

**ADGM COURTS, CIVIL EVIDENCE, JUDGMENTS, ENFORCEMENT AND  
JUDICIAL APPOINTMENTS REGULATIONS 2015**

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**ADGM COURTS, CIVIL EVIDENCE, JUDGMENTS, ENFORCEMENT AND  
JUDICIAL APPOINTMENTS REGULATIONS 2015**

Regulations to make provision about the composition and jurisdiction of the Courts of the Abu Dhabi Global Market; to make provision about the judiciary, their appointment and discipline; to make provision for the administration of justice within the Abu Dhabi Global Market; to make provision about costs and other amounts awarded in civil proceedings, including in relation to damages for personal injury; to make provision with respect to the procedure, and allocation of business, in the Courts; to provide for the admissibility of evidence and the proof of certain documentary evidence; to make provision for imposing charges to secure payment of money due, to become due, under judgments or orders of the Court; to make provision for deduction by employers under attachment of earnings orders; to make provision for the enforcement of judgments and debts; and for connected purposes.

Date of Enactment: [●] 2015

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations:-

**PART 1 – ESTABLISHMENT OF THE COURTS**

**1. The Courts**

- (1) The Courts are established in accordance with Articles 10(3) and 13 of the ADGM Founding Law.
- (2) Subject to Article 13(1) of the ADGM Founding Law, the Courts shall consist of –
  - (a) the Court of Appeal; and
  - (b) the Court of First Instance,each having such jurisdiction as may be conferred on it by the ADGM Founding Law and by or under Part 2 of these Regulations, or any other ADGM enactment or any Applicable Abu Dhabi Law.
- (3) Where, by virtue of any provision of the ADGM Founding Law or an Applicable Abu Dhabi Law or an ADGM enactment, any of the following are established –
  - (a) a small claims court;
  - (b) an employment tribunal;
  - (c) any other court or tribunal,

each shall be a “Court” and “Courts” shall be construed accordingly.

## **2. Seal of Courts**

- (1) The Courts shall have a seal, the design of which shall be determined by the Chief Justice.
- (2) The seal of the Courts shall be kept at the Central Office in such custody as the Chief Justice directs.
- (3) The Registrar shall have in his or her custody a stamp the design of which shall, as nearly as practicable, be the same as the design of the seal of the Courts.
- (4) A document or a copy of a document marked with a stamp referred to in subsection (3) is as valid and effectual as if it had been sealed with the seal of the Courts.
- (5) The seal of the Courts and the stamp referred in this section shall be affixed to documents as provided by these Regulations, or any other ADGM enactment or by rules of court.

## **3. Writs, orders, judgments etc.**

- (1) All writs, orders, judgments and process issued from the Courts shall be –
  - (a) under the seal of the Courts;
  - (b) signed (including by way of electronic signature) by the Registrar or an officer of the Courts acting with the authority of the Registrar; and
  - (c) enforced in accordance with Article 13(10) of the ADGM Founding Law.
- (2) For the purposes of subsection (1)(b), a document is taken to be signed by the Registrar if the electronic signature of the Registrar is applied to the document by an officer of the Courts acting with the authority of the Registrar.
- (3) In this section “electronic signature” of a person means the person’s unique identification in an electronic form that is approved by the Registrar.



## **PART 2 – SOVEREIGNTY AND JURISDICTION OF THE COURTS**

### **Chapter 1: General**

#### **4. No criminal jurisdiction**

- (1) The Courts shall not have any jurisdiction to hear, examine, try or determine any issue, cause or matter relating to any criminal offence, or any alleged criminal offence. In particular, the Courts shall not have any jurisdiction to review the arrest or detention of any person or property (including real property), or any other dealing with such property, executed pursuant to any Federal Law applicable in the Abu Dhabi Global Market and no proceedings issued in the Courts seeking to review or challenge such arrest or detention or other dealing may be heard, examined, tried or determined by any Court.
- (2) Subsection (1) applies notwithstanding that the offence, or alleged offence, or the arrest or detention or dealing occurred in the Abu Dhabi Global Market.
- (3) In these Regulations, unless otherwise stated or unless the context otherwise requires, references to “proceedings” shall be construed as references to civil proceedings only.

#### **5. No imprisonment for debt**

- (1) No person shall be arrested or imprisoned in the Abu Dhabi Global Market for defaulting payment of a sum of money.
- (2) Subsection (1) is subject to any contrary provision in any Federal Law applicable in the Abu Dhabi Global Market.

#### **6. Penalty for fraudulently obtaining credit**

- (1) Any person shall, in each of the following cases, be in contravention of these Regulations –
  - (a) if he has, with dishonest intent towards his creditors, or any of them, made or caused to be made any gift, delivery, conveyance or transfer of or any charge on his property (including real property);
  - (b) if he has, with dishonest intent towards his creditors, or any of them, concealed or removed any part of his property (including real property) since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.
- (2) Rules of court may provide that proceedings may be brought by either any creditor referred to in subsection (1) or by the Registrar at the direction of the Chief Justice.
- (3) A person found to be in contravention of these Regulations under subsection (1) shall be liable to pay a fine not exceeding –
  - (a) level 8 on the standard fines scale; or

- (b) 10% of the combined value of the property (including real property) which was gifted, delivered, conveyed, transferred, removed or concealed,

whichever is the greater.

- (4) In this section “person” means any natural or legal person.

#### **7. Judgment debts to carry interest**

- (1) Every judgment debt shall carry interest, whether simple or compound, from such time as shall be prescribed by rules of court until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment.
- (2) Rules of court may provide for the Court to disallow all or part of any interest otherwise payable under subsection (1).

#### **8. Orders of the Courts to have effect of judgments**

- (1) All orders, whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the effect of judgments in the Courts, and the persons to whom any such monies or costs, charges, or expenses shall be payable, shall be deemed judgment creditors within the meaning of these Regulations.
- (2) All remedies hereby given to judgment creditors are in like manner given to persons to whom any monies, or costs, charges, or expenses, are by such orders or rules respectively directed to be paid.

#### **9. Guarantee of continued judicial independence**

- (1) The Chief Justice, the Board and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.
- (2) The following particular duties are imposed for the purpose of upholding that independence.
- (3) The Chief Justice and the Board must not seek to influence particular judicial decisions through any special access to the judiciary.
- (4) The Chief Justice and the Board must have regard to –
  - (a) the need to defend that independence;
  - (b) the need for the judiciary to have the support necessary to enable them to exercise their functions;
  - (c) the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.
- (5) In this section, “the judiciary” includes the judiciary of any of the following –

- (a) the Courts; and
  - (b) any other Court established under any Applicable Abu Dhabi Law or ADGM enactment.
- (6) In this section, “the judiciary” also includes every person who –
- (a) holds a judicial office (as defined in section 218(3)); and
  - (b) but for this subsection would not be a member of the judiciary for the purposes of this section.

**10. Representations to the Board**

- (1) The Chief Justice may lay before the Board written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in the Abu Dhabi Global Market.
- (2) Any written representation laid before the Board in accordance with subsection (1) must be considered by the Board at the first meeting of the Board after the representation was laid before it; and at that meeting, the Board must decide whether, and if so how, it intends to address the issues contained within such representation.

**Chapter 2: Court of Appeal**

**11. General Jurisdiction of the Court of Appeal**

- (1) The Court of Appeal shall be a superior court of record and shall be the court of final instance in the Abu Dhabi Global Market.
- (2) Subject to the provisions of these Regulations, there shall be exercisable by the Court of Appeal all such jurisdiction as is conferred on it by –
  - (a) these Regulations or any other ADGM enactment;
  - (b) paragraphs (8) and (9) of Article 13 of the ADGM Founding Law; or
  - (c) any Applicable Abu Dhabi Law.
- (3) For all purposes of or incidental to –
  - (a) the hearing and determination of any appeal or reference to the Court of Appeal; and
  - (b) the amendment, execution and enforcement of any judgment, decision or order made on such an appeal,

the Court of Appeal shall have all the powers of the Court or tribunal from which the appeal or reference was brought; and an order of the Court of Appeal may be enforced in the same manner as an order of the Court or tribunal from which the appeal or reference was brought.

- (4) Any provision in these Regulations or any other ADGM enactment which authorises or requires the taking of any steps for the execution or enforcement of a judgment, decision or order of the Court of First Instance applies in relation to a judgment, decision or order of the Court of Appeal as it applies in relation to a judgment, decision or order of the Court of First Instance.

## **12. Appeals to the Court of Appeal**

- (1) Except as otherwise provided by –

- (a) the ADGM Founding Law;
- (b) any Applicable Abu Dhabi Law;
- (c) these Regulations; or
- (d) any other ADGM enactment,

the Court of Appeal shall have exclusive jurisdiction to hear and determine appeals from any judgment, decision or order of the Court of First Instance.

- (2) Subsection (1) is without prejudice to paragraph (8) of Article 13 of the ADGM Founding Law.

## **13. Applications for a new trial**

- (1) Where any cause or matter, or any issue in any cause or matter, has been tried in the Court of First Instance, any application for a new trial thereof, or to set aside a verdict, finding or judgment therein, shall be heard and determined by the Court of Appeal.
- (2) Nothing in this section shall alter the practice in insolvency.

## **14. Restrictions on appeals to the Court of Appeal**

No appeal shall lie to the Court of Appeal –

- (a) from any order of the Court of First Instance or any inferior court or tribunal allowing an extension of time for appealing from a judgment or order;
- (b) from any order, judgment or decision of the Court of First Instance or any inferior court or tribunal which, by virtue of any provision (however expressed) of these Regulations or any other ADGM enactment, is final.

## **Chapter 3: Court of First Instance**

### **15. General Jurisdiction of the Court of First Instance**

- (1) The Court of First Instance shall be a superior court of record.
- (2) Subject to the provisions of these Regulations, there shall be exercisable by the Court of First Instance all such jurisdiction as is conferred on it by –

- (a) paragraphs (6) and (7) of Article 13 of the ADGM Founding Law;
  - (b) an Applicable Abu Dhabi Law;
  - (c) these Regulations;
  - (d) any other ADGM enactment; or
  - (e) any agreement, whether or not in writing, where the parties have agreed to submit to the jurisdiction of the Courts.
- (3) Save as provided by Article 13(1) of the ADGM Founding Law, any jurisdiction of the Court of First Instance shall be exercisable only by a single Judge of that Court, except in so far as it is by rules of court made exercisable by another judicial officer of that Court.
- (4) The specific mention elsewhere in these Regulations of any jurisdiction covered by subsection (2) shall not derogate from the generality of that subsection.

**16. Mandatory, prohibiting and quashing orders**

- (1) The Court of First Instance shall have jurisdiction to make mandatory, prohibiting and quashing orders.
- (2) Every such order shall be final, subject to any right of appeal therefrom.

**17. Injunctions to restrain persons from acting in offices in which they are not entitled to act**

- (1) Where a person not entitled to do so acts in such an office to which this section applies, the Court of First Instance may –
  - (a) grant an injunction restraining him from so acting; and
  - (b) if the case so requires, declare the office to be vacant.
- (2) This section applies to any substantive Abu Dhabi Global Market office of a public nature and which is held under the Board on behalf of His Highness or which has been created by the ADGM Founding Law, an Applicable Abu Dhabi Law or any ADGM enactment. For the purposes of this section, members of the Board are deemed to hold public office under the Board.

**Chapter 4: Judicial Review**

**18. Application for judicial review**

- (1) An application to the Court of First Instance for one or more of the following forms of relief, namely –
  - (a) a mandatory, prohibiting or quashing order;
  - (b) a declaration or injunction under subsection (2); or

- (c) an injunction under section 17 restraining a person not entitled to do so from acting in an office to which that section applies,

shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.

- (2) A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review, seeking that relief, has been made and the Court of First Instance considers that, having regard to –

- (a) the nature of the matters in respect of which relief may be granted by mandatory, prohibiting or quashing orders;
- (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration to be made or for the injunction to be granted, as the case may be.

- (3) The Court of First Instance –

- (a) must refuse to grant relief on an application for judicial review; and
- (b) may not make an award under subsection (13) on such an application,

if it appears to the Court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.

- (4) The Court may disregard the requirements in subsection (3) if it considers that it is appropriate to do so for reasons of exceptional public interest.

- (5) If the Court grants relief or makes an award in reliance on subsection (4), the Court must certify that the condition in subsection (4) is satisfied.

- (6) No application for judicial review shall be made unless the leave of the Court of First Instance has been obtained in accordance with rules of court, and the Court shall not grant leave to make such an application unless –

- (a) it considers that the applicant has a sufficient interest in the matter to which the application relates; and
- (b) the applicant has provided the Court with any information about the financing of the application that is specified in rules of court for the purposes of this paragraph.

- (7) The information that may be specified for the purposes of subsection (6)(b) includes –

- (a) information about the source, nature and extent of financial resources available, or likely to be available, to the applicant to meet liabilities arising in connection with the application; and

- (b) if the applicant is a body corporate that is unable to demonstrate that it is likely to have financial resources available to meet such liabilities, information about its members and about their ability to provide financial support for the purposes of the application.
- (8) Rules of court under subsection (6)(b) that specify information identifying those who are, or are likely to be, sources of financial support must provide that only a person whose financial support (whether direct or indirect) exceeds, or is likely to exceed, a level set out in the rules of court has to be identified.

This subsection does not apply to rules of court that specify information described in subsection (7)(b).

- (9) When considering whether to grant leave to make an application for judicial review, the Court of First Instance –
- (a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred; and
  - (b) must consider that question if the defendant asks it to do so.
- (10) If, on considering that question, it appears to the Court of First Instance to be highly likely that the outcome for the applicant would not have been substantially different, the Court must refuse to grant leave.
- (11) The Court may disregard the requirement in subsection (10) if it considers that it is appropriate to do so for reasons of exceptional public interest.
- (12) If the Court grants leave in reliance on subsection (11), the Court must certify that the condition in subsection (11) is satisfied.
- (13) On an application for judicial review the Court of First Instance may award to the applicant damages, restitution or the recovery of a sum due if –
- (a) the application includes a claim for such an award arising from any matter to which the application relates; and
  - (b) the Court is satisfied that such an award would have been made if the claim had been made in an action begun by the applicant at the time of making the application.
- (14) If, on an application for judicial review, the Court of First Instance quashes the decision to which the application relates, it may in addition –
- (a) remit the matter to the Court, tribunal, Global Market’s Authority or the Board which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the Court of First Instance; or
  - (b) substitute its own decision for the decision in question.
- (15) But the power conferred by subsection (14)(b) is exercisable only if –

- (a) the decision in question is made by a Court, tribunal, Global Market’s Authority or the Board;
  - (b) the decision is quashed on the ground that there has been an error of law; and
  - (c) without the error, there would have been only one decision which the Court, tribunal, Global Market’s Authority or the Board could have reached.
- (16) Unless the Court of First Instance otherwise directs, a decision substituted by it under subsection (14)(b) has effect as if it were a decision of the relevant Court, tribunal or Global Market’s Authority or of the Board.
- (17) Where the Court of First Instance considers that there has been an undue delay in making an application for judicial review, the Court may refuse to grant –
- (a) leave for the making of the application; or
  - (b) any relief sought on the application,
- if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any other person or would be detrimental to good administration.
- (18) Subsection (17) is without prejudice to any ADGM enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.
- (19) In this section “the conduct complained of”, in relation to an application for judicial review, means the conduct (or alleged conduct) of the defendant that the applicant claims justifies the Court of First Instance granting relief.
- (20) In this section “tribunal”, in relation to an application for judicial review, includes any Global Market’s Authority decision-making body including, without limitation, committees and appeals panels.

**19. Use of information about financial resources**

- (1) This section applies when the Court of First Instance or the Court of Appeal is determining by whom and to what extent costs of or incidental to judicial review proceedings are to be paid.
- (2) The information to which the Court must have regard includes –
  - (a) information about the financing of the proceedings provided in accordance with section 18(6)(b); and
  - (b) any supplement to that information provided in accordance with rules of court.
- (3) The Court must consider whether to order costs to be paid by a person, other than a party to the proceedings, who is identified in that information as someone who is providing financial support for the purposes of the proceedings or likely or able to do so.



- (4) In this section “judicial review proceedings” means –
- (a) proceedings on an application for leave to apply for judicial review;
  - (b) proceedings on an application for judicial review;
  - (c) any proceedings on an application for leave to appeal from a decision in proceedings described in paragraph (a) or (b); and
  - (d) proceedings on an appeal from such a decision.

**20. Interveners and costs**

- (1) This section applies where –
- (a) a person is granted permission to file evidence or make representations in judicial review proceedings; and
  - (b) at that time, the person is not a relevant party to the proceedings.
- (2) That person is referred to in this section as an “intervener”.
- (3) A relevant party to the proceedings may not be ordered by the Court of First Instance or the Court of Appeal to pay the intervener’s costs in connection with the proceedings.
- (4) Subsection (3) does not prevent the Court making an order if it considers that there are exceptional circumstances that make it appropriate to do so.
- (5) On an application to the Court of First Instance or the Court of Appeal by a relevant party to the proceedings, if the Court is satisfied that a condition described in subsection (6) is met in a stage of the proceedings that the Court deals with, the Court must order the intervener to pay any costs specified in the application that the Court considers have been incurred by the relevant party as a result of the intervener’s involvement in that stage of the proceedings.
- (6) Those conditions are –
- (a) the intervener has acted, in substance, as the sole or principal applicant, defendant, appellant or respondent;
  - (b) the intervener’s evidence and representations, taken as a whole, have not been of significant assistance to the Court;
  - (c) a significant part of the intervener’s evidence and representations relates to matters that it is not necessary for the Court to consider in order to resolve the issues that are the subject of the stage in the proceedings;
  - (d) the intervener has behaved unreasonably.
- (7) Subsection (5) does not require the Court to make an order if it considers that there are exceptional circumstances that make it inappropriate to do so.

- (8) In determining whether there are exceptional circumstances that are relevant for the purposes of subsection (4) or (7), the Court must have regard to criteria specified in rules of court.
- (9) In this section, “judicial review proceedings” means –
- (a) proceedings on an application for leave to apply for judicial review;
  - (b) proceedings on an application for judicial review;
  - (c) any proceedings on an application for leave to appeal from a decision in proceedings described in paragraph (a) or (b); and
  - (d) proceedings on an appeal from such a decision,
- and the proceedings described in paragraphs (a) to (d) are “stages” of judicial review proceedings.
- (10) For the purposes of this section, “a relevant party” to judicial review proceedings means any of the following –
- (a) a person who is or has been an applicant or defendant in the proceedings described in subsection (9)(a), (9)(b) or (9)(c);
  - (b) a person who is or has been an appellant or respondent in the proceedings described in subsection (9)(d);
  - (c) any other person who is or has been directly affected by the proceedings and on whom the application for judicial review, or for leave to apply for judicial review, has been served.
- (11) If a person who is an intervener in judicial review proceedings becomes a relevant party to the proceedings, the person is to be treated for the purposes of subsections (3) and (5) as having been a relevant party, rather than an intervener, at all times when involved in the proceedings.

## **21. Capping of costs**

- (1) A costs capping order may not be made by the Court of First Instance or the Court of Appeal in connection with judicial review proceedings except in accordance with this section and section 22.
- (2) A “costs capping order” is an order limiting or removing the liability of a party to judicial review proceedings to pay another party’s costs in connection with any stage of the proceedings.
- (3) The Court may make a costs capping order only if leave to apply for judicial review has been granted.
- (4) The Court may make a costs capping order only on an application for such an order made by the applicant for judicial review in accordance with rules of court.

- (5) Rules of court may, in particular, specify information that must be contained in the application, including –
  - (a) information about the source, nature and extent of financial resources available, or likely to be available, to the applicant to meet liabilities arising in connection with the application; and
  - (b) if the applicant is a body corporate that is unable to demonstrate that it is likely to have financial resources available to meet such liabilities, information about its members and about their ability to provide financial support for the purposes of the application.
- (6) The Court may make a costs capping order only if it is satisfied that –
  - (a) the proceedings are public interest proceedings;
  - (b) in the absence of the order, the applicant for judicial review would withdraw the application for judicial review or cease to participate in the proceedings; and
  - (c) it would be reasonable for the applicant for judicial review to do so.
- (7) The proceedings are “public interest proceedings” only if –
  - (a) an issue that is the subject of the proceedings is of general public importance;
  - (b) the public interest requires the issues to be resolved; and
  - (c) the proceedings are likely to provide an appropriate means of resolving it.
- (8) The matters to which the Court must have regard when determining whether proceedings are public interest proceedings include –
  - (a) the number of people likely to be directly affected if relief is granted to the applicant for judicial review;
  - (b) how significant the effect on those people is likely to be; and
  - (c) whether the proceedings involve consideration of a point of law of general public importance.
- (9) The Board may by ADGM enactment amend this section by adding, omitting or amending matters to which the Court must have regard when determining whether proceedings are public interest proceedings.
- (10) Before making any ADGM enactment under subsection (9), the Board must consult the Chief Justice and no such ADGM enactment may be made under subsection (9) unless a draft of it has been provided to, and approved by, the Chief Justice.
- (11) In this section and section 22 –
  - (a) “costs capping order” has the meaning given in subsection (2);

- (b) “the Court” means the Court of First Instance or the Court of Appeal;
  - (c) “judicial review proceedings” means –
    - (i) proceedings on an application for leave to apply for judicial review;
    - (ii) proceedings on an application for judicial review;
    - (iii) any proceedings on an application for leave to appeal from a decision in proceedings described in sub-paragraphs (i) or (ii); and
    - (iv) proceedings on an appeal from such a decision,
 and the proceedings described in sub-paragraphs (i) to (iv) are “stages” of judicial review proceedings.
- (12) For the purposes of this section and section 22, in relation to judicial review proceedings –
- (a) the applicant for judicial review is the person who is or was the applicant in the proceedings on the application for judicial review and;
  - (b) references to relief being granted to the applicant for judicial review include the upholding on appeal of a decision to grant such relief at an earlier stage of the proceedings.

**22. Capping of costs: orders and their terms**

- (1) The matters to which the Court must have regard when considering whether to make a costs capping order in connection with judicial review proceedings, and what the terms of such an order should be, include –
- (a) the financial resources of the parties to the proceedings, including the financial resources of any person who provides, or may provide, financial support to the parties;
  - (b) the extent to which the applicant for the order is likely to benefit if relief is granted to the applicant for judicial review;
  - (c) the extent to which any person who has provided, or may provide, the applicant with financial support is likely to benefit if relief is granted to the applicant for judicial review;
  - (d) whether legal representatives for the applicant for the order are acting free of charge;
  - (e) whether the applicant for the order is an appropriate person to represent the interests of other persons or the public interest generally.
- (2) A costs capping order that limits or removes the liability of the applicant for judicial review to pay the costs of another party to the proceedings if relief is not granted to

the applicant for judicial review must also limit or remove the liability of the other party to pay the applicant's costs if it is.

- (3) The Board may by ADGM enactment amend this section by adding to, omitting or amending the matters listed in subsection (1).
- (4) Before making any ADGM enactment under subsection (3), the Board must consult the Chief Justice and no such ADGM enactment may be made under subsection (3) unless a draft of it has been provided to, and approved by, the Chief Justice.
- (5) In this section –
  - (a) “free of charge” means otherwise than for or in expectation of fee, gain or reward;
  - (b) “legal representative”, in relation to a party to the proceedings, means a person exercising a right of audience or conducting litigation on the party's behalf.

### **23. Appeals against Decisions or Procedures of Global Market's Authorities**

- (1) Subject as follows, any order, judgment, decision or procedure made by any Global Market's Authority may be appealed against or questioned by any interested party, or by any party to the proceedings, on the grounds that it is wrong in law or is in excess of jurisdiction by applying to the Court of First Instance.
- (2) Subsection (1) shall not apply to any order, judgment or decision made by any Court which is a superior court of record.
- (3) Subject to the provisions of these Regulations and to rules of court, the Court of First Instance shall, in accordance with section 15(2), have jurisdiction to hear and determine any application, or any appeal (whether by way of case stated or otherwise), which it has power to hear and determine under or by virtue of these Regulations or any other ADGM enactment.
- (4) Subsections (5) to (12) apply in the case of a reference or appeal to the Court of First Instance (whether made under these Regulations, or the Commercial Licensing Regulations 2015, the Companies Regulations 2015, or any other ADGM enactment) in respect of a decision of the Registration Authority.
- (5) In subsections (4) to (12) –
  - (a) “relevant decision” means a decision mentioned in subsection (4); and
  - (b) “Registration Authority” means the Global Market Registration Bureau.
- (6) Rules of court may make provision for the suspension of a relevant decision which has taken effect, pending determination of the reference or appeal.
- (7) The Court of First Instance may review the relevant decision of the Registration Authority and –

- (a) may consider any evidence relating to the subject-matter of the reference or appeal, whether or not it was available to the Registration Authority at the material time; and
  - (b) may consider and correct any mistake in law or misdirection of the Registration Authority relating to the subject-matter of the reference or appeal and to the relevant decision.
- (8) In the case of a reference under section 52(11) of the Commercial Licensing Regulations 2015 (third party rights), the Court of First Instance –
- (a) must determine what (if any) is the appropriate action for the Registration Authority to take in relation to the matter; and
  - (b) on determining the reference, must remit the matter to the Registration Authority with such directions (if any) as the Court considers appropriate for giving effect to its determination.
- (9) In the case of –
- (a) a reference under section 248(3) of the Companies Regulations 2015 (decision notice), the Court of First Instance must –
    - (i) determine whether, having regard to all of the circumstances, it is appropriate for the Registration Authority to make a disqualification order; or
    - (ii) dismiss the reference; and
    - (iii) in either case, on determining the reference, remit the matter to the Registration Authority with such directions (if any) as the Court considers appropriate for giving effect to its determination;
  - (b) an appeal under section 254(1) of the Companies Regulations 2015 (appeals), the Court of First Instance must –
    - (i) determine whether, having regard to all of the circumstances, it is appropriate for the Registration Authority to issue a decision notice; or
    - (ii) dismiss the appeal; and
    - (iii) in either case, on determining the appeal, either –
      - a. remit the matter to the Registration Authority with such directions as the Court considers appropriate for giving effect to its determination; or
      - b. make any order or determination that the Registration Authority might have made.
- (10) In any other case, the Court of First Instance must determine the reference or appeal by either –

- (a) dismissing it; or
  - (b) remitting the matter to the Registration Authority with a direction to reconsider and reach a decision in accordance with the findings of the Court.
- (11) The findings mentioned in subsection (10)(b) are limited to findings as to –
- (a) issues of fact or law;
  - (b) the matters to be, or not to be, taken into account in making the decision; and
  - (c) the procedural or other steps to be taken in connection with the making of the decision.
- (12) The Registration Authority must act in accordance with the determination of, and any direction given by, the Court of First Instance.
- (13) Subsections (14) to (29) apply in the case of a reference to the Court of First Instance (whether made under these Regulations, the Financial Services and Markets Regulations 2015, or any other ADGM enactment) in respect of a decision of the Appeals Panel.
- (14) In subsections (13) to (25) –
- (a) “relevant decision” means a decision mentioned in subsection (13);
  - (b) “the decision-maker” means –
    - (i) the Regulator; and/or
    - (ii) the Appeals Panel,as the case may be;
  - (c) “Regulator” means the Financial Services Regulatory Authority; and
  - (d) “Regulatory Committee” and “Appeals Panel” have the meaning prescribed under Chapters 1 and 2 of Part 19 of the Financial Services and Markets Regulations 2015 (Regulatory Committee, Appeals Panel and Disciplinary Measures).
- (15) Rules of court may make provision for the suspension of a relevant decision which has taken effect, pending determination of the reference.
- (16) The Court of First Instance may review the relevant decision of the Appeals Panel and may –
- (a) consider any evidence relating to the subject-matter of the reference, whether or not it was available to the decision-maker at the material time; and
  - (b) consider and correct any mistake in law or misdirection of the decision-maker relating to the subject-matter of the reference and to the relevant decision.

- (17) In the case of a disciplinary reference or a reference under section 254(11) of the Financial Services and Markets Regulations 2015 (Third Party rights), the Court of First Instance –
- (a) must determine what (if any) is the appropriate action for the Regulator to take in relation to the matter; and
  - (b) on determining the reference, must remit the matter to the Regulator with such directions (if any) as the Court considers appropriate for giving effect to its determination.
- (18) In any other case, the Court of First Instance must determine the reference by either –
- (a) dismissing it; or
  - (b) remitting the matter to the Regulator with a direction to reconsider and reach a decision in accordance with the findings of the Court.
- (19) The findings mentioned in subsection (18)(b) are limited to findings as to –
- (a) issues of fact or law;
  - (b) the matters to be, or not to be, taken into account when making the decision; and
  - (c) the procedural or other steps to be taken in connection with the making of the decision.
- (20) The Regulator must act in accordance with the determination of, and any direction given by, the Court of First Instance.
- (21) A reference is a “disciplinary reference” for the purposes of subsections (13) to (20) and this subsection (21) if it is in respect of any of the following decisions –
- (a) a decision to publish a statement under section 231 of the Financial Services and Markets Regulations 2015 (public censure);
  - (b) a decision to impose a fine under section 232 of the Financial Services and Markets Regulations 2015 (financial penalties);
  - (c) a decision to suspend a permission or impose a restriction under section 233 of the Financial Services and Markets Regulations 2015 (suspension and restriction of Financial Services Permission).
- (22) In determining in accordance with subsection (17) a reference made (whether under these Regulations, the Financial Services and Markets Regulations 2015 or any other ADGM enactment) as a result of a decision notice given by the Regulator, the Court may not direct the Regulator to take action which it would not, as a result of section 249(2) of the Financial Services and Markets Regulations 2015 (decision notices), have had power to take when giving the notice.
- (23) The action specified in a decision notice must not be taken –



- (a) during the period within which the matter to which the notice relates may be referred to the Court of First Instance (whether under these Regulations, the Financial Services and Markets Regulations 2015 or any other ADGM enactment); and
  - (b) if the matter is so referred, until the reference, and any appeal against the Court's determination, has been finally disposed of.
- (24) The Court may, on determining a reference (whether made under these Regulations, the Financial Services and Markets Regulations 2015 or any other ADGM enactment) in respect of a decision of the Regulator, make recommendations as to its regulating provisions or its procedures.
- (25) No reference may be made to the Court of First Instance under subsection (13) before the Appeals Panel has made a relevant decision; and the Court shall not have jurisdiction under subsection (13) to entertain or determine any reference of a decision, direction or order of the Regulator or the Regulatory Committee until it becomes the subject of a relevant decision by the Appeals Panel.
- (26) Subsections (27) to (29) apply in the case of proceedings before the Court of First Instance in respect of a decision of the Appeals Panel.
- (27) A person contravenes these Regulations if that person, without reasonable excuse –
  - (a) refuses or fails –
    - (i) to attend following the issue of a writ of attendance by the Court of First Instance; or
    - (ii) to give evidence; or
  - (b) alters, suppresses, conceals or destroys, or refuses to produce a document which he may be required to produce (whether or not pursuant to a writ of production) for the purposes of proceedings before the Court.
- (28) A person who commits a contravention of subsection (27)(a) shall be liable to a fine not exceeding level 3 on the standard fines scale.
- (29) A person who commits a contravention of subsection (27)(b) shall be liable to a fine not exceeding level 8 on the standard fines scale.

## **PART 3 – CONSTITUTION OF THE COURTS**

### **24. The Court of Appeal**

- (1) The Court of Appeal shall consist of –
  - (a) the Chief Justice; and
  - (b) any Judge of the Courts directed to sit in that Court by the Chief Justice.
- (2) A Judge of the Courts shall be styled “Justice of Appeal” when sitting in that Court.
- (3) The Court of Appeal shall be taken to be duly constituted notwithstanding any vacancy in the office of the Chief Justice.

### **25. Composition of the Court of Appeal**

- (1) In this section “Court”, except where the context otherwise requires, means the Court of Appeal.
- (2) Subject as follows and to Article 13(1) of the ADGM Founding Law, a Court shall be constituted for the purpose of exercising any of its jurisdictions if it consists of three Judges.
- (3) Subject to Article 13 of the ADGM Founding Law, the Chief Justice may, with the agreement of the Board, give (or vary or revoke) directions about the minimum number of Judges of which a Court must consist of if it is to be duly constituted.
- (4) The Chief Justice, or any Justice of Appeal designated by him, may (subject to any directions under subsection (3)) determine the number of Judges of which a Court is to consist of for the purpose of any particular proceedings.
- (5) A duly constituted Court shall be referred to as a “Full Court”.
- (6) The Chief Justice may give directions as to what is to happen in any particular case where one or more members of a Court which has partly heard proceedings are unable to continue.
- (7) Section 107 (assessors in the Court of First Instance) shall apply in relation to causes and matters before the Court of Appeal as they apply in relation to causes and matters before the Court of First Instance.

### **26. The Court of First Instance**

- (1) The Court of First Instance shall consist of –
  - (a) the Chief Justice; and
  - (b) any Judge of the Courts directed to sit in that Court by the Chief Justice.
- (2) A Judge of the Courts shall be styled “Justice of First Instance” when sitting in that Court.

- (3) Except where these Regulations expressly provide otherwise, all Justices of First Instance shall have in all respects equal power, authority and jurisdiction.
- (4) The Court of First Instance shall be taken to be duly constituted notwithstanding any vacancy in the office of the Chief Justice.

**27. Composition of the Court of First Instance**

- (1) In this section “Court”, except where the context otherwise requires, means the Court of First Instance.
- (2) Subject as follows and to Article 13(1) of the ADGM Founding Law, a Court shall be duly constituted for the purpose of exercising any of its jurisdictions if it consists of one Judge.
- (3) The Chief Justice may, with the agreement of the Board, give (or vary or revoke) directions about the minimum number of Judges of which a Court must consist of if it is to be duly constituted.
- (4) The Chief Justice may give directions as to what is to happen in any particular case where a Judge of the Court which has partly heard proceedings is unable to continue.

**28. Judges to exercise first instance and appellate jurisdiction**

Subject to section 100, the Chief Justice may from time to time direct any one or more Judge of the Courts –

- (a) to sit as a Justice of First Instance for the purpose of hearing and disposing of any cause, matter or issue pending before the Court of First Instance;
- (b) to sit as a Justice of Appeal for the purpose of hearing and disposing of any cause, matter or issue pending before the Court of Appeal.

**29. Power to create or alter Divisions or transfer certain Courts to different Divisions**

- (1) The Board, on behalf of His Highness, may from time to time, on the recommendation of the Chief Justice, by subordinate legislation provide for –
  - (a) the creation of different Divisions of the Court of Appeal or of the Court of First Instance;
  - (b) any increase or reduction in the number of Divisions of the Court of Appeal or of the Court of First Instance; or
  - (c) the transfer of any Courts to a different Division,to be carried into effect in pursuance of that recommendation.
- (2) Any subordinate legislation under this section may include such incidental, supplementary or consequential provisions as appear to the Board necessary or

expedient, including amendments of provisions referring to particular Divisions contained in these Regulations or any other ADGM enactment.

**30. Chair of Divisions**

Each Division shall be presided over by a Judge of that Division who shall hold the office of Chair of that Division and who shall be appointed Division Chair by the Chief Justice.

**31. Chief Justice of the Courts**

- (1) The Chief Justice is the Head of the judiciary of the Abu Dhabi Global Market Courts.
- (2) The Chief Justice is responsible –
  - (a) for representing the views of the judiciary to the Board and, where required and appropriate, to the Executive Council;
  - (b) for the maintenance and appropriate arrangements for the welfare, training and guidance of the judiciary within the resources made available by the Board;
  - (c) for the maintenance of appropriate arrangements for the deployment of the judiciary and the allocation of work within the Courts.
- (3) Subsection (2) is without prejudice and in addition to those duties and powers set out in Article 13(5) of the ADGM Founding Law.
- (4) The Chief Justice is entitled to sit in any Court.
- (5) In subsection (2)(a), “Executive Council” means the Executive Council of the Emirate.

## **PART 4 – POWERS OF THE COURT**

### **32. Orders for interim payment**

- (1) As regards proceedings pending in the Court of First Instance, provision may be made by rules of court for enabling the Court, in such circumstances as may be prescribed, to make an order requiring a party to the proceedings to make an interim payment of such amount as may be specified in the order, with provision for the payment to be made to such other party to the proceedings as may be so specified or, if the order so provides, by paying it into Court.
- (2) Any rules of court which make provision in accordance with subsection (1) may include provision for enabling a party to any proceedings who, in pursuance of such an order, has made an interim payment to recover the whole or part of the amount of the payment in such circumstances, and from such other party to the proceedings, as may be determined in accordance with the rules of court.
- (3) Any rules of court made by virtue of this section may include such incidental, supplementary and consequential provisions as the Chief Justice may consider necessary or expedient.
- (4) Nothing in this section shall be construed as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs.
- (5) In this section “interim payment”, in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the Court in the proceedings is given or made in favour of that other party.

### **33. Orders for provisional damages for personal injuries**

- (1) This section applies to an action for damages for personal injuries in which there is proved or admitted to be a chance that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration in his physical or mental condition.
- (2) Subject to subsection (4) below, as regards any action for damages to which this section applies in which a judgment is given in the Court of First Instance, provision may be made by rules of court for enabling the Court, in such circumstances as may be prescribed, to award the injured person –
  - (a) damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition; and
  - (b) further damages at a future date if he develops the disease or suffers the deterioration.

- (3) Any rules of court made by virtue of this section may include such incidental, supplementary and consequential provisions as the Chief Justice may consider necessary or expedient.
- (4) Nothing in this section shall be construed –
  - (a) as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs; or
  - (b) as prejudicing any duty of the Court under any ADGM enactment or rule of law to reduce or limit the total damages which would have been recoverable apart from any such duty.

**34. Powers of the Court of First Instance exercisable before commencement of action**

- (1) On the application of any person in accordance with rules of court, the Court of First Instance shall, in such circumstances as may be specified in the rules of court, have power to make an order providing for any one or more of the following matters, that is to say –
  - (a) the inspection, photographing, recording, preservation, custody and detention of property which appears to the Court to be property which may become the subject-matter of subsequent proceedings in the Court of First Instance, or as to which any question may arise in any such proceedings; and
  - (b) the taking of samples of any such property as is mentioned in paragraph (a), and the carrying out of any experiment on or with such property.
- (2) The Court of First Instance, on the application, in accordance with rules of court, of a person who appears to that Court to be likely to be a party to subsequent proceedings in that Court shall, in such circumstances as may be specified in the rules of court, have power to order a person who appears to it to be likely to be a party to the proceedings and is likely to have or have had in his possession, control, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim –
  - (a) to disclose whether those documents are in his possession, control, custody or power; and
  - (b) to produce such of those documents as are in his possession, control, custody or power to the applicant or, on such conditions as may be specified in the order –
    - (i) to the applicant’s legal advisers; or
    - (ii) to the applicant’s legal advisers and any other professional adviser of the applicant; or
    - (iii) if the applicant has no legal adviser, to any other professional adviser of the applicant.

**35. Power of the Court of First Instance to order disclosure of documents, inspection of property etc. against a non-party**

- (1) On the application, in accordance with rules of court, of a party to any proceedings, the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the Court to have in his possession, custody or power any documents which are relevant to an issue arising out of the said claim –
  - (a) to disclose whether those documents are in his possession, custody or power; and
  - (b) to produce such of those documents, as are in his possession, custody of power to the applicant or, on such conditions as may be specified in the order –
    - (i) to the applicant’s legal advisers; or
    - (ii) to the applicant’s legal advisers and any other professional adviser of the applicant; or
    - (iii) if the applicant has no legal adviser, to any other professional adviser of the applicant.
- (2) On the application, in accordance with rules of court, of a party to any proceedings, the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say –
  - (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject-matter of the proceedings or as to which any question arises in the proceedings;
  - (b) the taking of samples of any such property as mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.
- (3) The preceding provisions of this section are without prejudice to the exercise by the Court of First Instance of any power to make orders which is exercisable apart from those provisions.

**36. Provisions supplementary to sections 34 and 35**

- (1) The Court of First Instance shall not make an order under section 34 or 35 if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.
- (2) Rules of court may make provision as to the circumstances in which an order under section 34 or 35 can be made; and any rules making such provision may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.

- (3) Without prejudice to the generality of subsection (2), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under section 34(2) or 35 which are incurred by the person against whom the order is sought shall be awarded to that person unless the Court otherwise directs.
- (4) In sections 33, 34, 35 and this section “property” includes any real property, chattel or other corporeal or electronic property of any description.

**37. Power of the Court of First Instance to award interest on debts and damages**

- (1) Subject to rules of court, in proceedings (whenever instituted) before the Court of First Instance for the recovery of a debt or damages there may be included in any sum for which judgment is given simple or compound interest, at such rate as the Court thinks fit or as rules of court may provide, on all or any part of the debt or damages in respect of which judgment is given, or if payment is made before judgment is given, for all or any part of the period between the date when the cause of action arose and –
  - (a) in the case of any sum paid before judgment, the date of the payment; and
  - (b) in the case of the sum for which judgment is given, the date of the judgment.
- (2) Subject to rules of court, where –
  - (a) there are proceedings (whenever instituted) before the Court of First Instance for the recovery of a debt; and
  - (b) the defendant pays the whole debt to the claimant (otherwise than in pursuance of a judgment in the proceedings),

the defendant shall be liable to pay the claimant simple or compound interest at such rate as the Court thinks fit or as rules of court may provide on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.

- (3) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.
- (4) Rules of court may provide for a rate of interest by reference to section 7 as that section has effect from time to time or by reference to a rate for which any other ADGM enactment provides.
- (5) Interest under this section may be calculated at different rates in respect of different periods.
- (6) In this section, “claimant” means the person seeking the debt or damages and “defendant” means the person from whom the claimant seeks the debt or damages.
- (7) Nothing in this section affects the damages recoverable for the dishonour of a bill of exchange.

**38. Subpoena issued by Court of First Instance to run throughout the Abu Dhabi Global Market and the Emirate**



- (1) If in any cause or matter in the Court of First Instance it appears to the Court that it is proper to compel the personal attendance at any trial of a witness who may not be within the jurisdiction of the Court, it shall be lawful for the Court, if in its discretion it seems fit so to do, to order that a writ of attendance or writ of production shall be issued in special form commanding the witness to attend the trial wherever he shall be within the Emirate; and the service of any such writ in any part of the Emirate shall be as valid and effectual for all purposes as if it had been served with the jurisdiction of the Court of First Instance.
- (2) Every such writ shall have at its foot a statement to the effect that it is issued by the special order of the Court of First Instance, and no such writ shall be issued without such a special order.
- (3) If any person served with a writ issued under this section does not appear as required by the writ, the Court of First Instance, on proof to its satisfaction of the service of the writ and of the default, may transmit a certificate of the default under the seal of the Court to such competent authorities of the Emirate as the Court thinks fit requesting that that authority proceed against and punish the person in default in a like manner as if that person had neglected or refused to appear in obedience to process issued out of a competent court of the Emirate.
- (4) Nothing in this section shall affect –
  - (a) the power of the Court of First Instance to issue a commission for the examination of witnesses out of the jurisdiction of the Court in any case in which, notwithstanding this section, the Court thinks fit to issue such commission; or
  - (b) the admissibility at any trial of any evidence which, if this section had not been enacted, would have been admissible on the ground of a witness being outside the jurisdiction of the Court.
- (5) In this section references to attendance at trial include references to attendance before an examiner or commissioner appointed by the Court of First Instance in any cause or matter in that Court, including an examiner or commissioner appointed to take evidence outside the jurisdiction of the Court.

**39. Powers of the Court of First Instance with respect to injunctions and receivers**

- (1) The Court of First Instance may by order (whether interim or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.
- (2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.
- (3) The power of the Court of First Instance under subsection (1) to grant an interim injunction restraining a party to any proceedings from removing from the jurisdiction of the Court of First Instance or the Emirate, or otherwise dealing with, assets located within that jurisdiction or the Emirate shall be exercisable in cases where that party is,

as well as in cases where he is not, domiciled, resident or present within that jurisdiction.

- (4) The power of the Court of First Instance to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in real property; and that power –
  - (a) may be exercised in relation to an estate or interest in real property whether or not a charge has been imposed on that real property under section 115 (charging orders) for the purpose of enforcing the judgment, order or award in question; and
  - (b) shall be in addition to, and not in derogation of any power of any Court to appoint a receiver in proceedings for enforcing such a charge.
- (5) Where an order under section 115 imposing a charge for the purpose of enforcing a judgment, order or award has been, or has the effect as if, registered under section 96 of the Real Property Regulations 2015, section 98(1) of those Regulations shall not apply to an order appointing a receiver made either –
  - (a) in proceedings for enforcing the charge; or
  - (b) by way of equitable execution of the judgment, order or award or, as the case may be, of so much of it as requires payment of moneys secured by the charge.

#### **40. Relief against forfeiture for non-payment of rent**

- (1) In any action in the Court of First Instance for the forfeiture of a lease for non-payment of rent, the Court shall have power to grant relief against forfeiture in a summary manner.
- (2) Where the lessee or a person deriving title under him is granted relief under this section, he shall hold the demised premises in accordance with the terms of the lease without the necessity for a new lease.

#### **41. Execution of instrument by person nominated by Court of First Instance**

- (1) Where the Court of First Instance has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to endorse any negotiable instrument, then, if that person –
  - (a) neglects or refuses to comply with the judgment or order; or
  - (b) cannot after reasonable inquiry be found,

the Court of First Instance may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed, by such person as the Court may nominate for that purpose.

- (2) A conveyance, contract, document or instrument executed or endorsed in pursuance of an order under this section shall operate, and be for all purposes available, as if it

had been executed or endorsed by the person originally directed to execute or endorse it.

#### **42. Attachment of debts**

- (1) Subject to subordinate legislation for the time being in force under subsection (4), this section applies to any deposit account, and any profit sharing investment account, with a deposit-taker.
- (2) In determining whether, for the purposes of the jurisdiction of the Court of First Instance to attach debts for the purpose of satisfying judgments or orders for the payment of money, a sum standing to the credit of a person in an account to which this section applies is a sum due or accruing to that person and is, as such, attachable in accordance with rules of court, any condition mentioned in subsection (3) which applies to the account shall be disregarded.
- (3) Those conditions are –
  - (a) any condition that notice is required before any money or share is withdrawn;
  - (b) any condition that a personal application must be made before any money or share is withdrawn;
  - (c) any condition that a deposit book or share-account book must be produced before any money or share is withdrawn; or
  - (d) any other prescribed condition.
- (4) The Board may by subordinate legislation make such provision as it thinks fit, by way of amendment of this section or otherwise, for all or any of the following purposes, namely –
  - (a) including in, or excluding from, the accounts to which this section applies accounts of any description specified in the subordinate legislation;
  - (b) excluding from the accounts to which this section applies all accounts with any particular deposit-taker so specified or with any deposit-taker of a description so specified.
- (5) “Deposit-taker” means a person who may, in the course of his business, lawfully accept deposits in the Abu Dhabi Global Market or the Emirate.

#### **43. Administrative and clerical expenses of third party debt orders**

- (1) Where an interim third party debt order made in the exercise of the jurisdiction mentioned in section 42(2) is served on a deposit-taker, it may, subject to the provisions of this section, deduct from the relevant debt or debts an amount not exceeding the prescribed sum towards its administrative and clerical expenses in complying with the order. The right to make a deduction under this subsection shall be exercisable as from the time that the interim third party debt order is served on it.

- (2) In subsection (1) “the relevant debt or debts”, in relation to an interim third party debt order served on a deposit-taker, means the amount, as at the time the order is served on it, of the debt or debts of which the whole or a part is expressed to be attached by the order.
- (3) A deduction may be made under subsection (1) in a case where the amount referred to in subsection (2) is insufficient to cover both the amount of the deduction and the amount of the judgment debt and costs in respect of which the attachment was made, notwithstanding that the benefit of the attachment to the creditor is reduced as a result of the deduction.
- (4) An amount may not in pursuance of subsection (1) be deducted or, as the case may be, retained in a case where, by virtue of subsections (5) to (8) of sections 215 or 217 of the Insolvency Regulations 2015 or otherwise, the creditor is not entitled to retain the benefit of the attachment.
- (5) In this section –
  - (a) “deposit-taker” has the meaning given by section 42(5); and
  - (b) “prescribed” means prescribed by an order made by the Chief Justice.
- (6) An order under this section –
  - (a) may make different provision for different cases;
  - (b) without prejudice to the generality of paragraph (a) of this subsection, may prescribe sums differing according to the amount due under the judgment or order to be satisfied;
  - (c) may provide for this section not to apply to deposit-takers of any prescribed description.

#### **44. Restriction of vexatious legal proceedings**

- (1) If, on an application made under this section, the Court of First Instance is satisfied that any person has habitually and persistently and without any reasonable ground –
  - (a) instituted vexatious proceedings, whether in the Court of First Instance or any inferior court, and whether against the same person or against different persons; or
  - (b) made vexatious applications in any proceedings, whether in the Court of First Instance or any inferior court, and whether instituted by him or another,

the Court of First Instance may, after hearing that person or giving him an opportunity of being heard, make a civil proceedings order.
- (2) An order under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
- (3) Where an indefinite order has been made under subsection (2) –

- (a) the person who is the subject of such an order must first obtain leave from the Court before commencing any fresh proceedings of whatever nature, and such leave shall not be given unless the Court of First Instance is satisfied that the proceedings are not an abuse of the process of the Court in question and that there are good grounds for the proceedings to be issued; and
  - (b) the Registrar shall prevent the issue of any fresh proceedings by any person who is subject to an indefinite order under subsection (2) unless and until any leave has been obtained by the Court of First Instance under sub-paragraph (a).
- (4) No appeal shall lie from a decision of the Court of First Instance refusing leave required by virtue of this section.
- (5) A copy of any order made under subsection (1) shall be published in English on the Courts' website.
- (6) In this section –
  - (a) “civil proceedings order” means an order that –
    - (i) declares that the person against whom the order is made is a vexatious litigant;
    - (ii) no proceedings shall without the leave of the Court of First Instance be instituted in any Court by the person against whom the order is made;
    - (iii) any proceedings instituted by him in any Court before the making of the order shall not be continued by him without the leave of the Court of First Instance; and
    - (iv) no application (other than one for leave under this section) shall be made by him, in any proceedings instituted in any Court by any person, without the leave of the Court of First Instance;
  - (b) “inferior court” means any Court or tribunal established within the Abu Dhabi Global Market that is not a superior court of record.
- (7) If the Court of First Instance is satisfied that any proceedings already initiated in any Court has been brought without any reasonable grounds, it may declare such proceedings to be vexatious and may make an order dismissing the claim or claims as being vexatious.
- (8) A declaration and/or order under subsection (7) may be made by the Court's own motion or upon the application of one or more of the parties to the proceedings in respect of which the declaration or order is sought.

#### **45. Specific powers of arbitrator exercisable by the Court of First Instance**

In any cause or matter proceeding in the Court of First Instance in connection with any contract incorporating an arbitration agreement which confers specific powers upon the arbitrator, the Court of First Instance may, if all parties to the agreement agree, exercise any such power.

**46. Power to award damages (or order undertakings as to damages) as well as, or in substitution for, injunction or specific performance**

- (1) Where the Court of Appeal or the Court of First Instance has jurisdiction to entertain an application for an injunction or specific performance, it may –
  - (a) award damages in addition to, or in substitution for, an injunction or specific performance;
  - (b) order the applicant to give the Court an undertaking as to damages as a condition for granting an injunction or order.
- (2) Rules of court may provide the circumstances in which the Court of Appeal or the Court of First Instance has jurisdiction under subsection (1).
- (3) Where the Registration Authority or the Financial Services Regulatory Authority applies to the Court for the grant of an injunction under section 39, or under any other ADGM enactment, the Court shall not require the applicant to give an undertaking as to damages as a condition of granting an interim injunction.

**47. Costs in the Court of Appeal and the Court of First Instance**

- (1) Subject to the provisions of these Regulations or any other ADGM enactment and to rules of court, the costs of and incidental to all proceedings in –
  - (a) the Court of Appeal; and
  - (b) the Court of First Instance,shall be in the discretion of the Court.
- (2) Without prejudice to any general power to make rules of court, such rules may make provision for regulating matters relating to the costs of those proceedings including, in particular, prescribing scales of costs to be paid to legal or other representatives or for securing that the amount awarded to a party in respect of the costs to be paid by him to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs.
- (3) The Court shall have full power to determine by whom and to what extent the costs are to be paid, including, without limitation, the power to determine whether costs are to be paid on the standard or indemnity basis.
- (4) In subsections (1) and (2) “proceedings” includes the administration of trusts.
- (5) Nothing in subsection (1) shall alter the practice in insolvency.
- (6) In any proceedings mentioned in subsection (1), the Court may disallow, or (as the case may be) order the legal or other representatives concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.

- (7) In subsection (6) “wasted costs” means any costs incurred by a party –
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such representative; or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.
- (8) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf.

**48. Assumed rate of return on investment of damages**

- (1) In determining the return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury, the Court shall, subject to and in accordance with rules of court made for the purposes of this section, take into account such rate of return (if any) as may from time to time be prescribed by subordinate legislation made by the Chief Justice.
- (2) Subsection (1) above shall not however prevent the Court taking a different rate of return into account if any party to the proceedings shows that it is more appropriate in the case in question.
- (3) Subordinate legislation under subsection (1) above may prescribe different rates of return for different classes of case.

**49. Periodical payments**

- (1) Where the Court awards damages for future pecuniary loss in respect of personal injury, the Court –
- (a) may order that the damages are wholly or partly to take the form of periodical payments; and
  - (b) shall consider whether to make that order.
- (2) Where the Court awards other damages in respect of personal injury, it may, if the parties consent, order that the damages are wholly or partly to take the form of periodical payments.
- (3) The Court may not make an order for periodical payments unless satisfied that the continuity of payment under the order is reasonably secure.
- (4) An order for periodical payments may include provision –
- (a) requiring the party responsible for the payments to use a method (selected or to be selected by him) under which the continuity of payment is reasonably secure;
  - (b) about how the payments are to be made, if not by a method under which the continuity of payment is reasonably secure;

- (c) requiring the party responsible for the payments to take specified action to secure continuity of payment, where continuity is not reasonably secure;
  - (d) enabling a party to apply for a variation of provision included under paragraph (a), (b) or (c).
- (5) Where a person has the right to receive payments under an order for periodical payments, or where an arrangement is entered into in satisfaction of an order which gives a person a right to receive periodical payments, that person's right under the order or arrangement may not be assigned or charged without the Court's permission and –
- (a) the Court shall not approve an assignment or charge unless satisfied that special circumstances make it necessary; and
  - (b) a purported assignment or charge, or agreement to assign or charge, is void unless approved by the Court.
- (6) Where an order is made for periodical payments, an alteration of the method by which the payments are made shall be treated as a breach of the order (whether or not the method was specified under subsection (4)(b)) unless the Court declares its satisfaction that the continuity of payment under the new method is reasonably secure.
- (7) An order for periodical payments shall be treated as providing for the amount of payments to vary by reference to such price index, at such times, and in such a manner, as may be prescribed by or in accordance with rules of court.
- (8) An order for periodical payments may include provision –
- (a) disapplying subsection (7); or
  - (b) modifying the effect of subsection (7).

**50. Periodical payments: supplementary**

- (1) Rules of court may require the Court to take specified circumstances into account in considering –
- (a) whether to order periodical payments;
  - (b) the security of the continuity of payment;
  - (c) whether to approve an assignment or charge.
- (2) In section 49 “damages” includes an interim payment which the Court orders a defendant to make to a claimant.
- (3) Section 49 is without prejudice to any power exercisable apart from that section.

**51. Variation of orders and settlements**



- (1) The Chief Justice may by order enable a Court which has made an order for periodical payments to vary the order in specified circumstances (otherwise than in accordance with section 49(4)(d)).
- (2) The Chief Justice may by order enable a Court in specified circumstances to vary the terms on which a claim or action for damages for personal injury is settled by agreement between the parties if the agreement –
  - (a) provides for periodical payments; and
  - (b) expressly permits a party to apply to the Court for variation in those circumstances.
- (3) An order under this section may make provision –
  - (a) which operates wholly or partly by reference to a condition or other term of the Court's order or of the agreement;
  - (b) about the nature of an order which may be made by the Court on a variation;
  - (c) about the matters to be taken into account on considering variation;
  - (d) of a kind that could be made by rules of court (and which may be expressed to be with or without prejudice to the power to make those rules).
- (4) An order under this section may apply (with or without modification) or amend an ADGM enactment about provisional or further damages.
- (5) In subsection (4) –
  - (a) “provisional damages” means damages awarded by virtue of section 33(2)(a); and
  - (b) “further damages” means damages awarded by virtue of section 33(2)(b).

## **52. Provisional damages and fatal accident claims**

- (1) This section applies where a person –
  - (a) is awarded provisional damages; and
  - (b) subsequently dies as a result of the act or omission which gave rise to the cause of action for which the damages were awarded.
- (2) The award of the provisional damages shall not operate as a bar to an action in respect of that person's death under the Fatal Accidents Act 1976.
- (3) Such part (if any) of –
  - (a) the provisional damages; and
  - (b) any further damages awarded to the person in question before his death,

as was intended to compensate him for pecuniary loss in a period which in the event falls after his death shall be taken into account in assessing the amount of any loss of support suffered by the person or persons for whose benefit the action under the Fatal Accidents Act 1976 is brought.

- (4) No award of further damages made in respect of that person after his death shall include any amount for loss of income in respect of any period after his death.
- (5) In this section –
  - (a) “provisional damages” means damages awarded by virtue of section 33(2)(a);  
and
  - (b) “further damages” means damages awarded by virtue of section 33(2)(b).

**53. Interpretation**

In this section, and in sections 48 to 52, “personal injury” includes any disease and any impairment of a person’s physical or mental condition and references to a claim or action for personal injury include references to such a claim or action brought by virtue of the Fatal Accidents Act 1976.

## **PART 5 – EVIDENCE**

### **Chapter 1: Hearsay Evidence**

#### **54. Admissibility of hearsay evidence**

- (1) In proceedings, evidence shall not be excluded on the ground that it is hearsay.
- (2) In this Part –
  - (a) “hearsay” means a written or oral statement made otherwise than by a witness giving his own first-hand evidence in proceedings, which is tendered as evidence of the matters stated and which is relied on in Court to prove the truth of the matters stated; and
  - (b) references to hearsay include hearsay of whatever degree.
- (3) Nothing in this Part affects the admissibility of evidence which would be admissible apart from this section.
- (4) The provisions of sections 55 to 59 (safeguards and supplementary provisions relating to hearsay evidence) do not apply in relation to hearsay evidence which would be admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

#### **55. Notice of proposal to adduce hearsay evidence**

- (1) A party proposing to adduce hearsay evidence in proceedings shall, subject to the following provisions of this section, give to the other party or parties to the proceedings –
  - (a) such notice (if any) of that fact; and
  - (b) on request, such particulars of or relating to the evidence,  
as is reasonable and practicable in the circumstances for the purpose of enabling him or them to deal with any matters arising from its being hearsay.
- (2) Provision may be made by rules of court –
  - (a) specifying classes of proceedings or evidence in relation to which subsection (1) does not apply;
  - (b) as to the manner in which (including the time within which) the duties imposed by that subsection are to be complied with in the cases where it does apply.
- (3) Subsection (1) may also be excluded by agreement of the parties and compliance with the duty to give notice may in any case be waived by the person to whom notice is required to be given.

- (4) A failure to comply with subsection (1), or with rules under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the Court –
- (a) in considering the exercise of its powers with respect to the course of proceedings and costs; and
  - (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 57.

**56. Power to call witness for cross-examination on hearsay evidence**

Rules of court may provide that where a party to proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the Court, call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence-in-chief.

**57. Considerations relevant to weighing of hearsay evidence**

- (1) In estimating the weight (if any) to be given to hearsay evidence in proceedings the Court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) Regard may be had, in particular, to the following –
  - (a) whether it would have been reasonable and practicable for the party adducing the evidence to have produced the maker of the original statement as a witness;
  - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
  - (c) whether the evidence involves multiple hearsay;
  - (d) whether any person involved had any motive to conceal or misrepresent matters;
  - (e) whether the original statement was an edited account, or was made in collaboration with another person or for a particular purpose;
  - (f) whether the circumstances in which evidence is adduced as hearsay are such as to suggest an attempt to prevent the proper evaluation of its weight.

**58. Competence and credibility**

- (1) Hearsay evidence shall not be admitted in proceedings if or to the extent that it is shown to consist of, or be proved by means of, a statement made by a person who at the time he made the statement was not competent as a witness.

For this purpose “not competent as a witness” means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in proceedings.

- (2) Where in proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness –
- (a) evidence which, if he had been so called, would be admissible for the purpose of attacking or supporting his credibility as a witness is admissible for that purpose in the proceedings; and
  - (b) evidence tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purpose of showing that he had contradicted himself,

provided that evidence may not be given of any matter of which, if he had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

#### **59. Previous statements of witnesses**

- (1) Subject as follows, the provisions of this Part as to hearsay evidence in proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.
- (2) A party who has called or intends to call a person as a witness in proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except –
  - (a) with the leave of the Court; or
  - (b) for the purpose of rebutting a suggestion that his evidence has been fabricated.

This shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.

- (3) Where subsections (4), (5) or (6) apply, these Regulations do not authorise the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with those subsections. This is without prejudice to any provision made by rules of court under section 56 above (power to call witness for cross-examination on hearsay evidence).
- (4) A party who has called, or intends to call, a person as a witness in proceedings –
  - (a) may not discredit him by general evidence of the witness' bad character; but
  - (b) may, if in the Court's opinion the witness shall, or is likely to, be hostile –
    - (i) contradict him by other evidence; or
    - (ii) with the leave of the Court, prove that the witness has previously made a statement which is inconsistent with his present testimony.

Before a party can give proof pursuant to sub-paragraph (b)(ii) –

- (c) the circumstances of the supposed statement, sufficient to identify the particular occasion, must be mentioned to the witness; and
  - (d) the witness must be asked whether or not he made the statement.
- (5) If a witness, upon cross-examination as to a previous statement made by him relative to the subject matter of the proceedings, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof made be given that he did in fact make it; but before such proof can be given –
- (a) the circumstances of the supposed statement, sufficient to identify the particular occasion, must be mentioned to the witness; and
  - (b) the witness must be asked whether or not he made the statement.
- (6) A witness may be cross-examined as to previous statements made by him (whether in writing or orally and subsequently transcribed or otherwise reduced into writing), relative to the subject matter of the proceedings, without such writing being shown to him; but if the cross-examining party intends to use such writing to contradict the witness, the cross-examining party must, before such contradictory proof can be given, draw the witness' attention to those parts of the writing which are to be used for the purpose of contradicting him.
- (7) Nothing in these Regulations affects any of the rules of law as to the circumstances in which, where a person called as a witness in proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.
- (8) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 54 as evidence of the matter stated.

## **Chapter 2: Witnesses, Witness Statements and Admissibility**

### **60. Persons to be admissible witnesses**

- (1) Subject to subsection (3), in proceedings, or on any matter, cause, question or inquiry arising at any time in the course of such proceedings, the parties thereto and the persons on whose behalf such proceedings may be brought or defended shall be competent and compellable to give evidence, either orally or by written statement, on behalf of either or any of the parties to the proceedings.
- (2) Subject to subsection (3), in proceedings, or on any matter, cause, question or inquiry arising at any time in the course of such proceedings, the husbands and wives of the parties thereto, and of the persons on whose behalf such proceedings may be brought or defended, shall be competent and compellable to give evidence, either orally or by written statement, on behalf of either or any of the parties to the proceedings.
- (3) No person shall be compelled to give evidence under subsections (1) or (2), nor their evidence admitted in proceedings, if that person is not, or at the time that they made the written statement was not, competent as a witness.

## **61. Witness Statements**

- (1) Rules of court may make provision –
  - (a) requiring, in specified circumstances, any party to proceedings to serve on the other parties a written statement of the oral evidence which he intends to adduce on any issue of fact to be decided at the trial;
  - (b) enabling the Court to direct any party to proceedings to serve such a statement on the other party or parties; and
  - (c) prohibiting a party who fails to comply with such a requirement or direction from adducing oral evidence on the issue of fact to which it relates.
- (2) Where a party to proceedings has refused to comply with such a requirement or direction, the fact that his refusal was on the ground that the required statement would have been a document which was privileged from disclosure shall not affect any prohibition imposed by virtue of subsection (1)(c).
- (3) This section is not to be construed as prejudicing in any way any other power to make rules of court.

## **62. Evidence formerly admissible at common law**

- (1) In any proceedings, a statement which would by virtue of any rule of law mentioned in subsections (2) and (3) have been admissible as evidence of any fact stated therein shall be admissible as evidence of that fact by virtue of this subsection.
- (2) The rules of law referred to in subsection (1), that is, any rule of law whereby in proceedings –
  - (a) an admission adverse to any party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission;
  - (b) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them;
  - (c) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them; or
  - (d) records (for example, the records of courts, tribunals, treaties and minutes and decisions of the Board) are admissible as evidence of facts stated in them,

shall have effect in the Abu Dhabi Global Market.

In this subsection, “admission” includes any representation of fact, whether made in words or otherwise.

- (3) The rules of law referred to in subsection (1), that is, any rule of law whereby in proceedings evidence of a person's reputation is admissible for the purpose of proving his good or bad character shall have effect in the Abu Dhabi Global Market in so far as they authorise the Courts to treat such evidence as proving or disproving that character.
- (4) The words in which a rule of law, mentioned in this section, is described are intended only to identify the rule and shall not be construed as altering it in any way.

**63. Proof of instrument creating power of attorney**

Any document purporting to be an instrument, or an extract of an instrument, creating a power of attorney registered or executed in the Abu Dhabi Global Market, or in any jurisdiction outside the Abu Dhabi Global Market, shall without further proof be sufficient evidence of the contents of the instrument or extract and of the fact that it has been so registered or executed.

**64. Proof of statements contained in documents**

- (1) Where a statement contained in a document is admissible as evidence in proceedings, it may be proved –
  - (a) by the production of that document; or
  - (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,authenticated in such manner as the Court may approve.
- (2) It is immaterial for this purpose how many removes there are between a copy and the original.

**65. Proof of foreign judgments etc.**

- (1) All judgments, decrees, orders and other judicial proceedings of any international court, or court of justice in any foreign state or in the Emirate, and all witness statements, affidavits, pleadings and other legal documents filed, registered or deposited in any such court, may be proved in a Court, or before any person having by law authority to hear, receive, and examine evidence, by examined copies or by authenticated copies.
- (2) In order to be admissible in evidence, the authenticated copy of any document referred to in subsection (1) must purport either to be sealed with the seal of the international, or foreign, or Emirate court to which the original document belongs, or, in the event of such court having no seal, be signed by the judge, or, if there is more than one judge, by any one of the judges of that court.
- (3) If any authenticated copy purports to be sealed or signed in accordance with subsection (2), such authenticated copy shall be admitted in evidence by the Court in every case in which the original document could have been admitted into evidence, without any proof of the seal, or of the signature.



**66. Proof of records of business or public authority**

- (1) A document which is shown to form part of the records of a business or public authority may be received in evidence in proceedings without further proof.
- (2) A document shall be taken to form part of the records of a business or public authority if there is produced to the Court –
  - (a) a certified or sealed copy of that document; or
  - (b) a certificate to that effect signed by an officer of the business or authority to which the records belong.

For this purpose –

- (i) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given by such an officer and signed by him; and
  - (ii) a certificate shall be treated as signed by a person if it purports to bear a facsimile of his signature.
- (3) The absence of an entry in the records of a business or public authority may be proved in proceedings by a witness statement of an officer of the business or authority to which the records belong.
- (4) In this section –
  - (a) “records” means records in whatever form;
  - (b) “business” includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual;
  - (c) “officer” includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records;
  - (d) “public authority” includes any Abu Dhabi Global Market or Emirate public or statutory undertaking, any Global Market’s Authority, any government department and any person holding office under His Highness, including the Board; and
  - (e) “Global Market’s Authority” includes any board, committee, panel or department within a Global Market’s Authority.
- (5) The Court may, having regard to the circumstances of the case, direct that all or any of the above provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

**67. Penalty for falsely certifying documents**

- (1) If any person authorised or required by these Regulations, or any other ADGM enactment or an Applicable Abu Dhabi Law, to provide certified copies or certified extracts certifies any document, or extract of any document, knowing that the same is not a true copy or extract, as the case may be, he shall be liable for a fine not exceeding level 8 on the standard fines scale.
- (2) In this section “person” means –
  - (a) any party to the proceedings, including individuals, bodies (whether corporate or not), partnerships and public authorities; and
  - (b) any individual acting on behalf of such party including, without limitation, officers, directors, partners, employees, agents and legal or other advisors or representatives.

**68. Abolition of certain common law privileges**

The following rules of law are hereby abrogated, that is to say –

- (a) the rule whereby, in any legal proceedings, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose him to a forfeiture;
- (b) the rule whereby, in any legal proceedings, a person other than a party to the proceedings cannot be compelled to produce any deed or other document relating to his title to any real property; and
- (c) the rule whereby, in any civil proceedings, a party to the proceedings cannot be compelled to produce any document relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party.

**69. Witnesses cannot refuse to answer questions**

A witness cannot refuse to answer a question relevant to the claim, cause or matter in issue for any reason solely on the ground that the answer to such question would or may establish, or tend to establish, that he owes a debt or is otherwise subject or party to proceedings whether in the Abu Dhabi Global Market or elsewhere.

**Chapter 3: Expert Evidence**

**70. Rules of court with respect to expert reports and oral expert evidence**

- (1) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated proceedings or in connection with the obtaining or giving of legal advice are in certain circumstances privileged from disclosure, provision may be made by rules of court –
  - (a) for enabling the Court in any proceedings to direct, with respect to any matters, or class of matters, which may be specified in the direction, that the parties (or some of them) shall each by such date as may be so specified (or such other later

date as may be permitted or agreed in accordance with the rules) disclose to the other party or parties in the form of one or more expert reports the expert evidence on matters (or matters of that class) which he proposes to adduce as part of his case at the trial; and

- (b) for prohibiting a party who fails to comply with a direction given in any such proceedings under rules of court made by virtue of paragraph (a) from adducing in evidence, except with the leave of the Court, any statement (whether of fact or opinion) contained in any expert report whatsoever in so far as that statement deals with matters of any class specified in the direction.
- (2) Provision may be made by rules of court as to the conditions subject to which oral expert evidence may be given in proceedings.
- (3) Without prejudice to the generality of subsection (2), rules of court made in pursuance of that subsection may make provision for prohibiting a party who fails to comply with a direction given as mentioned in subsection (1)(b) from adducing, except with the leave of the Court, any oral expert evidence whatsoever with respect to matters of any class specified in the direction.
- (4) Any rules of court made in pursuance of this section may make different provision for different classes of cases, expert reports dealing with matters of different classes, and for other different circumstances.
- (5) References in this section to an expert report are references to a written report by a person dealing wholly or mainly with matters on which he is (or would, if living, be) qualified to give expert evidence.

#### **71. Admissibility of expert opinion and certain expressions of non-expert opinion**

- (1) Subject to any rules of court made in pursuance of this Chapter, where a person is called as a witness in any proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence.
- (2) Where a person is called as witness in any proceedings, a statement of opinion by him on any relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.
- (3) In this section “relevant matter” includes an issue in the proceedings in question.

#### **72. Evidence of foreign law**

- (1) In proceedings, a person who is suitably qualified on account of his knowledge or experience is competent to give expert evidence as to the law of any jurisdiction outside the Abu Dhabi Global Market irrespective of whether he has acted or is entitled to act as a legal practitioner there.
- (2) Where any question as to the law of any jurisdiction outside of the Abu Dhabi Global Market with respect to any matter has been determined (whether before or after the

passing of these Regulations) in any such proceedings as are mentioned in subsection (4), then in any proceedings –

- (a) any finding made or decision given on that question in the first-mentioned proceedings shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that jurisdiction with respect to that matter; and
- (b) if that finding or decision as so reported or recorded, is adduced for that purpose, the law of the jurisdiction with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved,

provided that paragraph (b) shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question adduced by virtue of this subsection in the same proceedings.

- (3) Except with the leave of the Court, a party to any proceedings shall not be permitted to adduce any such finding or decision as is mentioned in subsection (2) by virtue of that subsection unless he has, in accordance with rules of court, given to every other party to the proceedings notice that he intends to do so.
- (4) The proceedings referred to in subsection (2) are –
  - (a) proceedings at first instance in any Court;
  - (b) appeals arising out of any such proceedings as are mentioned in paragraph (a).
- (5) For the purposes of this section a finding or decision on any such question as is mentioned in subsection (2) shall be taken to be reported or recorded in citable form if, but only if, it is reported or recorded in writing in a report, transcript or other document which, if that question had been a question as to the law of the Abu Dhabi Global Market, could be cited as an authority in legal proceedings in the Abu Dhabi Global Market.

#### **Chapter 4: Applications to Obtain Evidence**

##### **73. Application to the Courts for assistance in obtaining evidence for civil proceedings in another court**

Where an application is made to the Court of First Instance for an order for evidence to be obtained in the Abu Dhabi Global Market, and the Court is satisfied that –

- (a) the application is made in pursuance of a request issued by or on behalf of a court or tribunal (the “requesting court”) exercising jurisdiction in any other part of the United Arab Emirates or in a jurisdiction outside the Abu Dhabi Global Market and the United Arab Emirates; and
- (b) the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the Court of First Instance shall have the power conferred on it by sections 74 to 77.

**74. Power of the Courts to give effect to application for assistance**

- (1) Subject to the provisions of this section, the Court of First Instance shall have the power, on any such application as is mentioned in section 73, to make by order such provision for obtaining evidence in the Abu Dhabi Global Market as may appear to the Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the Court may consider appropriate for that purpose.
- (2) Without prejudice to the generality of subsection (1), but subject to the provisions of this section, an order under this section, in particular, may make provision –
  - (a) for the examination of witnesses, either orally or in writing;
  - (b) for the production of documents;
  - (c) for the inspection, photographing, recording, preservation, custody or detention of any property;
  - (d) for the taking of samples of any property and the carrying out of any experiment on or with any property.
- (3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the requesting court; but this subsection shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.
- (4) An order under this section shall not require a person –
  - (a) to state what documents, relevant to the proceedings to which the application for the order relates, are or have been in his possession, custody or power; or
  - (b) to produce any documents other than particular documents specified in the order as being documents appearing to the Court of First Instance to be, or to be likely to be, in his possession, control, custody or power.
- (5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to payment on account of expenses and loss of time as on attendance as a witness in proceedings before the Court of First Instance.

**75. Privilege of witnesses**

- (1) A person shall not be compelled by virtue of an order under section 74 to give any evidence which he could not be compelled to give –
  - (a) in civil proceedings in the part of the United Arab Emirates in which the court that made the order exercises jurisdiction; or

- (b) subject to subsection (2), in civil proceedings in the jurisdiction in which the requesting court exercises jurisdiction.
- (2) Subsection (1)(b) shall not apply unless the person in question's claim to be exempt from giving the evidence is either –
- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
  - (b) conceded by the applicant for the order,
- and where such a claim by any person is not so supported or conceded, he may (subject to the other provisions of this section) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.
- (3) In this section, references to giving evidence include references to answering any questions and to producing any document and the reference in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

**76. Extension of powers of the Court of First Instance in relation to obtaining evidence for proceedings in that court**

Section 38 shall have effect as if references to attendance at a trial included references to attendance before an examiner or commissioner appointed by the Court of First Instance or a Justice of First Instance in any cause or matter in that Court, including an examiner or commissioner appointed to take evidence outside the jurisdiction of the Court of First Instance.

**77. Rules of court**

Rules of court may make provision –

- (a) as to the manner in which any such application in section 73 is to be made;
- (b) subject to the provisions of this Part 5, as to the circumstances in which an order can be made under section 74; and
- (c) as to the manner in which any such reference as mentioned in section 75(2) is to be made,

and any such rules may include such incidental, supplementary and consequential provision as the authority making the rules of court may consider necessary or expedient.

**Chapter 5: Preserving Evidence**

**78. Power of Courts to make orders for preserving evidence etc.**

- (1) The Court may make an order under this section for the purpose of securing, in the case of any existing or proposed proceedings in the Court –

- (a) the preservation of evidence which is or may be relevant; or
  - (b) the preservation of property which is or may be the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings.
- (2) A person who is, or appears to the Court likely to be, a party to proceedings in the Court may make an application for such an order.
- (3) Such an order may direct any person to permit any person described in the order, or secure that any person so described is permitted –
  - (a) to enter premises in the Abu Dhabi Global Market; and
  - (b) while on the premises, to take in accordance with the terms of the order any of the following steps.
- (4) Those steps are –
  - (a) to carry out a search for or inspection of anything described in the order; and
  - (b) to make or obtain a copy, photograph, recording, sample or other record of anything so described.
- (5) The order may also direct the person concerned –
  - (a) to provide any person described in the order, or secure that any person so described is provided with any information or article so described in the order; and
  - (b) to allow any person described in the order, or secure that any person so described is allowed, to retain for safe keeping anything described in the order.
- (6) An order under this section is to have effect subject to such conditions as are specified in the order.
- (7) This section does not affect the right of any person to refuse to do anything on the ground that to do so might tend to expose him or his spouse to proceedings for the recovery of a penalty.
- (8) In this section –
  - (a) “Court” means the Court of First Instance; and
  - (b) “premises” includes any vehicle, vessel or craft,and an order under this section may describe anything generally, whether by reference to a class or otherwise.

**79. Meaning of “civil proceedings”**

In this Part 5, “civil proceedings” means civil proceedings before any Court or any tribunal located within the Abu Dhabi Global Market, in relation to which the strict

rules of evidence apply, whether as a matter of law or by agreement of the parties. References to “the Court” and “rules of court” shall be construed accordingly.

## **Chapter 6: Administration of Oaths & False Evidence**

### **80. Administration of oaths**

Every Court, judicial office holder, officer of the Courts, or such other person now or hereafter having by law authority to hear, receive and examine evidence, is empowered to administer an oath to all such witnesses as are legally called before them respectively.

### **81. Taking evidence for foreign civil proceedings**

- (1) Any person appointed by a court or other judicial authority of any foreign state shall have the power to administer oaths in the Abu Dhabi Global Market for the purpose of taking evidence for use in civil proceedings carried on under the law of that country or territory.
- (2) A statement made by a person lawfully sworn in the Abu Dhabi Global Market for the purposes of a judicial proceeding in a court or tribunal of any foreign state shall, for the purposes of this Part 5, be treated as a statement made in a judicial proceeding in the Abu Dhabi Global Market.
- (3) The expression “judicial proceeding” includes a proceeding before any court, tribunal or person having by law the power to hear, receive and examine evidence on oath, whether in the Abu Dhabi Global Market or elsewhere.

### **82. False Evidence**

- (1) If any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he shall be liable to a fine not exceeding level 8 on the standard fines scale.
- (2) Where a statement, made for the purposes of a judicial proceeding, is not made before the Court or tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person making the statement, and to record or authenticate the statement, it shall, for the purposes of this section, be treated as having been made in a judicial proceeding.
- (3) The question whether a statement on was material is a question of law to be determined by the Court.

### **83. False unsworn statement under section 74**

If any person, in giving any evidence (either orally or in writing) otherwise than on oath, where required to do so by an order under section 74, makes a statement –

- (a) which he knows to be false in a material aspect; or
- (b) which is false in a material aspect and which he does not believe to be true,



he shall be liable to a fine not exceeding level 6 on the standard fines scale.

**84. False statutory declarations and other false statements without oath**

If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made –

- (a) in a statutory declaration; or
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return, or other document which he is authorised or required to make, attest, or verify, by any ADGM enactment for the time being in force; or
- (c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any ADGM enactment for the time being in force,

he shall be in contravention of these Regulations and shall be liable to a fine not exceeding level 7 on the standard fines scale.

**85. Aiders, abettors, bribers, etc.**

Every person who aids, abets, counsels, procures, bribes or otherwise induces another person to give false evidence shall be punished as if he was the one giving the false evidence himself and shall be liable for a fine not exceeding level 8 on the standard fines scale.

**Chapter 7: Contempt**

**86. The strict liability rule**

- (1) In this Chapter “the strict liability rule” means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in legal proceedings regardless of intent to do so.
- (2) The strict liability rule applies only in relation to publications, and for this purpose “publication” includes any photograph, video, film, speech, writing, programme or other communication in whatever form, which is addressed to the public at large or any section of the public and “publish” shall be construed accordingly.
- (3) The strict liability rule only applies to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.
- (4) The strict liability rule applies to a publication only if the proceedings are active at the time of the publication.
- (5) First instance and appellate proceedings are active within the meaning of subsection (4) at the times respectively prescribed by subsections (6) to (9); and in relation to proceedings in which more than one of the steps described in any of those subsections is taken, the reference in that subsection is a reference to the first of those steps.

- (6) First instance proceedings are active from the time when arrangements for the hearing are made or, if no such arrangements are previously made, from the time the hearing begins, until the proceedings are disposed of or discontinued or withdrawn; and for the purposes of this subsection any motion or application made in or for the purposes of any proceedings, and any pre-trial review, is to be treated as a distinct proceeding.
- (7) Arrangements for the hearing of proceedings to which subsection (6) applies are made within the meaning of that subsection –
  - (a) in the case of proceedings in the Court of First Instance for which provision is made by rules of court for setting down for trial, when the case is set down;
  - (b) in the case of any other proceedings, when a date for the trial or hearing is fixed.
- (8) Appellate proceedings are active from the time when they are commenced –
  - (a) by application for leave to appeal or apply for review, or by notice of such an application;
  - (b) by notice of appeal or of application for review;
  - (c) by other originating process,until disposed of or abandoned, discontinued or withdrawn.
- (9) In this section, “appellate proceedings” means proceedings on appeal from or for the review of the decision of the Court or tribunal in any proceedings.

#### **87. Defence of innocent publication or distribution**

- (1) A person is not in contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) he does not know and has no reason to suspect that relevant proceedings are active.
- (2) A person is not in contempt of court under the strict liability rule as the distributor of a publication containing any such matter if at the time of distribution (having taken all reasonable care) he does not know that it contains such matter and has no reason to suspect that it is likely to do so.
- (3) The burden of proof of any fact tended to establish a defence afforded by this section to any person lies upon that person.

#### **88. Contemporary reports of proceedings**

- (1) Subject to this section a person is not in contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.
- (2) In any such proceedings the Court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report

of the proceedings, or any part of the proceedings, be postponed for such period as the Court thinks necessary for that purpose.

- (3) For the purposes of subsection (1) a report of proceedings shall be treated as published contemporaneously in the case of a report of which publication is postponed pursuant to an order under subsection (2), if published as soon as practicable after that order expires.

#### **89. Discussion of public affairs**

A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular proceedings is merely incidental to the discussion.

#### **90. Savings**

Nothing in sections 86 to 89 –

- (a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;
- (b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions;
- (c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

#### **91. Consent required for institution of proceedings**

Proceedings for a contempt of court under the strict liability rule shall not be instituted except by, or with the consent of, the Chief Justice or on the motion of the Court having jurisdiction to deal with it.

#### **92. Use of recording instruments**

- (1) Subject to subsection (4) below, it is a contempt of court –
  - (a) to use in Court, or bring into Court for use, any instrument for recording sound and/or images, except with the leave of the Court;
  - (b) to publish a recording of proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;
  - (c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).
- (2) Leave under paragraph (a) of subsection (1) may be granted or refused at the discretion of the Court, and if granted may be granted subject to such conditions as the Court thinks proper with respect to the use of any recording made pursuant to the

leave and where leave has been granted the Court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

- (3) Without prejudice to any other power to deal with an act of contempt under paragraph (a) of subsection (1), the Court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited shall (unless the Court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the Court may direct.
- (4) This section does not apply to the making or use of audio or video recordings for purposes of official transcripts of proceedings.

**93. Source of information**

No Court may require a person to disclose, nor shall any person be in contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the Court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.

**94. Publication of matters exempted from disclosure in Court**

In any case where a Court (having the power to do so) allows a name or other matter to be withheld from the public in proceedings before the Court, the Court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld.

**95. Contempt of court**

- (1) The Courts have jurisdiction under this section to deal with any person who –
  - (a) wilfully insults the Judge or Judges, the Registrar, any witnesses before or officer of the Court or any lawyer having business in the Court, during his or their sitting or attendance in Court or in going to or returning from the Court; or
  - (b) wilfully interrupts the proceedings of the Court or otherwise misbehaves in Court.
- (2) In any such case the Court may, if it thinks fit, impose on him a fine not exceeding level 4 on the standard fine scale.

**96. Enforcement of fines**

Payment of a fine for contempt of court may be enforced upon the order of the Court in like manner as a judgment of the Court of First Instance for the payment of money and –

- (a) the Court shall, if the fine is not paid in full forthwith or within such time as the Court may allow, certify to the Registrar the sum payable;

- (b) the Registrar shall thereupon proceed to enforce payment of that sum as if it were due to him as a judgment debt.

## **PART 6 – PRACTICE, PROCEDURE AND ENFORCEMENT**

### **Chapter 1: Practice & Procedure**

#### **97. Proceedings to be held in public**

- (1) Subject to subsections (2) and (3), all hearings, including trials, shall be held in public.
- (2) The Court is not required to make special arrangements for accommodating members of the public.
- (3) The Court may direct that a hearing, or any part of it, be held in private if –
  - (a) publicity would defeat the object of the hearing;
  - (b) it involves matters relating to national security;
  - (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
  - (d) a private hearing is necessary to protect the interests of a party or witness;
  - (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
  - (f) it involves uncontentious matters arising in the administration of trusts; or
  - (g) the Court considers this to be necessary, in the interests of justice.
- (4) The Court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary –
  - (a) in order to protect the interests of that party or witness; or
  - (b) in the interests of justice.

#### **98. Proceedings to be conducted in English**

- (1) All proceedings before any Court must be conducted in English.
- (2) For the purposes of this section –
  - (a) “proceedings” means –
    - (i) any pre-action correspondence between a party’s legal or other representatives and another party, or a party’s legal or other representatives and another party’s legal or other representatives;
    - (ii) all correspondence between any or all of the parties once a claim form has been issued;

- (iii) all court forms, pleadings, statements (including, but not limited to, witness statements and disclosure statements), expert reports and requests for further information;
  - (iv) all applications to any Court (whether made on paper or orally);
  - (v) all hearings before any Judge or other officer of any Court (whether held in court or in chambers), including cross-examination of witnesses;
  - (vi) all orders whether drafted by any party or prepared by the Court of its own motion;
  - (vii) all judgments, decisions, directions or orders handed down by the Court whether orally or in writing;
- (b) “Court” means –
- (i) the Court of Appeal;
  - (ii) the Court of First Instance;
  - (iii) any Division or Divisions of the Court of Appeal or the Court of First Instance as may from time to time exist;
  - (iv) any other Court as His Highness may, from time to time, establish within the Abu Dhabi Global Market; and
  - (v) any tribunal as may, from time to time, exist and whether established by –
    - a. His Highness pursuant to the ADGM Founding Law or any Applicable Abu Dhabi Law; or
    - b. the Board pursuant to these Regulations or any ADGM enactment, and which performs a judicial function.

**99. Commencing and carrying on proceedings**

- (1) Subject to these Regulations, proceedings are to be commenced and carried on in the manner prescribed by rules of court.
- (2) For the purposes of these Regulations, “carry on proceedings” includes defending proceedings.

**100. Judges not to sit on appeal from their own judgments, etc.**

No Judge shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to, an appeal from a judgment or order made in any cause or matter or by any Court of which he was a member.

### **101. Sittings and vacations of the Court of Appeal**

- (1) Sittings of the Court of Appeal may be held, and any other business of the Court of Appeal may be conducted, at any place in the world.
- (2) Subject to rules of court –
  - (a) the places at which the Court of Appeal sits outside the Abu Dhabi Global Market;
  - (b) the days and times at which the Court of Appeal sits at any place outside the Abu Dhabi Global Market; and
  - (c) the manner in which any hearing is to be conducted (including by way of video conference, tele-conference or in person),shall be determined in accordance with directions given by the Chief Justice after consulting with the Board.
- (3) Rules of court may make provision for regulating the vacations to be observed by the Court of Appeal and in the offices of that Court.
- (4) Rules of court –
  - (a) may provide for securing such sittings of the Court of Appeal during vacations as the Chief Justice may determine; and
  - (b) without prejudice to paragraph (a), shall provide for the transaction during vacations by Judges of the Court of Appeal of all such business as that Court may require to be immediately or promptly transacted.
- (5) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his functions under this section.

### **102. Court divided in opinion**

If the Judges constituting a Full Court for the purposes of any proceedings are divided in opinion as to the judgment to be pronounced, judgment shall be pronounced according to the opinion of the majority.

### **103. Rules of court, and decisions of the Court of Appeal, as to whether judgment or order is final or interim**

- (1) Rules of court may provide for orders or judgments of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or as interim.
- (2) No appeal shall lie from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that Court, final or interim.



**104. Business assigned to specially nominated Judges**

- (1) Any business assigned, in accordance with these Regulations or any other ADGM enactment or rules of court, to one or more specially nominated Judges of the Court of First Instance may –
  - (a) during vacation; or
  - (b) during the illness or absence of that Judge; or
  - (c) for any other reasonable cause,be dealt with by any Judge of the Court of First Instance named for that purpose by the Chief Justice.
- (2) If at any time it appears to the Chief Justice to be desirable to do so with a view to the more convenient administration of justice, he may by order direct that business of any description which is for the time being assigned, in accordance with these Regulations or any other ADGM enactment or rules of court, to one or more specially nominated Judges of the Court of First Instance shall cease to be so assigned and may be dealt with by any other one or more Judges of the Court of First Instance.
- (3) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his functions under subsection (1) or (2).

**105. Proceedings in Court and in chambers**

Business in the Court of First Instance shall be heard and disposed of in Court except in so far as it may, under these Regulations or any other ADGM enactment, under rules of court or in accordance with the practice of the Court, be dealt with in chambers.

**106. Exercise of Court of First Instance jurisdiction otherwise than by Judges of that Court**

- (1) Provision may be made by rules of court as to the cases in which the jurisdiction of the Court of First Instance may be exercised by –
  - (a) such Recorders as the Chief Justice may from time to time nominate to deal with official referees' business; or
  - (b) special referees.
- (2) Without prejudice to the generality of subsection (1), rules of court may in particular authorise any question arising in any cause or matter to be referred to a special referee for inquiry and report.
- (3) Rules of court shall not authorise the exercise of powers of attachment by a special referee or any officer or other staff of the Court.
- (4) Subject to subsection (5), the decision of –

- (a) any such person as mentioned in subsection (1); or
- (b) any officer or staff of the Court,

may be called into question in such manner as may be prescribed by rules of court, whether by appeal to the Court of Appeal, or by an appeal or application to a Judge in Court or a Judge in chambers, or by an adjournment to a Judge in Court or a Judge in chambers.

- (5) Rules of court may provide either generally or to a limited extent for decisions of persons nominated under subsection (1)(a) being called into question only by appeal on a question of law.
- (6) The cases in which the jurisdiction of the Court of First Instance may be exercised by persons nominated under subsection (1)(a) shall be known as “official referees’ business”; and subject to rules of court, the distribution of official referees’ business among persons so nominated shall be determined in accordance with directions given by the Chief Justice after consulting the Board.
- (7) Any reference to an official referee in any enactment, whenever passed, or in rules of court or any other instrument or document, whenever made, shall, unless the context otherwise requires, be construed as, or (where the context requires) as including, a reference to a person nominated under subsection (1)(a).
- (8) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his functions under subsections (1)(a) and (6).

#### **107. Assessors**

- (1) In any cause or matter before the Court of First Instance, the Court may, if it thinks it expedient to do so, call in the aid of one or more assessors specially qualified, and hear and dispose of the cause or matter wholly or partially with their assistance.
- (2) The remuneration, if any, to be paid to an assessor for his services under subsection (1) in connection with any proceedings shall be determined by the Court, and shall form part of the costs of the proceedings.

#### **108. Sittings and vacations of the Court of First Instance**

- (1) Sittings of the Court of First Instance may be held, and other business of the Court of First Instance may be conducted, at any place in the world.
- (2) Subject to rules of court –
  - (a) the places at which the Court of First Instance sits outside the Abu Dhabi Global Market;
  - (b) the days and times when the Court of First Instance sits at any place outside the Abu Dhabi Global Market; and
  - (c) the manner in which any hearing is to be conducted (including by way of video conference, tele-conference or in person),

shall be determined in accordance with directions by the Chief Justice after consulting the Board.

- (3) Rules of court may make provision for regulating the vacations to be observed by the Court of First Instance and in the offices of that Court.
- (4) Rules of court –
  - (a) may provide for securing such sitting of the Court of First Instance during vacation as the Chief Justice may determine; and
  - (b) without prejudice to paragraph (a), shall provide for the transaction during vacation by Judges of the Court of First Instance of all such business in the Court of First Instance as may require to be immediately or promptly transacted.
- (5) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his functions under this section.

**109. Proof of documents bearing seal or stamp of the Courts or any office thereof**

- (1) Every document purporting to be sealed or stamped with the seal or stamp of the Courts or of any office of the Courts shall be received in evidence in the Abu Dhabi Global Market without further proof.
- (2) Rules of court may make provision for which documents require sealing or stamping by the Courts.

**110. Enrolment and engrossment of instruments**

- (1) The Registrar may make rules for authorising and regulating the enrolment or filing of instruments in the Courts, and for prescribing the form in which certificates of enrolment or filing are to be issued.
- (2) Rules under subsection (1) shall not affect the operation of any enactment requiring or authorising the enrolment of any instrument in the Courts or prescribing the manner in which any instrument is to be enrolled there.
- (3) Any instrument which is required or authorised by or under any rules to be enrolled or engrossed in the Courts shall be deemed to have been duly enrolled or engrossed if it is written on material authorised or required by rules made under subsection (1) and has been filed or otherwise preserved in accordance with rules made under that subsection.
- (4) The Registrar may make rules prescribing the fees to be paid on the enrolment or filing of any instrument in the Courts, including any additional fees payable on the enrolment or filing of any instrument out of time.

**111. Bonds given under order of Court**

- (1) A bond to be given by any person under or for the purposes of any order of the Court of First Instance or the Court of Appeal shall be given in such form and to such

officer of the Court as may be prescribed and, if the Court so requires, with one or more sureties.

- (2) An officer of the Court to whom a bond is given in accordance with subsection (1) shall have power to enforce it or to assign it, pursuant to an order of the Court under subsection (4), to some other person.
- (3) Where, by rules of court made for the purposes of this section, another officer of the Court is, at any time, substituted for the officer previously prescribed as the officer to whom bonds of any class are to be given, the rules may provide that bonds of that class which were given before the rules come into operation shall have effect as if references in the bonds to the officer previously prescribed were references to the substituted officer.
- (4) Where it appears to the Court that the condition of a bond given in accordance with subsection (1) has been broken, the Court may, on application, order the bond to be assigned to such person as may be specified in the order.
- (5) A person to whom a bond is ordered to be assigned under subsection (4) shall be entitled by virtue of the order to sue on the bond in his own name as if it had been originally given to him, and to recover on it as trustee for all persons interested in the full amount recoverable in respect of the breach of condition.

**112. Production of documents filed in, or in the custody of, the Courts**

- (1) Rules, as referred to in section 183, may be made for providing that, in any case where a document filed in, or in the custody of, any office of the Courts is required to be produced to any Court or tribunal (including an umpire or arbitrator) sitting elsewhere than in the Abu Dhabi Global Market –
  - (a) it shall not be necessary for any officer, whether or not served with a subpoena in that behalf, to attend for the purpose of producing the document; but
  - (b) the document may be produced to the Court or tribunal by sending it to the Court or tribunal, in the manner prescribed in the rules, together with a certificate, in the form so prescribed, to the effect that the document has been filed in, or is in the custody of, the office,and any such certificate shall be prima facie evidence of the facts stated in it.
- (2) Rules under this section may contain –
  - (a) provisions for securing the safe custody and return to the proper office of the Courts of any document sent to a Court or tribunal in pursuance of the rules; and
  - (b) such incidental and supplementary provisions as appear to the person making the rules to be necessary or expedient.

## **Chapter 2: Enforcement**

### **113. Enforcement**

- (1) Where a person takes steps to enforce a judgment or order of the Courts for payment of any sum due, the costs of any previous attempts to enforce that judgment shall be recoverable to the same extent as if they had been incurred in the taking of those steps.
- (2) Subsection (1) shall not apply in respect of any costs which the Court considers were unreasonably incurred (whether because the earlier attempt was unreasonable in all the circumstances of the case or for any other reason).

### **114. Referral of Money Judgment Payment Dispute to arbitration**

- (1) Subject to rules of court, parties who have submitted, or have agreed to submit, to, or are bound by, the jurisdiction of the Courts may further agree in writing that any dispute arising out of or in connection with the non-payment of any money judgment of the Courts may, at the option of the judgment creditor, be referred to arbitration under the arbitration rules as may be agreed by the parties, provided that the Referral Criteria are met.
- (2) The Referral Criteria are –
  - (a) the judgment has taken effect in accordance with rules of court;
  - (b) the judgement is not subject to any appeal, and the time permitted for a party to the judgment to apply for permission to appeal has expired;
  - (c) the judgment is not in respect of a contract which, by virtue of the Arbitration Regulations 2015 or any other ADGM enactment precludes arbitration in respect of such contracts;
  - (d) there is a Money Judgment Payment Dispute; and
  - (e) the judgment creditor and the judgment debtor have agreed in writing that any Money Judgment Payment Dispute between them may be referred to arbitration pursuant to this section.
- (3) In this section “Money Judgment Payment Dispute” means any dispute, difference, controversy or claim between a judgment creditor and a judgment debtor with respect to any money (including interest and costs) due under an unsatisfied judgment of the Courts –
  - (a) including –
    - (i) a failure to pay on demand any sum of money remaining due under a judgment of the Courts on or after the date on which that sum becomes due in accordance with rules of court; and/or
    - (ii) the inability or unwillingness of the judgment debtor to pay the outstanding portion of the judgment sum within the time demanded; but

- (b) excluding any dispute about the validity or substantive merits of the judgment.

### **Chapter 3: Charging Orders**

#### **115. Charging orders**

- (1) Where, under a judgment or order of the Courts, a person (the “debtor”) is required to pay a sum of money to another person (the “creditor”) then, for the purposes of enforcing that judgment or order, the Court of First Instance may make an order in accordance with the provisions of this Part 6 imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order.
- (2) An order under subsection (1) is referred to in these Regulations as a “charging order”.
- (3) A person may apply to the Court of First Instance for a charging order to enforce more than one judgment or order.
- (4) In deciding whether to make a charging order, the Court shall consider all the circumstances of the case and, in particular, any evidence before it as to –
  - (a) the circumstances (including, where relevant and appropriate, the personal circumstances) of the debtor; and
  - (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order.
- (5) Subsections (6) and (7) apply where, under a judgment or order of the Courts, a debtor is required to pay a sum of money by instalments.
- (6) The fact that there has been no default in payment of the instalments does not prevent a charging order from being made in respect of that sum.
- (7) But if there has been no default, the Court must take that into account when considering the circumstances of the case under subsection (4).

#### **116. Property which may be charged**

- (1) Subject to subsection (3) below, a charge may be imposed by a charging order only on –
  - (a) any interest held by the debtor beneficially –
    - (i) in any asset of a kind mentioned in subsection (2); or
    - (ii) under any trust; or
  - (b) any interest held by a person as a trustee of a trust (“the trust”), if the interest is in such an asset or is an interest under another trust and –

- (i) the judgment or order in respect of which a charge is to be imposed was made against that person as trustee of the trust; or
  - (ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for his own benefit; or
  - (iii) in a case where there are two or more debtors all of whom are liable to the creditor for the same debt, they together hold the beneficial interest under the trust unencumbered and for their own benefit.
- (2) The assets referred to in subsection (1) are –
- (a) real property;
  - (b) securities of any of the following kinds –
    - (i) government stock;
    - (ii) stock of any body incorporated within the Abu Dhabi Global Market;
    - (iii) stock of any body incorporated outside the Abu Dhabi Global Market or of any state or territory outside the Emirate or the United Arab Emirates, being stock registered in a register kept at any place within the Abu Dhabi Global Market;
  - (c) funds in Court; or
  - (d) funds in any bank or investment account kept in the Abu Dhabi Global Market.
- (3) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsections (2)(b), (c) or (d), the court making the order may provide for the charge to extend to any interest, dividend or other return payable in respect of the asset.

**117. Provisions supplementing sections 115 and 116**

- (1) A charging order may be made either absolutely or subject to conditions as to notifying the debtor or as to the time when the charge is to become enforceable, or as to other matters.
- (2) The Real Property Regulations 2015 shall apply in relation to charging orders as they apply in relation to other orders or writs issued or made for the purpose of enforcing judgments.
- (3) Subject to the provisions of this Part 6, a charge imposed by charging order shall have the like effect and shall be enforceable in the same Courts and in the same manner as an equitable charge created by the debtor by writing under his hand.
- (4) Subsections (6) to (8) apply where –
  - (a) a debtor is required to pay a sum of money in instalments under a judgment or order of the Courts (an “instalments order”); and

- (b) a charge has been imposed by a charging order in respect of that sum.
- (5) In subsections (6) to (8), references to the enforcement of a charge are to the making of an order for the enforcement of the charge.
- (6) The charge may not be enforced unless there has been default in payment of an instalment under the instalments order.
- (7) Rules of court may –
  - (a) provide that, if there has been default in payment of an instalment, the charge may be enforced only in prescribed cases; and
  - (b) limit the amounts for which, and the times at which, the charge may be enforced.
- (8) Except so far as otherwise provided by rules of court under subsection (7) –
  - (a) the charge may be enforced, if there has been a default in payment of an instalment, for the whole of the sum of money secured by the charge and the costs then remaining unpaid, or for such part as the Court may order; but
  - (b) the charge may not be enforced unless, at the time of enforcement, the whole or part of an instalment which has become due under the instalments order remains unpaid.
- (9) The Court of First Instance may at any time, on the application of the debtor or of any person interested in any property to which the order relates, make an order discharging or varying the charging order.
- (10) Where a charging order has been protected by an entry registered under the Real Property Regulations 2015, an order under subsection (9) discharging the charging order may direct that the entry be cancelled.
- (11) The Board, on the recommendation of the Chief Justice, may by subordinate legislation amend section 116(2) by adding to, or removing from, the kinds of asset for the time being referred to there, any asset of a kind which, in the Chief Justice’s opinion ought to be so added or removed.

**118. Power to set financial thresholds**

- (1) The Board, on the recommendation of the Chief Justice, may by subordinate legislation provide that a charge may not be imposed by a charging order for securing the payment of money of an amount below that determined in accordance with such subordinate legislation.
- (2) The Board, on the recommendation of the Chief Justice, may by subordinate legislation provide that a charge imposed by a charging order may not be enforced by way of order for sale to recover money of an amount below that determined in accordance with such subordinate legislation.
- (3) Subordinate legislation under this section may –



- (a) make different provision for different cases;
- (b) include such transitional provision as the chairman of the Board, after consulting the Chief Justice, thinks fit.

#### **Chapter 4: Stop Orders and Notices**

##### **119. Stop orders and notices**

- (1) The power to make rules of court under section 183 shall include the power by any such rules to make provision –
  - (a) for the Court of First Instance to make a stop order on the application of any person claiming to be entitled to an interest in prescribed securities; and
  - (b) for the service of a stop notice by any person claiming to be entitled to an interest in prescribed securities.
- (2) Rules of court made by virtue of subsection (1) shall prescribe the person or body on whom a copy of any stop order or stop notice is to be served.
- (3) Any rules of court made by virtue of this section may include such incidental, supplementary and consequential provisions as the authority making them consider necessary or expedient, and may make different provision in relation to different cases or classes of case.
- (4) In this section –
  - (a) “stop order” means an order of the Court prohibiting the taking, in respect of any of the securities specified in the order, of any of the steps mentioned in subsection (5);
  - (b) “stop notice” means a notice requiring any person or body on whom it is duly served to refrain from taking, in respect of any of the securities specified in the notice, any of those steps without first notifying the person by whom, or on whose behalf, the notice was served; and
  - (c) “prescribed securities” means securities (including funds in court and funds in any bank or investment account) of a kind prescribed by rules of court made under this section.
- (5) The steps mentioned in subsection (4) are –
  - (a) the registration of any transfer of the securities;
  - (b) in the case of funds in Court and funds in any bank or investment account, the transfer, sale, delivery out, payment or dealing with the funds, or of the income thereon; and
  - (c) the making of any payment by way of dividend, interest or otherwise in respect of the securities.

## Chapter 5: Appeals

### 120. Permission to appeal

- (1) Rules of court may provide that any right of appeal to –
  - (a) the Court of First Instance; or
  - (b) the Court of Appeal,may be exercised only with permission.
- (2) For the purposes of subsection (1), rules of court may make provision as to –
  - (a) the classes of case in which a right of appeal may be exercised only with permission;
  - (b) the Court or Courts which may give permission for the purposes of this section;
  - (c) any considerations to be taken into account in deciding whether permission should be given;
  - (d) any requirements to be satisfied before permission may be given; and
  - (e) the time within which an appeal, or an application for permission to appeal, must be brought,and may make different provision for different circumstances.
- (3) No appeal shall be made against a decision of a Court to give or refuse permission (but this subsection does not affect any right under rules of court to make a further application for permission to the same or another Court).
- (4) For the purposes of this section, a right to make an application to have a case stated for the opinion of the Court of First Instance constitutes a right of appeal.
- (5) For the purposes of this section, a right of appeal to the Court of Appeal includes the right to make an application for a new trial.

### 121. Second appeals

Where an appeal is made to the Court of First Instance in relation to any matter, and on hearing the appeal the Court makes a decision in relation to that matter, no appeal may be made to the Court of Appeal from that decision –

- (a) without leave to appeal to the Court of Appeal being granted by the Court of First Instance; or
- (b) where leave to appeal is sought directly from the Court of Appeal, unless the Court of Appeal considers that –
  - (i) the appeal would raise an important point of law, principle or practice; or

(ii) there is some other compelling reason for the Court of Appeal to hear it.

**122. Power to prescribe alternative destination of appeals**

- (1) The Chief Justice may by order provide that appeals which would otherwise lie to –
- (a) the Court of First Instance; or
  - (b) the Court of Appeal,
- shall instead lie elsewhere as specified in the order.
- (2) An order under subsection (1) –
- (a) may make different provision for different classes of proceedings or appeals; and
  - (b) may contain consequential amendments or repeals of enactments.
- (3) Before making an order under subsection (1), the Chief Justice –
- (a) shall consult the Board; and
  - (b) shall place before the Board a draft of the order.
- (4) For the purposes of this section, an application to have a case stated for the opinion of the Court of First Instance constitutes an appeal.
- (5) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his functions under this section.

**Chapter 6: Enforcement by Taking Control of Goods**

**123. Enforcement agents**

- (1) This section and section 124 apply for the purposes of Schedule 3.
- (2) An individual may act as an enforcement agent only if one of these applies –
- (a) he acts under a certificate under section 124;
  - (b) he is exempt;
  - (c) he acts in the presence and under the direction of a person to who paragraph (a) or (b) applies.
- (3) An individual is exempt if he acts in the course of his duty as a person appointed under section 210(1) (Court officers and staff).
- (4) An individual is exempt if he acts in the course of his duty as an officer of the Abu Dhabi Global Market, a Global Market's Authority or an Emirate's government department.

**124. Certificate to act as an enforcement agent**

- (1) A certificate may be issued under this section by the Registrar.
- (2) The Board, acting on the recommendation of and having consulted with, the Chief Justice, must make subordinate legislation about certificates under this section.
- (3) The subordinate legislation may in particular include provision –
  - (a) for fees to be charged for applications;
  - (b) for certificates to be issued subject to conditions, including the giving of security;
  - (c) for certificates to be limited to purposes specified by or under the subordinate legislation;
  - (d) about complaints against holders of certificates;
  - (e) about suspension and cancellation of certificates;
  - (f) to modify or supplement Schedule 3 for cases where a certificate is suspended or cancelled or expires;
  - (g) requiring the Courts to make information available relating to certificates.

**125. Power of the Court of First Instance to stay execution**

- (1) If, at any time, the Court of First Instance is satisfied that a party to the proceedings is unable to pay –
  - (a) a sum recovered against him (by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise); or
  - (b) any instalment of such a sum,the Court may stay the execution of any writ of control issued in the proceedings, for whatever period and on whatever terms it thinks fit.
- (2) The Court may act under subsection (1) from time to time until it appears that the cause of the inability to pay has ceased.
- (3) In this section, a party to proceedings includes every person, whether or not named as a party, who is served with notice of the proceedings or attends them.

**Chapter 7: Rent Arrears Recovery**

**126. Abolition of common law right**

The common law right to distrain for arrears of rent or to levy distress to satisfy any debt is abolished.

**127. Commercial rent arrears recovery (CRAR)**

- (1) A landlord under a lease of commercial premises may use the procedure in Schedule 3 to recover from the tenant rent payable under the lease.
- (2) A landlord's power under subsection (1) is referred to as CRAR (commercial rent arrears recovery).

**128. Landlord**

- (1) In this Chapter, "landlord", in relation to a lease, means the person for the time being entitled to the immediate reversion in the property comprised in the lease.
- (2) That is subject to the following.
- (3) In the case of a tenancy by estoppel, a person is "entitled to the immediate reversion" if he is entitled to it as between himself and the tenant.
- (4) If there are joint tenants of the immediate reversion, or if a number of persons are entitled to the immediate reversion as between themselves and the tenant –
  - (a) "landlord" means any one of them;
  - (b) CRAR may be exercised to recover rent due to all of them.
- (5) If the immediate reversion is mortgaged, "landlord" means –
  - (a) the mortgagee, if he has given notice of his intention to take possession or enter into receipt of rents and profits;
  - (b) otherwise, the mortgagor.
- (6) Subsection (5) applies whether the lease is made before or after the mortgage is created, but CRAR is not exercisable by a mortgagee in relation to a lease that does not bind him.
- (7) Where a receiver is appointed by a Court in relation to the immediate reversion, CRAR is exercisable by the receiver in the name of the landlord.
- (8) Any authorisation of a person to exercise CRAR on another's behalf must be in writing and must comply with any prescribed requirements.
- (9) This Chapter applies to any other person entitled to exercise CRAR as it applies to a landlord.

**129. Lease**

- (1) "Lease" means a tenancy in law or in equity, including a tenancy at will, but not including a tenancy at sufferance.
- (2) A lease must be evidenced in writing.

- (3) References to a lease are to a lease as varied from time to time (whether or not the variation is in writing).
- (4) This section applies for the purposes of this Chapter.

### **130. Commercial premises**

- (1) A lease (A) is of commercial premises if none of the demised premises is –
  - (a) let under lease A as a dwelling;
  - (b) let under an inferior lease (B) as a dwelling; or
  - (c) occupied as a dwelling.
- (2) The “demised premises” in this section include anything on them.
- (3) “Let as a dwelling” means let on terms permitting only occupation as a dwelling or other use combined with occupation as a dwelling.
- (4) Premises are not within subsection (1)(b) if letting them as a dwelling is in breach of a lease superior to lease B.
- (5) Premises are not within subsection (1)(c) if occupying them as a dwelling is a breach of lease A or a lease superior to lease A.
- (6) This section applies for the purposes of this Chapter.

### **131. Rent**

- (1) “Rent” means the amount payable under a lease (in advance or in arrears) for possession and use of the demised premises, together with any interest payable on that amount under the lease.
- (2) “Rent” does not include any sum in respect of services, repairs, maintenance, insurance, mortgage interest or other ancillary matters (whether or not called “rent” in the lease).
- (3) The amount payable for possession and use of the demised premises, where it is not otherwise identifiable, is to be taken to be so much of the total amount payable under the lease as is reasonably attributable to possession and use.
- (4) This section applies for the purposes of this Chapter except sections 126 to 138.

### **132. The rent recoverable**

- (1) CRAR is not exercisable except to recover rent that meets each of these conditions –
  - (a) it has become due and payable before notice of enforcement is given;
  - (b) it is certain, or capable of being calculated with certainty.
- (2) The amount of any rent recoverable by CRAR is reduced by any permitted deduction.

- (3) CRAR is exercisable only if the net unpaid rent is at least the minimum amount immediately before each of these –
  - (a) the time when notice of enforcement is given;
  - (b) the first time that goods are taken control of after that notice.
- (4) The minimum amount is to be calculated in accordance with subordinate legislation.
- (5) The net unpaid rent is the amount of rent that meets the conditions of subsection (1), less –
  - (a) any interest included in that amount under section 131(1); and
  - (b) any permitted deductions.
- (6) Subordinate legislation may provide for subsection (5)(a) not to apply in specified cases.
- (7) Permitted deductions, against any rent, are any deduction, recoupment or set-off that the tenant would be entitled to claim (in law or equity) in an action by the landlord for that rent.

### **133. Intervention of the Court of First Instance**

- (1) If notice of enforcement is given in exercise (or purported exercise) of CRAR the Court of First Instance may make either or both of the following orders on the application of the tenant –
  - (a) an order setting aside the notice;
  - (b) an order that no further step may be taken under CRAR, without further order, in relation to the rent claimed.
- (2) Subordinate legislation may make provision about –
  - (a) the further orders that may be made for the purposes of subsection (1)(b);
  - (b) the grounds of which the Court of First Instance must be satisfied before making an order or further order.

### **134. Use of CRAR after the end of the lease**

- (1) Subject to subsections (2) and (3), CRAR ceases to be exercisable when the lease ends.
- (2) CRAR continues to be exercisable in relation to goods taken control of under it –
  - (a) before the lease ended; or
  - (b) under subsection (3).

- (3) CRAR continues to be exercisable in relation to rent due and payable before the lease ended, if the conditions in subsection (4) are met.
- (4) These conditions are –
  - (a) the lease did not end by forfeiture;
  - (b) not more than 6 months have passed since the day when it ended;
  - (c) the rent was due from the person who was the tenant at the end of the lease;
  - (d) that person remains in possession of any part of the demised premises;
  - (e) any new lease under which that person remains in possession is a lease of commercial premises;
  - (f) that person who was the landlord at the end of the lease remains entitled to the immediate reversion.
- (5) In deciding whether a person remains in possession under a new lease, section 129(2) (lease to be evidenced in writing) does not apply.
- (6) In the case of a tenancy by estoppel, the person who was the landlord remains “entitled to the immediate reversion” if the estoppel with regard to the tenancy continues.
- (7) A lease ends when the tenant ceases to be entitled to possession of the demised premises under the lease together with any continuation of it by operation of an enactment or of a rule of law.

### **135. Right to rent from a sub-tenant**

- (1) This section applies where CRAR is exercisable by a landlord to recover rent due and payable from a tenant (the “immediate tenant”).
- (2) The landlord may serve notice on any sub-tenant.
- (3) The notice must state the amount of rent that the landlord has the right to recover from the immediate tenant by CRAR (the “notified amount”).
- (4) When it takes effect, the notice transfers to the landlord the right to recover, receive and give a discharge for any rent payable by the sub-tenant under the sub-lease, until –
  - (a) the notified amount has been paid (by payments under the notice or otherwise);  
or
  - (b) the notice is replaced or withdrawn.
- (5) A notice under this section takes effect at the end of a period to be determined by subordinate legislation.



- (6) Subordinate legislation may state –
  - (a) the form of a notice under this section;
  - (b) what it must contain;
  - (c) how it must be served;
  - (d) what must be done to withdraw it.
- (7) In determining, for the purposes of this section, whether CRAR is exercisable, section 132 applies with these modifications –
  - (a) if notice of enforcement has not been given, references to that notice are to be read as references to the notice under this section;
  - (b) if goods have not been taken control of, section 132(3)(b) does not apply.
- (8) In this section and sections 136 to 138 –
  - (a) “sub-tenant” means a tenant (below the immediate tenant) of any premises comprised in the headlease (and “sub-lease” is to be read accordingly);
  - (b) “headlease” means the lease between the landlord and the immediate tenant.

**136. Off-setting payments under a notice**

- (1) For any amount that a sub-tenant pays under a notice under section 135, he may deduct an equal amount from the rent that would be due to his immediate landlord under the sub-lease.
- (2) If an amount is deducted under subsection (1) or this subsection from rent due under a superior sub-tenant, that sub-tenant may deduct an equal amount from any rent due from him under his sub-lease.
- (3) Subsection (1) applies even if the sub-tenant’s payment or part of it is not due under the notice, if it is not due because –
  - (a) the notified amount has already been paid (wholly or partly otherwise than under the notice); or
  - (b) the notice has been replaced by a notice served on another sub-tenant.
- (4) That is subject to the following.
- (5) Subsection (1) does not apply if the landlord withdraws the notice before the payment is made.
- (6) Where the notified amount has already been paid (or will be exceeded by the payment), subsection (1) does not apply (or does not apply to the excess) if the sub-tenant has notice of that when making the payment.

- (7) Subsection (1) does not apply if, before the payment is made, payments under the notice at least equal the notified amount.
- (8) Subsection (1) does not apply to a part of the payment if, with the rest of the payment, payments under the notice at least equal the notified amount.
- (9) Where the notice has been replaced by one served on another sub-tenant, subsection (1) does not apply if the sub-tenant has notice of that when making the payment.

**137. Withdrawal and replacement of notices**

- (1) A notice under section 135 is replaced if the landlord serves another notice on the same sub-tenant for a notified amount covering the same rent or part of that rent.
- (2) A notice under section 135 served on one sub-tenant is also replaced if –
  - (a) the landlord serves a notice on another sub-tenant for a notified amount covering the same rent or part of that rent; and
  - (b) in relation any of the premises comprised in the first sub-tenant’s sub-lease, the second sub-tenant is an inferior or superior sub-tenant.
- (3) The landlord must withdraw a notice under section 135 if any of these happens –
  - (a) the notice is replaced;
  - (b) the notified amount is paid, unless it is paid wholly by the sub-tenant.

**138. Recovery of sums due and overpayments**

- (1) For the purposes of the recovery of sums payable by a sub-tenant under a notice under section 135 (including recovery by CRAR), the sub-tenant is to be treated as the immediate tenant of the landlord, and the sums are to be treated as rent accordingly.
- (2) But those sums (as opposed to rent due from the immediate tenant) are not recoverable by notice under section 135 served on an inferior sub-tenant.
- (3) Any payment received by the landlord that the sub-tenant purports to make under a notice under section 135, and that is not due under the notice for any reason, is to be treated as a payment of rent by the immediate tenant, for the purposes of the retention of the payment by the landlord and (if no rent is due) for the purposes of any claim by the immediate tenant to recover the payment.
- (4) But subsection (3) does not affect any claim by the sub-tenant against the immediate tenant.

**139. Contracts for similar rights to be void**

- (1) A provision of a contract is void to the extent that it would do any of these –

- (a) confer a right to seize or otherwise take control of goods to recover amounts within subsection (2);
  - (b) confer a right to sell goods to recover amounts within subsection (2);
  - (c) modify the effect of section 127(1), except in accordance with subsection (1).
- (2) The amounts are any amounts payable –
- (a) as rent;
  - (b) under a lease (other than rent);
  - (c) under an agreement collateral to a lease;
  - (d) in respect of a breach of a covenant or condition in a lease, in an agreement collateral to a lease;
  - (e) under an indemnity in respect of a payment within paragraphs (a) to (d).
- (3) A provision of a contract is not void under subsection (1)(c) to the extent that it prevents or restricts the exercise of CRAR.
- (4) In this section “lease” also includes a licence to occupy real property.

**140. Subordinate legislation**

- (1) In this section and in sections 123 to 139 “prescribed” means prescribed by subordinate legislation.
- (2) The following apply to rules under this section and sections 123 to 139.
- (3) Subordinate legislation may include any of these that the Board, having consulted the Chief Justice, considers necessary or expedient –
  - (a) supplementary, incidental or consequential provisions;
  - (b) transitory, transitional or saving provisions.
- (4) Subordinate legislation may make different provisions for different cases.

**Chapter 8: Attachment of Earnings**

**141. Court of First Instance to have power to attach earnings**

- (1) The Court of First Instance may make an attachment of earnings order to secure the payment of a judgment debt, other than a debt of less than US\$100 or such other sum as may be prescribed by rules of court.
- (2) Any power conferred by these Regulations to make an attachment of earnings order includes a power to make such an order to secure the discharge of liabilities arising before the coming into force of these Regulations.

**142. Orders to which these Regulations apply**

Sections 143 to 159 apply, except where otherwise stated, to attachments of earnings orders made or to be made, by the Court of First Instance under these Regulations.

**143. Principal definitions**

In sections 141 to 159 –

- (a) “judgment debt” means a sum payable under –
  - (i) a judgment or order enforceable by a Court in the Abu Dhabi Global Market; or
  - (ii) an order of any Court which is enforceable as if it were for the payment of money so recoverable;
- (b) “the relevant adjudication”, in relation to any payment secured or to be secured by an attachment of earnings order, means the judgment, order or other adjudication from which there arises the liability to make payment; and
- (c) “the debtor”, in relation to an attachment of earnings order, or to proceedings in which the Court has power to make an attachment of earnings order, or to proceedings arising out of such an order, means the person by whom payment is required by the relevant adjudication to be made.

**144. Application for an order and conditions of the Court of First Instance’s power to make it**

- (1) The person to whom payment under the relevant adjudication is required to be made (whether directly or through the Court or an officer of the Court) may apply for an attachment of earnings order.
- (2) For an attachment of earnings order to be made on the application of any person other than the debtor it must appear to the Court that the debtor has failed to make one or more payments required by the relevant adjudication.

**145. Effect and contents of attachment of earnings order**

- (1) An attachment of earnings order shall be an order directed to a person who appears to the Court of First Instance to have the debtor in his employment and shall operate as an instruction to that person –
  - (a) to make periodical deductions from the debtor’s earnings, as specified in the order; and
  - (b) at such times as the order may require, or as the Court may allow, to pay the amounts deducted to the collecting officer of the Court, as specified in the order.
- (2) If the Court of First Instance makes an attachment of earnings order to secure payment of a judgment debt, the order must specify that periodical deductions are to be made in accordance with the fixed deductions scheme.

- (3) If the Court of First Instance makes any other attachment of earnings order, the order must specify that periodical deductions are to be made in accordance with Part 1 of Schedule 4.
- (4) For the purposes of these Regulations, the relationship of employer and employee shall be treated as subsisting between two persons if one of them, as principal and not as a servant or agent, pays to the other any sums defined as earnings by section 158.
- (5) An attachment of earnings order shall contain prescribed particulars enabling the debtor to be identified by the employer.
- (6) The order shall specify the whole amount payable under the relevant adjudication (or so much of that amount as remains unpaid), including any relevant costs.
- (7) A Schedule 4 deductions order shall specify –
  - (a) the normal deduction rate, that is to say, the rate (expressed as a sum of money per week, month or other period) at which the Court thinks it reasonable for the debtor’s earnings to be applied to meeting his liability under the relevant adjudication; and
  - (b) the protected earnings rate, that is to say the rate (so expressed) below which, having regard to the debtor’s resources and needs, the Court thinks it reasonable that the earnings actually paid to him should not be reduced.
- (8) For the purposes of an attachment of earning order, the collecting officer of the Court shall be (subject to later variation of the order under section 149) the proper officer of the Court of First Instance.
- (9) In subsection (8) “proper officer” means an officer designated by the Chief Justice.
- (10) The Chief Justice may by order make such provision as he considers expedient (including transitional provision) with a view to providing for the payment of amounts deducted under attachment of earnings orders to be made to such officers as may be designated by the order rather than to collecting officers of the Court.
- (11) Any such order may make such amendments to these Regulations in relation to the functions exercised by or in relation to collecting officers of the Court as the Chief Justice considers expedient in consequence of the provision made by virtue of subsection (10).

**146. The fixed deductions scheme**

- (1) In sections 141 to 159 and Schedule 5 “fixed deductions scheme” means any scheme that the Board (in consultation with and on the recommendation of the Chief Justice) makes which specifies the rates and frequencies at which deductions are to be made under the attachment of earnings orders so as to secure the repayment of judgment debts.
- (2) The Board may establish the fixed deductions scheme by subordinate legislation.

- (3) The Board may not make subordinate legislation containing the first subordinate legislation under subsection (2) without first consulting the Chief Justice.

**147. Compliance with an attachment of earnings order by an employer**

- (1) Where an attachment of earnings order has been made, the employer shall, if he has been served with the order, comply with it; but he shall be under no liability for non-compliance before seven days have elapsed since the service.
- (2) Where a person is served with an attachment of earnings order directed to him and the debtor is not, or subsequently ceases to be, in his employment, he shall (in either case) within ten days from the date of service or, as the case may be, the cesser, give notice of that fact to the Court of First Instance.
- (3) Part 2 of Schedule 4 shall have effect with respect to the priority to be accorded as between two or more attachment of earnings order directed to a person in respect of the same debtor.
- (4) On any occasion when the employer makes, in compliance with the order, a deduction from the debtor's earnings –
  - (a) he shall be entitled to deduct, in addition, an amount not exceeding 5% of the monthly deduction towards his clerical and administrative costs; and
  - (b) he shall give to the debtor a statement in writing of the total amount of the deduction.

**148. Interrelation with alternative remedies open to creditors**

Where the Court of First Instance has made an attachment of earnings order to secure the payment of a judgment debt, so long as the order is in force, no execution for the recovery of the debt shall be issued against any of the debtor's property without the leave of the Court of First Instance.

**149. Variation, lapse and discharge of attachment of earnings orders**

- (1) The Court of First Instance may make an order discharging or varying an attachment of earnings order.
- (2) Subsection (1) is subject to Schedule 5 (which deals with the variation of certain attachment of earnings orders by changing the basis of deductions).
- (3) Where an order is varied, the employer shall, if he has been served with notice of the variation, comply with the order as varied; but he shall be under no liability for non-compliance before seven days have elapsed since the service.
- (4) Rules of court may provide as to the circumstances in which an attachment of earnings order made under these Regulations may be varied or discharged by the Court of its own motion.

- (5) Where an attachment of earnings order has been made and the person to whom it is directed ceases to have the debtor in his employment, the order shall lapse (except as regards deduction from earnings paid after the cesser and payment to the collecting officer of amounts deducted at any time) and be of no effect unless and until the Court of First Instance again directs it to a person (whether the same as before or another) who appears to the Court to have the debtor in his employment.
- (6) The lapse of an order under subsection (5) shall not prevent its being treated as remaining in force for other purposes.

**150. Suspension of fixed deductions orders**

- (1) The Court of First Instance must make an order suspending a fixed deductions order if the Court is satisfied of either or both of the following –
  - (a) that the fixed deductions order requires periodical deductions to be made at a rate which is not appropriate;
  - (b) that the fixed deductions order requires periodical deductions to be made at times which are not appropriate.
- (2) The Court of First Instance is to make the suspension order on the following terms –
  - (a) if the condition in subsection (1)(a) is met: on terms specifying the rate at which the debtor must make repayments (whether higher or lower than the rate at which the order requires the deductions to be made);
  - (b) if the condition in subsection (1)(b) is met: on terms specifying the times at which the debtor must make repayments;
  - (c) if either or both conditions are met: on any additional terms that the Court thinks appropriate having regard to all of the circumstances.
- (3) If the employer is given notice of the suspension order, he must cease to make the deductions required by the fixed deductions order; but the employer is under no liability for non-compliance before seven days have elapsed since service of the notice.
- (4) The Court of First Instance –
  - (a) must revoke the suspension order if any of the terms of the suspension order are breached;
  - (b) may revoke the suspension order in any other circumstances if it thinks that it is appropriate to do.
- (5) Rules of court may make provision as to the circumstances in which the Court of First Instance may of its own motion –
  - (a) make a suspension order; or
  - (b) revoke a suspension order.

- (6) The suspension of a fixed deductions order under this section does not prevent the order from being treated as remaining in force subject to the provisions of this section.
- (7) This section is without prejudice to any other powers of the Court to suspend attachment of earnings orders or to revoke the suspension of such orders.
- (8) In this section, in relation to a fixed deductions order, “repayments” means repayments of the judgment debt to which the order relates.

**151. Termination of employer’s liability to made deductions**

- (1) Where an attachment of earnings order ceases to have effect under section 148, the proper officer shall give notice of the cesser to the person to whom the order was directed.
- (2) Where the whole amount payable under the relevant adjudication has been paid, and also any relevant costs, the Court shall give notice to the employer that no further compliance with the order is required.
- (3) Where an attachment of earnings order –
  - (a) ceases to have effect under section 148; or
  - (b) is discharged under section 149,

the person to whom the order has been directed shall be under no liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date on which the notice required by subsection (1) or, as the case may be, a copy of the discharging order is served on him.

**152. Application of sums received by collection officer**

- (1) Subject to subsection (2), the collecting officer to whom a person makes payment in compliance with an attachment of earnings order shall, after deducting such court fees, if any, in respect of proceedings for or arising out of the order, as are deductible from those payments, deal with the sums paid in the same way as he would if they had been paid by the debtor to satisfy the relevant adjudication.
- (2) Where the Court of First Instance makes an attachment of earnings order to secure the payment of a judgment debt, sums paid to the collecting officer in compliance with the attachment of earnings order shall not be dealt with by him in accordance with subsection (1), but shall be retained by him pending the decision of the Court whether or not to make an administration order and shall then be dealt with by him as the Court may direct.

**153. Power of the Court of First Instance to obtain a statement of earnings etc.**

- (1) Where in any proceedings the Court of First Instance has the power under these Regulations to make a Schedule 4 deductions order, the Court may –
  - (a) order the debtor to give to the Court within a specified period, a statement signed by him of –



- (i) the name and address of any person by whom earnings are paid to him;
  - (ii) specified particulars as to his earnings and anticipated earnings, and as to his resources and needs; and
  - (iii) specified particulars for the purpose of enabling the debtor to be identified by an employer of his;
- (b) order any person appearing to the Court to have the debtor in his employment to give to the Court within a specified period, a statement signed by him or on his behalf or specified particulars of the debtor's earnings and anticipated earnings.
- (2) Where in any proceedings the Court of First Instance has power to make a fixed deductions order, the Court may order the debtor to give to the Court, within a specified period, a statement signed by him of –
- (a) the name and address of any person by whom earnings are paid to him; and
  - (b) specified particulars for enabling the debtor to be identified by any employer of his.
- (3) At any time when a Schedule 4 deductions order is in force, the Court may –
- (a) make such an order as is described in subsection (1)(a) or (b); and
  - (b) order the debtor to attend before the Court on a day and at a time specified in the order to give the information described in subsection (1)(a).
- (4) At any time when a fixed deductions order is in force, the Court may –
- (a) make such an order as is described in subsection (2); and
  - (b) order the debtor to attend before it on a day and at a time specified in the order to give the information described in subsection (2).
- (5) Without prejudice to subsections (1) to (4), rules of court may provide that where notice of an application for an attachment of earnings order is served on the debtor, it shall include a requirement that he shall, within such period and in such manner as may be prescribed, give the Court a statement in accordance with subsection (6) or (7).
- (6) In a case where the attachment of earnings order would, if made, be a Schedule 4 deductions order, the debtor must give a statement in writing of –
- (a) the matters specified in subsection (1)(a); and
  - (b) any other prescribed matters which are, or may be, relevant under section 145 to the determination of the normal deduction rate and the protected earnings rate to be specified in any attachment of earnings order made on the application.

- (7) In a case where the attachment of earnings order would, if made, be a fixed deductions order, the debtor must give a statement in writing of the matters specified in subsection (2).
- (8) In any proceedings in which the Court of First Instance has the power under these Regulations to make an attachment of earnings order, and in any proceedings for the making, variation or discharge of such an order, a document purporting to be a statement given to the Court in compliance with an order under subsection (1)(a) or (b) or (2), or with any such requirement of a notice of application for an attachment of earnings order as mentioned in subsection (5), shall, in the absence of proof to the contrary, be deemed to be a statement so given and shall be evidence of the facts stated therein.

**154. Obligation of debtor and his employers to notify changes of employment and earnings**

While an attachment of earnings order is in force –

- (a) the debtor shall from time to time notify the Court in writing of every occasion on which he leaves any employment, or becomes employed or re-employed, not later (in each case) than seven days from the date on which he did so;
- (b) if the order is a Schedule 4 deductions order, the debtor shall, on any occasion when he becomes employed or re-employed include in his notification under paragraph (a) particulars of his earnings and anticipated earnings from the relevant employment;
- (c) any person who becomes the debtor’s employer and knows that the order is in force shall, within seven days of his becoming the debtor’s employer or of acquiring that knowledge (whichever is the later), notify the Court in writing that he is the debtor’s employer, and if the order is a Schedule 4 deductions order, include in his notification a statement of the debtor’s earnings and anticipated earnings.

**155. Penalties for non-compliance with section 153 orders**

- (1) If, where the Court of First Instance makes an order pursuant to section 153, the debtor, or any person appearing to the Court to have the debtor in his employment pursuant to section 153(1)(b), fails to provide the statement required by that section or wilfully provides the Court with information which he knows or believes to be false or otherwise misleading, that person shall be liable to a fine not exceeding level 8 on the standard fines scale.
- (2) For the purposes of this section “information” means information in any form.

**156. Power of the Court of First Instance to determine whether particular payments are earnings**

- (1) Where an attachments of earnings order is in force, the Court shall, on the application of a person specified in subsection (2) below, determine whether payments to the debtor of a particular class or description specified by the application are earnings for

the purposes of the order; and the employer shall be entitled to give effect to any determination for the time being in force under this section.

- (2) The persons referred to in subsection (1) are –
  - (a) the employer;
  - (b) the debtor; and
  - (c) the person to whom payment under the relevant adjudication is required to be made (whether directly or through an officer of the Court).
- (3) Where an application under this section is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments of the class or description specified by the application which are made by him to the debtor while the application, or any subsequent appeal, is pending; but this subsection shall not, unless the Court otherwise orders, apply as regards such payments if the employer subsequently withdraws the application or, as the case may be, abandons the appeal.
- (4) On making a determination under this section, the Court of First Instance may in its discretion make such order as it thinks just and reasonable for payment by any of the persons mentioned in subsection (2) of the whole or any part of the costs of the determination.
- (5) Costs ordered to be paid under subsection (4) shall be enforceable as a civil debt.

#### **157. Consolidated attachment orders**

- (1) The powers of the Court of First Instance under sections 141 and 144 shall include the power to make an attachment of earnings order to secure the payment of any number of judgment debts.
- (2) An attachment of earnings order made by virtue of this section shall be known as a consolidated attachment order.
- (3) The power to make a consolidated attachment order shall be exercised subject to and in accordance with rules of court; and rules made for the purposes of this section may provide –
  - (a) for cases in which any power exercisable under this section or the rules of court may be exercised by the Court of First Instance of its own motion or on the application of a prescribed person; and
  - (b) for requiring the officer of the Court who receives payments made to him in compliance with an attachment of earnings order, instead of complying with section 152, to deal with them as directed by the Court or the rules of court.
- (4) Section 145(2) applies to a consolidated attachment order which the Court of First Instance makes to secure the payment of two or more judgment debts even if, immediately before the order is made, one or more of those debts is secured by a Schedule 4 deductions order.

**158. Meaning of “earnings”**

- (1) For the purposes of these Regulations, but subject to the following subsection, “earnings” are any sums payable to a person –
  - (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract for service);
  - (b) by way of pension (including an annuity in respect of past services), whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment.
- (2) The following shall not be treated as earnings –
  - (a) sums payable by any public department of the Abu Dhabi Global Market;
  - (b) any wage or salary sacrifices.

**159. General Interpretation**

- (1) In sections 141 to 158 (and this section) and Schedules 4 and 5 of these Regulations, except where the context otherwise requires –
  - (a) “the Court” in relation to an attachment of earnings order, means the Court of First Instance;
  - (b) “the employer”, in relation to an attachment of earnings order, means the person who is required by the order to make deductions from earnings paid by him to the debtor;
  - (c) “fixed deductions order” means an attachment of earnings order under which periodical deductions are to be made in accordance with the fixed deductions scheme;
  - (d) “prescribed” means prescribed by rules of court;
  - (e) “Schedule 4 deductions order” means an attachment of earnings order under which periodical deductions are to be made in accordance with Part 1 of Schedule 4;
  - (f) “suspension order” means an order under section 150 suspending a fixed deductions order.
- (2) Any reference in sections 141 to 158 (and this section) to sums payable under a judgment or order, or to the payment of such sums, includes a reference to costs and the payment of them; and the references in sections 145(6) and 151(2) to relevant costs are to any costs of the proceedings in which the attachment of earnings order in question was made, being costs which the debtor is liable to pay.

- (3) References in sections 145(7)(b) and 153(1)(a) to the debtor's needs include references to the needs of any person for whom he must, or reasonably may, provide.
- (4) Any power to make rules of court which is conferred by these Regulations is without prejudice to any other power to make rules of court.

### **Chapter 9: Information Orders and Information Subordinate Legislation**

#### **160. Application for information about action to recover judgment debt**

- (1) A person who is a creditor in relation to a judgment debt may apply to the Court of First Instance for information about what kind of action it would be appropriate to take in Court to recover that particular debt.
- (2) An application under subsection (1) must comply with any provision made in regulations about the making of such application.

#### **161. Action by the Court of First Instance**

- (1) This section applies if the creditor in relation to a judgment debt makes an application for information under section 160.
- (2) The Court of First Instance may make an information order in relation to the debtor.
- (3) The Court may exercise its powers under subsection (2) only if it is satisfied that to do so will help it to deal with the creditor's application.
- (4) Before exercising its powers under subsection (2), the Court must give notice to the debtor that the Court intends to make an order.
- (5) The Court may disclose such information (including information identifying the debtor) as it considers necessary to assist the recipients of an order to comply with such order.
- (6) A disclosure under subsection (5) is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (7) Nothing in this section is to be taken to prejudice any power that exists apart from this section to order the disclosure of information.

#### **162. Information orders**

- (1) An information order is an order of the Court of First Instance which –
  - (a) specifies a prescribed person (“the information discloser”);
  - (b) specifies prescribed information relating to the debtor (“the required information”); and
  - (c) orders the information discloser to disclose the required information to the Court.

- (2) In subsection (1), “prescribed” means prescribed by subordinate legislation.
- (3) Subordinate legislation under this section may be made by reference to –
  - (a) particular persons or particular descriptions of person (or both);
  - (b) particular information or particular descriptions of information (or both).
- (4) Subordinate legislation may, in particular, be made under this section so as to ensure that –
  - (a) an information order made against a particular person, or a person of a particular description, may order that person to disclose only particular information, or information of a particular description;
  - (b) an information order that orders the disclosure of particular information, or information of a particular description, may only be made against a particular person, or a person of a particular description.
- (5) Rules under this section must not make provision that would allow the Court to order the disclosure of information by the debtor.

**163. Information order: required information not held etc.**

- (1) An information discloser is not to be regarded as having breached an information order because of a failure to disclose some or all of the required information, if that failure is for one of the permitted reasons.
- (2) The permitted reasons are that –
  - (a) the information provider does not hold the information;
  - (b) the information provider is unable to ascertain whether the information is held because of the way in which the information order identifies the debtor;
  - (c) the disclosure of the information would involve the information discloser in unreasonable or disproportionate effort or expense.
- (3) It is to be presumed that a failure to disclose required information is for a permitted reason if –
  - (a) the information discloser gives the Court of First Instance a certificate that complies with subsection (4); and
  - (b) there is no evidence that the failure is not for a permitted reason.
- (4) The certificate must state –
  - (a) which of the required information is not being disclosed;
  - (b) what the permitted reason is, or permitted reasons are, for the failure to disclose that information.

- (5) Any reference in this section to the information discloser holding, or not holding, information includes a reference to the information being held, or not being held, on the information discloser's behalf.

**164. Using information about the debtor**

- (1) This section applies if –
- (a) the creditor in relation to a judgment debt makes an application for information under section 160; and
  - (b) information (“debtor information”) is disclosed to the Court of First Instance in compliance with an order made under section 161.
- (2) The Court may use the debtor information for the purposes of making another order under section 161 in relation to the debtor.
- (3) The Court may use the debtor information for the purpose of providing the creditor with information about what kind of action (if any) it would be appropriate to take in court (whether the Court of First Instance or another Court) to recover the judgment debt.
- (4) If the creditor takes any action in the Court of First Instance to recover the judgment debt, the Court may use the debtor information in carrying out functions in relation to that action.
- (5) If the creditor takes any action in another Court to recover the judgment debt –
- (a) the Court of First Instance may disclose the debtor information to the other Court; and
  - (b) the other Court may use that information in carrying out functions in relation to that action.
- (6) Debtor information may be used or disclosed under any of subsections (3) to (5) only if –
- (a) subordinate legislation about such use or disclosure of information is in force; and
  - (b) the use or disclosure complies with that subordinate legislation.
- (7) The use or disclosure of information in accordance with this section is not to be taken to breach any restriction on the use or disclosure of information (however imposed).
- (8) Nothing in this section is to be taken to prejudice any power that exists apart from this section to use or disclose information.
- (9) In this section “another Court” means any inferior Court or tribunal and “other Court” shall be construed accordingly.

**165. Penalty for unauthorised use or disclosure**

- (1) This section applies if –
  - (a) an application is made under section 160 in relation to recovery of a judgment debt (“the relevant judgment debt”);
  - (b) an information order is made in consequence of that application; and
  - (c) information (“debtor information”) is disclosed in accordance with the order.
- (2) A person to whom the debtor information is disclosed commits a contravention of these Regulations if he –
  - (a) uses or discloses the debtor information; and
  - (b) the use or disclosure is not authorised by any of subsections (3) to (6).
- (3) The use or disclosure of debtor information is authorised if it is in accordance with section 164.
- (4) The use or disclosure of the debtor information is authorised if it is –
  - (a) in accordance with an enactment or order of Court; or
  - (b) for the purposes of any proceedings before a Court,and it is in accordance with subordinate legislation.
- (5) The use or disclosure of debtor information is authorised if the information has previously been lawfully disclosed to the public.
- (6) The use or disclosure of debtor information is authorised if it is in accordance with rules of court that comply with subordinate legislation under subsection (7).
- (7) Subordinate legislation may make provision about the circumstances, if any, in which rules of court may allow access to, or the supply of, information disclosed in accordance with an information order.
- (8) A person who makes an unauthorised use or disclosure of debtor information shall not incur any liability for any such breach under subsection (2) if he proves that he reasonably believed that the use or disclosure was authorised or was otherwise lawful.
- (9) A person who commits a contravention under subsection (2) is liable to a fine not exceeding level 4 on the standard fines scale.

**166. Information subordinate legislation**

- (1) It is for the Board to make information subordinate legislation on the recommendation of, and having first consulted with, the Chief Justice.
- (2) In this section “information subordinate legislation” means rules under any of sections 160 to 165.



## **Chapter 10: Reciprocal Enforcement of Foreign Judgments**

### **167. Power to extend sections 167 to 172 to foreign countries giving reciprocal treatment**

- (1) If, in the case of any foreign country, which for the purposes of this Chapter includes any Emirate within the United Arab Emirates other than Abu Dhabi, the Board is satisfied that, in the event of the benefits conferred by sections 167 to 172 being extended to, or to any particular class of, judgments given in the courts of that country or in any particular class of those courts, substantial reciprocity of treatment will be assured as regards the enforcement in that country of similar judgments given in similar Courts of the Abu Dhabi Global Market, the Board may by order direct –
  - (a) that sections 167 to 172 shall extend to that country;
  - (b) that such courts of that country as are specified in the order shall be recognised courts of that country for the purposes of sections 167 to 172; and
  - (c) that judgments of any such recognised court, or such judgments of any class so specified, shall, if within subsection (2) of this section, be judgments to which sections 167 to 172 apply.
- (2) Subject to subsection (3), a judgment of a recognised court is within this subsection if it satisfies the following conditions, namely –
  - (a) it is either final and conclusive as between the judgment debtor and the judgment creditor or requires the former to make an interim payment to the latter; and
  - (b) there is payable under it a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
  - (c) it is given after the coming into force of the order which made that court a recognised court.
- (3) The following judgments of a recognised court are not within subsection (2) –
  - (a) a judgment given by that court on appeal from a court which is not a recognised court;
  - (b) a judgment or other instrument which is regarded for the purposes of its enforcement as a judgment (or interim judgment) of that court but which was given or made in another country;
  - (c) a judgment given by that court in proceedings founded on a judgment of a court in another country and having as their object the enforcement of that judgment.
- (4) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

### **168. Application for, and effect of, registration of foreign judgment**

- (1) Subject to subsection (2), a person, being a judgment creditor under a judgment to which sections 167 to 172 apply, may apply to the Court of First Instance at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the Court of First Instance, and on any such application, the Court shall, subject to proof of the prescribed matters and to the other provisions of this Chapter, order the judgment to be registered.
- (2) A judgment shall not be registered if at the date of the application –
  - (a) it has been wholly satisfied; or
  - (b) it could not be enforced by execution in the country of the original court.
- (3) Subject to the provisions of this Chapter with respect to the setting aside of registration and subject also to subsection (4) –
  - (a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and
  - (b) proceedings may be taken on a registered judgment; and
  - (c) the sum for which a judgment is registered shall carry interest; and
  - (d) the Court of First Instance shall have the same control over the execution of a registered judgment,  
as if the judgment had been a judgment originally given in the Court of First Instance and entered on the date of registration.
- (4) Execution shall not issue on the judgment so long as, under sections 167 to 172 and rules of court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.
- (5) If at the date of the application for registration of the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.
- (6) If, on an application for registration of a judgment, it appears to the Court of First Instance that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.
- (7) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

**169. Rules of court**

- (1) The power to make rules of court shall, subject to the provisions of this section, include power to make rules for the following purposes –
  - (a) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments;
  - (b) for prescribing the matters to be proved on an application for the registration of a judgment and for regulating the means of proving those matters;
  - (c) for providing for the service on the judgment debtor of notice of the registration of a judgment;
  - (d) for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed;
  - (e) for prescribing the method by which any question arising under this Chapter as to whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, is to be determined;
  - (f) for prescribing any matter which under sections 167 to 172 is to be prescribed.
- (2) Rules of court made for the purposes of sections 167 to 172 shall be expressed to have, and shall have, effect subject to any provisions contained in orders made under section 167 as are declared by such orders to be necessary for giving effect to agreements made between the Board and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of sections 167 to 172.

**170. Cases in which registered judgments must, or may, be set aside**

- (1) On an application made by any party against whom a registered judgment may be enforced, the registration of the judgment –
  - (a) shall be set aside if the Court of First Instance is satisfied –
    - (i) that the judgment is not a judgment to which sections 167 to 172 apply or was registered in contravention of sections 167 to 169; or
    - (ii) that courts of the country of the original court had no jurisdiction in the circumstances of the case; or
    - (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or
    - (iv) that the judgment was obtained by fraud; or

- (v) that the enforcement of the judgment would be contrary to public policy in the Emirate or the Abu Dhabi Global Market; or
  - (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;
- (b) may be set aside if the Court of First Instance is satisfied that the matter in dispute in the proceedings in the original court had previously, to the date of the judgment in the original court, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.
- (2) For the purposes of this section, and subject to subsection (3), the courts of the country of the original court shall be deemed to have had jurisdiction –
- (a) in the case of a judgment given in an action *in personam* –
    - (i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings; or
    - (ii) if the judgment debtor was a claimant or counter-claimant in the proceedings in the original court; or
    - (iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or
    - (iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted, resident in, or being a body corporate was registered under the laws of, the country of that court; or
    - (v) if the judgment debtor, being a defendant in the original court, had an office or a place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;
  - (b) in the case of a judgment given in an action the subject matter of which was immovable property, or in an action *in rem* the subject matter of which was moveable property, if the property in question was at the time of the proceedings in the original court situated in the country of that court;
  - (c) in the case of judgment given in an action other than any such action as is mentioned in paragraph (a) or (b), if the jurisdiction of the original court is recognised by any Applicable Abu Dhabi Law or any ADGM enactment.
- (3) Notwithstanding subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction –
- (a) if the subject matter of the proceedings was immovable property outside the country of the original court; or

- (b) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

**171. Powers of Court of First Instance on application to set aside registration**

- (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the Court of First Instance either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the Court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or stay the application to set aside registration until after the expiration of such period as appears to the Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by competent court or tribunal.
- (2) Where the registration of a judgment is set aside under subsection (1), or solely for the reason that the judgment was not, as at the date of the application for registration, enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.
- (3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had, as at the date of the application for registration, been partly satisfied, was registered for the whole sum payable under the judgment, the Court of First Instance shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

**172. Foreign judgments which can be registered not to be enforceable otherwise**

No proceedings for the recovery of a sum of money payable under a foreign judgment, being a judgment to which sections 167 to 172 apply, other than proceedings by way of registration of the judgment, shall be entertained by any Court.

**173. General effect of certain foreign judgments**

- (1) Subject to subsections (2) and (3), a judgment to which sections 167 to 172 apply or would have applied if a sum of money had been payable thereunder, whether or not it can be registered, and whether, if it can be registered, it is registered or not, shall be recognised in any Court as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.
- (2) This section shall not apply in the case of any judgment –
  - (a) where the judgment has been registered and the registration has been set aside on some ground other than –
    - (i) that a sum of money was not payable under the judgment; or

- (ii) that the judgment had been wholly or partly satisfied; or
  - (iii) that, at the date of the application, the judgment could not be enforced by execution in the country of the original court; or
- (b) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered, the registration would have been set aside on an application for that purpose on some ground other than one of the grounds set out in paragraph (a).
- (3) Nothing in this section shall be taken to prevent any Court recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of these Regulations.

**174. Power to make foreign judgments unenforceable in the Abu Dhabi Global Market if no reciprocity**

- (1) If it appears to the Board that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the Courts is substantially less favourable than that accorded by the Courts to judgments of the courts of that country, the Board may by order apply this section to that country.
- (2) Except so far as the Board may by order under this section otherwise direct, no proceedings shall be entertained in any Court for the recovery of any sum alleged to be payable under a judgment of a court of a country to which this section applies.

**175. Provision for issue of copies of, and certificates in connection with, Abu Dhabi Global Market judgments**

- (1) Rules may make provision for enabling any judgment creditor wishing to secure the enforcement in a foreign country to which sections 167 to 172 extend of a judgment to which this subsection (1) applies, to obtain, subject to any conditions specified in the rules –
  - (a) a copy of the judgment; and
  - (b) a certificate giving particulars relating to the judgment and the proceedings in which it was given.
- (2) Subsection (1) applies to any judgment given by a Court or tribunal in the Abu Dhabi Global Market under which a sum of money is payable or in respect of a fine or other penalty.
- (3) In this section “rules” means –
  - (a) in relation to judgments given by a Court, rules of court;
  - (b) in relation to judgments or awards given by any other tribunal, rules or any other ADGM enactment made by the authority having power to make rules or ADGM enactments regulating the procedure of that tribunal.

**176. Arbitration awards**

The provisions of this Chapter, except section 172, shall apply, as they apply to a judgment, in relation to an award in proceedings on an arbitration which has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

**177. Interpretation**

- (1) In this Chapter, except where the context otherwise requires –
  - (a) “appeal” includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;
  - (b) “country of the original court” means the country in which the original court is situated;
  - (c) “judgment” means a judgment or order given or made by a court in any civil proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;
  - (d) “original court” in relation to any judgment means the court by which the judgment was given;
  - (e) “prescribed” means prescribed by rules of court;
  - (f) “registration” means registration under sections 167 to 172, and the expressions “register” and “registered” shall be construed accordingly.
- (2) For the purposes of this Chapter, the expression “action *in personam*” shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters –
  - (a) matrimonial matters;
  - (b) administration of the estates of deceased persons;
  - (c) bankruptcy;
  - (d) winding up of companies;
  - (e) mental incapacity; or
  - (f) guardianship of children.

**Chapter 11: Set-Off and Cross-Claim**

**178. Defendant’s right to set-off**

Rules of court may make provision for and specify circumstances where a defendant in proceedings has the right to set-off a prescribed amount claimed against him by the claimant.

**179. Defendant's right to cross-claim**

Rules of court may make provision for and specify circumstances where the Court may grant a defendant in proceedings the right to cross-claim relief against another person.

**Chapter 12: Miscellaneous**

**180. Reimbursement of additional costs resulting from death or incapacity of presiding Judge etc.**

- (1) Where –
- (a) the Judge, or (as the case may be) any of the Judges, presiding at any proceedings to which this section applies becomes temporarily or permanently incapacitated from presiding at the proceedings, or dies, at any time prior to the conclusion of the proceedings; and
  - (b) any party represented at the proceedings incurs any additional costs in consequence of the Judge's incapacity or death,

the Registrar may, if he thinks fit, reimburse that party in respect of any such additional costs, or in respect of such part thereof as it may determine; but the amount of any such reimbursement shall not exceed such sum as the Chief Justice may by order prescribe for the purposes of this section.

- (2) Before making an order under this section, the Chief Justice must consult the Registrar.
- (3) This section applies to proceedings in any Court and, in the case of interlocutory proceedings, applies separately to any such proceedings and to any other proceedings in the cause or matter in question.
- (4) For the purposes of this section the amount of any additional costs incurred by any person as mentioned in subsection (1)(b) shall be such amount as may be agreed between the Registrar and that person or, in default of agreement, as may be ascertained by taxation.
- (5) Where any proceedings to which this section applies –
  - (a) are due to be begun before a Judge at a particular time; but
  - (b) are not begun at that time by reason of the Judge becoming temporarily or permanently incapacitated from presiding at the proceedings or by reason of his death,

subsection (1) shall have effect in relation to the incapacity or death of the Judge as it has effect in relation to any such incapacity or death of a presiding Judge as is mentioned in subsection (1)(a), but as if any reference to any party represented at the



proceedings were a reference to any party who would have been so represented but for the Judge's incapacity or death.

- (6) In this section "Judge" in relation to any proceedings, includes –
- (a) any person acting in a judicial capacity in the proceedings; or
  - (b) a person assisting at the proceedings as an assessor or an adviser appointed by virtue of section 107(1),

and, in relation to any such person as is mentioned in paragraph (b), any reference to presiding at any proceedings shall be construed as including a reference to assisting at the proceedings.

- (7) Any sums required by the Registrar for making payments under this section shall be paid out of money provided by the Abu Dhabi Global Market.
- (8) In this section "taxation" means the process whereby the Court assesses the amount of costs recoverable in a claim.

#### **181. Fees**

- (1) The Chief Justice may by subordinate legislation prescribe fees payable in respect of anything dealt with by the Courts.
- (2) Subordinate legislation under this section may, in particular, contain provision about –
- (a) scales or rates of fees;
  - (b) exemptions from fees;
  - (c) reductions in fees;
  - (d) whole or partial remission of fees.
- (3) When including any provision in subordinate legislation under this section, the Chief Justice must have regard to the principle that access to the Courts must not be denied.
- (4) Before making subordinate legislation under this section, the Chief Justice must consult the Registrar.
- (5) Court fees are recoverable summarily as a civil debt.
- (6) The Chief Justice must take such steps as are reasonably practicable to bring information about Court fees to the attention of persons likely to have to pay them.
- (7) "Court fees" means fees prescribed in subordinate legislation under this section.

#### **182. Annual Report**

- (1) As soon as practicable after each financial year, the Registrar must prepare a report about the business of the Courts during that year and give a copy of that report to –

- (a) the Chief Justice; and
  - (b) the Board.
- (2) Each of the following is a “financial year” for the purposes of this section –
- (a) the period which begins with the date on which this section comes into force and ends with the following 31 December;
  - (b) each successive period of 12 months.

## PART 7 – ADGM COURT PROCEDURE RULES

### 183. ADGM Court Procedure Rules

- (1) There are to be rules of court (to be called “ADGM Court Procedure Rules”) governing the practice and procedure to be followed in –
  - (a) the Court of Appeal;
  - (b) the Court of First Instance; and
  - (c) any other Court as may, from time to time, exist.
- (2) Unless otherwise provided by an Applicable Abu Dhabi Law or an ADGM enactment, ADGM Court Procedure Rules shall apply to the Court of Appeal and to all Divisions of the Court of First Instance.
- (3) Any power to make Rules is to be exercised with a view to securing that –
  - (a) the system of civil justice is accessible, fair and efficient; and
  - (b) the Rules are both simple and simply expressed.
- (4) Rules –
  - (a) may provide for the exercise of the jurisdiction of any Court within the scope of the Rules by officers or other staff of the Court;
  - (b) may provide for the removal of proceedings at any stage within the Courts, and –
    - (i) “provide for the removal of proceedings” means –
      - a. provide for transfer of proceedings elsewhere within the Courts; or
      - b. provide for any jurisdiction in any proceedings to be exercised (whether concurrently or not) elsewhere within the Courts without the proceedings being transferred; and
    - (ii) “proceedings” includes any part of proceedings;
  - (c) may modify the rules of evidence as they apply to proceedings in any Court within the scope of the Rules;
  - (d) may apply any rules of court which relate to a Court which is outside the scope of the Rules;
  - (e) may, instead of providing for any matter, refer to provision made or to be made about that matter by directions (“practice directions”).
- (5) Any rules of court, not made by the Chief Justice, which apply to proceedings of a particular kind in a Court within the scope of the Rules, may be applied by the Rules to other proceedings in such a Court.

- (6) In subsections (4)(d) and (5) “rules of court” includes any provision governing the practice and procedure of a Court which is made by or under an enactment.
- (7) Where Rules may be made by applying other rules, the other rules may be applied –
  - (a) to any extent;
  - (b) with or without modification; and
  - (c) as amended from time to time.
- (8) The power to make Rules includes the power to make different provision for different cases or different areas, including different provision –
  - (a) for a specific Court or specific Division of a Court; or
  - (b) for specific proceedings, or a specific jurisdiction, specified in the Rules.

**184. Chief Justice to make ADGM Court Procedure Rules**

- (1) ADGM Court Procedure Rules are to be made by the Chief Justice by subordinate legislation.
- (2) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his functions under this section.

**185. Process for making ADGM Court Procedure Rules**

- (1) The Chief Justice may, before making Rules, consult such persons as he considers appropriate.
- (2) Rules so made must be signed by the Chief Justice and come into force on such day as the Chief Justice directs.

**186. Power to make consequential amendments**

- (1) Without prejudice to the ADGM Founding Law, the Board may, after consulting the Chief Justice, by order amend, repeal or revoke any ADGM enactment to the extent it considers necessary or desirable in consequence of –
  - (a) section 183 or 184; or
  - (b) ADGM Court Procedure Rules.
- (2) Without prejudice to the ADGM Founding Law, the Board may, after consulting the Chief Justice, by order amend, repeal or revoke any ADGM enactment passed or made before the commencement of this section to the extent it considers necessary or desirable in order to facilitate the making of ADGM Court Procedure Rules.

- (3) The Chief Justice may nominate a judicial officer holder (as defined in section 218(3)) to exercise his functions under subsection (1) or (2).

**187. Practice directions**

- (1) Practice directions may be given in accordance with Schedule 2.
- (2) Practice directions given otherwise than under subsection (1) may not be given without the approval of –
  - (a) the Board; and
  - (b) the Chief Justice.
- (3) Practice directions (whether given under subsection (1) or otherwise) may provide for any matter which, by virtue of section 183(4)(b), may be provided for by ADGM Court Procedure Rules.
- (4) The power to give practice directions under subsection (1) includes the power –
  - (a) to vary or revoke practice directions given by any person;
  - (b) to give practice directions containing different provision for different cases (including different areas);
  - (c) to give practice directions containing provision for a specific Court, for specific proceedings or for a specific jurisdiction.
- (5) Subsection (2)(a) does not apply to practice directions to the extent that they consist of guidance about any of the following –
  - (a) the application or interpretation of the law;
  - (b) the making of judicial decisions.
- (6) Subsection (2)(a) does not apply to practice directions to the extent that they consist of criteria for determining which Judges may be allocated to hear particular categories of case; but the practice directions may, to that extent, be given only –
  - (a) after consulting the Board; and
  - (b) with the approval of the Chief Justice.

**188. Provisions as to rules of court**

- (1) Any power to make rules of court (other than ADGM Court Procedure Rules) regulating the practice or procedure of the Courts includes the power to make such provision as may be necessary or expedient for carrying into effect the provisions of these Regulations or any other ADGM enactment.
- (2) Any rules of court made for the purposes of these Regulations as they apply in relation to proceedings in the Court of First Instance apply, except in so far as their

operation is excluded by agreement, to arbitration proceedings to which these Regulations or any other ADGM enactment apply, subject to such modifications as may be appropriate.

- (3) Any question arising as to what modifications are appropriate shall be determined, in default of agreement, by the arbitrator or umpire, as the case may be.

**189. Powers to make Rules under other subordinate legislation**

Schedule 1 sets out a process for the exercise of rule-making powers under other subordinate legislation.

**190. Powers to give practice directions**

Schedule 2 sets out a process for the exercise of powers to give practice directions.

## **PART 8 – JUDICIAL AND OTHER APPOINTMENTS**

### **191. Judicial appointments: “judicial-appointment eligibility condition”**

- (1) Subsections (2) and (3) apply for the purposes of any statutory provision that refers to a person who satisfies the judicial-appointment eligibility condition.
- (2) A person satisfies that condition if he has a relevant qualification.
- (3) Subject to section 192, a person has a relevant qualification if he is or has been a lawyer for a continuous period of at least 10 years.
- (4) In this section “lawyer” means someone who is authorised to practice law in any jurisdiction by the body authorised to regulate the admittance, licensing and conduct of lawyers in that jurisdiction.
- (5) A person shall be taken to become a lawyer when that person’s name is entered for the first time on the roll or register kept by the body referred to in subsection (4).

### **192. “Relevant qualification” in section 191: further provision**

- (1) The Board, on the recommendation of the Chief Justice, may by order provide for the qualification specified in the order to be a relevant qualification for the purposes of section 191(1) in relation to an office or other position specified in the order.
- (2) An order under subsection (1) may, in relation to the qualification specified in the order, include provision as to when a person who holds that qualification is, for the purposes of section 191, to be taken first to have held it.
- (3) The Board may by order make provision supplementing or amending section 191(5).
- (4) No order may be made under this section unless a draft of it has been provided to, and approved by, the Chief Justice.
- (5) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his function under subsection (4).

### **193. Assisting the transaction of judicial business**

- (1) A person within any entry of column 1 of the following Table may at any time, at the request of the appropriate authority, act as a Judge of a relevant Court specified in the request.

TABLE

<b>1 Judge or ex-Judge</b>	<b>2 Where competent to act on request</b>
1. A Justice of Appeal.	The Court of First Instance.
2. A person who has been a Justice of Appeal.	The Court of Appeal and the Court of First Instance.
3. A Justice of First Instance.	The Court of Appeal.
4. A person who has been a Justice of First Instance.	The Court of Appeal and the Court of First Instance.

- (2) In subsection (1) –
- (a) “appropriate authority” means the Chief Justice or a judicial office holder (as defined in section 218(3)) nominated by him to exercise his functions under this section;
- (b) “relevant Court”, in the case of a person entered in column 1 of the Table, means a Court specified in relation to that entry in column 2 of the Table.
- (3) The appropriate authority may make a request under subsection (1) only after nominating that person to, and obtaining the agreement of, the Board.
- (4) If it appears to the Chief Justice, after consulting the Chairman of the Board, that it is expedient as a temporary measure to make an appointment under this subsection in order to facilitate the disposal of business in the Court of First Instance, he may appoint a person qualified for appointment as a Judge of the Courts to be a deputy Judge of the Court of First Instance during such period or on such occasions as the Chief Justice may, after consulting the Chairman of the Board, think fit.
- (5) A person appointed under subsection (4) is to hold and vacate office as a deputy Judge of the Court of First Instance in accordance with the terms of the person’s appointment, which are to be such as the Chief Justice, with the agreement of the Chairman of the Board, may determine.
- (6) Every person while acting under this section shall be treated for all purposes as, and accordingly may perform any of the functions of, a Judge of the Court in which he is acting.
- (7) A person shall by virtue of subsection (6) –
- (a) be treated as a Judge of the Court in which he is acting for the purposes of any statutory provision relating to –
- (i) the appointment and tenure of office of, and the affirmation to be taken by, Judges of that Court;
- (ii) the remuneration and allowances of such Judges; and



- (b) be treated as having been a Judge of a Court in which he has acted only under this section.
- (8) Such remuneration and allowances as the Chief Justice may, with the concurrence of the Board, determine may be paid out of money provided by the Abu Dhabi Global Market –
  - (a) to any person who has been a Justice of Appeal or a Justice of First Instance, and is by virtue of subsection (1) acting as mentioned in that subsection;
  - (b) to any deputy Judge of the Court of First Instance appointed under subsection (4).
- (9) A person may be removed from office as a deputy Judge of the Court of First Instance only by the Chief Justice; and then only on –
  - (a) the ground of inability or misbehaviour; or
  - (b) a ground specified in the person’s terms of appointment.
- (10) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise functions of the Chief Justice under this section.

**194. Appointment of Chief Justice, Registrar and Judges of the Courts**

- (1) Whenever the office of Chief Justice is vacant, the Board must appoint a qualified person to that office; and such appointment shall become effective upon the expiry of 15 days after notifying the Chairman of the Judicial Department of it and receiving no objections thereto.
- (2) Subsections (3) and (4) apply to an appointment or to a nomination to appoint a person to the office of Registrar.
- (3) The Chief Justice must nominate a person to the Board to fill any vacancy in the office of Registrar; and the Board must fill any such vacancy.
- (4) Where there is a vacancy in the office of the Registrar and the office of the Chief Justice is concurrently unfilled, the responsibility to make a nomination to the Board for the purposes of subsection (3) falls to the next most senior ranking Judge of the Courts whose office is filled.
- (5) Subsections (6) to (10) apply to a nomination for an appointment as a Judge of the Courts.
- (6) Subject to subsection (7), the Chief Justice must nominate a person to the Board to fill any vacancy in the office of Judge of the Courts.
- (7) Subsection (6) does not apply to a vacancy while the Chief Justice agrees that it may remain unfilled.
- (8) Where there is a vacancy in the office of Judge of the Courts and the office of the Chief Justice is concurrently unfilled, the responsibility to make a nomination to the

Board for the purposes of subsection (6) falls to the next most senior ranking Judge of the Courts whose office is filled.

- (9) The Board may request the Chief Justice to consider a person for nomination for appointment as a Judge of the Courts.
- (10) A request made under subsection (9) may relate to more than one nomination.
- (11) Following nomination by the Chief Justice, the person who has been nominated shall be appointed to the office of Judge of the Courts by the Board.
- (12) No person shall be qualified for appointment as Chief Justice, as a Judge of the Courts or as Registrar unless he satisfies the judicial-appointment eligibility condition.
- (13) A person appointed to the office of Chief Justice, as a Judge of the Courts or to the office of Registrar shall take the required judicial affirmation as soon as may be possible after accepting office.
- (14) In the case of a person appointed to the office of Chief Justice, the required judicial affirmation is to be taken in the presence of the Chairman of the Board.
- (15) In the case of a person appointed other than to the office of Chief Justice, the required judicial affirmation is to be taken in the presence of the Chief Justice or a judicial office holder (as defined in section 218(3)) nominated by him for this purpose.
- (16) In this section “required judicial affirmation” means the judicial affirmation as set out in section 203.
- (17) Any appointment or nomination for appointment for a judicial office pursuant to Article 13 of the ADGM Founding Law or under this Part 8 must be solely on merit.
- (18) A person must not be appointed, or nominated for appointment to any judicial office pursuant to Article 13 of the ADGM Founding Law or under this Part 8 unless the person or persons making the appointment or nomination to appoint is satisfied that he is of good character.

#### **195. Tenure of office of Judges of the Courts**

- (1) This section applies to the office of any Judge of the Courts.
- (2) A person appointed to an office to which this section applies shall hold that office during good behaviour, subject to a power of removal by the Board on the recommendation of the Chief Justice.
- (3) It is for the Chief Justice alone to recommend to the Board the exercise of the power of removal under subsection (2).
- (4) A Judge of the Courts shall vacate that office on becoming Chief Justice.
- (5) A person who holds an office to which this section applies may at any time resign it by giving the Board and the Chief Justice notice in writing to that effect.

- (6) The Board, if satisfied by means of a medical certificate that a person holding an office to which this section applies is disabled by permanent infirmity from the performance of the duties of his office, may, subject to subsection (7), declare that person's office to have been vacated; and the Board's declaration shall have like effect for all purposes as if that person had on the date of the declaration resigned his office.
- (7) A declaration under subsection (6) with respect to a person shall be of no effect unless it is made –
  - (a) in the case of either of the Chief Justice or the Registrar, with the concurrence of the other of them;
  - (b) in the case of a Judge of the Courts, with the concurrence of the Chief Justice and the Registrar.
- (8) Where subsection (7) applies but there is a vacancy in one or more (but not all) of the offices mentioned in that subsection, only the concurrence of the holders of such of the appropriate offices as are not vacant is required for the purposes of a declaration under subsection (6) to have effect under subsection (7).

**196. Remuneration etc. of Judges of the Courts**

- (1) Subject to Article 13(2) of the ADGM Founding Law and to subsection (2), there shall be paid to Judges of the Courts such remuneration and expenses as may be determined by the Board with the concurrence of the Chief Justice.
- (2) Any remuneration or expense payable under this section may be increased, but not reduced, by a determination or further determination under this section.
- (3) Remuneration or expenses payable under this section shall be charged upon and payable out of funds provided by the Abu Dhabi Global Market.
- (4) There shall be paid out of money provided by the Abu Dhabi Global Market to any Judge of the Courts, in addition to his remuneration or expenses, such allowances as may be determined by the Board with the concurrence of the Chief Justice.

**197. Precedence and seniority of Judges of the Courts.**

- (1) The Chief Justice is a member of the judiciary and of the Courts.
- (2) When sitting in the Court of Appeal, the Justices of Appeal shall rank after the Chief Justice and, among themselves, according to the priority of the dates on which they respectively became Judges of the Court, or if two or more of them became Judges of the Court on the same date, priority shall be determined according to the date when each Judge became a judge of his national High Court.
- (3) When sitting in the Court of First Instance, the Justices of First Instance shall rank next after the Justices of Appeal and, among themselves, according to the priority of the dates on which they respectively became Judges of the Courts, or if two or more

of them became Judges of the Court on the same date, priority shall be determined according to the date when each Judge became a judge of his national High Court.

- (4) Subject to subsections (2) and (3), when not sitting in either the Court of Appeal or the Court of First Instance, Judges of the Courts have the same rank, save that seniority shall be according to the dates on which they became Judges of the Courts.

**198. Property held by officers of the Courts**

Any property held in his official capacity by a judicial office holder shall, on his dying or ceasing to hold office, vest in the person appointed to succeed him without any conveyance, assignment or transfer.

**199. Central Office**

- (1) The Central Office of the Courts shall perform such business as the Chief Justice may direct.
- (2) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his functions under this section.

**200. Delegation of certain administrative functions of the Registrar**

- (1) Where the Registrar is unable to exercise any of his relevant functions, the Chief Justice may appoint a Judge of the Courts to exercise, on behalf of the Registrar, such of those functions as the Chief Justice considers appropriate.
- (2) Any appointment under this section shall be in writing and shall specify –
  - (a) the functions which may be exercised by the appointed Judge; and
  - (b) the period for which the appointment is to have effect.
- (3) In this section “relevant functions” means any functions of the Registrar under subsection (4).
- (4) The Registrar shall be responsible for, and have custody of, the records of the Courts and shall have the power to determine where such records (or any of them) are for the time being to be deposited.
- (5) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise his functions under subsection (1).

**201. Delegation of certain administrative functions of the Chief Justice**

- (1) Where the Chief Justice expects to be absent at a time when it may be appropriate for any relevant functions of his to be exercised, he may appoint the Registrar or any judicial office holder to act as his deputy and to exercise those functions on his behalf.
- (2) Where the Chief Justice considers that it would be inappropriate for him to exercise any such relevant functions in connection with a particular matter (because of a possible conflict of interests or for any other reason), he may appoint the Registrar or

a judicial office holder to act as his deputy and to exercise those functions on his behalf.

- (3) Any appointment under this section shall be in writing and shall specify –
  - (a) the functions which may be exercised by the deputy Chief Justice; and
  - (b) the period for which the appointment is to have effect.
- (4) In this section “relevant functions” means any functions of the Chief Justice under these Regulations.

**202. Judicial affirmations**

The form of the judicial affirmation is set out in section 203.

**203. Form of judicial affirmation**

The affirmation in these Regulations referred to as the judicial affirmation shall be as follows –

*“I,....., do solemnly, sincerely and truly declare and affirm that I will well and truly serve His Highness Sheikh Khalifa Bin Zayed Al Nahyan, the Ruler of the Emirate of Abu Dhabi, and the Board of Directors of the Abu Dhabi Global Market in the office of..... of the Abu Dhabi Global Market Courts , and I will do right to all manner of people after the laws, regulations and usages of the Abu Dhabi Global Market, without fear or favour, affection or ill will.”*

**204. Persons to take the judicial affirmation**

- (1) The judicial affirmation shall be taken by each of the officers listed –
  - (a) in section 193(4) (appointment of deputy Judges of the Court of First Instance);
  - (b) in section 194(13) (appointment of Judges of the Courts);
- (2) A person referred to in subsection (1) shall not be prevented from taking office, nor shall any of his acts performed in accordance with his duties under the terms of his appointment be declared invalid, void or *ultra vires*, merely because the person has yet to take the judicial affirmation.

**205. Name of His Highness for time being to be used in the judicial affirmation**

Where in the judicial affirmation the name of His Highness is expressed, the name of the Ruler of the Emirate for the time being shall be substituted from time to time.

**206. Functions of the Chief Justice during vacancy or incapacity**

- (1) This section applies during any period when –
  - (a) the office of Chief Justice is vacant; or
  - (b) the Chief Justice is incapacitated.

- (2) During such a period –
  - (a) any function of the Chief Justice may be exercised by the most senior Judge who is in the Abu Dhabi Global Market and is able and willing to exercise those functions;
  - (b) anything which falls to be done in relation to the Chief Justice may be done in relation to the most senior Judge.
- (3) For the purposes of this section –
  - (a) the Chief Justice is to be regarded as incapacitated only in accordance with sections 195(6) and (7)(a);
  - (b) in such a case, the Chief Justice is to be regarded as incapacitated until the Board is satisfied by means of a medical certificate declaring that he is no longer incapacitated.
- (4) In this section –
  - (a) “incapacitated”, in relation to the Chief Justice, means unable to exercise the functions of that office;
  - (b) “most senior Judge” shall be construed in accordance with section 197(4).

**207. Transfer, modification or abolition of functions by order**

- (1) The Board may by order make provision for any of these purposes –
  - (a) to transfer an existing function of the Chief Justice to another person;
  - (b) to direct that an existing function of the Chief Justice is to be exercisable concurrently with another person;
  - (c) to direct that an existing function of the Chief Justice exercisable concurrently with another person is to cease to be exercisable by the Chief Justice;
  - (d) to modify an existing function of the Chief Justice;
  - (e) to abolish an existing function of the Chief Justice.
- (2) An order under subsection (1) may in particular –
  - (a) amend or repeal any ADGM enactment;
  - (b) include –
    - (i) any supplementary, incidental or consequential provision; and
    - (ii) any transitory, transitional or saving provision,

which the Board considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, a provision made under subsection (1).

- (3) The amendments that may be made by virtue of subsection (2)(a) are in addition to those made by or under any other provision of the ADGM Founding Law or of these Regulations.

**208. Transfer: supplementary**

- (1) This section applies where a function of the Chief Justice is transferred to another person (“the transferee”) by any provision of these Regulations or of an order under section 207 (“the amending provision”).
- (2) The transfer does not affect the validity of anything done (or having effect as if done) by or in relation to the Chief Justice before the commencement of the amending provision.
- (3) So far as is necessary in consequence of the transfer, an enactment or instrument passed or made before the commencement of the provision has effect, subject to any amendment made by the amending provision or any other provision of these Regulations, as if –
  - (a) a reference to the Chief Justice were a reference to the transferee;
  - (b) a reference to the Chief Justice’s Office were a reference to the office of the transferee;
  - (c) a reference to an officer of the Chief Justice were a reference to an officer of the transferee.
- (4) Anything done by or in relation to the Chief Justice in connection with the function has effect, so far as is necessary for continuing its effect after the commencement of the amending provision, as if done by or in relation to the transferee.
- (5) Documents or forms printed for use in connection with the function may be used in connection with it even though they contain (or are to be read as containing) references to the Chief Justice, his Office or an officer of his.
- (6) For the purposes of the use of any such documents after the commencement of the amending provision, those references are to be read as references to the transferee, his office or an officer of his.

**209. Registrar**

- (1) The Courts shall have a Registrar.
- (2) It is for the Board to appoint the Registrar.
- (3) The Board may not appoint a person to the office of Registrar of the Courts without first consulting with, and securing the agreement of, the Chief Justice.
- (4) The Board and the Chief Justice may delegate to the Registrar any of the non-judicial functions of the Courts.

- (5) The Registrar must carry out his functions (whether under subsection (4) or otherwise) in accordance with any directions given by the Board or the Chief Justice.

**210. Officers and staff**

- (1) It is for the Registrar to appoint officers and staff of the Courts.
- (2) It is for the Registrar to determine the following matters –
- (a) the number of officers and staff of the Courts;
  - (b) subject to subsection (3), the terms on which officers and staff are to be appointed.
- (3) Service as the Registrar of the Courts, and service as an officer or staff appointed under subsection (1), is service in the service of the Abu Dhabi Global Market.
- (4) In this section “officers and staff of the Courts” means a person other than a Judge, Registrar, clerk or secretary of the Courts.

**211. Accommodation, facilities and other resources**

- (1) The Board must ensure that the Courts are provided with the following –
- (a) such court-houses, offices and other accommodation as the Board thinks, after consulting the Chief Justice, are appropriate for the Courts to carry out their business;
  - (b) such other resources as the Board thinks, after consulting the Chief Justice, are appropriate for the Courts to carry out their business.
- (2) The Board may discharge the duty under subsection (1) by –
- (a) providing accommodation or other resources; or
  - (b) entering into arrangements with any other person for the provision of accommodation or other resources.
- (3) In this section “court-house” means any place where the Courts sit, including the precincts of any building in which they sit.
- (4) The Registrar must, after consulting the Chief Justice, provide such facilities as the Courts may require in order to carry out their business.

**212. System to support the Courts in carrying on business**

- (1) The Registrar must ensure that the Courts’ resources are used to provide an efficient and effective system to support the Courts in carrying on their business.
- (2) In particular –
- (a) appropriate services must be provided for the Courts;



- (b) the accommodation provided under section 211 must be appropriately secured, equipped, maintained and managed.

**213. Security officers**

- (1) A Court security officer is a person who is –
  - (a) appointed by the Registrar under section 210(1) or provided under a contract; and
  - (b) designated by the Registrar as a Court security officer.
- (2) The Registrar may give directions as to –
  - (a) training courses to be completed by Court security officers;
  - (b) conditions to be met before a person may be designated as a Court security officer.
- (3) For the purposes of sections 214 to 216, a Court security officer who is not readily identifiable as such (whether by means of uniform or badge or otherwise) is not to be regarded as acting in the execution of the officer's duty.
- (4) In those sections "court building" means any building –
  - (a) where the business of the Courts is carried on; and
  - (b) to which the public has access.

**214. Powers of search, exclusion, removal and restraint**

- (1) A Court security officer acting in the execution of the officer's duty may search –
  - (a) any person who is in, or seeking to enter, a court building; and
  - (b) any article in the possession of such a person.
- (2) Subsection (1) does not authorise a Court security officer –
  - (a) to require a person to remove any of the person's clothing other than a coat, jacket, gloves or footwear;
  - (b) to require a person wearing national dress to remove any item of clothing forming part of such dress; and a person wearing such dress may not be required to remove any item of clothing forming part of it.
- (3) A Court security officer acting in the execution of the officer's duty may exclude or remove from a court building, or a part of a court building, any person who refuses –
  - (a) to permit a search under subsection (1); or
  - (b) to surrender an article in the person's possession when asked to do so under section 215(1).

- (4) A Court security officer acting in the exercise of the officer's duty may –
- (a) restrain any person who is in a court building; or
  - (b) exclude or remove any person from a court building, or a part of a court building,
- if it is reasonably necessary to do so for one of the purposes given in subsection (5).
- (5) The purposes are –
- (a) enabling the business of the Courts to be carried on without interference or delay;
  - (b) maintaining order;
  - (c) securing the safety of any person in the court building.
- (6) A Court security officer acting in the execution of the officer's duty may remove any person from a courtroom at the request of a Judge of the Courts.
- (7) The powers given by subsections (3), (4) and (6) include the power to use reasonable force, where necessary.
- (8) In this section "Judge of the Courts" includes any Judge (whether their appointment is permanent, deputy or temporary).

**215. Surrender, seizure and retention of knives, guns and other articles**

- (1) If a Court security officer acting in the execution of the officer's duty reasonably believes that an article in the possession of a person who is in, or seeking to enter, a court building ought to be surrendered on any of the grounds given in subsection (2), the officer must ask the person to surrender the article; and, if the person refuses to surrender the article, the officer may seize it.
- (2) The grounds are that the article –
- (a) may jeopardise the maintenance of order in the court building (or a part of it);
  - (b) may put the safety of any person in the court building at risk; or
  - (c) may be evidence of, or in relation to, a criminal offence.
- (3) Subject to subsection (4), a Court security officer may retain an article which was –
- (a) surrendered in response to a request under subsection (1); or
  - (b) seized under that subsection,
- until the time when the person who surrenders it, or from whom it was seized, is leaving the court building.

- (4) If a Court security officer reasonably believes that an article may be evidence of, or in relation to, a criminal offence, the officer may retain it until –
- (a) the time the person who surrendered it, or from whom it was seized, is leaving the court building; or
  - (b) the end of the permitted period,
- whichever is the later.
- (5) In subsection (4) “the permitted period” means such period, not exceeding 24 hours from the time the article was surrendered or seized, as will enable the Court security officer to draw the article to the attention of a police officer.
- (6) Subsections (3) to (5) do not apply where a knife or a gun is –
- (a) surrendered to a Court security officer in response to a request under subsection (1); or
  - (b) seized by a Court security officer under that subsection,
- but, instead, the knife or gun must be retained in accordance with subordinate legislation under section 216(3) unless returned or disposed of in accordance with that subordinate legislation or subordinate legislation under section 216(1).
- (7) If a Court security officer reasonably believes that a retained knife or gun may be evidence of, or in relation to, a criminal offence, nothing in subsection (6) prevents the officer retaining the knife or gun for so long as necessary to enable the officer to draw it to the attention of a police officer.
- (8) In this section “knife” includes –
- (a) a knife-blade; and
  - (b) any other article which –
    - (i) has a blade or is sharply pointed; and
    - (ii) is or may be made or adapted for use for causing injury to the person.
- (9) In this section –
- (a) “gun” means any device –
    - (i) designed to discharge projectiles or other material; and
    - (ii) is made or adapted for use for causing injury to the person;
  - (b) “projectile” means any projectile which may be –
    - (i) solid;

- (ii) liquid;
- (iii) gas; or
- (iv) energy,

and which may be free (such as bullets) or captive (such as taser probes).

**216. Subordinate legislation about retention of knives, guns and other articles**

- (1) The Board may by subordinate legislation make provision as to –
  - (a) the provision to persons –
    - (i) by whom articles have been surrendered in response to a request under section 215(1); or
    - (ii) from whom articles have been seized under section 215(1),  
of written information about the powers of retention of Court security officers;
  - (b) the keeping of records about articles which have been so surrendered or seized;
  - (c) the period for which unclaimed articles are to be kept; and
  - (d) the disposal of unclaimed articles at the end of that period.
- (2) In subsection (1) “unclaimed article” means an article –
  - (a) which has been retained under section 215;
  - (b) which a person is entitled to have returned;
  - (c) which has not been returned; and
  - (d) whose return has not been requested by a person entitled to it.
- (3) Without prejudice to the generality of subsection (1), the Board must make subordinate legislation which makes provision as to –
  - (a) the procedure to be followed when a knife or gun is retained under section 215;
  - (b) the making of requests by eligible persons for the return of knives or guns so retained;
  - (c) the procedure to be followed when returning a knife or gun pursuant to a request made in accordance with the subordinate legislation.
- (4) In subsection (3) –
  - (a) “eligible person”, in relation to a knife or gun retained under section 215 means –

- (i) the person who surrendered the knife or gun, or from whom the knife or gun was seized, under section 215(1); or
- (ii) any other person specified in subordinate legislation under subsection (3);
- (b) “knife” has the same meaning as in section 215;
- (c) “gun” has the same meaning as in section 215.

**217. Disciplinary powers**

- (1) Any power of the Board to remove a judicial office holder from a judicial office under this Part is exercisable only after the Board has complied with prescribed procedures (as well as any other requirements to which the power is subject).
- (2) The Chief Justice may exercise any of the following powers but only with the agreement of the Board and only after complying with prescribed procedures.
- (3) The Chief Justice may give a judicial office holder formal or pastoral advice, or a formal warning or reprimand, for disciplinary purposes (but this section does not restrict what he may do informally or for other purposes or where any advice or warning is not addressed to a particular judicial office holder).
- (4) The Chief Justice may suspend a person from a judicial office for any period if –
  - (a) the person has been convicted of a criminal offence;
  - (b) it has been determined under prescribed procedures that the person should not be removed from judicial office; and
  - (c) it appears to the Chief Justice with the agreement of the Board that the suspension is necessary for maintaining confidence in the Abu Dhabi Global Market judiciary.
- (5) While a person is suspended under this section from any office he may not perform any of the functions of the office (but his other rights as holder of the office are not affected).

**218. Disciplinary powers: interpretation**

- (1) This section has effect for the purposes of section 217.
- (2) A person is subject to criminal proceedings if in any jurisdiction proceedings against him for an offence have begun and have not come to an end, and the times when proceedings are begun and come to an end for the purposes of this subsection are such as may be prescribed.
- (3) “Judicial office” means any Judge of the ADGM Courts and “judicial office holder” shall be construed accordingly.
- (4) “Sentence” includes any sentence other than a fine (and “serving” is to be read accordingly).

- (5) The times when a person becomes and ceases to be subject to prescribed conditions for the purposes of section 217(4) are such as may be prescribed.
- (6) “Under investigation in any jurisdiction for an offence” has such meaning as may be prescribed.

**219. Subordinate legislation about procedures**

The Chief Justice may make subordinate legislation under these Regulations providing for the procedures that are to be followed in the investigation and determination of allegations by any person of misconduct by judicial office holders.

**220. Contents of subordinate legislation and procedural rules**

- (1) Subordinate legislation under section 219 may include provision as to any of the following –
  - (a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
  - (b) steps to be taken by a complainant before a complaint is to be investigated;
  - (c) the conduct of an investigation, including steps to be taken by the judicial office holder under investigation or by a complainant or other person;
  - (d) time limits for taking any step and procedures for extending time limits;
  - (e) persons by whom an investigation or part of an investigation is to be conducted;
  - (f) matters to be determined by the Chief Justice, the Board, the judicial office holder under investigation or any other person;
  - (g) requirements as to records of investigations;
  - (h) requirements as to confidentiality of communications or proceedings;
  - (i) requirements as to the publication of information or its provision to any person.
- (2) Subordinate legislation –
  - (a) may require a decision as to the exercise of functions under section 217, or functions mentioned in subsection (1) of that section, to be taken in accordance with findings made pursuant to prescribed procedures;
  - (b) may require that prescribed steps be taken by the Chief Justice or the Board in exercising those functions or before exercising them.
- (3) Where subordinate legislation under section 219 imposes any requirement on the judicial office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint) –

- (a) as may be prescribed by the subordinate legislation; or
  - (b) as may be determined by the Chief Justice and the Board or either of them in accordance with provisions so prescribed.
- (4) Subordinate legislation under section 219 may –
- (a) provide for any prescribed requirement not to apply if the Chief Justice and the Board so agree;
  - (b) make provision for different purposes.
- (5) Nothing in this section limits the generality of section 219.
- (6) The rules are to be published in such manner as the Chief Justice may determine with the agreement of the Board.
- (7) Without prejudice to subsection (6), the rules must be made available to and easily and freely accessible by members of the public.

**221. Delegation of functions**

- (1) The Chief Justice may nominate a judicial office holder (as defined in section 218(3)) to exercise any of his functions under the relevant sections.
- (2) The relevant sections are –
- (a) section 217(3) to (4);
  - (b) section 220(3)(b).

**222. Judges holding office in foreign courts**

- (1) A judicial office holder may hold judicial office in a relevant foreign court without being required to relinquish the Abu Dhabi Global Market judicial office.
- (2) In this section –
- (a) “Abu Dhabi Global Market judicial office” means the office of –
    - (i) Chief Justice;
    - (ii) Registrar;
    - (iii) Justice of Appeal;
    - (iv) Justice of First Instance;
  - (b) “relevant foreign court” means any court established in any jurisdiction, state or territory other than the Abu Dhabi Global Market.
- (3) A holder of an Abu Dhabi Global Market judicial office who also holds judicial office in a relevant foreign court is not required to perform any duties as a holder of the Abu

Dhabi Global Market judicial office but does not count as holding the Abu Dhabi Global Market judicial office for the purposes of section 196.



## **PART 9 – MISCELLANEOUS PROVISIONS ABOUT LEGAL SERVICES**

### **223. Rights of audience**

- (1) Subject to rules of court, made pursuant to subordinate legislation, where a person has at any time been a lawyer for a minimum continuous period of 5 years, he shall have the right of audience before the Courts.
- (2) Where a person –
  - (a) has at any time been authorised by an approved regulator as a lawyer to exercise a right of audience before a court in relation to proceedings of a particular description; and
  - (b) becomes authorised by another approved regulator as a lawyer to exercise a right of audience before that court in relation to that description of proceedings,any qualification regulations of the approved regulator mentioned in paragraph (b) which relate to that right are to have effect in relation to that person.
- (3) Subsection (2) does not apply in relation to any qualification regulations to the extent that they impose requirements relating to continuing education or training which have effect in relation to the exercise of the right by all members of the approved regulator who have the right.
- (4) Subsection (2) does not apply to a person if he has been banned from exercising the right of audience by the approved regulator mentioned in paragraph (a) of that subsection as a result of disciplinary proceedings and that approved regulator has not lifted the ban.
- (5) In this section “lawyer” means someone who is authorised to practice law in any jurisdiction by the body authorised to regulate the admittance, licensing and conduct of lawyers in that jurisdiction.

### **224. Notaries**

- (1) The Chief Justice may, by rules made pursuant to subordinate legislation, make provision –
  - (a) as to the educational and training qualifications which must be satisfied before a person may be qualified to practice as a public notary in the Abu Dhabi Global Market;
  - (b) as to further training (if any) which public notaries in the Abu Dhabi Global Market are to be required to undergo;
  - (c) for regulating the practice, conduct and discipline of public notaries in the Abu Dhabi Global Market;
  - (d) as to the keeping by public notaries in the Abu Dhabi Global Market of records and accounts;

- (e) as to the handling by public notaries in the Abu Dhabi Global Market of clients' money;
  - (f) as to the indemnification of public notaries in the Abu Dhabi Global Market against losses arising from claims in respect of civil liability incurred by them;
  - (g) as to compensation for losses suffered by persons in respect of dishonesty on the part of public notaries in the Abu Dhabi Global Market or their employees; and
  - (h) requiring the payment, in such circumstances as may be prescribed, of such reasonable fees as may be prescribed.
- (2) Subsection (1) shall not be taken to prejudice –
- (a) any other power of the Chief Justice to make rules; or
  - (b) any rules made by him under any such power.
- (3) In this section “prescribed” means prescribed by subordinate legislation made under this section.

**225. Conditional fee agreements**

- (1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement, but any other conditional fee agreement shall be unenforceable.
- (2) For the purposes of this section and section 226 –
- (a) a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances;
  - (b) a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances; and
  - (c) references to a success fee, in relation to a conditional fee agreement, are to the amount of the increase.
- (3) The following conditions are applicable to every conditional fee agreement –
- (a) it must be in writing;
  - (b) it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement; and
  - (c) it must comply with such requirements (if any) as may be prescribed by the Board.

- (4) The following further conditions are applicable to a conditional fee agreement which provides for a success fee –
  - (a) it must relate to proceedings of a description specified by subordinate legislation made by the Board;
  - (b) it must state the percentage by which the amount of the fees which would be payable if it were not a conditional fee agreement is to be increased; and
  - (c) that percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates by subordinate legislation made by the Board.
- (5) The additional conditions are applicable to a conditional fee agreement which –
  - (a) provides for a success fee; and
  - (b) relates to proceedings of a description specified by subordinate legislation made by the Board for the purposes of this subsection.
- (6) The additional conditions are that –
  - (a) the agreement must provide that the success fee is subject to a maximum limit;
  - (b) the maximum limit must be expressed as a percentage of the description of damages awarded in the proceedings that are specified in the agreement;
  - (c) that percentage must not exceed the percentage specified by subordinate legislation made by the Board in relation to the proceedings or calculated in a manner so specified; and
  - (d) those descriptions of damages may only include descriptions of damages specified by subordinate legislation made by the Board in relation to the proceedings.

**226. Conditional fee agreements: supplementary**

- (1) The requirements which the Board may prescribe under section 225(3)(c) –
  - (a) include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made; and
  - (b) may be different for different descriptions of conditional fee agreements (and, in particular, may be different for those which provide for a success fee and those which do not).
- (2) In section 225 and in this section (and in the definitions of “advocacy services” and “litigation services” as they apply for their purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a Court), whether commenced or contemplated.

- (3) Before making subordinate legislation under section 225(4), (5) or (6), the Board shall consult –
  - (a) the Chief Justice;
  - (b) any approved regulator; and
  - (c) such other bodies or persons as it considers appropriate.
- (4) A costs order made in proceedings may not include provision requiring payment by one party of all or part of a success fee payable by another party under a conditional fee agreement.
- (5) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee).

**227. Damages-based agreements**

- (1) A damages-based agreement which satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.
- (2) But a damages-based agreement which does not satisfy those conditions is unenforceable.
- (3) For the purposes of this section a damages-based agreement is an agreement between a person providing advocacy or litigation services and the recipient of those services which provides that –
  - (a) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided; and
  - (b) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained.
- (4) The agreement –
  - (a) must be in writing;
  - (b) must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement or to proceedings of a description prescribed by the Board;
  - (c) if subordinate legislation so provides, must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;
  - (d) must comply with such other requirements as to its terms and conditions as are prescribed; and

- (e) must be made only after the person providing the services under the agreement has complied with such requirements (if any) as may be prescribed as to the provision of information.
- (5) Subordinate legislation under subsection (4) is to be made by the Board and may make different provision in relation to different descriptions of agreements.
- (6) Before making subordinate legislation under subsection (4), the Board must consult –
  - (a) the Chief Justice;
  - (b) any approved regulator; and
  - (c) such other bodies or persons as it considers appropriate.
- (7) Rules of court may make provision with respect to the assessment of costs in proceedings where a party in whose favour a costs order is made has entered into a damages-based agreement in connection with the proceedings.
- (8) In this section “payment” includes a transfer of assets and any other transfer of monies’ worth (and the reference in subsection (4)(c) to a payment above a prescribed amount, or above to an amount calculated in a prescribed manner, is to be construed accordingly).
- (9) In this section (and in the definitions of “advocacy services” and “litigation services” as they apply for the purposes of this section) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a Court), whether commenced or contemplated.
- (10) Nothing in this section applies to an agreement entered into before the coming into force of the first subordinate legislation made under subsection (4).

## **228. Litigation funding agreements**

- (1) A litigation funding agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a litigation funding agreement.
- (2) For the purposes of this section a litigation funding agreement is an agreement under which –
  - (a) a person (“the funder”) agrees to fund (in whole or in part) the provision of advocacy or litigation services (by someone other than the funder) to another person (“the litigant”); and
  - (b) the litigant agrees to pay a sum to the funder in specified circumstances.
- (3) The following conditions are applicable to a litigation funding agreement –
  - (a) the funder must be a person, or a person of a description, prescribed by the Board;

- (b) the agreement must be in writing;
  - (c) the agreement must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement or to proceedings of any such description as may be prescribed by the Board;
  - (d) the agreement must comply with such requirements (if any) as may be so prescribed;
  - (e) the sum to be paid by the litigant must consist of any costs payable to him in respect of the proceedings to which the agreement relates together with an amount calculated by reference to the funder's anticipated expenditure in funding the provision of the services; and
  - (f) that amount must not exceed such percentage of that anticipated expenditure as may be prescribed by the Board in relation to proceedings of the description to which the agreement relates.
- (4) Subordinate legislation under subsection (3)(a) may require a person to be approved by the Board or by a prescribed person.
- (5) The requirements which the Board may prescribe under subsection (3)(d) –
- (a) include requirements for the funder to have provided information to the litigant before the agreement is made; and
  - (b) may be different for different descriptions of litigation funding agreements.
- (6) In this section (and in the definitions of “advocacy services” and “litigation services” as they apply for its purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a Court), whether commenced or contemplated.
- (7) Before making subordinate legislation under this section, the Board must consult –
- (a) the Chief Justice;
  - (b) any approved regulator; and
  - (c) such other bodies or persons as it considers appropriate.
- (8) A costs order made in any proceedings may, subject (in the case of Court proceedings) to rules of court, include provision requiring the payment of any amount payable under a litigation funding agreement.
- (9) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a litigation funding agreement.

**229. Payment of additional amount to successful claimant**

- (1) Rules of court may make provision for a Court to order a defendant in proceedings to pay an additional amount to a claimant in those proceedings where –

- (a) the claim is a claim for (and only for) an amount of money;
  - (b) judgment is given in favour of the claimant;
  - (c) the judgment in respect of the claim is at least as advantageous as an offer to settle the claim which the claimant made in accordance with rules of court and has not withdrawn it in accordance with those rules; and
  - (d) any prescribed conditions are satisfied.
- (2) Rules made under subsection (1) may include provision as to the assessment of whether a judgment is at least as advantageous as an offer to settle.
- (3) In subsection (1) “additional amount” means an amount not exceeding a prescribed percentage of the amount awarded to the claimant by the Court (excluding any amount awarded in respect of the claimant’s costs).
- (4) The Chief Justice may by subordinate legislation provide that rules of court may make provision for a Court to order a defendant in proceedings to pay an amount calculated in a prescribed manner to a claimant in those proceedings where –
- (a) the claim is or includes a non-monetary claim;
  - (b) judgment is given in favour of the claimant;
  - (c) the judgment in respect of the claim is at least as advantageous as an offer to settle the claim which the claimant made in accordance with rules of court and has not withdrawn in accordance with those rules; and
  - (d) any prescribed conditions are satisfied.
- (5) Subordinate legislation under subsection (4) must provide for the amount to be calculated by reference to one or more of the following –
- (a) any costs ordered by the Court to be paid to the claimant by the defendant in the proceedings;
  - (b) any amount awarded to the claimant by the Court in respect of so much of the claim as is for an amount of money (excluding any amount awarded in respect of the claimant’s costs);
  - (c) the value of any non-monetary benefit awarded to the claimant.
- (6) Subordinate legislation under subsection (4) –
- (a) must provide that rules of court made under the subordinate legislation may include provision as to the assessment of whether a judgment is at least as advantageous as an offer to settle; and
  - (b) may provide that such rules of court may make provision as to the calculation of the value of a non-monetary benefit awarded to a claimant.

- (7) Conditions prescribed under subsection (1)(d) or (4)(d) may, in particular, include conditions relating to –
  - (a) the nature of the claim;
  - (b) the amount of money awarded to the claimant;
  - (c) the value of the non-monetary benefit awarded to the claimant.
- (8) Rules of court and subordinate legislation made under this section may make different provision in relation to different cases.
- (9) In this section –
  - (a) “proceedings” means proceedings to which rules of court made under Part 7 of these Regulations apply;
  - (b) “non-monetary claim” means a claim for a benefit other than an amount of money;
  - (c) “prescribed” means prescribed by subordinate legislation made by the Chief Justice.



## **PART 10 – INTERPRETATION, CITATION, EXTENT AND COMMENCEMENT**

### **230. Interpretation**

- (1) In these Regulations, unless the context otherwise requires, or unless otherwise provided –

“Abu Dhabi Global Market” has the meaning given in section 1 of the Interpretation Regulations 2015;

“action” means any proceedings commenced in any manner prescribed by rules of court;

“ADGM enactment” means ADGM regulations and subordinate legislation;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings to provide;

“appeal”, includes –

- (i) an application for a new trial; and
- (ii) an application –
  - a. to the Court of Appeal to set aside a verdict, finding or judgment in any cause or matter in the Court of First Instance which has been tried or in which any issue has been tried; or
  - b. to the Court of First Instance to set aside a verdict, finding or judgment in any cause or matter in an inferior court or tribunal which has been tried or in which any issue has been tried;

“Applicable Abu Dhabi Law” means a law issued after the date of enactment of these Regulations by His Highness the Ruler of the Emirate of Abu Dhabi which expressly provides for the law to have application in the Abu Dhabi Global Market, including any rules, regulations, orders, resolutions or similar measures adopted pursuant to such law;

“arbitration agreement” has the same meaning as it has in the Arbitration Regulations 2015;

“Board” has the meaning given in section 1 of the Interpretation Regulations 2015;

“cause” means any action;

“charging order” means an order under section 115(1);

“Chief Justice” has the meaning given in section 1 of the Interpretation Regulations 2015;

“civil proceedings” has the meaning given by section 79 and includes, in addition to civil proceedings in any of the ordinary court of law –

- (i) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply;
- (ii) an arbitration or reference, whether under an enactment or not,

but does not include civil proceedings in relation to which the strict rules of evidence do not apply;

“Court”, where it appears with a capital letter, has the meaning given in section 1 of the Interpretation Regulations 2015, except where otherwise provided;

“Court of Appeal” means the Court of Appeal in the Abu Dhabi Global Market;

“Court of First Instance” means the Court of First Instance in the Abu Dhabi Global Market;

“debtor” and “creditor” have the meanings given by section 115(1);

“dividend” includes a distribution in respect of any unit of a unit trust;

“Division”, where it appears with a capital letter, means a division of the Court of Appeal or the Court of First Instance;

“document” means anything in which information of any description is recorded, and “copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“Emirate” means the Emirate of Abu Dhabi;

“Executive Council” means the Executive Council of the Emirate;

“fine” means a civil penalty by way of a fine;

“functions” includes powers and duties;

“Global Market’s Authority” has the meaning given under Articles 1 and 10 of the ADGM Founding Law;

“government stock” means any stock issued by the Federal Government of the United Arab Emirates, His Highness’ government in the Abu Dhabi Global Market or the Emirate;

“hearsay” shall be construed in accordance with section 54(2);

“His Highness the Ruler” means the ruler of the Emirate from time to time and “His Highness” and “the Ruler” shall be construed accordingly;

“inferior court” means any Court or tribunal established within the Abu Dhabi Global Market that is not a superior court of record;

“information” means information in any form;

“information discloser”, in relation to an information order, has the meaning given by section 162(1)(a);

“information order” has the meaning given by section 162;

“Judge” means a Judge of the Courts;

“Judge of the Courts” means, as the context requires, the Chief Justice, Registrar, Justice of Appeal or Justice of First Instance;

“judgment” includes a decree and means any judgment or order given or made by a Court in any civil proceedings;

“judgment creditor” means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

“judgment debt” means either of the following –

- (i) a sum which is payable under a judgment or order enforceable by the Court of First Instance; or
- (ii) a sum which, by virtue of an enactment, is recoverable as if it were payable under a judgment or order of the Court of First Instance (including a sum which is so recoverable because a Court so orders);

“judgment debtor” means the person against whom the judgment was given and includes any person against whom the judgment is unenforceable under the law of the original country;

“jurisdiction” includes powers;

“lease” has the meaning in section 129 (subject to section 139(4));

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide;

“mandatory order” means a command issuing from the Court of First Instance, directed to any person, body corporate or unincorporated, inferior court or tribunal, public authority or body requiring him or them to do some particular thing specified in it;

“matter” means any proceedings in Court not in a cause;

“notice of enforcement” means notice under paragraph 7 of Schedule 3;

“oath” includes “affirmation” and “declaration”;

“office” includes a position of any description;

“official referees’ business” has the meaning given by section 106(6);

“oral evidence” includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs;

“the original statement”, in relation to hearsay evidence, means the underlying statement (if any) by –

(i) in the case of evidence of fact, a person having personal knowledge of that fact;  
or

(ii) in the case of evidence of opinion, the person whose opinion it is;

“party”, in relation to any proceedings, includes any person who pursuant to or by virtue of rules of court or any other statutory provision has been served with notice of, or has intervened in, those proceedings;

“practice directions” means directions as to the practice and procedure of any Court within the scope of ADGM Court Procedure Rules;

“prescribed” means, except in relation to subordinate legislation, prescribed by rules of court;

“proceedings” has the meaning given by section 98(2)(a) and includes civil proceedings;

“prohibiting order” means an order issuing out of the Court of First Instance and directed to an inferior Court or tribunal or public authority or body which forbids that Court or tribunal or authority or body to act in excess of its jurisdiction or contrary to law;

“quashing order” means an order of the Court of First Instance by which decisions of an inferior Court or tribunal or public authority or body may be quashed;

“Registrar” means the Registrar and Chief Executive of the Abu Dhabi Global Market Courts;

“right of audience” means the right to appear before and address a Court including the right to call and examine witnesses;

“right to conduct litigation” means the right –

(i) to issue proceedings before any Court;

(ii) to commence, prosecute and defend such proceedings; and

(iii) to perform any ancillary functions in relation to proceedings (such as entering appearances to actions);

“Rules”, in Part 7, means the ADGM Court Procedure Rules;

“rules of court”, in relation to any Court or tribunal, means rules made by the authority having power to make rules or orders regulating the practice and procedure of that Court or tribunal; and the power of the authority to make rules of court includes power to make such rules for the purposes of any ADGM enactment which directs or authorises anything to be done by rules of court;

“Schedule” means a schedule to these Regulations;

“statement” means any representation of fact or opinion, however made;

“stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;

“superior court of record” means the Court of First Instance and/or the Court of Appeal as the context requires;

“tenant”, in relation to a lease, means the tenant for the time being under the lease;

“unit trust” means any trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever;

“writ of attendance” means a court summons that orders a person to appear before the Court in person and give oral testimony for use at a hearing or a trial;

“writ of control” means an order that commands an enforcement agent to take control and sell enough of a debtor’s goods in order to obtain the funds to satisfy a money judgment;

“writ of delivery” means an order that commands an enforcement agent to seize and recover specific goods from a debtor;

“writ of execution” means a writ of control, a writ of delivery or a writ of possession;

“writ of possession” means an order for the recovery of real property after an order for possession has been awarded by the Court;

“writ of production” means a court summons that orders a person to appear before the Court in person and produce documentary or other tangible evidence for use at a hearing or a trial;

“writing” means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form, including electronic means;

- (2) Any reference in these Regulations to rules of court includes a reference under any provision of these Regulations or any other ADGM enactment which confers power to make rules of court.

- (3) Any power conferred by these Regulations to make ADGM enactments includes the power to revoke or vary any such ADGM enactments by subsequent ADGM enactments.
- (4) Nothing in these Regulations shall be construed as enabling any Court to make an order that is binding on His Highness or any person in his capacity as an officer or servant of His Highness.
- (5) For the purposes of sections 115 and 117, references to a judgment or order of the Court of First Instance shall be taken to include references to a judgment, order, decree or award (howsoever called) of any court or arbitrator (including any foreign court or arbitrator) which is or has become enforceable (whether wholly or to a limited extent) as if it were a judgment or order of the Court of First Instance.
- (6) Nothing in these Regulations shall prejudice the operation of any enactment which provides (in whatever words) that any answer of evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described).

In this subsection, the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making disclosure (discovery), producing documents or otherwise.

- (7) Nothing in these Regulations prejudices –
  - (a) any power of a Court, in any legal proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion; or
  - (b) the operation of any agreement (whenever made) between the parties to any legal proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.
- (8) Where, by reason of any defect of speech or hearing from which he is suffering, a person, called as a witness in any legal proceedings gives his evidence in writing or by signs, that evidence is to be treated for the purposes of these Regulations as being given orally.
- (9) The rules of court made for the purpose of the application of sections 70 and 72 to proceedings in the Court of First Instance apply, except in so far as their application is excluded by agreement, to proceedings before tribunals other than the ordinary Courts of law, subject to such modifications as may be appropriate.

Any question arising as to what modifications are appropriate shall be determined, in default of agreement, by the tribunal.

- (10) A Court the practice and procedure of which is governed by ADGM Court Procedure Rules is referred to in these Regulations as being “within the scope” of the Rules; and references to a Court outside the scope of the Rules are to be read accordingly.
- (11) Any reference to information held on behalf of an information discloser includes a reference to any information which –

- (a) is held by a person who provides services to the information discloser; and
  - (b) is held by that person in connection with the provision of those services.
- (12) For the purposes of these Regulations, the forms and ceremonies used in administering an oath are immaterial, if the Court or person before whom the oath is taken has power to administer an oath for the purpose of verifying a statement, and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection, or has declared to be binding on him.

**231. Rules and subordinate legislation**

- (1) The Board may make ADGM enactments containing such terms and conditions as the Board may in its discretion specify, delegating to the Chief Justice any power that the Board has under any Part of, or Schedule to, these Regulations to make or issue any rules or subordinate legislation.
- (2) Any power or powers delegated by the Board under subsection (1) shall be exercised by the Chief Justice by means of subordinate legislation made, or rules issued, by the Chief Justice.
- (3) Any subordinate legislation made, or rules issued, by the Chief Justice under subsection (2) shall have the same force and effect as if it were, and shall otherwise be treated under these Regulations as being, made or issued (as the case may be) by the Board.
- (4) Subordinate legislation under these Regulations may –
  - (a) make different provision for different cases or circumstances;
  - (b) include supplementary, incidental and consequential provisions;
  - (c) make transitional provisions and savings; and
  - (d) revoke or amend any rules or other subordinate legislation, provided that, unless the Board specifies otherwise in accordance with subsection (1), only the Board may revoke or amend by rules any previous rules or any other subordinate legislation made or issued by the Board.

**232. Short title, extent, commencement and savings**

- (1) These Regulations may be cited as the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.
- (2) These Regulations shall apply in the whole of the Abu Dhabi Global Market.
- (3) These Regulations shall come into force on the date of their publication (the “Commencement Date”). The Board may by rules make any transitional, transitory, consequential, saving, incidental or supplementary provision in relation to the commencement of these Regulations as the Board thinks fit after consulting with the Chief Justice.

- (4) Subject to subsection (6), nothing in these Regulations shall have retrospective effect.
- (5) Subject to subsection (6), on and from the Commencement Date, any law previously in force in the Abu Dhabi Global Market which is inconsistent with, or deals with the same subject matter as these Regulations shall, subject to the ADGM Founding Law, cease to have any effect or force in the Abu Dhabi Global Market.
- (6) The exceptions referred to in subsections (4) and (5) are as follows –
  - (a) all acts and omissions occurring in the Abu Dhabi Global Market prior to the Commencement Date shall be determined in accordance with the law of the Emirate or any other law that would have applied pursuant to the law of the Emirate; and
  - (b) the Courts shall have exclusive jurisdiction to hear, examine and determine any proceedings, or any issue, cause or matter arising out of such proceedings, instituted prior to the Commencement Date; and all such proceedings, issues, causes or matters will be determined in accordance with the law of the Emirate or any other law that would have applied pursuant to the law of the Emirate.
- (7) All acts and omissions occurring in the Abu Dhabi Global Market on and following the Commencement Date shall be determined in accordance with these Regulations, or the Applicable Abu Dhabi Law or the relevant ADGM enactment, pursuant to the law of the Abu Dhabi Global Market.
- (8) The Courts shall have exclusive jurisdiction to hear, examine and determine any proceedings or any issue, cause or matter arising out of such proceedings instituted on and following the Commencement Date; and all such proceedings, issues, causes and matters will be determined in accordance with these Regulations, or the Applicable Abu Dhabi Law or the relevant ADGM enactment, pursuant to the law of the Abu Dhabi Global Market.



## **SCHEDULE 1 – POWERS TO MAKE RULES OF COURT**

### **Section 189**

#### **1. General Interpretation**

In this Schedule 1 “rules” means rules of court under other subordinate legislation which are, by virtue of provision in that subordinate legislation, to be made in accordance with this Schedule 1.

#### **2. Chief Justice or nominated judicial office holder to make rules**

- (1) It is for the Chief Justice, or a judicial office holder nominated by the Chief Justice, to make rules.
- (2) The Chief Justice may nominate a judicial office holder in accordance with sub-paragraph (1) –
  - (a) to make rules generally; or
  - (b) to make rules under a particular ADGM enactment.
- (3) In this Schedule 1 –
  - (a) “judicial office holder” has the same meaning as in section 218(3);
  - (b) references to the Chief Justice’s nominee, in relation to rules, mean a judicial office holder nominated by the Chief Justice under sub-paragraph (1) to make those rules.

#### **3. Commencement, amendment and annulment of rules**

- (1) Rules made by the Chief Justice, or by his nominee, come into force on such day as the Chief Justice, or his nominee, may direct.
- (2) The Board may amend or revoke a rule –
  - (a) of its own motion; or
  - (b) on the recommendation of the Chief Justice or a judicial office holder nominated by the Chief Justice in accordance with paragraph 2.

#### **4. Rules requested by the Board**

- (1) This paragraph applies if the Board gives the Chief Justice, or his nominee, written notice that it thinks it is expedient for rules to include provision that would achieve a purpose specified in the notice.
- (2) The Chief Justice, or his nominee, must make such rules as he considers necessary to achieve the specified purpose.
- (3) Those rules must be –

- (a) made within a reasonable period after the Board gives notice under subparagraph (1);
- (b) made in accordance with the provisions of this Schedule 1.

## **SCHEDULE 2 – POWERS TO GIVE PRACTICE DIRECTIONS**

**Sections 187 and 190**

### **1. General Interpretation**

In this Schedule 2 “practice directions” means directions under other subordinate legislation which are, by virtue of provision in that subordinate legislation, to be made or given in accordance with this Schedule 2.

### **2. Chief Justice or nominated judicial office holder to make practice directions**

- (1) It is for the Chief Justice, or a judicial office holder nominated by the Chief Justice, to make or give practice directions.
- (2) The Chief Justice may nominate a judicial office holder in accordance with sub-paragraph (1) –
  - (a) to make or give practice directions generally; or
  - (b) to make or give practice directions under a particular ADGM enactment.
- (3) In this Schedule 2 –
  - (a) “judicial office holder” has the same meaning as in section 218(3);
  - (b) references to the Chief Justice’s nominee, in relation to practice directions, mean a judicial office holder nominated by the Chief Justice under sub-paragraph (1) to make or give those practice directions.

### **3. Practice directions to be made only by agreement of the Board**

- (1) Subject to sub-paragraphs (2) and (3), the Chief Justice, or his nominee, may make or give practice directions only with the agreement of the Board.
- (2) Sub-paragraph (1) does not apply to practice directions to the extent that they consist of guidance about any of the following –
  - (a) the application or interpretation of the law;
  - (b) the making of judicial decisions;
  - (c) ADGM Court Procedure Rules;
  - (d) any other rules of court.
- (3) Sub-paragraph (1) does not apply to practice directions to the extent that they consist of criteria for determining which Judges may be allocated to hear particular categories of case; but the practice directions may, to that extent, be made or given only after consulting the Board.

- (4) If sub-paragraph (1) applies but the Board does not agree practice directions made or given by the Chief Justice, or by his nominee, the Board must give that person written reasons why it does not agree the practice directions.

## SCHEDULE 3 – TAKING CONTROL OF GOODS

### Section 123(1)

#### Part 1

#### Introductory

##### 1. The procedure

- (1) Using the procedure in this Schedule 3 to recover a sum means taking control of goods and selling them to recover that sum in accordance with this Schedule 3 and subordinate legislation under it.
- (2) In this Schedule 3, a power to use the procedure to recover a particular sum is called an “enforcement power”.
- (3) The following apply in relation to an enforcement power –
  - (a) “debt” means the sum recoverable;
  - (b) “debtor” means the person liable to pay the debt or, if two or more persons are jointly or jointly and severally liable, any one or more of them;
  - (c) “creditor” means the person for whom the debt is recoverable.

##### 2. Enforcement agents

- (1) In this Schedule 3 “enforcement agent” means an individual authorised by section 123(2) to act as an enforcement agent.
- (2) Only an enforcement agent may take control of goods and sell them under an enforcement power.
- (3) An enforcement agent, if he is not the person on whom an enforcement power is conferred, may act under the power only if authorised by that person.
- (4) In relation to goods taken control of by an enforcement agent under an enforcement power, references to the enforcement agent are references to any person for the time being acting as an enforcement agent under the power.

##### 3. General interpretation

- (1) In this Schedule 3 –
  - (a) “amount outstanding” is defined in paragraph 31(3) (application of proceeds);
  - (b) “control” (except in paragraph 5(4)(a) (effect of property in goods being bound)) means control under an enforcement power;
  - (c) “controlled goods” means goods taken control of that –
    - (i) have not been sold or abandoned;

- (ii) if they have been removed, have not been returned to the debtor (unless subject to a controlled goods agreement); and
  - (iii) if they are goods of another person, have not been returned to that person;
  - (d) “controlled goods agreement” has the meaning given by paragraph 11(4) (ways of taking control);
  - (e) “co-owner” in relation to goods of the debtor means a person other than the debtor who has an interest in the goods, but only if the enforcement agent –
    - (i) knows that the person has an interest in the particular goods; or
    - (ii) would know, if he made reasonable enquiries;
  - (f) “the Court”, unless otherwise stated, and subject to rules of court, means the Court of First Instance in relation to an enforcement power under a writ of the Court of First Instance;
  - (g) “disposal” and related expressions, in relation to securities, are to be read in accordance with paragraph 30(2) (holding and disposal of securities: supplemental);
  - (h) “exempt goods” means goods that subordinate legislation exempt by description or circumstances or both;
  - (i) “goods” means property of any description, other than real property;
  - (j) “interest” means a beneficial interest;
  - (k) “money” means money in US dollars or another currency;
  - (l) “premises” means any place, and in particular includes –
    - (i) a vehicle, vessel, aircraft (whether powered or unpowered and, if the former, howsoever powered) or hovercraft;
    - (ii) a movable structure;
  - (m) “securities” includes bills of exchange, promissory notes, bonds, equities, stock, specialities and securities for money.
- (2) In this Schedule 3 –
- (a) references to goods of the debtor or another person are references to goods in which the debtor or that person has an interest; but
  - (b) references to goods of the debtor do not include references to trust property in which either the debtor or a co-owner has an interest not vested in possession.

## **Part 2**

### **The Procedure**

#### **4. Binding property in the debtor's goods**

- (1) For the purposes of any enforcement power, the property in all goods of the debtor, except goods that are exempt goods for the purposes of this Schedule 3 or are protected under any other ADGM enactment, becomes bound in accordance with this paragraph.
- (2) Where the power is conferred by a writ issued from the Court, the writ binds the property in the goods from the time when it is received by the person who is under a duty to endorse it.
- (3) Where sub-paragraph (2) does not apply but notice is given to the debtor under paragraph 7(1) (notice of enforcement), the notice binds the property in the goods from the time when the notice is given.

#### **5. Effect of property in goods being bound**

- (1) An assignment or transfer of any interest of the debtor's in goods while the property in them is bound for the purposes of an enforcement power –
  - (a) is subject to that power; and
  - (b) does not affect the operation of this Schedule 3 in relation to the goods, except as provided by paragraph 40 (application to assignee or transferee).
- (2) Sub-paragraph (1) does not prejudice the title to any of the debtor's goods that a person acquires –
  - (a) in good faith;
  - (b) for valuable consideration; and
  - (c) without notice.
- (3) For the purposes of sub-paragraph (2)(a), a thing is to be treated as done in good faith if it is in fact done honestly (whether it is done negligently or not).
- (4) In sub-paragraph (2)(c) “notice” means –
  - (a) where the property in the goods is bound by a writ, notice that the writ, or any other writ by virtue of which the goods of the debtor might be seized or otherwise taken control of, had been received by the person who was under a duty to endorse it and that goods remained bound under it;
  - (b) where the property in the goods is bound by notice under paragraph 7(1) (notice of enforcement), notice that that notice had been given and that goods remained bound under it.

## **6. Time when property ceases to be bound**

- (1) For the purposes of any enforcement power the property in goods of the debtor ceases to be bound in accordance with this paragraph.
- (2) The property in any goods ceases to be bound –
  - (a) when the goods are sold;
  - (b) in the case of money used to pay any of the amount outstanding, when it is used.
- (3) The property in all goods ceases to be bound when any of these happens –
  - (a) the amount outstanding is paid, out of the proceeds of sale or otherwise;
  - (b) the instrument under which the power is exercisable ceases to have effect;
  - (c) the power ceases to be exercisable for any other reason.

## **7. Notice of enforcement**

- (1) An enforcement agent may not take control of goods unless the debtor has been given notice.
- (2) Subordinate legislation must state –
  - (a) the minimum period of notice;
  - (b) the form of the notice;
  - (c) what it must contain;
  - (d) how it must be given;
  - (e) who must give it.
- (3) The enforcement agent must keep a record of the time when the notice is given.
- (4) If subordinate legislation authorises it, the Court may order in prescribed circumstances that the notice given may be less than the minimum period.
- (5) The order may be subject to conditions.

## **8. Time limit for taking control**

- (1) An enforcement agent may not take control of goods after the prescribed period.
- (2) The period may be prescribed by reference to the date of notice of enforcement or of any writ conferring the enforcement power or any other date.
- (3) Subordinate legislation may provide for the period to be extended or further extended by the Court in accordance with the subordinate legislation.



## **9. Goods which may be taken**

- (1) An enforcement agent may take control of goods only if they are –
  - (a) on premises that he has power to enter under this Schedule 3; or
  - (b) in a public place.
- (2) An enforcement agent may take control of goods only if they are goods of the debtor.
- (3) Subject to sub-paragraphs (1) and (2) and to any other ADGM enactment under which goods are protected, an enforcement agent –
  - (a) may take control of goods anywhere in the Abu Dhabi Global Market;
  - (b) may take control of any goods that are not exempt.
- (4) Subordinate legislation may authorise him to take control of exempt goods in prescribed circumstances, if he provides the debtor with replacements in accordance with the subordinate legislation.

## **10. Value of goods taken**

- (1) Unless sub-paragraph (2) applies, an enforcement agent may not take control of goods whose aggregate value is more than –
  - (a) the amount outstanding; and
  - (b) an amount in respect of future costs, calculated in accordance with subordinate legislation.
- (2) An enforcement agent may take control of goods of higher value on premises or in a public place, only to the extent necessary, if there are not enough goods of a lower value within a reasonable distance –
  - (a) in a public place; or
  - (b) on premises that he has power to enter under this Schedule 3, either under paragraph 12 (entry without warrant) or under an existing warrant.
- (3) For the purposes of this paragraph goods are above a given value only if it is or ought to be clear to the enforcement agent that they are.
- (4) Sub-paragraph (1) does not affect the power to keep control of goods if they rise in value once they have been taken.

## **11. Ways of taking control**

- (1) To take control of goods an enforcement agent must do one of the following –
  - (a) secure the goods on the premises on which he finds them;

- (b) if he finds them in a public place, secure them in a public place where he finds them or within a reasonable distance;
  - (c) remove them and secure them elsewhere;
  - (d) enter into a controlled goods agreement with the debtor.
- (2) Any liability of an enforcement agent arising out of his securing goods in a public place under this paragraph is excluded to the extent that he acted with reasonable care.
  - (3) Subordinate legislation may make further provision about taking control in any of the ways listed in sub-paragraph (1), including provision –
    - (a) determining the time when control is taken;
    - (b) prohibiting the use of any of those ways for goods by description or circumstances or both.
  - (4) A controlled goods agreement is an agreement under which the debtor –
    - (a) is permitted to retain custody of the goods;
    - (b) acknowledges that the enforcement agent is taking control of them; and
    - (c) agrees not to remove or dispose of them, nor to permit anyone else to, before the debt is paid.

## **12. Entry without warrant**

- (1) An enforcement agent may enter relevant premises to search for and take control of goods.
- (2) Where there are different relevant premises this paragraph authorises entry to each of them.
- (3) This paragraph authorises repeated entry to the same premises, subject to any restriction in subordinate legislation.
- (4) If the enforcement agent is acting under section 127(1) (CRAR), the only relevant premises are the demised premises.
- (5) Otherwise premises are relevant if the enforcement agent reasonably believes that they are the place, or one of the places, where the debtor –
  - (a) usually lives; or
  - (b) carries on a trade or business.

## **13. Entry under warrant**

- (1) If an enforcement agent applies to the Court it may issue a warrant authorising him to enter specified premises to search for and take control of goods.

- (2) Before issuing the warrant, the Court must be satisfied that all these conditions are met –
  - (a) an enforcement power has become exercisable;
  - (b) there is reason to believe that there are goods on the premises that the enforcement power will be exercisable to take control of if the warrant is issued;
  - (c) it is reasonable in all the circumstances to issue the warrant.
- (3) The warrant authorises repeated entry to the same premises, subject to any restriction in subordinate legislation.

#### **14. Re-entry**

- (1) This paragraph applies where goods on any premises have been taken control of and have not been removed by the enforcement agent.
- (2) The enforcement agent may enter the premises to inspect the goods or to remove them for storage or sale.
- (3) This paragraph authorises repeated entry to the same premises.

#### **15. General powers to use reasonable force**

Where paragraph 16 applies, an enforcement agent may if necessary use reasonable force to enter premises or to do anything for which entry is authorised.

#### **16. General powers to use reasonable force: supplementary**

- (1) This sub-paragraph applies if the following condition is met, that is to say that the enforcement agent has power to enter the premises under paragraph 12 (entry without warrant) or 14 (re-entry) or under a warrant under paragraph 13.
- (2) This sub-paragraph applies if these conditions are met –
  - (a) the enforcement agent has power to enter the premises under paragraph 12 (entry without warrant);
  - (b) the enforcement agent reasonably believes that the debtor carries on a trade or business on the premises;
  - (c) the enforcement agent is acting under a writ of control issued for the purpose of recovering a sum payable under a Court of First Instance judgment.
- (3) This sub-paragraph and sub-paragraph (4) apply if these conditions are met –
  - (a) the enforcement agent has power to enter the premises under paragraph 14 (re-entry);
  - (b) he reasonable believes that the debtor carries on a trade or business on the premises;

- (c) he is acting under an enforcement power within sub-paragraph (4).
- (4) The enforcement powers are those under a writ of control issued for the purpose of recovering a sum payable under a Court of First Instance judgment.
- (5) This sub-paragraph and sub-paragraphs (6), (7), (8) and (9) apply if these conditions are met –
  - (a) the enforcement agent has power to enter the premises under paragraph 14 (re-entry);
  - (b) the enforcement agent has taken control of the goods by entering into a controlled goods agreement with the debtor;
  - (c) the debtor has failed to comply with any provision of the controlled goods agreement relating to the payment by the debtor of the debt;
  - (d) the debtor has been given notice of the intention of the enforcement agent to enter the premises to inspect the goods or to remove them for storage or sale;
  - (e) neither sub-paragraph (1) nor sub-paragraph (3) applies.
- (6) For the purposes of a notice under sub-paragraph (5)(d), subordinate legislation must state –
  - (a) the minimum period of notice;
  - (b) the form of the notice;
  - (c) what it must contain;
  - (d) how it must be given;
  - (e) who must give it.
- (7) The enforcement agent must keep a record of the time when a notice under sub-paragraph (5)(d) is given.
- (8) If subordinate legislation authorises it, the Court may order in prescribed circumstances that the notice given may be less than the minimum period.
- (9) The order may be subject to conditions.

**17. Application for power to use reasonable force**

- (1) This sub-paragraph and sub-paragraph (2) apply if an enforcement agent has power to enter premises under paragraph 12 (entry without warrant) or 14 (re-entry) or under a warrant under paragraph 13.
- (2) If the enforcement agent applies to the Court it may issue a warrant which authorises him to use, if necessary, reasonable force to enter the premises or to do anything for which entry is authorised.

- (3) This sub-paragraph and sub-paragraph (4) apply if an enforcement agent is applying for power to enter premises under a warrant under paragraph 13.
- (4) If the enforcement agent applies to the Court it may include in the warrant provision authorising him to use, if necessary, reasonable force to enter the premises or to do anything for which entry is authorised.
- (5) The Court may not issue a warrant under sub-paragraph (2) or include provision under sub-paragraph (4) unless it is satisfied that prescribed conditions are met.
- (6) A warrant under sub-paragraph (2) or provision included under sub-paragraph (4) may require any law enforcement officer to assist the enforcement agent to execute the warrant.

**18. Other provisions about powers of entry**

Paragraph 19 applies where an enforcement agent has power to enter premises under paragraph 12 (entry without warrant) or 14 (re-entry) or under a warrant under paragraph 13.

**19. Other provisions about powers of entry: supplemental**

- (1) The power to enter and any power to use force are subject to any restriction imposed by or under subordinate legislation.
- (2) A power to use force does not include power to use force against persons.
- (3) The enforcement agent may enter and remain on the premises only within prescribed times of day.
- (4) Subordinate legislation may give the Court power in prescribed circumstances to authorise him to enter or remain on the premises at other times.
- (5) The authorisation –
  - (a) may be by order or in a warrant under paragraph 13;
  - (b) may be subject to conditions.
- (6) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of –
  - (a) his identity; and
  - (b) his authority to enter the premises.
- (7) The request may be made before the enforcement agent enters the premises or while he is there.
- (8) The enforcement agent may take other people onto the premises.

- (9) The persons referred to in sub-paragraph (8) may assist the enforcement agent in exercising any power, including a power to use force.
- (10) The persons referred to in sub-paragraph (8) must not remain on the premises without the enforcement agent.
- (11) The enforcement agent may take any equipment onto the premises.
- (12) The enforcement agent may leave equipment on the premises if he leaves controlled goods there.
- (13) After entering the premises, the enforcement agent must provide a notice for the debtor giving information about what the enforcement agent is doing.
- (14) Subordinate legislation must state –
  - (a) the form of the notice;
  - (b) what information it must give.
- (15) Subordinate legislation may prescribe circumstances in which a notice need not be provided after re-entry to premises.
- (16) If the debtor is on the premises when the enforcement agent is there, the enforcement agent must give him the notice then.
- (17) If the debtor is not there, the enforcement agent must leave the notice in a conspicuous place on the premises.
- (18) If the enforcement agent knows that there is someone else there or that there are other occupiers, a notice he leaves under sub-paragraph (17) must be in a sealed envelope addressed to the debtor.
- (19) If the premises are occupied by any person other than the debtor, the enforcement agent must leave at the premises a list of any goods he takes away.
- (20) The enforcement agent must leave the premises as effectively secured as he finds them.

## **20. Goods in a public place**

- (1) If the enforcement agent applies to the Court it may issue a warrant which authorises him to use, if necessary, reasonable force to take control of goods in a public place.
- (2) The Court may not issue a warrant unless it is satisfied that prescribed conditions are met.
- (3) The warrant may require any law enforcement officer to assist the enforcement agent to execute it.
- (4) The power to use force is subject to any restriction imposed by or under subordinate legislation.

- (5) The power to use force does not include power to use force against persons.
- (6) The enforcement agent may not exercise any power under this Schedule 3 in a public place except within prescribed times of day.
- (7) Subordinate legislation may give the Court power in prescribed circumstances to authorise him to exercise a power at other times.
- (8) The authorisation may be subject to conditions.
- (9) If the enforcement agent takes control of goods in a public place or enters a vehicle on a highway or a public place with the intention of taking control of goods, he must provide a notice for the debtor giving information about what he is doing.
- (10) Subordinate legislation must state –
  - (a) the form of the notice;
  - (b) what information it must give.
- (11) If the debtor is present when the enforcement agent is there, the enforcement agent must give him the notice then.
- (12) Otherwise the enforcement agent must deliver the notice to any relevant premises (as defined by paragraph 12 (entry without warrant)) in a sealed envelope addressed to the debtor.

## **21. Inventory**

- (1) If an enforcement agent takes control of goods he must provide the debtor with an inventory of them as soon as practicable.
- (2) But if there are co-owners of any of the goods, the enforcement agent must instead provide the debtor as soon as reasonably practicable with separate inventories of goods owned by the debtor and each co-owner and an inventory of goods without a co-owner.
- (3) The enforcement agent must as soon as reasonably practicable provide the co-owner of any of the goods with –
  - (a) the inventory of those goods; and
  - (b) a copy of the notice under paragraph 19(13).
- (4) Subordinate legislation must state –
  - (a) the form of an inventory; and
  - (b) what it must contain.

## **22. Care of goods removed**

- (1) An enforcement agent must take reasonable care of controlled goods that he removes from the premises or public place where he finds them.
- (2) He must comply with any provision of subordinate legislation about their care while they remain controlled goods.

### **23. Valuation**

- (1) Before the end of the minimum period, the enforcement agent must –
  - (a) make or obtain a valuation of the controlled goods in accordance with subordinate legislation;
  - (b) give the debtor, and separately any co-owner, an opportunity to obtain an independent valuation of the goods.
- (2) In this paragraph “minimum period” means the period specified by subordinate legislation under –
  - (a) paragraph 30(5) to (12) (holding and disposal of securities: supplemental), in the case of securities;
  - (b) paragraph 26(1) and (2) (sale: supplementary), in any other case.

### **24. Best price**

- (1) An enforcement agent must sell or dispose of controlled goods for the best price that can reasonably be obtained in accordance with this Schedule 3.
- (2) That does not apply to money that can be used for paying any of the outstanding amount, unless the best price is more than its value if used in that way.

### **25. Sale**

Paragraph 26 applies to the sale of controlled goods, except where –

- (a) the controlled goods are securities; or
- (b) the sale is by exchange of one currency for another.

### **26. Sale: supplementary**

- (1) The sale must not be before the end of the minimum period except with the agreement of the debtor and any co-owner.
- (2) Subordinate legislation must specify the minimum period.
- (3) Before the sale, the enforcement agent must give notice of the date, time and place of the sale to the debtor and any co-owner.
- (4) Subordinate legislation must state –
  - (a) the minimum period of notice;



- (b) the form of the notice;
  - (c) what it must contain (besides the date, time and place of sale);
  - (d) how it must be given.
- (5) The enforcement agent may replace a notice with a new notice, subject to any restriction in subordinate legislation.
  - (6) Any notice must be given within the permitted period.
  - (7) Unless extended, the permitted period is 12 months beginning with the day on which the enforcement agent takes control of the goods.
  - (8) Any extension must be by agreement in writing between the creditor and debtor before the end of the period.
  - (9) The permitted period may be extended more than once.
  - (10) The sale must be by public auction unless the Court orders otherwise.
  - (11) The Court may make an order only on an application by the enforcement agent.
  - (12) Subordinate legislation may make provision about the types of sale the Court may order.
  - (13) In an application for an order under sub-paragraph (11), the enforcement agent must state whether he has reason to believe that an enforcement power has become exercisable by another creditor against the debtor or a co-owner.
  - (14) If the enforcement agent states that he does, the Court may not consider the application until notice of it has been given to the other creditor in accordance with subordinate legislation (or until the Court is satisfied that an enforcement power is not exercisable by the other creditor against the debtor or a co-owner).
  - (15) Subordinate legislation may make further provision about the sale of controlled goods, including in particular –
    - (a) requirements for advertising;
    - (b) provision about the conduct of a sale.

## **27. Place of sale**

- (1) Subordinate legislation may make provision about the place of sale of controlled goods.
- (2) Subordinate legislation may prescribe circumstances in which the sale may be held on premises where goods were found by the enforcement agent.
- (3) Except where subordinate legislation provides otherwise, the sale may not be held on those premises without the consent of the occupier.

- (4) Paragraph 28 applies if the sale may be held on those premises.

**28. Place of sale: supplemental**

- (1) The enforcement agent and any person permitted by him –
- (a) may enter the premises to conduct or attend the sale;
  - (b) may bring equipment onto the premises for the purposes of the sale.
- (2) This paragraph authorises repeated entry to the premises.
- (3) If necessary, the enforcement agent may use reasonable force to enable the sale to be conducted and any person to enter under this paragraph.
- (4) The enforcement agent must on request show the debtor and any person who appears to him to be in charge of the premises evidence of –
- (a) his identity; and
  - (b) his authority to enter and hold the sale on the premises.
- (5) The request may be made before the enforcement agent enters the premises or while he is there.
- (6) The enforcement agent must leave the premises as effectively secured as he finds them.

**29. Holding and disposal of securities**

Paragraph 30 applies to securities as controlled goods.

**30. Holding and disposal of securities: supplemental**

- (1) Subordinate legislation may make provision about how securities are to be held and disposed of.
- (2) In this Schedule 3, references to disposal include, in relation to securities, realising the sums secured or made payable by them, suing for the recovery of those sums or assigning the right to sue for their recovery.
- (3) Subordinate legislation may in particular make provision for purposes corresponding to those for which provision is made in this Schedule 3 in relation to the disposal of other controlled goods.
- (4) The power to make subordinate legislation under this paragraph is subject to subparagraphs (5) to (12).
- (5) The creditor may sue in the name of the debtor, or in the name of any person in whose name the debtor might have sued, for the recovery of any sum secured or made payable by securities, when the time of payment arrives.

- (6) Before any proceedings under sub-paragraph (5) are commenced or the securities disposed of, the enforcement agent must give notice of the disposal to the debtor and any co-owner.
- (7) Subordinate legislation must state –
  - (a) the minimum period of notice;
  - (b) the form of the notice;
  - (c) what it must contain;
  - (d) how it must be given.
- (8) The enforcement agent may replace a notice with a new notice, subject to any restriction in subordinate legislation.
- (9) Any notice must be given within the permitted period.
- (10) Unless extended the permitted period is 12 months beginning with the time of payment.
- (11) Any extension must be by agreement in writing between the creditor and debtor before the end of the period.
- (12) The permitted period may be extended more than once.

### **31. Application of proceeds**

- (1) Proceeds from the exercise of an enforcement power must be used to pay the amount outstanding.
- (2) Proceeds are any of these –
  - (a) proceeds of sale or disposal of controlled goods;
  - (b) money taken in exercise of the power, if paragraph 24(1) (best price) does not apply to it.
- (3) The amount outstanding is the sum of these –
  - (a) the amount of the debt which remains unpaid (or an amount that the creditor agrees to accept in full satisfaction of the debt);
  - (b) any amounts recoverable out of proceeds in accordance with subordinate legislation under paragraph 41 (costs).
- (4) If the proceeds are less than the amount outstanding, which amounts in sub-paragraph (3)(a) and (b) must be paid, and how much of any amount, is to be determined in accordance with subordinate legislation.
- (5) If the proceeds are more than the amount outstanding, the surplus must be paid to the debtor.

- (6) If there is a co-owner of any of the goods, the enforcement agent must –
  - (a) first pay the co-owner a share of the proceeds of those goods proportionate to his interest;
  - (b) then deal with the rest of the proceeds under sub-paragraphs (1) to (5).
- (7) Subordinate legislation may make provision for resolving disputes about what share is due under sub-paragraph (6)(a).

### **32. Passing of title**

- (1) A purchaser of controlled goods acquires good title, with two exceptions.
- (2) The exceptions apply only if the goods are not the debtor's at the time of sale.
- (3) The first exception is where the purchaser, the creditor, the enforcement agent or a related party has notice that the goods are not the debtor's.
- (4) The second exception is where a lawful claimant has already made an application to the Court claiming an interest in the goods.
- (5) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of an enforcement power.
- (6) A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.
- (7) "The Court" has the same meaning as in paragraph 39(8) (third party claiming goods).

### **33. Abandonment of goods other than security**

Paragraph 34 applies to controlled goods other than –

- (a) securities;
- (b) money to which paragraph 24(1) (best price) does not apply.

### **34. Abandonment of goods other than security: supplemental**

- (1) Controlled goods are abandoned if the enforcement agent does not give the debtor or any co-owner notice under paragraph 26(3) to (9) (notice of sale) within the permitted period.
- (2) Subordinate legislation may prescribe other circumstances in which controlled goods are abandoned.
- (3) If controlled goods are abandoned then, in relation to the enforcement power concerned, the following apply –
  - (a) the enforcement power ceases to be exercisable;

- (b) as soon as reasonably practicable the enforcement agent must make the goods available for collection by the debtor, if he removed them from where he found them.
- (4) Subordinate legislation may make further provision about arrangements under sub-paragraph (3)(b), including in particular provision about the disposal of goods uncollected after a prescribed period.
- (5) Where the enforcement power was under a writ, sub-paragraph (3) does not affect any power to issue another writ.

**35. Abandonment of securities**

Paragraph 36 applies to securities as controlled goods.

**36. Abandonment of securities: supplemental**

- (1) Securities are abandoned if the enforcement agent does not give the debtor or any co-owner notice under paragraph 30(5) to (12) (notice of disposal) within the permitted period.
- (2) Subordinate legislation may prescribe other circumstances in which securities are abandoned.
- (3) If securities are abandoned then, in relation to the enforcement power concerned, the following apply –
  - (a) the enforcement power ceases to be exercisable;
  - (b) as soon as reasonably practicable the enforcement agent must make the securities available for collection by the debtor, if he removed them for where he found them.
- (4) Where the enforcement power was under a writ, sub-paragraph (3) does not affect any power to issue another writ.

**37. Payment of amount outstanding**

- (1) This paragraph applies where the debtor pays the amount outstanding in full –
  - (a) after the enforcement agent has taken control of goods; and
  - (b) before they are sold or abandoned.
- (2) If the enforcement agent has removed the goods he must as soon as reasonably practicable make them available for collection by the debtor.
- (3) No further step may be taken under the enforcement power concerned.
- (4) For the purposes of this paragraph, the amount outstanding is reduced by the value of any controlled goods consisting of money required to be used to pay that amount, and sub-paragraph (2) does not apply to that money.

**38. Payment of amount outstanding: supplementary**

- (1) This paragraph applies if a further step is taken despite paragraph 37(3).
- (2) The enforcement agent is not liable unless he had notice, when the step was taken, that the amount outstanding had been paid in full.
- (3) Sub-paragraph (2) applies to a related party as to the enforcement agent.
- (4) If the step taken is sale of any of the goods the purchaser acquires good title unless, at the time of sale, he or the enforcement agent had notice that the amount outstanding had been paid in full.
- (5) A person has notice that the amount outstanding has been paid in full if he would have found it out if he had made reasonable enquiries.
- (6) Sub-paragraphs (2) to (4) do not affect any right of the debtor or a co-owner to a remedy against any person other than the enforcement agent or a related party.
- (7) In this paragraph, “related party” has the meaning given by paragraph 42(12).

**39. Third party claiming goods**

- (1) This paragraph applies where a person makes an application to the Court claiming that goods taken control of are his and not the debtor’s.
- (2) After receiving notice of the application the enforcement agent must not sell the goods, or dispose of them (in the case of securities), unless directed by the Court under this paragraph.
- (3) The Court may direct the enforcement agent to sell or dispose of the goods if the applicant fails to make, or to continue to make, the required payments into Court.
- (4) The required payments are –
  - (a) payment on making the application (subject to sub-paragraph (5)) of an amount equal to the value of the goods, or to a proportion of it directed by the Court;
  - (b) payment, at prescribed times (on making the application or later), of any amounts prescribed in respect of the enforcement agent’s costs of retaining the goods.
- (5) If the applicant makes a payment under sub-paragraph (4)(a) but the enforcement agent disputes the value of the goods, any underpayment is to be –
  - (a) determined by reference to an independent valuation carried out in accordance with subordinate legislation; and
  - (b) paid at the prescribed time.

- (6) If sub-paragraph (3) does not apply the Court may still direct the enforcement agent to sell or dispose of the goods before the Court determines the applicant's claim, if it considers it appropriate having regard to all the circumstances.
- (7) If the Court makes a direction under sub-paragraph (3) or (6) –
  - (a) paragraphs 25 (sale) to 30 (holding and disposal of securities: supplemental), and subordinate legislation under them, apply subject to any modification directed by the Court;
  - (b) the enforcement agent must pay the proceeds of sale or disposal into Court.
- (8) In this paragraph “the Court”, subject to rules of court, means the Court of First Instance.

**40. Application to assignee or transferee**

- (1) This Schedule 3 applies as follows where an interest of the debtor's in goods is assigned or transferred while the property in the goods is bound for the purposes of an enforcement power, and the enforcement agent –
  - (a) knows that the assignee or transferee has an interest in the particular goods; or
  - (b) would know, if he made reasonable enquiries.
- (2) These apply as if the assignee or transferee were a co-owner of the goods with the debtor –
  - (a) paragraph 21 (inventory);
  - (b) paragraph 23 (valuation);
  - (c) paragraph 26 (sale: supplementary);
  - (d) paragraph 38(6) (remedies after payment of amount outstanding).
- (3) If the interest of the assignee or transferee was acquired in good faith, for valuable consideration and without notice, paragraph 31(6) applies as if “co-owner” included the assignee or transferee.
- (4) If the interest of the assignee or transferee was not acquired in good faith, for valuable consideration and without notice, the enforcement agent must pay any surplus under paragraph 31(5) to the assignee or transferee and to the debtor (if he retains an interest).
- (5) If the surplus is payable to two or more persons it must be paid in shares proportionate to their interests.
- (6) Paragraph 5(3) and (4) (“good faith” and “notice”) apply for the purposes of this paragraph.

#### **41. Costs**

- (1) Subordinate legislation may make provision for the recovery by any person from the debtor of amounts in respect of costs of enforcement-related services.
- (2) Subordinate legislation may provide for recovery to be out of proceeds or otherwise.
- (3) The amount recoverable under the subordinate legislation in any case is to be determined by or under that legislation.
- (4) Subordinate legislation may in particular provide for the amount, if disputed, to be assessed in accordance with rules of court.
- (5) “Enforcement-related services” means anything done under or in connection with an enforcement power, or in connection with obtaining an enforcement power, or any services used for the purposes of a provision of this Schedule 3 or subordinate legislation under it.

#### **42. Limitation of liability for sale or payment of proceeds**

- (1) Any liability of an enforcement agent or related party to a lawful claimant for the sale of controlled goods is excluded except in two cases.
- (2) The first exception is where, at the time of the sale, the enforcement agent had notice that the goods were not the debtor’s, or not his alone.
- (3) The second exception is where, before the sale, the lawful claimant had made an application to the Court claiming an interest in the goods.
- (4) A lawful claimant in relation to goods is a person who has an interest in them at time of sale, other than an interest that was assigned or transferred to him while the property in the goods was bound for the purposes of the enforcement power.
- (5) Any liability of an enforcement agent or related party to a lawful claimant for paying over proceeds is excluded except in two cases.
- (6) The first exception is where, at the time of the payment, he had notice that the goods were not the debtor’s, or not his alone.
- (7) The second exception is where, before that time, the lawful claimant had made an application to the court claiming an interest in the goods.
- (8) A lawful claimant in relation to goods is a person who has an interest in them at the time of sale.
- (9) Sub-paragraphs (1) to (8) –
  - (a) do not affect the liability of a person other than the enforcement agent or a related party;
  - (b) do not apply to the creditor if he is the enforcement agent.



- (10) The following apply for the purposes of this paragraph.
- (11) The enforcement agent or a related party has notice of something if he would have found it out if he had made reasonable enquiries.
- (12) A related party is any person who acts in exercise of an enforcement power, other than the creditor or enforcement agent.
- (13) “The Court” has the same meaning as in paragraph 39.

**43. Remedies available to the debtor**

- (1) This paragraph applies where an enforcement agent –
  - (a) breaches a provision of this Schedule 3; or
  - (b) acts under an enforcement power under a writ, warrant, liability order or other instrument that is defective.
- (2) The breach or defect does not make the enforcement agent, or a person he is acting for, a trespasser.
- (3) But the debtor may bring proceedings under this paragraph.
- (4) Subject to rules of court, the proceedings must be brought in the Court of First Instance.
- (5) In the proceedings, the Court may –
  - (a) order goods to be returned to the debtor;
  - (b) order the enforcement agent or a related party to pay damages in respect of loss suffered by the debtor as a result of the breach or anything done under the defective instrument.
- (6) A related party is either of the following (if different from the enforcement agent) –
  - (a) the person on whom the enforcement power is conferred;
  - (b) the creditor.
- (7) Sub-paragraph (5) is without prejudice to any other powers of the Court.
- (8) Sub-paragraph (5)(b) does not apply where the enforcement agent acted in the reasonable belief –
  - (a) that he was not breaching a provision of this Schedule 3; or
  - (b) (as the case may be) that the instrument was not defective.
- (9) This paragraph is subject to paragraph 38 in the case of a breach of paragraph 37(3).

**44. Remedies available to the creditor**

If a debtor wrongfully interferes with controlled goods and the creditor suffers loss as a result, the creditor may bring a claim against the debtor in respect of the loss.

**45. Contraventions**

- (1) A person commits a contravention of these Regulations if he intentionally –
  - (a) obstructs a person lawfully acting as an enforcement agent;
  - (b) interferes with controlled goods without lawful excuse.
- (2) A person who commits a contravention under this paragraph is liable to a fine not exceeding level 4 on the standard fine scale.

**46. Relation to insolvency provisions**

This Schedule 3 is subject to subsection (5) to (8) of sections 215 and 217 of the Insolvency Regulations 2015.

**SCHEDULE 4 – DEDUCTIONS BY EMPLOYER UNDER  
ATTACHMENT OF EARNINGS ORDER**

**Sections 145 and 147**

**Part 1**

**Scheme of Deductions**

**1. Preliminary definitions**

- (1) In this Schedule 4 –
  - (a) “pay-day”, in relation to earnings paid to a debtor, means an occasion on which they are paid;
  - (b) “attachable earnings”, in relation to a pay-day, are the earnings which remain payable to the debtor on that day after deduction by the employer of amounts deductible under any ADGM enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme, namely any ADGM enactment, rules, deed or other instrument providing for payment of annuities or lump sums –
    - (i) to the persons with respect to whom the instrument has effect on their retirement at a specified age or on becoming incapacitated at some earlier age; or
    - (ii) to the personal representatives or the widows, relatives or dependants of such persons on their death or otherwise,whether with or without any further or other benefits.
- (2) On any pay-day –
  - (a) “the normal deduction” is arrived at by applying the normal deduction rate (as specified in the relevant attachment of earnings order) with respect to the relevant period; and
  - (b) “the protected earnings” are arrived at by applying the protected earnings rate (as so specified) with respect to the relevant period.
- (3) For the purposes of this paragraph the relevant period in relation to any pay-day is the period beginning –
  - (a) if it is the first pay-day of the debtor’s employment with the employer, with the first day of the employment; or
  - (b) if on the last pay-day earnings were paid in respect of a period falling wholly or partly after that pay-day, with the first day after the end of the period; or
  - (c) in any other case, with the first day after the last pay-day, and ending –

- (i) where the earnings are paid in respect of a period falling wholly or partly after the pay-day, with the last day of the period; or
- (ii) in any other case, with the pay-day.

**2. Employer's deduction (judgment debts)**

In the case of an attachment of earnings order made to secure the payment of a judgment debt, the employer shall on any pay-day –

- (a) if the attachable earnings exceed the protected earnings, deduct from the attachable earnings the amount of the excess or the normal deduction, whichever is the less;
- (b) make no deduction if the attachable earnings are equal to, or less than, the protected earnings.

**3. Employer's deduction (other cases)**

(1) The following provision shall have effect in the case of an attachment of earnings order to which paragraph 2 does not apply.

(2) If on a pay-day the attachable earnings exceed the sum of –

- (a) the protected earnings; and
- (b) so much of any amount by which the attachable earnings on any previous pay-day fell short of the protected earnings as has not been made good by virtue of this sub-paragraph on another previous pay-day,

then, in so far as the excess allows, the employer shall deduct from the attachable earnings the amount specified in sub-paragraph (3).

(3) The said amount is the sum of –

- (a) the normal deduction; and
- (b) so much of the normal deduction on any previous pay-day as was not deducted on that day and has not been paid by virtue of this sub-paragraph on any other previous pay-day.

(4) No deduction shall be made on any pay-day when the attachable earnings are equal to, or less than, the protected earnings.

## **Part 2**

### **Priority as between Orders**

#### **4. Priority as between orders**

- (1) Where the employer is required to comply with two or more attachment of earnings orders in respect of the same debtor, all or none of which orders are made to secure either the payment of judgment debts, then on any pay-day the employer shall, for the purposes of complying with Part 1 of this Schedule 4 –
  - (a) deal with the orders according to the respective dates on which they were made, disregarding any later order until an earlier one has been dealt with;
  - (b) deal with any later order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with any earlier order.
- (2) Where the employer is required to comply with two or more attachment of earnings orders, and one or more (but not all) of those orders are made to secure the payment of judgment debts, then on any pay-day the employer shall, for the purpose of complying with Part 1 of this Schedule 4 –
  - (a) deal first with any order which is not made to secure the payment of a judgment debt (complying with sub-paragraph (1) if there are two or more such orders); and
  - (b) deal thereafter with any order which is made to secure the payment of a judgment debt as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with an order having priority by virtue of sub-paragraph (a); and
  - (c) if there are two or more orders to which sub-paragraph (2)(b) applies, comply with sub-paragraph (1) in respect of those orders.

## SCHEDULE 5 – CHANGING THE BASIS OF DEDUCTIONS

Section 146

### Part 1

#### Changing the Basis of Fixed Deductions Scheme

##### 1. Introduction

- (1) This Part 1 of this Schedule 5 deals with the variation of a certain kind of attachment of earnings order – referred to as a Schedule 4 judgment debt order – by changing the basis of deductions.
- (2) A Schedule 4 judgment debt order is a Schedule 4 deductions order made by the Court of First Instance to secure payment of a judgment debt.
- (3) References to variation of a Schedule 4 judgment debt order by changing the basis of deductions are references to the variation of the order so that it specifies that periodical deductions are to be made in accordance with the fixed deductions scheme.

##### 2. Variation at discretion of court

- (1) The Court of First Instance may vary a Schedule 4 judgment debt order by changing the basis of deductions.
- (2) The Court of First Instance may make the variation –
  - (a) in consequence of an application made to the court; or
  - (b) of its own motion.
- (3) The variation takes effect on the date that it is made.

##### 3. Variation by court upon redirection

- (1) The Court of First Instance must vary a Schedule 4 judgment debt order by changing the basis of deductions if –
  - (a) the order lapses; and
  - (b) the Court of First Instance directs the order to a person in accordance with section 149(5).
- (2) The variation must be made at the same time as the Court of First Instance directs the order in accordance with section 149(5).
- (3) The variation takes effect on the date that it is made.

##### 4. Automatic variation on changeover date

- (1) On the changeover date, all Schedule 4 judgment debt orders are to be treated as if the Court of First Instance had varied them by changing the basis of deductions.

- (2) The variation takes effect on the changeover date.
- (3) The changeover date is the date which the Chairman of the Board, in consultation with the Chief Justice, specifies for the purposes of this paragraph.
- (4) The Chairman of the Board is to specify the changeover date in an order.

**5. Notice of variation still required**

Section 149(3) (service by court of notice of variation) applies to the variation of an order under this Part 1 of this Schedule 5 (including variation in accordance with paragraph 4) as it applies to any other variation of an attachment of earnings order.

## **Part 2**

### **Changing from the Fixed Deductions Scheme**

#### **6. Introduction**

- (1) This Part 2 of this Schedule 6 deals with the variation of fixed deductions orders by changing the basis of deductions.
- (2) References to variation of a fixed deductions order by changing the basis of deductions are references to the variation of the order so that it specifies that periodical deductions are to be made in accordance with Part 1 of Schedule 4.

#### **7. General prohibition on changing from the fixed deduction basis**

A Court may not vary a fixed deductions order by changing the basis of deductions unless the variation is in accordance with this Part 2 of this Schedule 5.