PART 44 FORMER APPEALS FORMER Appeals

PART 44 FORMER APPEALS

Scope of this part and interpretation 44.1 - 44.3

44.1

The Rules in this Part apply to appeals to:

(1) the Court of Appeal; and

(2) the Court of First Instance.

44.2

In this Part:

(1) 'appeal Court' means the Court[G] to which an appeal is made;

(2) 'lower Court' means the Court[G] , tribunal[G] or other person or body from whose decision an appeal is brought;

(3) 'appellant' means a person who brings or seeks to bring an appeal;

(4) 'respondent' means:

(a) a person other than the appellant[G] who was a party to the proceedings in the lower Court[G] and who is affected by the appeal; and

(b) a person who is permitted by the appeal Court[G] to be a party to the appeal; and

(5) 'appeal notice' means an appellant's[G] or respondent's[G] notice.

44.3

This Part is subject to any Rule, enactment or Practice Direction which sets out special provisions with regard to any particular category of appeal.

Stay 44.4

44.4

Unless the appeal Court[G] or the lower Court[G] orders otherwise, an appeal shall not operate as a stay[G] of any order or decision of the lower Court[G] .

Permission 44.5 - 44.11

44.5

An appellant[G] or respondent[G] requires permission to appeal:

(1) where the appeal is to the Court of Appeal, except where the appeal is against a committal order;

(2) where the appeal is to the Court of First Instance, except where the appeal is against:

(a) a refusal by the Registrar of Companies to grant authorisation to transfer incorporation under Article 122(1) of the Companies Law (Amended and Restated), DIFC Law 3 of 2006; or

(b) a refusal by the Registrar of Companies to grant authorisation to transfer a Limited Partnership under Article 63(1) of the Limited Partnership Law, DIFC Law 4 of 2006.

44.6

An application for permission to appeal may be made:

(1) to the lower Court[G] at the hearing at which the decision to be appealed was made; or

(2) to the appeal Court[G] in an appeal notice[G] .

44.7

An application to the appeal Court for permission to appeal under RDC 44.71(2) may not be heard by the judge against whose decision permission to appeal is sought.

44.8

Permission to appeal may be given only where:

(1) the Court[G] considers that the appeal would have a real prospect of success; or

(2) there is some other compelling reason why the appeal should be heard.

44.9

Where a party applies for permission to appeal against a decision at the hearing at which the decision was made, the Judge[G] making the decision shall state:

(1) whether or not the judgment[G] or order is final;

(2) whether an appeal lies from the judgment[G] or order; and

(3) whether the Court[G] gives permission to appeal; and

(4) if not, the appropriate appeal Court[G] to which any further application for permission may be made.

44.10

Where no application for permission to appeal has been made in accordance with Rule 44.6(1) but a party requests further time to make such an application, the Court[G] may adjourn the hearing to give that party the opportunity to do so.

44.11

Where the lower Court[G] refuses an application for permission to appeal, a further application for permission to appeal may be made to the appeal Court[G] .

Consideration of permission without a hearing 44.12 - 44.17

44.12

Applications for permission to appeal may be considered by the appeal Court[G] without a hearing.

44.13

If permission is granted without a hearing the parties will be notified of that decision and the procedure in Rules 44.93 to 44.97 will then apply.

44.14

If permission is refused without a hearing the parties will be notified of that decision with the reasons for it.

44.15

Where the appeal Court[G] , without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing. This may be before the same Judge[G] .

44.16

Where the appeal Court[G] refuses permission to appeal without a hearing, it may, if it considers that the application is totally without merit, make an order that the person seeking permission may not request the decision to be reconsidered at a hearing.

44.17

A request for the decision to be reconsidered at an oral hearing must be filed at the appeal Court[G] within 7 days after service[G] of the notice that permission has been refused. A copy of the request must be served by the appellant[G] on the respondent[G] at the same time.

Permission hearing 44.18 - 44.21

44.18

Rules 44.19 to 44.21 apply where an appellant[G] makes a request for a decision to be reconsidered at an oral hearing.

44.19

The appellant's[G] legal representative[G] must, at least 4 days before the hearing, in a brief written statement:

(1) inform the Court[G] and the respondent[G] of the points which he proposes to raise at the hearing; and

(2) set out his reasons why permission should be granted notwithstanding the reasons given for the refusal of permission.

44.20

Notice of a permission hearing will be given to the respondent[G] but he is not required to attend unless the Court[G] requests him to do so.

44.21

If the Court[G] requests the respondent's[G] attendance at the permission hearing, the appellant[G] must supply the respondent[G] with a copy of the appeal bundle within 7 days of being notified of the request, or such other period as the Court[G] may direct. The costs of providing that bundle shall be borne by the appellant[G] initially, but will form part of the costs of the permission application.

Limited permission 44.22 - 44.26

44.22

An order giving permission may:

(1) limit the issues to be heard; and

(2) be made subject to conditions.

44.23

Where a Court[G] under Rule 44.22 gives permission to appeal on some issues only, it will:

(1) refuse permission on any remaining issues; or

(2) reserve the question of permission to appeal on any remaining issues to the Court[G] hearing the appeal.

44.24

If the Court[G] reserves the question of permission under Rule 44.23(2), the appellant[G] must, within 14 days after service[G] of the Court's[G] order, inform the appeal Court[G] and the respondent[G] in writing whether he intends to pursue the reserved issues. If the appellant[G] does intend to pursue the reserved issues, the parties must include in any time estimate for the appeal hearing, their time estimate for the reserved issues.

44.25

If the appeal Court[G] refuses permission to appeal on the remaining issues without a hearing and the applicant wishes to have that decision reconsidered at an oral hearing, the time limit in Rule 44.17 shall apply. Any application for an extension of this time limit should be made promptly. The Court[G] hearing the appeal on the issues for which permission has been granted will not normally grant, at the appeal hearing, an application to extend the time limit in Rule 44.17 for the remaining issues.

44.26

If the appeal Court[G] refuses permission to appeal on remaining issues at or after an oral hearing, the application for permission to appeal on those issues cannot be renewed at the appeal hearing.

Respondents' costs of permission applications 44.27 - 44.29

44.27

In most cases, applications for permission to appeal will be determined without the Court[G] requesting:

(1) submissions from; or

(2) if there is an oral hearing, attendance by;

the respondent[G] .

44.28

Where the Court[G] does not request submissions from or attendance by the respondent[G] , costs will not normally be allowed to a respondent[G] who volunteers submissions or attendance.

44.29

Where the Court[G] does request:

(1) submissions from; or

(2) attendance by the respondent[G] ;

the Court[G] will normally allow the respondent[G] his costs if permission is refused.

Appeals from case management decisions 44.30 - 44.31

44.30

Case management decisions include decisions made under Rule 44.2 and decisions about:

(1) disclosure;

(2) filing[G] of witness statements or experts reports;

(3) directions about the timetable of the claim;

(4) adding a party to a claim; and

(5) security for costs.

44.31

Where the application is for permission to appeal from a case management decision, the Court[G] dealing with the application may take into account whether:

(1) the issue is of sufficient significance to justify the costs of an appeal;

(2) the procedural consequences of an appeal (e.g. loss of trial date) outweigh the significance of the case management decision; and

(3) it would be more convenient to determine the issue at or after trial.

Appellant's notice 44.32 - 44.35

44.32

An appellant's[G] notice must be filed and served in all cases.

44.33

Where the appellant[G] seeks permission from the appeal Court[G] it must be requested in the appellant's[G] notice.

44.34

The appellant's[G] notice must set out the grounds of appeal relied on.

44.35

The grounds of appeal must:

(1) set out clearly the reasons why it is said the decision of the lower Court[G] was:

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court[G] ; and

(2) specify, in respect of each ground, whether the ground raises an appeal on a point of law or is an appeal against a finding of fact.

Filing and service of appellant's notice 44.36 - 44.48

44.36

The appellant[G] must file the appellant's[G] notice at the appeal Court[G] within:

(1) such period as may be directed by the lower Court[G] which should not normally exceed 28 days and which may be longer or shorter than the period referred to in (2); or

(2) where the Court[G] makes no such direction, 14 days after the date of the decision of the lower Court[G] that the appellant[G] wishes to appeal.

44.37

Where the lower Court[G] Judge[G] announces his decision and reserves the reasons for his judgment[G] or order until a later date, he should, in the exercise of powers under Rule 44.36(1), fix a period for filing[G] the appellant's[G] notice at the appeal Court[G] that takes this into account.

44.38

Subject to Rule 44.39 and unless the appeal Court[G] orders otherwise, a sealed copy of the appellant's[G] notice, together with any skeleton arguments, must be served on each respondent[G] :

(1) as soon as practicable; and

(2) in any event not later than 7 days;

after it is filed.

44.39

Where the requirement to serve a skeleton argument is modified by Rule 44.75 the skeleton argument should be served as soon as it is filed.

44.40

The appellant[G] must, as soon as practicable, file a certificate of service[G] of the documents referred to in Rule 44.38.

44.41

Where the time for filing[G] an appellant's[G] notice has expired, the appellant[G] must:

(1) file the appellant's[G] notice; and

(2) include in that appellant's[G] notice an application for an extension of time.

44.42

The appellant's[G] notice should state the reason for the delay and the steps taken prior to the application being made.

44.43

Where the appellant[G] is applying for permission to appeal in his appellant's[G] notice, he must serve on the respondents[G] his appellant's[G] notice and skeleton argument (but not the appeal bundle), unless the appeal Court[G] directs otherwise.

44.44

Where permission to appeal:

(1) has been given by the lower Court[G] ; or

(2) is not required;

the appellant[G] must serve the appeal bundle on the respondents[G] with the appellant's[G] notice.

44.45

Where the appellant's[G] notice includes an application for an extension of time and permission to appeal has been given or is not required the respondent[G] has the right to be heard on that application. He must be served with a copy of the appeal bundle. However, a respondent[G] who unreasonably opposes an extension of time runs the risk of being ordered to pay the appellant's[G] costs of that application.

44.46

If an extension of time is given following such an application the procedure at Rules 44.93 to 44.97 applies.

44.47

The Court[G] may dispense with the requirement for service[G] of the notice on a respondent[G] . Any application notice[G] seeking an order under Rule 9.32 to dispense with service[G] should set out the reasons relied on and be verified by a statement of truth.

44.48

Unless the Court[G] otherwise directs a respondent[G] need not take any action when served with an appellant's[G] notice until such time as notification is given to him that permission to appeal has been given.

Variation of time 44.49 - 44.50

44.49

An application to vary the time limit for filing[G] an appeal notice[G] must be made to the appeal Court[G] .

44.50

The parties may not agree to extend any date or time limit set by:

(1) these Rules[G] ;

(2) any Practice Direction; or

(3) an order of the appeal Court[G] or the lower Court[G] .

Applications 44.51 - 44.52

44.51

Notice of an application to be made to the appeal Court[G] for a remedy incidental to the appeal may be included in the appeal notice[G] or in a Part 23 application notice[G] .

44.52

The applicant must file the following documents with the notice:

(1) one additional copy of the application notice[G] for the appeal Court[G] and one copy for each of the respondents[G] ;

(2) where applicable a sealed copy of the order which is the subject of the main appeal; and

(3) a bundle of documents in support which should include:

(a) the Part 23 application notice[G] ; and

(b) any witness statements and affidavits[G] filed in support of the application notice[G] .

Documents 44.53 - 44.57

44.53

The appellant[G] must file the following documents together with an appeal bundle with his appellant's[G] notice:

(1) two additional copies of the appellant's[G] notice for the appeal Court[G] ;

(2) one copy of the appellant's[G] notice for each of the respondents[G] ; and

(3) one copy of his skeleton argument for each copy of the appellant's[G] notice that is filed.

44.54

An appellant[G] must include in his appeal bundle the following documents:

(1) a sealed copy of the appellant's[G] notice;

(2) a sealed copy of the order being appealed;

(3) a copy of any order giving or refusing permission to appeal, together with a copy of the Judge's[G] reasons for allowing or refusing permission to appeal;

(4) any affidavit[G] or witness statement filed in support of any application included in the appellant's[G] notice;

(5) a copy of his skeleton argument;

(6) a transcript or note of judgment[G] , and in cases where permission to appeal was given by the lower Court[G] or is not required those parts of any transcript of evidence which are directly relevant to any question at issue on the appeal;

(7) the claim form and statements of case (where relevant to the subject of the appeal);

(8) any application notice[G] (or case management documentation) relevant to the subject of the appeal;

(9) in the case of judicial review or a statutory appeal, the original decision which was the subject of the application to the lower Court[G] ;

(10) in cases where the appeal is from a tribunal[G] , a copy of the tribunal's[G] reasons for the decision, a copy of the decision reviewed by the tribunal[G] and the reasons for the original decision and any document filed with the tribunal[G] setting out the grounds of appeal from that decision;

(11) any other documents which the appellant[G] reasonably considers necessary to enable the appeal Court[G] to reach its decision on the hearing of the application or appeal; and

(12) such other documents as the Court[G] may direct.

44.55

All documents that are extraneous to the issues to be considered on the application or the appeal must be excluded. The appeal bundle may include affidavits[G] , witness statements, summaries, experts' reports and exhibits but only where these are directly relevant to the subject matter of the appeal.

44.56

The appeal bundle must contain a certificate signed by the appellant's[G] legal representatives[G] to the effect that they have read and understood Rule 44.55 above and that the composition of the appeal bundle complies with it.

44.57

Where it is not possible to file all the above documents, the appellant[G] must indicate which documents have not yet been filed and the reasons why they are not currently available. The appellant[G] must then provide a reasonable estimate of when the missing document or documents can be filed and file them as soon as reasonably practicable.

Core bundles 44.58 - 44.60

44.58

In cases where the appeal bundle comprises more than 500 pages, exclusive of transcripts, the appellant's[G] legal representatives[G] must, after consultation with the respondent's[G] legal representatives[G] , also prepare and file with the Court[G] , in addition to copies of the appeal bundle (as amended in accordance with Rule 44.119) the requisite number of copies of a core bundle.

44.59

The core bundle must be filed within 28 days of receipt of the order giving permission to appeal or, where permission to appeal was granted by the lower Court[G] or is not required, within 28 days of the date of service[G] of the appellant's[G] notice on the respondent[G] .

44.60

The core bundle:

(1) must contain the documents which are central to the appeal; and

(2) must not exceed 150 pages.

Preparation of bundles 44.61

44.61

Rules 44.62 to 44.73 apply to the preparation of appeal bundles, supplemental respondents'[G] bundles where the parties are unable to agree amendments to the appeal bundle, and core bundles.

Rejection of bundles 44.62

44.62

Where documents are copied unnecessarily or bundled incompletely, costs may be disallowed. Where the provisions of this Part as to the preparation or delivery of bundles are not followed the bundle may be rejected by the Court[G] or be made the subject of a special costs order.

Avoidance of duplication 44.63

44.63

No more than one copy of any document should be included unless there is a good reason for doing

otherwise (such as the use of a separate core bundle in Rule 44.58).

Pagination 44.64

44.64

The following rules regarding pagination shall apply:

(1) Bundles must be paginated, each page being numbered individually and consecutively. The pagination used at trial must also be indicated. Letters and other documents should normally be included in chronological order. (An exception to consecutive page numbering arises in the case of core bundles where it may be preferable to retain the original numbering).

(2) Page numbers should be inserted in bold figures at the bottom of the page and in a form that can be clearly distinguished from any other pagination on the document.

Format and presentation 44.65

44.65

The following rules regarding format and presentation shall apply:

(1) Where possible the documents should be in A4 format. Where 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 text starts nearest the spine.

(2) Where any marking or writing in colour on a document is important, the document must be copied in colour or marked up correctly in colour.

(3) Documents which are not easily legible should be transcribed and the transcription marked and placed adjacent to the document transcribed.

(4) Documents in a language other than English should be translated and the translation marked and placed adjacent to the document translated. The translation should be agreed or, if it cannot be agreed, each party's proposed translation should be included.

(5) The size of any bundle should be tailored to its contents. A large lever arch file should not be used for just a few pages nor should files be overloaded.

(6) Where it will assist the Court[G] , different sections of the file may be separated by cardboard or other tabbed dividers so long as these are clearly indexed. Where, for example, a document is awaited when the appeal bundle is filed, a single sheet of paper can be inserted after a divider, indicating the nature of the document awaited. For example, 'Transcript of evidence of Mr J Smith (to follow)'.

Binding 44.66

44.66

The following rules regarding binding shall apply:

(1) All documents, with the exception of transcripts, must be bound together. This may be in a lever arch file, ring binder or plastic folder. Plastic sleeves containing loose documents must not be used. Binders and files must be strong enough to withstand heavy use.

(2) Large documents such as plans should be placed in an easily accessible file. Large documents which will need to be opened up frequently should be inserted in a file larger than A4 size.

Indices and labels 44.67

44.67

The following rules regarding indices and labels shall apply:

(1) An index must be included at the front of the bundle listing all the documents and providing the page references for each. In the case of documents such as letters, invoices or bank statements, they may be given a general description.

(2) Where the bundles consist of more than one file, an index to all the files should be included in the first file and an index included for each file. Indices should, if possible, be on a single sheet. The full name of the case should not be inserted on the index if this would waste space. Documents should be identified briefly but properly.

Identification 44.68

44.68

The following rules regarding identification shall apply:

(1) Every bundle must be clearly identified, on the spine and on the front cover, with the name of the case and the Court's[G] reference. Where the bundle consists of more than one file, each file must be numbered on the spine, the front cover and the inside of the front cover.

(2) Outer labels should use large lettering e.g. 'Appeal Bundle A' or 'Core Bundle'. The full title of the appeal and legal representatives'[G] names and addresses should be omitted. A label should be used on the front as well as on the spine.

Staples etc. 44.69

44.69

All staples, heavy metal clips, etc., must be removed.

Statement of case 44.70

44.70

The following rules regarding statements of case shall apply:

(1) Statements of case should be assembled in 'chapter' form — i.e. claim followed by particulars of claim, followed by further information, irrespective of date.

(2) Redundant documents, e.g. particulars of claim overtaken by amendments, requests for further information recited in the answers given, should generally be excluded.

New documents 44.71

44.71

The following rules regarding new documents shall apply:

(1) Before a new document is introduced into bundles which have already been delivered to the Court[G] , steps should be taken to ensure that it carries an appropriate bundle/page number so that it can be added to the Court[G] documents. It should not be stapled and it should be prepared with punch holes for immediate inclusion in the binders in use.

(2) If it is expected that a large number of miscellaneous new documents will from time to time be introduced, there should be a special tabbed empty loose-leaf file for that purpose. An index should be produced for this file, updated as necessary.

Correspondence between legal representatives 44.72

44.72

Since correspondence between legal representatives[G] is unlikely to be required for the purposes of an appeal, only those letters which will need to be referred to should be copied.

Sanctions for non-compliance 44.73

44.73

If the appellant[G] fails to comply with the requirements as to the provision of bundles of documents, the application or appeal will be referred for consideration to be given as to why it should not be dismissed for failure so to comply.

Skeleton arguments 44.74 - 44.75

44.74

The appellant's[G] notice must, subject to Rule 44.75, be accompanied by a skeleton argument. Alternatively the skeleton argument may be included in the appellant's[G] notice. Where the skeleton argument is so included it will not form part of the notice for the purposes of Rule 44.88.

44.75

Where it is impracticable for the appellant's[G] skeleton argument to accompany the appellant's[G] notice it must be filed and served on all respondents[G] within 14 days of filing[G] the notice.

Content of skeleton arguments 44.76 - 44.83

44.76

A skeleton argument filed on behalf of the appellant[G] should contain in paragraph 1 the legal representatives'[G] time estimate for the hearing of the appeal.

44.77

A skeleton argument must contain a numbered list of the points which the party wishes to make. These should both define and confine the areas of controversy. Each point should be stated as concisely as the nature of the case allows.

44.78

A numbered point must be followed by a reference to any document on which the party wishes to rely.

44.79

A skeleton argument must state, in respect of each authority cited:

(1) the proposition of law that the authority demonstrates; and

(2) the parts of the authority (identified by page or paragraph references) that support the proposition.

44.80

If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state the reason for taking that course.

44.81

The statement referred to in Rule 44.80 should not materially add to the length of the skeleton argument but should be sufficient to demonstrate, in the context of the argument:

(1) the relevance of the authority or authorities to that argument; and

(2) that the citation is necessary for a proper presentation of that argument.

44.82

The cost of preparing a skeleton argument which:

(1) does not comply with the requirements set out in Rules 44.76 to 44.81; or

(2) was not filed within the time limits provided by this Part (or any further time granted by the Court);

will not be allowed on assessment except to the extent that the Court[G] otherwise directs.

44.83

The appellant[G] should consider what other information the appeal Court[G] will need. This may include a list of persons who feature in the case or glossaries of technical terms. A chronology of relevant events will be necessary in most appeals.

Suitable record of the judgment 44.84 - 44.85

44.84

Where the judgment[G] to be appealed has been officially recorded by the Court[G] , an approved transcript of that record should accompany the appellant's[G] notice. Photocopies will not be accepted for this purpose. However, where there is no officially recorded judgment[G] , the following documents will be acceptable:

(1) Written judgments

Where the judgment[G] was made in writing a copy of that judgment[G] endorsed with the Judge's[G] signature.

(2) Note of judgment

When judgment[G] was not officially recorded or made in writing a note of the judgment[G] (agreed between the appellant's[G] and respondent's[G] legal representatives[G]) should be submitted for approval to the Judge[G] whose decision is being appealed. If the parties cannot agree on a single note of the judgment[G] , both versions should be provided to that Judge[G] with an explanatory letter. For the purpose of an application for permission to appeal the note need not be approved by the respondent[G] or the lower Court[G] Judge[G] .

(3) Reasons for judgment in tribunal cases

A sealed copy of the tribunal's[G] reasons for the decision.

44.85

An appellant[G] may not be able to obtain an official transcript or other suitable record of the lower Court's[G] decision within the time within which the appellant's[G] notice must be filed. In such cases the appellant's[G] notice must still be completed to the best of the appellant's[G] ability on the basis of the documentation available. However it may be amended subsequently with the permission of the appeal Court[G] .

Transcripts or notes of evidence 44.86 - 44.87

44.86

When the evidence is relevant to the appeal an official transcript of the relevant evidence must be obtained. Transcripts or notes of evidence are generally not needed for the purpose of determining an application for permission to appeal.

44.87

If evidence relevant to the appeal was not officially recorded, a typed version of the Judge's[G] notes of evidence must be obtained.

Amendment of appeal notice 44.88

44.88

An appeal notice[G] may not be amended without the permission of the appeal Court[G] . An application

to amend and any application in opposition will normally be dealt with at the appeal hearing unless that course would cause unnecessary expense or delay in which case a request should be made for the application to amend to be heard in advance.

Striking out appeal notices and setting aside or imposing conditions on permission to appeal 44.89 - 44.91

44.89

The appeal Court[G] may:

(1) strike out[G] the whole or part of an appeal notice[G] ;

(2) set aside[G] permission to appeal in whole or in part;

(3) impose or vary conditions upon which an appeal may be brought.

44.90

The Court[G] will only exercise its powers under Rule 44.88 where there is a compelling reason for doing so.

44.91

Where a party was present at the hearing at which permission was given he may not subsequently apply for an order that the Court[G] exercise its powers under Rule 44.89(2) or 44.89(3).

Procedure after permission is obtained 44.92 - 44.96

44.92

Rules 44.93 to 44.97 set out the procedure where:

(1) permission to appeal is given by the appeal Court[G] ; or

(2) the appellant's[G] notice is filed in the appeal Court[G] ; and:

(a) permission was given by the lower Court[G] ; or

(b) permission is not required.

44.93

If the appeal Court[G] gives permission to appeal, the appeal bundle must be served on each of the respondents[G] within 7 days of receiving the order giving permission to appeal.

44.94

The appeal Court[G] will send the parties:

(1) notification of the date of the hearing;

(2) where permission is granted by the appeal Court[G] a copy of the order giving permission to appeal; and

(3) any other directions given by the Court[G] .

44.95

Where the appeal Court[G] grants permission to appeal, the appellant[G] must add the following documents to the appeal bundle:

(1) the respondent's[G] notice and skeleton argument (if any);

(2) those parts of the transcripts of evidence which are directly relevant to any question at issue on the appeal;

(3) the order granting permission to appeal and, where permission to appeal was granted at an oral hearing, the transcript (or note) of any judgment[G] which was given; and

(4) any document which the appellant[G] and respondent[G] have agreed to add to the appeal bundle in accordance with Rule 44.119.

44.96

Where permission to appeal has been refused on a particular issue, the appellant[G] must remove from the appeal bundle all documents that are relevant only to that issue.

Time estimates 44.97

44.97

The legal representatives[G] who will argue the appeal must provide a time estimate within 14 days of the appellant[G] receiving the order giving permission to appeal. It should exclude the time required

by the Court[G] to give judgment[G] . If the respondent[G] disagrees with the time estimate, the respondent[G] must inform the Court[G] within 7 days of receipt of the estimate. In the absence of such notification the respondent[G] will be deemed to have accepted the estimate proposed on behalf of the appellant[G] .

Respondent's notice 44.98 - 44.104

44.98

A respondent[G] may file and serve a respondent's[G] notice.

44.99

A respondent[G] who:

(1) is seeking permission to appeal from the appeal Court[G] ; or

(2) wishes to ask the appeal Court[G] to uphold the order of the lower Court[G] for reasons different from or additional to those given by the lower Court[G] ;

must file a respondent's[G] notice.

44.100

Where the respondent[G] seeks permission from the appeal Court[G] it must be requested in the respondent's[G] notice.

44.101

A respondent[G] who wishes to ask the appeal Court[G] to vary the order of the lower Court[G] in any way must appeal and permission will be required on the same basis as for an appellant[G] .

44.102

A respondent[G] who wishes only to request that the appeal Court[G] upholds the judgment[G] or order of the lower Court[G] whether for the reasons given in the lower Court[G] does not make an appeal and does not therefore require permission to appeal in accordance with Rule 44.5.

44.103

A respondent[G] who wishes to appeal or who wishes to ask the appeal Court[G] to uphold the order of the lower Court[G] for reasons different from or additional to those given by the lower Court[G] must file a respondent's[G] notice.

44.104

If the respondent[G] does not file a respondent's[G] notice, he will not be entitled, except with the permission of the Court[G] , to rely on any reason not relied on in the lower Court[G] .

Time limits for respondent's notice 44.105 - 44.113

44.105

A respondent's[G] notice must be filed within:

(1) such period as may be directed by the lower Court[G] ; or

(2) where the Court[G] makes no such direction, 14 days after the date in Rule 44.106.

44.106

The date referred to in Rule 44.105 is:

(1) the date the respondent[G] is served with the appellant's[G] notice where:

(a) permission to appeal was given by the lower Court[G] ; or

(b) permission to appeal is not required;

(2) the date the respondent[G] is served with notification that the appeal Court[G] has given the appellant[G] permission to appeal; or

(3) the date the respondent[G] is served with notification that the application for permission to appeal and the appeal itself are to be heard together.

44.107

Rules 44.41 and 44.42 (extension for time for filing[G] appellant's[G] notice) also apply to a respondent[G] and a respondent's[G] notice.

44.108

Where an extension of time is required the extension must be requested in the respondent's[G] notice and the reasons why the respondent[G] failed to act within the specified time must be included.

44.109

The respondent[G] must file a skeleton argument for the Court[G] in all cases where he proposes to address arguments to the Court[G] . The respondent's[G] skeleton argument may be included within a respondent's[G] notice. Where a skeleton argument is included within a respondent's[G] notice it will not form part of the notice for the purposes of Rule 44.88.

44.110

Unless the appeal Court[G] orders otherwise a respondent's[G] notice must be served on the appellant[G] and any other respondent[G] :

(1) as soon as practicable; and

(2) in any event not later than 7 days;

after it is filed.

44.111

A respondent[G] who:

(1) files a respondent's[G] notice; but

(2) does not include his skeleton argument within that notice;

must file and serve his skeleton argument within 14 days of filing[G] the notice.

44.112

A respondent[G] who does not file a respondent's[G] notice but who files a skeleton argument must file and serve that skeleton argument at least 7 days before the appeal hearing.

44.113

The respondent[G] must:

(1) serve his skeleton argument on:

(a) the appellant[G] ; and

(b) any other respondent[G] ;

at the same time as he files it at the Court[G] ; and

(2) file a certificate of service[G] .

Content of respondent's skeleton argument 44.114

44.114

A respondent's[G] skeleton argument must conform to the directions at Rules 44.76 to 44.83 with any necessary modifications. It should, where appropriate, answer the arguments set out in the appellant's[G] skeleton argument.

Applications within respondent's notice 44.115

44.115

A respondent[G] may include an application within a respondent's[G] notice in accordance with Rule 44.51 above.

Filing respondent's notice and skeleton argument 44.116 - 44.121

44.116

The respondent[G] must file the following documents with his respondent's[G] notice in every case:

(1) two additional copies of the respondent's[G] notice for the appeal Court[G] ; and

(2) one copy each for the appellant[G] and any other respondents[G] .

44.117

The respondent[G] may file a skeleton argument with his respondent's[G] notice and—

(1) where he does so he must file two copies; and

(2) where he does not do so he must comply with Rules 44.111 and 44.112.

44.118

If the respondent[G] wishes to rely on any documents which he reasonably considers necessary to enable the appeal Court[G] to reach its decision on the appeal in addition to those filed by the

appellant[G] , he must make every effort to agree amendments to the appeal bundle with the appellant[G] .

44.119

If the legal representatives[G] of the parties are unable to reach agreement, the respondent[G] may prepare a supplemental bundle.

44.120

If the respondent[G] prepares a supplemental bundle he must file it, together with the requisite number of copies for the appeal Court[G] , at the appeal Court[G] :

(1) with the respondent's[G] notice; or

(2) if a respondent's[G] notice is not filed, within 21 days after he is served with the appeal bundle.

44.121

The respondent[G] must serve:

(1) the respondent's[G] notice;

(2) his skeleton argument (if any); and

(3) the supplemental bundle (if any);

on:

(a) the appellant[G] ; and

(b) any other respondent[G] ;

at the same time as he files them at the Court[G] .

Bundles of authorities 44.122 - 44.126

44.122

Once the parties have been notified of the date fixed for the hearing, the appellant's[G] legal representative[G] must, after consultation with his opponent, file a bundle containing photocopies of the authorities upon which each side will rely at the hearing.

44.123

The bundle of authorities should, in general:

(1) have the relevant passages of the authorities marked;

(2) not include authorities for propositions not in dispute; and

(3) not contain more than 10 authorities unless the scale of the appeal warrants more extensive citation.

44.124

The bundle of authorities must be filed:

(1) at least 7 days before the hearing; or

(2) where the period of notice of the hearing is less than 7 days, immediately.

44.125

If, through some oversight, a party intends, during the hearing, to refer to other authorities the parties may agree a second agreed bundle. The appellant's[G] legal representatives[G] must file this bundle at least 48 hours before the hearing commences.

44.126

A bundle of authorities must bear a certification by the legal representatives[G] responsible for arguing the case that the requirements of Rule 44.79 to 44.81 have been complied with in respect of each authority included.

Supplementary skeleton arguments 44.127 - 44.130

44.127

A supplementary skeleton argument on which the appellant[G] wishes to rely must be filed at least 14 days before the hearing.

44.128

A supplementary skeleton argument on which the respondent[G] wishes to rely must be filed at least 7 days before the hearing.

44.129

All supplementary skeleton arguments must comply with the requirements set out in Rules 44.76 to 44.83.

44.130

At the hearing the Court[G] may refuse to hear argument from a party not contained in a skeleton argument filed within the relevant time limit set out in this paragraph.

Papers for the appeal hearing 44.131 - 44.132

44.131

All the documents which are needed for the appeal hearing must be filed at least 7 days before the hearing.

44.132

Any party who fails to comply with the provisions of Rule 44.131 may be required to attend before the Chief Justice [G] to seek permission to proceed with, or to oppose, the appeal.

Appeals to the Court of Appeal 44.133

44.133

On hearing an appeal from a decision of the Court of First Instance, the Court of Appeal may:

(1) make or give any order that could have been made or given by the Court of First Instance;

(2) attach terms or conditions to an order it makes;

(3) annul or set aside[G] a decision;

(4) require or prohibit the taking of a specific action or of action of a specified class;

(5) make a declaration of facts; or

(6) make any other order that the Court of Appeal considers appropriate or just.

Appeals to the Court of First Instance 44.134

44.134

Unless another Rule, Practice Direction or enactment provides otherwise, on hearing an appeal, the

Court of First Instance may:

(1) affirm, reverse or vary the decision appealed;

(2) set aside[G] the decision appealed, in whole or in part;

(3) make any other order it considers appropriate;

(4) remit proceedings to the tribunal[G] from which the appeal was brought, subject to any directions the Court of First Instance considers appropriate; or

(5) make any order or direction that is in the interests of justice.

Hearings of appeals 44.135 - 44.138

44.135

Every appeal will be limited to a review of the decision of the lower Court[G] unless:

(1) the Court[G] considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing;

(2) Rule 44.136 applies; or

(3) any other Rule or enactment requires a re-hearing.

44.136

The hearing of an appeal will be a re-hearing (as opposed to a review of the decision of the lower Court[G]) if the appeal is from the decision of a person or other body and the person or other body:

(1) did not hold a hearing to come to that decision; or

(2) held a hearing to come to that decision, but the procedure adopted did not provide for the consideration of evidence.

44.137

The appeal Court[G] may exercise its powers in relation to the whole or part of an order of the lower Court[G] .

44.138

At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice[G] unless the appeal Court[G] gives permission.

Evidence on appeal 44.139 - 44.141

44.139

Unless it orders otherwise, the appeal Court[G] will not receive:

(1) oral evidence; or

(2) evidence which was not before the lower Court[G] .

44.140

Subject to Rule 44.139, the Court[G] may receive further evidence, including:

(1) oral testimony;

(2) unsworn and sworn written evidence;

(3) evidence by video link, telephone or other means in accordance with what is appropriate in the circumstances; or

(4) evidence given in accordance with Part 29.

44.141

The appeal Court[G] may draw any inference of fact which it considers justified on the evidence.

Conditions for allowing an appeal 44.142 - 44.144

44.142

The Court of Appeal will allow an appeal from a decision of the Court of First Instance where the decision of the lower Court[G] was:

(1) wrong; or

(2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court[G] .

44.143

The Court of First Instance will allow an appeal from a decision of a tribunal[G] provided for in the Law[G] , DIFC Law or Rules of Court[G] where the decision was:

(1) wrong in relation to a question of law;

(2) unjust because of procedural unfairness or a miscarriage of justice; and/or

(3) wrong in relation to any other matter provided for in or under DIFC Law.

44.144

The Court of First Instance will allow an appeal not referred to in Rule 44.143 where the decision was:

(1) wrong; or

(2) unjust because of a serious procedural or other irregularity in the proceedings.

Non-disclosure of Part 32 offers 44.145 - 44.147

44.145

The fact that a Part 32 offer or payment into Court[G] has been made must not be disclosed to any Judge[G] of the appeal Court[G] who is to hear or determine:

(1) an application for permission to appeal; or

(2) an appeal;

until all questions (other than costs) have been determined.

44.146

Rule 44.145 does not apply if the Part 32 offer or payment into Court[G] is relevant to the substance of the appeal.

44.147

Rule 44.145 does not prevent disclosure in any application in the appeal proceedings if disclosure of the fact that a Part 32 offer or payment into Court[G] has been made is properly relevant to the matter to be decided.

Who may exercise the powers of the Court of Appeal 44.148 - 44.153

44.148

The Registrar[G] may exercise the jurisdiction[G] of the Court of Appeal with the consent of the Chief Justice[G] to do all things necessary or convenient for the purpose of assisting the Judges[G] of the Court of Appeal in the exercise of their powers or duties.

44.149

A single Judge[G] may exercise the appellate jurisdiction[G] of the Court of Appeal relating to an application for:

(1) leave to appeal to the Court of Appeal;

(2) an extension of time within which to institute an appeal to the Court of Appeal;

(3) leave to amend the grounds of an appeal to the Court of Appeal; or

(4) a stay[G] .

44.150

Decisions of the Registrar[G] or a single Judge[G] and under Rules 44.148 or 44.149 may be made without a hearing.

44.151

A party may request any decision of the Registrar[G] or the single Judge[G] under Rules 44.148 or 44.149 made without a hearing to be reviewed by the Court of Appeal at a hearing.

44.152

A request under Rule 44.151 must be filed within 7 days after the party is served with notice of the decision.

44.153

A single Judge[G] may refer any matter for a decision by a Court consisting of two or more judges[G] .

Dismissal of applications or appeals by consent 44.154 - 44.156

44.154

Where an appellant[G] does not wish to pursue an application or an appeal, he may request the appeal Court[G] for an order that his application or appeal be dismissed. If such a request is granted it will usually be on the basis that the appellant[G] pays the costs of the application or appeal.

44.155

If the appellant[G] wishes to have the application or appeal dismissed without costs, his request must be accompanied by a consent signed by the respondent[G] or his legal representative[G] stating that the respondent[G] consents to the dismissal of the application or appeal without costs.

44.156

Where a settlement has been reached disposing of the application or appeal, the parties may make a joint request to the Court[G] asking that the application or appeal be dismissed by consent. If the request is granted the application or appeal will be dismissed.

Allowing unopposed appeals or applications without a hearing 44.157

44.157

The appeal Court[G] will not normally make an order allowing an appeal unless satisfied that the decision of the lower Court[G] was wrong, but the appeal Court[G] may set aside[G] or vary the order of the lower Court[G] with consent and without determining the merits of the appeal, if it is satisfied that there are good and sufficient reasons for doing so. Where the appeal Court[G] is requested by all parties to allow an application or an appeal the Court[G] may consider the request without a hearing. The request should set out the relevant history of the proceedings and the matters relied on as justifying the proposed order and be accompanied by a copy of the proposed order.

Availability of reserved judgments before hand down 44.158 - 44.160

44.158

Rules 44.159 and 44.160 apply where the presiding Judge[G] is satisfied that the result of the appeal will attract no special degree of confidentiality or sensitivity.

44.159

A copy of the written judgment[G] will be made available to the parties' legal representatives[G] by 4 p.m. on the second working day before judgment[G] is due to be pronounced or such other period as the Court[G] may direct. This can be shown, in confidence, to the parties but only for the purpose of obtaining instructions and on the strict understanding that the judgment[G] , or its effect, is not to be disclosed to any other person. A working day is any day on which the Court Office is open for business.

44.160

The appeal will be listed for judgment[G] and the judgment[G] handed down at the appropriate time.

Attendance of legal representatives on the handing down of a reserved judgment 44.161

44.161

Where any consequential orders are agreed, the parties' legal representatives need not attend on the handing down of a reserved judgment[G] . Where a legal representative does attend the Court[G] may, if it considers such attendance unnecessary, disallow the costs of the attendance. If the parties do not indicate that they intend to attend, where the appeal was heard by more than one Judge[G] , the judgment[G] may be handed down by a single member of the Court[G] .

Agreed orders following judgment 44.162 - 44.163

44.162

The parties must, in respect of any draft agreed orders file 4 copies in the Court Office, no later than 12 noon on the working day before the judgment[G] is handed down.

44.163

A copy of a draft order must bear the case reference, the date the judgment[G] is to be handed down and the name of the presiding Judge[G] .

Corrections to the draft judgment 44.164

44.164

Any proposed correction to the draft judgment[G] should be sent to the Judge[G] who prepared the draft with a copy to any other party.

Immediate assessment of costs 44.165 - 44.166

44.165

Costs are likely to be assessed by way of immediate assessment at the following hearings:

(1) contested directions hearings;

(2) applications for permission to appeal at which the respondent[G] is present;

(3) dismissal list hearings in the Court of Appeal at which the respondent[G] is present;

(4) appeals from case management decisions; and

(5) appeals listed for one day or less.

44.166

Parties attending any of the hearings referred to in Rule 44.165 should be prepared to deal with the immediate assessment.

Appeals to the Court of First Instance from the Director of Employment Standards 44.167 - 44.177

44.167

Rules 44.168 to 44.177 apply to appeals to the Court of First Instance from a determination, decision, or fine of the Director of Employment Standards pursuant to Article 83(1) of the Employment Law, DIFC Law 4 of 2005.

44.168

An appeal referred to in Rule 44.167 shall be filed within 30 days of receipt of the determination, decision, or fine appealed and in accordance with the requirements of this Part.

44.169

The Director of Employment Standards must be named as a party to an appeal referred to in Rule 44.167.

44.170

The Court[G] may grant a stay[G] of the decision appealed from until the disposition of the appeal.

44.171

The Court[G] may attach conditions to the stay[G] , including requiring a party to deposit as security part or all of a monetary order.

44.172

The Director of Employment Standards shall provide the Court[G] with the record that was before him at the time the determination, order or fine was made, including any witness statement and documents considered by him.

44.173

The Court[G] may consider any other relevant evidence, in addition to the record.

44.174

Before considering the appeal, the Court of First Instance may:

(1) refer the matter back to the Director of Employment Standards for further investigation; or

(2) recommend that an attempt be made to settle the matter.

44.175

The Court[G] may dismiss the appeal without a hearing if satisfied that:

(1) the appeal is not within the Court's[G] jurisdiction[G] ;

(2) the appeal is frivolous or trivial or is not brought in good faith.

44.176

On hearing the appeal the Court[G] may:

(1) decide all questions of fact or law arising in the course of an appeal;

(2) refer the matter back to the Director of Employment Standards; or

(3) confirm, vary or cancel the determination, decision or fine under appeal, or make another decision that it considers proper.

44.177

The Director of Employment Standards shall comply with any directions the Court[G] gives to him.

No second appeals 44.178

44.178

No appeal lies from a decision of the Court of First Instance or the Court of Appeal on an appeal.

Reopening of final appeals 44.179 - 44.189

44.179

The Court of Appeal or the Court of First Instance will not reopen a final determination of any appeal unless:

(1) it is necessary to do so in order to avoid real injustice;

(2) the circumstances are exceptional and make it appropriate to reopen the appeal; and

(3) there is no alternative effective remedy.

44.180

In Rules 44.179, 44.181, 44.184 and 44.188 “appeal” includes an application for permission to appeal.

44.181

Permission is needed to make an application under Rule 44.179 to reopen a final determination of an appeal even in cases where permission was not needed for the original appeal.

44.182

Permission must be sought from the Court[G] whose decision the applicant wishes to reopen.

44.183

The application for permission must be made by application notice[G] and supported by written evidence, verified by a statement of truth.

44.184

A copy of the application for permission must not be served on any other party to the original appeal unless the Court[G] so directs.

44.185

Where the Court[G] directs that the application for permission is to be served on another party, that party may within 14 days of the service[G] on him of the copy of the application file and serve a written statement either supporting or opposing the application.

44.186

The application for permission, and any written statements supporting or opposing it, will be considered on paper by a single Judge[G] , and will be allowed to proceed only if the Judge[G] so directs.

44.187

There is no right to an oral hearing of an application for permission unless, exceptionally, the Judge[G] so directs.

44.188

The Judge[G] will not grant permission without directing the application to be served on the other party to the original appeal and giving him an opportunity to make representations.

44.189

There is no right of appeal or review from the decision of the Judge[G] on the application for permission, which is final.