

PART 13 Default Judgment

PART 13

13.1

In these Rules, 'default judgment' means judgment without trial where a defendant.

(1) has failed to file an acknowledgment of service; or (2) has failed to file a defence.

13.2

For the purposes of this Part, a defence includes any document purporting to be a defence.

Claims in which default judgment may not be obtained 13.3

13.3

A claimant may not obtain a default judgment —

(1) where he uses the procedure set out in Part 8 (alternative procedure for claims); or

(2) in any other case where a Rule or Practice Direction provides that the claimant may not obtain default judgment.

Conditions to be satisfied 13.4 - 13.6

13.4

The claimant may obtain judgment in default of an acknowledgment of service only if—

(1) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and

(2) the relevant time for doing so has expired.

13.5

Judgment in default of defence may be obtained only—

- (1) where an acknowledgement of service has been filed but a defence has not been filed;
- (2) in a counterclaim made under Rule 21.7, where a defence has not been filed,

and, in either case, the relevant time limit for doing so has expired.

13.6

The claimant may not obtain a default judgment:

- (1) if the defendant has applied:

- (a) to have the claimant's statement of case struck out under Rule 4.16; or

- (b) for immediate judgment under Part 24; and, in either case, that application has not been disposed of;

- (2) if the defendant has satisfied the whole claim (including any claim for costs) on which the claimant is seeking judgment;

- (3) if the claimant is seeking judgment on a claim for money and the defendant has filed or served on the claimant an admission under Rule 15.14 or 15.24 (admission of liability to pay all of the money claimed) together with a request for time to pay;

- (4) unless he has either filed a certificate of service under Rule 9.43 or the Defendant has filed an acknowledgment of service.

Procedure for obtaining default judgment 13.7 - 13.8

13.7

A claimant may obtain a default judgment by filing a request in Form P13/01 or Form P13/02.

13.8

Requests for default judgment:

- (1) in respect of a claim for a specified amount of money or for the delivery of goods where the defendant will be given the alternative of paying a specified sum representing their value, or for fixed costs only, must be in Form P13/01,

- (2) in respect of a claim where an amount of money (including an amount representing the value of goods) is to be decided by the Court, must be in Form P13/02 and

- (3) in every other case, must be in Form P13/02 amended as necessary to describe the judgment

requested.

Nature of judgment where default judgment obtained by filing a request 13.9 - 13.13

13.9

Where the claim is for a specified sum of money, the claimant may specify in a request filed under Rule 13.7—

(1) the date by which the whole of the judgment debt is to be paid; or (2) the times and rate at which it is to be paid by instalments.

13.10

Except where Rule 13.12 applies, a default judgment on a claim for a specified amount of money obtained on the filing of a request, will be judgment for the amount of the claim (less any payments made) and costs—

(1) to be paid by the date or at the rate specified in the request for judgment; or

(2) if none is specified, immediately.

13.11

Where the claim is for an unspecified amount of money a default judgment obtained on the filing of a request will be for an amount to be decided by the Court and costs.

13.12

Where the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, a default judgment obtained on the filing of a request will be judgment requiring the defendant to—

(1) deliver the goods or (if he does not do so) pay the value of the goods as decided by the Court (less any payments made); and

(2) pay costs.

13.13

The claimant's right to enter judgment requiring the defendant to deliver goods is subject to Rule 36.50 (judgment in favour of certain part owners relating to the detention of goods).

Interest 13.14 - 13.15

13.14

A default judgment on a claim for a specified amount of money obtained on the filing of a request may include the amount of interest claimed to the date of judgment if—

- (1) the claim form includes the details required by Rule 17.18;
- (2) where interest is claimed under
 - (a) Articles 118 or 119 of the Contract Law 2004;
 - (b) Articles 17, 18 or 32 of the Law of Damages and Remedies 2005;
 - (c) Article 121(b) of the Law of Obligations 2005;
 - (d) Article 80 of the DIFC Employment Law 2005; the rate is no higher than the rate of interest fixed by these Rules under Article 39(2)(a) of the Court Law payable on judgment debts at the date when the claim form was issued; and
- (3) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

13.15

In any case where Rule 13.14 does not apply, judgment will be for an amount of interest to be decided by the Court.

Procedure for deciding an amount or value 13.16

13.16

Where the claimant obtains a default judgment on the filing of a request and judgment is for—

- (1) an amount of money to be decided by the Court;
- (2) the value of goods to be decided by the Court; or
- (3) an amount of interest to be decided by the Court

when the Court enters judgment it will give any directions it considers appropriate.

Claim against more than one defendant 13.17 - 13.19

13.17

A claimant may obtain a default judgment on request under this Part against one of two or more defendants, and proceed with his claim against the other defendants.

13.18

Where a claimant applies for a default judgment against one of two or more defendants —

(1) if the claim can be dealt with separately from the claim against the other defendants

(a) the Court may enter a default judgment against that defendant; and

(b) the claimant may continue the proceedings against the other defendants;

(2) if the claim cannot be dealt with separately from the claim against the other defendants

(a) the Court will not enter default judgment against that defendant; and

(b) the Court must deal with the application at the same time as it disposes of the claim against the other defendants.

13.19

A claimant may not enforce against one of two or more defendants any judgment obtained under this Part for delivery of goods unless—

(1) he has obtained a judgment for delivery (whether or not obtained under this Part) against all the defendants to the claim; or

(2) the Court gives permission.

Procedure for obtaining a default judgment for costs only 13.20 - 13.21

13.20

Where a claimant wishes to obtain a default judgment for costs only—

(1) if the claim is for fixed costs, he may obtain it by filing a request in the relevant practice form;

(2) if the claim is for any other type of costs, he must make an application in accordance with Part

23.

13.21

Where an application is made under Rule 13.20 for costs only, judgment shall be for an amount to be decided by the Court.

Evidence 13.22 - 13.25

13.22

On a request for default judgment the Court must be satisfied that:

(1) the claim form has been served on the defendant (a certificate of service on the Court file will be sufficient evidence);

(2) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired; (

3) the defendant has not satisfied the claim; and

(4) the defendant has not returned an admission to the claimant under Rule 15.14 or filed an admission with the Court under Rule 15.24.

13.23

On a request where the defendant was served with the claim outside the jurisdiction and the defendant has not acknowledged service, the evidence must establish that:

(1) the claim is one that the Court has power to hear and decide,

(2) no other court has exclusive jurisdiction to hear and decide the claim, and

(3) the claim has been properly served.

13.24

Evidence referred to in Rule 13.23 above must be by affidavit.

13.25

On an application for judgment for delivery up of goods where the defendant will not be given the alternative of paying their value, the evidence must identify the goods and state where the claimant believes the goods to be situated and why their specific delivery up is sought.

Currency 13.26

13.26

Where default judgment is given on a claim for a sum of money expressed in a currency other than US Dollars, the judgment should be for the amount of that currency with the addition of 'or the US Dollar equivalent at the time of payment'.