

Guide to litigation in the DIFC Courts and the ADGM Courts



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Legal landscape of the DIFC courts and the ADGM courts

Overview of the DIFC Courts

The Dubai International Financial Centre (“**DIFC**”) is a free zone in Dubai, United Arab Emirates (“**UAE**”), designed to be a financial hub with its own independent regulatory and legal framework for civil matters. The DIFC itself was established pursuant to UAE Federal Decree No. 35 of 2004. The DIFC Courts were then established by way of Dubai Law No. 9 of 2004, together with Dubai Law No. 12 of 2004 that governs the judicial authority of the DIFC. The DIFC judiciary is diverse and consists of judges from Australia, England and Wales, Malaysia, Scotland, and the UAE.

The DIFC Courts consist of three courts:

1. Small Claims Tribunal (“**SCT**”)
2. Court of First Instance (“**CFI**”); and
3. Court of Appeal (“**CoA**”).

The SCT

The SCT was established in 2007 and hears three types of claims:

1. Where the value of the claim is below AED500,000; or
2. When the claim relates to the current or former employment of a party, exceeds AED500,000 and the parties agree in writing for the dispute to be heard by the SCT; or
3. Where the claim is not employment related, does not exceed AED1 million, and the parties agree in writing that it be heard by the SCT. This election can be made in the contract between the parties or at a later stage.

The CFI

The CFI has 4 divisions: Civil & Commercial Division, Technology & Construction Division, Arbitration Division and Digital Economy Court Division.

The CFI has exclusive jurisdiction over any civil or commercial cases related to the DIFC where:

1. Civil or commercial claims to which the DIFC “*or any of the authorities, institutions of the Centre or licensed institutions thereof are a party*”;

2. Civil or commercial claims arising from a contract finalised or performed within the DIFC;
3. Civil or commercial claims arising from a transaction that has been performed within the DIFC and is related to DIFC activities;
4. Appeals against decisions made by the DIFC; and
5. Any claim that the Courts have jurisdiction in accordance with DIFC Laws and Regulations.

The DIFC is also an “opt-in” jurisdiction which means the CFI can hear cases where the parties to a contract agree that the DIFC Courts have jurisdiction or where the parties elect for a dispute to be heard by the DIFC Courts once it has arisen. Disputes are heard by one judge. The DIFC Courts also permit a party to be joined to proceedings even where the joined party would not otherwise be subject to the jurisdiction of the DIFC Courts, if the DIFC Courts consider the party to be a necessary and proper party to the dispute.

The CoA

The CoA is the highest court in the DIFC Courts system. Each dispute is heard by 3 judges. The CoA has exclusive jurisdiction over:

1. Appeals on Orders or Judgments made by the CFI; or
2. Interpretation of any articles of the DIFC’s laws based on the request of any DIFC bodies or establishments (provided the establishment obtains leave from the Chief Justice).

Overview of the ADGM Courts

The Abu Dhabi Global Market (“**ADGM**”) is a free-zone in Abu Dhabi, UAE, designed to be a financial hub with its own independent regulatory and legal framework for civil matters similar to that of the DIFC in Dubai. The ADGM itself was established in October 2015 by way of Abu Dhabi Law No. 4 of 2013 and expanded its jurisdiction to Al Reem Island in April 2023 by way of Cabinet Resolution No. 41 of 2023. The ADGM judiciary consists of judges from various common law jurisdictions such as Australia, England and Wales, Hong Kong, New Zealand, and Scotland.

The ADGM Courts apply English law and precedent directly in the ADGM in contrast to the DIFC Courts that have an independent legal framework that allows them to depart from English law. This provides for legal certainty and predictability in the ADGM notwithstanding its relatively recent establishment. The ADGM Courts are also the world’s first digital courts, embracing technology and innovation to provide a seamless experience.

The ADGM Courts consist of two courts:

1. CFI; and
2. CoA.

The CFI

The CFI has 3 divisions: Small Claims Division, Employment Division, Commercial and Civil Division

The CFI has exclusive jurisdiction over any civil or commercial cases related to the ADGM in relation to:

1. Civil or commercial cases and disputes involving the ADGM or any of the ADGM’s Authorities or any of the ADGM’s Establishments;
2. Lawsuits and civil or commercial disputes arising out of or relating to a contract or a transaction conducted in whole or in part in the ADGM or to an incident that occurred in the ADGM;
3. Any appeal against a decision or a procedure is issued by any of the ADGM Authorities according to the ADGM Regulations; and
4. Any request which the Global Market Courts has the jurisdiction to consider under the ADGM Regulations.

The CoA

The CoA is the highest court in the ADGM Courts system. Each dispute is heard by 3 judges. The CoA has exclusive jurisdiction over:

3. Appeals on Orders or Judgments made by the CFI; or
4. Interpretation of any articles of the ADGM’s laws based on the request of any ADGM bodies or establishments (provided the establishment obtains leave from the Chief Justice).

Commencing a Claim

The Rules of the DIFC Courts (“**RDC**”) govern claims in the DIFC Courts. The ADGM Court Procedure Rules (“**ADGM CPR**”) govern claims in the ADGM Courts. Failing to comply with the requirements in these may result in unnecessary delay and costs or risk the claim being rejected in its entirety.

DIFC Courts

If a claim is to be brought before the SCT, the parties need to request a filing form (Form P53/01) from the Registrar. In the claim form, the claimant must set out the reasons for the remedy sought.

Form P7/01 is used to commence a Part 7 Claim.

A Part 7 Claim is used for all claims in the DIFC Courts unless the claim requires a specific type of form (such as the SCT Form or the Part 8 Form).

Form P8/01 is used to commence a Part 8 Claim.

A Part 8 Claim is used where a claimant believes the claim is unlikely to involve a substantial dispute of fact or where a rule or practice direction permits or requires the use of the Part 8 Form.

A Part 43 Arbitration Claim needs to be commenced using Form P43/01. This form is used for any arbitration-related matters or any applications seeking relief in relation to pending arbitration proceedings in the DIFC.

A claimant needs to ensure they file the relevant form and pay the filing fee to commence a claim successfully.

ADGM Courts

A different form must be used when commencing proceedings in the ADGM depending on the nature of the claim:

1. A claim must be filed using Form CFI 1 unless it is a small claim, an employment dispute, a judicial review claim, an arbitration claim, or a matter that does not involve substantive disputes of fact.
2. A small claim is a claim for USD100,000 or less and not an employment dispute. A small claim must be initiated using Form CFI 2.
3. An employment dispute must be commenced using Form CFI 3.
4. A judicial review claim must be commenced using Form CFI 4.
5. An arbitration enforcement claim must be commenced using Form CFI 5.
6. A simplified claim that is unlikely to involve a substantive dispute of fact must be filed using Form CFI 6.

A claimant needs to ensure they file the relevant form and pay the filing fee to commence a claim successfully.

Service

It is extremely important for a party that has commenced a claim in the DIFC Courts or the ADGM Courts to serve the claim as per the requirements in the RDC and the ADGM CPR. Where service is defective, there may be minor issues such as delays or more serious consequences such as the annulment of an arbitral award or judgment (where enforcement of an arbitral award is sought).

RDC Part 9 and ADGM CPR Part 4 codify the requirements for effective service in the DIFC and ADGM Courts. The requirements for the DIFC Courts depend on the method of service the claimant elects to use and whether service is to be effected within the DIFC, outside the DIFC but within the UAE, or outside the UAE. The same factors are taken into account for the requirements for the ADGM Courts, however, as for location, the ADGM Courts have different requirements dependent on whether service is to be effected within the ADGM, outside the ADGM but within Abu Dhabi, or outside Abu Dhabi.

Permission from the DIFC Courts or ADGM Courts to serve outside the DIFC and ADGM respectively is not required (RDC 9.53 and ADGM CPR 23). A claimant can elect to serve via courier, by hand, fax, or another electronic method. Once a party serves the claim form, it then needs to confirm service to the court by filing a certificate of service that confirms details such as when, how, and where service took place.

Despite the strict requirements for service, the DIFC Courts and ADGM Courts have discretion to waive certain requirements where a party demonstrates it has done everything in its power to effect service. The DIFC Courts and ADGM Courts might order for service to be effected via an alternative method (such as SMS or via newspaper articles) (RDC 9.31 – 9.33 and ADGM CPR 19) or dispense of the requirement for service altogether (RDC 9.34 – 9.35 and ADGM CPR 20). However, such waivers are not guaranteed. Therefore, parties should always make every effort to abide by the requirements of the RDC and ADGM CPR to ensure that service is effective.

Contesting Jurisdiction

A defendant that wishes to contest the jurisdiction of the DIFC Courts must file an acknowledgement of service, indicating in the relevant section of the form that they intend to do so. A defendant then must file a jurisdictional objection within 14 days using an application form.

A defendant that wishes to contest the jurisdiction of the ADGM Courts must file an acknowledgement of service. A defendant then must file a jurisdictional objection within 28 days of the service of the claim.

Generally, the DIFC Courts and the ADGM Courts adopt an expansive approach to their jurisdictional scope and therefore have a very high threshold for successful jurisdictional objections.

Default Judgment

A claimant can file an application to request a default judgment pursuant to Part 13 of the RDC or ADGM CPR 39 to 41. A default judgment can be obtained where the defendant fails to file an acknowledgment of service or a defence within the timeframe specified by the RDC. In its application for default judgment, the claimant must provide the DIFC Courts with evidence that the claim is eligible for a default judgment under the RDC. Pursuant to RDC 13.22, the DIFC Courts require that the applicant proves that the claim form was properly served on the defendant and that that the relevant period for filing of an acknowledgment of service or defence has expired without the defendant doing so. Whilst the ADGM CPR does not set out the requirements for a default judgment application, it would be advisable to include the information required by the DIFC Courts.

Applications (Part 23) and Interim and Conservatory Measures

The DIFC Courts and ADGM Courts have wide discretion to award interim remedies including but not limited to the following:

1. Interim injunctions;
2. Interim declarations;
3. Property preservation and inspection orders;
4. Orders for the sale of property;
5. Freezing orders;
6. Disclosure and search orders; and
7. Interim payment orders.

The RDC and ADGM CPR includes specific requirements for applications for the above remedies.

DIFC Courts

A party seeking any DIFC Court order must file a Part 23 Application Form. Generally, an application needs to be supported by evidence verified by a statement of truth (for example, by way of a witness statement or affidavit).

ADGM Courts

A party seeking an ADGM Courts interim remedy for claims that are not small claims must file one of two types of forms:

1. Form CFI 12 for any supplication notices generally; or
2. Form CFI 12A for pre-claim interim remedies.

Settlement and Without Prejudice Offers

RDC 1.6 codifies the overriding objective which requires the DIFC Courts to deal with cases justly. This includes ensuring parties are on an equal footing, ensuring the case is dealt with expeditiously and fairly, saving expense, dealing with cases in a way that is proportionate, for example, to the claim value and the complexity of the issues. Parties are also required to assist the DIFC Courts to achieve the overriding objective. Consequently, the DIFC Courts encourage parties to settle their disputes where possible.

ADGM CPR 2.2 codifies the overriding objective of the ADGM Courts which seeks to establish a system of civil justice that is accessible, fair, and efficient, discouraging unnecessary disputes over procedural matters. Consequently, the ADGM Courts encourage parties to settle their disputes where possible, much like the DIFC Courts.

A party can make a Part 32 offer under the RDC or a Part 18 offer under the ADGM CPR which permits parties to settle claims (excluding costs) in an amicable manner. By default, a Part 32/Part 18 offer is made on a “without prejudice save as to costs” basis, meaning that it cannot be referred to or used during the actual legal proceedings until the point at which costs are being awarded. A Part 32/Part 18 offer can be made throughout the proceedings to encourage a settlement that avoids the additional time and costs of a lengthy litigation. There is also a strategic advantage to making a Part 32/Part 18 offer. If a Part 32/Part 18 offer is rejected and the final judgment is the same as or more favorable to the party making the offer than their Part 32/Part 18 offer, the court may penalise the party that rejected the offer in its decision on costs.

Enforcement

The process for enforcing a local (i.e., a judgment issued by the DIFC Courts or Dubai Courts) versus a foreign judgment (i.e., a judgment issued by a court from another jurisdiction) differs in the DIFC Courts.

Similarly, the process for enforcing a local (i.e., a judgment issued by the ADGM Courts or other UAE Courts) versus a foreign judgment (i.e., a judgment issued by a court from another jurisdiction) differ in the ADGM Courts

Enforcement of DIFC Court Judgments in onshore Dubai and foreign jurisdictions

The DIFC and onshore Dubai Courts are parties to a reciprocal protocol of enforcement. Therefore, provided certain formalities are met, DIFC Courts judgments can be enforced in onshore Dubai as if they were a judgment from the onshore Dubai Courts.

Enforcement in a foreign jurisdiction depends on the legal framework of the foreign jurisdiction in which enforcement is sought. The UAE is party to the Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications 1996, for the enforcement of arbitration awards (“**GCC Convention**”) and the Riyadh Arab Agreement for Judicial Cooperation 1983 (“**Riyadh Agreement**”). Although the DIFC Courts are the Courts of a GCC member state, the applicability of certain aspects of these treaties (such as the provisions on service) in the DIFC Courts has been subject to some disagreement. However, the DIFC Courts have recently confirmed that the provisions relating to recognition and enforcement in the GCC Convention and Riyadh Agreement do continue to apply to the DIFC Courts. The DIFC Courts have entered Memoranda of Guidance (“**MOGs**”) with various common law jurisdictions (England and Wales, Australia, Kenya Singapore, and New York). MOGs have also been signed with Kazakhstan and South Korea, despite these being civil jurisdictions. The MOGs, albeit not binding, create a mutual understanding of reciprocal enforcement between the jurisdictions. The MOGs are generally respected by the Courts of the relevant jurisdictions.

In recent years it has been confirmed that the DIFC Courts can be used as a conduit to enforce foreign judgments in onshore Dubai. As above, the DIFC Courts have reciprocal treaties with various countries and are a pro-enforcement jurisdiction. In contrast, onshore Dubai Courts do not have as many reciprocal treaties and permit examination of the merits during enforcement, albeit in a limited manner. As a result, parties often seek to recognise foreign judgments in the DIFC (thereby in effect, obtaining a DIFC judgment). The party then seeks to enforce this “DIFC judgment” against assets in Dubai that are outside the DIFC, with reference to the reciprocal protocol between the DIFC and the onshore Dubai Courts.

Enforcement of ADGM Court judgments in onshore Dubai and foreign jurisdictions

The ADGM and onshore Abu Dhabi Courts are parties to a memorandum of understanding of reciprocal enforcement. Therefore, provided certain formalities are met, an onshore Abu Dhabi Courts judgment can be enforced in the ADGM as if it were an ADGM Courts judgment. In the same way, ADGM Court judgments can be enforced in onshore Abu Dhabi, provided the formalities are met. The ADGM Courts are also considered to be a court of the Emirate of Abu Dhabi.

Similar to the DIFC Courts, enforcement in a foreign jurisdiction depends on the legal framework of the foreign jurisdiction in which enforcement is sought. The GCC Convention and the Riyadh Agreement govern enforcement of ADGM judgments in the courts of member states to these instruments.

The ADGM Courts have also entered MOGs with various jurisdictions (Australia, China, England and Wales, and Singapore). The MOGs, albeit not binding, create a mutual understanding of reciprocal enforcement between the jurisdictions. The MOGs are generally respected by the Courts of the relevant jurisdictions.

In contrast to the DIFC Courts, the ADGM Courts are not willing to be used as a conduit for enforcement in onshore Abu Dhabi. In *A4 v B4* (2019) ADGMCFI 0007, the ADGM Courts refused recognition and enforcement where it was clear the only reason for pursuing this was to execute against assets elsewhere in the UAE. This has subsequently been confirmed in the Guidance Notes to the Law No. 12 of 2020.

Enforcement of Local Judgments in the DIFC Courts and ADGM Courts

As noted above, the DIFC Courts and the onshore Dubai Courts have entered a reciprocal protocol of enforcement. This protocol works both ways which means that in the same way that a DIFC Courts judgment can be converted into an onshore Dubai Courts judgment, an onshore Dubai Courts judgment can be converted into a DIFC Courts judgment provided certain formalities are met.

Similarly, the ADGM Courts and the onshore Abu Dhabi Courts have entered a reciprocal protocol of enforcement. As above with the DIFC Courts and the onshore Dubai Courts protocol, enforcement of onshore Abu Dhabi Courts judgments in the ADGM is straightforward.

Enforcement of Foreign Judgments in the DIFC

Enforcement of foreign judgments from states that are a party to the GCC Convention, Riyadh Agreement, or the DIFC Courts’ and ADGM Courts’ MOGs is straightforward and proceeds as set out in the relevant legal framework. The DIFC Courts and ADGM Courts generally proceed on the assumption that a foreign judgment is conclusive and therefore there is a very limited risk that the DIFC Courts or ADGM Courts re-examine the merits of a dispute at the enforcement stage.

Although it is possible to enforce judgments from other jurisdictions in the DIFC Courts and the ADGM Courts, a party seeking to enforce the judgment will need to satisfy the DIFC Courts and the ADGM Courts that the judgment in question complies with the laws and rules of the DIFC Courts ADGM Courts, regardless of the fact that the parties did not submit their dispute to the DIFC Courts’ jurisdiction.

The case *Arabian Construction Company WLL v Credit Suisse Bank* (2019) DIFC CA 008 (29 March 2020) demonstrates the manner in which DIFC Courts approach the enforcement of foreign judgments. In this case, a judgment creditor was seeking to enforce a Kuwaiti judgment in the DIFC Courts against the judgment debtor. The judgment creditor was successful in an ex parte application seeking enforcement of the Kuwaiti judgment in the DIFC Courts. However, this order was set aside by the DIFC Courts on a challenge from the judgment debtor. The judgment creditor sought to appeal this set aside order, however it was not successful in doing so. In its reasoning, the DIFC Courts relied on the fact that the Kuwaiti Courts did not have jurisdiction in the underlying Kuwaiti proceedings in the manner required under the GCC Convention or the Riyadh Agreement. This was despite the fact that the Kuwaiti Courts had accepted jurisdiction in the underlying dispute. This was not a challenge against the jurisdiction of the Kuwaiti Courts but rather a challenge against the Kuwaiti Courts having the requisite jurisdiction to allow enforcement of the judgment in the DIFC Courts under the GCC Convention or the Riyadh Agreement.

Parties should therefore exercise caution and ensure a foreign judgment meets any tests set in the RDC and/or treaties to which the UAE is a party before proceeding to enforcement in the DIFC Courts and the tests set in the ADGM CPR and/or treaties to which the UAE is a party before proceeding to enforcement in the ADGM Courts.

Enforcement of Arbitral Awards in the DIFC

The process to enforce a domestic versus a foreign arbitral award is the same. To enforce an arbitral award in the DIFC Courts, the successful party needs to make an application pursuant to Article 42(1) of the DIFC Arbitration Law. Such an application can be made with or without notice to the other party. If the DIFC Courts decide to recognise the award, it will issue an order in both English and Arabic. The successful party must then serve the DIFC Court order on the unsuccessful party.

The UAE is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"). This requires the UAE Courts (including the DIFC Courts) to give effect to the parties' agreement to arbitrate and to recognise and enforce arbitration awards made in other contracting states. As a result, the DIFC Courts are generally pro-enforcement in relation to arbitration awards.

The DIFC Arbitration Law contains three grounds on which the DIFC Courts can find, on its own motion, that an arbitral award cannot be recognised or enforced:

1. the subject-matter of the dispute is not capable of settlement by arbitration under DIFC Law;
2. the dispute is expressly referred to a different body or tribunal for resolution under the DIFC Arbitration Law or any mandatory provision of DIFC Law; or
3. the award conflicts with the public policy of the UAE.

These grounds mirror the grounds on which recognition or enforcement can be refused under the New York Convention.

As with foreign judgments, the DIFC Courts can also be used as a conduit for enforcement of foreign arbitration awards in onshore Dubai.

Enforcement of Arbitral Awards in the ADGM

The process to enforce a domestic versus a foreign arbitral award is the same. To enforce an arbitral award in the DIFC Courts, the successful party needs to make an application pursuant to Article 61 of the ADGM Arbitration Regulations.

The UAE is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"). This requires the UAE Courts (including the ADGM Courts) to give effect to the parties' agreement to arbitrate and to recognise and enforce arbitration awards made in other contracting states. As a result, the ADGM Courts are generally pro-enforcement in relation to arbitration awards.

The ADGM Arbitration Regulations state the ADGM Courts may refuse recognition or enforcement of an arbitral award if the recognition or enforcement of the award would be contrary to the public policy of the UAE. This mirrors the wording of one of the grounds on which recognition or enforcement can be refused under the New York Convention.

Costs

Pursuant to the RDC and ADGM CPR, judges have wide discretion to award costs. However, the starting position is that the unsuccessful party must bear the successful party's costs. As a general rule in the ADGM Courts, the party that is being paid any amount of money, no matter how the value compares to the amount claimed, is the successful party.

Judges can choose to award costs on the standard or the indemnity basis. When costs are awarded on the standard basis, the DIFC Courts or ADGM Courts only allow costs that are proportionate to the matters in issue and resolve any doubts as to the proportionality of the costs in favour of the paying party. When costs are awarded on the indemnity basis, the DIFC Courts or ADGM Courts will resolve any doubts as to the proportionality of the costs in favour of the receiving party.

The DIFC Courts and ADGM Courts are also entitled to make interim costs orders in favour of a party.

Generally, the DIFC Courts and ADGM Courts determine the merits of a dispute first, following which they determine costs. Where a party is ordered to pay costs, the DIFC Courts might make an immediate assessment based on the statement of costs submitted by each party or order a detailed assessment which involves a separate hearing. As for the ADGM Courts, the ADGM Courts might make an summary assessment based on the statement of costs submitted by each party or order a detailed assessment which allows each party to examine the other's legal costs on a line-by-line basis.

Significant cases in the DIFC

As a common law jurisdiction, the DIFC Courts apply a system of binding precedent e.g., a decision of the CoA will be binding on the CFI. As a result, DIFC law is continually being developed as a result of decisions of the DIFC Courts. The cases summarised below are of significance as they clarify fundamental aspects of the operation of DIFC law/DIFC Courts such as the sources of DIFC law, the categorisation of digital assets and the requirements to apply to the DIFC Courts to set aside an arbitral award. Any party interested in submitting its disputes to the area of the DIFC Courts should ensure it is updated on the latest developments in the DIFC Courts' case law.

(1) Gate Mena DMCC (2) Huobi Mena FZE v (1) Tabarak Investment Capital Limited (2) Christian Thurner 2020 DIFC TCD 001

As part of this case, the DIFC Courts were required to consider whether cryptocurrencies are tangible property. The DIFC Courts found in the affirmative, following the reasoning in an English case (*AA vs. Unknown Persons* [2019] EWHC 3556 (Comm)).

Al Buhaira National Insurance Company v (1) Horizon Energy LLC (2) Al Buhaira International Shipping Inc [2021] CFI 098

This case centres around a conflict of laws between the onshore Courts and the DIFC Courts. The claimant was seeking an anti-suit injunction in the DIFC Courts on the basis that there were other proceedings already commenced before the onshore Courts. The DIFC Courts held that where there is a non-exclusive jurisdictional clause, to succeed in an anti-suit injunction, the applicant must evidence that the parallel proceedings are vexatious and oppressive – it is not sufficient to rely merely on the existence of parallel proceedings. The DIFC Courts will only grant anti-suit injunctions where the proceedings in the DIFC Courts would be vexatious and oppressive. In its reasoning, the DIFC Courts emphasised the importance of exercising caution when interfering with the processes of another court. This is significant as it prevents parties from using the DIFC Courts to engineer a conflict or possibility of parallel proceedings.

Muzama v Mihanti [2022] DIFC ARB 004

In this case, the DIFC Courts had to consider whether an arbitral award could be set aside on grounds of public policy. The DIFC Courts found that, for an award to be set aside on grounds of public policy, it was not sufficient for there to have been contraventions of public policy during the performance of the relevant underlying contract. Instead, the award itself must violate international public policy (e.g., fundamental principles of law, morality, or justice).

The Industrial Group Limited v Abdelazim EL Shikh EL Fadil Hamid [2022] DIFC CA 005 and CA 006

This case clarified the sources of English law. Dubai Law No. 12 of 2004 includes a “waterfall provision” of the sources of DIFC law, the last of which is the laws of England and Wales. Parties often use this to argue that DIFC Courts default to English law where the DIFC law itself is silent. However, in the Industrial Group case, the DIFC Courts held that DIFC law is statutory in nature. Given the statutory nature of DIFC law, the DIFC Courts found that there is no room for DIFC judges to simply import features of English law where they are absent from DIFC statute. This is a very significant decision as it suggests the DIFC Courts may not be as willing to follow English law as they have been in the past, limiting its use to interpreting DIFC law as opposed to creating new law.

Sandra Holdings v Saleh [2023] DIFC CA 003

This case established that the interim relief available under the RDC is not sufficient to confer jurisdiction of the DIFC Courts over a matter – a claimant must first demonstrate what jurisdictional gateway they are seeking to rely on in Dubai Law No. 12 of 2004 before they can seek to make an application to the DIFC Courts

Panther Real Estate Development LLC v Modern Executive Systems Contracting LLC [2022] DIFC CA 016

This is one of the first major construction judgments rendered by the CFI's Technology & Construction Division. The DIFC Courts clarified the strict interpretation of notice periods and time bar provisions. Moreover, the DIFC Courts also confirmed that the 28-day first notice period under a FIDIC contract (Red Book, First Edition, 1999, as amended) runs from when the contractor becomes aware or should have become aware of the event or circumstances giving rise to an extension of time claim. This decision provides much needed clarity on the approach of the DIFC Courts to interpreting FIDIC contracts and extension of time claims.

Significant cases in the ADGM

Mingguo v Sadeghnia [2023] ADGM CFI-021

This case required the ADGM Courts to consider a jurisdiction clause that specified disputes would be governed by the “Laws of the United Arab Emirates”. The ADGM Courts held that the terms “Laws of the United Arab Emirates” meant that in this instance, the laws of the ADGM would apply given that the contract concerned an ADGM entity, the formalities were to be carried out within the ADGM’s regulatory framework, and the jurisdictional clause elected for disputes to be submitted to the ADGM Courts. It is likely that the ADGM Courts adopt a similar approach for phrases such as “courts of the United Arab Emirates”. Consequently, parties should ensure their jurisdictional and dispute resolution clauses are clear on whether or not they intend for the ADGM Courts to have jurisdiction over, or for ADGM law to apply to their disputes.

AC Network Holding Ltd. v. Polymath Ekar SPV1 [2023] ADGMCA 0002

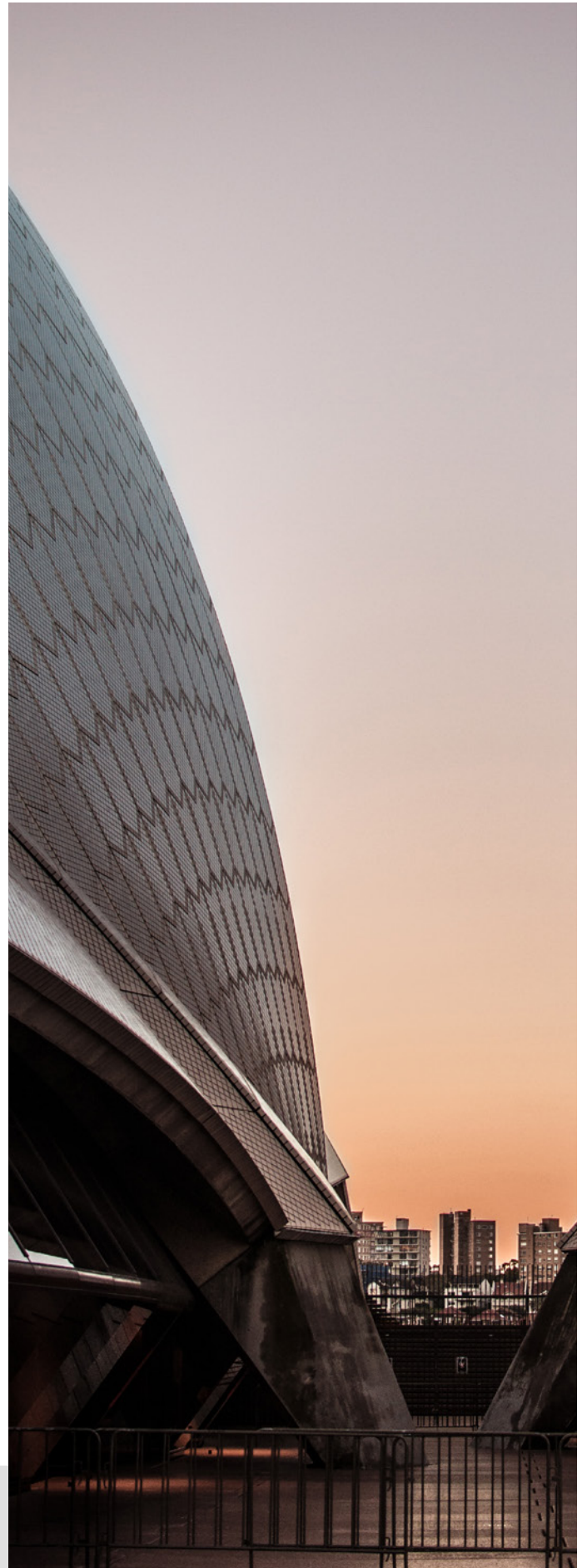
The AC Network case on appeal required the ADGM Courts to decide whether the ADGM Courts were bound by English law and precedent, or whether the ADGM Courts had the discretion to depart from English law. The ADGM Courts held that, although not sitting as English Courts, the ADGM Courts are bound to apply the law as it is in England and that the English system of precedent applies. This case confirms the way in which the ADGM and DIFC Courts diverge in their approach to gap-filling their own legal framework. Although this development means that parties are bound to English law if they submit to the jurisdiction of the ADGM Courts, it also provides certainty by ensuring the ADGM Courts follow the approach of a well-established legal system.

In the matter of NMC Health Plc (In Administration) ADGMCFI-2022-063

In this case, the UK based administrators for NMC Health have obtained what is believed to be the first ever recognition decision from the ADGM Courts. The ADGM Courts recognised NMC Health’s English administration as foreign main proceedings under the ADGM Insolvency Regulations 2015 (now replaced by the Insolvency Regulations 2022) and its England-based administrators (Richard Fleming, Benjamin Cairns and Mark Firmin or Alvarez & Marsal) as NMC Health’s foreign representatives. This case paves the way for foreign restructuring proceedings to be recognised in the ADGM Courts and streamlines the process for administrators seeking ancillary relief in the ADGM Courts.

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Further information

Scan for a digital version of the Guide to Arbitration in the DIFC and ADGM (UAE).



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