



DIFC Courts' Rules Sub-Committee

MEETING MINUTES

11 December 2018

DRA Offices

Attendees:

Adrian Chadwick, Hadeef & Partners

Philip Punwar, Baker Botts

Sheila Shadmand, Jones Day

Alessandro Tricoli, Fichte & Co Legal Consulting

Graham Lovett, Gibson Dunn

Diedre Walker, Norton Rose Fulbright

Nour Hineidi Kirk, Deputy Registrar, DIFC Courts (non-voting member)

Ayesha Bin Kalban, Assistant Registrar, DIFC Courts (non-voting member)

Guests:

Chief Justice Zaki Azmi

Peter Wood (substituting for Rita Jaballah), Al Tamimi & Company

Apologies:

Ghada Qaisi Audi, Ahmed Seddiqi & Sons

Welcome:

The Deputy Registrar Nour Hineidi welcomes all attending and introduces the newly appointed Chief Justice Zaki Azmi. Justice Zaki Azmi thanked members for letting him attend the meeting and let members know that the purpose of his attendance was to take feedback from members on how best the DIFC Courts can improve its services.



The Chief Justice spoke about his keenness to expedite cases in the DIFC Courts and asked members to provide their feedback on this. Specifically, whether cases could progress to hearing no later than 6 months after the CMC.

After some lengthy discussion, members agreed that cases in the DIFC Court move relatively efficiently (and this was based on client feedback). The general consensus was that due to the complexities surrounding some cases, the 6 month period for cases to proceed to trial after the CMC is perhaps unrealistic.

The Chief Justice then invited the Deputy Registrar to make some comments about the Courts' intention to become strict about late filing.

The Deputy Registrar discussed a situation whereby a law firm was charged a late filing fee for failing to submit documents on time. Late filing fees are already addressed in a Practice Direction but have never actually been implemented in practice.

Some members raised concerns with the question of imposing late filing fees on the basis that the real penalty is that the document should be considered as having not been filed (and the party should reap those consequences). The Deputy Registrar clarified that this was of course logical, but with the situation in question – the Court had asked parties to submit skeletons, which was instrumental in assisting the Court for the purposes of the hearing. If the skeleton was deemed 'not filed' then the hearing would have proceeded, but would have taken longer than the time set down for it (while the relevant Judicial Officer navigated through the 'unfiled' skeleton). As such, in most circumstances, it would make sense that the penalty is that the document is not deemed filed, but where the Registry can see that the filing was not made in time due to the oversight of the law firm acting for the party, for example, a penalty would be justified.

Adrian Chadwick chaired the meeting.

Nour Hineidi, Deputy Registrar of the DIFC Courts provided members with the below updates:

- Members were informed that the DIFC Courts plan on imposing a cap on the filing fee for a Bill of Cost assessment, to which members agreed. Fees, for filing of a Notice of Assessment, would be capped at USD \$130,000 (like the filing fee for Part 7 claims).
- Nour Hineidi informed members that for the first-time documents were in the process of being served under the mechanisms provided in the Riyadh Convention the through Court to Court process, from the DIFC Courts to the Al Dammam Commercial Courts in Saudi Arabia.



Nour Hineidi updated members that the DIFC Courts are working on some proposed Practice Directions (PDs) for 2019.

- Judges referring cases to mediation: this would be particularly sensible when the dispute has a relationship at stake for example, or concerns family members. Mediation could be in house before a judge, or the parties to mediate through a third party provider. General consensus is that members do not see an issue with the implementation of such a PD.
- Service by way of email as a matter of right: this was to be introduced on the basis that more often than not, parties were applying for alternative service (to serve by way of email). Members felt that introducing such a PD would create issues in terms of proof of service and that it was perhaps best to follow best practice in other jurisdictions and continue to have parties apply for alternative service for email service.
- Index of documents at the time of filing: the DIFC Courts will make it mandatory for parties to provide an index of documents provided at the time of filing, which makes it easier for a judge to refer to documents within the bundles. Index would sit on the forefront of the filed documents and would contain details such as the nature of the document being filed, party filing the document, solicitor firm acting for the party, number of documents, number of pages within each document and in total and the date of filing.
- Hearing bundles: under direction from the Chief Justice, the Registry is planning on issuing a Practice Direction on “agreed” and “non-agreed” bundles. The Chief Justice finds it confusing when two duplicate documents appear in for example, the Claimant’s bundle and also the Respondent’s bundle. This means that the Judge would then make two sets of notes on two separate documents which is confusing. The Deputy Registrar reminded members that such a Practice Direction would be redundant for those using the e-bundling service.

Drafts of these PDs will be circulated to members for their review before being finalised.

Other business

Members expressed concern over:

- the number of PDs that were being issued by the Registry; and
- how irregularly the Academy of Law (AoL) loose-leaf book was being updated.



The Deputy Registrar suggested the following changes for 2019:

- PDs would be incorporated into the Rules on a biannual basis;
- updated Rules would have a footnote reference bearing the PD introducing them;
- paragraph numbers and new paragraph numbers would be revisited. This is on the back of feedback from the Chief Justice who expressed his concern that upon the introduction of new Rules, there is typically a change in the paragraph number so that the new Rules slots into logical sequential numbering. One way forward would be to include the amendment under a different number reference so that the old number reference don't change. Another way forward would be to have annual Rule editions; and
- members felt that the Rule book (loose-leaf) provided by the Academy of law is not up to date. All the rules, with amendments should be in the loose-leaf book so that practitioners to not have to refer to the Rule book and Pds at the same time. This will be raised with the Academy of Law to ensure that the loose-leaf be updated every quarter. will also discuss on how we can update the PDs about into the Rules. We will also discuss on how we can update the PDs about into the Rules.

Members expressed that the Registry often delays in responding to email, it was agreed that any urgent matter be marked to the attention of the Registrars. The Deputy Registrar reminded members that in case of extreme urgency, the Registrars should also be phoned on their mobiles.

Members raised concerns regarding Local law firms who lack expertise when it comes to advocacy in the DIFC Courts as compared to the International law firm. The Deputy Registrar said that this was feedback which has been raised before, and a solution would be to perhaps introduce a mandatory and truncated version of the AoL's common law program at a lower price and to run over the space of say 2 or 3 days.

Members expressed their interest in assisting the Courts with drafting new rules, and practice directions rather than restricting their involvement at the consultation phase. The Deputy Registrar agreed that this was very sensible and perhaps very much in tune with the objective of the RSC.

It was agreed that the new charter of the Rules subcommittee will be sent to all members for their review and comments and will be finalised at the next meeting.

Meeting ended at 1.00pm.

Next meeting dates March 2019.