

## **PART 44 AMENDED APPEALS AMENDED Appeals**

### **PART 44 AMENDED APPEALS**

#### **Scope of this part and interpretation 44.1 - 44.2**

##### **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 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) unless the use or context otherwise requires, 'decision' means an order or direction or, where a matter is to be disposed of otherwise than by order or direction, the pronouncement of the disposal;
- (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
- (6) 'appeal notice' means an appellant's or respondent's 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**

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

Permission to appeal

**44.5**

An appellant or respondent 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.

**Appellant's Application 44.6 - 44.9****44.6**

An appellant's application for permission to appeal must be made to the lower Court:

(1) orally at the hearing at which the decision to be appealed was made; or

(2) in an appellant's notice.

**44.7**

Where an oral application as referred to in Rule 44.6(1) above has not been made, but a party requests further time to make such an application, the lower Court may adjourn the hearing to give that party the opportunity to do so.

**44.8**

The lower Court may refer an application for permission to appeal to the appeal Court for decision.

**44.9**

Where the lower Court refuses permission to appeal, a further application for permission to appeal may be made to the appeal Court in an appellant's notice.

**Time for appeal 44.10 - 44.13****44.10**

The appellant must file the appellant's notice as referred to in Rule 44.6(2):

- (1) within such period as may be directed by the lower Court; or
- (2) where the lower Court makes no such direction, within 21 days after the date of the decision.

**44.11**

The appellant must file the appellant's notice as referred to in Rule 44.9:

- (1) within such period as may be directed by the lower Court; or
- (2) where the lower Court makes no such direction; within 21 days after receipt of the notification of the decision refusing permission to appeal.

**44.12**

The parties may not agree to extend the time for appeal.

**44.13**

Where the time for appeal has expired, the appellant must file the appellant's notice and include therein –

- (1) an application for an extension of time; and
- (2) a statement of the reason for the delay and the steps taken prior to the application being made.

**Respondent's submissions 44.14**

**44.14**

(1) A respondent may make written submissions in opposition to an application for permission to appeal.

(2) A respondent wishing to make submissions in opposition to permission to appeal must file and serve the submissions:

(a) within 21 days of the service upon him of the appellant's notice; or,

(b) in the event that the grounds of appeal and/or skeleton argument are filed within 21 days of the date of the appellant's notice pursuant to RDC 44.30, within 21 days of the service upon him of the appellant's grounds of appeal and/or skeleton argument. (see RDC 44.34).

**Decision of the application 44.15 - 44.24****44.15**

An application for permission to appeal referred to the appeal Court by the lower Court or made to the appeal Court in an appellant's notice may not be decided by the Judge against whose decision permission to appeal is sought.

**44.16**

An application for permission to appeal not made orally to the lower Court at the hearing will ordinarily be decided without an oral hearing.

**44.17**

The appellant may request that the application for permission to appeal be considered at an oral hearing, supported by grounds as to why it would be in the interests of justice to do so.

**44.18**

The lower Court or the appeal Court may direct:

(1) the filing of further submissions by the appellant or any respondent;

(2) that the application for permission to appeal be considered at an oral hearing.

**44.19**

Permission to appeal may only be given where the lower Court or the appeal Court considers that:

- (1) the appeal would have a real prospect of success; or
- (2) there is some other compelling reason why the appeal should be heard.

**44.20**

If permission to appeal is granted without an oral hearing, the parties will be notified of that decision.

**44.21**

If permission to appeal is refused without an oral hearing, the parties will be notified of that decision and brief reasons for it.

Limited permission

**44.22**

An order giving permission to appeal may:

- (1) limit the issues to be heard; and
- (2) be made subject to conditions.

**44.23**

Where the lower Court or the appeal Court gives permission to appeal on some issues only, it will:

- (1) refuse permission to appeal on any remaining issues; or
- (2) reserve the question of permission to appeal on any remaining issues to the Court hearing the appeal.

**44.24**

If the lower Court reserves the question of permission to appeal under Rule 44.23(2), the appellant must, within 14 days after receipt of the notification of the decision, inform the appeal Court and the

respondent in writing whether he intends to pursue the reserved issues. If the appellant 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.

## **Respondents' costs of permission applications 44.25 - 44.27**

### **44.25**

The lower Court or the appeal Court will normally allow the respondent his costs of an application for permission to appeal if permission to appeal is refused.

Appeals from case management decisions

### **44.26**

Case management decisions include decisions made under Rule 4.2 and decisions about:

- (1) disclosure;
- (2) filing 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.

### **44.27**

Where the application is for permission to appeal from a case management decision, the lower Court or the appeal Court deciding 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 44.28 - 44.36**

### **44.28**

An appellant's notice must be filed in all cases other than an application for permission to appeal

made orally as referred to in Rule 44.6(1).

#### **44.29**

Subject to Rule 44.30, an appellant's notice must:

- (1) set out the grounds of appeal relied on and
- (2) include or be accompanied by a skeleton argument.

#### **44.30**

Where it is impracticable to comply with Rule 44.29, a statement of the grounds of appeal and the skeleton argument must be filed within 21 days of filing the appellant's notice.

#### **44.31**

The grounds 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;
- (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; and
- (3) state the orders sought on appeal.

#### **44.32**

An appellant's notice which includes a skeleton argument or a skeleton argument filed in compliance with Rule 44.30 must be accompanied by –

- (1) where an application for permission to appeal is made in an appellant's notice filed pursuant to Rule 44.6(2), any witness statement and **affidavit** in support of the application;
- (2) where an application for permission to appeal is made in an appellant's notice filed pursuant to

**Rule 44.9 –**

- (a) a copy of the order refusing permission to appeal, together with a copy of the Judge's reasons for refusing permission to appeal;
- (b) the claim form and statements of case (where relevant to the subject of the appeal);
- (c) a suitable record of the judgment;
- (d) a copy or record of the decision appealed from;
- (e) those parts of the documentary evidence and any transcript of evidence reasonable considered necessary to enable the appeal Court to decide whether or not to grant permission to appeal; and
- (f) any witness statement and affidavit in support of the application.

**44.33**

Where the lower Court refers an application for permission to appeal to the appeal Court for decision, the appellant must file the documents referred to in Rule 44.32(2) within 14 days of receipt of notification of the referral.

**44.34**

Unless the Court otherwise orders, the appellant must serve on each respondent –

- (a) a sealed copy of the appellant's notice;
- (b) copies of any statement of the grounds of appeal and any skeleton argument; and
- (c) copies of the documents accompanying the appellant's notice or the skeleton argument as referred to in Rule 44.32 as soon as practicable and in any event within 7 days after they are filed.

**44.35**

The appellant must, as soon as practicable, file a certificate of service of the documents referred to in Rule 44.34.

**44.36**

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



## **Applications 44.37 - 44.38**

### **44.37**

An application to be made to the appeal Court for a remedy incidental to the appeal may be included in the appellant's notice or made in a Part 23 application notice .

### **44.38**

Where an application for a remedy incidental to the appeal is included in the appellant's notice, the rules relating to Part 23 application notices apply mutatis mutandis to the application.

## **Appeal Bundles 44.39 - 44.42**

### **44.39**

(1) Where permission to appeal is not required or has been given, the appellant must file an appeal bundle not less than 21 days before the appeal hearing and serve a copy of the appeal bundle on each respondent at the same time as he files it.

(2) The appellant must provide two additional copies of the appeal bundle for the appeal Court.

(3) The appeal bundle must include -

(a) a sealed copy of the appellant's notice;

(b) a sealed copy of the decision appealed from;

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

(d) any affidavit or witness statement filed in support of any application included in the appellant's notice;

(e) a copy of his skeleton argument;

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

(g) a suitable record of the judgment, and those parts of any transcript of evidence which are directly relevant to any question at issue on the appeal;

(h) those parts of any documentary evidence and any transcript of evidence reasonably considered necessary to enable the appeal Court to decide the appeal;

(i) any application notice (or case management documentation) relevant to the subject of the appeal;

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

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

(l) any other documents which the appellant reasonably considers necessary to enable the appeal Court to decide the appeal and any application; and

(m) such other documents as the Court may direct.

#### **44.40**

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

#### **44.41**

The appeal bundle must contain a certificate signed by the appellant's legal representatives to the effect that they have read and understood Rules 44.39 and 44.40 and that the composition of the appeal bundle complies with it.

#### **44.42**

Where it is not possible to file all the above documents, the appellant must indicate which documents have not yet been filed and the reasons why they are not currently available. The appellant 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 44.43 - 44.45**

#### **44.43**

In cases where the appeal bundle comprises more than 500 pages, exclusive of transcripts, the appellant's legal representatives must, after consultation with the respondent's legal representatives, also prepare and file with the Court, in addition to copies of the appeal bundle (as amended in accordance with Rule 44.89) the requisite number of copies of a core bundle.

#### **44.44**

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 or is not required, within 28 days of the date of service of the appellant's notice on the respondent.

#### **44.45**

The core bundle:

- (1) must contain the documents which are central to the appeal; and
- (2) must not exceed 150 pages.

### **Preparation of bundles 44.46**

#### **44.46**

Rules 44.47 to 44.58 apply to the preparation of appeal bundles, supplemental respondents' bundles where the parties are unable to agree amendments to the appeal bundle, and core bundles.

### **Rejection of bundles 44.47**

#### **44.47**

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 or be made the subject of a special costs order.

### **Avoidance of duplication 44.48**

#### **44.48**

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 44.45).

### **Pagination 44.49**

#### **44.49**

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 44.50**

### **44.50**

The following rules regarding format and presentation shall apply:

(1) Where possible the documents should be in A4 format and may be printed single or double sided (unless the Court directs a particular 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, 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 44.51**

### **44.51**

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 44.52**

### **44.52**

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 44.53**

### **44.53**

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 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' names and addresses should be omitted. A label should be used on the front as well as on the spine.

## **Staples etc. 44.54**

### **44.54**

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

## **Statement of case 44.55**

### **44.55**

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 44.56**

### **44.56**

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, steps should be taken to ensure that it carries an appropriate bundle/page number so that it can be added to the Court 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 44.57**

### **44.57**

Since correspondence between legal representatives 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 44.58**

### **44.58**

If the appellant 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.

## **Content of skeleton arguments 44.59 - 44.66**

### **44.59**

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

### **44.60**

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.

#### **44.61**

Skeleton arguments submitted in the context of appeals and supplementary skeleton arguments for appeals are not to exceed 35 pages in length. Requests for permission to submit lengthier skeleton arguments should be made via letter application.

#### **44.62**

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

#### **44.63**

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.

#### **44.64**

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.

#### **44.65**

The statement referred to in Rule 44.64 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.

**44.66**

The cost of preparing a skeleton argument which:

- (1) does not comply with the requirements set out in Rules 44.59 to 44.64; 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 otherwise directs. 44.67**

**44.67**

The appellant should consider what other information the appeal Court 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 44.68 - 44.71****44.68**

A suitable record of the judgment is –

- (1) where the Court has issued the judgment sealed by the Court, a copy of the judgment;
- (2) In other cases of Court judgments –
  - (a) where the judgment has been officially recorded by the Court, a transcript of that record certified by the appellant's legal representative as a correct record;
  - (b) subject to Rule 44.68(3), where the judgment has not been officially recorded by the Court, a note of the judgment agreed between the legal representatives of the appellant and the respondent approved by the Judge whose decision is being appealed.
- (3) If the parties cannot agree on a single note of the judgment, both versions should be provided to the judge with an explanatory letter. For the purposes of an application for permission to appeal the note need not be agreed by the respondent or approved by the Judge.
- (4) In tribunal cases, a sealed copy of the tribunal's reasons for the decision.



**44.69**

An appellant may not be able to obtain a suitable record of the lower Court's judgment within the time within which the appellant's notice must be filed. In such cases the appellant's notice must still be completed to the best of the appellant's ability on the basis of the documentation available. However it may be amended subsequently with the permission of the appeal Court.

**44.70**

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.

**44.71**

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

**Procedure after permission to appeal is given 44.72 - 44.73****44.72**

Rules 44.73 to 44.74 set out the procedure where permission to appeal is given.

**44.73**

The appeal Court will send the parties

- (1) notification of the date of the hearing;
- (2) a copy of the order giving permission to appeal; and
- (3) any other directions given by the Court.

**Time estimates 44.74****44.74**

The legal representatives who will argue the appeal must provide a time estimate within 14 days of the appellant receiving the order giving permission to appeal. It should exclude the time required by the Court to give judgment. If the respondent disagrees with the time estimate, the respondent must inform the Court within 7 days of receipt of the estimate. In the absence of such notification the

respondent will be deemed to have accepted the estimate proposed on behalf of the appellant.

## **Respondent's notice 44.75 - 44.78**

### **44.75**

A respondent may file and serve a respondent's notice –

(1) applying for permission to appeal; or

(2) asking the appeal Court to uphold the decision of the lower Court for reasons different from or additional to those given by the lower Court.

### **44.76**

(1) A respondent who wishes to ask the appeal Court to vary the decision of the lower Court in any way must appeal and permission will be required on the same basis as for an appellant.

(2) A respondent's application for permission to appeal must be made to the appeal Court.

(3) The rules in relation to applying for permission to appeal in an appellant's notice and decision of the application apply *mutatis mutandis* to an application for permission to appeal in a respondent's notice.

### **44.77**

A respondent who wishes only to request that the appeal Court upholds the decision of the lower Court for reasons different from or additional to those given by the lower Court does not appeal and does not require permission to appeal.

### **44.78**

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

## **Time for respondent's notice 44.79 - 44.86**

### **44.79**

A respondent's notice must be filed within:

- (1) such period as may be directed by the Court; or
- (2) where the Court makes no such direction, 21 days after the date in Rule 44.80.

**44.80**

The date referred to in Rule 44.79 is –

- (1) where permission to appeal is not required, the date the respondent is served with the appellant’s notice;
- (2) in all other cases –
  - (a) the date the respondent receives a copy of the order giving permission to appeal; or
  - (b) the date the respondent receives notification that the application for permission to appeal and the appeal itself are to be heard together.

**44.81**

Rule 44.13 (extension for time for appeal) applies *mutatis mutandis* to a respondent and a respondent’s notice. Accordingly, where an extension of time is required the extension must be requested in the respondent’s notice and the reasons why the respondent failed to act within the specified time must be included.

**44.82**

The respondent must file a skeleton argument in all cases where he proposes to address arguments to the Court. The respondent’s skeleton argument may be included within a respondent’s notice.

**44.83**

Unless the Court orders otherwise a respondent’s notice must be served on the appellant and any other respondent:

- (1) as soon as practicable; and
- (2) in any event not later than 7 days;

after it is filed.

**44.84**

A respondent who:

- (1) files a respondent's notice; but
- (2) does not include his grounds of appeal and skeleton argument within that notice;

may file his grounds of appeal and skeleton argument accompanying the notice but in any event must file his skeleton argument within 21 days of filing the notice.

**44.85**

A respondent who does not file a respondent's notice but who files a skeleton argument must file that skeleton argument no later than 28 days after the appellant's skeleton has been filed.

**44.86**

The respondent must:

- (1) serve his skeleton argument on:

- (a) the appellant; and
- (b) any other respondent;

at the same time as he files it at the Court; and

- (2) file a certificate of service.

**Content of respondent's skeleton argument 44.87****44.87**

A respondent's skeleton argument must conform to the directions at Rules 44.59 to 44.67 with any necessary modifications. It should, where appropriate, answer the arguments set out in the appellant's skeleton argument.

**Applications within respondent's notice 44.88**

**44.88**

A respondent may include an application within a respondent's notice in accordance with Rule 44.37 above.

**Respondent's Document 44.89 - 44.92****44.89**

If the respondent wishes to rely on any documents which he reasonably considers necessary to enable the appeal Court to decide the appeal and any application in addition to those filed by the appellant, he must make every effort to agree amendments to the appeal bundle with the appellant.

**44.90**

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

**44.91**

If the respondent prepares a supplemental bundle he must file three copies of it within 21 days after he is served with the appeal bundle, and must provide two additional copies for the appeal Court.

**44.92**

The respondent must serve any supplemental bundle on the appellant and any other respondent at the same time as he files it.

**Amendment of appeal notice 44.93****44.93**

An appeal notice may not be amended without the permission of the appeal Court. 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 44.94 - 44.96**

**44.94**

The appeal Court 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.

**44.95**

The Court will only exercise its powers under Rule 44.94 where there is a compelling reason for doing so.

**44.96**

Where a party was present at an oral hearing at which permission to appeal was given he may not subsequently apply for an order that the Court exercise its powers under Rule 44.94(2) or 44.94(3)

**Bundles of authorities 44.97 - 44.101****44.97**

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

**44.98**

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.

**44.99**

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.

**44.100**

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 legal representatives must file this bundle at least 48 hours before the hearing commences.

**44.101**

A bundle of authorities must bear a certification by the legal representatives responsible for arguing the case that the requirements of Rule 44.62 or 44.64 have been complied with in respect of each authority included.

**Supplementary skeleton arguments 44.102 - 44.105****44.102**

A supplementary skeleton argument on which the appellant wishes to rely must be filed no later than 14 days after the respondent's skeleton has been filed.

**44.103**

A supplementary skeleton argument on which the respondent wishes to rely must be filed 14 days after the appellant's supplementary skeleton and at least 14 days before the hearing.

**44.104**

All supplementary skeleton arguments must comply with the requirements set out in Rules 44.59 to 44.67.

**44.105**

At the hearing the Court 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 44.106 - 44.107**

### **44.106**

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

### **44.107**

Any party who fails to comply with the provisions of Rule 44.106 may be required to attend before the **Chief Justice** to seek permission to proceed with, or to oppose, the appeal.

## **Appeals to the Court of Appeal 44.108**

### **44.108**

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 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 44.109**

### **44.109**

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 the decision appealed, in whole or in part;
- (3) make any other order it considers appropriate;



(4) remit proceedings to the tribunal 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 44.110 - 44.113**

### **44.110**

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

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

(2) Rule 44.111 applies; or

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

### **44.111**

The hearing of an appeal will be a re-hearing (as opposed to a review of the decision of the lower Court) 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.

### **44.112**

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

### **44.113**

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

## **Evidence on appeal 44.114 - 44.116**

**44.114**

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

- (1) oral evidence; or
- (2) evidence which was not before the lower Court.

**44.115**

Subject to Rule 44.114, the Court 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.

**44.116**

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

**Conditions for allowing an appeal 44.117 - 44.119****44.117**

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

- (1) wrong; or
- (2) unjust because of a serious procedural or other irregularity in the proceedings in the lower Court.

**44.118**

The Court of First Instance will allow an appeal from a decision of a tribunal provided for in the Law, DIFC Law or Rules of Court 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.

#### **44.119**

The Court of First Instance will allow an appeal not referred to in Rule 44.118 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 44.120 - 44.122**

#### **44.120**

The fact that a Part 32 offer or payment into Court has been made must not be disclosed to any Judge of the appeal Court 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.

#### **44.121**

Rule 44.120 does not apply if the Part 32 offer or payment into Court is relevant to the substance of the appeal.

#### **44.122**

Rule 44.120 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 has been made is properly relevant to the matter to be decided.

## Who may exercise the powers of the Court of Appeal 44.123 - 44.128

### 44.123

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

### 44.124

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

- (1) for permission to appeal to the Court of Appeal (and to grant such permission subject to such conditions as may be ordered by the single judge);
- (2) for an extension or reduction of time for any document to be filed in an appeal to the Court of Appeal (including a general power to amend the times fixed by the rules or by order of the court, as may be the case);
- (3) for leave to amend the grounds of appeal;
- (4) for a stay;
- (5) to strike out an appeal in the event that:
  - (a) the appellant does not file a document within the time ordered and notice has been given by the Court in the order for filing that the appeal will be struck out if filing is not made strictly on time; or
  - (b) the appellant does not attend the hearing of the appeal in person or by his Counsel on the date fixed for hearing; or
- (6) to strike out an appeal in the event that a skeleton is not submitted.
- (7) The single judge shall also have the power to decide any matter of case management relating to the appeal on behalf of the full bench of the Court of Appeal.

### 44.125

Decisions of the Registrar or a single Judge and under Rules 44.123 or 11.124 may be made without an oral hearing.

**44.126**

A party may request any decision of the Registrar or the single Judge under Rules 44.123 or 44.124 (3) or (4) made without a hearing to be reviewed by the Court of Appeal at an oral hearing.

**44.127**

A request under Rule 44.126 must be filed within 7 days after the party is served with notice of the decision.

**44.128**

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

**Dismissal of applications or appeals by consent 44.129 - 44.131****44.129**

Where an appellant does not wish to pursue an application or an appeal, he may request the appeal Court 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 pays the costs of the application or appeal.

**44.130**

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

**44.131**

Where a settlement has been reached disposing of the application or appeal, the parties may make a joint request to the Court 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 44.132****44.132**

The appeal Court will not normally make an order allowing an appeal unless satisfied that the decision of the lower Court was wrong, but the appeal Court may set aside or vary the order of the lower Court 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 is requested by all parties to allow an application or an appeal the Court 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 44.133 - 44.135**

### **44.133**

Rules 44.134 and 44.135 apply where the presiding Judge is satisfied that the result of the appeal will attract no special degree of confidentiality or sensitivity.

### **44.134**

A copy of the written judgment may be made available to the parties' legal representatives by 4 p.m. two clear working days before judgment is due to be pronounced or such other period as the Court 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, 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.

### **44.135**

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

## **Attendance of legal representatives on the handing down of a reserved judgment 44.136**

### **44.136**

Where any consequential orders are agreed, the parties' legal representatives need not attend on the handing down of a reserved judgment. Where a legal representative does attend the Court 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, the judgment may be handed down by a single member of the Court.

## **Agreed orders following judgment 44.137 - 44.138**

### **44.137**

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 is handed down.

**44.138**

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

**Corrections to the draft judgment 44.139****44.139**

Any proposed correction to the draft judgment should be sent to the Registry with a copy to any other party.

**Immediate assessment of costs 44.140 - 44.141****44.140**

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 is present;
- (3) dismissal list hearings in the Court of Appeal at which the respondent is present;
- (4) appeals from case management decisions; and
- (5) appeals listed for one day or less.

**44.141**

Parties attending any of the hearings referred to in Rule 44.140 should be prepared to deal with the immediate assessment.

**Appeals to the Court of First Instance from the Director of Employment Standards 44.142 - 44.152****44.142**

Rules 44.143 to 44.152 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.

**44.143**

An appeal referred to in Rule 44.142 shall be filed within 30 days of receipt of the determination, decision, or fine appealed and in accordance with the requirements of this Part.

**44.144**

The Director of Employment Standards must be named as a party to an appeal referred to in Rule 44.142.

**44.145**

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

**44.146**

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

**44.147**

The Director of Employment Standards shall provide the Court 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.

**44.148**

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

**44.149**

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.



**44.150**

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

- (1) the appeal is not within the Court's jurisdiction;
- (2) the appeal is frivolous or trivial or is not brought in good faith.

**44.151**

On hearing the appeal the Court 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.

**44.152**

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

**No second appeals 44.153****44.153**

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

**Reopening of final appeals 44.154 - 44.164****44.154**

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.

**44.155**

In Rules 44.154, 44.156, 44.159 and 44.163, “appeal” includes an application for permission to appeal.

**44.156**

Permission is needed to make an application under Rule 44.154 to reopen a final determination of an appeal even in cases where permission was not needed for the original appeal.

**44.157**

Permission to reopen a final determination of an appeal must be sought from the Court whose decision the applicant wishes to reopen.

**44.158**

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

**44.159**

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

**44.160**

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

**44.161**

The application for permission, and any written statements supporting or opposing it, will be considered on paper by a single Judge.

**44.162**

There is no right to an oral hearing of an application for permission unless, exceptionally, the

Judge so directs.

**44.163**

The Judge 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.

**44.164**

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