

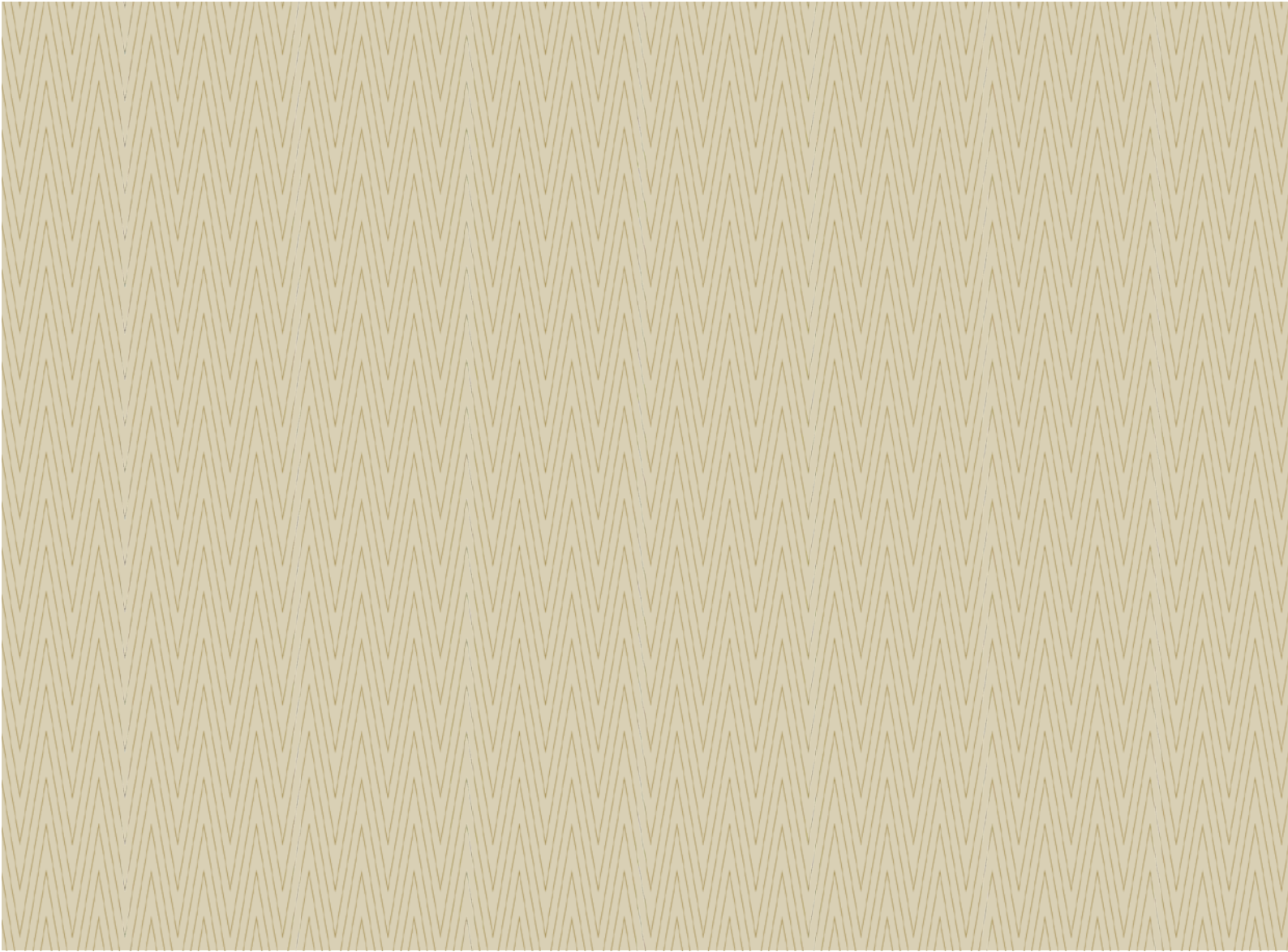


ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

ADGM COURTS

PRACTICE DIRECTION 8

EVIDENCE





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PRACTICE DIRECTION 8

EVIDENCE

Date first issued: 30 May 2016

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

A. WITNESS STATEMENTS [r.97]

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

B. AFFIDAVITS [r.104]

- 8.4. An affidavit must be in accordance with **Form CFI 14**.



- 8.5. Evidence by affidavit in an application before trial or after judgment may include statements of the witness's belief, if the grounds for that belief are stated. Otherwise, affidavits should be confined to facts known to the witness.

C. EVIDENCE AT TRIAL

Witness summons [r.123(2)]

- 8.6. A witness summons must be in accordance with **Form CFI 16**.
- 8.7. Rule 123 provides that a witness summons must be served personally.
- 8.8. Rule 124 provides that, at the time of service of a witness summons, the witness must be offered or paid a sum reasonably sufficient to cover the expenses of travelling to and from the Court and a sum by way of compensation for loss of time.

Hearsay, credibility, use of plans, photographs, models and other documentary evidence and questions of foreign law

- 8.9. Rule 112 provides for giving notice of intention to rely on hearsay evidence at trial. A notice required by that rule must be filed and served no later than 10 days before the day fixed for the commencement of the trial.
- 8.10. Rule 114 provides for a party to apply to the Court for permission to call the maker of a statement that contains hearsay evidence to be cross-examined on the contents of the statement. An application under Rule 114 for permission to call the maker of a statement must be made not more than 14 days after the day on which a notice of intention to rely on the hearsay evidence was served on the applicant.
- 8.11. Rule 115 provides for giving notice of intention to call evidence to attack the credibility of a person who made a statement of which hearsay evidence is to be given. A notice required by that rule must be filed and served no later than 5 days before the day fixed for the commencement of the trial.
- 8.12. Rule 116 provides for giving notice of intention to rely upon evidence which is not contained in a witness statement, affidavit or expert's report or is a document which may be received in evidence without further proof under section 65 of the Regulations. A notice required by that rule



must be filed and served no later than 10 days before the day fixed for the commencement of the trial.

- 8.13. Rule 117 provides for giving notice of intention to put in evidence a finding on a question of foreign law. A notice required by that rule must be filed and served no later than 10 days before the day fixed for the commencement of the trial.

Witness and deponent expenses and compensation [r.124 and r.125]

- 8.14. Rules 124 and 125 provide that, in addition to travel expenses, a witness must be offered or paid a sum by way of compensation for loss of time.
- 8.15. In the case of a witness or deponent who is employed and receives a salary for his employment, such sum for loss of time should equate to the loss of salary actually incurred by the person for the time away from his place of employment as a result of attending Court.
- 8.16. In the case of a witness or deponent who does not receive a salary but incurs a monetary loss as a result of attendance at Court, including payment to a care giver to care for a child or other dependant during the person's absence, such sum for loss of time should equate to the monetary loss incurred by the person.
- 8.17. In the case of a witness or deponent who does not receive a salary and does not incur a monetary loss, such sum for loss of time shall be determined by the Court having regard to the time spent at Court and the inconvenience to the person.

Evidence in particular claims

- 8.18. The Rules provide for Practice Directions relating to evidence that is to be given in support of or against the making of certain kinds of order, including orders for judicial review and third party debt orders. (See, for example, Rules 229 and 266). The directions about those matters are set out in Practice Direction 4 – Particular Claims other than Small Claims.

Evidence from foreign courts [r.130]

- 8.19. If the Court makes an order for the issue of a letter of request, the party who sought the order must file, in addition to those documents which the Rules require that party to file, the following documents:



- (a) a draft of the letter of request in a form suitable for execution by the Chief Justice (and any necessary translation of that document); and
- (b) a copy of the interrogatories, if any, that are to accompany the request (and any necessary translation of those interrogatories).

Application for a foreign assistance order [r.132]

8.20. An application for a foreign assistance order shall be made by application notice filed in the proceeding in which the order is sought.

Taking of evidence in a Convention State [r.137]

8.21. If the Court makes an order for the issue of a request to take a deposition from a person who is in another Convention State, the party who sought the order must file, in addition to the documents which the Rules require that party to file, a draft of the request in a form suitable for execution and transmission to the competent authority of that other Convention State.

Evidence for courts of other Convention States [r.138]

8.22. An application for an order for evidence to be taken under Rule 138 must be in accordance with **Form CFI 26** and must be:¹

- (a) supported by written evidence that includes or exhibits:
 - (i) a statement of the issues relevant to the proceedings;
 - (ii) a list of questions or the subject matter of questions to be put to the proposed deponent;
 - (iii) a draft order;
 - (iv) a translation of the documents in (i) and (ii) into English, if necessary; and
- (b) accompanied by the request as a result of which the application is made, and where appropriate, a translation of the request into English.

¹ Amended 24 May 2018.



Expert evidence

- 8.23. Part 17 of the Rules makes important provisions about expert evidence. The provisions of this Practice Direction amplify and supplement those requirements.
- 8.24. The Court decides what expert evidence may be called. Rule 142 provides that expert evidence shall be restricted to that which is reasonably required to resolve the proceedings and further provides that no party may call an expert, or put in evidence an expert's report, without the Court's permission.
- 8.25. Rule 140 provides that it is the duty of experts to help the Court on matters within their expertise and that this duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid. Hence, an expert must provide an opinion that is independent of the party retaining the expert and must not take on the role of advocate for a party.
- 8.26. An expert's report must comply with the requirements of the Rules, including, in particular, the requirements of Rule 141. The report must
- (a) contain statements that the expert understands his duty to the Court, and has complied and will continue to comply with that duty;
 - (b) be verified by a statement of truth in the form: *"I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer"*; and
 - (c) be signed personally by the expert and provided to the Court in an electronic form that complies with the requirements of Practice Direction 1.