

JUDGMENT SUMMARY

Neutral Citation	[2025] ADGMCFI 0002
Case Number	ADGMCFI-2024-319
Name of Case	Remy Alexandre Turcon v Toufic Assaf & Anor.
Judge	Justice Paul Heath KC
Date Issued	27 February 2025
Catchwords	Default Judgment. Court's discretionary powers as to costs. Summary assessment of costs on the standard basis. Costs that are proportionate to the matters in issue and are reasonably incurred and reasonable in amount. Factors relevant to assessment of proportionality and reasonableness.
Cases Cited	R (on the application of Gourlay) v Parole Board [2021] 3 All ER 95 (UKSC)
Legislation and Authorities Cited	ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Sections 49, 222 and 223 ADGM Court Procedure Rules 2016 – Rules 39, 40A, 195(1) and 198 Practice Direction 7 – Paragraph 7.22 Practice Direction 9 – Paragraphs 9.21 and 9.22
Executive Summary	<p>This is a judgment on costs following a default judgment awarded to the Claimant based on the Defendants breach of a Joint Venture Agreement. The Court considered the reasonableness and proportionality of the Claimant's legal costs, particularly in light of: (i) a pre-existing agreement between the Claimant's lawyers and a third party which provided for payment of both a fixed fee for work undertaken and a success fee; and (ii) a clause in the Joint Venture Agreement where the Defendants agreed to cover the Claimant's enforcement costs.</p> <p>Ultimately, the Court awarded the Claimant the fixed fee agreed with his lawyers but not the success fee uplift, highlighting the Court's broad discretion in cost matters and the need to consider all relevant factors beyond the standard guidelines set in Practice Direction 9.</p>

Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerns the decision on the costs payable by the First and Second Defendants, Mr Assaf and Mr Ibrahim, to the Claimant, Mr Turcon.</p> <p>The case arose from a breach of contract by Mr Assaf and Mr Ibrahim against Mr Turcon concerning a joint venture, whereby Mr Turcon would invest in e-businesses that had previously been established by Mr Assaf and Mr Ibrahim. The Joint Venture Agreement referred to these businesses as the “Robocom Ventures”. The investment was to be made through a company yet to be incorporated, which was to be called Robocom Holding LLC. Mr Turcon paid the sum of USD 800,000 to Mr Assaf and Mr Ibrahim in anticipation of incorporation of Robocom Holding LLC, but Mr Assaf and Mr Ibrahim failed to meet their obligations. Mr Turcon sued for the return of the USD 800,000, plus interest, filing fees, and costs.</p> <p>The Defendants did not defend the proceedings, and a default judgment was entered against them on 28 January 2025 for USD 800,000 plus interest and filing fees. However, the Court reserved the question of costs due to a potential issue regarding an agreement between Mr Turcon and his lawyers dated 28 October 2024 (the “Letter of Engagement”). This Letter of Engagement provided for payment of both a fixed fee for work undertaken and a success fee.</p> <p>Analysis</p> <p>The Court noted that the Letter of Engagement was actually between the lawyers for Mr Turcon (Matouk Bassiouny, Dubai) and Alexen Avocats (UK) Ltd (“Alexen”), with Alexen being treated as the “Client”. Therefore, Mr Turcon was not directly a party to this arrangement. Nevertheless, the Court decided to take its terms into account as a matter of discretion when determining the costs payable to Mr Turcon. The Letter of Engagement stipulated a fixed fee of USD 35,000 and a success fee uplift of USD 64,000 if the Claim were successful, totaling USD 99,000. Mr Turcon argued that this total amount was reasonable and proportionate.</p> <p>The judgment discusses the Court's discretion as to costs, referencing Section 49 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 and Rule 195(1) of the ADGM Court Procedure Rules 2016 (the “Rules”), which grant the Court broad discretion in such matters. The Court also cited the UK Supreme Court case of <i>R (on the application of Gourlay) v Parole Board</i> [2021] 3 All ER 95 (UKSC) regarding the exercise of judicial discretion.</p> <p>The judgment outlines the framework for assessing costs on the standard basis, which was the approach taken in this case. This involves considering whether costs were reasonably incurred, reasonable in amount, and proportionate to the matters in issue, as per Rule 198 of the Rules and Part D of Practice Direction 9 (“PD 9”). Paragraph 9.21 of PD 9 lists factors relevant to proportionality, including the sums in issue, complexity of the litigation, and hourly rates. Paragraph 9.22 of PD 9</p>
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	<p>outlines factors relevant to the reasonableness of costs, such as the conduct of parties, the amount involved, the importance of the matter, complexity of the matter, skill, time spent, and the receiving party's last approved budget. The Court highlighted that any doubt regarding the reasonableness and proportionality of costs should be resolved in favour of the paying party.</p> <p>In its analysis, the Court acknowledged that while it generally has fixed costs for a default judgment on a summary basis, this should not unduly restrict the Court's discretion as to costs. The Court considered the Letter of Engagement, viewing it as a means for Mr Turcon to access justice. It also considered the sum in issue (USD 800,000) and the potential for a trial when the Letter of Engagement was agreed to. Importantly, the Court noted Article 5.2(c) of the Joint Venture Agreement, wherein Mr Assaf and Mr Ibrahim promised to pay Mr Turcon's court costs and expenses in connection with the enforcement of the Joint Venture Agreement. The Court inferred that this suggested that the Defendants believed they would be responsible for a significant portion of the legal costs if Mr Turcon successfully claimed for breach of contract.</p> <p>Conclusion</p> <p>Ultimately, the Court decided to award Mr Turcon the fixed fee of USD 35,000 agreed upon in the Letter of Engagement, but not the success fee uplift. The Court reasoned that while Mr Turcon reasonably incurred costs up to USD 99,000 given the initial uncertainty, the actual work required to obtain a default judgment was limited. The Defendants had agreed to meet the costs, but there was doubt as to whether ordering the full amount would be too high, which must be resolved in their favour. The awarded amount of USD 35,000 represents 4.4% of the principal amount for which judgment has been entered by default.</p> <p>Finally, the Court emphasised that this specific award should not be regarded as having any precedential value of itself and reiterated the importance of exercising the discretion as to costs judicially, considering all relevant factors, including those outside the guidance of Paragraphs 9.21 and 9.22 of PD 9. Counsel acting for successful claimants in a case such as this should clearly identify any factors on which they rely to seek costs; particularly those that fall outside of the guidance provided by Paragraphs 9.21 and 9.22 of PD 9. Counsel should also indicate the weight that they consider should be given to such factors, and why.</p>
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This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.