



**BLANKE  
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**EMAC Breakfast  
Dubai Arbitration Week**

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**Navigating Arbitration in the UAE with  
Dr. Gordon Blanke**

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# The UAE Arbitration Landscape: Mainland v. Free Zone Arbitration



Mainland Arbitration	Free Zone Arbitration	
Onshore UAE (Abu Dhabi/Dubai)	Offshore DIFC	Offshore ADGM
<ul style="list-style-type: none"> <li>civil law jurisdiction</li> </ul>	<ul style="list-style-type: none"> <li>common law jurisdiction</li> </ul>	<ul style="list-style-type: none"> <li>common law jurisdiction</li> </ul>
<ul style="list-style-type: none"> <li>codified laws</li> </ul>	<ul style="list-style-type: none"> <li>self-contained statutes based on English law</li> </ul>	<ul style="list-style-type: none"> <li>Wholesale incorporation of all English statutory and common law by reference (<i>"little England &amp; Wales"</i>)</li> </ul>
<ul style="list-style-type: none"> <li>2018 UAE Federal Arbitration Law</li> </ul>	<ul style="list-style-type: none"> <li>2008 DIFC Arbitration Law</li> </ul>	<ul style="list-style-type: none"> <li>2015 ADGM Arbitration Regulations</li> </ul>
<ul style="list-style-type: none"> <li>Emirati court as curial court</li> </ul>	<ul style="list-style-type: none"> <li>DIFC court as curial court</li> </ul>	<ul style="list-style-type: none"> <li>ADGM court as curial court</li> </ul>
<ul style="list-style-type: none"> <li>DIAC, ADCCAC</li> </ul>	<ul style="list-style-type: none"> <li>DIFC-LCIA, DIFC-DIAC, EMAC</li> </ul>	<ul style="list-style-type: none"> <li>ADGM-ICC/ad hoc</li> </ul>
<ul style="list-style-type: none"> <li>bound by int'l enforcement instruments: NYC, GCC Convention, Riyadh Convention</li> </ul>		
<ul style="list-style-type: none"> <li>Free movement of judgments, orders, ratified awards (Art. 7, Judicial Authority Law)</li> <li>Joint Judicial Tribunal (<b>JT</b>) (Decree No. (19) of 2016)</li> </ul>	<ul style="list-style-type: none"> <li>MoU between ADJD and ADGM Courts re reciprocal enforcement of judicial instruments (Feb. 2018)</li> </ul>	



# Free Zone Arbitration: The Idea and Concept

- Free zones are geographic areas created by Ruler’s decree
- allow the development of certain service and industry sectors in designated parts of the UAE
- Two of these free zones, the **DIFC** (2004) and the **ADGM** (2015), are **judicial free zones**:
  - constitute **autonomous, stand-alone jurisdictions** in their own right (jurisdiction within a jurisdiction)
  - have their own **independent court system** and **English-speaking judiciary** (sourced from developed common law jurisdictions with significant arbitration experience) – DIFC/ADGM Courts form part of the UAE Courts (no hierarchy between them)
  - operate on a **English common law model** that is familiar to a majority of foreign investors
- can serve as a **seat of arbitration** in their own right
- adopt their own, standalone **arbitration laws**, based e.g. on the UNCITRAL Model Law
- facilitate the conduct of a **common law style arbitration** in the heart of the Middle East
- the DIFC and the ADGM serve as a **common law legal transplant** embedded in the civil law environment of onshore UAE (Dubai/Abu Dhabi): *“common law islands in a civil law ocean”* (M. Hwang SC, former Chief Justice, DIFC Courts)



# The Institutional Framework of UAE Arbitration: Onshore v. Offshore (Dubai)

DIAC (onshore)	DIFC-DIAC (offshore)	DIFC-LCIA (offshore)	EMAC (offshore)
<ul style="list-style-type: none"><li>• Onshore Dubai-based arbitration institution</li><li>• Administers its own set of <b>DIAC Rules</b> (revised, modernised set of rules presently pending adoption)</li><li>• Performs “<b>soft scrutiny</b>” of awards</li><li>• Cost Schedule: <b>non-refundable AED 5,000</b> Registration Fee</li><li>• Model clause available</li><li>• Defaults seat to (onshore) <b>Dubai</b></li><li>• Also operates as <b>appointing or challenge authority</b></li><li>• No recoverability of legal costs (<b>DCC No. 282/2012</b>)</li></ul>	<ul style="list-style-type: none"><li>• Offshore Dubai-based <b>representative office</b> of the DIAC in the DIFC</li><li>• Relies on the administrative functions of the onshore DIAC</li><li>• Presently contemplates adoption of <b>DIFC-DIAC Rules of Arbitration</b></li><li>• Defaults seat to <b>DIFC</b></li><li>• Signed <b>MoU with Dispute Resolution Authority</b> re enhancement of enforcement of DIAC awards in the DIFC</li></ul>	<ul style="list-style-type: none"><li>• Offshore Dubai-based arbitration institution</li><li>• DIFC-LCIA Rules, <b>modeled on LCIA</b> Rules</li><li>• <b>LCIA Court</b> in charge of institutional decision-making</li><li>• Accessibility to <b>LCIA panel of arbitrators</b></li><li>• <b>Hourly rates</b> (up to max. AED 2,500); <b>non-refundable AED 10,000 Registration Fee</b></li><li>• Express recoverability of <b>Legal Costs</b> (Art. 28.3, DIFC-LCIA)</li><li>• Model clause</li><li>• Defaults seat to <b>DIFC</b></li><li>• Also operates as an appointing authority</li></ul>	<ul style="list-style-type: none"><li>• <b>Maritime</b> arbitration centre</li><li>• Administers its own set of EMAC Rules</li><li>• Model clause available</li><li>• Defaults seat to <b>DIFC</b></li><li>• Express recoverability of <b>legal costs</b> (Art. 45.2, EMAC)</li><li>• Services a roster of <b>specialist maritime arbitrators</b></li></ul>

# The Institutional Framework of UAE Arbitration: Onshore v. Offshore (Abu Dhabi)



ADCCAC (onshore)	ADGM-ICC (offshore)	ADGMAC (offshore)
<ul style="list-style-type: none"> <li>• Onshore Abu-Dhabi based arbitration institution</li> <li>• Administers its own set of <b>ADCCAC Regulations</b> (revised in 2013)</li> <li>• Cost Schedule: <b>non-refundable AED 1,000</b> Registration Fee</li> <li>• Model clause available</li> <li>• Mostly chosen by AD-based governmental entities</li> </ul>	<ul style="list-style-type: none"> <li>• ADGM-based <b>representative office</b> of Paris-headquartered ICC</li> <li>• Administration of references under ICC Rules through the ICC in Paris (incl. <b>ICC Court</b>)</li> <li>• Shares premises with the <b>ADGMAC</b></li> <li>• Express recoverability of <b>legal costs</b> (Art. 38.1, ICC)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Arbitration logistics</b> provider and <b>arbitration venue</b> in the heart of the ADGM</li> <li>• Offers <b>state-of-the-art hearing facilities</b> for domestic and int'l arbitration</li> <li>• Is not an arbitral institution and does not administer arbitration proceedings</li> <li>• Has promulgated <b>ADGMAC Arbitration Guidelines</b> (September 2019)</li> </ul>

# The Legislative and Judicial Framework of UAE Arbitration: Onshore v. Offshore



	Mainland Arbitration	Free Zone Arbitration	
	Seated onshore (Abu Dhabi/Dubai)	Seated in DIFC	Seated in ADGM
<b>Curial Law</b>	<ul style="list-style-type: none"> <li>2018 FAL</li> </ul>	<ul style="list-style-type: none"> <li>2008 DIFC Arbitration Law</li> </ul>	<ul style="list-style-type: none"> <li>2015 ADGM Arbitration Regulations</li> </ul>
<b>Curial Courts</b>	<ul style="list-style-type: none"> <li>Emirati onshore courts (Dubai/Abu Dhabi)</li> <li>Competent CA chief justice, limited appeal to CC</li> <li>Civil law judiciary</li> </ul>	<ul style="list-style-type: none"> <li>DIFC CFI</li> <li>Appeal to DIFC CA</li> <li>Common law, arbitration-experienced judiciary from leading common law jurisdictions</li> </ul>	<ul style="list-style-type: none"> <li>ADGM CFI</li> <li>Appeal to ADGM CA</li> <li>Common law, arbitration-experienced judiciary from leading common law jurisdictions</li> </ul>
<b>Language</b>	<ul style="list-style-type: none"> <li>Arabic</li> </ul>	<ul style="list-style-type: none"> <li>English</li> </ul>	<ul style="list-style-type: none"> <li>English</li> </ul>
<b>PD 2/2015</b>		<ul style="list-style-type: none"> <li>enforcement of DIFC Court money judgments through arbitration [judmaward]</li> </ul>	
<b>PD 1/2017</b>		<ul style="list-style-type: none"> <li>cost sanctions against recalcitrant award debtors/security in the awarded amount</li> </ul>	

# The Procedural Acquis of UAE Arbitration: Onshore v. Offshore



	FAL 2018	DIFC AL 2008	ADGM AR 2015
<b>Capacity</b>	<b>Art. 4</b> <ul style="list-style-type: none"> <li>• Special authority (Art. 55(2) CPC)</li> <li>• Apparent authority (<b>DCC No. 1225/2018, 17 Mar. 2019; DCC Nos 107/2019 &amp; 293/2019</b>)</li> <li>• Legal successorship</li> </ul>	<b>Art. 12</b> <ul style="list-style-type: none"> <li>• No special authority</li> <li>• Apparent authority</li> </ul>	<b>Art. 16</b> <ul style="list-style-type: none"> <li>• No special authority</li> <li>• Apparent authority</li> <li>• Legal successorship</li> </ul>
<b>Arbitration agreement</b>	<b>Art. 5</b> <ul style="list-style-type: none"> <li>• Clause or stand-alone agreement</li> <li>• Ex ante and ex post</li> <li>• contract/tort</li> <li>• Incorporation by reference (“<i>so as to make clause part of contract</i>”) – <b>Art. 7(6), Model Law</b></li> </ul>	<b>Art. 12</b> <ul style="list-style-type: none"> <li>• idem</li> </ul>	<b>Art. 13</b> <ul style="list-style-type: none"> <li>• idem</li> </ul>
	<b>Art. 7</b> <ul style="list-style-type: none"> <li>• In writing (mandatory)</li> <li>• Exchange of correspondence/pleadings</li> <li>• By electronic message (email)</li> </ul>	<b>Art. 12</b> <ul style="list-style-type: none"> <li>• idem</li> </ul>	<b>Art. 13</b> <ul style="list-style-type: none"> <li>• idem</li> </ul>
<b>Arbitrability</b>	<b>Art. 4(1)</b> <ul style="list-style-type: none"> <li>• Only conciliable matters (<b>DCC No. 212/2019, 18 July 2019 &amp; DCC No. 285/2019, 25 July 2019</b>, excl. labour disputes)</li> </ul>	<b>Art. 12</b> <ul style="list-style-type: none"> <li>• No employment/consumer matters</li> </ul>	n/a



# The Procedural Acquis of UAE Arbitration: Onshore v. Offshore (cont'd)



	FAL 2018	DIFC AL 2008	ADGM AR 2015
<b>Separability</b>	<b>Art. 6</b> <ul style="list-style-type: none"> <li>Allows tribunal to examine validity of main contract</li> </ul>	<b>Arts 12 &amp; 23(1)</b>	<b>Art. 14</b> <ul style="list-style-type: none"> <li>idem</li> </ul>
<b>Formation of tribunal/default appointment</b>	<b>Art. 9</b> <ul style="list-style-type: none"> <li>Uneven number of arbitrators (public policy)</li> </ul>	<b>Art. 16</b> <ul style="list-style-type: none"> <li>Idem</li> </ul>	<b>Art. 17</b> <ul style="list-style-type: none"> <li>idem</li> </ul>
	<b>Art. 11</b> <ul style="list-style-type: none"> <li>Appointment procedure subject to party agreement</li> <li>Default-appointment by CJCA</li> <li>Curial court assisted by list of arbitrators from local institutions in default-appointment</li> </ul>	<b>Art. 17</b> <ul style="list-style-type: none"> <li>Idem (through CFI)</li> <li>No list approach</li> </ul>	<b>Art. 18</b> <ul style="list-style-type: none"> <li>Idem (through CFI)</li> <li>No list approach</li> </ul>
<b>Arbitrator qualifications</b>	<b>Art. 10</b> <ul style="list-style-type: none"> <li>Of age, natural person, of good standing, no nationality/gender requirement, impartial/independent</li> <li>Standing disclosure obligation</li> </ul>	<b>Art. 17(5)</b> <ul style="list-style-type: none"> <li>Nationality</li> <li>Impartiality, independence</li> <li>Contractual qualifications</li> </ul>	<b>Art. 18</b> <ul style="list-style-type: none"> <li>Nationality</li> <li>Impartiality, independence</li> <li>Contractual qualifications</li> </ul>

# The Procedural Acquis of UAE Arbitration: Onshore v. Offshore (cont'd)



Tribunal power	FAL 2018	DIFC AL 2008	ADGM AR 2015
<b><i>kompetenz-kompetenz</i></b>	<b>Art. 19</b> <ul style="list-style-type: none"> <li>Tribunal decides on own jurisdiction</li> <li>Only affirmative ruling on jurisdiction subject to appeal to CJCA</li> <li>Waiver implication?</li> </ul>	<b>Art. 23</b> <ul style="list-style-type: none"> <li>Idem, <b>but</b>:</li> <li>Waiver (<b>Art. 9</b>)</li> </ul>	<b>Art. 24</b> <ul style="list-style-type: none"> <li>Any ruling on jurisdiction subject to appeal to ADGM CA</li> <li>Waiver of right re failure to challenge (<b>Art. 10</b>)</li> </ul>
<b>To adopt interim/conservatory measures</b>	<b>Art. 21</b> <ul style="list-style-type: none"> <li>Order preservation of evidence</li> <li>Preserve goods/assets/funds for satisfaction of prospective award</li> <li>Maintain/restore status quo pending determination of dispute</li> <li>Pronounce prohibitory injunctive relief</li> <li>Order security for costs</li> </ul>	<b>Art. 24</b> <ul style="list-style-type: none"> <li>similar</li> </ul>	<b>Art. 27/Art. 32</b> <ul style="list-style-type: none"> <li>similar</li> </ul>
<b>To join third party</b>	<b>Art. 22</b> <ul style="list-style-type: none"> <li>After hearing the parties</li> <li>Provided third party is party to arbitration agreement</li> </ul>	n/a	<b>Art. 36</b> <ul style="list-style-type: none"> <li>idem</li> </ul>

# The Procedural Acquis of UAE Arbitration: Onshore v. Offshore (cont'd)



Tribunal power	FAL 2018	DIFC AL 2008	ADGM AR 2015
<b>To determine the rules of procedure</b>	<b>Art. 23</b> <ul style="list-style-type: none"> <li>• Subject to “<i>fundamental principles of litigation</i>”, incl. <b>oath-taking</b> requirement</li> <li>• Allowing parties to contract into rules of domestic/intern’l arbitral institutions</li> </ul>	<b>Art. 26</b> <ul style="list-style-type: none"> <li>• Parties at liberty to agree</li> <li>• In the event of party failure, Tribunal to decide as appropriate</li> <li>• Oath-taking: UAE public policy?</li> </ul>	<b>Art. 32</b> <ul style="list-style-type: none"> <li>• Oath-taking: UAE public policy?</li> </ul>
	<b>Art. 33</b> <ul style="list-style-type: none"> <li>• Rules of evidence, incl. admissibility, relevance and weight of evidence</li> </ul>	<b>Art. 26</b> <ul style="list-style-type: none"> <li>• idem</li> </ul>	<b>Art. 32</b> <ul style="list-style-type: none"> <li>• idem</li> </ul>
<b>To terminate/continue in default</b>	<b>Art. 32</b> <ul style="list-style-type: none"> <li>• To terminate where claimant fails to serve SoC with unjustified delay</li> <li>• To continue where respondent fails to serve SoDC or claimant reply to counterclaim</li> <li>• To draw necessary conclusions and make an award if a party fails to appear at a hearing, present documentary evidence or carry out any procedure without good cause</li> </ul>	<b>Art. 32</b> <ul style="list-style-type: none"> <li>• In the event of party default, proceed to render award</li> </ul>	<b>Art. 41</b> <ul style="list-style-type: none"> <li>• Largely similar</li> </ul>

# The Procedural Acquis of UAE Arbitration: Onshore v. Offshore (cont'd)



Tribunal power	FAL 2018	DIFC AL 2008	ADGM AR 2015
<b>To request evidential assistance from the curial court</b>	<b>Art. 36</b> <ul style="list-style-type: none"> <li>Assistance in the taking of evidence</li> <li>Summoning of witnesses</li> <li>Third-party document production</li> </ul>	<b>Art. 34</b> <ul style="list-style-type: none"> <li>Execution of request <i>“according to its rules on taking evidence”</i></li> </ul>	<b>Art. 43</b> <ul style="list-style-type: none"> <li>Execution of request <i>“according to its rules on taking evidence”</i></li> </ul>
<b>To determine the governing law</b>	<b>Art. 38</b> <ul style="list-style-type: none"> <li>To apply <i>“substantive rules of law it deems most closely connected to the dispute”</i></li> <li>Take into account the <i>“usages of trade applicable to the transaction and past practices between the parties”</i></li> </ul>	<b>Art. 35</b> <ul style="list-style-type: none"> <li>Terms of the contract, applicable law and <i>the “usages of the trade applicable to the transaction”</i></li> <li>Apply conflicts of laws rules</li> </ul>	<b>Art. 44</b> <ul style="list-style-type: none"> <li>Customs and trade usage</li> </ul>
<b>To extend time-limit for rendering final award</b>	<b>Art. 42</b> <ul style="list-style-type: none"> <li>Extend by six month</li> <li>Subject to party agreement for longer extension</li> <li>Unless curial court approval</li> </ul>	<b>n/a</b>	<b>n/a</b>

# The Procedural Acquis of UAE Arbitration: Onshore v. Offshore (cont'd)



Tribunal power	FAL 2018	DIFC AL 2008	ADGM AR 2015
<p><b>To assess costs</b></p> <p><b>(DCC No. 282/2012)</b></p>	<p><b>Art. 46</b></p> <ul style="list-style-type: none"> <li>• Tribunal fees/expenses, costs of Tribunal experts</li> <li>• Institutional/party costs?</li> </ul> <p><b>Art. 33(5)</b></p> <ul style="list-style-type: none"> <li>• <i>“The Parties may, at their own expense, avail of experts and attorneys.”</i></li> </ul>	<p><b>Art. 38(5)</b></p> <ul style="list-style-type: none"> <li>• Covers party and legal counsel costs</li> </ul>	<p><b>Art. 50(5)</b></p> <ul style="list-style-type: none"> <li>• Covers party and legal counsel costs</li> </ul>

# The Procedural Acquis of UAE Arbitration: Onshore v. Offshore (cont'd)



Curial power	FAL 2018	DIFC AL 2008	ADGM AR 2015
<b>To decide finally on arbitral jurisdiction</b>	<b>Art. 19(2)</b> <ul style="list-style-type: none"> <li>Where challenge of award affirming jurisdiction</li> </ul>	<b>Art. 23(3)</b> <ul style="list-style-type: none"> <li>Idem</li> </ul>	<b>Art. 26</b> <ul style="list-style-type: none"> <li>Where challenge of any Tribunal ruling on jurisdiction</li> </ul>
<b>To assist in the taking of evidence</b>	<b>Art. 36(2)</b> <ul style="list-style-type: none"> <li>Summon a witness for oral testimony or for document production</li> <li>Order sanctions against recalcitrant witness</li> <li>Direct a third party to produce evidentiary documents</li> </ul>	<b>Art. 34</b> <ul style="list-style-type: none"> <li><i>“according to its rules on the taking of evidence”</i></li> </ul>	<b>Art. 43</b> <ul style="list-style-type: none"> <li><i>“according to its rules on the taking of evidence”</i></li> </ul>
<b>To enforce interim measures and interim/partial awards</b>	<b>Art. 21(4)</b> <ul style="list-style-type: none"> <li>Order enforcement of a Tribunal-ordered interim measure</li> </ul> <b>Art. 39(2)</b> <ul style="list-style-type: none"> <li>Enforce interim awards issued by Tribunal</li> <li>Applicable to partial awards?</li> </ul>	n/a	n/a

# The Procedural Acquis of UAE Arbitration: Onshore v. Offshore (cont'd)



	FAL 2018	DIFC AL 2008	ADGM AR 2015
<b>Witnesses</b>	<b>Art. 33(7)</b> <ul style="list-style-type: none"> <li>Hearing in accordance with UAE law</li> <li>Oath-taking mandatory (DCC No. 364/2019)</li> </ul>	<b>Art. 31</b> <ul style="list-style-type: none"> <li>Oath-taking required (public policy)</li> </ul>	<b>Art. 39</b> <ul style="list-style-type: none"> <li>Oath-taking required (public policy)</li> </ul>
<b>Award</b>	<b>Art. 41(6)</b> <ul style="list-style-type: none"> <li>Electronic signature of award? Or “full” execution?</li> <li>Deemed rendered at the seat</li> </ul>	<b>Art. 38(3)</b> <ul style="list-style-type: none"> <li>Deemed rendered at the seat</li> <li>Full execution (public policy) required</li> </ul>	<b>n/a, but:</b> “Full execution” required?
<b>Use of modern means of communication</b>	<b>Art. 28</b> <ul style="list-style-type: none"> <li>Tribunal allowed to deliberate electronically</li> </ul> <b>Art. 33(3)</b> <ul style="list-style-type: none"> <li>Hearing held <i>“through modern means of communication without physical presence of the Parties”</i></li> </ul> <b>Art. 35</b> <ul style="list-style-type: none"> <li>Witnesses to testify remotely/video-conference etc.</li> </ul>	n/a	n/a

# Enforcement of Domestic and Foreign Awards: The Onshore/Offshore Enforcement Matrix



Competent Court	Domestic awards (issued in UAE)	Foreign awards	Foreign awards (issued abroad)			
			NYC (NYC/non-NYC awards) OA+OAA+CT	Riyadh OA + OAA + certificate of executory power of A	GCC	Bi-lateral
<b>UAE Courts</b> (Chief Justice CA, Cassation)  <b>O/CCA+CA+CT(A'bic)+CMin.</b>	Arts 55 & 57 FAL (simplified regime)	Art. 85-86, 88 CD 57/2018 (Execution Judge, 3-day enforcement order)	Arts III, IV and V (no reciprocity reservation)	Arts 25, 28 & 32	Arts 1,4 & 7	Egypt (2000) France (1992) Jordan (1999) Morocco (2006) Somalia (1982) Syria (2002)
<b>DIFC Courts</b> (First Instance, Appeal)  <b>O/CCA+O/CCAA+CT (Eng)</b>	Arts 42-44 DIFC AL; Art. 7 JAL; 24(1)(c) DIFC CL	Art. 42(1) DIFC AL; Art. 24(2) DIFC CL	Arts III, IV & V (no reciprocity reservation)	Arts 25, 28 & 32	Arts 1, 4 & 7	
<b>ADGM Courts</b> (First Instance, Appeal)  <b>O/CCA+O/CCAA+T (Eng)</b>	Arts 8, 55-57, ADGM AR; Art. 12, ADGM CL	Arts 8, 55-57, ADGM AR; Art. 12, ADGM CL	Arts III, IV & V Art. 55(b) & 55(2), ADGM AR (no reciprocity reservation)	Arts 25, 28 & 32	Arts 1, 4 & 7	



# Grounds for Challenge of Domestic Awards: Onshore v. Offshore



FAL 2018 (DCC No. 372/2019, 7 July 2019 – narrow construction)	DIFC AL 2008	ADGM AR 2015
<ul style="list-style-type: none"> <li>• absence of arbitration agreement, arbitration agreement is void or has lapsed (<b>Art. 53(1) FAL</b>)</li> <li>• lack of capacity (cf. Art. 4 FAL)</li> <li>• Party’s failure to present case due to lack of notice of arbitration, for violation of due process or <b>any other reason outside that Party’s control</b></li> <li>• <b>Tribunal’s failure to apply the chosen governing law</b></li> <li>• composition/ appointment of Tribunal not in accordance with FAL/ Parties’ agreement</li> <li>• <b>procedural irregularities impacting the award or award rendered out of time</b></li> <li>• <i>extra petita</i> (partial nullification)</li> <li>• <b>ex officio grounds:</b> non-arbitrability; violation of UAE public order</li> </ul>	<ul style="list-style-type: none"> <li>• incapacity of a party to the arbitration agreement or invalidity of the arbitration agreement under the relevant law</li> <li>• Party’s failure to present case due to lack of notice of arbitrator or arbitration or was otherwise unable to present case</li> <li>• <i>extra petita</i> (partial nullification)</li> <li>• composition/ appointment of Tribunal not in accordance with DIFC AL/ Parties’ agreement</li> <li>• <b>ex officio grounds:</b> non-arbitrability; violation of UAE public order</li> </ul>	<ul style="list-style-type: none"> <li>• incapacity of a party to the arbitration agreement or invalidity of the arbitration agreement under the relevant law</li> <li>• Party’s failure to present case due to lack of notice of arbitrator or arbitration or was otherwise unable to present case</li> <li>• <i>extra petita</i> (partial nullification)</li> <li>• composition/ appointment of Tribunal not in accordance with ADGM AR/ Parties’ agreement</li> <li>• award has not yet become final and binding or has been set aside</li> <li>• <b>ex officio grounds:</b> non-arbitrability; violation of UAE public order</li> </ul>



# The Onshore/Offshore Area of Free Movement

- Achieve the **full functional integration** of the offshore common law free zones and the onshore civil law judicial/legal system through:

## DIFC-Dubai: Art. 7 JAL (Execution)

- the subject award must be **final and executory**
- No review on the merits (*“the execution judge may not reconsider the merits [of the order for enforcement]”*)
- Apposition of the **executory formula**: *“Authorities must take the initiative to enforce this document and assist in implementing it even forcefully whenever requested to.”* (together with execution letter to be filed with execution judge)
- **Official translation** into Arabic/English

## ADGM-Abu Dhabi: ADJD-ADGM MoU

- Facilitate enforcement of other court’s ratified awards *“without re-examining the substance of the dispute on which they have been issued”* (Cl.2)
- A *“ratified or recognised arbitral award by ADJD or ADGM Courts has the same force as a judgment of either of the courts and therefore does not require any further ratification or recognition by the other court”* (Cl. 5(a)(ii))
- Apposition of **executory formula**: *“[t]he authorities and competent bodies must proceed to execute this instrument and to carry out the requirements thereof even by force if so requested”*
- **Legal translation** of ratified award into Arabic/English

- Ensures **free movement of judicial instruments**, including ratified awards, between **onshore and offshore** courts, putting in place a **system of mutual recognition of judicial instruments onshore/offshore** without a re-examination on the merits



## The Onshore/Offshore Area of Free Movement (cont'd)

- Builds on the **mutual trust between the onshore and offshore courts**
- Constitutionally speaking, the onshore and offshore courts form part of the same family of UAE courts, no judicial hierarchy existing between them and both are subject to UAE public policy in the enforcement process)
- Consider **pan-UAE regime of mutual recognition and enforcement onshore/offshore** (MoU between UAE Ministry of Justice and ADGM Courts, May 2016)
- The onward enforcement of an onshore Dubai court order for the enforcement of ratified DIFC awards will proceed under Art. 11 of **UAE Federal Law No. 11 of 1973** (Concerning the Organization of Judicial Relationships Amongst Emirates Members in the Federation), possibly the subject award qualifies for direct enforcement before any Emirati court:

*“The decisions of the arbitrators issued in one of the Emirates shall be executable in any other Emirate member of the Federation. The juridical body being demanded to carry out the execution cannot reinvestigate the same incident concerning which the decision of the arbitrators was issued.” (Art. 13)*

- **Conflicts of jurisdiction** between onshore and offshore courts (e.g. parallel challenge and enforcement action of domestic, non-DIFC award before Dubai/DIFC Courts) are addressed by the **Dubai-DIFC Joint Judicial Tribunal (JT)** (established by Ruler’s Decree No. 19/2016, composed of Dubai/DIFC Court judges): **First-seized rule?** (cf. Art. 54 FAL – 30-day moratorium)



# The DIFC and ADGM as Conduits

- Both the DIFC and the ADGM Courts may serve as a **host** or **conduit jurisdiction** for the enforcement of domestic non-DIFC/ADGM awards of foreign awards for onward execution against assets of an award debtor in onshore Dubai/Abu Dhabi without an offshore geographic nexus (**even absent any assets of the award debtor in the ADGM/DIFC**: ARB 003/2013 – *Banyan Tree v. Maydan*, DIFC CFI, 2 April 2015; Case No. XX – (1)X1 (2)X2 v. (1) Y1 (2) Y2, DIFC CFI, 29 July 2015 (domestic); ARB 002/2013, DIFC CFI, 2014 (foreign))

## Dubai-DIFC: Art. 7 JAL

- Wide enforcement powers/obligations under the DIFC AL with respect to “[a]n *arbitral award*, irrespective of the State or jurisdiction in which it was made” (**Art. 42(1), DIFC AL**)
- Art. 7 JAL also contemplates *execution* of ratified awards “where the subject matter of execution is situated outside the DIFC” (**Art. 7(2) JAL**)
- Art. 5(A)(1)(e) JAL** confers “exclusive jurisdiction” on the DIFC Courts read together with **Art. 8(2) DIFC CL**
- Typically in situations where an award debtor has assets both inside and outside the DIFC (ARB 002/2013; JT – *Assas v. Fius*, Cassation No. 6/2017) or where an award debtor’s assets come into the jurisdiction of the DIFC (CA-005-2014, DIFC CA, 3 Nov. 2014)

## Abu Dhabi-ADGM: ADGM AR/ADJD-ADGM MoU

- Wide enforcement power/obligations under ADGM AR with respect to any “*arbitral awards which are sought to be recognised and enforced in the [ADGM], irrespective of the State or jurisdiction in which they are made*” (**Art. 55(1)(c), ADGM AR**)
- Ratification/enforcement procedure under the ADJD-ADGM MoU applies “where the subject of enforcement is situated within/outside ADGM” (**Cls 6 & 11**)
- Recognition and enforcement of LCIA NYC award despite absence of any geographic nexus with ADGM: ADGMCFI-2019-008 - *A4 v. B4* [2019] ADGMCFI 0007, 8 Oct. 2019

## The DIFC and ADGM as Conduits (cont'd)

- See **Case No. 1619/2016**, Dubai CFI, 15 Feb. 2017 denies DIFC Court's status as conduit in *Banyan Tree* on the basis of Dubai Court's general jurisdiction and that DIFC Court's jurisdiction criteria not met (no DIFC nexus), **but**:
  - no general jurisdiction of Dubai courts
  - onshore/offshore courts are of equal status (absent any judicial hierarchy)
  - each court is competent to determine its own jurisdiction (on the basis of own laws)
  - no requirement of DIFC nexus under DIFC law for DIFC Courts' competence to hear actions for recognition and enforcement of domestic or foreign awards
  - no public policy violation (Case No. XX – (1)X1 (2)X2 v. (1) Y1 (2) Y2, DIFC CFI, 29 July 2015: *“it is public policy in the whole of the UAE not to apply the CPC within the DIFC”*)
  - the DIFC Courts' status as a conduit does not violate the UAE Constitution (ARB 001/2014 – (1) X1 (2) X2 v. (1) Y, DIFC CFI, 5 Jan. 2014)
- Enhances **choice of enforcement fora** for both domestic and foreign arbitral awards in the UAE (**forum shopping between onshore and offshore**)
- Allows the circumvention of **less tested local (onshore) enforcement process**

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