

OLD PART 53 Small Claims Tribunal

OLD PART 53

53.1

This Part sets out the:

- (1) 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

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) Part 12 (Disputing the Court's Jurisdiction);
- (4) Part 15 (Admissions);
- (5) Part 23 (General Rules about applications for Court orders);
- (6) Rules 29.9 to 29.11 (Evidence — power to control evidence);
- (7) 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);
- (8) Rules 34.1 to 34.14 (discontinuance); and
- (9) Part 36 (judgments and orders); and
- (10) Parts 44 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 started by a Claim Form using Form P53/01.

53.10

A small claim is started when the SCT Registrar issues a Claim Form at the request of a 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

The SCT will serve the claim form on defendant, unless otherwise directed by the Registry

Responding to a small claim 53.14 - 53.16**53.14**

Within 7 days after he is served with a claim form in respect of a matter which has been referred to the SCT, a defendant must:

- (1) Admit the claim by filing and serving on the claimant an admission in accordance with RDC Part 15;
- (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 an application to dispute the jurisdiction of the SCT, supported by evidence.

53.15

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

53.16

Where the defendant files and serves an application to dispute the jurisdiction in accordance with Rule 53.14(3), the application will be heard by an SCT Judge in accordance with RDC Part 23."

The consultation 53.17 - 53.42

53.17

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.

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

53.19

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

53.20

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).

53.21

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.

53.22

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.

53.23

The SCT will attempt to fix the consultation on a date on which both parties are able to attend.

53.24

If any party is unable to attend the consultation on the date fixed, he must notify the SCT and the other party as soon as possible and give his reasons for being unable 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 and fix a new date.

53.25

It is essential that each party attends the consultation in person. Parties should not be represented by a lawyer. A party may be represented by a non-lawyer where it appears to the SCT that it is reasonably necessary.

53.26

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

53.27

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

53.28

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.

53.29

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

- (1) dismiss the claim; or
- (2) adjourn the consultation.

53.30

A party who was neither present nor represented at the consultation and against whom the claim has been decided in accordance with Rule 53.28 or Rule 53.29 may apply for that order to be set aside and the claim reinstated.

53.31

A party who applies for an Order to be set aside in accordance with Rule 53.30, must make the application not more than 7 days after the day on which notice of the Order was served on him.

53.32

The SCT may grant an application under Rule 53.30 only if the applicant:

- (1) had a good reason for not attending the consultation; and
- (2) has a real prospect of success in the small claim.

53.33

If the SCT grants an application to set aside an Order under Rule 53.30:

- (1) the SCT will fix a new date for the consultation; and
- (2) the consultation may take place immediately after the hearing of the application to set aside the Order and may be dealt with by the SCT Judge who set aside the Order.

53.34

Unless the SCT Judge orders otherwise, the consultation shall take place in private.

53.35

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.

53.36

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 53.38 to 53.42 below.

Re-allocation

53.37

Where appropriate, the SCT Judge may order that the small claim be transferred to the Court of First Instance. 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.

Preparation for the hearing

53.38

If the claim is not settled at the consultation, unless he fixes a further consultation or Rule 53.37 applies, the SCT Judge will give directions for the preparation of the small claim for trial.

53.39

The SCT Judge at the consultation 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.

53.40

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

53.41

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.

53.42

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 53.43**53.43**

The SCT may add to, vary or revoke directions.

Conduct of the hearing 53.44 - 53.72

53.44

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

53.45

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

53.46

Hearings will be informal.

53.47

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

53.48

The strict rules of evidence do not apply.

53.49

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

53.50

The SCT Judge may limit cross-examination.

53.51

The SCT Judge may in particular:

(1) ask questions of all or any of the witnesses himself before allowing any other person to ask

questions of any witnesses;

(2) refuse to allow cross-examination of any witness until all the witnesses have given evidence in chief; and/or

(3) limit cross-examination of a witness to a fixed time or to a particular subject or issue, or both.

Representation at a hearing

53.52

Natural persons

(1) Unless the SCT Judge orders otherwise, a party should present his own case at a hearing.

(2) A party may be represented at the hearing by a non-lawyer or lawyer[1] 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 is allowed to be represented by a lawyer, or in house Counsel as permitted under Rule 53.53, the opposing party shall be informed and given the opportunity to be represented at the hearing.

(4) Parties' attention is drawn to RDC Part 53.70.

53.53

Corporate parties

Any of its full-time officers or employees (including in house Counsel) may represent a corporate party.

53.54

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.

53.55

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

53.56

The SCT Judge must give reasons for his decision.

53.57

The SCT Judge may give reasons for his judgment as briefly and simply as the nature of the case requires.

53.58

He will normally do so orally at the hearing, but he may give them later at a hearing either orally or in writing.

53.59

Where the SCT Judge decides the case without a hearing under Rule 53.64, 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

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

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

Setting Judgment aside and re-hearing

53.65

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.

53.66

A party who applies for an order setting aside a Judgment under Rule 53.65 must make the application not more than 7 days after the day on which notice of the Judgment was served on him.

53.67

The SCT may grant an application under Rule 53.65 only if the applicant:

- (1) had a good reason for not attending the hearing; and
- (2) has a real prospect of success at the hearing.

53.68

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.

53.69

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 53.64.

Costs in the SCT

53.70

The SCT may not 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, except:

(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.

53.71

A party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under Rule 53.70(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

53.72

Where a claim is transferred from the SCT to the Court of First Instance, Rule 53.70 (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 53.73 - 53.74

53.73

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.

53.74

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

Appeals 53.75 - 53.82

53.75

RDC Part 44 deals with appeals.

53.76

Attention is drawn to FRDC 44.36 / ARDC 44.10 which specifies that, subject to any Order of the SCT, an appellant should file his appellant's notice seeking permission to appeal with the Court of First Instance within 14 days (FRDC) or 21 days (ARDC) after the date of the decision which the appellant wishes to appeal.

53.77

Attention is also drawn to FRDC 44.143 / ARDC 44.118 which sets out the circumstances in which the Court of First Instance will allow an appeal from a decision of a Tribunal.

53.78

An appellant's Notice must be filed and served in Form P53/02.

53.79

Where the SCT dealt with the claim to which the appellant is a party under Rule 53.64 without a hearing, an application for permission to appeal must be made to the Court of First Instance.

53.80

Where an appeal is allowed the Appeal Court will, if possible, dispose of the case at the same time without referring the claim to the lower court or ordering a new hearing. It may do so without hearing further evidence.

53.81

Permission to appeal an SCT Judgment may be made subject to conditions when the Judge granting permission considers it appropriate to do so. Such conditions may include the costs of appeal.

Waiver of fees or fee deferral

53.82

Where a party seeks an order that the Court fee associated with his claim should be waived:

- (1) He must state this in his claim form;
- (2) He must set out in his claim form or attach to his claim form a statement of the grounds on which he seeks waiver of the court fees;
- (3) The SCT Registrar shall decide on paper whether to waive the fees or defer payment of the fees until the end of the case;
- (4) Where Court fees are waived, the SCT Registry shall record that fact on the case file.