In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

UNION PROPERTIES P.J.S.C
First Claimant/ Applicant

UPP CAPITAL INVESTMENT CO. L.L.C.
Second Claimant/ Applicant

and

TRINKLER & PARTNERS LTD
First Defendant/ Respondent

THOMAS PIERRE TRINKLER
Second Defendant/ Respondent

~~**PATRICK ALBERT HELD**~~
~~Third Defendant/ Respondent~~

FIRST FUND MANAGEMENT LIMITED
Fourth Defendant/ Respondent

JORG KLAR
Fifth Defendant/ Respondent

PARESH CHANDRASEN KHIARA
Sixth Defendant/ Respondent

AMNA HASAN ALI SALEH ALHAMMADI
Seventh Defendant/ Respondent

DAHI YOUSEF AHMED ABDULLA ALMANSOORI
Eighth Defendant/ Respondent

NASER BUTTI OMAIR YOUSEF ALMHEIRI
Ninth Defendant

KHALIFA HASAN ALI SALEH ALHAMMADI
Tenth Defendant/ Respondent

~~**STEFAN DUBACH**~~
~~Eleventh Defendant/ Respondent~~

AHMED YOUSEF ABDULLA HUSSAIN KHOURI
Twelfth Defendant/ Respondent

HASSAN ASHOOR AL MULLA
Thirteenth Defendant/ Respondent

BLUE ROCK INVESTMENTS L.L.C
Fourteenth Respondent

DANA MIDDLE EAST INVESTMENT L.L.C
Fifteenth Respondent

MOHAMED HASAN ALI SALEH ALHAMMADI
Sixteenth Respondent

~~**ISLAND FALCON PROPERTY MANAGEMENT L.L.C**~~
~~Seventeenth Respondent~~

ISLAND FALCON INVESTMENTS L.L.C
Eighteenth Respondent

TEXTURE GLOBAL INVESTMENT LIMITED
Nineteenth Respondent

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2025] ADGMCFI 0015
Before:	Justice Sir Andrew Smith
Decision Date:	19 July 2025
Decision:	1. The Application is refused. 2. Submissions as to costs may be filed and served by 5.00 pm on 25 July 2025.
Hearing Date:	16 July 2025
Date of Order:	19 July 2025
Catchwords:	Application for non-party disclosure. Whether jurisdiction to make a disclosure order extends to non-parties outside ADGM. Application of doctrine of forum non conveniens. Exercise of discretion.
Legislation Cited:	ADGM Courts Procedure Rules 2016, r.88, 137(2)(c) ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 Abu Dhabi Law No. 4/2013 Abu Dhabi Law No. 12/2020 English Civil Procedure Rules 1998 ADGM Application of English Law Regulations 2015
Cases Cited:	Gorbachev v Guriev [2022] EWCA Civ 1270 Investment Group Private Ltd v Standard Chartered Bank [2015] DIFC CA Fleming and anor. v Dubai Islamic Bank and ors PJSC [2021] ADGM CFI 0006 Three Rivers DC v Bank of England (No 4) [2002] EWCA Civ 1182 Gary Flood v Times Newspapers Ltd [2009 EWHC 411 (QB) at para 29 Frankson v Secretary of State for the Home Department [2003] EWCA Civ 655 Nix v Emerdata Ltd [2022] EWHC 718 (Comm) Mackinnon v Donaldson, Lufkin & Jenrette Securities Corporation [1986] 1 Ch 482. Rosewood Hotel Abu Dhabi LLC v Skelmore Hospitality Group Ltd [2020] ADGM CFI 0002 Union Properties PJSC and anor v Naser Butti Omair Yousef Almheiri [2025] ADGMCA 0001 Union Properties PJSC and anor v Trinkler & Partners Ltd and ors [2023] ADGMCFI 0009 NMC Healthcare Ltd v Neopharma [2023] ADGMCFI 0022

Case Number:	ADGMCFI-2022-265
Parties and Representation:	Mr Nils de Wolff of Greenberg Traurig Limited Mr Husam Elkhatib of Arqaam Capital Limited

JUDGMENT

1. This is my judgment on an application dated 9 June 2025 for disclosure of documents (the "**Application**") brought by the Claimants against Arqaam Capital Limited ("**Arqaam**"), a company incorporated in the Dubai International Financial Centre ("**DIFC**"). Arqaam is not a party to the proceedings: the Application is made under rule 88 of the ADGM Courts Procedure Rules 2016 ("**CPR**"), which is headed "*Order against a non-party*" and provides as follows:

> *"(1) Where an application is made to the Court under any ADGM enactment for disclosure by a person who is not a party to the proceedings, the application must be supported by evidence and served in accordance with the relevant practice directions.*
>
> *(2) The Court may make an order under this Rule only where the documents of which disclosure is sought are likely to support the applicant's case, or adversely affect the case of one of the other parties to the proceedings and disclosure is necessary in order to dispose fairly of the claim or to save costs".*

2. By the Application, which is supported by a witness statement of Mr Nils de Wolff of Greenberg Traurig Limited, their legal representatives, the Claimants sought disclosure of four classes of documents:

   a. Instructions dated 10 September 2018, 19 September 2018 and 3 October 2018 relating to the delivery of certain Participation Notes (or "**P-Notes**") to Arqaam;

   b. Prospectuses and supplementary prospectuses relating to the P-Notes;

   c. Documents by way of confirmation of the redemption of P-Notes; and

   d. "*Confirmation of and supporting documentation for any transfers of* [specified] *P-Notes*".

3. The Application is opposed by Arqaam in so far as it relates to documents in categories (a) and (d). Arqaam has agreed to provide the prospectuses and supplementary prospectuses. The Claimants do not pursue the Application in relation to documents by way of confirmation of redemptions because, since it was issued, they have obtained them from another source.

4. I heard the argument on the Application on 16 July 2025. The Claimants were represented by Mr de Wolff. Arqaam's submissions were presented by Mr Husam El Khatib, its Executive Director Legal.

The Proceedings

5. Previous judgments have described these proceedings, and a short summary of the claims and the nature of the dispute will suffice for present purposes. Fuller descriptions can be found in my judgment of 24 April 2023, [2023] ADGMCFI 0009, and the judgment of the Court of Appeal of 25 June 2025, [2025] ADGM CA 0001. In brief, the Claimants allege that various former directors and other persons perpetrated against them a fraud which involved the purchase by the Second Claimant, UPP Capital Investment Co LLC ("**UPPC**"), of 391,789,341 units of P-Notes for AED 320,717,867.84. For the most part (as to 364,549,341 units purchased for AED 286,516,611.54), they were P-Notes the underlying security of which was by way of shares in the First Claimant, Union Properties PJSC ("**UP**"). The P-Notes were issued by a Netherlands company called ARQ P Notes BV. Arqaam acted as and arranger and dealer in the notes: Mr El Khatib described its role as that of an "*execution-only broker*".

6. The thrust of the Claimants' case is this:

   a. Between January and April 2018, UP transferred AED 337 million to UPPC, who invested it with Julius Baer & Co Limited ("**JB**"), and AED 287 million of the money was invested in a JB fund, the UAE focus fund.

   b. In July 2018, UPPC withdrew the funds in the UAE Focus Fund, now amounting to UAE 270 million (a loss of some UAE 17 million), and the proceeds were used to buy the 391,789,341 units of P-Notes.

   c. In three transactions between 10 September 2018 and 5 October 2018, the 364,549,341 units were converted into shares in UP, and the shares were transferred to accounts held in the name of Mr Hassan Ashoor Al Mulla, a lawyer and the Thirteenth Defendant, at different banks or financial institutions.

   d. According to the Claimants, at least some of the proceeds from the share sales were used by Mr Khalifa Hasan Ali Saleh Alhammadi, the Tenth Defendnt, to buy from UP properties in the name of companies owned by members of his family.

   e. These transactions were not authorised by the Claimants and were concealed from them. The Claimants' case is that, in order to conceal the true position, in June 2018 it had been arranged that UPPC enter into a Mandate Agreement and an Investment Management Agreement with Trinkler & Partners Limited ("**TAP**"), a Swiss company registered in Zurich and the First Defendant, and that in September 2018 TAP enter into a Service Level Agreement with First Fund Management Limited ("**FFM**"), a company incorporated in the Abu Dhabi Global Market ("**ADGM**") and the Fourth Defendant. According to the Claimants, TAP and FFM then made false reports to them that they

had received the 364,549,341 P Notes, and later that they had sold them and reinvested the proceeds in various securities.

f. The Claimants discovered what was happening only after being alerted in late October 2021 that the Federal Prosecution Authorities were investigating the activities of Mr Alhammadi; that the reports from TAP and FFM were false; and that they had been defrauded.

7. The Claimants originally brought the proceedings against 13 defendants. They have entered judgment in default against three of them: Ms Amna Hasan Ali Saleh Alhammadi, the Seventh Defendant; Mr Alhammadi; and Mr Al Mulla. The proceedings are not pursued against TAP, which is in liquidation; Mr Patrick Albert Held, the Third Defendant; and Mr Stefan Dubach, the Eleventh Defendant. They have been struck out against Mr Naser Butti Omair Yousef Almheiri, the Ninth Defendant; and judgment is pending on an application by Mr Dahi Yousef Ahmed Abdulla Almansoori, the Eighth Defendant, to strike out the proceedings against him or for summary judgment.

8. The case is listed for a Trial commencing on 25 November 2025. The Claimants will, of course, have to prove that they are the victims of a fraud of the kind alleged, and their resultant loss. However, it might well be that the real focus of the dispute between the Claimants and the remaining Defendants will be about who were parties to the fraud.

The Arguments on the Application

9. At the risk of oversimplification, the thrust of Mr de Wolff's argument in support of the Application was this: the classes of documents in respect of which the Claimants seek a disclosure order are "*critical*" to the case because they are likely to show who participated in the fraud by giving instructions for the 390,389,341 units to be transferred to Arqaam and for most of them to be converted into UP shares, and to show how the shares were dealt with thereafter. The Application satisfies the requirements for a disclosure order under CPR r. 88, and, it is said, should be granted.

10. Against this, Mr El Khatib emphasised, and I accept, that Arqaam has no wish to prevent justice being done or to conceal important matters from the Court: its concern is essentially, that, although Arqaam has no connection with the ADGM, the Application asks the ADGM Courts to order that it disclose information which is confidential to its client, JB, and disclosure of which would expose Arqaam to expense and potential liabilities, reputational damage, scrutiny from regulators and risk to client and investor confidence.

The Issues

11. The questions that arise for determination on the Application are these:

a. Does the Court have jurisdiction to grant the Application?

b. Should the Application be refused or stayed on the grounds of forum non conveniens?

c. *Are the requirements of CPR r.88 satisfied?*

d. *If so, should the Court exercise its discretion to order disclosure of the documents?*

Jurisdiction

12. By article 13(7) of *Abu Dhabi Law No. 4/2013* (the "**Founding Law**"), as amended by *Abu Dhabi Law No. 12/2020*, it is provided as follows:

> *"The Court of First Instance shall have exclusive jurisdiction to consider and decide on matters according to the following:*
>
> *a) Civil or commercial claims and disputes involving the Global Market or any of the Global Market Authorities or any of the Global Market Establishments;*
>
> *b) Civil or commercial claims and disputes arising out of or relating to a contract entered into, executed or performed in whole or in part in the Global Market, or a transaction entered into or performed in whole or in part in the Global Market, or to an incident that occurred in whole or in part in the Global Market;*
>
> *c) Any appeal against a decision or a procedure issued by any of the Global Market Authorities according to the Global Market Regulations;*
>
> *d) Any request, claim or dispute which the Global Market's Courts has the jurisdiction to consider under the Global Market Regulations;*
>
> *e) Any issues concerning the interpretation of any articles of the Global Market Regulations".*

13. Arqaam submitted that the Court has no jurisdiction over the proceedings, and so the Application, because the Court's jurisdiction is limited to proceedings covered by article 13 of the Founding Law. That is so, but the jurisdiction under article 13 includes jurisdiction over "*Civil or commercial claims and disputes involving … any of the Global Market Establishments*". The term "*Global Market Establishment*" is defined by article 1 of the Founding Law to include any company registered in the ADGM. It therefore includes FFM, which is a defendant in the proceedings, and the dispute involves a Global Market Establishment.

14. In conducting the proceedings, the Court has the procedural powers conferred by the *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015* (the "**Courts Regulations**") and the CPR. I have already set out rule 88 of the CPR. Section 37 of the Courts Regulations provides as follows:

> *"On the application of a party to any proceedings, the Court of First Instance shall, in such circumstances as may be specified in court procedure rules, have power to order a person who is not a party to the proceedings and who appears to the Court*

to have in his possession, custody or power any documents which are relevant to an issue arising out of the said proceedings to –

(a) disclose whether those documents are in his possession, custody or power; and

(b) produce such of those documents, as are in his possession, custody of power to the applicant or, on such conditions as may be specified in the order, to any advisors of the applicant".

15. This leads to the question whether the jurisdiction to make a disclosure order extends to non-parties who are outside the ADGM. Section 37 of the Courts Regulations is in the terms of the United Kingdom Senior Courts Act 1981, and CPR r.238 is in the same terms as the English Civil Procedure Rules r.33.1. In *Gorbachev v Guriev [2022] EWCA Civ 1270*, the English Court of Appeal considered whether the English Courts have jurisdiction to make a disclosure order against a non-party who is outside England and Wales, or whether the scope of the rule is limited by the principle of statutory principle of territoriality (or the presumption that a statutory provision is not intended to have extra-territorial effect). Having considered the history of the statutory provisions and the relevant authorities, Males LJ, with whom the other members of the Court agreed, decided that the English Court does have jurisdiction to make a disclosure order against persons outside the territorial jurisdiction of the Court. In accordance with the ADGM *Application of English Law Regulations 2015*, I consider that I am bound similarly to interpret CPR r.88 as having extra-territorial scope, but in any case, I would respectfully agree with the reasoning and the conclusion of Males LJ, and reach the same conclusion in respect of the ADGM legislation.

Forum Non Conveniens

16. Arqaam has an alternative argument that, even if the Court has jurisdiction over the Application, it should decline to exercise it in accordance with the doctrine of *forum non conveniens*. It submits that the "*relevant jurisdiction*" is either the Netherlands, where ARQ P Notes BV, the issuer of the notes, is incorporated, or England, because the P-Notes were governed by English law. It has a secondary contention that the DIFC Courts are "*more appropriate*" because of the "*regulatory context*", the location of relevant parties and Arqaam itself, and Arqaam's activities are regulated by the DIFC authorities.

17. I reject this argument. No party to the proceedings has applied for these proceedings to be stayed in favour of a different forum: Arqaam, as a non-party, has no standing to object to the forum in which the Claimants have brought their proceedings.

18. Further, I cannot accept that these proceedings have a closer connection with either the Netherlands or England than with the ADGM. ARQ P Notes BV is not party to the proceedings, and the issuer of the notes has no obvious relevance to any issue between the parties. (Indeed, the Claimants plead, apparently erroneously, that Arqaam was the issuer of the P-Notes.) Nor is the governing law of the P-Notes relevant to any issue between the parties.

19. I accept that the jurisdiction of the DIFC, or indeed "*onshore*" Dubai, has a closer connection with the dispute than the ADGM. However, here Arqaam's argument runs into a different difficulty. In *Investment Group Private Ltd v Standard Chartered Bank, [2015] DIFC CA 004,* the DIFC Court of Appeal was concerned with a dispute that arose out of two loans advanced by Standard Chartered Bank ("**SCB**") to Investment Group Private Ltd ("**IGP**"). SCB brought proceedings in the DIFC Courts for sums said to be due under them and to enforce a Share Pledge Agreement. IGP applied for a declaration that the courts of DIFC had no jurisdiction to hear the proceedings, and alternatively for a stay on the grounds of *forum non conveniens* in favour of the Sharjah Courts, where IGP had brought overlapping proceedings. With regard to the application for a stay, the DIFC Court of Appeal considered that the doctrine of *forum non conveniens* has no role in the context of resolving which of two courts of the UAE should determine a dispute. Its essential reason was that under the Constitution of the UAE the power to determine conflicts between the decisions of different courts of the UAE is vested in the Union Supreme Court ("**USC**"). Article 99 of the UAE Constitution provides that: "*The Union Supreme Court shall have jurisdiction in the following matters: ... Conflict of jurisdiction between the judicial authority in one Emirate and the judicial authority in another Emirate. The rules relating thereto shall be regulated by a Union Law*". The DIFC Court reasoned that, "*Although Article 99 does not adopt the language of 'exclusive jurisdiction', it cannot be understood as conferring on the USC anything less than exclusive jurisdiction over the matters set out in that provision*" (at para 187), and that "*It is true that a jurisdictional conflict crystallizes, and the USC intervenes, only after the competing UAE courts issue conflicting and final judgments on jurisdiction .... But that fact does not mean that the DIFC can apply the [forum non conveniens] doctrine before the jurisdictional conflict crystalizes...The power to resolve jurisdictional conflicts ... is vested in the USC absolutely*" (at para 190). Thus, the Court concluded (at para 191) that "*The point is that the power to determine jurisdictional conflicts is absolutely and exclusively vested in the USC under the UAE's Constitution, and is therefore removed from this Court's power in all circumstances*".

20. In *Fleming and anor v Dubai Islamic Bank PJSC and ors [2021] ADGM CFI 0006*, I said that, while the decision in the Investment Group Private Ltd case is not binding authority in the ADGM, it would be "*of considerable persuasive authority*" if a comparable case came before these Courts (at para 114). I respectfully agree with the reasoning of the DIFC Court of Appeal and would adopt it and apply it to the ADGM. I do not accept that the doctrine of *forum non conveniens* applies to a question about which Court within the UAE should determine a dispute.

Are the requirements of CPR r.88 satisfied?

21. There is no dispute that the procedural requirements in CPR r.88(1) were satisfied by the Claimants. Under CPR r.88(2), the Claimants also have to establish that:

    (i) The documents of which disclosure is sought are likely to support their case, or adversely affect the case of (at least) one of the other parties to the proceeding; and

    (ii) Disclosure is necessary in order to dispose fairly of their claims or to save costs.

22. Mr de Wolff submitted that the disclosure of the documents is "*likely*" to support Claimants' case. This requirement does not require the applicant for disclosure to show a higher degree of likelihood than that it is more probable than not that the documents will do so: *Three Rivers DC v Bank of England (No 4) [2002] EWCA Civ 1182*. It might be that disclosure is not required in order to establish that the Claimants were the victims of a fraudulent scheme, but that misses the point. The Claimants' argument was that it is likely to assist in identifying who issued instructions to transfer the P-Notes to Arqaam and who benefitted from the scheme. I accept that. I also accept that, for similar reasons, disclosure is necessary in order to dispose of the claims fairly,

23. In his submissions, Mr El Khatib told me that Arqaam took instructions only from JB: it had not found and examined the documents themselves, but it so inferred because for regulatory reasons it could only take instructions from a properly registered client, and none of the parties to these proceedings had been so registered as a client. However, these submissions are not supported by any evidence, and I am not persuaded by them.

Discretion

24. The power under the section 37 of the Courts Regulations and rule 88 of the CPR is discretionary: "*the Court of First Instance shall ...have power*"; "*The Court may make an order...*". These conclusions therefore lead to the question whether the Court should exercise its discretion to make an order.

25. It can properly be said in favour of the exercise of the discretion (i) that the documents are likely to be very important in determining central issues about the serious allegations against the remaining defendants and the very substantial claims made in these proceedings, and (ii) that the application is focused and identifies with precision a limited number of documents.

26. Against that, Arqaam identifies a number of considerations that weigh against granting an order for disclosure. The two most important, to my mind, are these:

    a. Neither Arqaam nor the matters giving rise to these claims have any real connection with the ADGM, and the documents are not in the ADGM.

    b. Arqaam acted only as an arranger and dealer, or as an execution-only broker, in relation to the P-Notes on behalf of its client, JB, and information about the dealings, and the instructions for the dealings, is the confidential to JB, whose rights to confidentiality are protected both contractually and by the applicable regulatory regime, and who is not a party to the Application. As Mr de Wolff submitted, an obligation of confidentiality does not necessarily preclude the Court from making an order. Further, the Court can, in appropriate cases, mitigate the disclosure of confidential information by such measures as, for example, restricting disclosure to an "*confidentiality club*". Nevertheless, in my judgment, the confidential nature of the documents is an important factor in the exercise of the discretion. (Mr El Khalib also said that JB owned the documents: the point was not developed and on the face of it, this would be surprising. However that might be, disclosure orders are directed to

documents in the control, not the ownership, of the respondent, and I need not engage with the question of ownership.)

27. Mr El Khatib argued that the Dubai Financial Services Authority (the "**DFSA**") requires it to keep records for a minimum of six years (unless otherwise required by law, regulation or a specific direction of the DFSA). However, there is no convincing evidence that it no longer retains the documents that the Claimants seek. This is no reason to refuse the Application.

28. Secondly, it was submitted that an order for disclosure would require Arqaam to spend "*substantial time, effort and expense in searching, verifying, and producing documentation that is no longer actively maintained*", and that Arqaam "*has not been offered any form of indemnity or compensation for the associated costs*". I do not attach much weight to this point: Mr de Wolff accepted that *prima facie* an applicant for relief of this kind is required to pay the respondent's costs of complying with the order.

29. The English cases firmly establish that the Courts should exercise caution in exercising this "*intrusive jurisdiction*", as it was described in *Gary Flood v Times Newspapers Ltd [2009] EWHC 411 (QB) at para 29*. Even where the respondent is within the jurisdiction, non-party disclosure has been said to be "*the exception and not the rule*": *Frankson v Secretary of State for the Home Department [2003] EWCA Civ 655*. The Courts take an even more restrictive approach to the exercise of its discretion when the respondent is not in the jurisdiction. At para 59 of his judgment in the *Gorbachev v Gouriev case (cit sup)*, Males LJ referred to the judgment of Cockerill J in *Nix v Emerdata Ltd [2022 EWHC 718 (Comm)*, and said:

> *"The long standing practice of states has been to deal with the problem of evidence and documents outside their jurisdiction by means of letters of request whereby a court in which proceedings are taking place will request a court in the jurisdiction where a witness is located to require the witness to answer questions or to produce documents. That was described by Mrs Justice Cockerill in Nix v Emerdata Ltd at [27] as 'the proper, courteous, respectful method of obtaining evidence within a foreign jurisdiction from a foreign party [which] is a very sensitive topic in many jurisdictions'".*

30. Later in his judgment, Males LJ said (at para 90):

> *"Even if jurisdiction exists to make an order against a third party for production of documents held abroad, in view of the availability of the letter of request procedure it would only be in an exceptional case that it would be appropriate to exercise that jurisdiction, for the reasons given by Mrs Justice Cockerill in Nix v Emerdata Ltd."*.

31. Here, there is a further reason to exercise caution before making an order for disclosure: in the *Gorbachev v Gouriev* case (at para 56), Males LJ referred to the decision of Hoffmann J in *Mackinnon v Donaldson, Lufkin & Jenrette Securities Corporation [1986] 1 Ch 482*. The case itself was not concerned with an order for non-party disclosure, but, as Males LJ observed, it illustrates

that the exercise of a jurisdiction to compel the production of documents from persons beyond the state is "*particularly sensitive*".

32. The case concerned an application under the *Bankers' Books Evidence Act 1878* for an order requiring an American bank with a branch in London to produce books and papers held at its head office in New York. Because the bank could be served at its London branch, there was no issue about the English court's jurisdiction over the bank: otherwise, as Hoffmann J observed, the only ways in which such an order could have been obtained were through a letter of request to the courts of New York or by direct application to the New York courts themselves. Hoffmann J said (at p. 493) that the English court did not have subject matter jurisdiction:

> *"The content of the subpoena and order is to require the production by a non-party of documents outside the jurisdiction concerning business which it has transacted outside the jurisdiction. In principle and authority it seems to me that the court should not, save in exceptional circumstances, impose such a requirement upon a foreigner, and, in particular, upon a foreign bank. The principle is that a state should refrain from demanding obedience to its sovereign authority by foreigners in respect of their conduct outside the jurisdiction"*.

He also said (at p.499): "[i]*t seems to me that in a case like this, where alternative legitimate procedures are available, an infringement of sovereignty can seldom be justified except perhaps on the grounds of urgent necessity* ...".

33. Thus, as I read the judgment, Hoffmann J was especially concerned about making an order against an overseas bank, which is a recognition, I think, of the sensitive nature of information that banks typically hold. Arqaam is not a bank, but in some ways its position is comparable in that it holds clients' confidential information, in that it is subject to regulatory rules and supervision, and in that its commercial reputation likely depends on it maintaining its clients' confidentiality and high standards of regulatory compliance. It is more appropriate that the DIFC Court, rather than this Court, should determine whether information that is said to be regarded as confidential under the DIFC regulatory regime, should be disclosed in the circumstances of this case.

34. The constraints upon making an order for non-party disclosure against a person outside the jurisdiction are based, in part, upon considerations of comity. As I said in *NMC Healthcare Ltd v Neopharma [2023] ADGMCFI 0022*, citing the judgment of HH Justice William Stone in *Rosewood Hotel Abu Dhabi LLC v Skelmore Hospitality Group Ltd [2020] ADGMCFI 0002*, "*the question whether powers conferred on the ADGM Courts are to be given effect elsewhere in the UAE does not engage such questions of international law or considerations of comity in the international context*". Nevertheless, and even giving full weight to that consideration, powerful English authorities show that orders for non-party disclosure against persons outside the jurisdiction are exceptional, especially where a letter of request regime is available.

35. CPR r.137(2)(c) makes express provision for ADGM Courts to issue a letter of request to a competent authority elsewhere in the UAE. In the course of the hearing, I asked Mr de Wolff why the Claimants had not adopted this procedure. He made three points in response: (i) that this Court is familiar with the case; (ii) that the doctrine of *forum non conveniens* does not apply between the Courts of the UAE; and (iii) that the letter of request route would cause delay. I am not impressed by these arguments. I have no doubt that the DIFC Court would readily grasp the importance of the documents to doing justice and having a fair trial of these difficult and substantial proceedings. It is irrelevant to the exercise of the discretion under CPR r.88 whether the *forum non conveniens* doctrine applies to the proceedings in which disclosure is sought. I accept that the timetable to trial is a demanding one, but the argument about delay does not come well from the Claimants: they brought these proceedings in November 2022 and did not make the Application until June 2025. In any case, I am confident that the DIFC Court would deal with a letter of request with appropriate urgency.

36. I am not persuaded that this is a proper case to grant the Application for non-party disclosure. There is nothing exceptional that justifies departure from the letter of request route, and Arqaam has advanced proper objections to the Application. I refuse it.

37. My provisional view is that the Claimants should pay Arqaam its costs in respect of the Application, other than any costs related to submissions made by Arqaam after the hearing, which were uninvited and entirely inappropriate; and that Arqaam's costs are to be assessed summarily on the standard basis. Any submissions that I should make a different order about costs should be filed and served by 5.00 pm on 25 July 2025.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
19 July 2025