

JUDGMENT SUMMARY

Neutral Citation	[2024] ADGMCFI 0016
Case Numbers	ADGMCFI-2020-020; ADGMCFI-2022-111 and ADGMCFI-2022-299
Name of Cases	NMC Healthcare LTD and associated companies Abu Dhabi Commercial Bank PJSC v Prasanth Manghat NMC Healthcare LTD (in administration) (subject to a Deed of Company Arrangement) & Others v Bavaguthu Raghuram Shetty & Others
Judge	Justice Sir Nicholas Patten
Date Issued	19 November 2024
Catchwords	Disclosure and inspection. Bank’s duty of confidentiality. Whether Court’s inspection of documents is required. Conditions on disclosure and inspection for protection of customers.
Cases Cited	NMC Healthcare LTD (in administration) and associated companies v Dubai Islamic Bank PJSC & Others [2023] ADGMCFI 0006
Legislation and Authorities Cited	UAE Federal Decree Law No. 14 of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities (the “Federal Banking Law”) – Article 120 UAE Federal Decree Law No. 31 of 2021 Promulgating the Crimes and Penalties Law (the “UAE Criminal Law”) – Article 432 UAE Federal Decree Law No. 34 of 2021 on Countering Rumours and Cybercrimes (the “UAE Cybercrime Law”) – Article 45 ADGM Court Procedure Rules 2016 – Rule 89
Executive Summary	<p>This judgment addresses the Bank of Baroda's (“Baroda”) request for authorisation to disclose confidential customer account information. Due to Article 120 of the the UAE Federal Decree Law No. 14 of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities, Baroda sought a court order to release documents containing confidential data from at least 30,000 customers, many of whom were not parties to the litigation.</p> <p>Drawing on precedent from a similar case, the Court ultimately granted Baroda permission to disclose the documents but imposed strict conditions to protect customer confidentiality, limiting the use and</p>

	dissemination of the information solely to the purposes and parties of the lawsuits, and restricting their use in open court.
Overall Summary	<p>Background</p> <p>The core issue addressed in this Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment is the Bank of Baroda’s (“Baroda”) application for an order related to the disclosure of documents containing information about the accounts of its customers as part of its disclosure obligations.</p> <p>A key challenge is Article 120(1) of the UAE Federal Decree Law No. 14 of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities (the “Federal Banking Law”), which deems information about a customer’s bank account confidential. This information can only be disclosed with the permission of the account owner “<i>and in legally authorised cases</i>”. The prohibition on disclosure continues even after the business relationship between the customer and the bank ends. Baroda is concerned that disclosing documents containing such data from other parts of the UAE could breach this prohibition.</p> <p>Baroda is also concerned that, if unauthorised disclosure is given, then it may also breach Article 432 of the UAE Federal Decree Law No. 31 of 2021 Promulgating the Crimes and Penalties Law and Article 45 of the UAE Federal Decree Law No. 34 of 2021 on Countering Rumours and Cybercrimes.</p> <p>Baroda’s application sought: (i) an order to disclose documents containing data and information relating to its customers’ accounts and related transactions falls under Article 120(1) of the Federal Banking Law; or (ii) an order declaring that their disclosure falls under an exception in Article 120(6)(e) of the Federal Banking Law, such that authorisation to disclose the said documents under Article 120(1) of the Federal Banking Law is not required.</p> <p>Article 120(6) lists exceptions to the general prohibition contained in Article 120(1), including powers of legal authorities (120(6)(a)) and the right of the concerned institutions to disclose data relating to the customer’s transactions to establish their right in a legal dispute in respect of such transactions (120(6)(e)).</p> <p>The documents Baroda needs to disclose, referred to as the “Article 120 Documents”, contain data and information relating to at least 30,000 current and former customers. Some customers are parties to the JA Claim (like NMC companies, Dr Shetty, and Mr Manghat), while others are involved in transactions relevant to the case (like Neopharma LLC and Nexgen Pharma LLC). However, many are entirely unconnected with the proceedings but their financial information is included in documents Baroda must disclose. It is estimated that 10,000 out of 35,000 documents ready for disclosure fall into this category.</p> <p>Analysis</p> <p>The judgment refers to a previous case, NMC Healthcare LTD (in administration) and associated companies v. Dubai Islamic Bank PJSC & Others [2023] ADGMCFI 0006 (the “DIB Case”), where Justice Sir Andrew</p>

	<p>Smith faced a similar application concerning documents relating to non-parties. The learned Judge said that he was not in a position to determine whether the defendant bank's submissions on the meaning and effect of Article 120(1) were correct but to use his words "<i>its position appears cogent</i>". The Judge directed that the non-parties be given notice and provided guidance on the Court's approach to disclosing confidential third-party information.</p> <p>The judgment confirms that the right of a third party to confidentiality is not an absolute bar to disclosure in litigation, but courts will consider these rights due to respect for the third party and the public interest in upholding confidentiality in banking. However, if the Court concludes that disclosure is necessary for the proceedings to be resolved fairly and justly, that consideration will prevail. The Court will generally inspect the documents to make an informed decision on whether the interests of justice or the customer's rights should prevail. If disclosure is permitted, the Court will consider imposing conditions to minimise the intrusion on the customer's rights.</p> <p>Article 120 highlights that customers' rights relate to keeping confidential information about their banking affairs private, rather than preventing disclosure of individual documents containing such data if relevant. Redaction may also be considered to protect confidential information.</p> <p>The real issue on this application is whether The Court should follow the course taken by Justice Sir Andrew Smith in the DIB Case and attempt to review the documents concerned and order redactions as a condition of their disclosure in the proceedings. All counsel concerned with the application supported the Court taking a different course; in the case of Mr Salve because of the scale of such a task and in the case of Mr King because of the additional delay it would lead to. While the Court generally inspects documents, there can be exceptions, particularly given the large volume of material (10,000 documents) which would cause significant delay.</p> <p>The Court concluded that the interests of justice plainly favour the disclosure of these documents. This is due to the significance of the litigation involving an important group of ADGM companies and their creditors, who are alleged victims of a significant fraud that needs proper investigation at trial.</p> <p>Given the impracticality of court inspection and redaction for all 10,000 documents, the Judge decided to protect unrelated customers by imposing conditions similar to those in the DIB Case.</p> <p>The conditions imposed are:</p> <ul style="list-style-type: none"> • without further order, the documents and information can only be used for the purpose of these proceedings; • without further order, the documents and information shall not be disclosed to any person who is not a party to the proceedings; and • without further order, the parties shall not refer to the confidential information in open court.
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	<p>The Court noted that the judge managing the case or the trial judge may impose further restrictions.</p> <p>Conclusion</p> <p>The Court ordered that Baroda is legally authorised to disclose and make available for inspection the Article 120. This authorisation is subject to the conditions outlined above regarding the use and disclosure of the documents and the information they contain.</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.