

The Reciprocal Enforcement of Judgments, Orders and Arbitral Awards by the ADGM Courts and Abu Dhabi Judicial Department: A Recent and Important Development

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On 11 February 2018, the Abu Dhabi Global Market Courts (“ADGM Courts”) and the Abu Dhabi Judicial Department (“ADJD”) signed a memorandum of understanding (“2018 MoU”) to allow the mutual and reciprocal recognition and enforcement of judgments, decisions, orders and ratified arbitral awards between the ADGM Courts and the Courts of the Emirate of Abu Dhabi (“the Abu Dhabi Courts”), which are overseen by the ADJD, without the need for the re-examination of the substance of the dispute on which they have been issued.

The 2018 MoU is a key step taken by the two courts to strengthen the vision of His Highness Sheikh Mansour Bin Zayed Al Nahyan, Deputy Prime Minister and Minister of Presidential Affairs, “to cooperate and integrate with the various government entities towards the enhancement of the competitive position of the Emirate of Abu Dhabi, and to provide excellent government services.” In his words, it is also wholly in accordance with Abu Dhabi’s “vision of justice and equality, integrity and transparency, and innovation and excellence in judicial services”.

Background

The 2018 MoU has been signed pursuant to Article 13(11) of Abu Dhabi Law No. 4 of 2013, which provides for the enforcement of judgments, decisions and orders and arbitral awards ratified by the ADGM Courts in competent entities with jurisdiction outside the ADGM in accordance with the procedure and rules adopted by those entities. This provision extends to include agreements for memoranda of understanding between the Board of Directors of the ADGM’s Court and the competent entities outside the ADGM. The 2018 MoU provides further clarity in terms of the specific processes for reciprocal enforcement, which Abu Dhabi Law No. 4 of 2013 did not cover.

In doing so, the 2018 MoU builds on the foundation laid down by an earlier MoU signed between the same parties in April 2016 (“the 2016 MoU”). This established a framework to create judicial cooperation procedures by both parties, specifically in respect to procedures for the reciprocal recognition and enforcement of judgments, decisions, orders and arbitration awards; the exchange of information; the creation of electronic services and communication between the court systems; and the delivery of education. In the words of the ADGM Courts’ Chief Justice, the 2016 MoU was intended to contribute to “achieving the highest level of judicial performance in our own courts consistent with best international practice.” The 2018 MoU provides a conclusive and more detailed framework for reciprocal enforcement and is undeniably a step forward from the 2016 MoU.

In signing the 2018 MoU, the ADGM Courts and ADJD have demonstrated their determination that litigants will have the clarity and guidance they need regarding the enforcement of judgments in the judicial system of the Emirate of Abu Dhabi. Echoing the purposes of the 2018 MoU, the accompanying press release states that the 2018 MoU is intended to “contribute to the objectives of the Government of Abu

Dhabi to enhance the international competitive position of the Emirate”, to “create an environment capable of attracting investment by the realisation of competitive indicators” and provide the business and investor community with the “clarity and guidance they need” regarding enforcement.

The reciprocal process of enforcement under the 2018 MoU

The stated purpose of the 2018 MoU between the Courts is to “formalise the agreed procedures for the reciprocal enforcement of their judgments, decisions and orders, and arbitral awards ratified or recognised by them, without re-examining the substance of the dispute on which they have been issued.” The requirements and procedures set out in the MoU are intended to encourage litigants to seek enforcement from the court in whose jurisdiction the subject of enforcement is situated, whether within the ADGM’s jurisdiction or within the wider Emirate.

The types of executory instrument covered by the 2018 MoU include all final judgments, judgments for expedited enforcement, and decisions and orders made by the ADJD or ADGM Courts. In addition, the judgments also include ratified or recognised arbitral awards rendered by the ADJD and ADGM Courts. Such arbitral awards are to have the same force as a judgment of either of the courts without the requirement of any further ratification or recognition by the other court. Mutual recognition and enforcement also extends to include court-approved settlement agreements (known as ‘memoranda of composition’) certified by either court.

For the enforcement of an Abu Dhabi Court-rendered judgment by the ADGM Courts, where the subject of enforcement is situated within the ADGM, an executory formula from the sending court in English must be affixed on the original judgment. The judgment creditor must submit an application to the ADGM Courts in accordance with the ADGM Courts’ Procedure Rules and Practice Directions. The enforcement judge at the ADGM Courts will then apply the enforcement procedures set out in the Procedure Rules without re-examining the merits of the original judgment.

For the enforcement of an ADGM Court-rendered judgment by the Abu Dhabi Courts, where the subject of enforcement is situated outside the ADGM but within the Emirate of Abu Dhabi, an executory formula from the ADGM Courts must be affixed on the judgment in Arabic. Mirroring the process outlined above, the judgment creditor must submit an application to the Abu Dhabi Courts subject to the applicable Abu Dhabi Courts’ rules and procedures. The enforcement judge in the Abu Dhabi Courts will then apply the enforcement procedures set out in Federal Law No. 11 of 1992 without re-examining the merits of the original judgment of the ADGM Courts.

The 2018 MoU also provides for deputising an enforcement judge from the respective Courts in instances where a judgment creditor registers a judgment issued in one Court for enforcement and where it requires actions or measures to be taken by the other Court. The Courts have agreed to assign an officer at each court to assist judgment creditors and to collaborate and liaise with the other court’s officers so as to avoid any duplication of enforcement actions. Collaboration between the ADJD and ADGM Courts extends further to an agreement to keep, provide and publish all information and statistics in relation to any referrals and direct applications made under the 2018 MoU.

Enforcement of Foreign Judgments

The question arises whether the 2018 MoU will enable the enforcement of foreign judgments by the Abu Dhabi Courts, without reopening the merits of the underlying dispute, where they have already been recognized by the ADGM Courts.

ADGM Court Regulations (e.g., Articles 170, 171 and 180 of chapter 10 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointment Regulations 2015) allow for the enforcement of foreign judgments and foreign arbitral awards to be recognised by the ADGM Courts provided that the UAE has entered into an applicable treaty with the country in which the foreign award was rendered. In the absence of such a treaty, it is only if the Chief Justice of the ADGM Courts is satisfied that the foreign courts, which

rendered the foreign judgment, have agreed to provide reciprocal treatment of recognition and enforcement for ADGM judgments, and having consulted Chairman of the Board, that he may direct that the courts of that foreign country be recognised foreign courts.

Likewise, the onshore Abu Dhabi Courts have been generally reluctant to enforce foreign judgments in the absence of an applicable international treaty for the reciprocal recognition and enforcement of judgments.

However, unlike the Abu Dhabi Courts, the ADGM Courts, like the DIFC Courts, have strong and developing international links, including with courts in England and Wales, Hong Kong, Australia and Singapore. The ADGM Courts have previously signed international MoUs with the Commercial Court, Queens Bench Division, England and Wales; Supreme Court of the Republic of Singapore; Federal Court of Australia; Supreme Court of New South Wales; and High Court of the Hong Kong special administrative region of the People's Republic of China. These international MoUs provide for enforcement of judgments of the relevant courts without re-examining the merits of their judgments when recognition suits relating to such judgments are filed before the ADGM Courts.

Hence, for a number of years, various paths have existed for the recognition of foreign judgments and arbitral awards by the ADGM Courts based on international treaties, agreements of reciprocity with recognised foreign courts or non-binding international MoUs without any re-examination of the merits of the dispute. The question remains whether the 2018 MoU will enable foreign judgments so recognized by the ADGM Courts to be enforced by the Abu Dhabi Courts, without re-examining the merits of the dispute, solely pursuant to the framework provided by the 2018 MoU (since foreign judgments are not expressly included in the definition of "ADGM judgments" in the 2018 MoU).

This question has added significance in light of recent decisions of the Joint Judicial Committee, set up by Decree 19 of 2016, that decides on conflicts of jurisdiction between the DIFC Courts and the Courts of the Emirate of Dubai. The status of the DIFC Courts as a so-called "conduit jurisdiction" is questionable, which will no doubt prompt parties to look closely at the ADGM Courts as an alternative gateway for the recognition and enforcement of foreign judgments by the onshore UAE courts.

Advances at the ADGM Courts

The ADGM is an international financial centre; it commenced operations on 21 October 2015. Established by UAE Federal Decree as a broad-based financial centre, the ADGM aims to position Abu Dhabi as a global centre for business and finance. It is intended to serve as a strategic link between the growing economies of the Middle East, Africa and South Asia, and the rest of the world. It is comprised of three independent authorities: the Registration Authority, the Financial Services Regulatory Authority and the ADGM Courts. It is envisioned to enable registered financial institutions, companies and entities to thrive and operate within an international regulatory framework based on the common law. The ADGM is the second financial free zone in the UAE to have a commercial and civil court based on the common law system operating in English. It is the first jurisdiction to apply directly the English common law and certain English statutes.

The 2018 MoU comes as the ADGM Courts rolls out an innovative new eCourts document handling and communication system. The eCourts platform permits the integrated use of videoconferencing facilities, so that hearings can be held remotely, and allows for the filing and management of all court documents including electronic evidence bundles for trial.

A copy of the MoU – signed by Lord Hope of Craighead, the ADGM Courts Chief Justice, as well as representatives from the ADJD and ADGM – is available at <https://www.adgm.com/media/256642/executed-mou-for-reciprocal-enforcement-between-adjd-and-adgm-courts-11022018.pdf>

Al Tamimi uniquely possesses the capability to litigate before both of the financial free zone courts and conduct litigation before the UAE Federal Courts and the courts of each individual Emirate. For further information on Abu Dhabi or arbitration, please contact John Gaffney (j.gaffney@tamimi.com). For further information on Dubai, please contact Peter Smith (p.smith@tamimi.com)