



**DIFC Courts' Rules Sub-Committee**

**MEETING MINUTES**

**6 June 2017**

**DRA Offices**

**Attendees:**

Adrian Chadwick, Hadeef & Partners

Philip Punwar, Baker Botts

Peter Smith, Al Tamimi & Company on behalf of Rita Jaballah

Alessandro Tricoli, Fichte & Co Legal Consulting

Graham Lovett, Gibson Dunn

Patrick Bourke, Norton Rose

Amna Al Owais, DIFC Courts

Natasha Bakirci, DIFC Courts

Lema Hatim, DIFC Courts

Mahika Hart, DIFC Courts

Jonathan Lim, Intern DIFC Courts

Cheryl Fernandes (Committee Secretary), DIFC Courts

**Apologies:**

Ghada Qaisi Audi, Ahmed Seddiqi & Sons

Sheila Shadmand, Jones Day

Mark Beer, DIFC Courts

1. **Welcome:** Chairman Patrick Bourke welcomes all attending.

2. The minutes of the meeting held on 15 December 2016 were approved.
3. The proposed draft new Part 56 of the RDC – introducing the specialist Technology & Construction Division (TCD); Assistant Registrar Natasha Bakirci updated members regarding the draft rules for its proposed specialist Technology and Construction Division. The draft rules are in line with the structure of the UK's Technology and Construction Courts and are intended to apply to a wide range of claims involving “technically complex” issues.

Members were of the opinion that it wouldn't be necessary to have the TCD judge approve the transfer as is the case in England as we do not have sufficient judges, and are unsure of who those judges will be. We also have limited geographical scope, with one court in DIFC.

Also, there seemed to be consensus that transfer should be decided by the Registry and not upon Part 23 application. The claim form will have a box to indicate whether the Claimant thinks that it should go to the TCD and the Registry/a judge will take the final un-appealable decision.

4. The proposed rules amendments for E-service allowing SCT Claimants to serve electronically through a number of social media platforms; Assistant Registrar Lema Hatim updated members that the DIFC Courts are exploring the option of allowing for service of process by electronic means upon application at the outset at the DIFC Courts' Small Claims Tribunal.

The courts are considering to allow for service of process by various types of electronic means (whether it is email or social media or instant messaging applications), and this not only as an alternative means of service as they are now under Part 9 of the Rules of the DIFC Courts (RDCs) but as a means of service upon application to the SCT at the outset. We are currently focusing on considering the proposed change for the SCT only, where service is in most cases effected by the SCT directly onto the defendant, under the Rules of Part 53 of the RDC.

5. Updates regarding the revised Part 44 RDC rules on leave to appeal were provided by Assistant Registrar Natasha Bakirci. The main changes in Procedure require Appellants to first make their application for permission to appeal to the lower Court: either (i) orally at the hearing at which the decision to be appealed was made; or (ii) in an appellant's notice. The lower Court may refer an application for permission to appeal to the appeal Court for a decision. Where the lower Court refuses to give permission to appeal, a further (second) application for permission to appeal may be made to the appeal Court in an appellant's notice. The appellant now has 21 days after the date of the decision appealed against in which to file the appellant's notice, where the lower Court has made no other direction. The Respondent has now been given an opportunity to make submissions in opposition to permission to appeal



within 21 days of the service upon him of the appellant's notice. 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.

An application for permission to appeal not made orally to the lower Court at the hearing will ordinarily be decided without an oral hearing, although 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. No possibility anymore for a party to request any decision of the Registrar or single Judge refusing permission to appeal without a hearing to be reviewed by the Court of Appeal at an oral hearing.

6. **Updates to the AOL Code of Conduct regarding Third Party Funding:** Mahika Hart updated members regarding the proposed amendments to the Academy of Law's Code of Conduct to address ethical issues to do with Third Party Funding (TPF) in the DIFC. These changes are suggested in tandem with the recent release by the DIFC Courts of Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts ("PD 2/2017") on 14 March 2017. This PD only requires parties to indicate whether or not they qualify as a "Funded Party" in their DIFC Courts case and if so, to identify the name of the relevant "Funder/s". In order to further address instances of TPF in the DIFC legal community, changes to the AOL's Code of Conduct were proposed to address Practitioners' obligations to advise regarding TPF, Practitioners' obligations to disclose independent benefits received from TPF, and Practitioners' obligations regarding conflicts between instructions from the client and the funder. Comments and concerns were recorded from members of the committee regarding the proposed changes, especially as regards whether TPF should be included in the Code of Conduct as a conduct issue. General consensus was reached regarding the changes relevant to referral fees and conflicting instructions.
7. No other matters were raised by members.
8. Meeting closed at 11.40am

Next Meeting Date – 2<sup>nd</sup> October 2017, 11.00am -12.30pm.