PART 56 Technology And Construction Division

PART 56

General

56.1

This Part applies to Technology and Construction Division claims ("TCD Claims").

56.2

In this Part –

(1)A "TCD Claim" means a claim which—

(a)satisfies the requirements of Rule 56.3; and

(b)has been issued in or transferred into the specialist Division for such claims;

(2)"Technology and Construction Division" has the meaning provided for by Rule 56.5.

56.3

A claim may be brought as a TCD Claim if it involves issues or questions which are technically complex. The following are examples of the types of claim which may be appropriate to bring as TCD Claims, but are not exhaustive and other types of claim may be appropriate to this specialist division:

(1) building or other construction disputes;

(2) engineering disputes;

(3) claims by and against engineers, architects, surveyors, accountants and other specialised advisers relating to the services they provide;

(4) claims by and against the DIFC or any DIFC Body relating to their statutory duties concerning the development of land or the construction of buildings;

(5) claims relating to the design, supply and/or installation of computers, computer software and related network and information technology systems and services;

(6) claims between landlord and tenant for breach of a repairing covenant;

(7) claims between neighbours, owners and occupiers of land in trespass, nuisance etc.;

(8) claims arising out of fires;

(9) claims involving taking of accounts where these are complicated; and

(10) challenges to decisions of arbitrators in construction and engineering disputes.

56.4

TCD Claims will be dealt with in the Technology and Construction Division, unless:

(1) this Part or a Practice Direction permits otherwise; or

(2) a Judge directs otherwise.

Specialist division

56.5

The Technology and Construction Division is a specialist division of the DIFC Courts.

56.6

A Judge will be appointed to be the Judge in charge of the Technology and Construction Division.

Application of the Rules of the Dubai International Financial Centre Courts

56.7

The Rules of the DIFC Courts and their Practice Directions and Registrar's Directions apply to TCD Claims unless this Part or a Practice Direction provides otherwise.

Issuing a TCD Claim

56.8

A TCD Claim may be commenced using the procedure in Part 7 or Part 8, including Arbitration Claims under Part 43.

56.9

The claim form and all other Court documents relating to a TCD Claim must be marked "Technology and Construction Division".

Applications before proceedings are issued

56.10

A party who intends to issue a TCD Claim must make any application within the claim form for determination by the Court whether it should be issued in the Technology and Construction Division.

56.11

The written evidence in support of such an application must state that the proposed claim is a TCD Claim.

Transfer of proceedings

56.12

The Court may order proceedings to be transferred to or from the Technology and Construction Division.

56.13

Where the Court orders proceedings to be transferred, it will give notice of that transfer to all the parties.

Case management

56.14

Rules 43.26 to 43.38 do not apply to Arbitration Claims that proceed as TCD Claims, save insofar as provided by this Part.

56.15

Part 26 (Case Management) applies to TCD Claims with the modification to Rule 26.1 that the Court will fix a Case Management Conference within 14 days of the earlier of these events:

(1) the filing of particulars of claim; or

(2) the date of an order transferring the claim to the Technology and Construction Division.

56.16

At the same time that the parties must file and serve Case Management Information Sheets under

Rule 26.3, the Claimant, in consultation with the other parties, must file and serve a TCD Case Management Directions Form. A standard form of a TCD Case Management Directions Form is set out in Schedule A to this part.

56.17

The parties are encouraged to agree the directions to propose to the Court by reference to the TCD Case Management Directions Form. If any directions are not agreed the parties must explain on the TCD Case Management Direction Form the scope of the disagreement in respect of each direction that is not agreed and the reason for the disagreement.

56.18

If any party fails to file or serve the Case Management Information Sheet or the Claimant fails to file or serve the TCD Case Management Directions Form by the date specified, the Court may:

(1) impose such sanction as may be appropriate to further the overriding objective; and

(2) either proceed with or adjourn the Case Management Conference.

56.19

In addition to the topics the Court is likely to consider at a Case Management Conference set out in Rule 26.35, in TCD Claims further topics the Court will consider are likely to include:

(1) whether any issues can be conveniently dealt with by a Court-appointed expert and whether ancillary orders may be necessary for the carrying out of inspections, the obtaining of samples, the conducting of experiments, or the performance of calculations;

(2) whether it would be appropriate and proportionate to make any interim orders for the preservation of evidence under Rule 25.1; and

(3) whether it would be appropriate and proportionate for elements of the claim (or any counterclaims or other additional claims under Part 21) to be set out by way of a Scott Schedule. A Scott Schedule is a table in which elements of the Claimant's case are set out item by item and the Defendant's response is set out in the adjacent columns. When the Court orders the production of a Scott Schedule:

(a) a Judge may give directions for the relevant column headings; and

(b) each party's entries on the Scott Schedule must be supported by a statement of truth in accordance with Part 22.

Pre-Trial Review

56.20

If the Court fixes a date for a Pre-Trial Review, the parties must send to the Registrar and serve on all other parties completed TCD Pre-Trial Review Questionnaires not less than three days before the date fixed for the Pre-Trial Review. A standard form of TCD Pre-Trial Review Questionnaire is set out in Schedule B to this Part.

56.21

If any party fails to return or exchange the TCD Pre-Trial Review Questionnaire by the date specified the Court may:

(1) impose such sanction as may be appropriate to further the overriding objective; and

(2) either proceed with or adjourn the Pre-Trial Review.

56.22

The TCD Pre-Trial Review Questionnaire incorporates the Pre-Trial Checklist required under Rule 26.61.

56.23

At the Pre-Trial Review, the Court will give such directions for the conduct of the trial as it sees fit.

Schedule A

TCD CASE MANAGEMENT DIRECTIONS FORM

[Delete or amend the following directions, as appropriate to the circumstances of the case]

1. Trial date:

2. Estimated length of trial:

3. Directions, if appropriate, (a) for the trial of any preliminary issues or (b) for the trial to be divided into stages:

4. [ ] be added as a [claimant] [defendant] in this Claim.

5. This claim is to be [consolidated] [managed and tried with] claim no. [ ]

The lead claim shall be claim no. [ ]

All directions given in the lead claim shall apply to both claims, unless otherwise stated.

6. Further statements of case shall be filed and served as follows:

a. Defence and any counterclaim by 4 pm on [ ]

b. Reply (if any) and defence to counterclaim (if any) by 4 pm on [ ]

7. Permission to make the following amendments [ ]

8. Standard production of documents:

a. By 5 pm on [ ]

b. Specific directions in respect of electronic production of documents [where appropriate]

9. Parties to file and serve any Request to Produce by 5pm on [ ].

10. By 5pm on [ ],:

a. The parties shall file and serve any Objections to Requests to Produce; and

b. The parties shall produce documents responsive to any Request to Produce in respect of which no Objection is raised.

11. The Court will determine any Objections to Requests to Produce and issue any disclosure orders by 5pm on [ ].

12. There shall be a Scott Schedule in respect of defects / items of damage / other [ ]

a. The column headings shall be as follows [ ]

b. Claimant / Defendant to serve Scott Schedule by 5 pm on [ ]

c. Defendant / Claimant to respond to Scott Schedule by 5 pm on [ ]

13. Signed statements of witnesses of fact to be served by 5 pm on [ ]
[Supplementary statements of witnesses of fact to be served by 5 pm on [ ]]

14. The parties have permission to call the following expert witnesses in respect of the following issues:

a. [ ]

b. [ ]

c. [ ]

15. In respect of any expert evidence permitted under paragraph 13:

a. Directions for carrying out inspections / taking samples / conducting experiments / performance of calculations shall be [ ]

b. Experts in like fields to hold discussions in accordance with RDC 31.58 by [ ]

c. Experts' joint memorandum pursuant to RDC 31.63 to be prepared and filed by 5 pm on [ ]

d. Experts' reports to be served by 5 pm on [ ]

16. A court-appointed expert shall be appointed to report on the following issues [ ]

The following directions shall govern the appointment of the court-appointed expert:

a. [ ]

b. [ ]

17. The following documents shall be provided to the court electronically or in computer-readable form, as well as in hard copy [ ]

18. A further case management conference shall be held on [ ] at [ ] am/pm. Time allowed [ ]

19. The pre-trial review shall be held on [ ] at [ ] am/pm. Time allowed [ ]

20. The above dates and time limits may be extended by agreement between the parties. Nevertheless:

a. The dates and time limits specified in paragraph [ ] may not be extended by more than [14] days without the permission of the Court.

b. The dates specified in paragraph 1 (trial) and paragraph 18 (pre-trial review) cannot be varied without the permission of the Court.

21. Costs [in the case].

Schedule B

TCD PRE-TRIAL REVIEW QUESTIONNAIRE

[Note: this questionnaire should normally be completed with the involvement of the legal representatives instructed for trial]
[SHORT TITLE OF CASE and CASE NUMBER]

1 Trial date:

2 Party lodging questionnaire:

A. DIRECTIONS COMPLIED WITH

3 Have you complied with all the previous directions given by the Court? Yes/No

4 If no, explain which directions are outstanding and why:

[ ]

5 Are any further directions required to prepare the case for trial? Yes/No

6 If yes, explain the directions required and give reasons:
[ ]

B. EXPERTS

7 Has the Court already given permission for you to use written expert evidence? Yes/No

8 If yes, give the expert(s)' name(s) and field(s) of expertise:
[ ]

9 Have the experts held discussions as directed? Yes/No

10 Have they filed statements as directed following those discussions? Yes/No

11 Have the expert(s') reports(s) been served and filed as ordered? Yes/No

12 Has the Court already given permission for the expert(s) to give oral evidence at the trial? Yes/No

13 If no, are you seeking permission? Yes/No

14 If yes, give your reasons for seeking permission:
[ ]

15 If yes, what are the names, addresses and fields of expertise of your experts?
[ ]

16 Give details of any dates within the trial period when your expert(s) will not be available:
[ ]

C. OTHER WITNESSES

17 How many witnesses (not including experts) will be giving evidence on your behalf at trial?

18 What are the names and addresses of your witnesses?
[ ]

19 Give details of any dates within the trial period when you or your witnesses will not be available:
[ ]

20 Are any of the witness statements agreed between the parties? Yes/No

21 If yes, give the name of the witness and the date of his or her statement:
[ ]

22 Do you or any of your witnesses need any special facilities? Yes/No

23 If yes, what are they?
[ ]

24 Will an interpreter be required for any witness and if so, have any necessary directions already been given? Yes/No

25 If no, what type of interpretation will be required?
[ ]

26 Have directions been given for any witness to give evidence by video link? Yes/No

27 If yes, have all necessary arrangements been made? Yes/No

28 If no, what further arrangements are necessary?
[ ]

D. LEGAL REPRESENTATION

29 Name(s) of legal representative(s):

30 Name(s) of individual legal representative(s) for trial:

31 Please give details of any dates within the trial period when the person presenting the case will not be available.

32 What are the individual legal representative(s)'s for trial confirmed estimates of the minimum and maximum lengths of the trial? (A confirmed estimate of length signed by the individual legal representative(s) for trial should be attached).

E. OTHER MATTERS

33 Have you completed preparation of trial bundles? Yes/No

34 If no, when will the preparation of the trial bundles be completed?

35 Is the Case Management Bundle up-to-date? Yes/No

36 What is your estimate of costs already incurred and to be incurred at trial?

[Signature of legal representative(s)]