

Abu Dhabi Establishes English-Language Commercial Courts

by pdfLawUpdate -

John Gaffney - j.gaffney@tamimi.com - Abu Dhabi

Malak Nasreddine - m.nasreddine@tamimi.com - Abu Dhabi, UAE

October 2016

In 2013, the Abu Dhabi Government established the Abu Dhabi Global Market (“ADGM”), an international financial free zone in the heart of the UAE’s capital city. ADGM is comprised of three authorities, including the Abu Dhabi Global Market Courts (“ADGM Courts”). The ADGM Courts have recently commenced operations. The purpose of this article is to briefly introduce readers to the composition, structure and functioning of the ADGM Courts.

Overview

The ADGM Courts are common-law courts, based on the English court system. They form part of both ADGM and the Abu Dhabi judicial system. The Courts adjudicate civil and commercial disputes. The ADGM Courts thus offer a common law system in the midst of a predominantly civil law Middle East region. Moreover, English law will be directly applicable in the ADGM, making the ADGM the first jurisdiction in the Middle East to directly apply English law.

The ADGM Courts are located in the ADGM Building in Al Maryah Island, Abu Dhabi, although sittings and any other business may be conducted in any place in the world, i.e., hearings are not limited to the ADGM hearing rooms. Hearings may be conducted by video conference and will be available for real time viewing in ADGM Courts’ hearing rooms. This allows ADGM judges to manage cases with greater flexibility, expeditiously, efficiently and economically. ADGM Court hearings are fully open to the public; however, all arbitration-related proceedings are to be heard in closed court (unless all parties agree otherwise, or the Court is satisfied that the proceeding ought to be heard in open court).

The ADGM Courts are accepting cases electronically since becoming operational. The electronic and physical infrastructures for the conduct and hearing of cases are close to being finalised.

ADGM Court Structure

The ADGM Courts are comprised of a Court of First Instance and a Court of Appeal. The Court of First Instance consists of a Civil Division, Employment Division and Small Claims Division.

Legal Framework

The ADGM Courts’ legal framework comprises the ADGM Courts’ Regulations, a single unified statute, which are complemented by the ADGM Court Rules (“Rules”) and Practice Directions. The Rules comprise the Division and Jurisdiction Rules, ADGM Court Procedure Rules, Certification of Enforcement Agents Rules, Taking Control of Goods and Commercial Rent Arrears Recovery Rules, Judicial Discipline Prescribed Procedure Rules, Judicial Conduct Rules, and Rules of Conduct.

Judges of the ADGM Courts

The Judges of the ADGM Courts are drawn from around the world and led by the Chief Justice of

ADGM Courts, Lord Hope of Craighead KT.

The ADGM Courts Judges are the Right Honourable the Lord Mark Saville of Newdigate PC, the Honourable Kenneth Hayne AC, the Right Honourable Sir Peter Blanchard KNZM, William Stone SBS QC, and the Honourable Lord McGhie (who will preside over the Small Claims Division). The judges have significant experience in England & Wales, Scotland, Australia, New Zealand and Hong Kong. The judges may sit both in the Court of First Instance and the Court of Appeal. They may also act as arbitrators under ADGM's arbitration framework. ADGM Judges are required to be independent and impartial.

In addition to the foregoing judicial appointments, ADGM has appointed Linda Fitz-Alan as Registrar of the ADGM Courts in 2015. She was previously CEO and Principal Registrar of the Supreme Court of New South Wales.

Jurisdiction of the ADGM Courts

Court of First Instance

The Court of First Instance has jurisdiction over matters relating to:

- Civil or commercial cases and disputes involving
 - the ADGM;
 - any of ADGM's Authorities (which are the ADGM Registration Bureau, the Financial Services Regulatory Authority, and the ADGM Courts); or
 - any company or entity which is registered and licensed to operate within the ADGM;
- Lawsuits and civil or commercial disputes arising out of or relating to
 - a contract or a transaction conducted in whole or in part in the ADGM; or
 - to an incident that occurred in the ADGM;
- Any appeal against a decision or a procedure issued by the ADGM Authorities; and
- Any request which the ADGM Courts has the jurisdiction to consider under the ADGM Regulations.

In relation to the matters specified in (1.) and (2.) above, parties may specify in their commercial contracts and transactions that they agree to 'opt out' of the ADGM jurisdiction, and instead choose any other jurisdiction or agree to refer their disputes to arbitration. Conversely, parties with no nexus to the ADGM can also 'opt in' to the ADGM jurisdiction.

Civil Division

The Civil Division has jurisdiction over cases where the claim exceeds USD100,000. It also hears appeals in relation to judgments of the Small Claims Division and reviews decisions of the ADGM Authorities.

The Civil Division does not have jurisdiction over any claim or dispute:

1. Where the value of the claim or dispute is, or is less than, USD100,000;
2. Arising out of or in connection with family proceedings; and
3. Relating to employment matters.

Small Claims Division

The Small Claims Division has exclusive jurisdiction over:

- Claims and disputes with a value of USD100,000 or less;
- Disputes falling within Employment Division jurisdiction, where all parties have agreed in writing that the relevant claim or dispute is to be heard in or determined by the Small Claims Division.

Employment Division

The Employment Division of the Civil Division has exclusive jurisdiction over claims and disputes:

- Relating to the enforcement of rights and obligations under the Employment Regulations; and
- For the enforcement of any claim relating to employment matters other than the enforcement of any right or obligation under the Employment Regulations 2015.

The Employment Division does not have jurisdiction over any claim or dispute relating to the Civil and the Small Claims Divisions.

Court of Appeal

The Court of Appeal has jurisdiction (a) to consider appeals made against judgments or decisions issued by the Court of First Instance, and (b) to interpret any articles of the ADGM laws and regulations. There is no automatic right to appeal in respect of judgments issued by the Civil and Employment Divisions. A party must apply for permission to appeal the judgment, either to the Court of First Instance or Court of Appeal. In the case of a judgment issued by the Small Claims Division, an appeal can only be made on a question of law. The Court of Appeal's judgments are final and may not be appealed.

Types of cases the ADGM Courts may and may not hear

The ADGM Courts will hear the following types of cases:

- Commercial and contract disputes;
- Tort cases;
- Personal injury cases;
- Judicial review cases; and
- Application relating to the recognition and enforcement of arbitral awards.

The jurisdiction of the ADGM Courts is, of course, not unlimited. ADGM Courts *cannot* hear:

- Criminal cases;
- Family cases (i.e. matters relating to divorce, guardianship, alimony, personal status, and inheritance which are matters governed by Sharia).

Relief available to parties

The ADGM Courts may order a range of effective remedies in respect of disputes falling within their jurisdiction:

- The Courts have the power to order injunctions to restrain parties from acting in a position, in relation to which they are not entitled to act. The Court of First Instance may grant specific performance.
- The Court may award damages in addition to, or in substitution for, an injunction or specific performance.
- The Courts may appoint a receiver. The power to appoint a receiver by way of equitable execution will operate in relation to all legal estates and interests in real property.
- The Courts may order debtor-specific remedies. The Court may order goods to be returned to the debtor, or order an enforcement agent to pay damages for loss suffered by the debtor.
- The Courts have the power to grant relief against forfeiture for non-payment of rent.
- The Courts can order damages for personal injuries.
- In judicial review cases, the ADGM Courts may order mandatory, prohibiting or quashing orders, a declaration, or an injunction to restrain parties from acting in offices in which they are not entitled to act. (The Courts can also award damages, restitution or the recovery of a sum due.)

Rights of audience before the ADGM Courts

Any person may have a right of audience and appear before the Small Claims Division of the Court of First Instance, but such appearance is subject to compliance with the rules of conduct of the Courts.

Otherwise, in order to appear before the ADGM Courts, one must be a lawyer who has been practising for a continuous period of at least 5 years prior to appearing before the Court. Lawyers who have been banned or suspended as a result of disciplinary proceedings do not enjoy a right of audience. ADGM Courts have not instituted a registration system of legal practitioners as a pre-requisite for a right of audience, as is the case for the Dubai International Financial Centre Courts.

Online Services

Parties will be assisted with the ADGM Courts' electronic services, as soon as the e-services become fully implemented. ADGM Courts will offer a range of electronic services, including e-filing, e-case management and e-trials. ADGM Court e-services will include (a) e-filing for all documents, and the ability to conduct payments online, (b) communication between parties and ADGM Courts, and allowing lawyers to track their cases, and (c) e-trials, with access to electronic documents, audio visual remote connections, real time transcript and research capability.