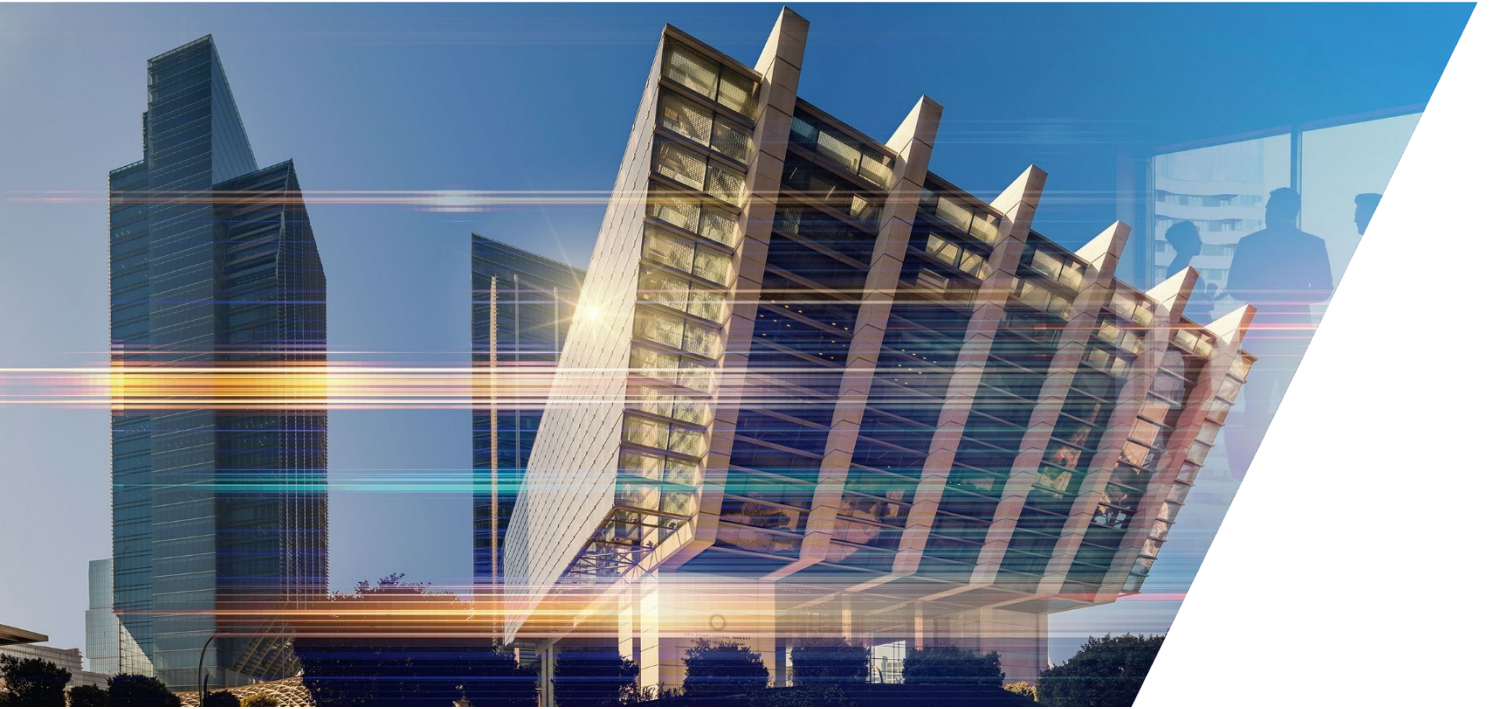




ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 10
ENFORCEMENT

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ENFORCEMENT

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PRACTICE DIRECTION 10

ENFORCEMENT

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This Practice Direction is to be read with, and subject to, the ADGM Court Procedure Rules 2016 (“CPR”) and the Divisions and Jurisdiction (Court of First Instance) Rules 2015. 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 must be read in conjunction with all other Practice Directions.

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

A. ARBITRATION

Recognition and enforcement of an award [r.232 and r.233]

- 10.1. An application for recognition or enforcement of an award must be supported by written evidence exhibiting at least the following documents:
 - (a) a copy of the executed arbitration agreement; and
 - (b) a copy of the award which it is sought to have enforced.
- 10.2. An application for recognition or enforcement of an award is to be made in accordance with **Form CFI 5**. Evidence in support of the application is to be in accordance with **Form CFI 15**.
- 10.3. The Court may give written directions about the further conduct of the application.
- 10.4. If an order giving permission to recognise or enforce an award is made by the Court, it must be served in the same way a claim form may be served under Part 4 of the CPR.

Interest on awards [r.235]

- 10.5. An applicant seeking an order for the recognition or enforcement of an award of interest on the whole or part of the award which relates to a period after the date of the award must provide the following particulars in their claim:
 - (a) whether simple or compound interest was awarded;
 - (b) where rests were provided for, specify them;
 - (c) the rate or rates of interest claimed; and
 - (d) the period or periods for which each rate of interest is claimed.

B. RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS OF RECOGNISED COURTS

- 10.6. The following directions apply unless otherwise provided for in an applicable treaty, agreement, memorandum of understanding or memorandum of guidance (whether or not any such memorandum be of binding effect) with the relevant jurisdiction.
- 10.7. In this section “judgment” includes decisions, orders or arbitral awards that have been recognised or ratified by a recognised court.

Applications for registration [r.298]

- 10.8. An application for registration and enforcement of a judgment of the judicial authorities of the Emirate and the Emirate Members of the United Arab Emirates is made by filing a claim form in accordance with **Form CFI 29**.
- 10.9. An application for registration of a recognised court’s judgment (other than a judgment of the judicial authorities of the Emirate and the Emirate Members of the United Arab Emirates) is made by filing a claim form in accordance with **Form CFI 27**, supported by witness statement evidence in accordance with **Form CFI 15**, setting out the following information:
- (a) the name of the judgment creditor and his address for service within ADGM;
 - (b) the name of the judgment debtor and his address or place of business, if known;
 - (c) confirmation that the judgment is a money judgment;
 - (d) the amount in respect of which the judgment remains unsatisfied;
 - (e) the grounds on which the judgment creditor is entitled to enforce the judgment;
 - (f) whether the judgment can be enforced by execution in the country where it was given;
 - (g) where the judgment contains different provisions, some but not all of which can be registered for enforcement, details of those provisions in respect of which it is sought to register the judgment;
 - (h) where interest is recoverable under the State in which the judgment was given:
 - (i) the law of that State under which interest has become due under the judgment;
 - (ii) the amount of interest which has accrued up to the date of the application; and
 - (iii) the rate of interest, the date from which it is recoverable and the date on which it ceases to accrue; and
 - (i) any matter which, if the judgment debtor was represented, the judgment debtor would wish the Court to be aware of. This includes any matters which might tend to undermine the judgment creditor’s application.

Security for costs [r.299]

10.10. Rule 299 provides that a judgment creditor may apply for security for costs as if the judgment creditor was a claimant. Practice Direction 7 sets out certain circumstances in which the Court may conclude that it would be just to order security for costs to an applicant.

C. ENFORCEMENT OF THE COURT'S ORDERS AND JUDGMENTS

10.11. An application by a judgment creditor seeking to enforce an order or judgment of the Court by the Court's deputisation to the judicial authorities of the Emirate must be made in accordance with **Form CFI 30**.

Applications for certified copies of judgments [r.302]

10.12. An application for a certified copy of an order or judgment of the Court must be made in accordance with **Form CFI 24** supported by the following:

- (a) a copy of the order or judgment which the applicant seeks to enforce;
- (b) where the applicant seeks to enforce an arbitral award, a copy of any order of the Court recognising the award; and
- (c) a draft of any execution letter which is sought.

D. EXECUTORY FORMULA

10.13. The Registry shall not affix an executory formula, for the purpose of recognition or enforcement in any other jurisdiction, to an order or judgment rendered by the Court in respect of the recognition or enforcement of:

- (a) an order or judgment issued by a court outside the Emirate; or
- (b) any arbitral award rendered by a tribunal where the seat is outside the jurisdiction.

E. COURT-APPOINTED RECEIVERS

10.14. This Section deals with Court-appointed receivers under Part 28 of the Rules. For provisions dealing with the appointment of a receiver other than by an order of the Court, see Practice Direction 14.

Application for appointment of receiver [r.238]

10.15. An application for the appointment of a receiver may be made without notice.

10.16. An application for the appointment of a receiver is to be made in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.

10.17. The witness statement evidence must:

- (a) explain the reasons why the appointment is required;

- (b) give details of the property which it is proposed that the receiver should get in or manage, including estimates of:
 - (i) the value of the property; and
 - (ii) the amount of income it is likely to produce;
- (c) if the application is to appoint a receiver by way of equitable execution, give details of:
 - (i) the judgment which the applicant is seeking to enforce;
 - (ii) the extent to which the debtor has failed to comply with the judgment;
 - (iii) the result of any steps already taken to enforce the judgment; and
 - (iv) why the judgment cannot be enforced by any other method; and
- (d) if the applicant is asking the Court to allow the receiver to act:
 - (i) without giving security; or
 - (ii) before he has given security or satisfied the Court that he has security in place;

explain the reasons why that is necessary.

- 10.18. The witness statement evidence should normally identify an individual whom the Court is to be asked to appoint as receiver and should:
- (a) state the name, address and position of the individual;
 - (b) include written evidence by a person who knows the individual, stating that he believes the individual is a suitable person to be appointed as receiver, and the basis of that belief; and
 - (c) be accompanied by written consent, signed by the individual, to act as receiver if appointed.
- 10.19. If the applicant does not nominate a person to be appointed as receiver, or if the Court decides not to appoint the individual nominated, the Court may:
- (a) order that a suitable person be appointed as receiver; and
 - (b) direct any party to nominate a suitable individual to be appointed.
- 10.20. A party directed to nominate a person to be appointed as receiver must file witness statement evidence in accordance with **Form CFI 15** setting out the information required by paragraph 10.18 and attaching the written consent of the individual nominated.

Discharge of receiver [r.241]

- 10.21. An application by a receiver or any party for the receiver to be discharged on completion of his duties shall be made in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**

Removal of receiver

10.22. An application by a receiver or any party for the receiver to be removed or for his appointment to come to an end for any reason other than by way of discharge under Rule 241 shall be made in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.

Receiver's application for directions [r.242]

10.23. An application for directions to the Court shall be made in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.

Remuneration of receiver [r.243(4)]

10.24. The remuneration of a receiver shall be fixed at such sum as is reasonable and proportionate in all the circumstances taking into account the nature, extent and complexity of the receiver's duties.

No default judgment [r.40(1)(e)]

10.25. An applicant for appointment of a receiver may not obtain a default judgment under Rule 39.

F. METHODS OF ENFORCEMENT

Enforcing a judgment or order for payment of money [r.246]

10.26. A judgment or order for the payment of money (including a judgment or order for the payment of costs) may be enforced by any one or more of the following methods:

- (a) taking control of goods;
- (b) attachment of earnings;
- (c) obtaining a third-party debt order;
- (d) charging orders;
- (e) orders for:
 - (i) possession of land;
 - (ii) sale of land or other property over which the judgment creditor has the benefit of a charge;
 - (iii) requiring judgment debtors to provide information about their means or any other matter about which information is needed for enforcement;
 - (iv) appointing receivers (as to which see Section E above);
- (f) orders relating to insolvency procedures (as to which see Practice Direction 14).

Enforcement of decisions of bodies other than the Court [r.250 and r.251]

- 10.27. For the purpose of Rules 250(1) and 250(2), a party seeking to enforce a decision of a tribunal, panel, body or person other than the Court must commence that action by filing an enforcement application in accordance with **Form CFI 25**.
- 10.28. Rule 251(3) provides that where an ADGM enactment provides that a decision of a tribunal, panel, body or person other than the Court may be enforced in the same manner as an order of the Court of First Instance if it is registered. An application for registration must be made in accordance with **Form CFI 25**.
- 10.29. Paragraphs 10.27 and 10.28 apply *mutatis mutandis* to the enforcement of a compromise.

Application to obtain information from judgment debtor [r.253(3) and r.256]

- 10.30. An application to obtain information from a judgment debtor must be made by application notice filed in the proceeding in which the relevant judgment or order was obtained. Such an application notice is to be in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**, and must state:
- (a) the judgment or order to which the application relates;
 - (b) the amount of the judgment debt (including any interest which has accrued) which the judgment creditor alleges to be outstanding; and
 - (c) the information which the judgment creditor seeks from the judgment debtor.
- 10.31. A party who obtains an order that a person attend Court, must serve the order on that person by personal service in accordance with Part 4 of the CPR.
- 10.32. With regards to the sum to be offered or paid to a person for the purpose of Rule 257, the applicant shall:
- (a) offer or pay to the person the sum of USD 50.00 at the time the person is served with the order; and
 - (b) in all cases, provide an undertaking in the application notice to pay such further sum as may be ordered by the Court.

Judgment creditor's affidavit [r.258(1)]

- 10.33. The affidavit or affidavits required to be filed under Rule 258(1) must:
- (a) provide details of how and when the order was served;
 - (b) state either that the person ordered to attend the Court has not requested payment of his travelling expenses or the judgment creditor has paid a sum in accordance with such a request; and
 - (c) stating how much of the judgment debt remains unpaid.

Application for third party debt order [r.261]

10.34. An application for a third party debt order must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**, and must state:

- (a) the name and address of the judgment debtor;
- (b) the judgment or order to which the application relates;
- (c) the amount of the judgment debt (including any interest which has accrued) which the judgment creditor alleges to be outstanding;
- (d) if the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;
- (e) the name and address of the third party, and if the third party is a bank, the branch and account number, if known;
- (f) the nature and extent of the debt which the judgment creditor alleges that the third party owes to the judgment debtor; and
- (g) the judgment creditor's estimate of his costs of the application for a third party debt order.

Interim third party debt order [r.262]

10.35. The amount of money specified in an interim third party debt order as the amount which the third party must retain is to be calculated as the sum of:

- (a) the amount of the judgment debt outstanding at the date of the order (including interest accrued to that date);
- (b) an amount equal to a further 7 days' interest on the judgment debt; and
- (c) the estimate made by the Judge or Court officer making the interim third party debt order of the amount of the judgment creditor's costs of the application.

Service of interim third party debt order and associated documents [r.263]

10.36. Within 3 days of the making of an interim third party debt order the judgment creditor must serve on the third party and the judgment debtor a copy of the interim third party order together with a copy of the application notice and any documents filed in support of the application.

Obligations of third party served with interim order [r.264]

10.37. Within 7 days of being served with an interim third party debt order, the third party must file and serve on the judgment creditor a witness statement in accordance with **Form CFI 15** disclosing:

- (a) every account which the judgment debtor holds with the third party, stating the balance of each account;
- (b) whether the third party claims not to owe any money to the judgment debtor;

- (c) whether the third party claims to owe less than the amount specified in the interim order; and
- (d) whether the third party claims to be unable to comply with the order and, if so, for what reason.

Service of evidence on objection to making final order [r.266(3)]

- 10.38. Written evidence to be relied on under Rule 266(1) by a judgment debtor or by a third party is to be in accordance with **Form CFI 15** and must be filed and served on the judgment creditor and on the judgment debtor or third party (as the case requires) within 14 days of the service of the interim third party debt order.
- 10.39. Written evidence to be relied on under Rule 266(2) by a judgment creditor is to be in accordance with **Form CFI 15** and must be filed and served on the judgment debtor and on the third party within 7 days of the judgment debtor or the third party filing their written evidence in accordance with Rule 266(1).

Application for money in court [r.268(1)]

- 10.40. If money is standing to the credit of a judgment debtor in Court, a judgment creditor may apply, by application notice filed in the proceeding in which the creditor obtained the judgment or order on which he relies, and served on the judgment debtor, for an order that the money in Court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him. Any application is to be made using **Form CFI 36**.

G. CHARGING ORDERS, STOP ORDERS AND STOP NOTICES

Application for charging order [r.270]

- 10.41. An application for a charging order must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.
- 10.42. An application for a charging order must state:
 - (a) the name and address of the judgment debtor;
 - (b) the judgment or order of the Court which the applicant seeks to enforce by charging order;
 - (c) the amount of money due or to become due under that judgment or order payment of which the applicant seeks to secure by charging order;
 - (d) if the judgment debt is payable by instalments, the amount of any instalments which have fallen due and remain unpaid;
 - (e) whether the judgment creditor knows of the existence of any other creditors of the judgment debtor, and their names (if known);
 - (f) precisely what asset or assets it is sought to charge; and

- (g) the nature of the judgment debtor's interest in the asset (or in each asset) which the applicant alleges to be sufficient to enable a charging order to be made in respect of that asset.

Service of interim charging order and associated documents [r.272]

- 10.43. Within 3 days of the making of an interim charging order the judgment creditor must serve on the judgment debtor a copy of the order together with a copy of the application notice and all documents filed in support of the application.

Amount of liability for breach of interim order [r.273(3)]

- 10.44. A person served with an interim charging order relating to securities who, without the permission of the Court, permits any transfer of any of the securities will be liable to pay to the judgment creditor such amount as is just and equitable having regard, *inter alia*, to the fair market value of those securities.
- 10.45. A person served with an interim charging order relating to securities who, without the permission of the Court, pays any dividend, interest or redemption payment relating to them will be liable to pay to the judgment creditor an amount equal to the amount of that dividend, interest or redemption payment.

Application to object to making final charging order [r.275(1)]

- 10.46. Unless the Court orders otherwise, any person who objects to the Court making a final charging order may apply to the Court within 14 days of being served with the interim charging order by filing an application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**, stating the ground or grounds of objection.
- 10.47. An application notice filed in accordance with paragraph 10.46 of this Practice Direction must be served, together with the material on which the objector relies in support of his objection, on the judgment creditor, the judgment debtor and each person served with the interim charging order within 7 days of filing the application notice and material in support.

Procedure for enforcement of charging order by sale [r.276(2)]

- 10.48. A judgment creditor seeking an order for the sale of property to enforce a charging order must use the Rule 30 procedure and file and serve a claim form in accordance with **Form CFI 6**.
- 10.49. The judgment creditor must comply with Rule 32 regarding the filing and service of written evidence required under the Rule 30 procedure.
- 10.50. The written evidence filed in support of the claim is to be in accordance with **Form CFI 15** and must:
- (a) identify the charging order and the property to be sold;
 - (b) state the amount in respect of which the charge was imposed and the amount due at the date of the issue of the claim;
 - (c) verify, so far as known, the debtor's title to the property charged;
 - (d) state, so far as the claimant is able to identify:

- (i) the names and addresses of any other creditors who have a prior charge or other security over the property; and
 - (ii) the amount owed to each creditor;
- (e) give an estimate of the price which would be obtained on sale of the property; and
- (f) if the claim relates to land, give details of every person who to the best of the claimant's knowledge is in possession of the property.

Charging order against the property of a partnership

10.51. For the purpose of paragraph 10.43 of this Practice Direction (service of interim charging order) the specified documents must in the case of a judgment debtor that is a partnership be served on:

- (a) a member of the partnership; or
- (b) another officer of the partnership.

10.52. Where an order requires a partnership to appear before the Court, it will be sufficient for a partner to appear before the Court.

Application for a stop order [r.278]

10.53. An application for a stop order must be made by application notice in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**, and must:

- (a) identify the funds in court or the securities in respect of which a stop order is sought;
- (b) state whether the applicant claims as a person having a mortgage or charge on the interest of any person in the funds or as a person to whom that interest has been assigned or as a person who is a judgment creditor of the person entitled to that interest; and
- (c) in the case of securities, whether the applicant claims to be a person beneficially entitled to the securities.

Content of a stop order relating to securities [r.280]

10.54. A stop order relating to securities may prohibit all or any of the following steps:

- (a) the registration of any transfer of the securities; and
- (b) the making of any payment by way of dividend, interest or otherwise in respect of the securities.

Application for stop notice [r.282(2)]

10.55. An application for a stop notice must be made in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**, setting out the following matters:

- (a) the securities in respect of which the stop notice is sought;

- (b) the person or persons upon whom it is proposed to serve the stop notice;and
- (c) a draft stop notice for the purpose of Rule 282(2).

Withdrawal or discharge of stop notice [r.283(1)]

- 10.56. A request for the withdrawal or discharge of a stop notice must be made in accordance with **Form CFI 36** setting out the reasons for the request.