

## KEY DEVELOPMENTS IN THE ABU DHABI GLOBAL MARKET (ADGM)

The ADGM has continued to make significant developments in establishing itself as an attractive free zone in the UAE for local and foreign investors. On 27 May 2020, Abu Dhabi Law No.12 of 2020 (the "**Amendment Law**") was enacted in order to effect a number of amendments to the ADGM Founding Law (Abu Dhabi Law No. 4 of 2013).<sup>1</sup> Among other things, the amendments clarified questions around the enforceability of ADGM Court judgments and arbitral awards, and the ability for ADGM based entities to operate in the rest of Abu Dhabi. We have analysed the key changes in this briefing.

### DISPUTE RESOLUTION DEVELOPMENTS

#### Confirmation of Opt-in Jurisdiction

Article 13(8) of the ADGM Founding Law now allows parties expressly to opt-in to the jurisdiction of the ADGM Courts, confirming the position under Article 16(2) of the ADGM Court Regulations that parties without a connection to the ADGM can agree to have their disputes heard before the ADGM Courts.

Parties may opt-in to the ADGM Courts' jurisdiction in writing by incorporating an appropriate dispute resolution clause in their contracts. It is also possible for parties to opt-in to the ADGM Courts' jurisdiction after a claim or dispute has started.

#### Enforcement of ADGM Court judgments and ADGM seated arbitral awards

##### *In onshore Abu Dhabi*

Prior to the Amendment Law, the enforcement of ADGM Court judgments and ADGM seated arbitral awards in onshore Abu Dhabi (and vice versa) was based upon the non-binding terms of a memorandum of understanding dated 11 February 2018 between the ADGM and the Abu Dhabi Judicial Department (the "**AD MOU**").

The Amendment Law has codified into law the reciprocal enforcement principles in the AD MOU.

The Amendment Law also confirms that there are two routes of enforcement onshore in the Abu Dhabi Courts: a) *Direct Route* - applying to the Abu Dhabi

#### Key points

- Parties can expressly opt-in to the ADGM Court's jurisdiction or ADGM as an arbitral seat even if they have no connection to the ADGM
- Provisions relating to the enforcement of ADGM Court judgments and ADGM seated arbitral awards in onshore Abu Dhabi (and vice-versa) are now codified in law
- The amendments provide clarity as to the status of ADGM Court judgments and arbitral awards for enforcement outside the UAE
- The ADGM Courts cannot be used as a conduit jurisdiction to enforce foreign judgments and awards in onshore Abu Dhabi
- Options for setting up in the ADGM to access Abu Dhabi markets are set to be enhanced
- Netting agreements are enforceable within the ADGM

<sup>1</sup> The amendments came into effect on 30 April 2020.

court for enforcement directly; or b) *Deputisation Route* - an application to the ADGM Courts to deputise an enforcement judge in the Abu Dhabi Courts to enforce the ADGM Court judgment or award. The ADGM Court's [guide](#) (which provides more extensive commentary on the Amendment Law) notes that there have been 19 ADGM Court judgments that were successfully enforced in Abu Dhabi using the direct route.

The processes in the AD MOU for execution still apply, such as the requirement for the ADGM Court judgment or award to be translated into Arabic and to include a specific executory statement.

The new provisions introduced by the Amendment Law should increase the prospects of successful enforcement of ADGM Court judgments and ADGM seated arbitral awards by the onshore Abu Dhabi Courts (and vice versa) without reviewing the underlying merits of the judgments/awards, although this has yet to be tested in practice.

#### Outside the UAE

The Amendment Law confirms the status of the ADGM Courts as courts of the Emirate of Abu Dhabi. This is a helpful clarification for courts in overseas jurisdictions, and should improve the prospects of ADGM Court judgments and ADGM seated arbitral awards being enforced outside the UAE through the international enforcement treaties and conventions to which the UAE is a party.

### **ADGM is not a Conduit Jurisdiction**

Prior to the Amendment Law, the possibility of using the ADGM Courts as a conduit jurisdiction for the enforcement of foreign court judgments and arbitral awards in onshore Abu Dhabi was yet to be conclusively addressed.

The Amendment Law answers this question in the negative by confirming that the ADGM cannot be used as a conduit jurisdiction. Article 13(14) of the ADGM Founding Law (as amended) excludes judgments and arbitral awards obtained outside ADGM/Abu Dhabi from the enforcement process.

The ADGM [guide](#) emphasises that as a matter of principle, "*parties should go to the place where the relevant assets are located for the purpose of enforcement*". By removing the possibility of the ADGM being used as a conduit jurisdiction for enforcement in onshore Abu Dhabi, the Amendment Law has reduced the scope for future jurisdictional conflicts between the ADGM Courts and the Abu Dhabi Courts.

### **PROVIDING SERVICES TO ONSHORE ABU DHABI FROM THE ADGM**

The ADGM Founding Law has also been amended in a number of ways for firms setting up in the ADGM to access Abu Dhabi customers.

Firstly, the law now states that ADGM institutions may hold meetings and display, market and promote within Abu Dhabi. Previously, this was restricted to within ADGM. This provides more freedom to ADGM offices and other institutions to market their products and services to persons in Abu Dhabi and integrate more within the Abu Dhabi community. However, it must be noted that this is subject to Federal laws – including, for financial services, the licensing and other requirements from the UAE Securities and Commodities Authority (**SCA**) and the UAE Central Bank (**UAECB**) for the promotion of products and services within their competencies. There are also recent developments in SCA and UAECB rules and regulations to be aware of.

Secondly, the law also refers to the ADGM authorities supporting other Abu Dhabi licensing authorities and that ADGM entities may establish a branch, company or representative office in Abu Dhabi outside the ADGM without having to have a place of residence/office outside the ADGM. This is a positive codification formalising the dual-licensing regime which has previously been available for certain sectors with approval from the ADGM authorities and the Abu Dhabi Department of Economic Development, helping an ADGM entity to conduct services and provide products in Abu Dhabi, outside the ADGM, in a cost effective way. Again, this will be subject to Federal licensing requirements for firms to conduct their business outside the ADGM and is currently not available for financial services as a result.

Finally, the law contains an amendment to delete a previous restriction on ADGM firms "taking deposits from the State's market or dealing in UAE Dirhams" and replaces with a reference to deposit taking being subject to Federal law. This Dirham restriction is still contained in the UAE Federal Law on financial free zones<sup>2</sup> (the "**Free Zone Law**") and is reflected in the ADGM Financial Services Regulatory Authority Conduct of Business Rules (**COB Rules**), with no current plans for amendments we are aware of. We understand this change is more of a clarification rather than an expectation the Federal Dirham restriction will be amended soon.

The changes are overall positive for future business into Abu Dhabi and permit the flexible English law framework and 100% foreign ownership structures in the ADGM to continue to be developed for use in Abu Dhabi markets. However, in practice, we will need to wait on the implementation of consequential amendments to Federal laws to ensure ADGM firms in many sectors, such as financial services, can reduce the need for local licenses/approvals outside the ADGM.

## **NETTING**

Article 13 of the ADGM Founding Law has also been amended to confirm (what was already considered to be the case in the market) that foreign judgments and awards to enforce netting agreements are enforceable within the ADGM (subject to regulations set by the ADGM board of directors).

## **CONCLUSION**

The changes brought about by the Amendment Law are a positive development in enhancing the ADGM's dispute resolution framework and provide parties with greater certainty when opting in to the ADGM's jurisdiction. They also support ADGM entities being able to access Abu Dhabi business.

We continue to advise many of our financial institution and corporate clients on cross border issues and developing the right framework to do business – please do not hesitate to reach out.

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<sup>2</sup> Federal Law No. 8 of 2004.

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