

THE MANDATORY CODE OF CONDUCT FOR LEGAL PRACTITIONERS IN THE DIFC COURTS¹

Part A - Governing Principles

The DIFC Courts (“**the Court**”) were established to uphold the laws of the DIFC and to advance the rule of law by ensuring the just and effective resolution of disputes within the Court’s jurisdiction. The DIFC Dispute Resolution Authority (DRA) Academy of Law was formed by the President of the DIFC through Resolution 3 of 2014, and following the issue of DRA Order No. 2 of 2015 has taken over responsibility for the ancillary legal services previously provided by the DIFC Courts, including the registration of practitioners and the promotion and maintenance of legal professional ethics. By registering with the Academy of Law to practise in the Court, each individual registered legal practitioner (“**Practitioner**”) undertakes to act with integrity and independence in support of the Court and the wider community that it serves.

The right of any Practitioner to practise in the Court is conditional upon:

- (i) observance of this Mandatory Code of Conduct together with any Supplementary Code of Conduct Practice Direction (“**Supplement**”) issued periodically by the Chief Justice (together “**the Code**”);
- (ii) recognition of the Court’s power to refuse to permit a specific Practitioner to represent a party (or continue to represent a party) where, in the opinion of the judge hearing the matter, the integrity of the process would be threatened by that Practitioner’s representation of the party or the fair administration of justice in accordance with the Overriding Objective at **Part 1.5** of the Rules of the DIFC Courts (“**the Rules**”) would be put in peril;
- (iii) recognition of the Court’s and the Academy of Law’s power to suspend, terminate or place conditions on a Practitioner’s registration in the circumstances set out at **Part G** below; and
- (iv) recognition of the Court’s and the Academy of Law’s power to sanction any breach of the Code as provided for at **Part F** below.

For the purposes of the Code, practice in the Court includes the issue and conduct of proceedings as well as advocacy.

Part B - Duties Owed to the Court

1. Practitioners shall deal with the Court and its staff honestly, co-operatively, with integrity and with civility.
2. Practitioners shall ensure that they are familiar with the Rules and in particular with the provisions of the Overriding Objective.
3. Practitioners shall ensure that they are familiar with such DIFC laws and Dubai laws establishing the DIFC as may be relevant to the matter before the Court.

¹ Revised by DRA Order No. 1 of 2017 on 29 October 2017

4. Practitioners shall never knowingly or recklessly make any incorrect or misleading statement of fact or law to the Court and shall correct any material incorrect or misleading statement of fact or law at the earliest opportunity.
5. Practitioners shall inform the Court of all relevant decisions and legislative provisions of which they are aware, regardless of whether the effect is favourable or unfavourable to the contention for which they argue.
6. Practitioners shall not appear as advocate or otherwise conduct proceedings before the Court in any matter in which they have reason to believe they may be a witness, save where any evidence they may give is likely to be purely formal or uncontroversial.

Part C – Duties Owed to Clients

7. Practitioners shall fearlessly advance, defend and protect the interests of their client before the Court without regard to any consequences to themselves or any other person.
8. Practitioners shall not agree to act for a client in any matter before the Court if:
 - (i) the Practitioner owes a separate duty to act in the best interests of another client and (a) those clients are competing with each other for the same objective and (b) the Practitioner does not have the written consent of each client to act for the other client, or
 - (ii) the Practitioner's duty to act in the best interests of a client conflicts, or there is a significant risk that it may conflict, with the Practitioner's or the law firm's own interests in the same or related asset, liability or matter.

Part C-8 shall also apply to any law firm to which the Practitioner belongs.

9. Practitioners shall only agree to act in proceedings before the Court if they can handle them promptly, with competence and without undue interference from the pressure of other work.
10. Practitioners shall not seek to provoke or prolong Court proceedings unnecessarily, nor shall they undertake work in a manner which improperly increases the fees payable to them.
11. Practitioners shall at the earliest opportunity advise their client of any appropriate alternative means of dispute resolution.
12. Practitioners shall at the time of their engagement advise their client of the Court's discretion as to costs and in particular the general rule at **Part 38.7(1)** of the Rules that the unsuccessful party will be ordered to pay the reasonable legal costs and expenses of the successful party.
13. Practitioners shall at the time of their engagement enter into a clear and transparent fee agreement with their client and thereafter ensure that sufficient records are kept of work done to enable the Court to properly assess any legal costs and expenses claimed during, or at the conclusion of, proceedings.

14. Practitioners shall keep information communicated to them by their client confidential unless such disclosure is authorised by the client, ordered by the Court or required by law. This duty continues even after the Practitioner has ceased to act for the client.
15. Practitioners that have acted for a client in a matter shall not thereafter act against the client (or against persons who were involved in or associated with the client in that matter) in the same or any related matter before the Court.

Part D – Duties Owed to Other Practitioners

16. Practitioners shall deal with each other honestly, co-operatively and with civility.

Part E – General Duties

17. Practitioners shall not engage in conduct that undermines the Overriding Objective or which may otherwise result in procedural unfairness.
18. Practitioners shall not act in any matter before the Court unless satisfied of their continuing adherence to the Academy of Law’s registration criteria.
19. Practitioners shall abstain from any behaviour which may tend to discredit the Court and the reputation of its Practitioners.
20. Practitioners shall never withdraw from any matter before the Court in order to confer a tactical advantage upon a party.
21. Practitioners instructed in respect of a matter before the Court shall not initiate any communication about that matter directly with a party who is known to have retained another Practitioner to represent them in the matter. The only exceptions to this duty arise where (i) the Practitioner has obtained the consent of the other Practitioner (ii) the relevant communication is a notice which by law or contract must be personally served on the other Practitioner’s client or (iii) the interests of the party with which it is intended to communicate will be prejudiced if the communication is delayed. In the latter case the other Practitioner must be informed as soon as possible.
22. Practitioners shall not agree to act in any matter before the Court other than at the direct request of the client party concerned, or their clearly authorised agent. For the purposes of this Code an insurer acting in the name of an insured shall be deemed a client party.
23. Subject to any relevant provisions of the Rules, Practitioners shall not disclose to the Court prior to judgment, the content of any settlement offers or settlement negotiations, regardless of whether these have expressly been stated to be “Without Prejudice”, unless the communication containing the settlement offer or negotiations has been expressly marked or otherwise identified as sent on an open basis.

Part F – Sanctions for Breach of the Code

24. Any complaint by any person or body (“**the Complainant**”) that a Practitioner has acted in breach of the Code shall be made in writing to the Director of the DRA Academy of

- Law (“the Director” of the “Academy of Law”). The Director² shall then forward the complaint to a Registrar of the DIFC Courts, which includes Senior Registrars, the Assistant Registrar, and any other Registrar who may be appointed in future (‘Complaints Committee’).
25. Where the facts and circumstances of the complaint involve any Registrar to any significant degree, it shall be allocated to another Registrar. Where the facts and circumstances of the complaint involve all of the Registrars, the Chief Justice may nominate any other officer of the Court to discharge any of the Registrar’s duties under **Part F**.
 26. Where there is inappropriate conduct in Court, the registry may write to the Academy of Law with details of the Court’s feedback on the perceived incident of the inappropriate conduct. The Registry may further request the Academy of Law to reach out to the concerned Practitioner for the purposes of giving him /her the feedback, and/or requiring that Practitioner to consider training or counselling by a Senior Lawyer, and reminding that practitioner of his or her duties to the Court.
 27. A complaint under this part may be made by the Court or the Academy of Law itself. Where the Court is the Complainant, the complaint shall be made by the Court acting through a Registrar or any other officer of the Court as the Chief Justice may appoint for that purpose. Where the Academy of Law is the Complainant, the complaint shall be made by the Director.
 28. The complaint must be investigated and processed within a maximum period of 4 months from the date that the Assessors have been appointed (if applicable) and the complete documents have been submitted by parties. The Chief Justice may, upon written application by the Complaints Committee, extend the period within which the complaint must be processed.
 29. No complaint received by a Registrar more than 12 months after the facts complained of shall be accepted, unless the Registrar is satisfied that the Complainant suffered from an impediment that prevented him making the Complaint within that time. Where the Registrar is satisfied that the Complainant suffered from an impediment, the complaint will not be accepted if received more than 12 months after the removal of such impediment.
 30. Unless the allocated Registrar decides on reasonable grounds that the complaint is frivolous or vexatious he³ shall:
 - (i) Forward a copy of the complaint to the Practitioner;
 - (ii) Require from the Practitioner a written response to the complaint;
 - (iii) Make any further investigation he deems appropriate;
 - (iv) Issue a reasoned written decision on the complaint⁴.
 31. Subject to **Part F-25**, a Practitioner against whom a complaint is made, may require that it is investigated and decided upon jointly by a Registrar and two independent Assessors chosen by the Registrar from the Register of Practitioners. The Registrar shall be responsible for drawing up and issuing the decision, which decision shall be that of the majority. Should either side wish to lodge an objection as regards the suitability of an

² Or one of the officers of the Academy of Law.

³ All references to the masculine gender in the Code shall be read as including the feminine gender.

⁴ This may be done through the Academy of Law.

Assessor who has been chosen for this purpose by the Registrar, they may do so in writing to the Chief Justice within 5 working days of the publication of the identity of the Assessor in question. The Chief Justice's decision in this connection will be final.

32. Assessors shall participate in the investigation of the complaint on a Pro Bono basis.
33. (1) The Court, acting through a Registrar, the Chief Justice, the Director of the Academy of Law or any nominee of the Chief Justice, may impose the following sanctions upon any Practitioner found on a balance of probabilities to have committed a breach of the Code:
- (a) Private Admonition⁵;
 - (b) Public Admonition;
 - (c) Fine not exceeding US\$5,000 in the case of an individual Practitioner and US\$15,000 in the case of a firm;
 - (d) Suspension from the Register of Practitioners for a period of time not exceeding 3 years;
 - (e) Removal from the Register of Practitioners.
- (2) The Academy of Law reserves the discretion to publish redacted versions of decisions where no breach of the Code has been found, if considered beneficial to the legal community. Parties shall first be invited to submit their comments and the greatest care shall be taken to ensure the anonymity of the parties in any eventual publication of the decision.
- (2) The Court may impose a combination of sanctions. Any sanction other than a Private Admonition shall be published by the Academy of Law together with a summary of the complaint and the names of the Complainant and the Practitioner.⁶
- (3) When imposing any sanction other than a Private Admonition, the Academy of Law may notify the fact to any Bar Association or similar body responsible for the supervision or regulation of the Practitioner concerned.
- (4) Save where the Court of Appeal orders otherwise, the Court may stay the implementation of any sanction and/or direct that its decision shall be kept confidential, for a period not exceeding 60 clear days from the date it was issued.
34. A decision may be reviewed, or at its discretion a complaint re-heard, by the Court of Appeal on the application of the Practitioner or the Complainant.

Part G – Matters Affecting Registration

⁵ "Private admonition" shall include for the purposes of this Code the issuing of redacted judgments for the benefit of the local legal community.

⁶ Private admonitions may be published, with the names of the parties having been redacted.

35. . (1) Where a Practitioner:-
- (a) Has been sentenced to a term of imprisonment in respect of any civil or criminal proceedings in Dubai or elsewhere;
 - (b) Has been convicted of an offence involving dishonesty or fraud in Dubai or elsewhere;
 - (c) Has been convicted of an offence in relation to his conduct in his practice of law in Dubai or elsewhere;
 - (d) As a result of a bankruptcy order made against him, is prohibited by the relevant bankruptcy law from having charge of clients' moneys;
 - (e) Has been found guilty by any Court or Tribunal outside the DIFC having jurisdiction over his conduct as a practising lawyer (whether in Dubai or elsewhere) of a violation of a code of professional ethics applicable to him;
 - (f) Is incapacitated by illness or accident, or by the Practitioner's physical or mental condition, to such extent as to be unable to attend to his practice;
 - (g) Is incapable of conducting cases in court as advocate either because of difficulties with the English language or by reason of a lack of appropriate litigation expertise;
 - (h) Has stolen or otherwise improperly dealt with clients' moneys.
- a judge of the Court, if satisfied that any of the above conditions has been met, may on the application of an officer of the Registry make an order:-
- (i) Suspending the Practitioner from exercising his rights as a registered Practitioner for an appropriate period; or
 - (ii) Imposing conditions with which the Practitioner must comply on a continuing basis in order to remain enrolled on the Register of Practitioners; or
 - (iii) Terminating the right of the Practitioner to remain enrolled on the Register of Practitioners.
- (2) An order made under **Part G-35 (1)** may be reviewed or, at its discretion, the application for the order may be re-heard, by the Court of Appeal on the application of the Practitioner.
- (3) Save where the Court of Appeal orders otherwise, the Court may stay the implementation of its order and/or direct that its order shall be kept confidential, for a period not exceeding 60 clear days from the date it was issued.