

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0012
Case Number	ADGMCFI-2024-073
Name of Case	A15 v B15
Judge	Justice Sir Andrew Smith
Date Issued	8 August 2024
Catchwords	Application for recognition and enforcement of arbitral award. Jurisdiction challenge. Sections 60(1)(a) and (c), 61 and 62 of ADGM Arbitration Regulations. UAE Federal Arbitration Law. Determination of seat of arbitration. Estoppel. Discretion to adjourn an application for recognition or enforcement of an award pending determination of other court.
Cases Cited	<p>A8 v B8 [2023] ADGMCFI 0015</p> <p>Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb [2020] UKSC 38</p> <p>Braes Doune Wind Farm (Scotland) Ltd v Alfred McAlpine Business Services Ltd [2008] EWHC 426 (TCC)</p> <p>Dihl v Waterfront Property Investment Ltd [2009] DIFC CFI 011</p> <p>Ledger v Leeor [2022] DIFC CA -13</p> <p>Dubai Court of Cassation Case No. 508/2022</p> <p>Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb [2019] EWHC 3568 (Comm)</p> <p>Dubai Court of Cassation Case No. 1132/2020</p> <p>Abu Dhabi Court of Cassation Case No. 1045/2022</p> <p>Dubai Court of Cassation Case No. 460/2023</p> <p>Abu Dhabi Appeal Court Case No. 81/2022</p> <p>Abu Dhabi Appeal Court Case No. 57/2023</p> <p>Abu Dhabi Court of Cassation Case No. 635/2022</p> <p>Abu Dhabi Appeal Court Case No. 101/2022</p> <p>Abu Dhabi Appeal Court Case No. 87/2022</p>

	<p>Abu Dhabi Appeal Court Case No. 53/2021</p> <p>NMC Healthcare Ltd v Dubai Islamic Bank PJSC [2023] ADGM CFI 0017</p> <p>Good Challenger Navigante SA v Metalexportimport SA [2003] EWCA Civ 1668</p> <p>Kebab-Ji SAL (Lebanon) v Kout Food Group (Kuwait) [2021] UKSC 48</p> <p>AIC Limited v The Federal Aviation Authority of Nigeria [2019] EWHC 2212 (TCC)</p> <p>Daman Real Capital Partners Co LLC v Oger Dubai LLC, Cassation No 1/2016 (JT)</p> <p>Dubai Water Front LLC v Chenshan Liu, Cassation No 2.2016 (JT)</p>
Legislation and Authorities Cited	<p>Abu Dhabi Law No. (4) of 2013, as amended by Abu Dhabi Law No. (12) of 2020 (the “Founding Law”) – Articles 1, 13.13, 13.14 and 13.7(d)</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 - Articles 16(2) and 227</p> <p>United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) (the “New York Convention”)</p> <p>UAE Federal Law No. (6) of 2018 on Arbitration – Articles 1, 18, 52, 53 and 56(1)</p> <p>Law No. (9) of 2004 Concerning Dubai International Financial Centre, as amended by UAE Federal Law No. 7 of 2011</p> <p>Law No. (12) of 2004 in respect of The Judicial Authority at Dubai International Financial Centre – Article 5A</p> <p>Arbitration Regulations 2015 - Sections 60 and 61</p>
Executive Summary	<p>This judgment considered an application challenging its jurisdiction to recognise and enforce an arbitral award. The Court determined the arbitration's seat was not the ADGM, rejecting jurisdiction under Section 60(1)(a) of the ADGM Arbitration Regulations 2015. However, it found jurisdiction existed under Section 60(1)(c) as an award sought to be enforced in ADGM. Proceedings were adjourned pending related challenges in Dubai Courts.</p>
Overall Summary	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerned an application by the Claimant, A15 (a Republic of Korea company), for recognition and enforcement of an arbitral award against the Defendant, B15 (a state-owned company from the People's Republic of China). The dispute arose from a subcontract for marine work in the UAE dated 25 March 2020, governed by UAE law. The subcontract included an arbitration agreement providing for resolution under ICC rules. The agreement initially stated the “place of arbitration shall be U.A.E.”, but subsequent correspondence and</p>

	<p>the Terms of Reference signed by the parties clarified the "seat" or "legal place" of arbitration as "Dubai, United Arab Emirates".</p> <p>An arbitration award was issued on 14 February 2024, with an addendum correcting the awarded amount. A15 applied to the ADGM Courts under section 61 of the ADGM Arbitration Regulations 2015 (“ADGM Arbitration Regulations”) for recognition and enforcement. B15 challenged the ADGM Court's jurisdiction through a separate application. The Court noted parallel proceedings, including an application by B15 to annul the award in the Dubai Courts, which was partially successful at the Court of Appeal level but is currently under appeal by both parties before the Dubai Court of Cassation.</p> <p>Analysis</p> <p>The primary question before the Court was whether it had jurisdiction to recognise and enforce the award. A15 relied on two potential grounds under Section 60(1) of the ADGM Arbitration Regulations: either the seat of the arbitration was the ADGM (s.60(1)(a)) or it was another award sought to be enforced in ADGM (s.60(1)(c)).</p> <p>Regarding the argument that the seat of arbitration was the ADGM, A15 pointed to the fact that the ICC office administering the arbitration was located in the ADGM and the hearing took place there. B15 argued that the parties had explicitly agreed the seat was Dubai. The court analysed the concept of "seat" as a legal rather than physical place, determining the system of law governing the arbitration. It found that the parties, through their correspondence and the signed Terms of Reference, had clearly agreed upon Dubai as the seat of arbitration.</p> <p>The Court interpreted this agreement as designating the civil law jurisdiction of Dubai, consistent with the choice of UAE procedural rules. It reviewed relevant UAE court decisions but concluded they did not compel a finding that the ADGM was the seat despite the ICC office location or hearing venue, where the parties had agreed on Dubai. The Court therefore determined that the award was not one where the seat of arbitration was the ADGM.</p> <p>B15 also argued that a decision from the Umm Al Quwain Court concerning a precautionary attachment created an issue estoppel preventing A15 from claiming the seat was ADGM. The Court rejected this, finding no "full contestation" or necessary decision before the Umm Al Quwain Court on whether the ADGM specifically was the seat.</p> <p>Alternatively, A15 sought recognition under Section 60(1)(c) as another arbitral award sought to be enforced in ADGM. The Court accepted this ground for jurisdiction, rejecting B15's procedural objections and its argument that lack of assets in ADGM precluded A15 genuinely seeking enforcement there. However, the Court noted B15's argument based on UAE Federal Arbitration Law Article 52, suggesting the award might not be enforceable in ADGM without a prior order from the Dubai Court (the seat). Given the ongoing appeals in the Dubai Court of Cassation regarding the annulment of the award, the ADGM Court invoked its power under Section 62(2) to adjourn the application for recognition and enforcement.</p>
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	<p>Conclusion</p> <p>The Court concluded that it does have jurisdiction over the award under Section 60(1)(c) of the ADGM Arbitration Regulations. However, in light of the pending appeals before the Dubai Court of Cassation challenging the award, the Court exercised its discretion to adjourn A15's application for recognition and enforcement. B15's separate application challenging jurisdiction was also adjourned, allowing for potential future arguments regarding the need for a prior Dubai Court order. Costs were reserved .</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.