

## JUDGMENT SUMMARY

<b>Neutral Citation</b>	[2023] ADGMCFI 0013
<b>Case Number</b>	ADGMCFI-2021-042
<b>Name of Case</b>	NMC Healthcare LTD (in administration) and associated companies v Dubai Islamic Bank PJSC & Others
<b>Judge</b>	Justice Sir Andrew Smith
<b>Date Issued</b>	8 June 2023
<b>Catchwords</b>	Collateral use of disclosed documents. Variation of interim order. Bank customers' rights of confidentiality.
<b>Cases Cited</b>	Science Research Council v Nasse [1980] AC 1028
<b>Legislation and Authorities Cited</b>	Federal Decree Law 14 of 2018 - Article 120 ADGM Arbitration Regulations – Article 31
<b>Executive Summary</b>	This judgment considered the "collateral use" of documents. The Court refused to permit collateral use of disclosed documents in ongoing arbitration. While Rule 89(1) of ADGM Court Procedure Rules usually restricts use, the Court had already qualified this to protect bank customer confidentiality under UAE law (Article 120). Refusal was due to insufficient customer notice, no material change in circumstances, and the Court's inability to weigh confidentiality against the undisclosed arbitration needs.
<b>Overall Summary</b>	<b>Background</b>  This Abu Dhabi Global Market ("ADGM") Court of First Instance (Commercial & Civil Division) judgment concerned an application by NMC Healthcare Ltd (in administration) and 31 other companies (the " <b>Claimants</b> ") to vary a prior order, which would have permitted the collateral use of disclosed documents in ongoing arbitration proceedings. The application concerned documents protected by bank customer confidentiality under UAE law.

	<p>The main proceedings involve 34 Claimants, with about 20 ("<b>non-guarantor claimants</b>" or "<b>NGCs</b>") pursuing claims against Dubai Islamic Bank PJSC ("<b>DIB</b>") in the ADGM Court. The Claimants whose claims against DIB are stayed are concurrently pursuing DIB and its subsidiary Noor Bank PJSC in arbitration proceedings before an LCIA tribunal, seated in England.</p> <p>A central issue was the "<i>collateral use</i>" of documents. Rule 89(1) of the ADGM Court Procedure Rules generally restricts the use of disclosed documents to the specific proceedings in which they were disclosed. However, an earlier order (the "<b>CMC Order</b>") dated 7 October 2022, had initially disapplied this rule, permitting the use of disclosed documents for the purposes of both the arbitration and certain UAE onshore proceedings.</p> <p>In December 2022, DIB applied for authorisation to disclose and allow inspection of documents related to five of its customers: (i) Dr BR Shetty; (ii) Guide General Contracting and Maintenance LLC ("<b>GGCM</b>"); Royal Catering Services ("<b>RCS</b>"); Neopharma LLC; and Centurion Investments. This authorisation was sought due to UAE law, specifically Article 120 of Federal Decree Law 14 of 2018, which prohibits banks from disclosing customer information without written permission unless "<i>authorised by law</i>". The Court initially declined to authorize this without notice to the customers and without seeing the documents.</p> <p><b>Analysis</b></p> <p>The Court determined it lacked jurisdiction to directly authorise the use of these documents <i>in</i> the arbitration proceedings under Article 31 of the ADGM Arbitration Regulations. However, for disclosure and inspection <i>in the ADGM court proceedings</i>, the Court confirmed its jurisdiction. It decided to exercise this jurisdiction by balancing the case for disclosure against the customers' rights to confidentiality, following the guidance. Consequently, the Court varied the CMC Order, qualifying the disapplication of Rule 89(1) to exclude documents containing confidential data of these specific customers. After further inspections and obtaining Dr Shetty's consent, the Court authorized inspection of some documents relating to other customers, sometimes with redactions.</p> <p>Separately, the LCIA arbitration tribunal issued an order on 18 April 2023 for DIB to disclose documents relating to the same customers, contingent on DIB obtaining consent under Article 120 or party authorisation. Despite DIB's efforts, none of the customers, including Dr Shetty, ultimately gave permission for the documents' use in the arbitration.</p> <p>The Claimants then applied to amend the 20 February 2023 order to permit the collateral use of the documents previously authorised for inspection <i>in the arbitration</i>. The Court refused this application for several key reasons:</p> <ol style="list-style-type: none"> <li>1. <b>Lack of Proper Notice to Customers:</b> The Claimants failed to give adequate notice of this new application to the customers,</li> </ol>
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	<p>despite having been previously informed that the Court required proper notice for such applications.</p> <ol style="list-style-type: none"> <li>2. <b>No Material Change of Circumstances:</b> The Court found no material change of circumstances that would warrant varying an interlocutory order. While the Claimants had now seen the documents and the Tribunal had made its disclosure direction, these developments were "<i>entirely foreseeable and foreseen</i>" in February 2023.</li> <li>3. <b>Inability to Balance Interests for Arbitration:</b> Crucially, the Court was not provided with sufficient information about the issues in the arbitration or the importance of the documents to the. This prevented the Court from assessing whether the Claimants' interests or the interests of the parties in the arbitration outweighed the customers' statutory confidentiality rights under UAE law (Article 120 of Federal Decree Law 14 of 2018). The Tribunal's view on relevance did not supersede the Court's duty to consider and balance these statutory rights under UAE legislation.</li> <li>4. <b>Inconsistent Allegations and Blanket Request:</b> The NGCs had previously pleaded allegations of dishonesty against DIB using these documents in the court proceedings, but did not pursue them during cross-examination and are now seeking permission to abandon them. The Claimants did not clarify whether they intended to pursue similar or different allegations in arbitration. Furthermore, the application sought a blanket authorization for all documents, without showing justification for each.</li> <li>5. <b>Lack of Evidential Basis for Future Use:</b> The Claimants' counsel suggested the documents would be reviewed to decide on further applications for "<i>authorisation by law</i>," but no clear plan or evidential basis was provided for how such authorization would be sought or from which court or tribunal.</li> </ol> <p><b>Conclusion</b></p> <p>Based on these considerations, the application to permit collateral use of the disclosed documents in the arbitration was refused.</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.***