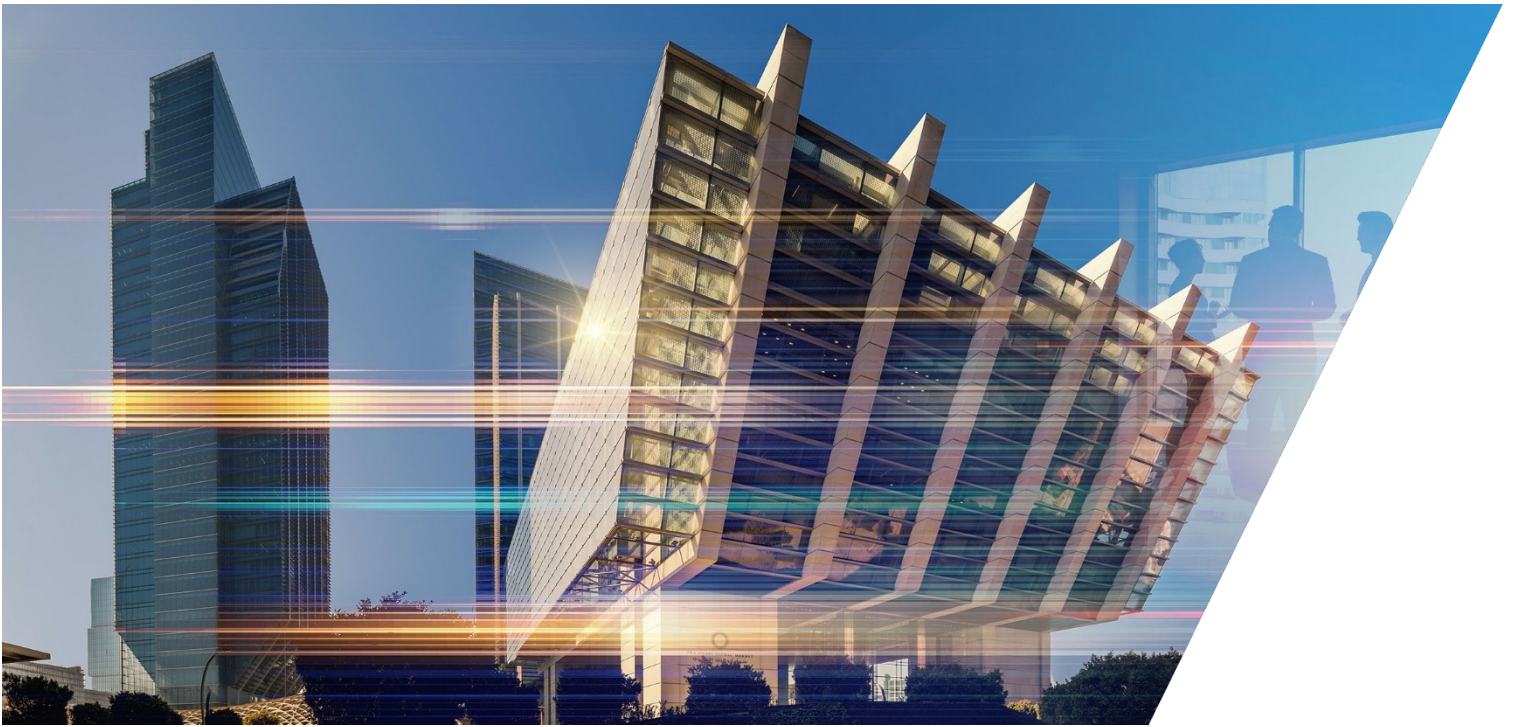




ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 7
APPLICATIONS

PRACTICE DIRECTION 7
APPLICATIONS
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PRACTICE DIRECTION 7

APPLICATIONS

Date re-issued: 1 September 2021

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**. Applications made in the Employment Division are dealt with in **Practice Direction 4**.

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 on the eCourts Platform. It is the responsibility of the party submitting the application to select the without notice filing option on the eCourts Platform.
- 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 or orders that the applicant seeks from the Court;

- (b) if the parties agree that the Court should dispose of the application without a hearing; or
- (c) where the Court considers that the application can be fairly determined on the papers without an oral hearing and, in all of the circumstances, it would be appropriate to do so.

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 on the eCourts Platform. It is the responsibility of the party submitting the application to select the without notice filing option on the eCourts Platform.
- 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 or orders that the applicant seeks from the Court;
 - (b) if the parties agree that the Court should dispose of the application without a hearing; or
 - (c) where the Court considers that the application can be fairly determined on the papers without an oral hearing and, in all of the circumstances, it would be appropriate to do so.

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 7.23, 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. The application must contain sufficient detail of any claim for costs having regard to Practice Direction 9.
- 7.23. 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.
- 7.24. 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 5 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 a 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.

Application for a freezing injunction [r.71(1)(f)]

- 7.35. An application for a freezing injunction (also referred to as a “freezing order”) must be made as follows:
- (a) in relation to an application made prior to the filing of a claim, in accordance with **Form CFI 12A**, supported by affidavit evidence in accordance with **Form CFI 14**;
 - (b) in relation to an application made after a claim has been filed, in accordance with **Form CFI 12**, supported by affidavit evidence in accordance with **Form CFI 14**; or
 - (c) in relation to an application made in relation to proceedings which are taking place, will take place, or have taken place outside the jurisdiction, in accordance with **Section H, Practice Direction 5**.
- 7.36. An example of an order for a freezing injunction is set out in Schedule A to this practice direction. It may be modified as appropriate in any particular case. In particular, the Court may, if it considers it appropriate, require the applicant's legal representatives, as well as the applicant, to give undertakings.
- 7.37. A freezing injunction in respect of assets outside the jurisdiction should normally include wording to allow overseas branches of banks or similar institutions which have offices within the jurisdiction to comply with what they reasonably believe to be their obligations under the laws of the country where the assets are located or under any other applicable law.
- 7.38. The Court will not, except in exceptional circumstances, make a freezing injunction without a hearing.

Application to vary or discharge freezing injunction

- 7.39. An application to vary or discharge a freezing injunction must be made by application notice in accordance with **Form CFI 12**, and any evidence in support of the application must be by way of affidavit evidence in accordance with **Form CFI 14**.
- 7.40. Applications to discharge or vary freezing injunctions are treated as matters of urgency for listing purposes. Those representing applicants for discharge or variation should ascertain before a date is fixed for the hearing whether, having regard to the evidence which they wish to adduce, the claimant would wish to adduce further evidence in opposition. If so, all reasonable steps must be taken by all parties to agree upon the earliest practicable date at which they can be ready for the hearing, so as to avoid the last minute need to vacate a fixed date.
- 7.41. Any bank or third party served with, notified of or affected by a freezing injunction may apply to the Court without notice to any party for directions, or notify the Court in writing without notice to any party, in the event that the order affects or may affect the position of the bank or third party under legislation, regulations or procedures aimed to prevent money laundering.
- 7.42. If a freezing injunction is discharged or varied, the Judge will consider whether it is appropriate to hear immediately any application under a cross-undertaking for compensation and whether it is appropriate to direct immediate payment of such compensation by the applicant.

SCHEDULE A

In the name of

His Highness Sheikh Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF FIRST INSTANCE

COMMERCIAL AND CIVIL DIVISION

BETWEEN

[]

Applicant

and

[Individual]

First Respondent

[Corporation]

Second Respondent

[Corporation]

Third Respondent

ORDER

PENAL NOTICE

IF YOU, THE WITHIN NAMED (1) []; (2) []; (3) [], DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE SUBJECT TO A PENALTY.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE SUBJECT TO A PENALTY.

JUDGE: Justice []
DATE OF ORDER: []
CLAIM NO: ADGMCFI-[]

UPON the Applicant's Application by notice dated [] ("**the Application**")

[**AND UPON** the Application being made without notice to the Respondents]

AND UPON considering the documents on the Court file

AND UPON conducting a hearing [remotely] on []

AND UPON hearing ... for the Applicant

ORDER

1. This order made on [] by Justice [] is:
 - (a) a Domestic Freezing Injunction made against the First Respondent, being []; and
 - (b) a Worldwide Freezing Injunction made against the Second and Third Respondents, being respectively [].
2. [This order was made at a hearing without notice to the Respondents. The Respondents have a right to apply to the Court to vary or discharge the order – see paragraph 14 below.]
3. There will be a further hearing in respect of this order on [] ('the return date').
4. As there is more than one Respondent:
 - (a) unless otherwise stated, references in this order to "the Respondent" mean all of them;
 - (b) unless otherwise stated, references in this order to "the Corporate Respondents" mean the Second and Third Respondents; and
 - (c) this order is effective against any Respondent on whom it is served or who is given notice of it.

FREEZING INJUNCTIONS

The First Respondent

5. Until the return date or further order of the Court, the First Respondent must not remove from the ADGM or in any way dispose of, deal with or diminish the value of any of his assets which are in the ADGM up to the value of [AED ...]/[US\$...].

6. Paragraph 5 applies to all the First Respondent's assets whether or not they are in his own name, whether they are solely or jointly owned and whether the First Respondent is interested in them legally, beneficially or otherwise, including any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The First Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.
7.
 - (1) If the total value free of charges or other securities ("unencumbered value") of the First Respondent's assets in the ADGM exceeds [AED...]/[US\$...], the First Respondent may remove any of those assets from the ADGM or may dispose of or deal with them so long as the total unencumbered value of the First Respondent's assets still in the ADGM remains above [AED ...]/[US\$...].
 - (2) If the total unencumbered value of the First Respondent's assets in the ADGM does not exceed [AED ...]/[US\$...], the First Respondent must not remove any of those assets from the ADGM and must not dispose of or deal with any of them.

The Corporate Respondents

8. Until the return date or further order of the Court, each of the Corporate Respondents must not—
 - (1) remove from the ADGM any of its assets which are in the ADGM up to the value of [AED ...]/[US\$...]; or
 - (2) in any way dispose of, deal with or diminish the value of any of its assets whether they are in or outside the ADGM up to the same value.
9. Paragraph 8 applies to each Corporate Respondent's assets whether or not they are in its own name, whether they are solely or jointly owned and whether the relevant Respondent is interested in them legally, beneficially or otherwise, including any asset which it has the power, directly or indirectly, to dispose of or deal with as if it were its own. A Corporate Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with its direct or indirect instructions.
10.
 - (1) If the total value free of charges or other securities ("unencumbered value") of any Corporate Respondent's assets in the ADGM exceeds [AED ...]/[US\$...], the Corporate Respondent may remove any of those assets from the ADGM or may dispose of or deal with them so long as the total unencumbered value of that Corporate Respondent's assets still in the ADGM remains above [AED...]/[US\$...].
 - (2) If the total unencumbered value of a Corporate Respondent's assets in the ADGM does not exceed [AED ...]/[US\$...], that Respondent must not remove any of those assets from the ADGM and must not dispose of or deal with any of them. If any Corporate Respondent has other assets outside the ADGM, it may dispose of or deal with those assets outside the ADGM so long as the total unencumbered value of all its assets whether in or outside the ADGM remains above [AED ...]/[US\$...].

PROVISION OF INFORMATION

11.

- (1) Each Respondent must by [] on [] swear and serve on the Applicant's solicitors an affidavit setting out its assets worldwide exceeding [AED...]/[US\$...] in value whether in its own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.
- (2) If the provision of this information is likely to incriminate a Respondent, it may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of Court and may render the Respondent liable to a penalty.

EXCEPTIONS TO THIS ORDER

12.

- (1) This order does not prohibit the First Respondent from spending [AED ...]/[US\$....] a week towards his ordinary living expenses, The First Respondent may agree with the Applicant's legal representatives that the above spending limit should be increased or that this order should be varied in any other respect, but any agreement.
- (2) This order does not prohibit any of the Respondents from spending a reasonable sum on legal advice and representation.
- (3) This order does not prohibit any Respondent from dealing with or disposing of any of his or its assets in the ordinary and proper course of business [but before doing so the relevant Respondent must tell the Applicant's legal representatives].
- (4) The order will cease to have effect in respect of a Respondent—
 - (a) if that Respondent provides security by paying the sum of [AED...]/[US\$...] into Court, to be held to the order of the Court; or
 - (b) if that Respondent makes provision for security in that sum by another method agreed in writing with the Applicant's legal representatives.

COSTS

13. Costs of the Application are reserved to the Judge hearing the application on the return date.

VARIATION OR DISCHARGE OF THIS ORDER

14. Anyone served with, notified of, or affected by this order may apply to the Court at any time for directions or to vary or discharge this order (or so much of it as affects that person).

INTERPRETATION OF THIS ORDER

15. Where the First Respondent is ordered not to do something he must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

16. Where either of the Corporate Respondents is ordered not to do something it must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENTS

17. Effect of this order

It is a contempt of Court for any person knowingly to assist in or permit a breach of this order. Any person doing so may be subject to a penalty.

18. Set off by banks

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the Respondent before it was notified of this order.

19. Withdrawals by the Respondent

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

20. Persons outside the ADGM

- (1) Except as provided in sub-paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this Court.
- (2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this Court:
 - (a) the Respondent or the Corporate Respondents' officers or his, her or its agents appointed by power of attorney;
 - (b) any person who—
 - (i) is subject to the jurisdiction of this Court;
 - (ii) has been given written notice of this order at its, her or his residence or place of business within the jurisdiction of this Court; and
 - (iii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this order; and
 - (c) any other person, only to the extent that this order is declared enforceable by or is enforced by a Court in that country or state.

21. Assets located outside the ADGM

Nothing in this order shall, in respect of assets located outside the ADGM, prevent any third party from complying with:

- (1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and
- (2) any orders of the Courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors.

COMMUNICATIONS WITH THE COURT

22. All communications to the Court about this order should be sent to Abu Dhabi Global Market Authorities Building, ADGM Square, Al Maryah Island, PO Box 111999, Abu Dhabi, UAE quoting the case number. The telephone number is T +971 2 333 8976; registry@adgmcourts.com. The offices are open between 8.30am and 4:30pm Sunday to Thursday except public holidays.

SCHEDULE A—AFFIDAVITS

The Applicant relied on the following affidavits—

- (1) First Affidavit of [] sworn on [].
- (2) First Affidavit of [] sworn on [].

SCHEDULE B—UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) If the Court later finds that this order has caused loss to any of the Respondents, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the Court may make.
- [(2) The Applicant will on or before
 - (a) cause a written guarantee in a form acceptable to the Court in the sum of [AED ...]/[US\$...] to be issued from a bank with a place of business within the ADGM in respect of any order that the Court may make pursuant to the undertaking in paragraph (1) above/pursuant to the undertakings in paragraph (1) above and paragraph (6) below, and
 - (b) cause a copy of such guarantee to be served on the Respondents
- (3) By [] on [] the Applicant shall file and serve on each of the Respondents a claim form claiming the appropriate relief.
- (4) Pursuant to ADGM CPR 65(1) the Applicant shall serve on the Respondents as soon as practicable:
 - (a) this order;
 - (b) the Application including the Affidavits in support set out in Schedule A; and
 - (c) an application notice for continuation of this order
- (5) Anyone notified of this order by the Applicant will be given a copy of it by the Applicant's legal representatives.
- (6) The Applicant will pay the reasonable costs of anyone, other than (i) a Respondent; or (ii) directors, officers, partners, employees or agents of a Respondent, which have been incurred as a result of this order including the costs of finding out whether that person holds any of the Respondent's assets and if the Court later finds that this order has caused such person loss,

and decides that such person should be compensated for that loss, the Applicant will comply with any order the Court may make.

- (7) If this order ceases to have effect (for example, if a Respondent provides security as provided for above) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who it has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (8) The Applicant will notify the Court as soon as reasonably practicable if substantial sums are recovered by the Applicant such that the limits of [AED...]/[US\$...] in paragraphs 5, 7, 8 and 10 above (or any of them) may be affected.
- (9) The Applicant will not without the permission of the Court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in the ADGM or in any other jurisdiction, other than this claim.
- (10) The Applicant will not without the permission of the Court seek to enforce this order in any jurisdiction outside the ADGM.

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's legal representatives are:

[]