

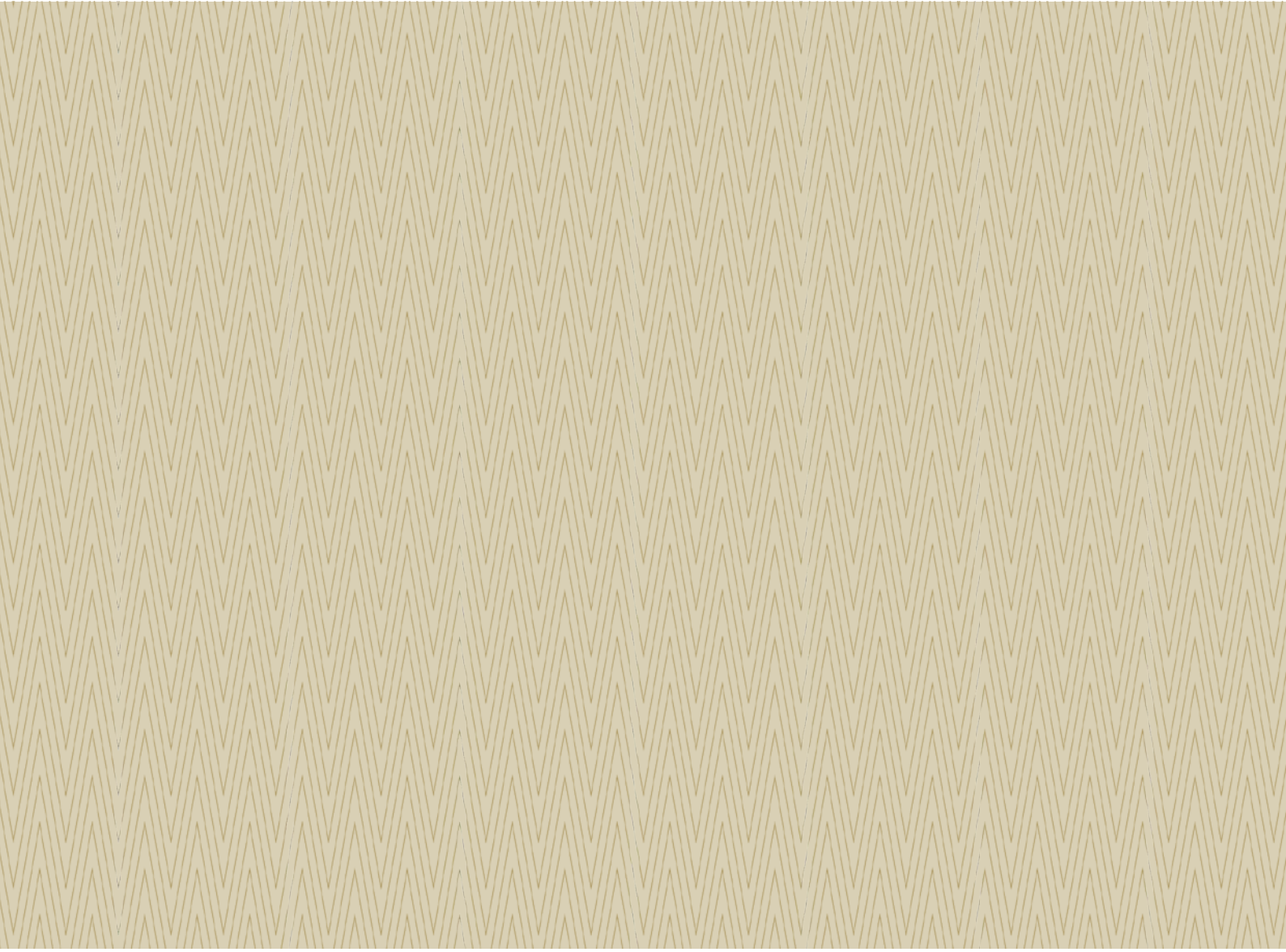


ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

ADGM COURTS

PRACTICE DIRECTION 7

APPLICATIONS





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APPLICATIONS

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PRACTICE DIRECTION 7

APPLICATIONS

Date first issued: 30 May 2016

This Practice Direction is to be read with, and subject to, the ADGM Court Procedure Rules 2016. Except as provided otherwise in this Practice Direction, terms have the meanings set out in those Rules.

A. PRE-CLAIM APPLICATIONS (r.64(3))

- 7.1. An application for an urgent interim remedy may be made prior to the filing of a claim on condition that an undertaking is given to the Court to file such a claim within a period of 2 days after the application is filed, or within such period as the Court otherwise may direct.
- 7.2. An applicant who wishes to apply to the Court for an urgent interim remedy prior to a claim being filed must file an application notice in accordance with **Form CFI 12A**, together with any witness statement evidence in support and a draft of the order which is being sought from the Court in the application.
- 7.3. The draft order must be in accordance with **Form CFI 37** and the witness statement evidence must be in accordance with **Form CFI 15**.
- 7.4. In instances wherein the application is made *without notice*, and where the Court has made an order, whether granting or dismissing the application, copies of the application notice and the order made thereon, together with the witness statement evidence must, unless the Court otherwise orders, be served on any party or other person against whom the order was made and/ or against whom the order was sought.
- 7.5. In instances wherein the application is to be made *upon* notice, the application notice, the witness statement evidence and the draft order must be served on each respondent thereto as soon as practicable after the filing of such documents, and thereafter:
 - (a) as soon as practicable the applicant must file a certificate of service in accordance with **Form CFI 31**;
 - (b) a respondent to an application notice must file a notice of appearance in accordance with **Form CFI 23** if the respondent wishes to raise any matter before the Court in response to the application or in relation to the order(s) sought by the applicant; and



- (c) the Court may give directions regarding the hearing of the application, including the filing of any evidence in response by the respondent, as the Court considers appropriate.

B. POST-CLAIM APPLICATIONS

Application notice (r.64)

- 7.6. A party wishing to make an application to the Court before the trial commences, or after judgment has been given, must file an application notice in accordance with **Form CFI 12**, together with any witness statement evidence in support and a draft order which the applicant is seeking from the Court in accordance with **Form CFI 37**. All witness statements must be in accordance with **Form CFI 15**.
- 7.7. Applications should, wherever possible, be made so that they can be considered at any other hearing for which a date already has been fixed or for which a date is about to be fixed, with particular reference to Case Management Conferences and directions hearings.

Service of application notice and material in support

- 7.8. The applicant must serve the following on each respondent to the application:
 - (a) the application notice;
 - (b) the witness statement evidence in support;
 - (c) the draft order;
 - (d) notice of any written material previously served on that respondent and on which the applicant may seek to rely at the hearing of the application; and
 - (e) any other written material on which the applicant may seek to rely at the hearing of the application.
- 7.9. The material referred to in the preceding paragraph must be served by the applicant on each respondent:
 - (a) as soon as practicable after it is filed; and
 - (b) except where another time limit is specified in these Rules or a relevant practice direction, and where the Court previously has set a hearing date for the application, at least 3 days before the hearing.



Applications made without notice (rr.64 and 65)

- 7.10. An application may be made without notice if this is permitted by a rule, a practice direction or otherwise is with the Court's permission. The Court's permission will be granted only 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.
- 7.11. Where the Court is asked to make an order on an application without notice, the applicant must bring to the Court's attention any matter which, if the respondent was represented, the respondent would wish the Court to be aware of. This includes any matters which might tend to undermine the application.
- 7.12. Where the Court makes an order on an application without notice, whether granting or dismissing an application, unless the Court orders otherwise, the applicant must serve forthwith on every person against whom an order was sought or made:
- (a) the application notice;
 - (b) all written material on which the applicant sought to rely in support of his application;
 - (c) a transcript of the hearing of the application;
 - (d) a copy of the order; and
 - (e) written notice that any person against whom an order was sought or made may apply to have the order set aside or varied.

Proceeding in the absence of a party

- 7.13. If an applicant or respondent to an application does not attend the hearing of the application, the Court may proceed in his absence.

Proceeding without a hearing

- 7.14. The Court may deal with any application without a hearing if the parties agree as to the terms of the order; or agree that the Court should dispose of the application without a hearing; or if the Court does not consider that a hearing would be appropriate.



C. PARTICULAR APPLICATIONS

General

7.15. The following directions (relating to some particular applications that may be made before trial) are to be read as supplementing and varying the general directions about applications before trial.

Application for default judgments [r.39]

7.16. An application for default judgment under Rule 39 must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence addressing the following:

- (a) the occurrence of the default relied on;
- (b) that the default has not been remedied; and
- (c) that the conditions prescribed by Rule 40 are satisfied.

All witness statements must be in accordance with **Form CFI 15**.¹

7.17. A default judgment on a money claim may include interest at the rate agreed between the parties or, if there is no agreed rate, at the rate of 9 per cent from the date the money was due.²

Application for further information [r.54]

7.18. The Court will exercise its powers to order a party to clarify any matter which is in dispute in a proceeding and to give additional information in relation to any such matter having regard to the overriding objective of the Rules: to secure that the ADGM Courts are accessible, fair and efficient.

7.19. Accordingly, a party seeking an order that another party clarify any matter in dispute or give additional information in relation to any such matter should state in the application notice how and why the provision of the further information sought is necessary to dispose fairly of the claim.

Applications for security for costs [r.75 and r.76]

7.20. An application for security for costs must be made by application notice in accordance with **Form CFI 12**.

¹ Amended 18 February 2018.

² Amended 28 February 2018.



- 7.21. The Court may order that security for costs be provided where an ADGM enactment permits the court to require security for costs or if the Court is satisfied that having regard to all the circumstances of the case, it is just to do so.
- 7.22. Without limiting paragraph 7.22, the Court may (but is not obliged to) conclude that it would be just to order security for costs if it is satisfied that:
- (a) the claimant is resident out of the UAE;
 - (b) the claimant is a company or other body (whether incorporated inside or outside ADGM) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
 - (c) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
 - (d) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
 - (e) the claimant is acting as a nominal claimant, other than as a representative claimant under Rule 57, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so; or
 - (f) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.
- 7.23. Where an order for security for costs is made, security shall be given in such manner and at the time the Court directs.
- 7.24. The Court may also order security for costs of an appeal as it may order security for costs in the circumstances set out in paragraphs 7.22 and 7.23.

Applications to set aside notice of discontinuance [r.171]

- 7.25. The defendant may not make an application under Rule 171 to set aside a notice of discontinuance more than 28 days after the date when the notice of discontinuance was served on him.

D. APPLICATIONS TO THE COURT OF FIRST INSTANCE FOR PERMISSION TO APPEAL [r.206(4)]

- 7.26. An application to the Court of First Instance for permission to appeal to the Court of Appeal should be made to the trial judge.



- 7.27. Unless made when the disputed judgment or order was pronounced or made, an application for permission to appeal must be made by application notice filed in the proceeding within 14 days of the day on which the disputed judgment or order was pronounced or made.
- 7.28. An application notice seeking permission to appeal must identify:
- (a) the judgment or order against which it is sought to appeal;
 - (b) the ground or grounds on which the appeal would be brought; and
 - (c) the order or orders that would be sought in the appeal.
- 7.29. An application notice seeking permission to appeal must be served on all other parties to the proceeding in which the disputed judgment or order was pronounced or made.
- 7.30. An applicant for permission to appeal must file proof of the service of the application on a party forthwith after service.
- 7.31. The proof of service must state when and how service was made.
- 7.32. If permission to appeal is given, further proceedings in the matter are governed by Parts B to G of **Practice Direction 11**.