

## JUDGMENT SUMMARY

<b>Neutral Citation</b>	[2024] ADGMCFI 0008
<b>Case Numbers</b>	ADGMCFI-2020-020 and ADGMCFI-2022-063
<b>Name of Cases</b>	NMC Healthcare LTD and associated companies NMC Health Plc (In Administration) and Others v (1) Neopharma LLC; (2) Nexgen Pharma LLC; and (3) Ernst & Young – Middle East, trading as Ernst & Young Middle East (Abu Dhabi Branch)
<b>Judge</b>	Justice Sir Andrew Smith
<b>Date Issued</b>	9 July 2024
<b>Catchwords</b>	Whether production of documents might contravene foreign law. Scope for expert evidence on foreign law under CPR r. 142. Whether expert evidence is reasonably required. Submissions on foreign law under CPR r.117. Translation of documents.
<b>Cases Cited</b>	NMC Healthcare Ltd v Dubai Islamic Bank PJSC [2023] ADGMCFI 0017 Iraqi Civilians v Ministry of Defence [2016] UKSC 23 Byers v Saudi National Bank [2022] EWCA Civ 43 Bank Mellat v HM Treasury [2019] EWCA Civ 449 Harley v Smith [2010] EWCA Civ 78 Brownlie v FS Cairo [2021] UKSC 45
<b>Legislation and Authorities Cited</b>	ADGM Court Procedure Rules 2016 – Rules 2, 14, 117, 142 and 143
<b>Executive Summary</b>	<p>This judgment addresses procedural applications within ongoing insolvency proceedings. The core issue revolves around whether Ernst &amp; Young Middle East (“<b>EYME</b>”) should be required to produce documents despite concerns that doing so might contravene UAE law.</p> <p>The Court considered two specific applications: one by the applicants (the Joint Administrators of the NMC Group companies) seeking directions for foreign law issues to be handled through legal submissions, and another by EYME (as the Third Respondent) requesting permission to present expert evidence on UAE law.</p>

	<p>Ultimately, the Court: (i) granted the Joint Administrators' application for dealing with foreign law via submissions; and (ii) refused EYME's application for expert evidence, concluding that expert testimony was not reasonably necessary and that legal submissions would be a more efficient approach.</p>
Overall Summary	<p><b>Background</b></p> <p>This Abu Dhabi Global Market ("ADGM") Court of First Instance (Civil &amp; Commercial Division) judgment relates to insolvency proceedings concerning NMC Healthcare Ltd, NMC Holding Ltd, and NMC Health PLC, where Mr Benjamin Thom Cairns and Mr Richard Dixon Fleming act as joint administrators (the "<b>JAs</b>"). One of the respondents is Ernst &amp; Young – Middle East (Abu Dhabi Branch) ("<b>EYME</b>").</p> <p>The decision arises from a previous Court Order in the proceedings dated 5 February 2024 requiring EYME to produce documents. EYME objected to producing these documents, expressing concerns that it might contravene criminal and other laws of the UAE. Following these objections, the JAs applied for an order that the documents should be produced nonetheless, which was termed the "<b>Foreign Law Application</b>".</p> <p>Two specific applications were before the Court for decision:</p> <ol style="list-style-type: none"> <li>1. The JAs' application seeking directions for questions of foreign law arising in the Foreign Law Application to be dealt with by legal submissions under Rule 117(2) of the ADGM Court Procedure Rules 2016 ("<b>CPR</b>") (the "<b>r.117 Application</b>").</li> <li>2. EYME's application seeking permission to file and serve an <b>expert report</b> dealing with specific matters of UAE law (the "<b>Expert Evidence Application</b>").</li> </ol> <p><b>Analysis</b></p> <p>The Court considered whether expert evidence on foreign law was "<i>reasonably required</i>" under Rule 142(1) of the CPR, noting the alternative of dealing with foreign law via legal submissions under Rule 117 of the CPR. The Court agreed with EYME that determining UAE law requires understanding how onshore UAE courts and authorities would interpret and apply relevant statutes, not just the ADGM Courts interpreting them itself. However, the Court found that foreign law can be presented through submissions, and parties can use suitably qualified UAE lawyers for this purpose.</p> <p>The Court identified the core issue in the Foreign Law Application as whether EYME is exposed to a real risk of sanction by onshore UAE Courts and authorities by producing the documents. The likely approach to this issue is that of English law, which requires the court to balance the actual risk of prosecution in the foreign state against the importance of the documents for the fair disposal of the ADGM proceedings. The foreign law must be regularly enforced for the risk to be considered real.</p> <p>The Court found EYME's assertion that the foreign law questions were complex was neither persuasively developed nor exemplified. Furthermore, the Court examined the specific matters EYME proposed for expert evidence, finding some were too general or related to</p>

	<p>the application of law to the facts, which is outside the proper scope of expert evidence. The Court also noted that modern practice and ADGM rules allow foreign law to be presented via submissions, departing from older notions requiring expert evidence. Potential difficulties with translating Arabic legal sources could be managed, possibly by agreeing or appointing a neutral translator, without necessarily needing expert evidence.</p> <p><b>Conclusion</b></p> <p>In conclusion, the Court found that EYME had not shown that expert evidence was reasonably required to decide the Foreign Law Application. It determined that dealing with any questions of UAE law by way of submissions would be more efficient and better promote the overriding objective of accessible, fair, and efficient civil justice. Therefore, the r.117 Application was granted, and the Expert Evidence Application 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.***