

Open for business: the ADGM Courts

The Abu Dhabi Global Market has moved decisively to consolidate its presence with the launch of its own court system, giving parties the option of an additional free zone forum for the resolution of disputes.

The ADGM

The ADGM (the Abu Dhabi Global Market) is a financial free zone located on Al Maryah Island in Abu Dhabi. Much like the prominent financial free zone centre in Dubai, the Dubai International Financial Centre (the DIFC), the ADGM offers an environment attractive to businesses, predominantly in the financial sector, to set up and conduct business. The ADGM allows for 100% foreign ownership of businesses registered in its jurisdiction where the primary language is English. The laws and regulations applicable in the jurisdiction will be familiar to participants in the international marketplace – indeed, the common law of England and certain English law statutes will be directly applicable in the ADGM (subject to some modifications and exceptions). However, the ADGM does not have its own criminal laws and the ADGM Courts do not have jurisdiction to hear matters relating to any criminal offence.

The ADGM Courts' Procedural Rules

The task of enforcing the application of the laws and regulations applicable in the ADGM and to resolve disputes between parties is assigned to the ADGM Courts which became fully operational on 30 May 2016 when the Courts' procedural rules, supporting

directions, standard forms and fees were issued.

The judiciary of ADGM Courts is made up of a number of eminent international judges, headed by the Chief Justice, Lord David Hope of Craighead, a former Justice of the Supreme Court of the United Kingdom. The Registrar of the Courts is Linda Fitz-Alan, who has 30 years' experience in the legal sector, including a previous role as CEO and Principal Registrar of the Supreme Court of New South Wales, Australia.

The ADGM Courts' rules are broadly based on the rules of the courts of England and Wales and, as noted above, English law will feature prominently in the ADGM – presumably more so than in the DIFC as English law will be directly applicable in the ADGM. In the DIFC, English law is the default reference law if DIFC law is silent on a point (in the absence of the parties' agreement or another governing law being more closely related to the facts and persons involved). In that sense, the ADGM will also be "a Common Law island in a Civil Law ocean", an expression used to describe the DIFC. As such the ADGM will be faced with many of the challenges faced by the DIFC Courts in determining the scope of its jurisdiction and the interplay with the non-free zone courts of the UAE (see below – Who can use the ADGM Courts?).

The ADGM Courts' rules feature many of the typical features of common law courts – including:

- the possibility of obtaining summary judgment, that is, a judgment to dispose of the case in an expedited manner – available in appropriate cases where the claimant or defendant (as the case may be) can show that the other party's case has no real prospect of success
- the availability of interim protective measures, for example, obtaining a pre-trial order against a party to a case to stop them removing assets from a particular jurisdiction (known as a 'freezing injunction')
- the ability to obtain an order that the other party to a case pays funds into court before the trial as a guarantee in case, following trial, the ADGM Courts order that party to pay some or all of the applicant's legal costs. Note that this procedural tool, known as a 'security for costs' order is potentially wider in scope than the equivalent provisions in the DIFC Courts' and English Courts' rules. In particular, the ADGM Courts can order security for costs to be paid "if, it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order"
- the rules also allow for evidence by deposition, which is an oral

examination of a person before the relevant hearing in the case – a concept that will be familiar to North American lawyers.

Who can use the ADGM Courts?

In short, the ADGM Courts have jurisdiction over matters that have a connection to the ADGM or in an appeal of a decision or a procedure issued by any of the ADGM authorities. In addition, parties with or without any connection to the ADGM can 'opt in' to the ADGM Courts' jurisdiction.

The precise scope of jurisdiction of the ADGM Courts will, no doubt, become clearer over time. It is reassuring to note that the relevant authorities in the UAE have fully endorsed the ADGM Courts as a valid forum within the Emirate of Abu Dhabi's jurisdiction – pursuant to the memorandum of understanding between the ADGM Courts and the UAE Ministry of Justice (see below), the two parties have agreed to work

on the "objective" to, amongst other things, "recognise the choice of ADGM Courts by parties to a contract in or outside of the UAE as a valid forum to settle any contractual disputes between such contractual parties, in accordance with the applicable laws".

Enforcement

The litmus test for the effectiveness of any court system is the ease by which a judgment or order can be enforced against a counterparty. Whilst there is no particular issue with respect to enforcement against a counterparty or its assets within the jurisdiction of the ADGM, the more difficult question is how an ADGM Court judgment will be enforced outside of the ADGM in Abu Dhabi, other Emirates, in the DIFC and further afield in the GCC and internationally.

The Regulations provide that the ADGM Courts may enter into reciprocal recognition and enforcement agreements or memoranda with the judicial

authorities of Abu Dhabi. Indeed, on 5 May 2016, the UAE Ministry of Justice and the ADGM Courts entered into a memorandum of understanding with the objective of, amongst other things, taking "all necessary measures that will ensure that enforcement of the ADGM Courts' judgments and arbitration awards issued in the ADGM may be sought before the federal courts in the UAE and implementing Articles 219 to 234 of Federal Law No. (11) of 1992 Concerning Civil Procedure to the enforcement of such judgments and arbitration awards without examining the substance of the dispute". The intention is therefore that the ADGM Courts' judgments and ADGM arbitral awards should easily be enforced in Abu Dhabi and the federal courts in the UAE (ie courts in Sharjah, Ajman, Umm al-Quwain and Fujairah).

If the mechanism of enforcing an ADGM Courts judgment in the Abu Dhabi Courts, when it is clarified, results in a conversion of the ADGM Courts judgment into an Abu Dhabi Courts judgment, presumably that judgment could take advantage of all reciprocal enforcement mechanisms in place for Abu Dhabi Courts judgments but the precise system of enforcement outside of the ADGM remains to be developed. It is likely, we assume, that over time the ADGM Courts will enter into further agreements, memoranda of understanding and other arrangements with other jurisdictions to streamline the enforcement procedure.

Fees

The fees for the claims in the ADGM Courts were published with the courts' rule on 31 May 2016. For money and/or property claims exceeding claims (exceeding US\$100,000)

	Claim value	Fee
Money and/or property claims (exceeding US\$100,000)	US\$100,001 – US\$ 500,000	2.5% of the value of the claim
	US\$500,000 – US\$1 million	US\$12,500 +2% over US\$500,000
	US\$1 million – US\$5 million	US\$22,500 + 0.5% over US\$1 million
	US\$5 million – US\$10 million	US\$42,500 + 0.25% over US\$5 million
	Over US\$10 million	US\$55,000 + 0.15% over US\$10 million to a maximum of US\$65,000

before the ADGM Court of First Instance, the court fees increase on a progressive scale based on the value of the claim.

Final word

The ADGM Courts have the right combination of judicial and administrative expertise, Abu Dhabi

government backing and good foundational rules and regulations to quickly develop into a competitive dispute resolution forum on both the domestic and international stage. There are some issues that still need to be clarified, such as the precise scope of its jurisdiction and the mechanics of enforcement outside of

the ADGM, but those matters will, we expect, be settled in due course – preferably without the need for lengthy court proceedings to set precedents but by further rulemaking to give potential participants certainty on those issues.

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