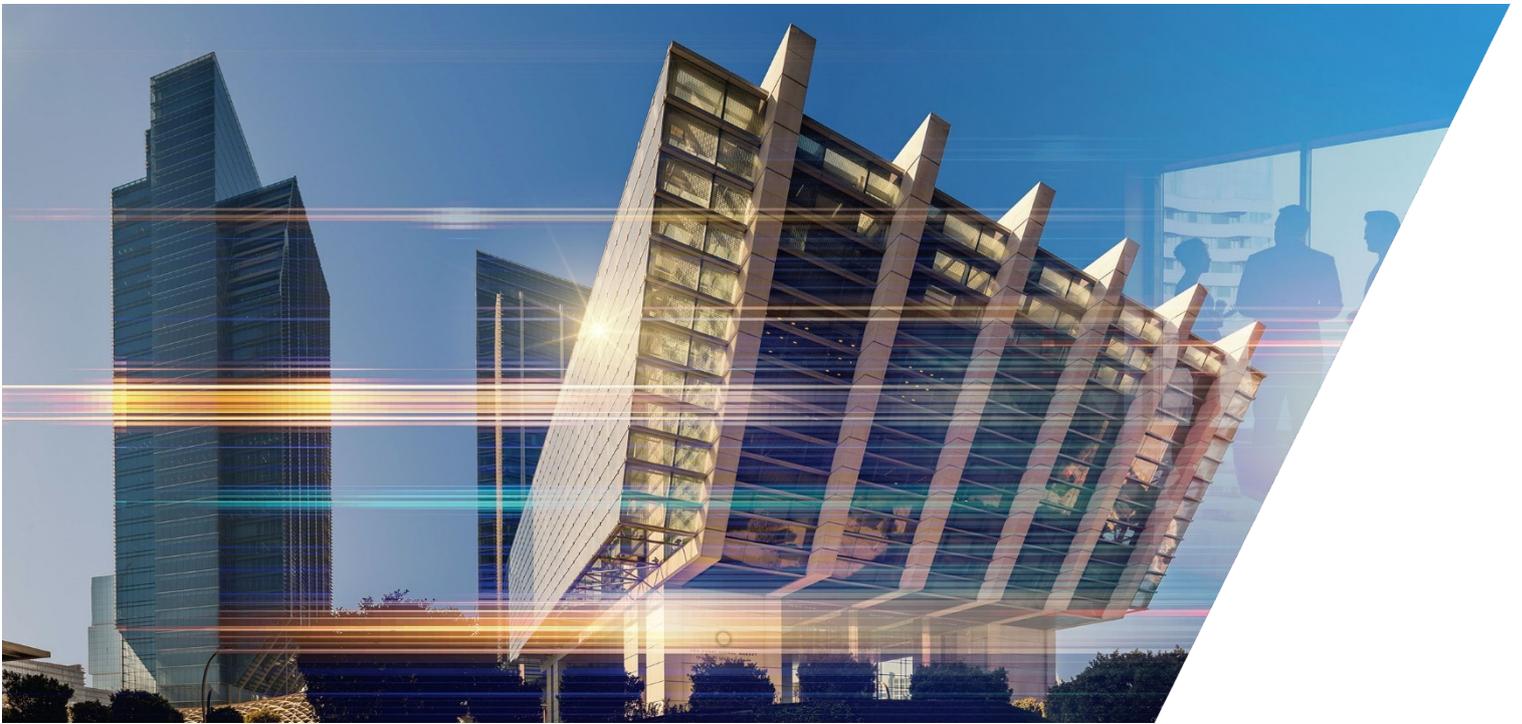




ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 7
APPLICATIONS

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APPLICATIONS

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PRACTICE DIRECTION 7
APPLICATIONS

Date re-issued: 2 November 2020

This Practice Direction is to be read with, and subject to, the ADGM Court Procedure Rules 2016 ("CPR"). Except as provided otherwise in this Practice Direction, terms have the meanings set out in the CPR and a reference to a Rule is a reference to the CPR.

This Practice Direction does not relate to any applications made in respect of insolvency proceedings. Any such applications are to be made in accordance with **Practice Direction 14**. Applications made in the Small Claims Division are dealt with in Practice Direction 3.

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

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

- 7.1. An application for an urgent interim remedy may be made prior to the filing of a claim on condition that an undertaking is given to the Court to file such a claim within a period of 2 days after the application is filed.
- 7.2. An applicant who wishes to apply to the Court for an urgent interim remedy prior to a claim being filed must file an application notice in accordance with **Form CFI 12A**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 7.3. The application notice must include or attach:
 - (a) the order or orders that the applicant seeks from the Court;
 - (b) all witness statements that the applicant relies on in support of the application;
 - (c) an undertaking by the applicant to file a claim within 2 days of the issuing of the application notice by the Court; and
 - (d) a statement as to whether the applicant requests a without notice hearing of the application and the reasons for the request.

Applications made without notice (r.64 and 65)

- 7.4. Applications made without notice are to be submitted to the Court by email to registry@adgmcourts.com.
- 7.5. An application may be made without notice if this is permitted by a rule, a practice direction or otherwise is with the Court's permission. The Court's permission will be granted only where:
 - (a) there is exceptional urgency;
 - (b) it is otherwise desirable to do so in the interests of justice; or
 - (c) there are good reasons for making the application without notice, for example, because the notice would or might defeat the object of the application.

- 7.6. Where the Court is asked to make an order on an application without notice, the applicant must bring to the Court's attention any matter which, if the respondent was represented, the respondent would wish the Court to be aware of. This includes any matters which might tend to undermine the application.
- 7.7. Where the Court makes an order on an application without notice, whether granting or dismissing an application, the Court may make orders that the applicant serve on every person against whom an order was sought or made:
- (a) the application notice;
 - (b) all written material on which the applicant sought to rely in support of his application;
 - (c) a transcript of the hearing of the application;
 - (d) a copy of the order; and
 - (e) notice that any person against whom an order was sought or made may apply to have the order set aside or varied.

Applications made with notice

- 7.8. Where the application is to be made *upon* notice, the application notice, the witness statement evidence and any other written material on which the applicant may seek to rely at the hearing of the application must be served on each respondent within 7 days after the filing of such documents, and thereafter:
- (a) the applicant must file a certificate of service in accordance with **Form CFI 31** within a further 7 days;
 - (b) a respondent to an application notice must file a notice of appearance in accordance with **Form CFI 23** within 7 days of being served with the application notice, if the respondent wishes to raise any matter before the Court in response to the application or in relation to the order(s) sought by the applicant; and
 - (c) the Court may give directions regarding the hearing of the application, including the filing of any evidence in response by the respondent, as the Court considers appropriate.

Proceeding in the absence of a party

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

Proceeding without a hearing

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

B. POST-CLAIM APPLICATIONS

Application notice (r.64)

- 7.11. A party wishing to make an application to the Court before the trial commences, or after judgment has been given, must file an application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 7.12. The application notice must include or attach:
- (a) the order or orders that the applicant seeks from the Court;
 - (b) all witness statements that the applicant relies on in support of the application; and
 - (c) whether the applicant requests a hearing of the application and, if so, whether the hearing is to be conducted on a without notice or on an expedited basis including any reasons supporting the request.

Service of application notice and material in support

- 7.13. The applicant must serve the following on each respondent to the application:
- (a) the application notice;
 - (b) the witness statement evidence in support;
 - (c) notice of any written material previously served on that respondent and on which the applicant may seek to rely at the hearing of the application; and
 - (d) any other written material on which the applicant may seek to rely at the hearing of the application.

Applications made without notice (r.64 and 65)

- 7.14. Applications made without notice are to be submitted to the Court by email to registry@adgmcourts.com.
- 7.15. An application may be made without notice if this is permitted by a rule, a practice direction or otherwise is with the Court's permission. The Court's permission will be granted only where:
- (a) there is exceptional urgency;
 - (b) it is otherwise desirable to do so in the interests of justice; or
 - (c) there are good reasons for making the application without notice, for example, because the notice would or might defeat the object of the application.
- 7.16. Where the Court is asked to make an order on an application without notice, the applicant must bring to the Court's attention any matter which, if the respondent was represented, the respondent would wish the Court to be aware of. This includes any matters which might tend to undermine the application.

- 7.17. Where the Court makes an order on an application without notice, whether granting or dismissing an application, the Court may make orders that the applicant serve on every person against whom an order was sought or made:
- (a) the application notice;
 - (b) all written material on which the applicant sought to rely in support of his application;
 - (c) a transcript of the hearing of the application;
 - (d) a copy of the order; and
 - (e) written notice that any person against whom an order was sought or made may apply to have the order set aside or varied.

Proceeding in the absence of a party

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

Proceeding without a hearing

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

C. PARTICULAR APPLICATIONS

General

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

Application for default judgments [r.39]

- 7.21. Subject to paragraph 7.22, an application for default judgment must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence addressing the following:
- (a) the occurrence of the default relied on; and
 - (b) that the default has not been remedied.

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

- 7.22. An application for default judgment may be made without notice if the defendant has failed to file an acknowledgment of service. Any evidence relied on by a claimant in support of his application need not be served on a party who has failed to file an acknowledgment of service.
- 7.23. Paragraph 7.14 does not apply to an application for default judgment, which must be submitted to the Court via the eCourts Platform.
- 7.24. A default judgment on a money claim may include interest at the rate agreed between the parties or, if there is no agreed rate, at the rate of 9 per cent from the date the money was due.

Application for further information [r.54]

- 7.25. The Court may exercise its powers to order a party to clarify any matter which is in dispute in a proceeding and to give additional information in relation to any such matter having regard to the overriding objective of the Rules: to secure that the ADGM Courts are accessible, fair and efficient.
- 7.26. An application for further information must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 7.27. A party seeking an order that another party clarify any matter in dispute or give additional information in relation to any such matter should state in the witness statement how and why the provision of the further information sought is necessary to dispose fairly of the claim.

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

- 7.28. An application for security for costs must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 7.29. The Court may order that security for costs be provided where an ADGM enactment permits the Court to require security for costs or if the Court is satisfied that having regard to all the circumstances of the case, it is just to do so.
- 7.30. Without limiting paragraph 7.29, the Court may (but is not obliged to) conclude that it would be just to order security for costs if it is satisfied that:
- (a) the claimant is resident out of the UAE;
 - (b) the claimant is a company or other body (whether incorporated inside or outside ADGM) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
 - (c) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
 - (d) the claimant gave an incorrect address in the claim form;
 - (e) the claimant is acting as a nominal claimant, other than as a representative claimant under Rule 57, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so; or
 - (f) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

- 7.31. Where an order for security for costs is made, security shall be given in such manner and at the time the Court directs.
- 7.32. The Court may also order security for costs of an appeal as it may order security for costs in the circumstances set out in paragraphs 7.29 and 7.30.

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

- 7.33. An application to set aside a notice of discontinuance must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 7.34. The defendant may not make an application under Rule 171 to set aside a notice of discontinuance more than 28 days after the date when the notice of discontinuance was served on him.