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UAE MoJ and ADGM Courts adopt MoU on judicial co-operation: A world first?

Gordon Blanke (Blanke Arbitration LLC) · Wednesday, June 8th, 2016

On 15 May 2016, the UAE Ministry of Justice and the Abu Dhabi Global Market (ADGM) Courts, the courts of the newly established common law free zone carved out of the heart of Abu Dhabi (see my previous reporting [here](#)), entered into a Memorandum of Understanding concerning cooperation in legal and judicial matters with immediate effect from that date (for a full copy of the MoU see the official website of the ADGM at <https://www.adgm.com/media/71361/final-executed-mou-between-moj-and-adgm-courts.pdf>). This MoU is, no doubt, of historic significance, not only because it will ultimately lead to the likely establishment of a regime of full co-operation and mutual recognition between the offshore ADGM and the onshore or mainland courts, but also because it extends any co-operative endeavours to the courts of the UAE more generally. In other words, the geographic scope of the MoU – unlike the initial memoranda of co-operation between the Dubai International Financial Centre (DIFC) courts and the onshore Dubai Courts, which were confined to co-operation between the DIFC and mainland Dubai judiciaries only (see e.g. the 2009 Memorandum of Cooperation between the Dubai and DIFC Courts) – is unlimited in that it is intended to cover the courts of each and every Emirate: Tellingly, again unlike the corresponding DIFC memoranda adopted by the Dubai and DIFC Courts, the MoU is concluded by His Excellency Mohamad Hamad Al Badi Al Dhaheri in his capacity of Undersecretary of the UAE Ministry of Justice on the one hand and the Chairman of the ADGM and the Chief Justice of the ADGM Courts on the other; for the avoidance of doubt, the MoU is not concluded by the President of the Abu Dhabi Courts and as such not limited to Abu Dhabi, but truly federal in nature. As a result, the obligations of co-operation envisaged under the MoU weigh in at the federal, UAE level, and are not intended to develop their effects just and only within Abu Dhabi.

In this sense, the MoU promises something quite different from (or simply much more than) the regime of mutual recognition and co-operation that has been put in place by the Ruler of Dubai in the form of the Judicial Authority Law, which served the codification of the relevant DIFC memoranda of co-operation (see Law No. 12 of 2004 in respect of The Judicial Authority at Dubai International Financial Centre as amended and in particular its Art. 7): Whereas the free movement of DIFC Court judgments, orders and ratified awards within the meaning of the Judicial Authority Law stops at the borders of mainland Dubai, onward enforcement in other Emirates being effected with anecdotally uncertain outcomes in reliance on the terms of UAE Federal Law No. 11 of 1973 (Concerning the Organization of Judicial Relationships Amongst Emirates Members in the Federation), the MoU appears to pave the way for the direct enforceability of ADGM Court judgments, orders and arbitral awards before any other Emirati Courts and vice versa. Once fully

implemented, this system would dispense with the need to rely on Law No. 11 of 1973 and render any ADGM Court or other Emirati Courts' judgments, orders and awards directly enforceable in other Emirates or the ADGM respectively. This would really be quite revolutionary and essentially promote the full integration of the common law legal system of the ADGM into the UAE civil law system, which would surely be a world first!

Taking a closer look at the language of the MoU for present purposes, the more ambitious scope of the MoU becomes immediately apparent. The MoU hence lists as one of its many objectives *“to take all necessary measures that will ensure that enforcement of the ADGM Courts’ judgments and arbitration awards issued in ADGM may be sought before the federal courts in the UAE and implementing Articles 219 – 234 of Federal Law No. (11) of 1992 Concerning Civil Procedure to the enforcement of such judgments and arbitration awards without examining the substance of the dispute.”* (see MoU, Cl. 2(5)) The MoU further encourages the Parties to *“develop[...] and implement[...] legislation, protocols and/or guidelines for the requirements for reciprocal recognition and enforcement of UAE Federal and ADGM Courts’ judgments, decisions, orders and arbitral awards respectively in a manner that does not contradict the laws regulating the same”* (see MoU, Cl. 3(3)) and to *“facilitate[...] [...] judicial cooperation between the Parties, specifically with respect to agreed procedures of reciprocal recognition and enforcement of UAE Federal and ADGM Courts’ judgments, decisions, orders and arbitration awards respectively.”* (see MoU, Cl. 3(4)) Read together with Art. 8 of the ADGM Arbitration Regulations 2015 and Art. 12 of Law No. (4) of 2013 Concerning Abu Dhabi Global Market (see my previous reporting [here](#)), which arguably confer upon the ADGM Courts jurisdiction for the recognition and enforcement of arbitral awards in the ADGM irrespective of their provenance (whether domestic or foreign), these provisions support the nascent role of the ADGM Courts as a “host” or “conduit” jurisdiction for the enforcement of any domestic or foreign awards for onward execution anywhere in the UAE.

In addition, apart from creating the prospect of a true UAE-wide regime of mutual recognition and enforcement in the terms discussed above, the MoU envisages the establishment of the ADGM Courts as a contractual forum of choice for the resolution of international disputes: In the words of the MoU, *“[t]he Parties [...] have agreed to work [...] [towards] recogni[sing] the choice of the ADGM Courts by parties to a contract in or outside the UAE as a valid forum to settle any contractual disputes between such contractual parties, in accordance with the applicable laws”* (see MoU, Cl. 2(7)), hence shedding the ADGM Courts’ present limitation of their jurisdiction to disputes with an ADGM nexus only and bringing it in line with the DIFC Courts’ universal jurisdiction (provided party agreement) (see Judicial Authority Law, Art. 5(A)(2)).

Taking account of the full potential of the MoU, one senses that there are great times ahead for the ADGM Courts and stiff competition for the DIFC Courts in the struggle for primacy in which of the two courts will emerge as the preferred (conduit) jurisdiction for international investors.

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