

# The Arbitral Jurisdiction of the Abu Dhabi Global Market

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## Introduction

On 17 October 2018, the Abu Dhabi Global Market (“**ADGM**”) launched its arbitration centre.<sup>1</sup> The ADGM arbitration centre is fully operational and equipped with hearing facilities that are made available to parties resolving their disputes through mediation or arbitration. The launch of the ADGM arbitration centre further enhances the ADGM’s attractiveness as an arbitral seat, in addition to the establishment by the International Chamber of Commerce (“**ICC Court**”) of its Middle East representative office in ADGM. The arbitration centre facilities are not exclusive for arbitrations administered by the ICC nor to parties with a nexus to the ADGM. Parties, without any connection with the ADGM, may hold their arbitration or mediation hearings in the arbitration centre.

The ADGM is a financial free zone located in the capital of the United Arab Emirates. It is the first financial free zone in Abu Dhabi, and the second financial free zone in the UAE (in addition to the Dubai International Finance Centre (“**DIFC**”). Foreign parties are attracted to the ADGM for a number of reasons, including the ability to use English language to conduct proceedings in the ADGM Courts (as opposed to Arabic used in the court’s onshore), the direct application of English common law, and its adoption of the UNCITRAL Model Law on Arbitration.

Notwithstanding that the ADGM commenced operations four years ago (pursuant to Federal Decree No. 15 of 2013 and Abu Dhabi Law No. 4 of 2013), some confusion still exists concerning its arbitral jurisdiction. This article is intended to address any such misunderstandings. This article will discuss the ADGM judicial jurisdiction and arbitral jurisdiction, and its jurisdiction to enforce foreign awards and judgements.

## The ADGM’s Judicial Jurisdiction

Before analysing the ADGM’s scope of arbitral jurisdiction, it is useful to review the scope of its judicial jurisdiction.

The ADGM Courts are one of three authorities in the ADGM, with the ADGM Courts broadly modelled on the English judicial system. The ADGM Courts comprise of a Court of First Instance and

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<sup>1</sup> Although, it is not an arbitration institution, as some might assume.

a Court of Appeal. The ADGM Court of First Instance, which consists of three divisions, is the court designated to hear all arbitration-related matters in the ADGM.

Abu Dhabi Law No. 4 of 2013 (“**Founding Law**”) defines in part the scope of the ADGM Court’s jurisdiction. Article 13(6) of the Founding Law states that the ADGM Court of First Instance will solely consider and decide on matters concerning ADGM- related activities. In particular, the ADGM Court of First Instance has jurisdiction to decide on:

- (a) civil or commercial disputes involving the ADGM or any of the ADGM Authorities or establishments,
- (b) civil or commercial disputes arising out of or in connection to a contract or a transaction conducted in whole or in part in the ADGM,
- (c) appeals against decisions or procedures issued by ADGM authorities, and (d) requests, in which the ADGM Courts have the jurisdiction to consider.

In addition, Article 13(7) of the Founding Law states that the parties may agree to the jurisdiction of any court other than the ADGM Court of First Instance or agree to refer their disputes to arbitration in relation to (a) and (b) above.

Articles 13(6) 13(7) of the Founding Law should be read and construed in conjunction with ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (“**ADGM Court Regulations**”), as amended, which also governs the jurisdiction and procedures of the ADGM. Article 16(2) of the ADGM Court Regulations provide that the ADGM Court of First Instance may exercise jurisdiction conferred on it by:

- a) Article 13(6) and 13(7) of the ADGM Founding Law;
- b) Applicable Abu Dhabi Laws;
- c) The ADGM Court Regulations;
- d) Any other ADGM enactment; or
- e) Any written request by the parties to have the ADGM Court of First Instance determine their dispute.  
(Emphasis added)

Therefore, it is possible for parties to opt into the jurisdiction of the ADGM Court of First Instance, even where the transaction or dispute in question has no connection with the ADGM. The ADGM Courts may thus determine claims or disputes having no nexus to the ADGM, subject to party agreement.

### **ADGM’s Arbitral Jurisdiction**

It has been suggested by one prominent commentator that the ADGM's arbitral jurisdiction is more narrowly drawn than the DIFC (i.e., the underlying dispute must have same nexus to the ADGM).<sup>2</sup> That is not correct. The ADGM enacted the ADGM Arbitration Regulations in 2015 ("**ADGM Arbitration Regulations**"), which are closely modelled on the UNCITRAL Model Law on International Commercial Arbitration. The ADGM Arbitration Regulations govern arbitrations seated in the ADGM, as well as the enforcement of arbitral awards in the ADGM Courts, which act as the supervisory courts in respect of ADGM-seated arbitrations.

The ADGM Arbitration Regulations apply to arbitrations (a) seated in the ADGM, and/or (b) when the arbitration agreement expressly provides for the application of the ADGM Arbitration Regulations (Article 8 of the ADGM Regulations). The "seat" is the juridical seat of the arbitration designated (a) by the parties to the arbitration agreement, or (b) by the arbitral tribunal or any institution or person vested by the parties with powers in that regard (Article 33 of the ADGM Regulations).

Therefore, contrary to what has been suggested, the ADGM Arbitration Regulations establish the ADGM as a seat of arbitration for (a) disputes with a nexus to the ADGM, or (b) for disputes unconnected to the ADGM, where the parties choose the ADGM as the seat of arbitration. The parties may freely choose the ADGM as the seat of arbitration and the ADGM Arbitration Regulations as the procedural law of the arbitration.

### **ADGM's Jurisdiction to Enforce Foreign Awards and Judgements**

Foreign parties may also find the ADGM Courts as an attractive jurisdiction for enforcement of their foreign awards/judgments.

The ADGM Courts have signed two Memoranda of Understanding (MoU) with local and federal governmental bodies relating to cooperation in legal and judicial matters. The ADGM Courts have an MoU with Abu Dhabi Judicial Department (the government authority for judicial matters in the Emirate of Abu Dhabi), which facilitates judicial cooperation between the ADGM Courts and the Abu Dhabi Courts, especially in respect to the recognition and enforcement of judgments, decisions, orders and arbitration awards. As a result, the Abu Dhabi Courts have agreed to recognise and enforce ADGM judgements without re-examining the substance of the dispute.

In addition, the ADGM Courts entered into an MoU with the UAE Ministry of Justice titled "Cooperation in Legal and Judicial Matters". The MoU requires the parties "to take all necessary

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<sup>2</sup> See e.g., Gordon Blanke, "Free Zone Arbitration: The Mechanics" (Indian Journal of Arbitration Law, Volume 6, Issue 2) at p. 60, and Gordon Blanke, "Arbitrating in the ADGM: Some Further Thoughts and Considerations" (Kluwer Arbitration Blog, 2016) Available at <http://arbitrationblog.kluwerarbitration.com/2016/03/10/arbitrating-in-the-adgm-some-further-thoughts-and-considerations/> (Last Accessed on 22 October 2018)

measures that will ensure that enforcement of the ADGM Courts' judgements, and arbitration awards issued in ADGM may be sought before the federal courts in the UAE". The UAE's Federal Court system includes all Emirates except Dubai, Ras Al Khaimah and Abu Dhabi (which have their own court systems). Hence, the UAE Federal Courts have also agreed to enforce judgments and arbitral awards issued in the ADGM.

The UAE is a party to the New York Convention on the Recognition and Enforcement of Arbitral Awards 1958 ("New York Convention"), without any declarations or reservations. The ADGM is also bound by the New York Convention by virtue of the fact that it is part of the UAE. The ADGM Courts have also signed a number of international MoUs that provide for reciprocal enforcement of judgments. The ADGM Courts have concluded international MoUs with: (a) the Commercial Court, Queens Bench Division, England and Wales, (b) Supreme Court of New South Wales, (c) Supreme Court of the Republic of Singapore, (d) Federal Court of Australia, and (e) High Court of the Hong Kong special administrative region of the People's Republic of China.

Articles 170 of the ADGM Court Regulations provides that, where the UAE entered into an applicable treaty with a foreign country for the mutual recognition and enforcement of judgments, the ADGM Courts must (a) comply with the terms of such treaty, and (b) recognise and enforce judgments rendered by that foreign country. In the case where no such treaty exists, Article 171.1 of the ADGM Court Regulations provides that the Chief Justice of the ADGM Court may order that the courts of the foreign country be recognised as foreign courts (provided that the Chief Justice is satisfied that substantial reciprocity of treatment will be assured as regards the recognition and enforcement in that foreign country of the judgments of the Courts). Article 180 of the ADGM Court Regulations extends the application of Articles 170 and 171 to arbitral awards that are enforceable in the same manner as a court judgment in accordance with the applicable laws.

It remains to be seen whether as a result of the foregoing domestic and international memoranda, read in conjunction with the Founding Law and ADGM Court Regulations, parties may effectively utilise the ADGM as a jurisdiction to enforce foreign judgments and awards.

## **Conclusion**

It is unfortunate that there remains to be some confusion in relation to the scope of ADGM's arbitral jurisdiction. The ADGM Arbitration Regulations establish the ADGM as a seat of arbitration for (a) disputes with a nexus to the ADGM, or (b) for disputes unconnected to the ADGM, where the parties choose the ADGM as the seat of arbitration. Parties thus may freely choose the ADGM as the seat of arbitration and the ADGM Arbitration Regulations as the procedural law of the arbitration.