

JUDGMENT SUMMARY

Neutral Citation	[2021] ADGMCFI 0005
Case Number	ADGMCFI-2020-051
Name of Case	Global Private Investments RSC Limited v Global Aerospace Underwriting Managers Limited & Others
Judge	Justice Sir Andrew Smith
Date Issued	2 May 2021
Catchwords	Application for security for costs. Whether conditions met for security to be given. Whether circumstances of the case make it just to make an order for security. Whether undertakings to court mitigate the risk that applicants would face without an order for security.
Cases Cited	<p>Dena Technology (Thailand) Ltd v Dena Technology Ltd [2014] EWHC 616 (Comm)</p> <p>Aoun v Bahri [2002] EWHC 29 (Comm)</p> <p>Frontline Development Partners Ltd v Asif Hakim Adil [2015] DIFC 005</p> <p>Sarpd Oil International v Addax Energy [2016] EWCA Civ 120</p> <p>Jirehouse Capital v Beller [2008] EWCA Civ 908</p> <p>Re Unisoft (No 2) [1993] BCLC 532, 534</p> <p>Longstaff International v Baker Mackenzie [2004] EWHC 1852 (Ch)</p> <p>Nasser v United Bank of Kuwait [2001] EWCA Civ 556</p> <p>Danilina v Charukhin [2018] EWHC 39 (Comm)</p> <p>Tatneft v Bogolyubov [2019] EWHC 1400 (Comm)</p> <p>Rowe and ors v Ingenious Holdings plc and ors [2021] EWCA Civ 29</p>
Legislation and Authorities Cited	<p>ADGM Court Procedure Rules 2016 – Rules 75 and 287</p> <p>English Civil Procedure Rules 1998 – Rule 25.13</p>

	<p>ADGM Companies Regulations 2020 – Article 961(1)(a)</p> <p>ADGM Practice Direction 7 – Paragraphs 7.29 and 7.30</p>
Executive Summary	<p>This judgment addresses an application for security for costs filed by the Defendants, a group of insurers (the “Insurers”), against the Claimant, Global Private Investments RSC Limited (“GPI”). The Court granted the Insurers’ application, ordering GPI to provide security in the amount of US\$650,000. The judgment explains the Court’s reasoning for this decision, considering the relevant ADGM rules and whether there was reason to believe that the Claimant would be unable to pay the Defendants’ costs if ordered. The Court considered factors such as the Claimant’s financial information, its assets (specifically an aircraft and bank funds in Russia), and the potential difficulties in enforcing a costs order in the Russian Courts.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment considered an application for security for costs made by several insurers (the “Insurers”) as the Defendants under Rule 75 of the ADGM Courts Procedure Rules 2016 (the “CPR”) against Global Private Investments RSC Limited (“GPI”) as the Claimant.</p> <p>Under Rule 75 of the CPR and paragraph 7.29 of Practice Direction 7 (“PD7”), the Court may order security for costs if satisfied that, having regard to all the circumstances, it is just to make such an order. Paragraph 7.30 of PD7 lists conditions under which the Court <i>may</i> conclude that it is just to order security for costs, including if the claimant is a company and there is reason to believe it will be unable to pay the defendant’s costs.</p> <p>The substantive Claim involved the Claimant seeking an indemnity under an aircraft insurance policy for damage sustained by a corporate jet in a hailstorm. While the Insurers paid for repairs and hire, they disputed the Claimant’s entitlement to compensation for the reduced value of the repaired aircraft.</p> <p>The Claimant was an ADGM-incorporated “Special Purpose Vehicle” (“SPV”) that had acquired the aircraft from a Cypriot company (Amerivo Holdings Ltd), which was a 100% subsidiary of the Russian Direct Investment Fund (“RDIF”).</p> <p>The Insurers argued that security should be ordered because it was just to do so, and because conditions under paragraphs 7.30(b) (inability to pay) and 7.30(f) (steps making enforcement difficult) of PD 7 were met. The Claimant disputed this, stating it had sufficient funds in Russian bank accounts, had given undertakings, and owned the aircraft.</p>

	<p>Analysis</p> <p>The Court considered whether the Claimant had taken any steps which would make enforcement difficult (paragraph 7.30(f) of PD 7).</p> <p>It found that the change of the aircraft's registration to Austria and the intention to fly it between territories or the intention to sell it did not constitute steps already taken that would make enforcement more difficult. Therefore, the Court rejected the contention that paragraph 7.30(f) of PD 7 was satisfied.</p> <p>However, the Court found that the Insurers were on firmer ground regarding the inability to pay costs (Paragraph 7.30(b) of PD 7). With the Insurers' costs estimated at US\$1 million, there was reason to believe the Claimant would be unable to pay substantial costs if ordered. The test is whether there is "<i>reason to believe</i>" that the party will not be able to pay costs, not the higher threshold of "<i>more likely than not</i>". The Claimant is a 'Restricted Scope Company' / SPV, and its decision not to disclose full financial information could be taken into account. While the Claimant owned the aircraft and held funds in Russian bank accounts, these assets presented issues. The aircraft is not liquid and could be moved, making enforcement difficult. Regarding the Russian bank funds, there is no enforcement treaty between ADGM/UAE and Russia, and evidence suggested enforcement in Russian Courts for costs orders would be "<i>almost impossible</i>".</p> <p>The Court could take notice of these potential difficulties without formal evidence. The Claimant provided no evidence that enforcement proceedings for costs could be brought against his assets in the Russia Courts. The Claimant's undertakings provided little mitigation of the risk.</p> <p>Considering all the circumstances, particularly the uncertainty of recovering costs due to the lack of liquid assets within the jurisdiction and the difficulties of enforcing against the aircraft or funds in Russia, the Court concluded that paragraph 7.30(b) of PD 7 was satisfied such that it was just that the Claimant provide security for costs.</p> <p>Conclusion</p> <p>The Insurers' application for security of costs was granted, and the Claimant was ordered to provide security in the sum of US\$650,000 within 28 days by payment into Court or other agreed method.</p>
--	--

This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.