrick Bourke.
2. The minutes of the meeting held on 14 March 2016 were approved.
3. **Practice Direction (PD) on Neutral Citation:** Assistant Registrar Natasha Bakirci updated members on the Practice Direction relating to the neutral citation of Judgments which was issued in October 2016. The DIFC Courts have been publishing all new Judgments with a neutral citation and are attempting to update historical Judgments, this will be a gradual process with a view to completion by the end of the first quarter of 2017. This will apply to judgments issued from Small Claims Tribunal, Court of First Instance and Court of Appeal.

There was some concern that members expressed that the PD on Neutral Citation is not being followed as it is written. The Practice Direction seems to envision assigning a new and unique number to each judgment and order listed on the website so that each document can be referred to as “*Case Name* [YEAR] DIFC COURT ###”. Members thought this does not work well specially in cases where there are multiple judgments or orders as it is difficult to differentiate.

Members agreed that it would be better if all the judgments and orders on the website be renumbered in a consistent way so that people can follow the neutral citation PD. This is something that the DIFC Courts will work on.

4. **Progress on Leave to Appeal amendments:** Assistant Registrar Natasha Bakirci informed members that the Amended Part 44 Rules of the DIFC Courts on Leave to Appeal is being currently reviewed, the idea being that all requests for leave to appeal should first be considered by the trial judge. Appellants are now required to first make their application for permission to appeal to the lower Court: either (i) orally at the hearing at which the decision to be appealed was made; or (ii) in an appellant’s notice. The lower Court may refer an application for permission to appeal to the appeal Court for a decision.
Where the lower Court refuses to give permission to appeal, a further (second) application for permission to appeal may be made to the appeal Court in an appellant’s notice. The appellant now has 21 days after the date of the decision appealed against in which to file the appellant’s notice, where the lower Court has made no other direction. The Respondent has now been given an opportunity to make submissions in opposition to permission to appeal within 21 days of the service upon him of the appellant’s notice.



The amended rules shall go into public consultation sometime mid December 2016 for a period of 1 month, as required with an aim to issuing them early in 2017.

- 5. New Rule: Allowing parties to apply at the outset of a case for leave to serve proceedings electronically:** Natasha Bakirci informed members that the DIFC Courts are exploring the option of allowing for service of process by electronic means (whether it is email or social media or instant messaging applications), as methods of service at the DIFC Courts' Small Claims Tribunal (SCT) upon application at the outset, without having to exhaust attempts at other means of service. The advantages of doing this would be to improve efficiency and speed of dispute resolution. This would be a prime example of the DIFC Courts embracing technology and innovation, and establishing itself yet again as one of the leading commercial courts for development and responsiveness to public needs.

Currently the focus is on considering the proposed change for the SCT only, where service is in most cases effected by the SCT directly onto the defendant, under the Rules of Part 53.

- 6. Practice Direction on Litigation Funding:** This Practice Direction (PD) sets out requirements to be observed by "Funded Parties" in respect of their relationships, interactions and contracts with "Fundors" concerning legal "Proceedings" in the DIFC Courts. Funded parties entering into a Litigation Funding Arrangement (LFA) in respect of DIFC Courts proceedings must provide, to every other party to the relevant dispute notice of the identity of the funder (defined as a person or entity independent from the funded party and their legal representatives, including a parent entity, subsidiary entity or group of entities, that provides funding towards the proceedings); and the fact that an LFA has been entered into (although disclosure of a copy of, or any part of, the LFA is not required unless otherwise the ordered by the DIFC Courts).

Mahika Hart informed members that the PD will go into public consultation for 1 month in January 2017, and we hope to receive valuable feedback from the local legal community.

- 7. Meeting closed at 4.00pm.**

Next Meeting Date: 6 June 2017