FOREWORD

When members of the public think of courts, they think of disputes and laws and the judiciary’s striving to resolve the former according to the latter. A jurist knows well, however, that there is an indispensable ingredient missing from the layman’s equation, if disputes are ever to be resolved justly. For while judges must settle disagreements according to the law, it is all but inconceivable that a fair result could be achieved unless a case is guided by the compass of procedural rules fine-tuned to ensure fairness. Without such rules, ‘justice’ would be too expensive, too slow, too unpredictable and too inclined towards the well-resourced and powerful; justice would scarcely be found in the courts at all.

The Rules of the Dubai International Financial Centre (DIFC) Courts are the compass of the DIFC Courts. From Part 1 to Part 57 of its most recent version, these Rules guide litigants, lawyers, the Courts’ Registry and Judiciary alike from the Overriding Objective of the Court and its Rules through every aspect of the life of a case – issuing proceedings, filing defences, appealing decisions and so on – and all the way through to areas such as probate.

Nevertheless, no set of rules can be designed to answer every question which could arise. Inevitably, as new and uncontemplated circumstances present themselves for determination, old rules require supplementation, revocation, amendment or explanation. In the context of a busy court, this is to say that procedural rules will quite quickly be accompanied by a plethora of new rules, practice directions from the Courts’ Registry and explanatory caselaw from the Judiciary; spread across loose-leaf supplements, online publications and law reports. The paradoxical result then, is that as a court’s procedural rules mature and refine, there is more potential for the relevant rule or its correct application to escape a case. ‘Genuine access to justice requires people to be able to understand how the legal procedure works,’ Lord Woolf, then Master of the Rolls of the Court of Appeal of England and Wales, wrote in 1996, ‘The procedure, working properly, is a vital guarantee that justice will be done.’

With this in mind, on behalf of the DIFC Courts, I unreservedly welcome the present publication. Not only does the DIFC Courts Practice gather in one volume all the rules with which any case that passes through these Courts is required to comply, but it also contains the most up-to-date and detailed commentary of the Rules available anywhere. For all the Courts’ users, the DIFC Courts Practice will, I have little doubt, be the definitive guide on DIFC Courts procedure and, I think, will hasten the greatest level of understanding of this procedure to date – across the board and for all the Courts’ users – and will provide in turn a greater guarantee of justice for all litigants. For the court of a ‘common law island in a civil law ocean’, as the former Chief Justice Michael Hwang famously put it, and being particularly mindful of the
high number of litigants in person that pass through our busy Small Claims Tribunal, the importance of this development cannot be overstated.

As a final remark, if members of the public first think of laws and disputes when they think about courts, next it is decisions and judges. But the jurist, again, knows better that, in the common law tradition, it is the lawyer who plays a most central role in the court’s decision-making, including the development of the jurisdiction’s laws and procedural rules. Indeed it is the lawyer who presents the arguments and constructions from which, more often than not, the judge will simply select the best (or at least that is what is hoped for). Of the lawyers who appear in these Courts, few have made as great a contribution to the development of the laws and rules as Rupert Reed QC and Tom Montagu-Smith QC, the editors of this publication. And so, accompanied with gratitude to these two lawyers for this, their most recent contribution, is an additional sense that there really were not very many people better placed to have made it.

Chief Justice Zaki Azmi
4 March 2020