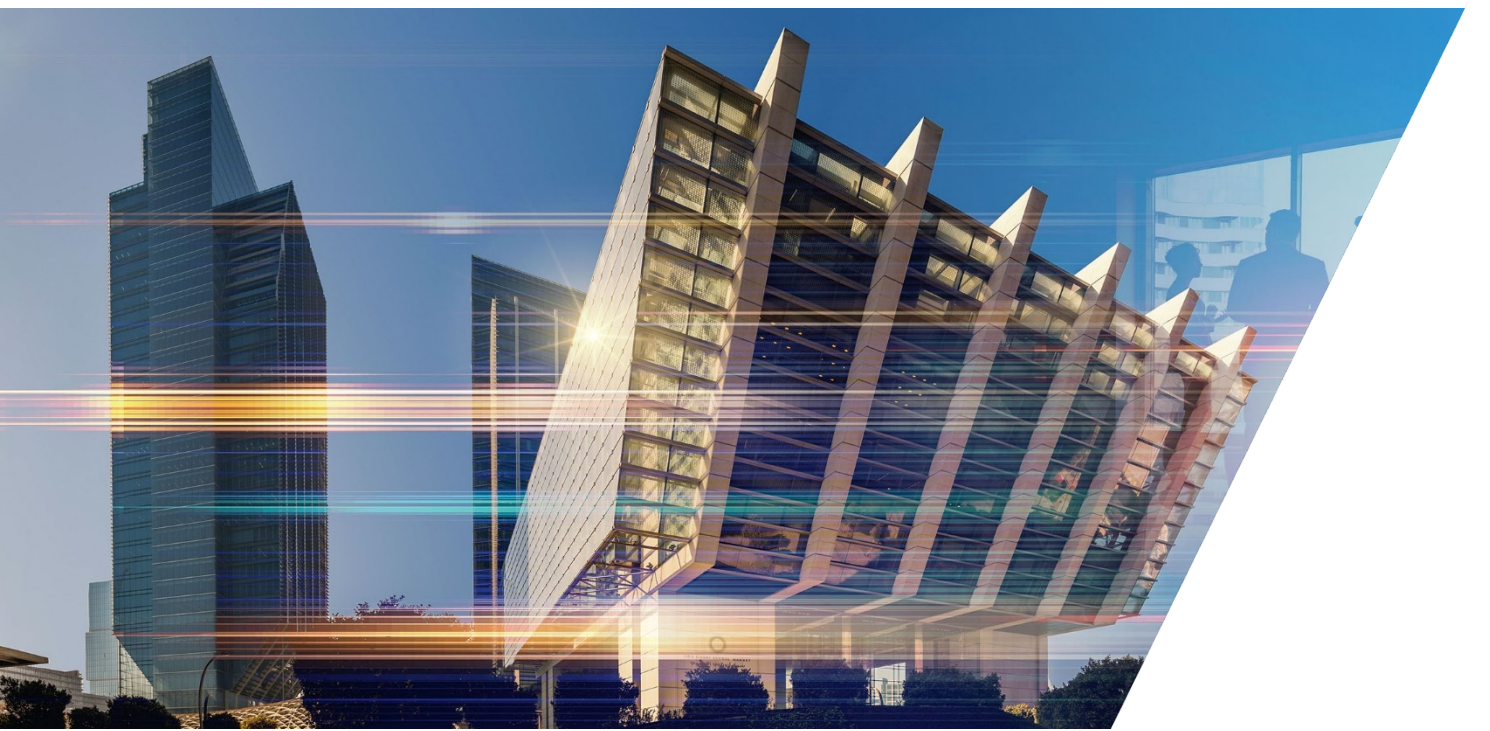




ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 8
EVIDENCE

PRACTICE DIRECTION 8

EVIDENCE

Table of Contents

A. WITNESS STATEMENTS [r.97]	1
B. AFFIDAVITS [r.104]	1
C. EVIDENCE AT TRIAL AND OTHER HEARINGS	2
<i>Witness summons and examination orders [r.120, 123, 124 and 125]</i>	2
<i>Hearsay, credibility, use of plans, photographs, models and other documentary evidence and questions of foreign law [r.112, 114, 115, 116 and 117]</i>	2
D. LETTERS OF REQUEST TO JUDICIAL AUTHORITIES	3
<i>Obtaining evidence from courts outside the jurisdiction [r.130, 137]</i>	3
E. LETTERS OF REQUEST FROM JUDICIAL AUTHORITIES	3
<i>Obtaining evidence for courts outside the jurisdiction [r.132, 138]</i>	3
F. EXPERT EVIDENCE [r.140, 141, 142]	4

PRACTICE DIRECTION 8

EVIDENCE

Date re-issued: XX August 2021

This Practice Direction is to be read with, and subject to, the ADGM Court Procedure Rules 2016 (“CPR”). 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.

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

A. WITNESS STATEMENTS [r.97]

- 8.1. Except in the case of small claims and employment claims, a witness statement must be in accordance with **Form CFI 15**.
- 8.2. A witness statement stands as the evidence in chief of a witness.
- 8.3. The evidence in a witness statement must comply with the following requirements:
 - (a) it must be in the witness’s own words;
 - (b) it must be concise and include all relevant details;
 - (c) it must contain only evidence that the witness would be allowed to give orally;
 - (d) it must not include lengthy quotations from documents;
 - (e) it must not contain argument;
 - (f) it must indicate which of the statements are made from the witness’s own knowledge and which are made on information or belief, giving the source for any statement made on information or belief; and
 - (g) it must contain a statement by the witness that he believes the information contained in it is true.
- 8.4. The making of or causing to be made a false statement in a witness statement without an honest belief in its truth may result in proceedings being brought against the person for a contempt of court.

B. AFFIDAVITS [r.104]

- 8.5. An affidavit must be in accordance with **Form CFI 14**.
- 8.6. The provisions in paragraphs 8.3 (a) – (f) and 8.4 also apply to affidavits.

C. EVIDENCE AT TRIAL AND OTHER HEARINGS

Witness summons and examination orders [r.120, 123, 124 and 125]

- 8.7. An application for a witness summons must be in accordance with **Form CFI 16** and may be made without notice.
- 8.8. Rule 123 provides that a witness summons must be served personally.
- 8.9. Rules 124 and 125 provide that at the time of service of a witness summons or examination order, a witness or deponent must be offered or paid a sum:
- (a) reasonably sufficient to cover his travelling expenses;
 - (b) by way of compensation for loss of time and,
 - (c) in the case of a witness summons under Rule 124, for costs otherwise incurred in compliance with it.
- 8.10. With regards to the sum to be offered or paid to a witness or deponent for the purpose of Rules 124 and 125, the applicant for the witness summons or examination order shall:
- (a) offer or pay to the witness the sum of USD100 at the time the witness is served with the witness summons;
 - (b) offer or pay to the deponent the sum of USD100 at the time the deponent is served with the examination order; and
 - (c) in all cases, provide an undertaking in the application notice to pay such further sum as may be ordered by the Court.
- 8.11. The sums referred to in sub-paragraphs 8.10 (a) and (b) may be reduced by USD 20 where the Court orders that the attendance on a witness summons or examination order is to proceed by way of video-link.

Hearsay, credibility, use of plans, photographs, models and other documentary evidence and questions of foreign law [r.112, 114, 115, 116 and 117]

- 8.12. Rule 112(3) provides for giving notice of intention to rely on hearsay evidence at trial in relation to all other cases not dealt with by Rules 112(1) or 112(2). For the purpose of Rule 112(3), the party proposing to rely on the hearsay evidence must:
- (a) file and serve the notice in accordance with **Form CFI 17** no later than the latest date for serving witness statements; and
 - (b) if the hearsay evidence is to be in a document, supply a copy to any party who requests him to do so.
- 8.13. Rule 114 provides for a party to apply to the Court for permission to call the maker of a statement that contains hearsay evidence to be cross-examined on the contents of the statement. An application under Rule 114 for permission to call the maker of a statement to be cross-examined must be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant. The application must be made in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 8.14. Rule 115 provides for giving notice of intention to call evidence to attack the credibility of a person who made a statement of which hearsay evidence is to be given. A notice required by

that rule must be filed and served in accordance with **Form CFI 17** not more than 14 days after the day on which a hearsay notice relating to the hearsay evidence was served on him.

- 8.15. Rule 116(3) provides for notice to be given by a party intending to rely upon evidence which is not contained in a witness statement, affidavit or expert's report or is a document which may be received in evidence without further proof under section 65 of the Regulations. If the party is to serve witness statements in respect of the hearing at which he intends to rely on such evidence, the notice is to be filed and served in accordance with **Form CFI 17** no later than the latest date for serving witness statements. Otherwise, it is to be filed and served at least 21 days before the hearing at which he intends to rely on the evidence.
- 8.16. Rule 117(3) provides for giving notice of intention to put in evidence a finding on a question of foreign law. A notice required by that rule must be filed and served in accordance with **Form CFI 17** no later than 10 days before the day fixed for the commencement of the hearing or the trial.

D. LETTERS OF REQUEST TO JUDICIAL AUTHORITIES

Obtaining evidence from courts outside the jurisdiction [r.130, 137]

- 8.17. An application for an order for the issue of a letter of request to take a deposition from a person who is outside the jurisdiction shall be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**. Such witness statement evidence must include or exhibit:
- (a) a statement of the issues relevant to the proceedings;
 - (b) a list of the questions or the subject matter of the questions to be put to the proposed deponent; and
 - (c) a draft letter of request.

E. LETTERS OF REQUEST FROM JUDICIAL AUTHORITIES

Obtaining evidence for courts outside the jurisdiction [r.132, 138]

- 8.18. An application for an order for evidence to be taken for a court outside the jurisdiction shall be made by application notice in accordance with **Form CFI 26** and must include or exhibit
- (a) the order sought from the Court;
 - (b) a statement of the issues relevant to the proceedings;
 - (c) a list of the questions or the subject matter of the questions to be put to the proposed deponent; and
 - (d) a certified copy of the letter of request from the foreign court and, if applicable, a certified English translation of the request.

F. EXPERT EVIDENCE [r.140, 141, 142]

- 8.19. Part 17 of the Rules makes provisions about expert evidence. The provisions of this Practice Direction amplify and supplement those requirements.
- 8.20. Rule 140 provides that it is the duty of experts to help the Court on matters within their expertise and that this duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid. Hence, an expert must provide an opinion that is independent of the party retaining the expert and must not take on the role of advocate for a party.
- 8.21. An expert's report must comply with the requirements of the Rules, including, in particular, the requirements of Rule 141(2).
- 8.22. The expert report must be verified by a statement of truth in the following form: *"I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer"*.
- 8.23. The expert report must be signed personally by the expert and filed with the Court using **Form CFI 36**.
- 8.24. The Court decides what expert evidence may be called. Rule 142 provides that expert evidence shall be restricted to that which is reasonably required to resolve the proceedings and further provides that no party may call an expert or put in evidence an expert's report without the Court's permission.