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MoU on Judicial Co-operation Adopted Between Abu Dhabi Judicial Department and the ADGM Courts

Gordon Blanke (Blanke Arbitration LLC) · Friday, July 15th, 2016

In a somewhat surprising move, the Abu Dhabi Judicial Department, the government authority responsible for judicial matters in the Emirate of Abu Dhabi, and the Abu Dhabi Global Market (ADGM) Courts entered into a [Memorandum of Understanding concerning cooperation in legal and judicial matters dated 19 April 2016](#) .

This, at least, is the position, giving credence to the official website of the ADGM Courts, which recorded the posting of the MoU with effect from 19 April 2016 (although, according to this commentator, it has only been published much more recently; see <https://www.adgm.com/doing-business/adgm-courts/memoranda-of-understanding/>). Equally enigmatic is the confidentiality provision contained in the MoU, according to which “[n]either party may, without obtaining the prior written approval of the other party, reveal this Memorandum to the public” (see MoU, Cl. 8(2)), which would restrain the premature publication of the MoU. Neither is the MoU dated, nor does it bear signatures of the original signatories. Finally, the MoU predates the Memorandum of Understanding between the UAE Ministry of Justice and the ADGM Courts (the “UAE MoU”), which entered into effect on [15 May 2016](#), and was understood to deal with the legal and judicial co-operation of the UAE Ministry of Justice and the ADGM Courts for the benefit of all Emirati Courts.

The MoU raises a question mark over the true geographic scope of the UAE MoU: It is arguable in this context that the Courts of Dubai, Ras Al Khaimah, and Abu Dhabi do not fall within the scope of the UAE MoU given that those courts do, strictly speaking, not form part of the UAE federal court system. Hence, the Courts of those three Emirates will have to establish their own regime of judicial co-operation with the ADGM Courts, outside the framework of the UAE MoU. Whatever the correct position may be, it bears mentioning for present purposes that the MoU aims in particular at the “[f]acilitation of the judicial cooperation procedures of recognition and reciprocal enforcement of certified judgments, decisions, orders and arbitration awards in a manner that does not contradict the laws regulating the same.” (see MoU, Cl. 4(4)) This, one should think, will ultimately incentivize the Abu Dhabi and ADGM Courts to establish a regime of mutual recognition by analogy to the regime currently in place between the Dubai and Dubai International Financial Centre (DIFC) Courts, enabling the free movement of ratified arbitral awards between the offshore ADGM and onshore Abu Dhabi and vice versa. This will ultimately also facilitate the development of the ADGM into a host or conduit jurisdiction for the recognition and enforcement of domestic and foreign arbitral awards for onward execution against an award debtor’s assets onshore, again following the precedent of the [DIFC Courts](#) . This being said, there

presently persist natural subject-matter and geographic limitations on the ADGM Courts' proper jurisdiction to matters with an ADGM nexus. These limitations may, however, be removed through legislative amendment (as indeed happened previously within the context of the DIFC) in due course.

In any event, whatever the true ambitions of judicial co-operation between the Abu Dhabi and ADGM Courts, the MoU appears to place the initial steps of co-operation onto the right footing: the MoU envisages co-operation in the fields of law, academia, science, research and technology and the judiciary more specifically through e.g. common training courses and study groups and a regular exchange of mutual experiences to promote the efficiency of each other's judicial system (see MoU, Cls 2 and 4) and ultimately achieve, one should think, some form of mutual integration of the offshore common law and onshore civil law systems of the ADGM and Abu Dhabi (or the wider UAE?) respectively.

No doubt, exciting times ahead! Will the Dubai and Ras Al Khaimah Courts follow suit? Watch this space for further developments ...


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