

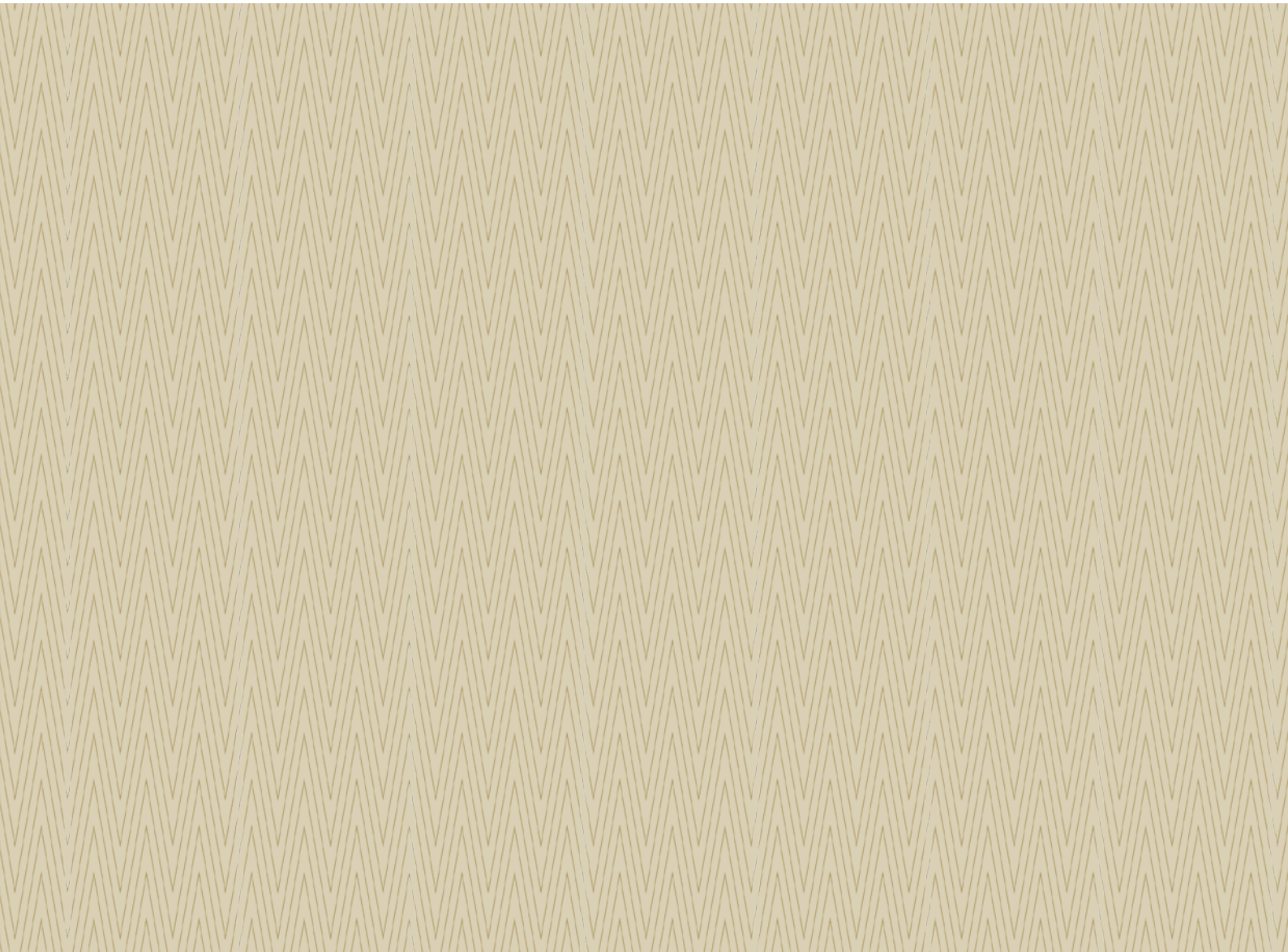


ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

ADGM COURTS

PRACTICE DIRECTION 9

COSTS





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PRACTICE DIRECTION 9

COSTS

Date 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. INTRODUCTION

- 9.1. Part 24 of the Rules provides for Fees and Costs.
- 9.2. Rule 195(3) provides that Part 24 of the Rules is subject to any rule or practice direction which sets out special provisions with regard to any particular category of proceeding before the Court.
- 9.3. This Practice Direction makes special provisions with respect to two categories of proceedings:
 - (a) proceedings in the Small Claims Division; and
 - (b) proceedings not in the Small Claims Division which were commenced by claim form and are not:
 - (i) proceedings using the Rule 30 procedure;
 - (ii) a claim for judicial review; or
 - (iii) an arbitration claim.
- 9.4. Rules 197 to 199 provide for assessing costs on the standard basis or on the indemnity basis. Rule 200 provides that where the Court orders a party to pay costs to another party (other than fixed costs) it may either make a summary assessment of the costs or order detailed assessment of the costs by a costs officer. This Practice Direction provides for the procedures that are to be followed if there is to be an assessment of costs.

B. SMALL CLAIMS

- 9.5. Unless the Court orders otherwise, the following amounts will be allowed for legal representatives' costs in proceedings in the Small Claims Division:



Commencement Costs

Relevant band	Where the claim form is served by any method other than personal service by the claimant	Where the claim form is served personally by the claimant and there is only one defendant	Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant
Where— <ul style="list-style-type: none"> • the value of the claim does not exceed US\$50,000; or • the only claim is for delivery of goods and no value is specified or stated on the claim form 	US\$320	US\$360	US\$60
Where the value of the claim exceeds US\$50,000 but does not exceed US\$100,000	US\$1,200	US\$1,320	US\$180

9.6. Where the only claim is for a specified sum of money and the defendant pays the sum claimed within 14 days after service of the claim on him, together with the commencement costs specified in this table, the defendant is not liable for any further costs unless the Court orders otherwise.

Judgment entered before trial

9.7. The following amounts will be allowed for legal representatives' costs in addition to commencement costs in the circumstances described in column 1:



	Where the amount of the judgment does not exceed US\$50,000	Where the amount of the judgment exceeds US\$50,000 but does not exceed US\$100,000
Where judgment in default of an acknowledgment of service is entered under Rule 36	US\$90	US\$360
Where judgment in default of a defence is entered under Rule 44	US\$100	US\$420
Where judgment is entered under Rule 42 either on admission of whole or part of the claim and the claimant accepts the defendant's proposal as to the manner of payment	US\$160	US\$660
Where judgment is entered under Rule 42 either on admission of whole or part of the claim and the Court decides the date or time of payment	US\$220	US\$840
Where summary judgment is given under Rule 68	US\$700	US\$2,520

Judgment entered after trial

- 9.8. If judgment for the claimant is entered after trial, the following amounts will be allowed as legal representatives' costs:



	Where the amount of the judgment exceeds US\$5,000 but does not exceed US\$50,000	Where the amount of the judgment exceeds US\$50,000 but does not exceed US\$100,000
Small claims other than employment claims	US\$3,420	US\$5,325
Employment claim treated as a small claim	US\$3,420	US\$6,920

9.9. If judgment for the defendant is entered after trial, the following amounts will be allowed as legal representatives' costs:

	Where the amount of the claim does not exceed US\$50,000	Where the amount of the claim exceeds US\$50,000 but does not exceed US\$100,000
Small claims other than employment claims	US\$3,420	US\$5,325
Employment claim treated as a small claim	US\$3,420	US\$6,920

9.10. Where a defendant has filed a counterclaim, costs will be allowed to the parties for bringing or defending that counterclaim (in addition to the costs referable to the bringing or defending of the claim) as if the parties to that counterclaim had been claimant and defendant in separate proceedings.

Service costs

9.11. If service by an alternative method is permitted by an order under Rule 19, or if a claim is served out of ADGM and Abu Dhabi, the following additional costs will be allowed to a claimant:

Where service by an alternative method is permitted by an order under Rule 19 for each individual served.	US\$320
Where a document is served out of ADGM and Abu Dhabi:	
(a) in another Emirate of the UAE;	US\$410
(b) in any other place.	US\$460



Fixed enforcement costs

9.12. Annexure 1 sets out fixed enforcement costs for legal representatives.

C. COSTS MANAGEMENT ORDERS

Provision of costs budgets

9.13. All parties to proceedings in the Court of First Instance which were commenced by claim form (other than proceedings in the Small Claims Division, proceedings using the Rule 30 procedure; proceedings making a claim for judicial review; or an arbitration claim) must file and exchange costs budgets not later than 7 days before the first Case Management Conference.

9.14. Unless the Court orders otherwise, a costs budget must be in accordance with **Form COSTS 7** (“the Costs Management Form”). The Costs Management Form must be dated and verified by the legal representative having responsibility for the proceedings on behalf of the party.

9.15. In substantial cases, the Court may direct that costs budgets be limited initially to part only of the proceedings and subsequently extended to cover the whole proceedings.

Making of Costs Management Order

9.16. Where costs budgets are filed and exchanged, the Court will generally make a Costs Management Order.

9.17. If there is a dispute between the parties in regard to a costs budget, the Court would be assisted if the claiming party provided material in support of the claim in a form that:

- (a) divides the relevant budget item into the separate amounts allowed for:
 - (i) Legal representative’s costs;
 - (ii) Counsel’s costs;
 - (iii) Other costs;
 - (iv) Court fees;
 - (v) Other disbursements;
- (b) in the case of the legal representative’s costs, identifies separately the amount allowed in respect of each professional level of legal representative and the manner of computation of each amount allowed; and



- (c) in the case of Counsel's fees, identifies separately the amount allowed in respect of senior and junior counsel and the manner of computation of each amount allowed.
- 9.18. If the Court makes a Costs Management Order, paragraphs 9.19 to 9.25 of this Practice Direction shall apply except to the extent that the Court otherwise orders, whether before or after the making of the Costs Management Order.
- 9.19. Save in exceptional circumstances –
- (a) the recoverable costs of initially completing the Costs Management Form shall not exceed the higher of \$US2,000 or 1% of the approved or agreed budget; and
 - (b) all other recoverable costs of the budgeting and costs management process shall not exceed 2% of the approved or agreed budget.
- 9.20. If the budgets or parts of the budgets are agreed between all parties, the Court will record the extent of such agreement. In so far as the budgets are not agreed, the Court will review them and, after making any appropriate revisions, record its approval of those budgets. The Court's approval will relate only to the total figures for each phase of the proceedings, although in the course of its review the Court may have regard to the elements of each total figure. When reviewing budgets, the Court will not undertake a detailed assessment in advance, but rather will consider whether the budgeted costs fall within the range of reasonable costs.
- 9.21. As part of the costs management process the Court may not approve costs incurred before the date of any budget. The Court may, however, record its comments on those costs and will take those costs into account when considering the reasonableness of all subsequent costs.

Review of costs budgets

- 9.22. The Court may set a timetable or give other directions for future reviews of budgets.
- 9.23. Each party may revise its budget in respect of future costs, if significant developments in the litigation warrant such revisions. Any revised budget must be submitted to the other parties for agreement. In default of agreement, the revised budget shall be submitted to the Court, together with a note of: (a) the changes made and the reasons for those changes; and (b) the objections of any other party. The Court may approve, vary or disapprove the revisions, having regard to any significant developments which have occurred since the date when the previous budget was approved or agreed.
- 9.24. After its budget has been approved or agreed, each party shall re-file and re-serve the budget in the form approved or agreed with re-cast figures, annexed to the order approving it or recording its agreement.



9.25. If interim applications are made which, reasonably, were not included in a budget, then the costs of such interim applications shall be treated as additional to the approved budget.

D. COSTS OFFICERS

9.26. The Registrar of the Court is a costs officer.

9.27. The Chief Justice may appoint one or more other persons as a costs officer.

E. DETAILED ASSESSMENT OF COSTS

9.28. Where a party has been ordered to pay costs and the amount of the costs has not been agreed or the subject of a Costs Management Order, the party to whom the costs are to be paid (the "receiving party") may claim a detailed assessment of the costs.

Bill of costs

9.29. The receiving party claims a detailed assessment of the costs by filing and serving on the party ordered to pay the costs (the "paying party") a bill of costs in accordance with **Form COSTS 1**.

9.30. The receiving party must, at the same time as service upon the paying party, also serve a copy of the bill of costs on any other relevant person including:

- (a) any person who has taken part in the proceedings which gave rise to the assessment and who is directly liable under an order for costs made against him;
- (b) any person who has given notice in writing to the receiving party that he has a financial interest in the outcome of the assessment and wishes to be a party accordingly; and/ or
- (c) any other person whom the Court orders to be treated as such either on its own motion or on application of either party to the proceedings.

9.31. A claim for a detailed assessment of costs must be made no later than 3 months after:

- (a) the date of final judgment in the proceeding in which the order was made;
- (b) where a claim for detailed assessment has been stayed pending an appeal, the date of the order lifting the stay;
- (c) the date of service of a notice of discontinuance under Rule 170;
- (d) the date of the dismissal of an application to set aside a notice of discontinuance under Rule 171; or
- (e) within such further time as the Court or a costs officer allows.



9.32. Where the receiving party fails to commence a claim for detailed assessment within the period required, the paying party may apply for an order requiring the receiving party to commence the claim within such time as the Court may direct. The Court may make directions upon such application that all or part of the costs and any interest to which the receiving party would otherwise be entitled be disallowed.

Notice of Dispute

9.33. A paying party and any other paying party to the claim for detailed assessment who disputes the claim made by the receiving party must file and serve on the receiving party a notice of dispute no later than 28 days after the date of service of the claim for a detailed assessment or such further time as the Court or a costs officer allows.

9.34. A notice of dispute shall be in accordance with **Form COSTS 2** and must state by reference to each item in the bill of costs the amount which the paying party says should be allowed as costs for the item.

9.35. An extension of the time for making a claim for a detailed assessment of costs or for filing and serving a notice of dispute will be allowed only if it is shown to be in the interests of justice to do so.

Default Costs Certificates

9.36. The receiving party may file an application for a default costs certificate if the period for filing a notice of dispute has expired and a notice of dispute has not been filed. An application for a default costs certificate should be in accordance with **Form COSTS 6**. Where a receiving party obtains a default costs certificate, the costs payable to him for making a claim for detailed assessment shall be US\$160.

9.37. The Court must set aside or vary a default costs certificate if the receiving party was not entitled to all or any amount of the costs certified or if it appears to the Court that there is a good reason why the claim for detailed assessment should continue.

Provisional assessment

9.38. In every case where a claim is made for a detailed assessment of costs, a costs officer will first make a provisional assessment of the amount that should be allowed.

9.39. A provisional assessment is to be carried out without hearing on the papers provided by the parties.

9.40. The costs officer who makes a provisional assessment of the amount to be allowed will inform the parties in writing of the outcome of that assessment and the basis or bases on which it was made.



9.41. A party dissatisfied with a provisional assessment may file and serve on the opposite party, no later than 28 days after the costs officer issued the provisional assessment, a notice of dissatisfaction with the assessment stating, in summary form, the cause or causes of that dissatisfaction. A notice of dissatisfaction shall be in accordance with **Form COSTS 3**.

9.42. On the filing of a notice of dissatisfaction, a costs officer will appoint a time for the conduct of a detailed assessment of the costs.

Guidelines for detailed assessment

9.43. The detailed assessment of costs is to be conducted by reference to:

- (a) the issues in the proceedings;
- (b) the amount or value of the claim or claims made;
- (c) the particular complexity of the matter or the novelty of the questions raised;
- (d) the skill, effort and specialised knowledge involved;
- (e) the time spent on the proceedings;
- (f) the indicative hourly rates set out in Annexure 2 to this Practice Direction which are designed to provide guidance to parties on charge out rates that are likely to be acceptable to the Court;
- (g) whether the costs were proportionate, reasonably incurred and reasonable in amount;
- (h) the notice of dispute;
- (i) the provisional assessment; and
- (j) any other matter that the costs officer gives permission to a party to raise.

Costs of detailed assessment

9.44. If the amount allowed by the costs officer, after detailed assessment, differs from the provisional assessment by an amount in favour of the party requesting a detailed assessment which is less than one sixth of the provisional assessment, the party seeking the detailed assessment must pay the costs of the detailed assessment.

9.45. In any other case, the costs of the detailed assessment are to be in the discretion of the costs officer.

9.46. In exercising that discretion, the costs officer may have regard to the amounts originally claimed by the receiving party and estimated by the paying party to be due.



F. REVIEW OF COSTS OFFICER'S DECISION

- 9.47. Any party to a detailed assessment of costs who is dissatisfied with some or all of the final decision of the costs officer may apply to a Judge for review of the decision. An application for review of the final decision of the costs officer must be made no later than 28 days after the date of such final decision.
- 9.48. An application for review is to be made by filing and serving an application notice in accordance with **Form COSTS 4**, accompanied by such written submissions as the applicant seeks to rely on in support of the application.
- 9.49. The applicant's written submissions must state what part or parts of the costs officer's decision is or are challenged and the basis or bases for that challenge.

Notice of objection

- 9.50. A party who objects to the application for review may do so by filing and serving within 14 days of the service of the application for review, a notice of objection in accordance with **Form COSTS 5**, accompanied by such written submissions as the objecting party seeks to rely on in opposition to the application.
- 9.51. The objecting party's written submissions must identify which of the bases for challenge are disputed and on what basis or bases.
- 9.52. A judge may decide an application for review of the decision of a costs officer without any further submission or hearing.

G. CERTIFICATE OF COSTS OFFICER

- 9.53. A costs officer must certify the amount of costs agreed between parties or allowed following a detailed assessment of costs.
- 9.54. If, following a review of the costs officer's decision, the amount allowed is varied, the costs officer must certify the amount as so varied.



**ANNEXURE 1
FIXED ENFORCEMENT COSTS**

The amount to be allowed in respect of legal representatives' costs in respect of enforcement are as follows:

For an application under Rule 232 that an arbitration award may be enforced as if payable under a Court order, where the amount outstanding under the award:	
exceeds US\$50 but does not exceed US\$500	US\$185
exceeds US\$500 but does not exceed US\$1,200	US\$245
exceeds US\$1,200 but does not exceed US\$4,000	US\$415
exceeds US\$4,000	US\$450
On attendance to question a judgment debtor (or officer of a company or other corporation) who has been ordered to attend Court under Rule 253 where the questioning takes place before a Court officer, including attendance by a responsible representative of the legal representative	for each half hour or part, US\$90 (when the questioning takes place before a Judge, he may immediately assess any costs allowed).
On the making of a final third party debt order under Rule 265 or an order for the payment to the judgment creditor of money in Court under Rule 268:	
if the amount recovered is less than US\$300	one-half of the amount recovered
Otherwise	US\$590
On the making of a final charging order under Rule 275:	US\$660
	The Court may also allow reasonable disbursements in respect of search fees and the registration of the order.
Where an application for an attachment of earnings order is made and costs are allowed under sections 141 and 159(2) of the Regulations for each attendance on the hearing of the application	US\$50



ANNEXURE 2
INDICATIVE HOURLY LEGAL CHARGES¹

The rates set out in the following table should be considered a guideline as to rates likely to be acceptable to the Courts when assessing costs.

Level of Legal Experience Average Hourly Rate (AED)	Average Hourly Rate (AED)
Trainees up to 5 years	1,750
Lawyers 6-10 years	2,200
10 + years	2,450
Partners	2,800

¹ Amended 20 February 2018.