

Kluwer Arbitration Blog

The Abu Dhabi Global Market: An Arbitral Seat Open to All

John P Gaffney (Al Tamimi & Company) · Tuesday, May 14th, 2019

Introduction

The [Abu Dhabi Global Market](#) (“**ADGM**”) is a financial free zone in the United Arab Emirates. Foreign parties are attracted to the ADGM for a number of reasons, including its direct application of English common law, the ability to use English language to conduct proceedings in the [ADGM Courts](#), and its enhanced adoption of the UNCITRAL Model Law on International Commercial Arbitration (“**UNCITRAL Model Law**”) (see previous discussion [here](#)).

Further, the ADGM has recently opened an arbitration centre, which is 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 to all parties, including those registered in the ADGM, as well as to those with no connection with the ADGM.

Notwithstanding that the ADGM arbitration law was enacted in 2015, regrettably there appears to be some misunderstanding on the scope of its arbitral jurisdiction.

This article is intended to address such misunderstanding.

The Proper Scope of the ADGM’s Arbitral Jurisdiction

It has been suggested in a number of articles, including in a [previous Kluwer Arbitration Blog](#) by Dr Gordon Blanke, that the ADGM’s arbitral jurisdiction is more narrowly drawn than the DIFC (i.e., the underlying dispute must have some nexus to the ADGM).

Most recently, it was posited that:

“Unlike the case in the DIFC, future arbitrants cannot contract into the resolution by arbitration of any disputes in the ADGM: arbitrating in the ADGM requires a subject-matter nexus to the ADGM. This essentially means that arbitration in the ADGM is limited to (i) the resolution of civil

or commercial disputes involving the ADGM or any ADGM stakeholders (ie ADGM authorities or establishments) or to (ii) the resolution of disputes arising out of a contract or a transaction conducted in whole or in part in the ADGM or out of an incident that occurred in the ADGM. As a consequence, DIFC arbitration is an attractive option to all those that wish to arbitrate general commercial disputes in a common law environment in the Middle East.”¹⁾

There appears to be a misunderstanding. The [Arbitration Regulations](#) enacted in 2015 (“**Arbitration Regulations 2015**”), which govern arbitrations seated in the ADGM, represent an enhanced adoption of the UNCITRAL Model Law. Part 3 of the Arbitration Regulations 2015, which governs arbitration proceedings, applies to arbitrations “where the seat of the arbitration is the Abu Dhabi Global Market, or where an arbitration agreement applies these 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 (Seat of arbitration) of the Arbitration Regulations 2015 provides:

“The parties are free to agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be determined by (a) any arbitral or other institution or person vested by the parties with powers in that regard, or (b) the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties.”

Therefore, contrary to what has been suggested, the Arbitration Regulations 2015 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 (i) choose the ADGM as the seat of arbitration, or (ii) agree to the application of the ADGM Arbitration Regulations.

The foregoing, and rather self-evident, conclusion is underlined by Article 32 (Determination of rules of procedure) of the Arbitration Regulations 2015, which provides in sub-section (3):

“Unless otherwise agreed by the parties, the tribunal has the power to order a claimant to provide security for the costs of the arbitration. This power shall not be exercised on the ground that the claimant is (a) an individual ordinarily resident outside the Abu Dhabi Global Market, or (b) a corporation or association incorporated or formed other than in the Abu Dhabi Global Market, or whose central management and control is exercised outside the Abu Dhabi Global Market.” [Emphasis added]

As may be seen, the Arbitration Regulations 2015 thus contemplate that the parties to an arbitration seated in the ADGM or to which the Arbitration Regulations 2015 otherwise apply will not necessarily have a nexus to the ADGM. If the requirement of a nexus to the ADGM did exist, the highlighted passage in Article 32(3), above, would be unnecessary.

This is consistent with the scope of jurisdiction of the ADGM Courts, in respect of which 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.²⁾

Conclusion

It is regrettable that there remains to be some misunderstanding in relation to the scope of ADGM's arbitral jurisdiction. The Arbitration Regulations 2015 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. Thus, contrary to what has been suggested, parties with no "subject matter nexus" to the ADGM may freely choose the ADGM as the seat of arbitration and the ADGM Arbitration Regulations as the procedural law of the arbitration.

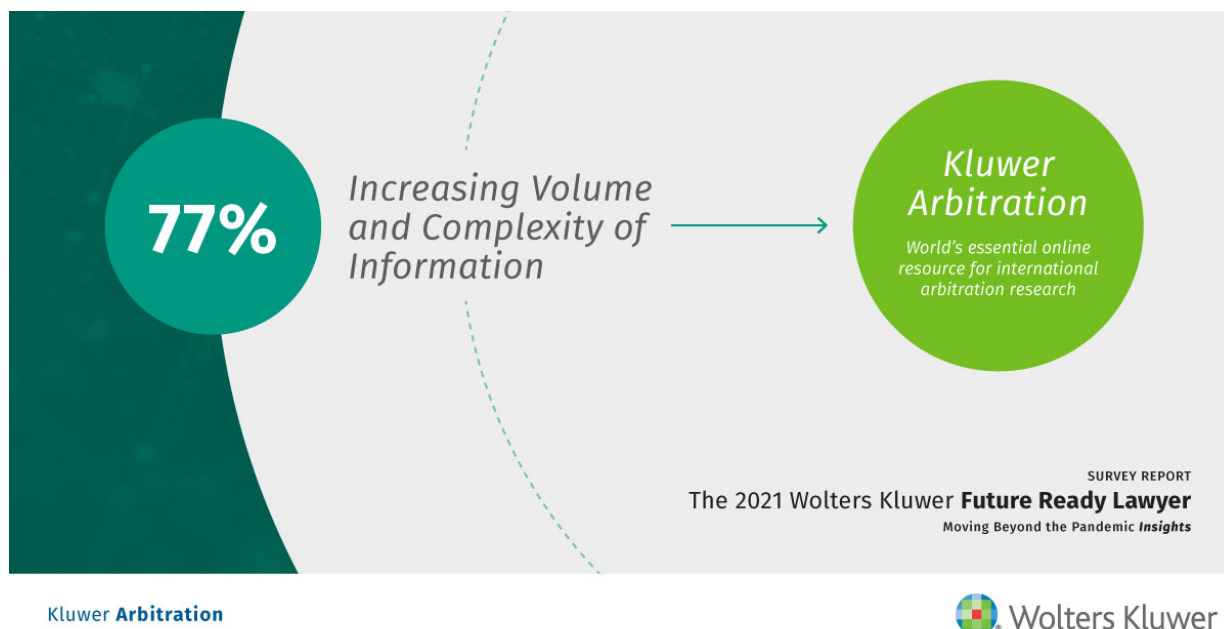
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References

- ↑1 Gordon Blanke, “Free zone arbitration in the DIFC and the ADGM”, *Arbitration International*, 2019, 0, 1-22, at 2.
- The ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (“ADGM Court Regulations”), as amended, which also govern the jurisdiction and procedures of the ADGM Courts (in addition to Abu Dhabi Law No. 4 of 2013 (“**Founding Law**”) which defines in part the scope of the ADGM Court’s jurisdiction), provides in Article 16 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.

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