

## JUDGMENT SUMMARY

<b>Neutral Citation</b>	[2025] ADGMCFI 0015
<b>Case Number</b>	ADGMCFI-2022-265
<b>Name of Case</b>	Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others
<b>Judge</b>	Justice Sir Andrew Smith
<b>Date Issued</b>	19 July 2025
<b>Catchwords</b>	Application for non-party disclosure. Whether jurisdiction to make a disclosure order extends to non-parties outside ADGM. Application of doctrine of <i>forum non conveniens</i> . Exercise of discretion.
<b>Cases Cited</b>	<p>Gorbachev v Guriev [2022] EWCA Civ 1270</p> <p>Investment Group Private Ltd v Standard Chartered Bank [2015] DIFC CA 004</p> <p>Fleming and anor. v Dubai Islamic Bank and ors PJSC [2021] ADGMCFI 0006</p> <p>Three Rivers DC v Bank of England (No 4) [2002] EWCA Civ 1182</p> <p>Gary Flood v Times Newspapers Ltd [2009] EWHC 411 (QB)</p> <p>Frankson v Secretary of State for the Home Department [2003] EWCA Civ 655</p> <p>Nix v Emerdata Ltd [2022] EWHC 718 (Comm)</p> <p>Mackinnon v Donaldson, Lufkin &amp; Jenrette Securities Corporation [1986] 1 Ch 482</p> <p>Rosewood Hotel Abu Dhabi LLC v Skelmore Hospitality Group Ltd [2020] ADGMCFI 0002</p> <p>Union Properties P.J.S.C &amp; Anor. v Naser Butti Omair Yousef Almheiri [2025] ADGMCA 0001</p> <p>Union Properties P.J.S.C &amp; Anor. v Trinkler &amp; Partners Ltd and ors [2023] ADGMCFI 0009</p> <p>NMC Healthcare Ltd v Neopharma [2023] ADGMCFI 0022</p>
<b>Legislation and Authorities Cited</b>	<p>ADGM Court Procedure Rules 2016 – Rules 88, 137(2)(c) and 238</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 37</p> <p>Abu Dhabi Law No. 4/2013 as amended by Abu Dhabi Law No. 12/2020 (the “ADGM Founding Law”) – Articles 1 and 13(7)</p> <p>English Civil Procedure Rules 1998 – Rule 33.1</p> <p>ADGM Application of English Law Regulations 2015</p>

	<p>UAE Constitution 1971 – Article 99 Bankers' Books Evidence Act 1879 (UK)</p>
<b>Executive Summary</b>	<p>This judgment concerns an Application for Non-Party Disclosure (the “<b>Application</b>”) brought by Union Properties PJSC and UPP Capital Investment Co LLC (the Claimants) against Arqaam Capital Limited (“<b>Arqaam</b>”). The Claimants sought specific documents from Arqaam, who was not a party to the main proceedings, alleging that these documents were crucial to their case involving a complex fraud scheme perpetrated by various former directors and individuals.</p> <p>The core issues addressed by the Court included: (i) whether it had jurisdiction to order disclosure from a non-party outside the Abu Dhabi Global Market; (ii) the applicability of the <i>forum non conveniens</i> doctrine; and (iii) whether the disclosure criteria under Rule 88 of the ADGM Court Procedure Rules 2016 were met.</p> <p>Ultimately, the Court refused the Application, citing the confidential nature of the information held by Arqaam and the preference for using a letter of request to obtain documents from a party located in another jurisdiction within the UAE, such as the Dubai International Financial Centre.</p>
<b>Overall Summary</b>	<p><b>Background</b></p> <p>This Abu Dhabi Global Market (“<b>ADGM</b>”) Court of First Instance (Commercial &amp; Civil Division) judgment considered an Application for Non-Party Disclosure (the “<b>Application</b>”) brought by Union Properties PJSC and UPP Capital Investment Co LLC (“<b>UPPC</b>”) (the Claimants) against Arqaam Capital Limited (“<b>Arqaam</b>”).</p> <p>The Application, made under Rule 88 of the ADGM Courts Procedure Rules 2016 (the “<b>CPR</b>”), sought disclosure of four categories of documents related to Participation Notes (“<b>P-Notes</b>”), including instructions for their delivery and confirmation of transfers.</p> <p>Arqaam, a company incorporated in the Dubai International Financial Centre (“<b>DIFC</b>”), opposed the Application for documents concerning instructions and transfers of the P-Notes, while agreeing to provide the prospectuses and supplementary prospectuses relating to the P-Notes.</p> <p>The main proceedings involve allegations by the Claimants that the former directors and others perpetrated against them a fraud involving the purchase of P-Notes by UPPC. Arqaam's role in these transactions was described as an “<i>execution-only broker</i>”. The Claimants argued that the sought documents were “<i>critical</i>” to their case, as they would likely reveal who participated in the fraud and how the P-Notes were dealt with.</p> <p>Arqaam contended that disclosing this information, which is confidential to its client, Julius Baer &amp; Co Limited, would expose it to expense, potential liabilities, reputational damage and regulatory scrutiny.</p> <p><b>Analysis</b></p> <p>The Court addressed four key issues:</p> <ol style="list-style-type: none"> <li>1. <b>Jurisdiction:</b> The Court found that it did have jurisdiction over the main proceedings because the case concerned a “<i>Civil or</i></li> </ol>

	<p><i>commercial [claim] ... involving [a] Global Market [Establishment]</i>" pursuant to Article 13(7)(a) of Abu Dhabi Law No. 4/2013 as amended by Abu Dhabi Law No. 12/2020. Furthermore, the Court concluded that it had jurisdiction to make a disclosure order against non-parties located outside the ADGM consistent with the interpretation of similar English law provisions.</p> <ol style="list-style-type: none"> <li>2. <b>Forum Non Conveniens:</b> The Court rejected Arqaam's argument that the Application should be refused on the grounds of <i>forum non conveniens</i>. It stated that Arqaam, as a non-party, lacked standing to object to the forum in which the Claimants have brought their proceedings. Crucially, the Court held that the doctrine of <i>forum non conveniens</i> does not apply to jurisdictional conflicts between Courts within the UAE, as the power to resolve such conflicts is exclusively vested in the Union Supreme Court pursuant to Article 99 of the UAE Constitution and the findings of the DIFC Court in Investment Group Private Ltd v Standard Chartered Bank [2015] DIFC CA 004.</li> <li>3. <b>Requirements of Rule 88 of the CPR:</b> The Court accepted that the documents were "<i>likely</i>" to support the Claimants' case and that disclosure was "<i>necessary</i>" in order to dispose of the claims fairly.</li> <li>4. <b>Exercise of Discretion:</b> Despite the documents' importance to the Claimants' case, the Court declined to exercise its discretion to order disclosure. The Court emphasised that it must exercise caution in this "<i>intrusive jurisdiction</i>", especially when dealing with non-parties outside the ADGM. It noted that the proper and courteous method for obtaining evidence from a foreign jurisdiction is through a letter of request, and that exercising direct jurisdiction against a non-party abroad is generally reserved for an "<i>exceptional case</i>".</li> </ol> <p>The Court highlighted the "<i>particularly sensitive</i>" nature of ordering disclosure from entities like Arqaam, which hold confidential client information and are subject to regulatory supervision. Given that ADGM Courts have express provisions for issuing letters of request within the UAE (Rule 137(2)(c) of the CPR), and finding no exceptional circumstances to justify bypassing this route, the Application was refused.</p> <p><b>Conclusion</b></p> <p>In conclusion, the Application was refused and the Claimants were ordered to pay Arqaam's costs in respect of the Application.</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.***