

JUDGMENT SUMMARY

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| Neutral Citation | [2024] ADGMCFI 0013 |
| Case Number | ADGMCFI-2020-020 and ADGMCFI-2022-063 |
| Name of Case | NMC Healthcare LTD and associated companies In the matter of NMC Health Plc (In Administration) |
| Judge | Justice Sir Andrew Smith |
| Date Issued | 19 September 2024 |
| Catchwords | Production of documents said to be prohibited by UAE legislation. Interpretation of UAE legislation. Status of ADGM and its Courts. Restrictions on auditors disclosing information. Court's jurisdiction to vary orders. Liberty to apply. Redacting documents for reasons of confidentiality. |
| Cases Cited | In re Mid East Trading Ltd [1998] BCC 726, 754D Bank Mellat v H M Treasury [2019] EWCA Civ 449 NMC Healthcare Ltd and ors v Dubai Islamic Bank PJSC and ors [2023] ADGMCFI 0017 NMC Healthcare Ltd and ors v Dubai Islamic Bank PJSC and ors [2023] ADGMCFI 0013 Case 216/2015 of the Dubai Court of Cassation Goel v Credit Suisse (Switzerland) Limited, Case no CA [2021] CA-002 A15 v B15 [2024] ADGM CFI 0012 Tibbles v SIG plc [2012] EWCA Civ 518 Cristel v Cristel [1951] 1 KB 725 Re Paragon Offshore Plc [2020] EWHC 2740 (Ch) |
| Legislation and Authorities Cited | ADGM Insolvency Regulations 2022 Federal Law No. 12/2014 on the Regulation of the Auditing Profession – Articles 12(1) and 40 Federal Law No. 41/2023 on the Regulation of the Accounting and Auditing Profession – Articles 18 and 39 Federal Law No. 31/2021 on the Issuance of the Crimes and Penalties Law – Article 56 |

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| | <p>Federal Law No. 32/2021 on Commercial Companies – Article 248</p> <p>Federal Law No. 2/2019 on the Use of Information and Communication Technology (ICT) in Health Fields</p> <p>Federal Decree-Law No. 45/2021 on the Protection of Personal Data</p> <p>Cabinet Resolution No. 48/2022 on the Implementing Regulation of Federal Law No. 12/2024 on the Regulation of the Auditing Profession</p> <p>Federal Law No. 34/2021 Concerning the Fight Against Rumours and Cybercrimes – Article 45</p> <p>Federal Law 5/1985 On the Civil Transactions Law of the UAE State (the “Civil Code”) – Articles 1, 30 and 262</p> |
| Executive Summary | <p>This judgment considered two applications. The Court found that Ernst & Young – Middle East (“EYME”) must produce documents to the Joint Administrators of NMC Healthcare Ltd. The Court found that UAE laws do not prohibit disclosure when ordered by the ADGM Courts. An extension for document production deadlines was also granted to EYME.</p> |
| Overall Summary | <p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment concerned two consolidated cases before the ADGM Court, primarily dealing with the large-scale fraud allegedly perpetrated against the NMC Group of companies between 2012 and 2020. This alleged fraud led to the insolvency and administration of the NMC Group, previously the largest healthcare provider in the UAE.</p> <p>The joint administrators (JAs) of several NMC entities in administration in the ADGM sought disclosure of documents from Ernst & Young – Middle East (“EYME”), who had provided audit and review services to the Group.</p> <p>An order dated 5 February 2024 (the “February Order”) required EYME to produce various categories of documents to the JAs by specific deadlines. However, EYME issued notices under paragraph 20 of the February Order, claiming a real risk of contravening UAE law if they produced certain documents. This triggered a stay on disclosure of those documents.</p> <p>The judgment addresses two applications:</p> <ol style="list-style-type: none"> 1. EYME's request for extensions of time to comply with the outstanding disclosure obligations (the “Extension Application”) and; and 2. the JAs' application to lift the stay on disclosure engaged by EYME's notices regarding potential breaches of UAE law (the “Foreign Law Application”). <p>Analysis</p> <p>The Court's analysis primarily focused on whether complying with the ADGM Court's order would cause EYME to breach UAE law and whether EYME was entitled to an extension of time for disclosure.</p> <p>Regarding the Foreign Law Application, EYME argued that producing the documents would contravene several UAE laws, including auditors laws,</p> |

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| | <p>the Penal Code, the Commercial Companies Law, and the Healthcare ICT Law. They contended that an ADGM Court order did not override these onshore UAE laws. The JAs argued that exceptions in these laws, which permit disclosure when required by a "judicial authority" or "permitted by law," applied to an order from the ADGM Court. The Court found that the ADGM Court is an integral part of the UAE legal system and a "judicial authority" within the meaning of the relevant UAE statutes. Consequently, it held that EYME would not be in breach of these UAE laws by producing documents in compliance with the ADGM Court's order.</p> <p>The Court also considered EYME's argument for redacting personal data under the UAE Data Protection Law. While acknowledging the law's purpose, the Court found that disclosure ordered by the Court is permitted under an exception relating to "judicial procedures". Thus, disclosure of unredacted documents would not breach the Data Protection Law, though the Court noted the importance of considering third-party confidentiality.</p> <p>On the Extension Application, the JAs challenged the Court's jurisdiction to grant an extension. The Court rejected this, finding jurisdiction based on the "liberty to apply" provision in the February Order and on changes of circumstances under ADGM rules. EYME sought extensions citing the volume and complexity of documents. The JAs complained about delays and excessive redactions. The Court acknowledged the difficulties but also noted delays from the JAs. It found EYME's proposal for monthly tranches of documents helpful.</p> <p>Conclusion</p> <p>The Court granted the JAs' Foreign Law Application, ruling that EYME must produce the documents subject to the February Order as compliance with an ADGM Court order does not contravene the cited UAE laws, including those potentially criminal or regulatory.</p> <p>The Court also granted the Extension Application, allowing EYME more time for disclosure, specifically endorsing the proposal for producing documents in monthly instalments.</p> <p>The Court made no specific direction on redactions, noting that EYME should continue to make proper redactions, particularly for third-party personal data, taking into account the Court's ruling on the Data Protection Law. Any challenges to redactions should be brought by the JAs. The Court will determine the costs of the applications later.</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.