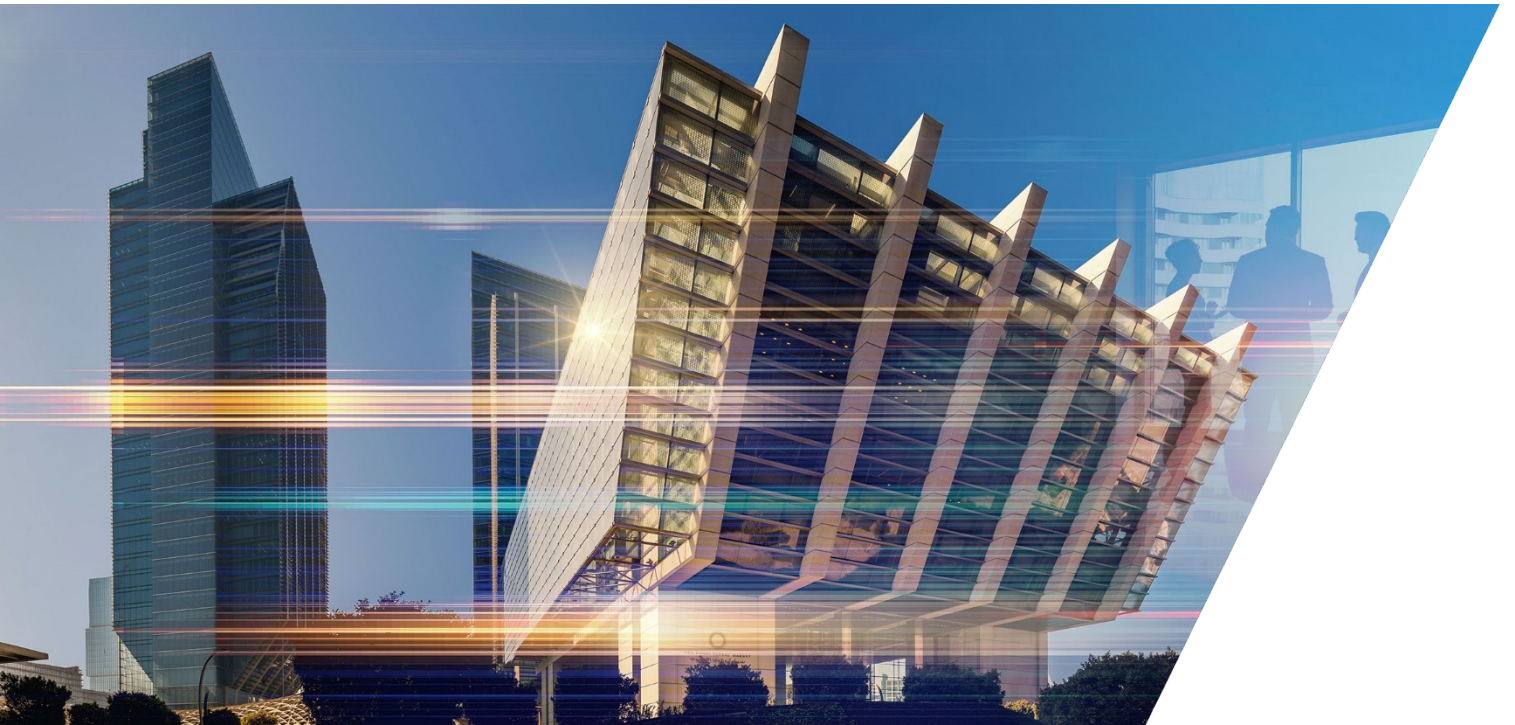




ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 11
APPEALS

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APPEALS

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PRACTICE DIRECTION 11

APPEALS

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This Practice Direction deals with:

- applications made to the Court of First Instance for permission to appeal; and
- applications for permission to appeal, and appeals, made to the Court of Appeal.

Appeals to the Court of First Instance in relation to Small Claims are dealt with in **Practice Direction 3 – Small Claims**.

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.

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

A. PERMISSION TO APPEAL [r.206, r.207 and r.208]

Requirement to seek permission to appeal

11.1. Rule 206(1) provides that a party requires permission to appeal from an order or judgment of a Judge in the Court of First Instance to the Court of Appeal.

What constitutes an appeal

11.2. For the purpose of this Practice Direction, “appeal” includes:

- (a) an appeal against the whole or part of an order or judgment; and
- (b) a request for an order to be varied.

Categories of application for permission to appeal

11.3. Rule 206(2) provides for the following categories of application for permission to appeal to the Court of Appeal (each a “permission application”):

- (a) permission application made in respect of a case management or interim order or judgment;
- (b) permission application made in respect of an order or judgment refusing permission to apply for judicial review; and
- (c) permission application made in respect of any other case.

- 11.4. For the purpose of Rule 206(2)(a):
- (a) case management order or judgment includes an order, direction or judgment made under Parts 11 to 15 and 17 of the Rules and includes an order or direction about disclosure, filing of witness statements or experts' reports, the timetable of the claim and adding a party to a claim and about security for costs; and
 - (b) interim order or judgment includes an order or judgment made under Part 10 of the Rules and includes an order or direction in relation to an interim remedy or an interim payment.
- 11.5. Where the application is for permission to appeal from a case management or interim order or judgment, the Court may take into account whether:
- (a) the issue is of sufficient significance to justify the costs of an appeal;
 - (b) the procedural consequences of an appeal (e.g. loss of trial date) outweigh the significance of the case management or interim order; and
 - (c) it would be more convenient to determine the issue at or after trial.

Threshold test for grant of permission to appeal

- 11.6. Rule 208(4) provides that permission to appeal may only be given if the Court considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.

Permission application – how made

- 11.7. Rules 206(2) and 206(3) prescribe:
- (a) how a permission application is to be made;
 - (b) the time limit within which a permission application must be made; and
 - (c) the Court which is to hear and determine a permission application.
- 11.8. A permission application made to the Court of First Instance should be made to the trial judge.
- 11.9. A permission application made under Rules 206(2) or 206(3) must be made:
- (a) to the Court of First Instance, by way of application notice in accordance with **Form CFI 38**; or
 - (b) to the Court of Appeal, by way of application notice in accordance with **Form COA 1**.
- 11.10. The application notice must identify:
- (a) the order or judgment against which it is sought to appeal;
 - (b) any order refusing permission to appeal;

- (c) the ground or grounds on which the appeal would be brought;
 - (d) the order or orders that would be sought in the appeal; and
 - (e) any other application that the applicant wishes to make (unless it is not practical to make such application in the notice).
- 11.11. At the same time as it files and serves its application notice, an applicant must file and serve its written argument in support of its permission application.
- 11.12. The written argument in support must be in accordance with **Form CFI 39** (if filed in the Court of First Instance) or **Form COA 2** (if filed in the Court of Appeal) and must:
- (a) not, without the permission of the Court, exceed the page limit referred to in paragraph 11.13 below;
 - (b) attach a copy of:
 - (i) the order or judgment against which it is sought to appeal (including any reasons provided for the order or judgment);
 - (ii) any order refusing permission to appeal (including any reasons provided for the order);
 - (c) set out briefly in chronological form the history of the proceedings;
 - (d) identify, as shortly as the circumstances allow, the facts and the issue or issues of law in the proposed appeal;
 - (e) set out in summary form the reasons why permission to appeal should be granted;
 - (f) in relation to any other application, include a short statement as to why that application should be granted; and
 - (g) identify any documents that the applicant intends to rely on.
- 11.13. For the purpose of paragraph 11.12(a), the page limit of a written argument in support of a permission application that relates to:
- (a) a case management or interim order or judgment, is 6 pages;
 - (b) an order or judgment refusing permission to apply for judicial review, is 8 pages; and
 - (c) any other case, is 12 pages.

Service

- 11.14. The application notice and written argument in support of a permission application must be served by the applicant on all other parties to the proceeding in which the order or judgment which is the subject of the application was made.

- 11.15. In relation to a permission application made to the Court of First Instance, service of all documents (including those referred to in paragraph 11.14) is ordinarily effected through the eCourts Platform in accordance with Practice Direction 1.
- 11.16. In relation to a permission application made to the Court of Appeal, the applicant must serve the documents referred to in paragraph 11.14 in accordance with Part 4 of the CPR and Practice Direction 6, and file a certificate of service in accordance with **Form CFI 31** within 7 days after service.
- 11.17. Unless the Court orders otherwise, any respondent who wishes to participate in the permission application made to the Court of Appeal must do so by filing an acknowledgment of service in accordance with **Form COA 6**:
- (a) in relation to a case management or interim order or judgment, within 4 days of being served with the permission application;
 - (b) in relation to any other case, within 7 days of being served with the permission application.
- 11.18. Thereafter, service of all documents filed in the proceeding is effected through the eCourts Platform in accordance with Practice Direction 1.

Respondent's written argument in response

- 11.19. A respondent's written argument in response to a permission application must be in accordance with **Form CFI 40** (if filed in the Court of First Instance) or **Form COA 3** (if filed in the Court of Appeal) and must;
- (a) not, without the permission of the Court, exceed the page limit referred to in paragraph 11.20 below;
 - (b) set out the reasons why the permission application should be dismissed;
 - (c) set out any reasons why any other application made should be dismissed; and
 - (d) identify any documents that the respondent intends to rely on.
- 11.20. For the purpose of paragraph 11.19(a), the page limit of a written argument in response to a permission application that relates to:
- (a) a case management or interim order or judgment, is 6 pages;
 - (b) an order or judgment refusing permission to apply for judicial review, is 8 pages; and
 - (c) any other case, is 12 pages.

Reply to written argument in response

- 11.21. An applicant for permission to appeal may, if invited by the Court to do so, file and serve a written argument in reply to the written argument of the respondent or respondents.

- 11.22. The applicant's written argument in reply must be in accordance with **Form CFI 41** (if filed in the Court of First instance) or **Form COA 4** (if filed in the Court of Appeal) and must:
- (a) not, without the permission of the Court, exceed 4 pages;
 - (b) only seek to reply to the written argument of the respondent or respondents; and
 - (c) identify any further documents that the applicant intends to rely on.

Nature of permission application and materials to be provided

- 11.23. The determination of a permission application is summary in nature.
- 11.24. As part of any permission application, the parties are encouraged to provide the Court with only those materials that will assist the Court in making a determination as to whether the relevant test for the grant of permission to appeal is met.
- 11.25. For example, ordinarily a permission application can, and should, be made and answered without production of any substantial part of the evidence tendered at the hearing which preceded the order or judgment which is challenged. If reference to a document in evidence (for example, the contract which was the subject of the proceedings) or a particular passage of oral evidence is necessary for a proper understanding of the permission application, or any response, the party should (subject to paragraph 11.24) annex that document or that passage of evidence to its written argument.

Documents to be uploaded to the eCourts Platform

- 11.26. Any document referred to by a party in a written argument must be uploaded by that party to the eCourts platform unless the document has previously been uploaded to the eCourts platform in the proceeding to which it relates.
- 11.27. Any document uploaded to the eCourts platform under paragraph 11.26 may be appended to the written argument to which it relates. For the avoidance of doubt, any appended document is not to be included in the page count for the purpose of paragraphs 11.13, 11.18 or 11.20.

Authorities

- 11.28. Any authorities to be relied on by a party should be referred to in the party's written argument.
- 11.29. A party is required to upload to the eCourts platform, using **Form CFI 36**, any authority that it intends to rely on so that it is available to the Court deciding the permission application.

Disposition of permission application

- 11.30. Permission applications before the Court of Appeal will be decided by a panel of three judges.

- 11.31. Permission applications will ordinarily be determined on the papers without an oral hearing.
- 11.32. The Court considering the permission application may direct that the permission application be referred for further written submissions, or for oral argument, on the question of whether permission should be granted.
- 11.33. A permission application may be referred for oral argument as on an appeal.
- 11.34. Where more than one party makes a permission application in connection with an order or judgment of the Court, the Court deciding the applications may:
- (a) consolidate the permission applications into the same proceeding;
 - (b) determine the applications at the same time; or
 - (c) make such orders as it considers appropriate for the efficient determination of the applications.
- 11.35. A permission application may be granted, in whole or in part, and with or without conditions.
- 11.36. A permission application may be refused, with or without costs.
- 11.37. The decision by the Court of Appeal on a permission application may not be challenged by any proceeding in the Court, whether by way of review, appeal or otherwise.

B. THE APPEAL [r.209, r.209A, r.209B, r.209C and r.211]

Notice of appeal

- 11.38. Without permission of the Court, a notice of appeal may not allege any ground of appeal outside the scope of the grant of permission to appeal.
- 11.39. If permission to appeal is given, the appellant must file and serve a notice of appeal in accordance with **Form COA 5** within 7 days of the order granting permission to appeal.
- 11.40. The notice of appeal must identify:
- (a) the order or judgment against which the appeal is brought;
 - (b) the ground or grounds on which the appeal is brought;
 - (c) the order or orders sought in the appeal;
 - (d) the order granting permission to appeal; and
 - (e) any other application that the appellant wishes to make (unless it is not practical to make such application in the notice).

Service

- 11.41. The notice of appeal must be served in accordance with Part 4 of the CPR and Practice Direction 6 on all parties to the proceeding in which the order or judgment which is the subject of the appeal was made.
- 11.42. The appellant must file a certificate of service in accordance with **Form CFI 31** within 7 days after service of the notice of appeal.

Appellant's written argument and proposed appeal bundle index

- 11.43. Rule 209(2) prescribes the time limit within which an appellant must file and serve its written argument in support of the appeal. At the same time as it files and serves its written argument in support, an appellant must file and serve its proposed appeal bundle index. Service is to be effected in the same manner as set out in paragraph 11.41.
- 11.44. The appellant's written argument in support of its notice to appeal must be in accordance with **Form COA 7** and must:
- (a) not, without the permission of the Court, exceed the page limit referred to in paragraph 11.45 below;
 - (b) attach a copy of:
 - (i) the order or judgment against which it is sought to appeal (including any reasons provided for the order or judgment);
 - (ii) the order granting permission to appeal (including any reasons provided for the order);
 - (c) set out briefly in chronological form the history of the proceedings;
 - (d) identify the facts and the issue or issues of law in the appeal;
 - (e) set out the reasons why the appeal should be granted;
 - (f) set out the reasons why any other application made should be granted; and
 - (g) identify any documents that the appellant intends to rely on.
- 11.45. For the purpose of paragraph 11.44(a), the page limit of a written argument in support of an appeal that relates to:
- (a) a case management or interim order or judgment, is 10 pages;
 - (b) an order or judgment refusing permission to apply for judicial review, is 12 pages; and
 - (c) any other case, is 20 pages.

Acknowledgment of Service

- 11.46. Any respondent who wishes to participate in the proceeding must do so by filing an acknowledgment of service in accordance with Form COA 6:
- (a) in relation to a case management or interim order or judgment, within 4 days of being served with the appellant's written argument in support of the appeal;
 - (b) in relation to any other case, within 7 days of being served with the appellant's written argument in support of the appeal.
- 11.47. Thereafter, service of all documents filed in the proceeding is effected through the eCourts Platform in accordance with Practice Direction 1.

Respondent's written argument in opposition and proposed revised appeal bundle index

- 11.48. Rule 209A prescribes the time limit within which a respondent must file and serve any written argument in response to the appeal. At the same time as it files and serves its written argument in response, a respondent must file and serve any revised appeal bundle index.
- 11.49. The respondent's written argument in response to the appeal must be in accordance with **Form COA 8** and must;
- (a) not, without the permission of the Court, exceed the page limit referred to in paragraph 11.50 below;
 - (b) set out the reasons why the appeal should be dismissed;
 - (c) contain notice of any intention to support the order or judgment appealed against on a ground or grounds other than the ground or grounds on which the order or judgment is based (and such alternative grounds are to be set out in the written argument);
 - (d) set out any reasons why any other application made should be dismissed; and
 - (e) identify any documents that the respondent intends to rely on.
- 11.50. For the purpose of paragraph 11.49(a), the page limit of a written argument in response to an appeal that relates to:
- (a) a case management or interim order or judgment, is 10 pages;
 - (b) an order or judgment refusing permission to apply for judicial review, is 12 pages; and
 - (c) any other case, is 20 pages.

Appellant's written argument in reply and further proposed appeal bundle index

- 11.51. Rule 209B prescribes the time limit within which an appellant may file and serve any written argument in reply. At the same time as it files and serves any written argument in reply, an appellant must file and serve any further revised appeal bundle index.

- 11.52. The appellant's written argument in reply must be in accordance with **Form COA 9** and must:
- (a) not, without the permission of the Court, exceed the page limit referred to in paragraph 11.53 below;
 - (b) only seek to reply to the written argument of the respondent or respondents; and
 - (c) identify any further documents that the appellant intends to rely on.
- 11.53. For the purpose of paragraph 11.52(a), the page limit of a written argument in reply that relates to:
- (a) a case management or interim order or judgment, is 4 pages;
 - (b) an order or judgment refusing permission to apply for judicial review, is 5 pages; and
 - (c) any other case, is 10 pages.

Appeal bundle

- 11.54. Within:
- (a) 7 days of the appellant filing and serving its written argument in reply and any further revised appeal bundle index;
 - (b) if a respondent has filed a written argument in response and any revised appeal bundle index, and no documents are filed and served under subparagraph (a), 3 days of the time limit for filing serving any written argument in reply and further revised appeal bundle index has expired; or
 - (c) if no respondent has filed a written argument in response or revised appeal index, 7 days of the time limit for filing and serving the last of any written argument in response and revised appeal index has expired,

the appellant is to prepare an electronic appeal bundle using the eCourts Platform.

- 11.55. Within 3 days of the appeal bundle being prepared, the parties are to file any replacement documents which require cross referencing to the bundle.

Documents to be uploaded to the eCourts Platform

- 11.56. Any document referred to by a party in a written argument, or otherwise to be relied on, must be uploaded by that party to the eCourts platform, unless that document has already been uploaded for the purpose of the appeal).
- 11.57. Any document uploaded to the eCourts platform under paragraph 11.56 may be appended to the written argument to which it relates. For the avoidance of doubt, any appended document is not to be included in the page count for the purpose of paragraphs 11.45, 11.50 or 11.53.

Materials and appeal bundle

- 11.58. Parties to an appeal must cooperate in preparing the materials to be made available to the Court for the determination of the appeal ("the appeal record"). The appeal record is to be provided to the Court in the form of an electronic appeal bundle which is to be prepared in accordance with this Practice Direction.
- 11.59. Materials should be included in the appeal bundle only if required by this Practice Direction, or for the proper argument and disposition of the appeal.
- 11.60. The following materials must be included in the appeal bundle in the following order:
- (a) the order or judgment appealed against (including any reasons provided for the order or judgment);
 - (b) the order granting permission to appeal (including any reasons provided for the order);
 - (c) the appellant's notice of appeal;
 - (d) where they are necessary for understanding the issues and argument in the appeal:
 - (i) the parties' statements of case; and
 - (ii) the transcript of any relevant part of the evidence given at trial;
 - (e) the chronology of events relevant to the appeal;
 - (f) the statement of facts as found by, or agreed in, the Court below;
 - (g) the appellant's written argument;
 - (h) the respondents' written argument;
 - (i) any written argument in reply;
 - (j) the appellant's authorities; and
 - (k) the respondents' authorities.
- 11.61. For the purpose of the appeal bundle, the parties are to agree:
- (a) a chronology of events relevant to the appeal; and
 - (b) the statement of facts as found by, or agreed in, the Court below.
- 11.62. The materials referred to in the paragraph 11.61 should be prepared in neutral terms and the Court expects the parties to consult and agree on their contents so that they can be included in the bundle within the time limits provided for in this Practice Direction.
- 11.63. The appeal bundle is to be prepared using the eCourts Platform.

Authorities

- 11.64. Any authorities to be relied on by a party should be referred to in their written argument and, in any event, not less than 5 days before the date fixed for any hearing of the appeal each party to the appeal must file and serve on all other parties a list of the authorities to which that party intends to refer the Court at the hearing of the appeal.
- 11.65. A party is required to upload to the eCourts platform, using **Form CFI 36**, any authority that it intends to rely on so that it is available for inclusion in the appeal bundle.

Determination of appeal

- 11.66. The Court shall make such directions as it considers appropriate for the listing of any appeal for hearing and may fix the time allowed to parties for the presentation of oral argument.
- 11.67. Where permission to appeal is granted to more than one party, and an appeal is made by more than one party in connection with an order or judgment of the Court, the Court deciding the appeals may:
- (a) consolidate the appeals into the same proceeding;
 - (b) determine the appeals at the same time; or
 - (c) make such orders as it considers appropriate for the efficient determination of the appeals.
- 11.68. An appeal may be granted, in whole or in part, and with or without conditions.

Costs

- 11.69. If permission to appeal is granted, the costs of the permission application shall be costs in the appeal unless some other order is made either when permission is given or later.
- 11.70. The Court may make such order in relation to the costs of the appeal as it considers appropriate.

C. PROVISIONS OF GENERAL APPLICATION

- 11.71. This Practice Direction sets out the page limits for documents. When preparing any document, a party must use:
- (a) not less than 12-point font;
 - (b) margins of not less than 20 cm; and
 - (c) at least one and a half line spacing.

Applications

- 11.72. Where it is necessary to bring an application before the Court of Appeal, it should be included in the permission application or the notice of appeal. The Court may, as it considers appropriate, deal with the application either before or at the time the permission application or appeal is heard.
- 11.73. Where it is not practical to include the application in the permission application or notice of appeal, a party must file and serve an application notice in accordance with **Form COA 10** supported by witness statement evidence in accordance with **Form COA 12**.
- 11.74. An application may be made without notice if it is permitted only where it is shown to be in the interests of justice, either generally or in the particular case, that this be allowed.
- 11.75. The Court shall make such other directions as are necessary in relation to the application and may deal with any application made before the hearing of the permission application or appeal, or without a hearing if the Court does not consider that a hearing is appropriate or the parties agree that no hearing is appropriate.