

Abu Dhabi Global Market Establishes Arbitration Hearing Center

September 4, 2017

The Abu Dhabi Global Market (the “**ADGM**”) recently announced that it will be opening an arbitration hearing center during the first quarter of 2018. At the same time, the Paris-based International Court of Arbitration of the International Chamber of Commerce (the “**ICC Court**”) announced that it will be opening its first Middle East and North Africa (“**MENA**”) representative office within the ADGM in January 2018. This memorandum explains these new developments in greater detail and explores the likely consequences that they may have for arbitration in the UAE and the wider MENA region.

At the very least, it is anticipated that these developments will encourage parties based in Abu Dhabi to adopt ADGM-ICC arbitration in their contracts, considering the combination of a preeminent arbitration forum with a local seat and highly experienced judges acting as arbitrators.

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I. The ADGM

The ADGM is a financial center and free zone district located on Abu Dhabi's Al Maryah Island. It commenced operations in 2014 and is overseen by three independent authorities: (i) the Registration Authority; (ii) the Financial Services Regulatory Authority; and (iii) the ADGM Courts. The ADGM Courts adjudicate civil and commercial matters that arise within the ADGM and disputes where parties opt into the court's jurisdiction pursuant to section 16(2)(e) of the ADGM Courts Regulations and Rules.

The ADGM distinguishes itself from other free zone districts within the region by applying English common law directly, rather than attempting to codify aspects of the common law through legislation. Both the free zone districts of Dubai International Financial Centre (the "DIFC") and Qatar Financial Centre, each one with a longer presence in the region and its own arbitration hearing center, have adopted a codified approach.

II. New Arbitration Hearing Center

Once the ADGM Arbitration Hearing Center opens early next year, judges at the ADGM Courts will also be able to act as arbitrators at the Arbitration Hearing Center. The judges sitting in the ADGM Courts are among the most experienced and highly esteemed common law judges and include Chief Justice Lord Hope, who before joining the ADGM Courts served as the Deputy President of the Supreme Court of the United Kingdom from 2009 until his retirement in 2013. The ADGM Arbitration Hearing Center is expected to be fully digital in its operations and include video-conferencing facilities as well as advanced software for case preparation and presentation of evidence. In addition, the ADGM Arbitration Hearing Center has indicated that it will be offering training and accreditation courses on dispute resolution once it is established.

III. ICC MENA Representative Office

The ICC's plan to open a representative office within the ADGM will provide users within the MENA region with greater accessibility to the ICC Court. It is

expected that services will be provided in the Arabic language as well, which may encourage more local contracts to adopt the ICC Rules. Once the ICC Court representative office opens, it will be able to accept the registration of arbitration cases.

IV. Enforcement

The robustness of any arbitration framework depends heavily on the likelihood of recognition and enforcement of arbitral awards by the courts within the jurisdiction.

The ADGM Courts have enacted Arbitration Regulations based on the Model Law on International Commercial Arbitration published by the United Nations Commission on International Trade Law (the "UNCITRAL Model Law"), which is considered to be a widely accepted international standard for dispute resolution legislation. The ADGM Regulations limit the scope of court intervention in the arbitral process as well as the grounds for challenging an arbitral award, with no review permitted on the merits of an arbitral dispute. In addition, the ADGM has included a series of enhancements to the UNCITRAL Model Law that reflect international best practice or at least trends, including enhancing confidentiality as well as strengthening party autonomy in the arbitral process.

While both the DIFC and the ADGM have enacted arbitration laws based on the UNCITRAL Model Law, arbitration law onshore continues to be governed by the UAE Civil Procedure Law (Law No. 11 of 1992), which does not fully conform to the UNCITRAL Model Law. In particular, although the UAE onshore courts have generally adopted a pro-enforcement attitude, they have occasionally invoked the ground of procedural irregularity in a broad way to refuse enforcement of awards on the basis of comparatively minor procedural oversights.

Until recently, there was some confusion on whether the UAE Civil Procedure Law also applied to foreign arbitration awards. However, it has now been clarified that the requirements of the 1958 United Nations Convention on the Recognition and Enforcement of

Foreign Arbitral Awards (the “**New York Convention**”), to which the UAE acceded without reservation in 2006, are to be applied in relation to foreign arbitration awards. While the domestic courts apply the New York Convention, it has not been interpreted consistently, especially by the lower courts. For example, in 2016 the Dubai Court of Appeal refused to enforce an ICC award rendered in London, whereas this decision was later overturned by the Court of Cassation.

Where an arbitration award is ratified by the DIFC Courts, it is considered to be directly enforceable by the Dubai Court pursuant to the Judicial Authority Law (Law No. 12 of 2004). The Judicial Authority Law does not permit the Dubai Courts to review the merits of a DIFC enforcement order and it is given the same status as a judgement or order from the Dubai Courts. It is expected that the ADGM will adopt a similar legal framework in order to eliminate some of the uncertainties attending the enforcement of awards by the domestic UAE courts. The ADGM Courts have a memorandum of understanding with both the Abu Dhabi Judicial Department and Ministry of Justice with respect to reciprocal enforcement of their judgments, decisions and orders, including arbitral awards respectively ratified or recognized by them. It is expected that more detailed procedures and requirements for the reciprocal enforcement of ADGM Court judgments will be published, and that they will include a provision excluding re-examination of the merits of the judgments of either ADGM Courts or Abu Dhabi Courts upon enforcement.

As part of the wider efforts to bolster and streamline the arbitration framework within the UAE, there has been discussion of a draft Federal Arbitration Law that would conform the domestic laws to the UNCITRAL Model Law. However, progress on this front has been slow and, despite several reports since 2008 that the Federal Arbitration Law would be enacted imminently, it is still awaited.

V. Concluding Remarks

In light of the uncertainties present in the UAE’s domestic arbitration enforcement framework, the

ADGM Courts will need to adopt a reciprocal enforcement protocol with the Abu Dhabi Courts in order to preserve the advantages afforded under the ADGM Courts Arbitration Regulations and to appeal to local users with assets onshore in the UAE.

Almost a decade ago, the London Court of International Arbitration (the “**LCIA**”) entered into a joint venture with the DIFC. In recent years, it has become more common for contracting parties in the MENA region to select LCIA-DIFC arbitration in their English-law agreements. Considering that some parties have a preference for ICC Rules over LCIA Rules and that the ADGM system more closely follows English law, there may be a gradual shift toward using English ADGM law coupled with the ICC Rules in the coming years.

It is too early to predict how popular ADGM-ICC arbitration will become across the Gulf Cooperation Council countries and the wider MENA region. At the very least, it is expected that some contracting parties based in Abu Dhabi will begin to choose ADGM-ICC arbitration as a welcome combination of a preeminent arbitration forum with a local seat and experienced judges acting as arbitrators.

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