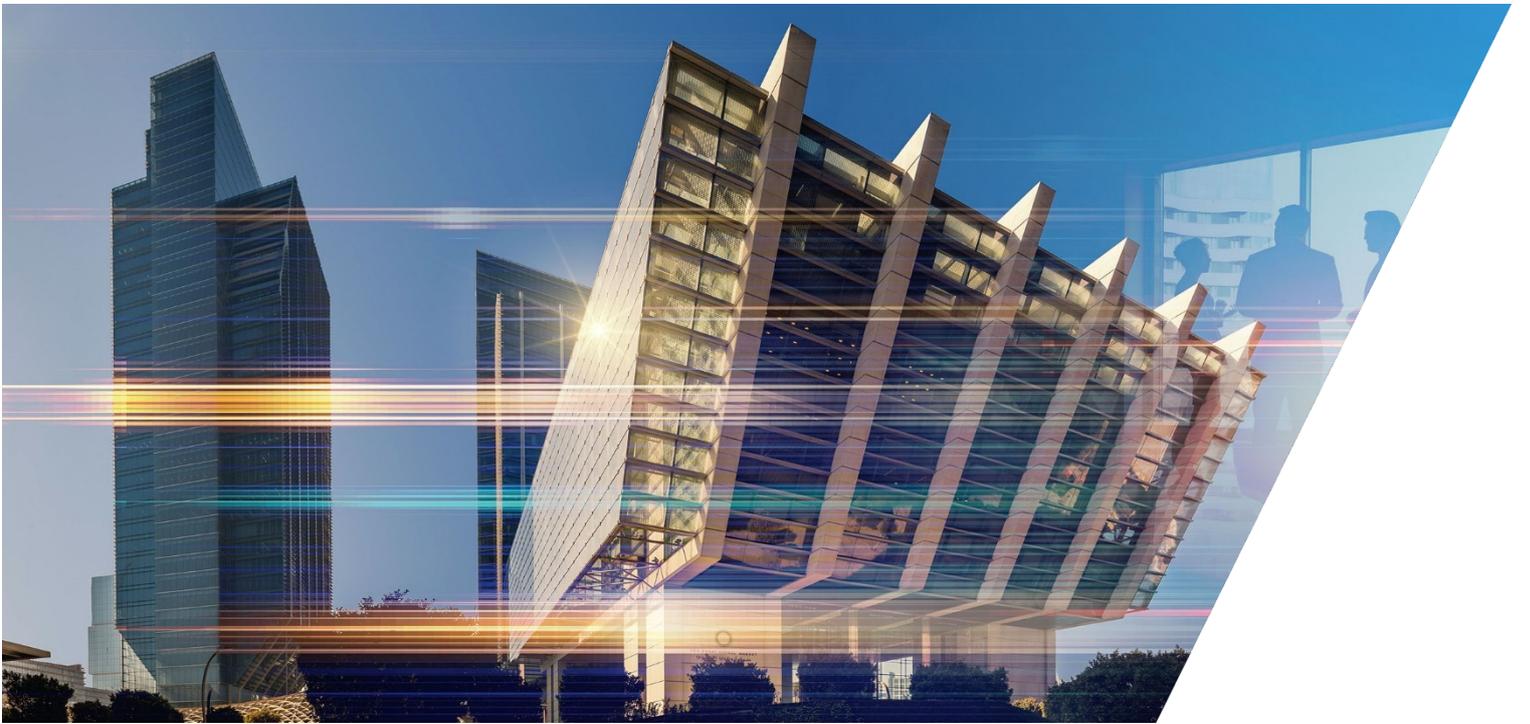




ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 9
COSTS

PRACTICE DIRECTION 9

COSTS

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PRACTICE DIRECTION 9

COSTS

Date 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 those Rules and a reference to a Rule is a reference to the CPR.

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

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. In this Practice Direction:
 - (a) Part B applies only to Small Claims;
 - (b) Part C applies to all proceedings in the Court of First Instance except for:
 - (i) small claims
 - (ii) employment claims
 - (iii) proceedings using the Rule 30 procedure;
 - (iv) a claim for judicial review; and
 - (v) an arbitration claim.
 - (c) Parts D to G apply to all proceedings in the Court of First Instance other than small claims where the costs in those proceedings are fixed in accordance with Part B.
- 9.4. The Court will not order a party to a small claim, an employment claim, or any appeal from those claims, to pay a sum to another party in respect of that other party's costs, fees and expenses, where the value of the claim does not exceed US\$10,000, except:
 - (a) such part of any court fees paid by that other party as the Court may consider appropriate; and
 - (b) such further costs as the Court may assess by the summary procedure and ordered to be paid by a party who has behaved unreasonably.

B. SMALL CLAIMS

Fixed costs for legal representatives

9.5. The following amounts will be fixed for legal representatives' costs in proceedings in the Small Claims Division.

| Event | Amount USD |
|--|--|
| Commencement Costs – where claim form is served on the defendant or defendants | 1% of claim amount: minimum of USD300 maximum of USD1,000 |
| Where judgment in default of a defence is entered under Rule 312 | USD300 |
| 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 | USD250 |
| 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 | USD250 |
| Where summary judgment is given under Rule 68 | 1% of judgment amount: minimum of USD300 maximum of USD1000 |
| Judgment entered for the claimant after trial | 5% of judgment amount: minimum of USD1,500 maximum of USD5,000 |
| Judgment entered for the defendant after trial | 5% of claim amount: minimum of USD1,500 maximum of USD5,000 |

9.6. Where the only claim is for a specified sum of money and the defendant pays the sum claimed within 7 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.

9.7. 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.

Fixed costs for litigants in person

9.8. Litigants in person will be allowed 50% of the amounts allowed for legal representatives set out in the table under paragraph 9.5 in addition to any recoverable disbursements.

C. COSTS MANAGEMENT ORDERS

Provision of costs budgets

- 9.9. All parties must indicate whether they seek the exchange of costs budgets and must do so not later than 4 days before the initial case management conference.
- 9.10. 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, or by the party if not legally represented.
- 9.11. 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

- 9.12. Where costs budgets are filed, the Court will generally make a Costs Management Order.
- 9.13. If the Court makes a Costs Management Order, paragraphs 9.12 to 9.19 of this Practice Direction shall apply, whether before or after the making of the Costs Management Order.
- 9.14. 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.
- 9.15. The Court will review any costs budgets filed and, after making any appropriate revisions, record its approval of those budgets in a Costs Management Order. 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.
- 9.16. As part of the costs management process, the Court may approve costs incurred before the date of any budget. However, such approval of those costs will not affect the Court’s discretion in relation to making orders in connection with such costs at any subsequent stage of the proceedings.

Review of costs budgets

- 9.17. The Court may set a timetable or give other directions for future reviews of budgets.
- 9.18. Each party may revise its budget in respect of future costs, if significant developments in the proceedings warrant such revisions. The Court may approve, vary or disapprove the revisions, having regard to such developments which will be recorded in a further Costs Management Order.
- 9.19. 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. SUMMARY ASSESSMENT OF COSTS

9.20. In relation to the standard basis, costs incurred are proportionate if they bear a reasonable relationship to:

- (a) the sums in issue in the proceedings;
- (b) the value of any non-monetary relief in issue in the proceedings;
- (c) the complexity of the litigation;
- (d) the additional work generated by the conduct of the paying party;
- (e) any wider factors involved in the proceedings, such as reputation or public importance; and
- (f) the indicative hourly rates set out in Annexure 1 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.

9.21. In relation to any assessment of costs the Court will have regard to:

- (a) whether the costs were reasonably incurred and are reasonable in amount;
- (b) the conduct of all the parties;
- (c) the amount or value of any money or property involved;
- (d) the importance of the matter to all of the parties;
- (e) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (f) the skill, effort, specialised knowledge and responsibility involved;
- (g) the time spent on the case;
- (h) the place where, and the circumstances in which, work or any part of it was done; and
- (i) the receiving party's last approved budget.

9.22. A litigant in person is entitled to costs for the same categories of –

- (a) work; and
- (b) disbursements

which would have been allowed if the work had been done or the disbursements had been incurred by a legal representative on the litigant in person's behalf.

9.23. The amount which may be allowed to a litigant in person under paragraph 9.22(a) is set out in Annexure 1.

9.24. A template for a Statement of Costs for Summary Assessment is set out in Annexure 2. Any Statement of Costs must be filed using **Form CFI 36**.

E. DETAILED ASSESSMENT OF COSTS

9.25. 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.

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.

Bill of costs

9.28. 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**.

9.29. 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.

9.30. 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 proceedings 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.

9.31. 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 if the receiving party fails to commence a claim or detailed assessment within such time as the Court has directed.

Notice of Dispute

9.32. 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.

- 9.33. 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.
- 9.34. 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

- 9.35. 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 the application shall be US\$160.
- 9.36. Upon application by the paying party, 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. The application is to be made in accordance with **Form CFI 12**, supported by witness statement evidence in accordance with **Form CFI 15**.

Provisional assessment

- 9.37. 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.
- 9.38. A provisional assessment is to be carried out without hearing on the papers provided by the parties.
- 9.39. 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.
- 9.40. 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**.
- 9.41. 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

- 9.42. The detailed assessment of costs is to be conducted by reference to:
- (a) in relation to an assessment on the standard basis, the matters set out in paragraph 9.20;
 - (b) in all cases, the matter set out in paragraph 9.21;
 - (c) the notice of dispute;
 - (d) the provisional assessment; and
 - (e) any other matter that the costs officer gives permission to a party to raise.

Costs of detailed assessment

- 9.43. 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.
- 9.44. In any other case, the costs of the detailed assessment are to be in the discretion of the costs officer.
- 9.45. 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

- 9.46. 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.
- 9.47. 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.
- 9.48. 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

- 9.49. 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.
- 9.50. The objecting party's written submissions must identify which of the bases for challenge are disputed and on what basis or bases.
- 9.51. 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

- 9.52. A costs officer must certify the amount of costs agreed between parties or allowed following a detailed assessment of costs.
- 9.53. 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
INDICATIVE HOURLY LEGAL CHARGES

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 legal representative costs.

| Level of Legal Experience Average Hourly Rate (AED) | Average Hourly Rate (AED) |
|--|----------------------------------|
| Trainee/ Paralegal | 1,400 |
| Associate | 2,200 |
| Senior Associate | 2,800 |
| Counsel | 3,100 |
| Partners | 3,600 |

The hourly rate likely to be acceptable to the Court when assessing the costs of a litigant in person is AED 150.

**ANNEXURE 2
TEMPLATE FOR A STATEMENT OF COSTS FOR SUMMARY ASSESSMENT**

Description of fee earners*

- (a) *(name) (grade) (hourly rate claimed)*
- (b) *(name) (grade) (hourly rate claimed)*
- (c) *(name) (grade) (hourly rate claimed)*
- (d) *(name) (grade) (hourly rate claimed)*

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Attendances on *(party)*

Personal attendances

- (a) *(number)*
- (b) *(number)*
- (c) *(number)*
- (d) *(number)*

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hours at AED

hours at AED

hours at AED

hours at AED

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AED

AED

AED

AED

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Letters out/emails

- (a) *(number)*
- (b) *(number)*
- (c) *(number)*
- (d) *(number)*

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hours at AED

hours at AED

hours at AED

hours at AED

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Telephone

- (a) *(number)*
- (b) *(number)*
- (c) *(number)*
- (d) *(number)*

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Attendances on opponents (including negotiations)
Personal attendances

| | | | | | |
|-----------------------|--|--------------|--|-----|--|
| (a) (<i>number</i>) | | hours at AED | | AED | |
| (b) (<i>number</i>) | | hours at AED | | AED | |
| (c) (<i>number</i>) | | hours at AED | | AED | |
| (d) (<i>number</i>) | | hours at AED | | AED | |

Letters out/emails

| | | | | | |
|-----------------------|--|--------------|--|-----|--|
| (a) (<i>number</i>) | | hours at AED | | AED | |
| (b) (<i>number</i>) | | hours at AED | | AED | |
| (c) (<i>number</i>) | | hours at AED | | AED | |
| (d) (<i>number</i>) | | hours at AED | | AED | |

Telephone

| | | | | | |
|-----------------------|--|--------------|--|-----|--|
| (a) (<i>number</i>) | | hours at AED | | AED | |
| (b) (<i>number</i>) | | hours at AED | | AED | |
| (c) (<i>number</i>) | | hours at AED | | AED | |
| (d) (<i>number</i>) | | hours at AED | | AED | |

Attendances on others
Personal attendances

| | | | | | |
|-----------------------|--|--------------|--|-----|--|
| (a) (<i>number</i>) | | hours at AED | | AED | |
| (b) (<i>number</i>) | | hours at AED | | AED | |
| (c) (<i>number</i>) | | hours at AED | | AED | |
| (d) (<i>number</i>) | | hours at AED | | AED | |

Letters out/emails

| | | | | | |
|-----------------------|--|--------------|--|-----|--|
| (a) (<i>number</i>) | | hours at AED | | AED | |
| (b) (<i>number</i>) | | hours at AED | | AED | |
| (c) (<i>number</i>) | | hours at AED | | AED | |
| (d) (<i>number</i>) | | hours at AED | | AED | |

Telephone

| | | | | | |
|--------------|--|--------------|--|-----|--|
| (a) (number) | | hours at AED | | AED | |
| (b) (number) | | hours at AED | | AED | |
| (c) (number) | | hours at AED | | AED | |
| (d) (number) | | hours at AED | | AED | |

Site inspections etc.

| | | | | | |
|--------------|--|--------------|--|-----|--|
| (a) (number) | | hours at AED | | AED | |
| (b) (number) | | hours at AED | | AED | |
| (c) (number) | | hours at AED | | AED | |
| (d) (number) | | hours at AED | | AED | |

Work done on documents, as set out in schedule:

| |
|--|
| |
|--|

Attendance at hearing:

| | | | | | |
|-----------------|--|--------------|--|-----|--|
| (a) (number) | | hours at AED | | AED | |
| (b) (number) | | hours at AED | | AED | |
| (c) (number) | | hours at AED | | AED | |
| (d) (number) | | hours at AED | | AED | |
| (e) Fixed Costs | | | | AED | |

| | | | | | |
|--------------|--|--------------------------------------|--|-----|--|
| (a) (number) | | hours travel and waiting time AED | | AED | |
| (b) (number) | | hours travel and waiting time AED | | AED | |
| (c) (number) | | hours travel and waiting time AED | | AED | |
| (d) (number) | | hours travel and waiting time AED | | AED | |

Sub-Total

| |
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| |
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Brought forward AED

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| | | |
|--|------------|--|
| Counsel's fees (<i>name</i>) (<i>year of call</i>) | | |
| Fee for [advice/conference/documents] | AED | |
| Fee for hearing | AED | |
| Other expenses | | |
| Court fees | AED | |
| Others (<i>give a brief description</i>) | AED | |
| | | |
| Total | AED | |
| Grand Total | AED | |

The costs stated above do not exceed the costs which the (*party*) is liable to pay in respect of the work which this statement covers. Counsel's fees and other expenses have been incurred in the amounts stated above and will be paid to the persons stated.

(*party*)

Signed

Dated

Name of Partner signing

Name of firm of solicitors

Schedule of work done on documents

| Item | Description of work (one line only) | (A) hours | (B) hours | (C) Hours | (D) Hours | Total AED |
|------|--|--------------|--------------|--------------|--------------|--------------|
| 1. | | | | | | |
| 2. | | | | | | |
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| 26. | | | | | | |
| 27. | | | | | | |
| 28. | | | | | | |
| 29. | | | | | | |
| 30. | | | | | | |
| Total | | | | | | |