

## **PART 35 Miscellaneous Provisions Relating To Hearings**

### **PART 35**

#### **Interpretation 35.1**

##### **35.1**

In this Part, reference to a hearing includes a reference to the trial.

#### **General Rule – Hearings to be in public 35.2 - 35.13**

##### **35.2**

The general rule is that a hearing is to be in public.

##### **35.3**

The requirement for a hearing to be in public does not require the Court to make special arrangements for accommodating members of the public.

##### **35.4**

A hearing, or any part of it, may be in private if:

- (1) publicity would defeat the object of the hearing;
- (2) it involves matters relating to national security;
- (3) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
- (4) a private hearing is necessary to protect the interests of any child or patient, including the approval of a compromise or settlement on behalf of a child or patient or an application for the payment of money out of Court to such a person;
- (5) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
- (6) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or

(7) the Court considers this to be necessary, in the interests of justice.

### **35.5**

The Court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

### **35.6**

The decision as to whether to hold a hearing in public or in private must be made by the Judge conducting the hearing having regard to any representations which may have been made to him.

### **35.7**

The hearings set out below shall in the first instance be listed by the Court as hearings in private under Rule 35.4(3), namely:

(1) an application to suspend a warrant of execution or a warrant of possession or to stay execution where the Court is being invited to consider the ability of a party to make payments to another party;

(2) a determination under Rule 15.41 or a redetermination under Rule 15.44 or an application to vary or suspend the payment of a judgment debt by instalments;

(3) an application for a charging order (including an application to enforce a charging order), third party debt order, attachment of earnings order, administration order, or the appointment of a receiver;

(4) an order to attend Court for questioning;

(5) an application for security for costs under Article 46(1) of the Court Law 2005; and

(6) an application by a trustee or personal representative for directions as to bringing or defending legal proceedings.

### **35.8**

Nothing in this Part prevents a Judge ordering that a hearing taking place in public shall continue in private, or vice-versa.

**35.9**

If the Court or Judge's room in which the proceedings are taking place has a sign on the door indicating that the proceedings are private, members of the public who are not parties to the proceedings will not be admitted unless the Court permits.

**35.10**

Where there is no such sign on the door of the Court or Judge's room, members of the public will be admitted where practicable. The Judge may, if he thinks it appropriate, adjourn the proceedings to a larger room or Court .

**35.11**

When a hearing takes place in public, members of the public may obtain a transcript of any judgment given or a copy of any order made, subject to payment of the appropriate fee.

**35.12**

When a judgment is given or an order is made in private, if any member of the public who is not a party to the proceedings seeks a transcript of the judgment or a copy of the order, he must seek the permission of the Judge who gave the judgment or made the order.

**35.13**

A judgment or order given or made in private, when drawn up, must have clearly marked in the title: 'Before [title and name of Judge] sitting in Private'

**Failure to attend the trial 35.14 - 35.18****35.14**

The Court may proceed with a trial in the absence of a party but:

- (1) if no party attends the trial, it may **strike out** the whole of the proceedings;
- (2) if the **claimant** does not attend, it may **strike out** his claim and any defence to **counterclaim** . The **defendant** may prove any counterclaim at trial and obtain judgment on his counterclaim and for costs; and
- (3) if a defendant does not attend, it may **strike out** his defence or counterclaim (or both). The

claimant may prove his claim at trial and obtain judgment on his claim and for costs.

### **35.15**

Where the Court strikes out proceedings, or any part of them, under Rule 35.14, it may subsequently restore the proceedings, or that part.

### **35.16**

Where a party does not attend and the Court gives judgment or makes an order against him, the party who failed to attend may apply in accordance with Part 23 for the judgment or order to be set aside .

### **35.17**

An application under Rule 35.15 or Rule 35.16 must be supported by evidence, giving reasons for the failure to attend Court and stating when the applicant found out about the order against him.

### **35.18**

Where an application is made under Rule 35.15 or Rule 35.16 by a party who failed to attend the trial, the Court will only grant the application if the applicant:

- (1) acted promptly when he found out that the Court had exercised its power to strike out or to enter judgment or make an order against him;
- (2) had a good reason for not attending the trial; and
- (3) has a reasonable prospect of success at the trial.

## **Timetable for trial 35.19 - 35.20**

### **35.19**

When the Court sets a timetable for a trial in accordance with Rule 26.75 (fixing or confirming the trial date and giving directions) it will do so in consultation with the parties.

### **35.20**

Where the trial is fixed for a Sunday, or for a Monday where the Judge is hearing other matters on the Sunday:

All documents to be submitted for the trial must be received by the DIFC Courts Registry by no later than 10am on the Wednesday prior to the trial. Skeleton arguments are to be filed with the DIFC Courts by no later than 2pm on the Thursday prior to the trial.

## **General 35.21 - 35.27**

### **35.21**

It is the claimant's responsibility to prepare and lodge the agreed trial bundles.

### **35.22**

If another party wishes to put before the Court a bundle that the claimant regards as unnecessary, he must prepare and lodge it himself.

### **35.23**

The number, content and organisation of the trial bundles must be approved by the legal representatives with the conduct of the trial.

### **35.24**

Consideration must always be given to what documents are and are not relevant and necessary. Where the Court is of the opinion that costs have been wasted by the copying of unnecessary documents it will have no hesitation in making a special order for costs against the person responsible.

### **35.25**

Any party preparing a trial bundle should, as a matter of course, provide all other parties who are to take part in the trial with a copy, at the cost of the receiving party. Further copies should be supplied on request, again at the cost of the receiving party.

### **35.26**

If oral evidence is to be given at trial, the claimant must provide a clean unmarked set of all relevant trial bundles for use in the witness box. The claimant is responsible for ensuring that these bundles are kept up to date throughout the trial.

### **35.27**

Failure to comply with the requirements for lodging bundles for the trial may result in the trial not commencing on the date fixed, at the expense of the party in default. An order for immediate

payment of costs may be made.

## **Agreement of bundles 35.28 - 35.34**

### **35.28**

The preparation of bundles requires a high level of co-operation between legal representatives for all parties. It is the duty of all legal representatives to cooperate to this high level.

### **35.29**

When agreeing bundles for trial, the parties should also establish through their legal representatives , and record in correspondence, whether the agreement of bundles:

- (1) extends no further than agreement of the composition and preparation of the bundles; or
- (2) includes agreement that the documents in the bundles are authentic (see further Rules 29.115 and 29.116); or
- (3) includes agreement that the documents may be treated as evidence of the facts stated in them.

### **35.30**

The Court will expect parties normally to agree that the documents or at any rate the great majority of them may be treated as evidence of the facts stated in them. A party not willing so to agree should, when the trial bundles are lodged, write a letter to the Court (with a copy to all other parties) stating that it is not willing so to agree, and explaining why that is so.

### **35.31**

The number content and organisation of the trial bundles should be agreed in accordance with the following procedure:

- (1) the claimant must submit proposals to all other parties at least 6 weeks before the date fixed for trial; and
- (2) the other parties must submit details of additions they require and any suggestions for revision of the claimant's proposals to the claimant at least 4 weeks before the date fixed for trial.

**35.32**

Where it is not possible to agree the contents of the bundle, a summary of the points on which the parties are unable to agree should be included.

**35.33**

Preparation of the trial bundles must be completed not later than 21 days before the date fixed for trial unless the Court orders otherwise.

**35.34**

Unless the Court orders otherwise, a full set of the trial bundles must be lodged with the Listing Office at least 14 days before the date fixed for trial.

**Contents 35.35 - 35.36****35.35**

Unless the Court orders otherwise, the trial bundle should include a copy of:

- (1) the claim form and all statements of case;
- (2) a case summary and/or chronology where appropriate;
- (3) requests for further information and responses to the requests;
- (4) all witness statements to be relied on as evidence;
- (5) any witness summaries;
- (6) any notices of intention to rely on hearsay evidence under Rule 29.104;
- (7) any notices of intention to rely on evidence (such as a plan, photograph etc.) under Rule 29.126 which is not:
  - (a) contained in a witness statement, affidavit or experts report;
  - (b) being given orally at trial;
  - (c) hearsay evidence under Rule 29.104;
- (8) any experts' reports and responses to them;
- (9) any order giving directions as to the conduct of the trial;

- (10) any other documents required by a Court order;
- (11) any other documents required by any other Rule or Practice Direction; and
- (12) any other necessary documents.

### **35.36**

The originals of the documents contained in the trial bundle, together with copies of any other Court orders should be available at the trial.

## **Organisation 35.37 - 35.40**

### **35.37**

Bundles should be prepared as follows:

- (1) No more than one copy of any one document should be included, unless there is good reason for doing otherwise;
- (2) Contemporaneous documents, and correspondence, should be included in chronological order;
- (3) Where a contract or similar document is central to the case it may be included in a separate place provided that a page is inserted in the chronological run of documents to indicate:
  - (a) the place the contract or similar document would have appeared had it appeared chronologically; and
  - (b) where it may be found instead;
- (4) Documents in manuscript, or not fully legible, should be transcribed; the transcription should be marked and placed adjacent to the document transcribed;
- (5) Documents that are not in English should be translated; the translation should be marked and placed adjacent to the document transcribed; the translation should be agreed, or, if it cannot be agreed, each party's proposed translation should be included;
- (6) If a document has to be read across rather than down the page, it should be so placed in the bundle as to ensure that the top of the text is nearest the spine;
- (7) No bundle should contain more than 300 pages;
- (8) Bundles should not be overfilled, and should allow sufficient room for later insertions. Subject to this, the size of file used should not be a size that is larger than necessary for the present and anticipated contents;

(9) Bundles should be paginated, in the bottom right hand corner and in a form that can clearly be distinguished from any existing pagination on the document;

(10) Bundles should be indexed, save that a chronological bundle of contemporaneous documents need not be indexed if an index is unlikely to be useful;

(11) Bundles should be numbered and named on the outside and on the inside front cover, the label to include the short title of the case, and a description of the bundle (including its number, where relevant).

### **35.38**

Documents within bundles should be marked as follows:

(1) When copy documents from exhibits have been included in the bundle(s), then unless clearly unnecessary, the copy of the affidavit or witness statement to which the documents were exhibited should be marked in the right hand margin (in manuscript if need be) to show where the document referred to may be found in the bundle(s).

(2) Unless clearly unnecessary, where copy documents in a bundle are taken from the disclosure of more than one party, the documents should be marked in the top right hand corner (in manuscript if need be) to show from which party's disclosure the copy document has been taken;

(3) Where there is a reference in a statement of case or witness statement to a document which is contained in the trial bundles, a note should be made in the margin (if necessary in manuscript) identifying the place where that document is to be found. Unless otherwise agreed this is the responsibility of the party tendering the statement of case or witness statement.

### **35.39**

For the trial a handy-sized core bundle should normally be provided containing the really important documents in the case. The documents in this bundle should be paginated, but each page should also bear its bundle and page number reference in the main bundles. It is particularly important to allow sufficient room for later insertions (see Rule 35.37(8) above).

### **35.40**

Large documents, such as plans, should be placed in an easily accessible file.

## **Representation at trial of Companies or Other Corporations 35.41 - 35.47**

**35.41**

At any hearing, a written statement containing the following information should be provided for the Court:

- (1) the name and address of each of the parties' legal representatives for trial;
- (2) his qualification or entitlement to act as a legal representatives for trial; and
- (3) the party for whom he so acts.

**35.42**

A company or other corporation may be represented at trial by an employee who is not otherwise authorised to appear before the Court if:

- (1) the employee has been authorised by the company or corporation to appear at trial on its behalf; and
- (2) the Court gives permission.

**35.43**

Where a party is a company or other corporation and is to be represented at a hearing by an employee, the written statement should contain the following additional information:

- (1) The full name of the company or corporation as stated in its certificate of registration;
- (2) The registered number of the company or corporation;
- (3) The position or office in the company or corporation held by the representative; and
- (4) The date on which and manner in which the representative was authorised to act for the company or corporation, e.g. \_\_\_\_\_ 20\_\_ : written authority from managing director; or \_\_\_\_\_ 20\_\_ : Board resolution dated \_\_\_\_\_ 20\_\_ .

**35.44**

Although Rule 35.42 allows a company or other corporation with the permission of the Court to be represented at trial by an employee, the complexity of most cases in the Court will make that unsuitable. Accordingly, permission will be given only in unusual circumstances.

**35.45**

Permission under Rule 35.42 should be obtained in advance of the hearing from the Judge who is to hear the case. If it is for any reason impracticable or inconvenient to do so, the permission should be obtained from any Judge by whom the case could be heard.

**35.46**

The permission may be obtained informally and without notice to the other parties. The Judge who gives the permission should record in writing that he has done so and supply a copy to the company or corporation in question and to any other party who asks for one.

**35.47**

Permission will not normally be granted under Rule 35.42 in contempt proceedings.

**Information technology at trial 35.48 - 35.50****35.48**

The use of information technology at trial is encouraged where it is likely substantially to save time and cost or to increase accuracy.

**35.49**

If any party considers that it might be advantageous to make use of information technology in preparation for, or at, trial, the matter should be raised at the case management conference. This is particularly important if it is considered that document handling systems would assist disclosure and inspection of documents or the use of documents at trial.

**35.50**

Where information technology is to be used for the purposes of presenting the case at trial, the same system must be used by all parties and must be made available to the Court .

**Reading lists, authorities and trial timetable 35.51 - 35.60****35.51**

Unless the Court orders otherwise, a single reading list approved by all the parties' legal representatives for trial must be lodged with the Registry not later than 1 p.m., ~~two days (i.e. two~~

~~clear days~~) before the date fixed for trial together with an estimate of the time required for reading.

This text has been amended by virtue of Rule Amendment 1 of 2020 issued on 18 May 2020

### **35.51A**

Unless the Court orders otherwise, a single reading list approved by all the parties' representatives for trial must be lodged with the Registry not later than 1pm, four clear days before the date fixed for trial together with an estimate of the time required for reading.

### **35.52**

If any party objects to the Judge reading any document in advance of the trial, the objection and its grounds should be clearly stated in a letter accompanying the trial bundles and in the skeleton argument of that party.

### **35.53**

Parties should consider in particular whether they have any objection to the Judge's reading the witness statements before the trial.

### **35.54**

In the absence of objection, the Judge will be free to read the witness statements and documents in advance.

### **35.55**

A composite bundle of the authorities referred to in the skeleton arguments should be lodged with the Registry as soon as possible after skeleton arguments have been exchanged.

### **35.56**

Unless otherwise agreed, the preparation of the bundle of authorities is the responsibility of the claimant, who should provide copies to all other parties. The parties' legal representatives should liaise in relation to the production of bundles of authorities to ensure that the same authority does not appear in more than one bundle.

**35.57**

When lodging the reading list, the claimant should also lodge a trial timetable.

**35.58**

A trial timetable may have been fixed by the Judge at the pre-trial review. If it has not, a trial timetable should be prepared by the legal representatives for the claimant after consultation with the legal representatives for all other parties.

**35.59**

If there are differences of view between the legal representatives for the claimant and legal representatives for other parties, these should be shown.

**35.60**

The trial timetable will provide for oral submissions, witness evidence and expert evidence over the course of the trial. On the first day of the trial the Judge may fix the trial timetable, subject to any further order.

**Skeleton arguments etc. at trial 35.61 - 35.64****35.61**

Written skeleton arguments should be prepared by each party. Guidelines on the preparation of skeleton arguments are set out in Schedule A to Part 23.

**35.62**

Unless otherwise ordered, the skeleton arguments should be served on all other parties and lodged with the Court as follows:

- (1) by the claimant , not later than 1 p.m., ~~two days (i.e. two clear days)~~ before the start of the trial;
- (2) by each of the defendants , not later than 1 p.m., ~~one day (i.e. one clear day)~~ before the start of the trial.

This text has been amended by virtue of Rule Amendment 1 of 2020 issued on 18 May 2020

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### **35.62A**

Unless otherwise ordered, the skeleton arguments should be served on all other parties and lodged with the Court as follows:

- (1) by the claimant, not later than 1pm, four clear days before the start of the trial;
- (2) by each of the defendants, not later than 1pm, three days before the start of the trial.

### **35.63**

In heavier cases, it will often be appropriate for skeleton arguments to be served and lodged at earlier times than indicated at Rule 35.62. The timetable should be discussed between the legal representatives and may be the subject of a direction in the pre-trial timetable or at any pre-trial review.

### **35.64**

The claimant should provide a chronology with his skeleton argument. Indices (i.e. documents that collate key references on particular points, or a substantive list of the contents of a particular bundle or bundles) and dramatis personae, should also be provided where these are likely to be useful. Guidelines on the preparation of chronologies and indices are set out in Schedule A to Part 23.

## **Trial sitting days and hearing trials in public 35.65 - 35.66**

### **35.65**

Trial sitting days will not normally include Fridays, Saturdays and UAE Public Holidays.

### **35.66**

Where it is necessary in order to accommodate hearing evidence from certain witnesses or types of witness, the Court may agree to sit outside normal hours.

## **Oral opening statements at trial 35.67 - 35.68**

**35.67**

Oral opening statements should as far as possible be uncontroversial and in any event no longer than the circumstances require. Even in a very heavy case, oral opening statements may be very short.

**35.68**

At the conclusion of the opening statement for the claimant, the legal representatives for each of the other parties will usually each be invited to make a short opening statement.

**Applications in the course of trial 35.69 - 35.70****35.69**

It will not normally be necessary for an application notice to be issued for an application which is to be made during the course of the trial, but all other parties should be given adequate notice of the intention to apply.

**35.70**

Unless the Judge directs otherwise, the parties should prepare skeleton arguments for the hearing of the application.

**Oral closing submissions at trial 35.71 - 35.72****35.71**

All parties will be expected to make oral closing submissions, whether or not closing submissions have been made in writing. It is a matter for the legal representatives to consider how in all the circumstances these oral submissions should be presented.

**35.72**

Unless the trial Judge directs otherwise, the claimant will make his oral closing submissions first, followed by the defendant (s) in the order in which they appear on the claim form with the claimant having a right of reply.

**Written closing submissions at trial 35.73 - 35.75**

**35.73**

In a more substantial trial, the Court will normally also require closing submissions in writing after oral closing submissions. However, the trial judge may decide:

(a) that written closing submissions are unnecessary;

(b) may direct the scope of the written submissions or;

c) dispense with them. Oral submissions may in some cases also be unnecessary, and it is open to the trial judge to decide accordingly.

**35.74**

In the case of written submissions the Court will normally allow an appropriate period of time after the conclusion of the evidence to allow the preparation of these submissions.

**35.75**

Even in a less substantial trial, the Court will normally require a skeleton argument on matters of law.

**Judgment 35.76 - 35.90****35.76**

Where judgment is to be reserved the Judge may, at the conclusion of the hearing, invite the views of the parties' legal representatives as to the arrangements to be made for the handing down of the judgment .

**35.77**

The Court may provide a copy of the draft judgment to the parties' legal representatives by 4 p.m. on the second working day before handing down, or at such other time as the Court may direct.

**35.78**

If the Judge intends to hand down a written judgment , a copy of the draft text marked

“Unapproved judgment. No permission is granted to copy or use in Court”

and bearing the rubric:

“Confidential to the parties and their legal representatives ”

may, at the Court’s discretion, be supplied to the advocates one clear day before the judgment is to be delivered.

### **35.79**

A copy of the draft judgment may be shown, in confidence, to the parties provided that:

(1) neither the judgment nor its substance is disclosed to any other person or used in the public domain; and

(2) no action is taken (other than internally) in response to the judgment , before the judgment is handed down.

### **35.80**

Any breach of the obligation of confidentiality prescribed by Rule 35.79 may be treated as contempt of Court .

### **35.81**

The case may be listed for judgment , and the judgment handed down at the appropriate time.

### **35.82**

Legal representatives should inform the Court not later than noon on the day before judgment is to be handed down of any typographical or other errors of a similar nature which the Judge might wish to correct.

### **35.83**

Unless the parties or their legal representatives are told otherwise when the draft judgment is circulated, the parties must, in respect of any draft agreed order:

(1) e-mail a copy to the Registry (together with any proposed corrections or amendments to the draft judgment ); and

(2) file four copies in the Registry , by noon on the working day before handing down.

**35.84**

A copy of a draft order must bear the case reference, the date of handing down and the name of the Judge.

**35.85**

Judgment is not delivered until it is formally pronounced in an open hearing by the Court or is issued by the Registry to the parties or their legal representatives .

**35.86**

Where any consequential orders are agreed, the parties' legal representatives need not attend on the handing down.

**35.87**

Where a legal representative does attend, the Court may, if it considers such attendance was unnecessary, disallow the costs of the attendance.

**35.88**

In a matter heard by more than one Judge , the judgment may be handed down by a single member of the Court .

**35.89**

Copies of the approved judgment will be made available to the parties, to law reporters and to any other person wanting a copy.

**35.90**

The Judge may direct that the written judgment stand as the definitive record and that no transcript need be made. Any editorial corrections made at the time of handing down will be incorporated in an approved official text as soon as possible.

**Costs 35.91 - 35.92**

**35.91**

The rules governing the award and assessment of costs are contained in Parts 38 to 40.

**35.92**

The immediate assessment procedure provided for in Part 38 also applies to trials lasting one day or less.

**Impounded documents 35.93 - 35.95****35.93**

Documents impounded by order of the Court must not be released from the custody of the Court except in compliance:

- (1) with a Court order; or
- (2) with a written request made by the Attorney General of Dubai.

**35.94**

A document released from the custody of the Court under Rule 35.92(2) must be released into the custody of the person who requested it.

**35.95**

Documents impounded by order of the Court , while in the custody of the Court , may not be inspected except by a person authorised to do so by a Court order.

**Settlement or discontinuance after the trial date is fixed 35.96 - 35.97****35.96**

Where:

- (1) an offer to settle a claim is accepted;
- (2) or a settlement is reached; or
- (3) a claim is discontinued, which disposes of the whole of a claim for which a date or 'window' has been fixed for the trial;

the parties must ensure that the Registry is notified immediately.

### **35.97**

If an order is drawn up giving effect to the settlement or discontinuance of a claim, a copy of the sealed order should be filed with the Registry .

## **Recording of proceedings 35.98 - 35.101**

### **35.98**

At any hearing the proceedings will be tape recorded unless the Judge directs otherwise.

### **35.99**

No party or member of the public may use unofficial recording equipment in any Court or Judge's room without the permission of the Court . To do so without permission constitutes a contempt of Court .

### **35.100**

(1) Any party or person may require a transcript or transcripts of the recording of any hearing to be supplied to him, upon payment of the charges authorised by any scheme in force for the making of the recording or the transcript.

(2) Video and audio recordings of a hearing will normally only be provided for the purpose of preparing a transcript of the proceedings or to provide a record for the private use of the party or person by whom it is requested. Such recordings shall not be used for any other purpose without express authorisation of the Court and shall not, without express permission of the Court, be published or broadcast in any way whatsoever.

### **35.101**

Where the person requiring the transcript or transcripts is not a party to the proceedings and the hearing or any part of it was held in private under Rule 35.4, Rule 35.99 does not apply unless the Court so orders.

## **Exhibits at trial 35.102**

**35.102**

Exhibits which are handed in and proved during the course of the trial should be recorded on an exhibit list and kept in the custody of the Court until the conclusion of the trial, unless the Judge directs otherwise. At the conclusion of the trial it is the parties' responsibility to obtain the return of those exhibits which they handed in and to preserve them for the period in which any appeal may take place.