

JUDGMENT SUMMARY

Neutral Citation	[2021] ADGMCFI 0007
Case Number	ADGMCFI-2021-057
Name of Case	A5 v B5 and Anor
Judge	Justice Sir Andrew Smith
Date Issued	19 September 2021
Catchwords	Recognition of arbitration award; challenge to Court’s jurisdiction. Right under Arbitration Regulations to oppose application for recognition; whether challenge permitted under section 62(1)(c). Review by Court of tribunal’s decision about jurisdiction; entitlement to full reconsideration on application for recognition. Whether arbitration agreement “in writing”. Scope of arbitration agreement.
Cases Cited	<p>Dardana Ltd v Yukos Oil Co, [2002] EWCA 543</p> <p>Dallah Estate and Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan, [2010] UKSC 46</p> <p>Zambia Steel and Building Supplies Ltd v James Clark & Eater Ltd., [1986] 2 Lloyd’s Rep 225</p> <p>Minmetals Germany GmbH v Ferco Steel Ltd., [1999] 1 AER 315</p>
Legislation and Authorities Cited	<p>Arbitration Regulations 2015 – Sections 13, 14, 58 and 62</p> <p>Application of English Law Regulations 2015</p>
Executive Summary	The Court granted A5’s application to recognise an arbitration award against B5 and C5. The Defendants were precluded from opposing recognition due to untimely application. Furthermore, the Court upheld the arbitrator’s jurisdiction, confirming a valid “ <i>in writing</i> ” arbitration agreement accepted by conduct, and that the award did not exceed its defined scope. Public policy grounds for refusal were also rejected.
Overall Summary	This Abu Dhabi Global Market (“ ADGM ”) Court of First Instance (Commercial & Civil Division) judgment concerned and recognized an

	<p>arbitration award in favour of A5, a law firm, against B5 and C5, both Abu Dhabi-incorporated entities. The award, issued on 5 April 2021, granted A5 AED 120,000 plus fees and interest. The arbitrator had asserted jurisdiction based on an arbitration agreement contained within an <i>"Acknowledgment and Undertaking"</i> (the "Undertaking"), dated 2 November 2019, which was signed and sealed by B5 and C5. This agreement stipulated arbitration under ICC rules with the seat in the ADGM.</p> <p>The underlying dispute arose from a Main Agreement, dated 5 August 2021, where A5 had engaged B5 for interior design works. This agreement included provisions for a delay penalty and outlined dispute resolution mechanisms involving a supervisor (XX). Subsequently, B5, lacking authorization to undertake the works in Abu Dhabi, proposed its subsidiary, C5, to complete them. A5 accepted this proposal, leading to the Undertaking, which established B5 and C5's joint obligation to A5 to perform the works according to the Main Agreement's terms. Although A5 did not sign the Undertaking, it accepted its terms by conduct.</p> <p>A5 initiated arbitration on 22 June 2020, alleging unreasonable delays and seeking damages. B5 and C5 largely did not participate but later raised a jurisdictional objection. The arbitrator ruled that his jurisdiction extended to breaches of the Undertaking, including obligations from the Main Agreement incorporated by reference, but not to <i>"separate and free-standing breaches of the Main Contract"</i>. He awarded AED 120,000 in delay penalties.</p> <p>In parallel, B5 had successfully claimed monies from A5 in the Abu Dhabi Courts under the Main Agreement, with that court rejecting A5's jurisdictional objection based on the arbitration agreement. Conversely, B5's direct challenge to the arbitration award in the Abu Dhabi Appeal Court was dismissed. That court ruled on 30 June 2021 that the ADGM Courts held <i>exclusive</i> jurisdiction over the award, given that the ADGM was the seat of arbitration. A5 then brought this current application for recognition of the Award in the ADGM Court, which the Defendants opposed primarily on jurisdictional grounds.</p> <p>Analysis</p> <p>The Court first addressed A5's argument that the Defendants were procedurally barred from opposing recognition under section 62(3) of the Arbitration Regulations 2015. This section precludes a party from resisting recognition if they could have (but failed to) apply to set aside the award under section 58 within the stipulated three-month period. The Defendants' filing on 1 July 2021 was deemed merely an attempt to suspend proceedings, not a formal application to set aside the award. The Court agreed with A5, finding the Defendants' failure to act within the statutory timeframe fatal to their ability to resist recognition.</p> <p>Despite this procedural bar, the Court proceeded to review the merits of the Defendants' jurisdictional challenge, clarifying that it would decide questions of jurisdiction <i>afresh</i>, not merely deferring to the arbitrator's initial decision.</p>
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	<p>Two core jurisdictional questions were examined. Firstly, whether a valid arbitration agreement existed that qualified as being "<i>in writing</i>". While the arbitrator had relied on the <i>amended</i> section 14(2) of the Arbitration Regulations (which allows agreements to be binding by conduct even if unsigned), the Court noted that this amendment came into force <i>after</i> the arbitration commenced. Therefore, the Court applied the <i>unamended</i> section 13(2). Applying English law principles, which govern the interpretation of "<i>in writing</i>" in the ADGM and construe the requirement liberally, the Court affirmed that an unsigned agreement can be binding by conduct if the intention to be bound is ascertainable. The Court concluded that A5's actions, particularly in initiating the arbitration proceedings, demonstrated clear acceptance of the Undertaking's terms, thus establishing an "<i>in writing</i>" arbitration agreement under the unamended regulations.</p> <p>Secondly, the Court assessed whether the award dealt with matters that fell outside the scope of the Arbitration Agreement. The Defendants argued that the arbitrator's interpretation of the scope was too broad, potentially overriding the Main Agreement's distinct dispute resolution mechanisms. The Court found that giving any realistic effect to the Arbitration Agreement meant it must cover disputes involving A5, especially considering the joint obligations accepted by B5 and C5 in the Undertaking. The arbitrator had appropriately limited his jurisdiction to breaches of the Undertaking, explicitly excluding "<i>separate and free-standing</i>" breaches of the Main Agreement, which the Court deemed consistent with the scope. The Court also briefly considered and rejected the argument that recognition would be contrary to the public policy of the UAE, noting that the party raising this objection failed to meet the burden of proof.</p> <p>Conclusion</p> <p>The Court ultimately concluded that even if the Defendants had been procedurally permitted to contest the award's recognition, their substantive arguments against jurisdiction lacked merit. A5's application for recognition of the arbitration award was therefore granted. The issue of costs was reserved for later determination, with the parties directed to make written submissions.</p>
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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.