

## **PART 36 Judgments And Orders**

### **PART 36**

#### **Scope of this Part 36.1**

##### **36.1**

This Section sets out **Rules** about judgments and orders which apply except where any other of these Rules or a Practice Direction makes a different provision in relation to the judgment or order in question.

#### **Standard requirements 36.2 - 36.5**

##### **36.2**

Every judgment or order must state the name and judicial title of the person who made it, unless it is:

(1) default judgment entered under Rule 13.7 (entry of default judgment where judgment is entered by a **Court officer** ) or a default costs certificate obtained under Rule 40.17; or

(2) judgment entered under Rule 15.17, 15.23 and 15.29 (entry of judgment on admission where judgment is entered by a **Court Officer** ).

##### **36.3**

Every judgment or order must:

(1) bear the time of day at which and date on which it is given or made; and

(2) be sealed by the **Court** .

##### **36.4**

Court orders may be issued and sealed by the **Registry** electronically.

**36.5**

Where a party applies for permission to appeal against a judgment or order at the hearing at which the judgment or order was made, the judgment or order shall state:

- (1) whether or not the judgment or order is final; and
- (2) whether the Court gives permission to appeal.

**Examples of forms of trial judgment 36.6 - 36.7****36.6**

Form P36/01 is the general form of judgment .

**36.7**

A trial judgment should have the following matters set out in a preamble:

- (1) any order made during the course of the trial concerning the use of evidence;
- (2) any matters that were agreed between the parties prior to or during the course of the trial in respect of:
  - (a) liability;
  - (b) contribution ;
  - (c) the amount of the damages or part of the damages ; and
- (3) the findings of the Judge in respect of each head of damage in a personal injury case.

**Statement as to service of a claim form 36.8 - 36.9****36.8**

Where a party to proceedings which have gone to trial requires a statement to be included in the judgment as to where, and by what means the claim form issued in those proceedings was served, application should be made to the trial Judge when judgment is given.

**36.9**

If the Judge so orders, the statement will be included in a preamble to the judgment as entered.

**Adjustment of final judgment figure in respect of an interim payment 36.10 - 36.13****36.10**

In a final judgment where an interim payment has previously been made which is less than the total amount awarded by the Judge , the judgment or order should set out in a preamble:

- (1) the total amount awarded by the Judge ; and
- (2) the amount and date of the interim payment(s).

**36.11**

The total amount awarded by the Judge should then be reduced by the total amount of any interim payments, and the judgment or order should then provide for entry of judgment and payment of the balance.

**36.12**

In a final judgment where an interim payment has previously been made which is more than the total amount awarded by the Judge , the judgment or order should set out in a preamble:

- (1) the total amount awarded by the Judge ; and
- (2) the amount and date of the interim payment(s).

**36.13**

An order should then be made for repayment, reimbursement, variation or discharge under Rule 25.87 and for interest on an overpayment under Rule 25.90.

**Currency other than US Dollars 36.14**

**36.14**

Where judgment is ordered to be entered in a currency other than US Dollars, the order should be in the following form:

It is ordered that the defendant pay the claimant (state the sum in the currency other than US Dollars) or the US Dollar equivalent at the time of payment.

**Costs 36.15 - 36.16****36.15**

Attention is drawn to Parts 38 to 40, in particular, to the Court's power to make a summary assessment of costs and the provisions relating to interest in detailed assessment proceedings.

**36.16**

Attention is also drawn to Rule 38.56 which provides that if an order makes no mention of costs, none are payable in respect of the proceedings to which it relates.

**Judgments paid by instalments 36.17****36.17**

Where a judgment is to be paid by instalments, the judgment should set out:

- (1) the total amount of the judgment ;
- (2) the amount of each instalment;
- (3) the number of instalments and the date on which each is to be paid; and
- (4) to whom the instalments should be paid.

**Drawing up and filing of judgments and orders 36.18 - 36.24****36.18**

Except for orders made by the Court of its own initiative and unless the Court otherwise orders, every judgment or order will be drawn up by the parties.

**36.19**

Where a judgment or an order is to be drawn up by a party:

- (1) he must file it no later than 48 hours after the date on which the Court ordered or permitted him to draw it up so that it can be sealed by the Court ; and
- (2) if he fails to file it within that period, any other party may draw it up and file it.

**36.20**

Where any judgment , order or direction is to be served outside the DIFC , unless the Court otherwise directs:

- (1) in proceedings on notice the parties must agree and lodge with the Court an Arabic translation of any judgment , order or direction within 48 hours of the same being given, made or handed down as the case may be, in default of which the Court may accept one party's translation or suspend or revoke the judgment , order or direction on such terms as it thinks fit;
- (2) in without notice proceedings the party seeking relief must provide an Arabic translation of the order sought and made; or
- (3) in the event of any inconsistency between the Arabic and English versions of any judgment , order or direction, the English version shall prevail.

**36.21**

The Court may direct that:

- (1) a judgment or an order drawn up by a party must be checked by the Court before it is sealed; or
- (2) before a judgment or an order is drawn up by the Court , the parties must file an agreed statement of its terms.

**36.22**

If the Court directs that a judgment or order which is being drawn up by a party must be checked by the Court before it is sealed, the party responsible must file the draft within 48 hours of the date the order was made with a request that the draft be checked before it is sealed.

**36.23**

If the Court directs the parties to file an agreed statement of terms of an order which the Court is to draw up, the parties must do so no later than 48 hours from the date the order was made, unless the Court directs otherwise.

**36.24**

If the Court requires the terms of an order which is being drawn up by the Court to be agreed by the parties the Court may direct that a copy of the draft order is to be sent to all the parties:

- (1) for their agreement to be endorsed on it and returned to the Court before the order is sealed; or
- (2) with notice of an appointment to attend before the Court to agree the terms of the order.

**Service of judgments and orders 36.25 - 36.26****36.25**

Where a judgment or an order has been drawn up by a party and is to be served by the Court:

- (1) the party who drew it up must file a copy to be retained at Court and sufficient copies for service on him and on the other parties; and
- (2) once it has been sealed, the Court must serve a copy of it on each party to the proceedings.

**36.26**

Unless the Court directs otherwise, any order made otherwise than at trial must be served on:

- (1) the applicant and the respondent; and
- (2) any other person on whom the Court orders it to be served.

**Power to require judgment or order to be served on a party as well as his legal representative 36.27****36.27**

Where the party on whom a judgment or order is to be served is acting by a legal representative ,

the Court may order the judgment or order to be served on the party as well as on his legal representative .

## **Agreed orders 36.28 - 36.29**

### **36.28**

An application for an agreed order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

### **36.29**

Where proceedings are to be stayed on agreed terms:

(1) The draft order should include the following:

“(1) The Defendant having agreed to the terms set forth in the schedule hereto, IT IS ORDERED THAT all further proceedings in this claim be stayed, except for the purpose of carrying such terms into effect.

(2) Liberty to apply in order to carry such terms into effect.”; and

(2) Settlement terms should be set out in a schedule attached to the draft order.

## **When judgment or order takes effect 36.30**

### **36.30**

A judgment or order takes immediate effect from the time on the day when it is given or made, or such later time or date as the Court may specify.

## **Time from which interest begins to run 36.31 - 36.32**

### **36.31**

Where interest is payable on a judgment pursuant to Article 39 of the Court Law 2004, the interest shall begin to run from the date that judgment is given unless:

(1) a Rule in another Part or a Practice Direction makes different provision; or

(2) the Court orders otherwise.

### **36.32**

The Court may order that interest shall begin to run from a date before the date that judgment is given.

### **Who may apply to set aside or vary a judgment or order 36.33**

### **36.33**

A person who is not a party but who is directly affected by a judgment or order may apply to have the judgment or order set aside or varied.

### **Time for complying with a judgment or order 36.34**

### **36.34**

A party must comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless:

- (1) the judgment or order specifies a different date for compliance (including specifying payment by instalments);
- (2) any of these Rules specifies a different date for compliance; or
- (3) the Court has stayed the proceedings or judgment .

### **Orders requiring an act to be done 36.35 - 36.36**

### **36.35**

An order which requires an act to be done (other than a judgment or order for the payment of an amount of money) must specify the time within which the act should be done.

### **36.36**

The consequences of failure to do an act within the time specified may be set out in the order. In this case the wording of the following example suitably adapted must be used:

"Unless the [claimant/defendant] serves his list of documents by 4.00 p.m. on Wednesday, 31 January 2007 his [claim/defence] will be struck out and judgment entered for the [defendant/claimant]."

## **Non-compliance with a judgment or order 36.37 - 36.40**

### **36.37**

An order which restrains a party from doing an act or requires an act to be done should, if disobedience is to be dealt with by an application to bring contempt of Court proceedings, have a penal notice endorsed on it as follows:

"If you [name] disobey this order you may be held to be in contempt of Court and may be imprisoned, fined or have your assets seized."

### **36.38**

The provisions of Rule 36.35 also apply to an order which contains an undertaking by a party to do or not do an act, subject to Rule 36.39.

### **36.39**

The Court has the power to decline to:

- (1) accept an undertaking; and
- (2) deal with disobedience in respect of an undertaking by contempt of Court proceedings, unless the party giving the undertaking has made a signed statement to the effect that he understands the terms of his undertaking and the consequences of failure to comply with it.

### **36.40**

The statement may be endorsed on the order containing the undertaking or may be filed in a separate document such as a letter.

## **Correction of errors in judgments and orders 36.41 - 36.46**

### **36.41**

The Court may at any time correct an accidental slip or omission in a judgment or order.

**36.42**

An application for a correction must be made by application notice and the standard application fee should be paid. The application notice should be precise in describing the nature of the error, should set out the exact wording of the correction sought and, where appropriate should be accompanied by a draft order. An application may be dealt with without a hearing:

- (1) where the applicant so requests;
- (2) with the consent of the parties; or
- (3) where the Court does not consider that a hearing would be appropriate.

**36.43**

The Judge may deal with the application without notice if the slip or omission is obvious or may direct notice of the application to be given to the other party or parties.

**36.44**

If the application is opposed it should, if practicable, be listed for hearing before the Judge who gave the judgment or made the order.

**36.45**

The Court has an inherent power to vary its own orders to make the meaning and intention of the Court clear.

**36.46**

Where the Court allows an application to correct an order and the reason for the error was a clerical mistake on the part of the Registry , the application fee will be refunded.

**Cases where Court gives judgment both on claim and counterclaim 36.47 -****36.49****36.47**

Rule 36.48 applies where the Court gives judgment for specified amounts both for the claimant on his claim and against the claimant on a counterclaim .

**36.48**

If there is a balance in favour of one of the parties, it may order the party whose judgment is for the lesser amount to pay the balance.

**36.49**

In a case to which Rule 36.48 applies, the Court may make a separate order as to costs against each party.

**Judgment in favour of certain part owners relating to the detention of goods****36.50 - 36.51****36.50**

In Rule 36.51 'part owner' means one of two or more persons who have an interest in the same goods.

**36.51**

Where:

- (1) a part owner makes a claim relating to the detention of the goods; and
- (2) the claim is not based on a right to possession;

any judgment or order given or made in respect of the claim is to be for the payment of damages only, unless the claimant had the written authority of every other part owner of the goods to make the claim on his behalf as well as for himself.

**II DECLARATORY JUDGMENTS 36.52****36.52**

The Court may make binding declarations whether or not any other remedy is claimed.

**III PREPARATION OF DOCUMENTS UNDER AN ORDER 36.53 - 36.55**

**36.53**

Where a judgment or order directs any document to be prepared, executed or signed, the order will state:

- (1) the person who is to prepare the document; and
- (2) if the document is to be approved, the person who is to approve it.

**36.54**

If the parties are unable to agree on the form of the document, any party may apply in accordance with Part 23 for the form of the document to be settled.

**36.55**

In such case the Judge may:

- (1) settle the document himself; or
- (2) refer it to:
  - (a) the Registrar ; or
  - (b) an Assessor in accordance with Part 31 subject to such modifications as he thinks fit.

**Accounts and inquiries: General 36.56 - 36.59****36.56**

Where the Court orders any account to be taken or any inquiry to be made, it may, by the same or a subsequent order, give directions as to the manner in which the account is to be taken and verified or the inquiry is to be conducted.

**36.57**

In particular, the Court may direct that in taking an account, the relevant books of account shall be evidence of their contents but that any party may take such objections to the contents as he may think fit.

**36.58**

Any party may apply to the Court in accordance with Part 23 for directions as to the taking of an account or the conduct of an inquiry or for the variation of directions already made.

**36.59**

Every direction for the taking of an account or the making of an inquiry shall be numbered in the order so that, as far as possible, each distinct account and inquiry is given its own separate number.

**Verifying the account 36.60****36.60**

Subject to any order to the contrary:

- (1) the accounting party must make out his account and verify it by an affidavit to which the account is exhibited; and
- (2) the accounting party must file the account with the Court and at the same time notify the other parties that he has done so and of the filing of any affidavit verifying or supporting the account.

**Objections 36.61 - 36.63****36.61**

Any party who wishes to contend:

- (1) that an accounting party has received more than the amount shown by the account to have been received;
- (2) that the accounting party should be treated as having received more than he has actually received;
- (3) that any item in the account is erroneous in respect of amount; or
- (4) that in any other respect the account is inaccurate;

must, unless the Court directs otherwise, give written notice to the accounting party of his objections.

**36.62**

The written notice referred to in Rule 36.61 must, so far as the objecting party is able to do so:

- (1) state the amount by which it is contended that the account understates the amount received by the accounting party;
- (2) state the amount which it is contended that the accounting party should be treated as having received in addition to the amount he actually received;
- (3) specify the respects in which it is contended that the account is inaccurate; and
- (4) in each case, give the grounds on which the contention is made.

**36.63**

The contents of the written notice must be verified by an affidavit to which the notice is an exhibit.

**Allowances 36.64****36.64**

In taking any account all just allowances shall be made without any express direction to that effect.

**Management of proceedings 36.65****36.65**

The Court may at any stage in the taking of an account or in the course of an inquiry direct a hearing in order to resolve an issue that has arisen and for that purpose may order that points of claim and points of defence be served and give any necessary directions.

**Delay 36.66****36.66**

If it appears to the Court that there is undue delay in the taking of any account or the progress of any inquiry the Court may require the accounting party or the party with the conduct of the inquiry, as the case may be, to explain the delay and may then make such order for the management of the proceedings (including a stay) and for costs as the circumstances may require.

## **Distribution 36.67**

### **36.67**

Where some of the persons entitled to share in a fund are known but there is, or is likely to be, difficulty or delay in ascertaining other persons so entitled, the Court may direct, or allow, immediate payment of their shares to the known persons without reserving any part of those shares to meet the subsequent costs of ascertaining the other persons.

## **Accounts and inquiries to be conducted before the Registrar 36.68**

### **36.68**

Unless the Court orders otherwise, an account or inquiry will be taken or made by the Registrar .

## **Advertisements 36.69**

### **36.69**

The Court may:

- (1) direct any necessary advertisement; and
- (2) fix the time within which the advertisement should require a reply.

## **Examination of claims 36.70 - 36.72**

### **36.70**

Where the Court orders an account of debts or other liabilities to be taken, it may direct any party, within a specified time, to:

- (1) examine the claims of persons claiming to be owed money out of the estate or fund in question;
- (2) determine, so far as he is able, which of them are valid; and
- (3) file written evidence:
  - (a) stating his findings and his reasons for them; and

(b) listing any other debts which are or may be owed out of the estate or fund.

### **36.71**

Where the Court orders an inquiry for next of kin or other unascertained claimants to an estate or fund, it may direct any party, within a specified time, to:

- (1) examine the claims that are made;
- (2) determine, so far as he is able, which of them are valid; and
- (3) file written evidence stating his findings and his reasons for them.

### **36.72**

If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, the Court may direct them to join with the party directed to examine claims in producing the written evidence required by this rule.

## **Consideration of claims by the Court 36.73**

### **36.73**

For the purpose of considering a claim the Court may:

- (1) direct it to be investigated in any manner;
- (2) direct the person making the claim to give further details of it; and
- (3) direct that person to:
  - (a) file written evidence; or
  - (b) attend Court to give evidence;

to support his claim.

## **Notice of decision 36.74**

**36.74**

If:

- (1) the Court has allowed or disallowed any claim or part of a claim; and
- (2) the person making the claim was not present when the decision was made;

the Court will serve on that person a notice informing him of its decision.

**Interest on debts 36.75 - 36.77****36.75**

Where an account of the debts of a deceased person is directed by any judgment , unless the deceased's estate is insolvent or the Court orders otherwise, interest shall be allowed:

- (1) on any debt which carries interest, at the rate it carries; and
- (2) on any other debt, from the date of the judgment , at the rate payable on judgment debts at that date.

**36.76**

Where interest on a debt is allowed under Rule 36.75(2), it shall be paid out of any assets of the estate which remain after payment of:

- (1) any costs of the proceedings directed to be paid out of the estate;
- (2) all the debts which have been established; and
- (3) the interest on such of those debts as by law carry interest.

**36.77**

For the purpose of Rules 36.75 and 36.76:

- (1) 'debt' includes funeral, testamentary or administration expenses; and
- (2) in relation to any expenses incurred after the judgment , Rule 36.75(2) applies as if, instead of the date of the judgment , it referred to the date when the expenses became payable.