# PART 55 Probate Rules

## PART 55

## PART 55 RDC

**Rules of the IFC Courts RELATING TO PROBATE CLAIMS AND CLAIMS RELATING TO the administration of estates.**

## Scope of this Part and definitions 55.1

**55.1**

(1) This Part contains rules about –

(a) probate;

(b) probate claims;

(c) claims for the rectification of wills; and

(d) claims and applications to –

(i) Substitute another person for an executor; or

(ii) Remove an executor

(2) In this Part:

(a) “probate claim” means a claim for –

(i) the grant of probate or administration (with Will annexed) of a deceased person’s estate;

(ii) the revocation of such a grant; or

(iii) an order declaring for or against the validity of a will;

(iv) any application for an order confirming the revocation of a will under

Rule 18 of the WPR Rules.

(b) “WPR” means the DIFC Wills and Probate Registry;

(c) “testamentary document” means a will, a draft of a last will, written instructions for a will made by or at the request of, or under the instructions of, the testator, and any document purporting to be evidence of the contents, or to be a copy, of a Will which is alleged to have been lost or destroyed; or any document that might affect the validity of the registered will.

(d) Testamentary instrument means any document which may have been annexed to the will at the time of the will registration, and relating to the estate in question.

(e) “WPR Rules” means the DIFC Wills and Probate Registry Rules.

(3) Where appropriate, WPR Rules shall apply and “executor” includes for the purpose only of this Part an administrator where the context allows this.

## General 55.2

**55.2**

This Section contains rules about probate claims.

## How to start a probate claim 55.3

**55.3**

(1) A probate claim must be commenced using the procedure in Part 7

(2) The claim form and all other Court documents relating to a probate claim must be marked at the top “In the estate of [name] deceased (Probate)”.

(3) The commencement of a probate claim will, unless the Court otherwise directs, prevent any grant of probate or grant of administration (with will annexed) being made until the probate claim has been disposed of.

(4) The Court shall give notice of the probate claim to the WPR.

## Acknowledgment of Service and Defence 55.4

**55.4**

(1) A defendant who is served with a claim form must file an acknowledgment of service.

(2) Subject to paragraph (3), the period for filing an acknowledgment of service is –

(a) if the defendant is served with a claim form which states that particulars of claim are to follow, 28 days after service of the particulars of claim; and

(b) in any other case, 28 days after service of the claim form.

(3) Rule 16.9 (which provides the period for filing a defence) applies as if the words 'under Part 11' were omitted from rule
16.9(2).

## Lodging of wills and testamentary documents and filing of evidence about testamentary documents 55.5

### 55.5

(1) Unless the Court directs otherwise, the will and any other testamentary instruments held at the WPR shall be lodged with the Court.[1]

(2) Any testamentary document of the deceased person that affects the validity of the will, in the possession or control of any party, must be lodged with the Court.

(3) Unless the Court directs otherwise, such testamentary documents must be lodged at the Court –

(a) by the claimant when the claim form is issued; and

(b) by a defendant when he acknowledges service.

(4) The claimant and every defendant who acknowledges service of the claim form must in written evidence

(a) describe any testamentary document that affects the validity of the will of the deceased of which he has any knowledge or,

(b) if any such testamentary document of which he has knowledge is not in his possession or under his control, give the name and address of the person in whose possession or under whose control it is or, if he does not know the name or address of that person, state that fact.

(5) Unless the Court directs otherwise, the written evidence required by paragraph (4) must be filed in the Court –

(a) by the claimant, when the claim form is issued; and

(b) by a defendant when he acknowledges service.

(6) The written evidence about testamentary documents required by this Part must contain a statement of truth in accordance with part 22 of the RDC, and be signed.

(7) If there is urgent need to commence a probate claim, and it is not possible for the claimant to lodge the testamentary documents or to file the evidence about the will with the Court at the same time as the claim form is to be issued, the Court may direct that the claimant shall be allowed to issue the claim form, and direct the claimant to lodge the documents and to file the evidence, within such time as the Court shall specify.

(8) Except with the permission of the Court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has filed his evidence.

(9) Unless the Court orders otherwise, if a testamentary document is held by the Court (whether it was lodged by a party or it was previously held at the WPR) when the claim has been disposed of, the Court will send it to the WPR.

## Revocation of existing grant 55.6

### 55.6

(1) In a probate claim which seeks the revocation of a grant of probate or grant of administration (with will annexed) every person who is entitled, or claims to be entitled, to administer the estate under that grant must be made a party to the claim.

(2) If the claimant is the person to whom the grant was made, he must lodge the original probate or grant of administration (with will annexed) at the Court when the claim form is issued.

(3) If a defendant has the probate or grant of administration (with will annexed) under his control, he must lodge it at the Court when he acknowledges service.

(4) Paragraphs (2) and (3) do not apply where the grant has already been lodged at the Court, which in this paragraph includes the WPR.

## Continuance of legal proceedings after revocation of temporary administration 55.7

### 55.7

If, while any legal proceeding is pending in the Court, by or against an administrator to whom a temporary administration has been granted, that administration is revoked, the Court may order that the proceeding be continued by or against the new administrator, in like manner as if the same had

been originally commenced by or against him, but subject to such conditions and variations, if any, as the Court directs.

## Contents of statements of case 55.8

### 55.8

(1) The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.

(2) If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons.

(3) Any party who contends that at the time when a will was executed the testator did not know of and approve its contents must give particulars of the facts and matters relied on.

(4) Any party who wishes to contend that –

(a) a will was not duly executed;

(b) at the time of the execution of a will the testator lacked testamentary capacity; or

(c) the execution of a will was obtained by undue influence or fraud, must set out the contention specifically and give particulars of the facts and matters relied on.

## Counterclaim 55.9

### 55.9

(1) A defendant who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will, or grant of administration (with will annexed) of the estate, of the deceased person must serve a counterclaim making that contention.

(2) If the claimant fails to serve particulars of claim within the time allowed, the defendant may, with the permission of the Court, serve a counterclaim and the probate claim shall then proceed as if the counterclaim were the particulars of claim.

## Probate counterclaim in other proceedings 55.10

### 55.10

(1) In this rule “probate counterclaim” means a counterclaim in any claim other than a probate claim by which the defendant claims any such remedy as is mentioned in rule 55.1(2)(a).

(2) Subject to the following paragraphs of this rule, this Part shall apply with the necessary modifications to a probate counterclaim as it applies to a probate claim.

(3) A probate counterclaim must contain a statement of the nature of the interest of each of the parties in the estate of the deceased to which the probate counterclaim relates.

## Failure to acknowledge service or to file a defence 55.11

### 55.11

(1) A default judgment cannot be obtained in a probate claim and rule 11.4 and Part 13 of the RDC do not apply.

(2) If any of several defendants fails to acknowledge service, the claimant may –

(a) after the time for acknowledging service has expired; and

(b) upon filing written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on that defendant;

proceed with the probate claim, as if that defendant had acknowledged service.

(3) If no defendant acknowledges service or files a defence then, unless on the application of the claimant the Court orders the claim to be discontinued, the Court shall order that the claim is to proceed to trial.

(4) When making an application under paragraph (3) the claimant must file written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on each of the defendants.

(5) Where the Court makes an order under paragraph (3), it may direct that the claim be tried on written evidence.

## Discontinuance and dismissal 55.12

### 55.12

(1) Part 34 does not apply to probate claims.

(2) At any stage of a probate claim the Court, on the application of the claimant or of any defendant who has acknowledged service, may order that –

(a) the claim be discontinued or dismissed on such terms as to costs or otherwise as it thinks just; and

(b) a grant of probate of the will, or grant of administration (with will annexed) of the estate, of the deceased person be made to the person entitled to the grant.

## Case management 55.13

### 55.13

In giving case management directions in a probate claim, the Court will give consideration to the questions –

(1) whether any person who may be affected by the claim and who is not joined as a party should be joined as a party, or giving notice of the claim under rule 20.55.

(2) whether to make a representation order[2] under rule 20.35 or 20.41.

## Settlement of a probate claim 55.14

### 55.14

If, at any time, the parties agree to settle a probate claim, the Court may –

(1) order the trial of the claim on written evidence, which will lead to a grant in special form;

(2) order that the claim be discontinued or dismissed under rule 55.12, which will lead to a grant in common form;

(3) pronounce for, or against, the validity of one or more wills under Rule 54 of the WPR Rules.

(4) An appropriate consent order (for applications for compromise of probate action, in accordance with Rule 54 of the WPR Rules) should be signed by both parties in the presence of a court officer

## Applications for a grant 55.15

### 55.15

(1) An application for an order for:

(a) A discretionary grant[3];

(b) A grant pending the determination of a probate claim[4];

(c) An interim grant[5];

(d) A grant limited in any other way the Court thinks fit;

(e) Where there is a dispute as to the persons entitled to the grant, that a grant is made to a particular person or persons;shall be made by application notice in a probate claim.

(2) If an application is made for an order for a grant under paragraph (1):-

(a) Rules 49.14 to 49.35 of the RDC shall apply, as if the administrator were a receiver appointed by the Court;

(b) If the Court allows the administrator remuneration[6]under rule 49.28, it may make an order specifying the remuneration is recoverable out of the estate of the deceased; and

(c) Every application, relating to the conduct of the administration (with will annexed), shall be made by application notice in the probate claim.

(3) An appointment of an administrator, to whom administration (with will annexed) are granted pending the determination of a probate claim, will cease automatically when a final order in the probate claim is made, but will continue pending any appeal. Where, in such a case, the grant ceases automatically, the grant shall be returned to the WPR.

## Rectification of Wills 55.16

### 55.16

(1) This Section contains rules about claims for the rectification of a will, in conjunction with Part 5 (Rectification of wills) of the WPR Rules.

(2) Every executor of the estate shall be joined as a party.

## Lodging the grant 55.17

**55.17**

(1) If the claimant is the person to whom the grant was made in respect of the will of which rectification is sought, he must, unless the Court orders otherwise, lodge the grant of probate or grant of administration (with will annexed) with the Court when the claim form is issued.

(2) If a defendant has the grant of probate or grant of administration (with will annexed) in his possession or under his control, he must, unless the Court orders otherwise, lodge it in the relevant office within 14 days after the service of the claim form on him.

## Orders 55.18

**55.18**

A copy of every order made for the rectification of a will shall be sent to the WPR for filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the grant under which the estate is administered.

## Substitution and Removal of Executors 55.19

**55.19**

(1) This Section contains rules about claims and applications for substitution or removal of an executor (see also Rule 29 of the WPR Rules on the maximum number of executors).

(2) Every executor of the estate shall be joined as a party.

(a) This rule shall apply to such applications (with references to claims being read as references to applications).

## Starting the claim 55.20

**55.20**

The claim form must be accompanied by –

(1) a sealed or certified copy of the grant of probate or grant of administration (with will annexed),

and

(2) written evidence containing the grounds of the claim and the following information so far as it is known to the claimant –

(a) brief details of the property comprised in the estate, with an approximate estimate of its capital value and any income that is received from it;

(b) brief details of the liabilities of the estate, if any;

(c) the names and addresses of the persons who are in possession of the documents relating to the estate;

(d) the names of the beneficiaries and their respective interests in the estate; and

(e) the name, address and occupation of any proposed substituted executor.

## Consent to act and evidence 55.21

### 55.21

If the claim is for the appointment of a substituted executor, the claim form must be accompanied by –

(1) a signed or sealed consent to act; and

(2) written evidence as to the fitness of the proposed substituted executor, if an individual, to act.

## Production of the grant 55.22

### 55.22

(1) On the hearing of the claim, the executor must produce to the Court the grant of representation to the deceased's estate.

(2) If an order is made substituting or removing the executor, the grant (together with a sealed copy of the order) must be sent to and remain in the custody of the WPR, until a memorandum of the order has been endorsed on, or permanently annexed to the grant.

(3) Where the claim is to substitute or remove an executor and the claim is made before a grant of probate has been issued, paragraphs (1) and (2) do not apply. Where, in such a case, an order is made substituting or removing an executor, a sealed copy of the order must be sent to the WPR, where it will be recorded and retained, pending any application for a grant. An order sent to the WPR in accordance with this paragraph must be accompanied by a note of the full name and date of

death of the deceased, if it is not apparent on the face of the order.

## General 55.23

### 55.23

This Part contains rules about claims relating to the administration of estates of deceased persons (where a deceased person has made a will).
It applies to claims –

(a) for the court to determine any question (excluding intestacy and its consequences) arising inthe administration of the estate of a deceased person; and

(b) for an order for the administration of the estate of a deceased person to be carried out under the direction of the court (‘an administration order’).

(c) To enforce rights under a foreign law under Rule 111 of the WPR Rules.

## Parties 55.24 - 55.25

### 55.24

In a claim to which this Part applies –

(a) all the executors or administrators of the deceased person’s estate must be parties;

(b) if the claim is made by executors or administrators, any of them who does not consent to being a claimant must be made a defendant; and

(c) the claimant may make parties to the claim any persons with an interest in or claim against the estate who it is appropriate to make parties having regard to the nature of the order sought.

(The court may, under rule 20.2, order additional persons to be made parties to a claim.)

### 55.25

The following are examples of the types of claims which may be made under this Part –

(1)a claim for the determination of any of the following questions

(a)any question as to who is included in any class of persons having

(i)a claim against the estate of a deceased person;

(ii) a beneficial interest in the estate of such a person; or

(b) any question as to the rights or interests of any person claiming

(i) to be a creditor of the estate of a deceased person;

(ii) to be entitled under a will of a deceased person; or

(2) a claim for any of the following remedies –

(a) an order requiring an executor or administrator –

(i) to provide and, if necessary, verify accounts;

(ii) to pay into court money which he holds in that capacity; or

(iii) to do or not to do any particular act;

(b) an order approving any sale, purchase, compromise or other transaction by an executor or administrator; or

(c) an order directing any act to be done which the court could order to be done if the estate were being administered or executed under the direction of the court.

## Determining certain claims under this Part without a hearing 55.26

### 55.26

(1) Where a claim is made by a trustee for a remedy within rule 55.25(2)(b) (including a case where the remedy sought is approval of a transaction affected by conflict of interests or duties), the court may be requested to determine the claim without a hearing.

(2) The claim form in such a case may be issued without naming defendants, and no separate application for permission need be made.

(3) The claim form must be accompanied by

(a) a witness statement setting out the material facts justifying determination without a hearing and in particular –

(i) identifying those affected by the remedy sought and

(ii) detailing any consultation of those so affected and the result of that consultation;

(b) the advice of a lawyer on the merits of the claim;

(c) a draft order for the remedy sought;

(d) a statement of costs.

(4) If the court considers that the case does not require an oral hearing, it will proceed to consider the claim on the papers.

(5) If the court considers that an oral hearing is required, it will give appropriate directions.

(6) If the court considers it appropriate, it will make the order sought and may direct that the claimant must –

(a) serve notice of the order on the interested parties in accordance with rule 20.55, and

(b) file a certificate of service within 7 days of doing so.

## Administration Orders – rule 55.23(b) 55.27

### 55.27

(1) The court will only make an administration order if it considers that the issues between the parties cannot properly be resolved in any other way.

(2) If, in a claim for an administration order, the claimant alleges that the executors or administrators have not provided proper accounts, the court may –

(a) stay the proceedings for a specified period, and order them to file and serve proper accounts within that period; or

(b) if necessary to prevent proceedings by other creditors or persons claiming to be entitled to the estate, make an administration order and include in it an order that no such proceedings are to be taken without the court's permission.

(3)Where an administration order has been made in relation to the estate of a deceased person, and a claim is made against the estate by any person who is not a party to the proceedings –

(a) no party other than the executors or administrators of the estate may take part in any

proceedings relating to the claim without the permission of the court; and

(b) the court may direct or permit any other party to take part in the proceedings, on such terms as to costs or otherwise as it thinks fit.

## Application to enforce rights under a foreign law – rule-55.23(c) 55.28

### 55.28

An application to enforce rights under a foreign law shall be in accordance with Rule 111 of the WPR Rules and supported by:

(a) a certified copy of the grant or court order issued in the foreign jurisdiction;

(b) extracts of the relevant law; and

(c) an affidavit of a suitably qualified lawyer confirming the relevant law.