

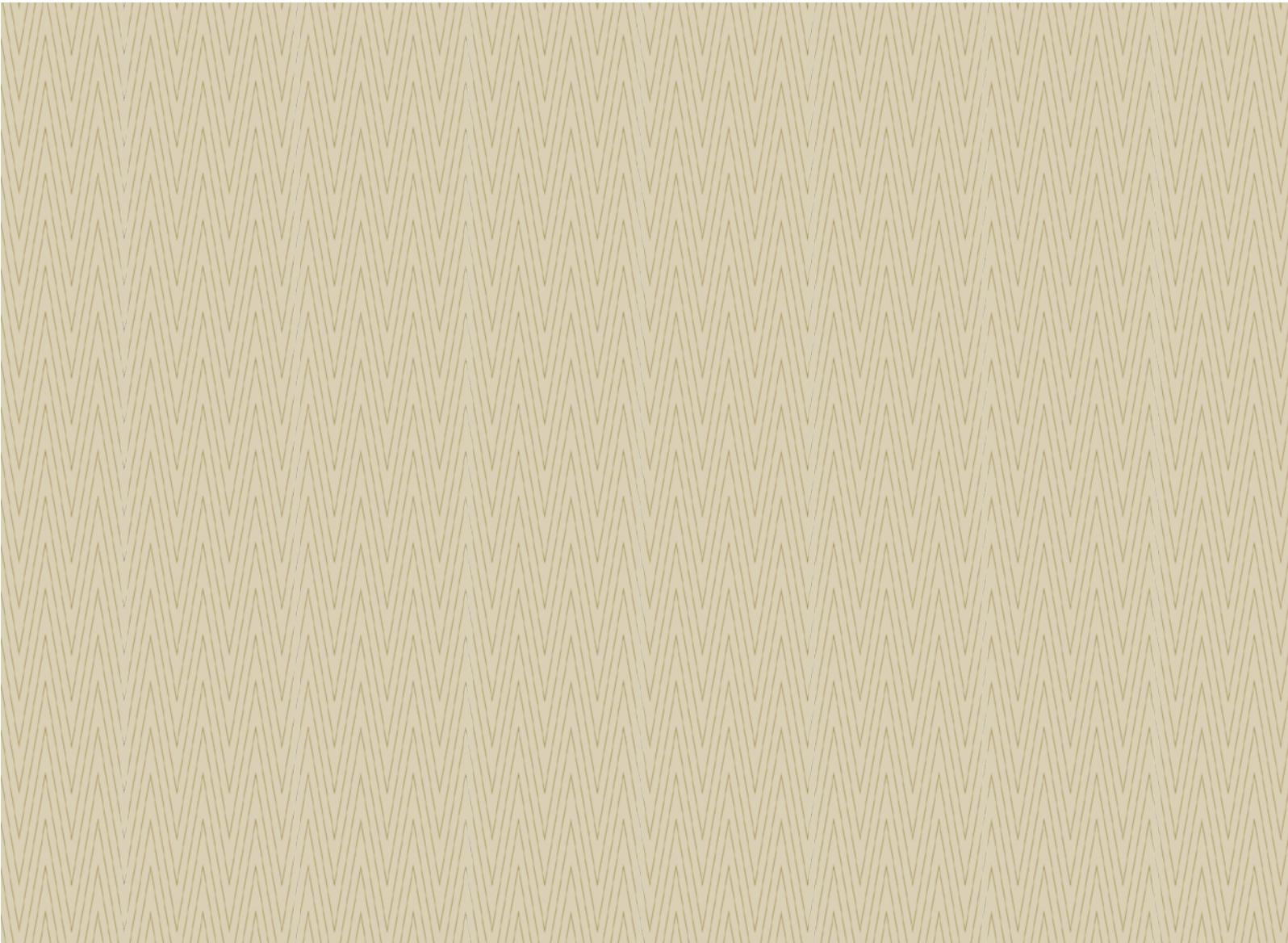


ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

ADGM COURTS

PRACTICE DIRECTION 6

DISCLOSURE





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DISCLOSURE

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PRACTICE DIRECTION 6

DISCLOSURE

Date first issued: 30 May 2016

This Practice Direction is to be read with, and subject to, the ADGM Court Procedure Rules 2016. Except as provided otherwise in this Practice Direction, terms have the meanings set out in those Rules.

A. DEFINITIONS

6.1. In this Practice Direction:

- (a) “document” means anything in which information of any description is recorded and includes an electronic document;
- (b) “copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly; and
- (c) “electronic document” means any document held in electronic form and includes, for example, email and other electronic communications such as text messages and voicemail, word-processed documents and databases, and documents stored on portable devices such as memory sticks and mobile phones. In addition to documents that are readily accessible from computer systems and other electronic devices and media, it includes documents that are stored on servers and back-up systems and documents that have been deleted. It also includes metadata and other embedded data which is not typically visible on screen or a print out.

B. DISCLOSURE BY PARTIES [r.87]¹

6.2. Rarely, if at all, will the Court direct general discovery of documents or discovery by interrogation.

Standard disclosure

6.3. Except as provided by the Rules or by a Practice Direction, or as directed by the Court, each party must give to all other parties to a proceeding standard

¹ Amended 11 December 2017.



disclosure of documents no later than 28 days after the day by which the defendant is, or defendants are, required to file a defence.

- 6.4. “Standard disclosure” is defined by the Rules and requires a party to disclose all documents on which he will rely at trial, except for documents that have already been submitted by another party.

When standard disclosure not required

- 6.5. The obligation to give standard disclosure of documents does not apply to the following proceedings:
- (a) proceedings using the Rule 30 Procedure;
 - (b) proceedings in the Small Claims Division; and
 - (c) Judicial Review proceedings.

Cooperation between the parties – electronic documents

- 6.6. Before the first Case Management Conference, the parties should discuss any issues that may arise regarding searches for and the preservation of electronic documents. This may involve the parties seeking and providing information about the categories of electronic documents within their control, the computer systems, electronic devices and media on which any relevant documents may be held, the storage systems maintained by the parties, their document retention policies and the anticipated time and cost of carrying out any searches which might be requested.
- 6.7. Where the number or volume of documents to be searched is likely to be extensive, the parties should, where possible, seek to exchange preliminary production requests in draft form before standard production of documents takes place. Any such exchange does not limit the parties’ rights to submit further requests to produce after standard production.
- 6.8. The parties should cooperate at an early stage as to the format in which electronic copy documents are to be provided on inspection of documents.
- 6.9. If the physical structure of a file is, or is claimed to be, of evidential value:
- (a) any such claim should be raised at the earliest opportunity; and
 - (b) the legal representatives of the party holding the file should make one complete copy of the file in the form in which they received it before any documents are removed for the purpose of inspecting documents.
- 6.10. In the case of difficulty or disagreement on any of the matters referred to in this section of the Practice Direction, the matter should be referred to the Court for



directions at the earliest practical date, if possible at the first Case Management Conference.

C. APPLICATIONS FOR FURTHER OR SPECIFIC DISCLOSURE [r. 86 and r.87]²

- 6.11. The Court discourages unfocused or disproportionate requests for further disclosure of documents.
- 6.12. If a party seeks further or specific disclosure of documents, that party must identify what documents or classes of documents are sought and state why their provision would assist the fair and effective trial of the proceedings.
- 6.13. An application for further or specific disclosure must be made by application notice.

Further or specific disclosure

- 6.14. When giving further or specific disclosure, a party is required to make a reasonable search for documents.
- 6.15. The factors relevant in deciding the reasonableness of a party's search include the following –
 - (a) the number of documents involved;
 - (b) the nature and complexity of the proceedings;
 - (c) the ease and expense of retrieval of any particular document; and
 - (d) the significance of any document which is likely to be located during the search.
- 6.16. Where a party has not searched for a category or class of document on the grounds that to do so would be unreasonable, he must state this in his disclosure statement and identify the category or class of document.

Disclosure of copies

- 6.17. A party need not disclose more than one copy of a document.
- 6.18. A copy of a document must conform fully to the original. The Court may order that the original of a document be presented for inspection. A copy of a document that contains a modification, obliteration or other marking or feature shall be treated as a separate document. Parties should not redact documents which they

² Amended 11 December 2017.



disclose without the agreement of the other parties or the permission of the Court.

Making disclosure – Redfern Schedule and disclosure statement

- 6.19. A party giving further or specific disclosure must do so in the form of a Redfern Schedule, supported by a disclosure statement in accordance with **Form CFI 13**.
- 6.20. A party must state in his Redfern Schedule whether he has a right or duty to withhold from inspection any document or categories of documents and the grounds on which he claims that right or duty.
- 6.21. The disclosure statement must –
- (a) expressly state that the disclosing party believes the extent of the search to have been reasonable in all the circumstances; and
 - (b) draw attention to any particular limitations to the extent of the search and give the reasons for such limitations.
- 6.22. Attention is drawn to Rule 91(2) in regard to false disclosure statements.
- 6.23. Every additional disclosure which a party makes must be made by adding to his Redfern Schedule so that there is at all times a single complete record of each party's disclosure.

D. INSPECTION OF DOCUMENTS [r.90]³

Inspection of documents referred to in statements of case and other documents

- 6.24. Nothing in this Practice Direction affects a party's right under the Rules to inspect any document which is referred to in:
- (a) an opposing party's statement of case;
 - (b) a witness statement;
 - (c) a witness summary; or
 - (d) an affidavit.

³ Amended 11 December 2017.



Inspection of documents mentioned in an expert's report

- 6.25. If a party wishes to inspect documents referred to in the expert report of another party he should first request inspection of the documents informally and inspection should be provided by agreement unless the request is unreasonable.
- 6.26. Where an expert report refers to a large number or volume of documents and it would be burdensome to copy or collate them, the Court will only order inspection of such documents if it is satisfied that it is necessary for the just disposal of the proceedings and the party cannot reasonably obtain the documents from another source.

Disputing a claim to withhold from inspection

- 6.27. If a party seeks to inspect a document which the disclosing party claims he has a right or duty to withhold from inspection, the requesting party must complete the relevant part of the disclosing party's Redfern Schedule and serve it on the disclosing party.
- 6.28. If the disclosing party presses his claim to withhold the document from inspection, he must:
- (a) complete the relevant part of his Redfern Schedule;
 - (b) serve the completed Redfern Schedule on the requesting party;
 - (c) file the completed Redfern Schedule with the Court; and
 - (d) identify those items in the Redfern Schedule in respect of which he seeks the determination of the Court.
- 6.29. The Court may determine any objection to production, without receiving any further submission by any party, by recording its decision in the Redfern Schedule.

Failure to disclose or permit inspection

- 6.30. The Rules provide that a party may not rely on any document which he fails to disclose or in respect of which he fails to permit inspection unless the Court gives permission. Any application for that permission should be made at the earliest opportunity and should be supported by material explaining why the party concerned did not disclose or permit inspection of the document earlier.



E. ORDER FOR DISCLOSURE AGAINST NON-PARTY [r.88]⁴

- 6.31. Any application made to the Court for disclosure by a person who is not a party to the proceedings must be made by filing an application notice which must be supported by evidence.
- 6.32. The supporting evidence for an application for disclosure by a non-party must be contained in an affidavit detailing the specific facts, matters or circumstances relied upon to demonstrate that –
- (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
 - (b) that disclosure is necessary in order to dispose fairly of the claim or to save costs.
- 6.33. An order for disclosure by a non-party must –
- (a) specify the documents or the classes of documents which the non-party must disclose; and
 - (b) require the non-party, when making disclosure, to specify any of those documents –
 - (i) which are no longer in his control; or
 - (ii) in respect of which he claims a right or duty to withhold inspection.
- 6.34. Such an order may –
- (a) require the non-party to indicate what has happened to any documents which are no longer in his control; and
 - (b) specify the time and place for disclosure and inspection.
- 6.35. A non-party need not disclose more than one copy of a document.
- 6.36. A copy of a document must conform fully to the original.

⁴ Amended 11 December 2017.