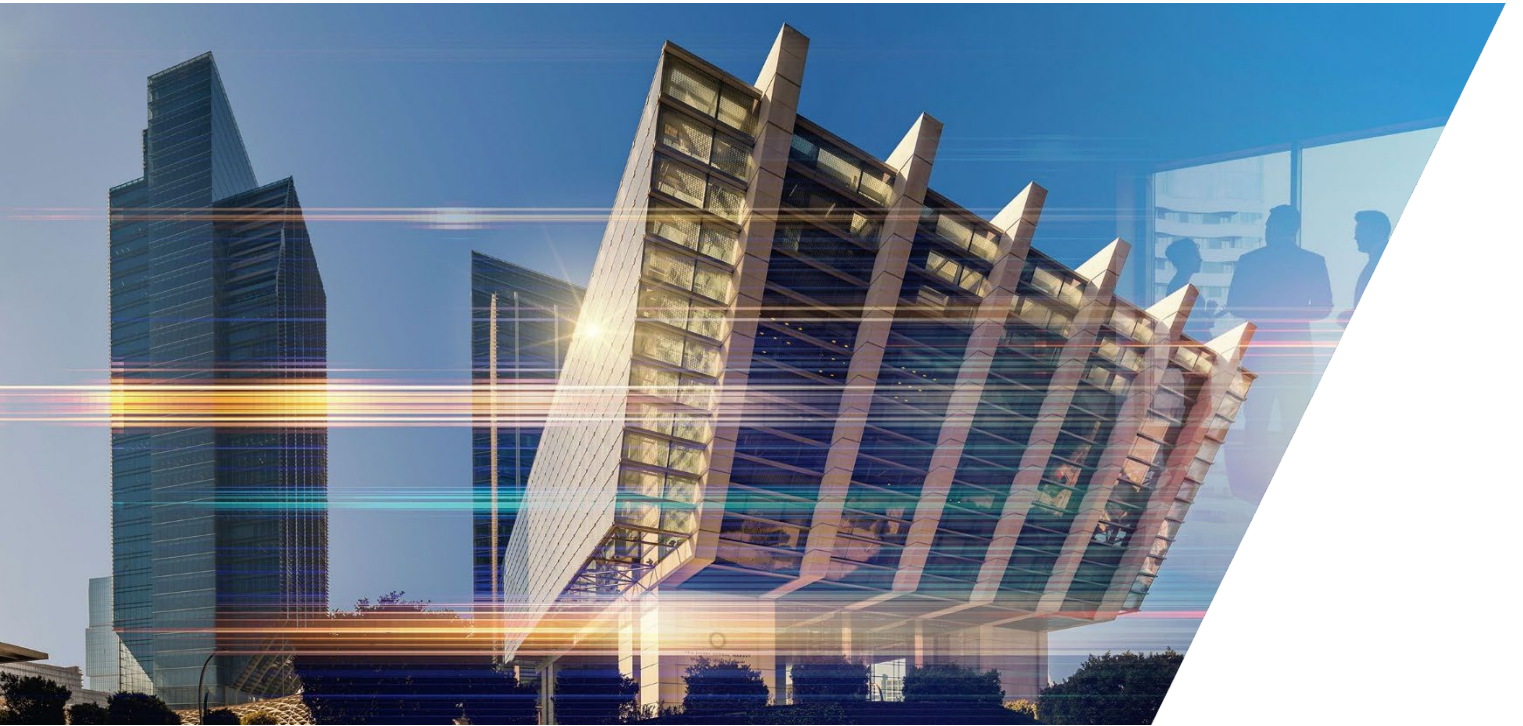


ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 5
PARTICULAR CLAIMS

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PARTICULAR CLAIMS

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PRACTICE DIRECTION 5

PARTICULAR CLAIMS

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This Practice Direction is to be read with, and subject to, the ADGM Court Procedure Rules 2016 (“CPR”) and the Divisions and Jurisdiction (Court of First Instance) Rules 2015. Except as provided otherwise in this Practice Direction, terms have the meanings set out in the CPR and a reference to a Rule is a reference to the CPR.

This Practice Direction must be read in conjunction with other Practice Directions including, in particular:

- **Practice Direction 1 - General**
- **Practice Direction 2 – Commercial and Civil Claims**
- **Practice Direction 3 – Small Claims**
- **Practice Direction 4 – Employment Claims**
- **Practice Direction 6 – Service of Documents**
- **Practice Direction 9 - Costs**
- **Practice Direction 13 – Court-Annexed Mediation**

Unless the Court orders otherwise, the following provisions shall apply.

A. GROUP LITIGATION ORDERS

Procedures [r.63(2)]

- 5.1. If a claimant alleges that there are, or are likely to be, a number of claimants making similar claims which give rise to common or related issues of fact or law (“the GLO issues”) the claimant may apply, before or after the commencement of a proceeding in the Court, for a Group Litigation Order (“a GLO”).
- 5.2. The application for a GLO must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 5.3. The application notice must specify:
 - (a) each issue of fact or law which the claimant alleges is a GLO issue;
 - (b) each pending proceeding in the Court in which that GLO issue arises or is likely to arise;
 - (c) the claimant’s estimate of the number of persons who have made or are likely to make claims raising one or more of those GLO issues;
 - (d) what steps the claimant will allege should be taken to identify which claims are to be managed as a group under the GLO; and
 - (e) the terms on which a person may enter a claim on the group register to be managed as one of the group of claims managed under the GLO.

No default judgment [r.40(1)(e)]

- 5.4. A claimant whose claim is entered on the group register may not obtain a default judgment under Rule 39 without the permission of the Court.

B. CLAIMS FOR DAMAGES FOR PERSONAL INJURY

Matters to be stated in claim form [r.189]

- 5.5. A claimant claiming damages for personal injury must set out the following matters in the claim form:
- (a) date of birth;
 - (b) business, profession or occupation at the time of the injury for which he claims damages;
 - (c) what amounts are claimed for past costs or expenses, including medical, hospital and like expenses;
 - (d) whether the claimant claims any amount for past loss of income and, if so,
 - (i) the period of the loss and the amount claimed; and
 - (ii) the claimant's total income in the 12 months immediately preceding the injury for which damages are claimed, and the source and amount of each part of that income;
 - (e) whether the claimant claims any amount for loss of future earning capacity and, if so,
 - (i) the annual earnings the claimant claims that the damages should be based on; and
 - (ii) the discount rate that should be applied to yield a net present value of the alleged loss;
 - (f) whether the claimant claims provisional damages; and
 - (g) whether the claimant claims that part or all of the damages claimed should take the form of periodical payments.

Offer to settle a claim for future pecuniary loss [r.164(4)]

- 5.6. If an offeror makes a Part 18 offer proposing to settle a claim for damages for personal injury, which is or includes a claim for future pecuniary loss, the offer:
- (a) must state the amount of any offer to pay or to accept the whole or part of any damages in the form of a lump sum;
 - (b) may state what part of the lump sum, if any, relates to damages for future pecuniary loss and what part, if any, relates to other damages to be paid or accepted in the form of a lump sum;

- (c) must state what part of the offer relates to damages for future pecuniary loss to be paid or accepted in the form of periodical payments and, if it does, must specify:
 - (i) the amount and duration of the periodical payments;
 - (ii) the amount of any payments for substantial capital purchases and when they are to be made;
 - (iii) whether the amount of any of those payments is to vary according to some identified index; and
 - (iv) how such damages are to be paid and how the continuity of their payment is to be secured.

Claims for provisional damages [r.186 and r.187]

- 5.7. In any case where a claimant claims provisional damages, the claimant must identify in the claim form:
- (a) why section 35 of the Regulations applies;
 - (b) the disease or type of deterioration which the claimant claims the Court should assume, when assessing damages, that the claimant will not develop or suffer; and
 - (c) the period within which, or the date from which, the claimant claims that the Court should permit a subsequent application for damages to be made if the claimant develops that disease or suffers that type of deterioration.

Offer to settle a claim for provisional damages [r.165]

- 5.8. If an offeror makes a Part 18 offer proposing to settle a claim for damages for personal injury on terms that the settlement shall include an award of provisional damages, the offer must contain the following information:
- (a) what disease or deterioration the offeror proposes that the claimant should be assumed not to develop or suffer; and
 - (b) the period during which, or the date from which, the offeror proposes that a subsequent application for damages is to be made if the claimant develops that disease or suffers that type of deterioration.

Claims for damages in the form of periodical payments [r.188 and r.189]

- 5.9. In any case where a claimant claims damages in the form of periodical payments, the claimant must identify in the claim form:
- (a) why section 51 of the Regulations applies; and
 - (b) why the claimant seeks an award of damages in the form of periodical payments.

- 5.10. The factors to which the Court shall have regard when deciding whether to make an award of damages in the form of periodical payments include:
- (a) the scale of the annual payments taking into account any deduction for contributory negligence;
 - (b) the form of award preferred by the claimant including:
 - (i) the reason for the claimant's preference;
 - (ii) the nature of any financial advice the claimant received when considering whether to claim damages by way of periodical payments; and
 - (iii) the form of award preferred by the defendant.
- 5.11. An order awarding damages in the form of periodical payments must state:
- (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
 - (b) the amount awarded for future loss of earnings and other income;
 - (c) the amount allowed for future care and medical costs and other recurring or capital costs;
 - (d) that the claimant's annual future pecuniary losses, as assessed by the Court, are to be paid for the duration of the claimant's life, or such other period as the Court orders; and
 - (e) that the amount of the payments shall vary annually by reference to a stated index.
- 5.12. If an amount awarded for future loss of earnings and other income is to increase or decrease on a certain date, the order must also specify:
- (a) the date on which the increase or decrease is to take effect; and
 - (b) the method by which the amount of the increase or decrease is to be calculated.
- 5.13. In deciding whether special circumstances make an assignment or change of periodical payments necessary, the Court must have regard to such of matters as are relevant to the particular case, bearing in mind the need to ensure that the claimant receives the fullest possible use of and benefit from the payments.

C. JUDICIAL REVIEW

Application for permission [r.218(2)] and content of claim form [r.219(2)]

- 5.14. An application for permission to bring a claim for judicial review is made by filing a claim form in accordance with **Form CFI 4**.
- 5.15. The claim form is to be served in accordance with Rule 220(2).

- 5.16. The claim form must state, in numbered paragraphs:
- (a) what ADGM enactment, decision, action or failure to act the claimant challenges;
 - (b) what interest the claimant has in the matter to which the application relates;
 - (c) the grounds for the claimant's challenge;
 - (d) where the claimant challenges the lawfulness of a decision, action or failure to act, what person or authority the claimant alleges made the decision, took the action or failed to act;
 - (e) what other person or persons is or are interested in the matter to which the application relates;
 - (f) what relief the claimant seeks from the Court;
 - (g) where the claimant seeks to make a claim for damages, restitution or the recovery of any sum due, the grounds for that claim; and
 - (h) the source, nature and extent of the financial resources available, or likely to be available, to the claimant to meet liabilities arising in connection with the application.

Acknowledgment of service [r.221]

- 5.17. An acknowledgment of service of a claim for judicial review must be in accordance with **Form CFI 7A**.

Service of evidence [r.229]

- 5.18. Evidence on which the claimant seeks to rely, whether in support of his application for permission, or his claim if permission is given, is to be in accordance with **Form CFI 15** and must be served with the claim form.
- 5.19. Rule 35(2) does not apply to these proceedings, but evidence on which a defendant seeks to rely, whether in opposition to the application for permission or the claim, is to be in accordance with **Form CFI 15** and must be served within 21 days after the defendant files and serves an acknowledgment of service.

Powers of Court [r.230]

- 5.20. The Court will conduct hearings proportionately, having regard to the amounts or issues at stake and the complexity of the issues.
- 5.21. In managing a case, the Court may make any order, give any direction or take any step it considers appropriate having regard to the circumstances of the case and the overriding objective in Rule 2(2).
- 5.22. The Court may decide, at a preliminary hearing, to refuse permission to bring a claim for judicial review if the Court considers that:
- (a) the claimant has no real prospect of succeeding in the claim for judicial review and there is no other compelling reason why the application for permission should be disposed of after a hearing;

- (b) it is highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred; or
- (c) the claimant is likely to be unable to meet an order for costs if the claim for judicial review is dismissed.

No default judgment [r.40(1)(e)]

5.23. A claimant for judicial review may not obtain a default judgment under Rule 39.

Obligations of disclosure of documents

5.24. Neither the claimant nor any defendant to a claim for judicial review need provide disclosure of documents.

Appeal against decisions or procedures of Global Market Authorities [r.230A]

5.25. An appeal made against any order, judgment, decision or procedure made by any Global Market Authority must be made by way of a claim form in accordance with **Form CFI 6**.

5.26. The claim form must state, in numbered paragraphs:

- (a) what order, judgment, decision or procedure the claimant challenges;
- (b) what interest the claimant has in the matter to which the application relates;
- (c) set out the grounds alleged that the order, judgment, decision or procedure is wrong in law or is in excess of jurisdiction;
- (d) what other person or persons is or are interested in the matter to which the appeal relates;
- (e) what relief the claimant seeks from the Court.

5.27. Any evidence on which the claimant seeks to rely is to be in accordance with **Form CFI 15** and must be served with the claim form.

5.28. The claim form and evidence in support must be served on the defendant and, unless the Court otherwise directs, on any person the claimant considers to be an interested party within 7 days after the date of issue.

5.29. An acknowledgment of service of the claim form must:

- (a) be in accordance with **Form CFI 7A**;
- (b) where the person filing the acknowledgment of service intends to contest the claim, set out a summary of the grounds for doing so.

5.30. Rule 35(2) does not apply to these proceedings, but evidence on which a defendant seeks to rely is to be in accordance with **Form CFI 15** and must be served within 21 days after the defendant files and serves an acknowledgment of service.

5.31. Paragraphs 5.20, 5.21, 5.23 and 5.24 apply to an appeal brought pursuant to Rule 230A.

D. DERIVATIVE CLAIMS [r.59 and r.60]

Documents required to be served on the company

- 5.32. Rule 59(3) provides that a derivative claim is commenced by issuing a claim form. A claimant must use **Form CFI 44** when making a derivative claim. The company must be made a defendant to the claim.
- 5.33. In order to seek permission to continue the claim, as required under Rule 60(1), a claimant must file an application notice in accordance with **Form CFI 12** (“permission application”). The company must not be made a respondent to the permission application.
- 5.34. The permission application must be supported by the written evidence in accordance with **Form CFI 15** that the claimant relies upon to seek the Courts’ permission to continue with the claim.
- 5.35. The claimant must notify the company of the claim and the permission application by serving a copy of the following documents upon the company at least 14 days before the date allocated for the hearing of the permission application:
- (a) the claim form;
 - (b) the permission application; and
 - (c) the written evidence in support of the permission application.
- 5.36. A permission application will ordinarily be decided on the papers without further argument or submission.

E. CONTEMPT

Application for penalty and service [r.288 and r.290]

- 5.37. The application notice making a penalty application:
- (a) under Rule 288 is to be made using **Form CFI 12**.
 - (b) under Rule 290 is to be made by a Rule 30 claim form using **Form CFI 6**.
- 5.38. A penalty application under Rule 288 must be supported by an affidavit and must state:
- (a) what judgment, order or undertaking it is alleged that the respondent has disobeyed;
 - (b) when and how a copy of the judgment or order, or judgment or order recording the undertaking, was served on the person alleged to have disobeyed the judgment, order or undertaking or, if the judgment or order was not served, when the Court dispensed with service;
 - (c) when and how the respondent is alleged to have disobeyed that judgment, order or undertaking; and
 - (d) the propositions of law which entitle the applicant to the orders sought.

- 5.39. A penalty application made under Rule 290 must be accompanied by the following statements and documents:
- (a) the claimant must identify the acts matters and circumstances alleged to constitute an interference with the due administration of justice and identify what proceedings in a court, panel or tribunal the claimant alleges have been, or may have been, affected by that conduct; and
 - (b) any document which the claimant proposes to tender in evidence at the trial of the application; and
 - (c) the propositions of law which entitle the applicant to the orders sought.
- 5.40. A penalty application made under Rule 290 must be served personally on the respondent unless the Court gives permission to serve it in some other manner.

No default judgment [r 40(1)(e)]

- 5.41. An applicant for a penalty under Rule 290 may not obtain a default judgment under Rule 39.

F. ARBITRATION CLAIMS

Privacy of arbitration claims [r.231(5)]

- 5.42. All arbitration claims are to be heard in closed court.
- 5.43. Judgments relating to arbitration claims will ordinarily be published in anonymised form.

Arbitration claims – Rule 30 procedure [r.231, r.30, r.31 and r.32]

- 5.44. An arbitration claim using the Rule 30 procedure must be made using **Form CFI 28** and must be accompanied by written evidence using **Form CFI 15**.

G. APPLICATIONS UNDER AN ADGM ENACTMENT

- 5.45. This section does not apply to any proceedings commenced under the Insolvency Regulations 2015.
- 5.46. ADGM Enactments, including Article 13(7) of Abu Dhabi Law No. 4 of 2013, provide for certain applications to be made to the Court.
- 5.47. An application of the kind referred to in paragraph 5.46 of this Practice Direction is to be made in accordance with any provision made by the relevant ADGM Enactment, but subject to any contrary provision made by an ADGM Enactment, may be made by filing a claim form in accordance with **Form CFI 1** or **Form CFI 6**.
- 5.48. Further steps in any proceedings referred to in paragraph 5.46 of this Practice Direction shall be in accordance with the provisions of the relevant ADGM Enactment or as the Court shall direct.

H. APPLICATION FOR INTERIM RELIEF PURSUANT TO RULE 72(7)

5.49. Where a party wishes to apply for an interim remedy but:

- (a) the remedy is sought in relation to proceedings which are taking place, will take place, or have taken place outside the jurisdiction; or
- (b) the application is made under section 36 of the Regulations before a claim has been commenced,

the application must be made in accordance with the Rule 30 procedure, as modified below, using **Form CFI 6**.

5.50. Rule 108(2) sets out the circumstances where affidavit evidence is required.

5.51. The application may be made without notice where:

- (a) there is exceptional urgency;
- (b) it is otherwise desirable to do so in the interests of justice; or
- (c) there are good reasons for making the application without notice, for example, because the notice would or might defeat the object of the application.

5.52. The Court may give directions immediately after the Rule 30 claim form is issued, whether on the application of a party or on its own initiative.