

# Statement of Substance and Purpose and Summary of Draft Rules

MARCH 18, 2022 EXPLANATORY MEMORANDA

## Introduction

1. The proposed new Part 58 of the Rules of the DIFC Court creates the Digital Economy Court. This is a new division of the DIFC Courts intended to be at the forefront of resolving disputes relating to current and emergent technologies, including digital assets, cryptocurrency, big data, blockchain technologies, artificial intelligence and cloud services.
2. The Digital Economy Court has been established to attract new and emerging disputes to the DIFC and to help to position the DIFC Courts as the foremost modern commercial Court in the region and one of the most modern and forward-thinking courts in the world. The proposed new Part 58 will facilitate the efficient and modern resolution of digital economy disputes, facilitating the presentation of data, paperless hearings and smart forms.
3. This document summarises the key provisions in the proposed new Part 58 and sets out their substance and purpose.

## General provisions (RDC 58.1-58.4)

4. These provisions create the Digital Economy Court as a specialist division of the DIFC Court. They provide for the application of the RDC, Practice Directions and other court guidance unless Part 58 provides otherwise. A judge is appointed to be the Judge-in-Charge of the Digital Economy Court.

## Types of claims suitable for the Digital Economy Court (RDC 58.5-58.7)

5. These provisions define the types of claims that are suitable for determination in the Digital Economy Court. A non-exhaustive list of types of claims is given in RDC 58.7. There may be some overlap between claims that could be brought in the Digital Economy Court and claims that could be brought in other divisions, such as the Technology and Construction Division. Ultimately, it will be a matter for the court to decide which division a claim is most suited to.
6. These provisions also define those digital economy claims that are suitable for the Fast Digital Economy Claim procedure that is set out in RDC 58.57 to 58.91. Fast Digital Economy Claims are addressed below.

## Emphasis on digital determination of disputes (RDC 58.8-58.9)

7. As a modern, forward-thinking court, these provisions make express that the Digital Economy Court will as far as possible conduct proceedings using appropriate technology with a view to reducing the

environmental impact of court proceedings. This will include conducting hearings remotely wherever possible and using digital, rather than paper bundles. Parties are under a duty to assist the court in achieving this objective.

### **Powers over digital assets (RDC 58.10)**

8. This provision clarifies that the Digital Economy Court's powers to grant interim and final remedies includes the power to authorise judicial officers and others to effect digital transactions where a party refuses to do so and the means of effecting the digital transaction is within the court's control, or the control of someone over whom it has jurisdiction. This ensures that modern means of enforcement over digital assets will be available to the Digital Economy Court. This power can be used at any time in the proceedings.

### **Smart forms (RDC 58.11-58.12)**

9. These provisions authorise the use of smart forms in the Digital Economy Court. Unlike traditional court forms, users will provide information through a dynamic, artificial intelligence driven platform that will procure information from court users and then generate a digital document in a format useful to the court.

### **Commencement of claims (RDC 58.13-58.15)**

10. These provisions deal with the commencement of claims in the Digital Economy Court. As with the Technology and Construction Division, claims can be started in the Digital Economy Court using either the Part 7 or Part 8 procedure.

11. Parties can issue interim applications in the Digital Economy Courts before commencing a claim, but are required to apply at the same time for a determination that the claim is suitable for the Digital Economy Courts.

### **Service (RDC 58.16-58.26)**

12. These provisions deal with service in the Digital Economy Court. Service of claim forms continues to be governed by Part 9, but there are new provisions clarifying that alternative service may be ordered permitting the use of any digital method likely to bring the claim form to the attention of the defendant. This encourages service by email, digital messaging services or social media.

13. The remaining rules are an innovation in the Digital Economy Court. Parties will be expected to supply at the first opportunity nominated email addresses. Documents must be served on a party's nominated email address and are considered served if they are served on that email address. This ensures that email communication between parties and the use of digital rather than paper documents is the default for conducting litigation in the Digital Economy Court.

### **Transfer of proceedings (RDC 58.27-58.28)**

14. The court has a general power to transfer proceedings into and out of the Digital Economy Court. This ensures suitable claims are dealt with in the Digital Economy Court and cases that are not suitable, but which have been commenced in the Digital Economy Court, are transferred to a more appropriate division.

### **Case management (RDC 58.29-58.33)**

15. These provisions deal with general case management in the Digital Economy Court. There is a new requirement that parties prepare a list of issues in advance of the first Case Management Conference. This is to enable the court to better manage the proceedings to ensure more efficient and expeditious resolution (see, for example, below in relation to document production).

16. RDC 58.33 also contains a list of matters that the parties and the court will consider. This will include the joinder of third parties with interests in digital assets, directions for technology or artificial intelligence-led review of documents; directions for the facilitation of the presentation of digital data and consideration of whether issues can be determined without a hearing.

### **Assessors (RDC 58.34-58.36)**

17. There are new provisions dealing with assessors. The Digital Economy Court will encourage the use of assessors where there are technical issues as an alternative to the use of party appointed experts. The new rules permit each party to nominate an assessor who will sit with and advise the court on technical matters at hearings.

### **Applications (RDC 58.37-58.38)**

18. There is a new timetable for heavy applications. As proceedings in the Digital Economy Court are expected to be conducted expeditiously, there is now a shorter timetable for the filing and service of evidence and an indication that the court will list heavy applications within 2 months of service of evidence by a respondent. Parties will be expected to justify departures from this timetable.

### **Document production (RDC 58.39-58.51)**

19. There are new rules for document production. Their purpose is to ensure that the most efficient and cost-effective document production processes are adopted. Parties give initial disclosure of essential documents on which they rely in advance of the Case Management Conference.

20. Model A involves production of only 'known adverse' documents. Model B involves the production of further documents on which a party relies. Model C involves the usual request led production found in Part 28. The court and the parties are then expected to consider which of three different disclosure models are most suitable for each issue in the case. Different models can be adopted for different issues and it is not necessary for each party to give production according to the same model on every issue.

21. There is a new continuing obligation to produce known adverse documents, i.e. those documents that a party is aware of and that support another party's case or harm the producing party's case. This ensures that relevant documents in any party's possession are quickly identified and put before the court.

#### **Trial witness statements (RDC 58.52-58.55)**

22. There are new provisions relating to trial witness statements. These are designed to ensure that the content of statements is limited to the evidence that a witness can properly give, rather than being a lengthy exposition of the documents. The aim of these new provisions is to ensure that the preparation of witness statements is short and focused on the issues on which witness evidence is relevant.

#### **Hearings (RDC 58.56)**

23. This new rule makes clear that the presumption in the Digital Economy Court is that hearings will be conducted remotely with the digital presentation of material.

#### **Fast digital economy claims procedure (RDC 58.57-58.91)**

24. This is a new procedure specifically designed for the swift and efficient resolution of low value high volume digital economy claims. It is suitable for claims of AED100,000 or less, although parties can consent to larger claims being dealt with under this procedure. Claims are dealt with in private and any judgments that are published will be anonymised.

25. Most of the RDC are disapplied, in favour of the procedure contained in these rules. Claimant and defendant serve successive statements of case to which are attached the critical evidence and legal argument on which a party relies. If a party has a jurisdictional objection, that is also made in these documents.

26. Once those statements of case are served, the court will generally determine the claim and any counterclaim (including any jurisdictional objections) without a hearing. The aim will be for the court to determine the claim within three months of service of the claim form. If a short hearing is required, it will take place informally and in whatever manner the court considers in suitable for the efficient determination of the claim.

27. There are less onerous service provisions. A document is served provided it is delivered by a means that is reasonably likely to bring it to the attention of the other party.

28. The court retains the power to transfer proceedings out to the Digital Economy Court if the issues raised are not suitable for the fast claims procedure.

29. The fast digital economy claims procedure is a no adverse legal cost regime. The successful party is entitled to reimbursement of court fees from the unsuccessful party. But the unsuccessful party will not have to pay the legal fees of the successful party.

30. There is a limited route of appeal to the Digital Economy Court, but only on issues of law or procedural irregularity. There are also no second appeals to the Court of Appeal.