PART 53 Small Claims Tribunal

PART 53

53.1

This Part:

(1) sets out the special procedure for dealing with claims ("small claims") which are issued in or have been transferred to the Small Claims Tribunal (the "SCT"); and

(2) limits the amount of costs that can be recovered in respect of a small claim.

53.2

The SCT will hear and determine claims within the jurisdiction of the DIFC Courts:

(1) where the amount of the claim or the value of the subject matter of the claim does not exceed AED 500,000 or;

(2) where the claim relates to the employment or former employment of a party; and

all parties elect in writing that it be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims); or

(3) which do not fall within the provisions of sub-paragraphs (1) or (2) above, but in respect of which:

(a) the amount of the claim or the value of the subject matter of the claim does not exceed AED 1,000,000; and

(b) all parties to the claim elect in writing that it be heard by the SCT, and such election is made in the underlying contract (if any) or subsequent to execution of that contract

(c) where they have been filed with the Small Claims Leasing Tribunal

or

(4) such other claims as may be ordered or directed by the Chief Justice to be heard by the SCT from time to time.

53.3

(1) Where parties have elected the SCT's jurisdiction in writing, neither party shall be able to withdraw such election without the approval of an SCT Judge.

(2) Where a claimant issues multiple claims against the same defendant, the SCT Judge may, where appropriate treat those claims as a single consolidated claim under Rule 4.2(7) for the purposes of deciding whether the amount in dispute exceeds the limits of the SCT's jurisdiction.

53.4

Reference in this Part to "claims" shall include reference to counterclaims, save that, where a counterclaim would not otherwise be within the SCT's jurisdiction, an SCT Judge may direct that the proceedings be transferred to the Court of First Instance

53.5

References in this Part to filing a document are references to filing that document with the SCT Registrar, unless stated otherwise

SCT Judge's power to grant a final remedy 53.6

The SCT Judge may grant any final remedy in relation to a small claim which a Judge of the Court of First Instance of the DIFC Courts could grant if the proceedings were before that Court.

Extent to Which Other Parts Apply 53.7 - 53.8

53.7

The following Parts of the RDC shall apply to small claims except to the extent that a Rule limits such application or the SCT Judge orders otherwise:

(1) Parts 1 to 5;

(2) Part 9.6 (Service);

(3) Rules 29.9 to 29.11 (Evidence — power to control evidence);

(4) Rules 31.2 (Experts and assessors — general), 31.3 – 31.11 (Experts and assessors — overriding duty to the court), 31.12 – 31.18 (Experts and assessors — power to restrict expert evidence), 31.29 – 31.47 (Experts and assessors — power to appoint an expert) and 35.8 (Experts and assessors — instructions to a single joint expert);

(5) Part 36 (judgments and orders); and

(6) Parts 45 to 52.

53.8

The SCT of its own initiative may order a party to provide further information if it considers it

appropriate to do so.

Commencement of A Small Claim 53.9 - 53.13

53.9

A small claim must be commenced by way of a Claim Form using Form P53/01.

53.10

A small claim is commenced when the SCT Registrar issues a Claim Form at the request of the filing party.

53.11

The claimant must set out in or attach to the Claim Form a statement summarising the remedy sought and the claimant's reasons for claiming that he is entitled to that remedy. The claimant must include on the face of the Claim Form a statement of the monetary value of the small claim.

53.12

The claimant must include in the Claim Form the name and address for service of the defendant, together with any other available contact information. Where the defendant is a company, the claimant shall state the address where, to the best of his knowledge, the company carries on its business.

53.13

Upon the claimant's filing of the Claim, the SCT will serve the claim form on defendant, unless otherwise directed by the Registry.

Responding to A Small Claim 53.14 - 53.15

53.14

Within 7 days after a defendant is served with a claim form in respect of a matter which has been referred to the SCT, the defendant must file an acknowledgment of service under form 53/04 indicating its intention to:

(1) Admit the claim

(2) File a defence to the claim setting out (a) which parts of the claim are admitted; (b) which parts are denied and his reasons for denying those parts; and (c) the details of any counterclaim;

or

(3) Make a challenge to dispute the jurisdiction of the SCT by evidence.

53.15

Where the defendant admits the claim in accordance with Rule 53.14(1), the SCT shall issue an order resolving the dispute.

Jurisdictional Challenge 53.16 - 53.20

53.16

A jurisdictional challenge must be filed at the time of filing the Acknowledgment of service and must set out the grounds on which the party makes the challenge.

53.17

A party responding to a jurisdictional challenge must respond to the challenge within 7 days of the filing of the challenge.

53.18

The challenge must be heard by an SCT Judge at a jurisdiction hearing. The SCT Judge may decide the challenge within the hearing.

53.19

In the event that the SCT judge dismisses the jurisdictional challenge at the jurisdiction hearing, the SCT Judge may direct that a Consultation be held immediately in the presence of the parties.

53.20

If the party fails to file its jurisdictional challenge in accordance with Rule 53.16, the SCT Registrar may issue directions for the filing of the challenge within 7 days of the date of the Acknowledgment of service.

The Consultation 53.21 - 53.40

53.21

After the defendant has filed and served a defence in accordance with Rule 53.14(2) and/or after the time for filing such a statement has passed, the SCT will fix a time for the parties to attend before an SCT judge for a consultation.

53.22

The primary purpose of the consultation will be to allow the parties to attempt to resolve their dispute.

53.23

The SCT may treat the consultation as the final hearing of the claim if all parties agree as such.

53.24

The SCT will generally fix the consultation within 7 days after the time for filing a defence has expired (i.e. within 14 days after service of the claim form).

53.25

When filing the Claim Form the claimant should inform the SCT of any dates within that period on which he is unable to attend the consultation and his reasons for being unable to attend.

53.26

When filing a defence, the defendant should inform the SCT of any dates within that period on which he is unable to attend the consultation and his reasons for being unable to attend.

53.27

The SCT will attempt to fix the consultation on a date suitable to both parties.

53.28

If any party is unable to attend the consultation on the listed date, it must notify the SCT and the other party as soon as possible and provide reasons for its failure to attend. If it appears to the SCT that the party has a good reason for being unable to attend the consultation, the SCT may adjourn the consultation to a later date.

53.29

It is essential that each party attends the consultation in person. Parties may be represented by a lawyer after having sought permission from the SCT judge hearing the consultation. A party may also be represented by a non-lawyer.

Should permission be granted for a party to be represented by a lawyer, the other side must be given the opportunity to seek legal representation.

53.30

Any of its full-time officers or employees may represent a corporate party at the consultation.

53.31

Each party should file with his claim form or defence any documents on which he wishes to rely at the consultation.

53.32

If a party fails to attend the consultation, the SCT Judge may:

(1) decide the small claim against that party; or

(2) adjourn the consultation.

53.33

If neither party attends the consultation, the SCT Judge may:

(1) dismiss the claim; or

(2) adjourn the consultation.

53.34

A party who was neither present nor represented at the consultation and against whom the claim has been decided in accordance with Rule 53.32 or Rule 53.33 may apply for that order to be set aside and the claim reinstated.

53.35

A party who applies for an Order to be set aside in accordance with Rule 53.34, must make the application not more than 7 days after the day on which notice of the Order was served on him. The SCT judge who's Order is subject to an application to set aside may extend the time for the filing of an application to set aside an order.

53.36

The SCT may grant an application under Rule 53.34 only if the applicant:

(1) had a good reason for not attending the consultation; or

(2) has a real prospect of success in the small claim.

53.37

If the SCT grants an application to set aside an Order under Rule 53.34 the SCT will fix a new date for the consultation.

53.38

Unless the SCT Judge orders otherwise, the consultation shall take place in private. Discussions held therein shall be without prejudice to the parties and shall not be referred to at the Hearing, should the matter fail to settle.

53.39

If the claim is settled at the consultation, the SCT Judge conducting the consultation will issue a consent order, recording the terms of the settlement.

53.40

If the claim is not settled at the consultation, the SCT Judge may either:

(1) fix a date for a further consultation; or

(2) make arrangements for the hearing of the claim in accordance with RDC Rules 53.42 to 53.46 below.

Re-allocation 53.41 - 53.42

53.41

Where appropriate, the SCT Judge may issue a reasoned order that the small claim be transferred to the Court of First Instance to be progressed as a fresh claim under the procedures followed by the CFI. When deciding whether to do so, the SCT Judge shall have regard to the following matters:

(1) The financial value of the claim or of the subject of the claim;

(2) The nature of the dispute;

(3) The nature of the remedy sought;

(4) The likely complexity of the facts, law or evidence;

(5) The number of parties or likely parties;

(6) The value of any counterclaim or other additional claim and the complexity of any matters relating to it;

(7) The amount of oral evidence which may be required;

(8) The importance of the claim to persons who are not parties to the proceedings;

(9) The views expressed by the parties at the consultation; and

(10) The circumstances of the parties, including their financial means.

53.42

A claimant in an SCT claim that has been transferred to the CFI in accordance with 53.41 is at liberty to pursue its claim in the CFI by filing a Part 7 claim form.

Preparation for the hearing 53.43 - 53.47

53.43

If the claim is not settled at the consultation, unless he fixes a further consultation or Rule 53.41 applies, the SCT Judge will give directions for the preparation of the small claim for hearing.

53.44

Should the parties have failed to reach a settlement at the consultation, the SCT Judge will generally:

(1) fix a date for the final hearing of the small claim;

(2) inform the parties of the time allowed for the final hearing; and

(3) order each party to file and serve on every other party copies of any further documents on which they intend to rely at the hearing.

53.45

A party may request from the SCT Judge at the consultation to give particular directions about the conduct of the case.

53.46

In deciding whether to make an order for exchange of witness statements the SCT Judge will have regard to the following:

(1) the amount in dispute in the proceedings;

(2) the nature of the matters in dispute; and

(3) the need for the parties to have access to justice without undue formality, cost or delay.

53.47

No expert may give evidence, whether written or oral, at a hearing without the permission of the SCT.

Power of The SCT To Add To, Vary or Revoke Directions 53.48

53.48

The SCT may add to, vary or revoke directions.

Conduct of The Hearing 53.49 - 53.59

53.49

Unless the parties agree otherwise, the hearing of the claim will not be conducted by the same SCT Judge who conducted the consultation.

53.50

The SCT Judge may adopt any method of proceeding at a hearing that he considers to be fair.

53.51

Hearings will be informal.

53.52

The general rule is that a small claim hearing will be in private, unless the parties agree or the SCT Judge orders otherwise.

53.53

The strict rules of evidence do not apply. In respect of evidence, the SCT shall apply Rules 29.9 and 29.10 of the RDC.

53.54

The SCT Judge may take evidence on oath but is not required to do so.

Representation at a hearing

53.55

(1) A party should present his own case at a hearing

A party may be represented at the hearing by a non-lawyer or lawyer only after obtaining permission from the SCT which is to be given where it appears to the SCT on reasonable grounds that it is necessary in the circumstances

(3) If a party wishes to be represented at the hearing by a lawyer, that party must inform the SCT and the opposing party that it is intending to do so 4 days prior to the scheduled date of the hearing in order to allow sufficient time for the opposing party to also instruct a lawyer if he wishes to do so.

(4) Parties' attention is drawn to RDC Part 53.78.

53.56

With the exception of consultations, the SCT will take a minute of or otherwise record by such means as the SCT Judge considers appropriate any hearing that takes place at the SCT. A party may obtain a copy of that minute or other recording on payment of the proper charges specified by the SCT

53.57

It is not permissible for a party to use its own recording devices in the SCT.

53.58

The SCT Judge must give reasons for his judgments briefly and simply as the nature of the case requires. He may do so orally at the hearing.

53.59

Where the SCT Judge decides the case without a hearing under Rule 53.63, the SCT Judge will prepare a note of his reasons and the SCT will send a copy to each party.

Non-attendance of parties at a final hearing 53.60 53.63

53.60

If a claimant does not attend the hearing, the SCT may strike out the claim.

53.61

If a defendant does not attend the hearing and the claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the claimant alone.

53.62

If neither party attends the hearing, the SCT may strike out the claim and any defence and counterclaim.

53.63

Nothing in these provisions affects the general power of the SCT to adjourn a hearing, for example where a party who wishes to attend a hearing on the date fixed cannot do so for a good reason.

Disposal without a hearing 53.64

53.64

The SCT may, if all parties agree, deal with the claim without a hearing.

Applications in the SCT 53.65 - 53.73

53.65

(1) ‘application notice’ means a document in which the applicant states his intention to seek a Court order; and

(2) ‘respondent’ means:

(a) the person against whom the order is sought; and

(b) such other person as the Court may direct.

53.66

Every application should be made as soon as it becomes apparent that it is necessary or desirable to make it.

53.67

An application notice must state:

(1) what order the applicant is seeking;

(2) briefly, why the applicant is seeking the order; and

(3) and must be supported by evidence.

53.68

Unless the Court otherwise directs, a copy of the application notice must be served as soon as practicable after it is filed.

53.69

When a copy of an application notice is served it must be accompanied by a copy of any evidence filed in support of the application.

53.70

The timetable for an application is as follows:

(1) any evidence that the applicant wishes to rely on must be filed and served with the application;

(2) The respondent’s response must be filed within 3 days thereafter;

(3) Any reply by the applicant must be filed within 2 days thereafter.

53.71

The timetable may be abridged or extended by agreement between the parties provided that any date fixed for a hearing of the application is not affected. In appropriate cases, this timetable may be abridged by the Court.

53.72

The Court at its discretion may, in the absence of the parties’ consent:

(1) dispose of an application without a hearing;

(2) direct that the nature of an application, including applications for permission to appeal be amended;

(3) direct that an application be consolidated with another

53.73

Where the applicant or any respondent fails to attend the hearing of an application, the Court may proceed in his absence.

Setting Judgment aside and re-hearing 53.74 - 53.78

53.74

A party who was not present at the hearing of the claim may apply for an order that a Judgment under this Part shall be set aside and the claim re-heard

53.75

A party who applies for an order setting aside a Judgment under Rule 53.73 must make the application not more than 7 days after the day on which notice of the Judgment was served on him.

53.76

The SCT may grant an application under Rule 53.73 only if the applicant:

(1) had a good reason for not attending the hearing; or

(2) has a real prospect of success at the hearing.

53.77

If a Judgment is set aside:

(1) the SCT must fix a new hearing for the claim; and

(2) the hearing may take place immediately after the hearing of the application to set the Judgment aside and may be dealt with by the SCT Judge who set aside the Judgment.

53.78

A party may not apply to set aside a Judgment under this rule if the SCT dealt with the claim without a hearing under Rule 53.63.

Costs in the SCT 53.79 - 53.80

53.79

The General Rule is that each party shall bear its own costs. However,the SCT may order a party to a small claim to pay a sum to another party in respect of that other party’s costs, fees and expenses, including those relating to an appeal, where:

(1) such part of any Court or Tribunal fees paid by that other party as the SCT may consider appropriate;

(2) such further costs as the SCT may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.

53.80

A party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under Rule 53.78(2), but the SCT may take it into consideration when it is applying the unreasonableness test.

Claim re-allocated from the SCT to the Court of First Instance 53.81

53.81

Where a claim is transferred from the SCT to the Court of First Instance, Rule 53.78 (costs in the SCT) will cease to apply after the claim has been transferred and the Costs Rules set out in RDC Parts 38–40 will apply from the date of transfer.

Enforcement 53.82 - 53.83

53.82

An Order of the SCT shall have the same status as an Order of the Court of First Instance of the DIFC Courts and may be enforced in accordance with the rules and procedures set out in RDC Parts 45–50.

53.83

Applications for the enforcement of an Order of the SCT should be made to the Court of First Instance.

Appeals 53.84 - 53.86

53.84

The following Rules apply to appeals from the SCT to the Court of First Instance.

53.85

In this Rule:

(1) 'the Court of First Instance means the Court to which an appeal is made.

(2) 'lower Court' means the Court, tribunal or other person or body from whose decision an

appeal is brought;

(3) ‘Court’ means the Court to which an appeal is made and the Court, tribunal or other person or body from whose decision an appeal is brought;

(4) ‘appellant’ means a person who brings or seeks to bring an appeal;

(5) ‘respondent’ means:

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

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

(5) ‘appeal notice’ means an appellant’s or respondent’s notice.

53.86

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

Conditions for Allowing an Appeal 53.87

53.87

The Court will allow an appeal where the decision was:

(1) wrong;

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

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

Stay 53.88

53.88

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

Permission to Appeal 53.89 - 53.93

53.89

An application for permission to appeal must be made to the Court of First Instance in an appellant's Notice in Form P53/02.

53.90

The application for permission to appeal will be put before the Court of First Instance judge for determination.

53.91

Permission to appeal may be given only where:

(1) the Court 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.

53.92

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

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

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

(3) whether the lower Court gives permission to appeal; and

(4) if not, the court to which any further application for permission may be made.

53.93

Where no application for permission to appeal has been made in accordance with Rule 53.83 but a party requests further time to make such an application, the Court may adjourn the hearing to give that party the opportunity to do so.

Consideration of Permission Without A Hearing 53.94 - 53.100

53.94

Applications for permission to appeal may be considered by the Court of First Instance without a hearing.

53.95

An order determining permission to appeal must be supported by reasons.

53.96

If permission is granted without a hearing the parties will be notified of that decision and the procedure in Rules 53.115 will then apply.

53.97

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

53.98

Where the Court of First Instance, 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.

53.99

Where the Court of First Instance 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.

53.100

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

Permission Hearing 53.101 - 53.103

53.101

Rules 53.101 and 53.102 apply where an appellant makes a request for a decision on permission to appeal to be reconsidered at an oral hearing.

53.102

The appellant must, at least 4 days before the hearing, in a brief written statement:

(1) inform the Court of First Instance and the respondent 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.

53.103

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

Appellant’s Notice 53.104 - 53.106

53.104

An appellant’s notice must be filed and served in all cases.

53.105

The appellant’s notice must set out the reasons of appeal relied on.

53.106

The reasons of appeal must:

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

(a) wrong; or

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

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

Filing and Service of Appellant’s Notice 53.107 - 53.111

53.107

The appellant must file the appellant’s notice at the lower court within 14 days after the date of the decision of the lower Court that the appellant wishes to appeal.

53.108

Where the lower Court Judge announces his decision and reserves the reasons for his judgment or order until a later date, he should, in the exercise of powers under Rule 53.107, fix a period for filing the appellant’s notice at the Court that takes this into account.

53.109

Unless the Court orders otherwise, a sealed copy of the appellant’s notice together with any reasons of appeal must be served on each respondent:

(1) as soon as practicable; and

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

after it is filed at the Court.

53.110

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

(1) file the appellant's notice immediately; and

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

53.111

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

Variation of Time 53.112

53.112

An application to vary the time limit for filing an appeal notice must be made to the Court of First Instance.

Amendment of Appeal Notice 53.113

53.113

An appeal notice may not be amended without the permission of the Court. An application to amend and any application in opposition will normally be dealt with at the appeal hearing should permission to appeal be granted 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 53.114 - 53.115

53.114

The Court of First Instance may:

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

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

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

53.115

The Court of First Instance will only exercise its powers under Rule 53.113 where there is a compelling reason for doing so.

Procedure After Permission Is Obtained 53.116 - 53.117

53.116

Rules 53.116 set out the procedure where:

(1) permission to appeal is given by the Court of First Instance; or

(2) permission is not required.

53.117

The Court of First Instance will send the parties:

(1) notification of the date of the hearing;

(2) directions for the filing of the respondent's submissions in opposition, usually within 7 days of the order granting permission to appeal; and

(3) any other directions given by the Court.

Assessment of Costs 53.118

53.118

Costs in relation to an appeal of an SCT case are likely to be assessed under the Judge's discretion.