



DIFC Courts' Rules Sub-Committee

MEETING MINUTES

7 August 2018

DRA Offices

Attendees:

Adrian Chadwick, Hadeef & Partners

Philip Punwar, Baker Botts

Sheila Shadmand, Jones Day

Alessandro Tricoli, Fichte & Co Legal Consulting

Rita Jaballah, Al Tamimi & Company

Nour Hineidi Kirk, Deputy Registrar, DIFC Courts

Apologies:

Ghada Qaisi Audi, Ahmed Seddiqi & Sons

Graham Lovett, Gibson Dunn

Cheryl Fernandes (Committee Secretary), DIFC Courts

Ayesha Bin Kalban, Assistant Registrar, DIFC Courts



1. Welcome

Deputy Registrar Nour Hineidi Kirk welcomed all members to the first Committee meeting for the year.

2. Amendment to Court Fees for DIFC Courts

Nour Hineidi Kirk informed members that the DIFC Courts are currently in the process of updating their court fees. There is currently a USD 1500 fee for filing an application for a Grant of Probate that shall be payable to the DIFC Courts. The DIFC Courts have also introduced other court fees in the draft 2018 Fee Schedule (namely probate fees, letter application fees and revised reimbursement mechanisms).

3. Applications

Members raised the point that some general applications do not currently fall under any of the prescribed categories in the fee schedule. For example, a recent application was made under the Riyadh Convention (a court-to-court application) that did not fit under any of the prescribed application categories of application under the rules.

4. Reimbursement process

The provision for reimbursement under Schedule 4 and its problems were discussed. The Courts have found that the current reimbursement mechanism is convoluted as there is no timeline and no requirement for an application to be made. This raised the question of whether the Courts should ask parties to apply for a reimbursement or whether reimbursements should be dispensed with. It was noted that many parties do not seek reimbursements promptly and when reimbursements are applied for a few years after the discontinuation of a case, there is a considerable backlog created.

There seemed to be a consensus that the Courts should not get rid of the mechanism of reimbursement of court fees, but rather the DIFC Courts should introduce a time limit for when a reimbursement can be claimed. There was a subsequent discussion surrounding how long this should be and it was agreed that a 60-day time limit would be appropriate.

Members enquired about the reimbursement mechanism and (i) whether filing fees paid could be put in an Escrow account; and (ii) how the Court works out the value of reimbursement. Nour Kirk explained that the procedure is an objective, proportionate exercise in calculating 65% of the fee and the process is transparent.



5. Practice Direction No.3 of 2018 (DIFC Wills Registry for Non-Muslims)

This Practice Direction came into effect on 24 June 2018:

1. Following the establishment of the “Wills Registry for Non-Muslims” (‘WRNM’) pursuant to DIFC Courts Rules of Court Order No.7 of 2017, issued on 5 November 2017, the DIFC Wills and Probate Registry Rules (‘WPR Rules’) were amended pursuant to the Dispute Resolution Authority Practice Direction No.8 of 2017, issued on 26 November 2017, to provide that all applications for a Grant of Probate shall be made at the WRNM.
2. The fee for filing an application for a Grant of Probate at the WRNM shall be USD 1500, payable to the DIFC Courts.
3. A further fee of USD 100 shall be chargeable for any execution letters sought from the DIFC Courts in order to enforce a Grant of Probate order externally. Other fees which may be incurred in respect of special applications, notifications, objections, and searches are set out in the Schedule to this Practice Direction.
4. A fee of USD 300 shall be chargeable for the late Identification of Assets. The fee will apply to the administrative costs (including the issuing of a further Probate Order and Deputisation Letter) associated with the late identification of assets. A fee of USD300 shall also be chargeable for any subsequent amendments required to be made to the Grant of Probate Order.
5. The DIFC Courts Fees Schedule shall be amended to incorporate the above.

6. Proposed Practice Direction to help deal with the process and case management for contentious probate claims.

The DIFC Courts are due to deal with their first contentious probate case, however the RDC Part 55 Rules and the Probate and Wills Registry Rules are not currently very clear on the process following the filing of a contentious probate claim. It has therefore been proposed that it may be necessary to issue a Practice Direction or Registrars Direction to help clarify matters.



7. Proposed Practice Direction re email communication with the DIFC Courts Registry

Nour Hineidi Kirk raised the issue of parties copying the Registry into 'email banter' for correspondence which the Registry need not be copied into. Members agreed that it would be useful to issue a Practice Direction regulating contact with the Registry (and limiting it to circumstances where the Registry is being asked to take action on a certain matter).

8. Proposed Practice Direction on Riyadh Convention

The Practice Direction will go through the application process for the court-to-court process. Although this was traditionally done by letter, Nour Hineidi Kirk explained that the administrative burden of the process creates the need for a fee to cover expenses (such as couriers). It was agreed that a court-to-court mechanism was more efficient than the diplomatic mechanism for enforcing orders abroad.

9. E-bundling

There was a discussion surrounding the e-bundling initiative as part of Dubai's paperless 2020 vision and whether it was more cost effective than printing hard copy documents.

Several members raised concerns over the cost of e-bundling which is currently GBP 0.35 per page using CaseLines, the cloud-based legal management platform. It was observed that printing hard copies of documents was cheaper, and that this was a deterrent to using e-bundling. CaseLines' services were discussed in more detail including the existence of a minimum fee (members were unsure how much this was but estimates of USD 150 were put forward) and the maximum e-bundle size (300 pages) which would cost USD 100 (clearly making the service more expensive than printing). Nour Hineidi Kirk suggested it may be beneficial for CaseLines to showcase their services once again to all practitioners.

Nour Hineidi Kirk made the point that prices could be negotiated, and membership discounts may be available which would benefit firms that deal with lots of cases. There was further discussion regarding the pricing of e-bundling (which is at CaseLines' discretion).

The implementation of e-bundling (which is not yet compulsory) was discussed. However, there is potential for e-bundling to be made compulsory from 1 June 2019.

Members discussed the trial period for e-bundling and how the trial period would be beneficial in helping the Courts assess the pros and cons of the system, as well as methods of remedying the cons. Nour Hineidi Kirk suggested the possibility of extending the trial period because no cases have so far tested the platform in the UAE.



Members discussed finding an alternative provider for e-bundling services and agreed that this should be looked into. Alternative options from Asian providers in Hong Kong and Singapore were discussed as a possibility, since CaseLines is from the UK where the costs of these services tends to be high.

10. DIFC Court Fees

Members raised concerns over DIFC court fees in general and the importance of avoiding the perception of exaggerated court fees. The fees for the High Court of England and Wales were discussed as an example of fees being prohibitive and slowing down the work attracted to that court. Members stressed the need to lower court fees, especially for professional clients who are able to compare fees globally and who may find that globally, the DIFC Courts' fees are not competitive.

11. Election of New Chair

Members discussed the procedure for electing a new Chair to the Rules Sub-Committee following the departure of the previous Chairperson. This discussion raised questions regarding how members are currently appointed to the Committee and how this should be reformed going forward.

Different methods of appointment were discussed by the members, noting that some committees appoint by firm and others appoint by person. The Rules Sub-Committee was established about six years ago by judicial direction whereby members were chosen by the judge on the basis of their experience. However, it was agreed that there is currently no set procedure and consequently, the practitioners are probably unaware of how to become part of the Committee.

Further questions regarding the organisation of the Committee were discussed, such as whether a charter for the Committee should be created. It was put forward that the Chief Justice of the DIFC Courts should be consulted regarding his views on the Committee, thereby providing guidance on the drafting of the charter. The members agreed that nominations should be opened to all registered practitioners and votes collected for each nominee which would yield the advantage of attracting fresh talent and more people for a fuller Committee.

There was a suggestion for the creation of a Deputy Chair role. The discussion then moved on to which members wanted to nominate themselves for chair. Philip Punwar and Adrian Chadwick put themselves forward. However, since other members of the committee were absent at the meeting it was agreed that nominations and votes could be put forward and collected via email.

12. Other matters arising from the Committee

Philip Punwar stated that in his experience, there was some uncertainty regarding Search Orders. Members suggested the need for a Practice Direction that covers search orders



since there is currently no such provision for this in either England and Wales or Dubai. He asserted the need for the Practice Direction to cover simple questions that applicants need answers to. For instance, applicants need to understand how they effectively nominate the supervising legal representative. Issues such as whether the applicants should enter into an engagement letter with the supervising legal representative/ firm or whether this was unnecessary because a failure to pay legal fees would be viewed as a professional misconduct default were also raised. Mr Punwar suggested that these queries could easily be set out in a Practice Direction on Search Orders and volunteered to put a draft question on paper to get this going.

Updating the Draft Order; it was suggested that the Draft Order could be amended to move towards a paperless search, since most firms now store information on the cloud. Issues relating to technology were discussed such as the fact that the Order does not anticipate the modern age and needs to reflect that the applicant's IT consultants may have to take the downloading and copying offsite into secure premises where the supervising legal representative may not be present. Concerns over the security of data and the availability of insurance to cover damage to or breach of data were also raised.

Other practical difficulties were also noted, including the fact that Search Orders may refer to certain classes of documents but IT specialists are unable to identify what is within the scope of the search. Some solutions were put forward such as whether the search terms for copying could be defined and whether an agreement could be made in advance.

In addition, it was agreed that the Practice Direction should make clear the finish time for the search. Members also suggested that the Practice Direction should include when the supervisor should attend a meeting and set up a process for how queries can be clarified for the supervising legal representative by the Court. Lastly, the lack of provision in relation to the supervising legal representative's fees in the Draft Order were also discussed and it was agreed that this should be included in the Practice Direction.

The members also agreed it would be worth looking into whether there were any common law jurisdictions that have introduced a new Draft Order. Some members suggested it would be helpful to look in to the US and Exchange Commission on global cryptocurrencies.

Meeting closed at 1.00pm

Next meeting to be in December 2018.