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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

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN

A22
First Claimant

B22
Second Claimant

and

C22
Defendant

JUDGMENT OF JUSTICE PAUL HEATH KC

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Neutral Citation:	[2025] ADGMCFI 0018
Before:	Justice Paul Heath KC
Decision Date:	13 August 2025
Decision:	See paragraph 75 of this Judgment.
Hearing Date(s):	6 August 2025
Date of Order:	13 August 2025
Catchwords:	Anti-suit injunction. Jurisdiction under Sections 16 and 41 of the *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015*. Whether grant of interim anti-suit injunction "*just and convenient*". Exercise of discretion.
Legislation Cited:	Abu Dhabi Law No. (4) of 2013 (as amended by Abu Dhabi Law (No. 12) of 2020) ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 ADGM Arbitration Regulations 2015 Arbitration Act 1996 (UK) Senior Courts Act 1981 (UK) UAE Civil Code (Law No. 5 of 1985 concerning the issuance of the civil transactions law of the UAE) UAE Commercial Maritime Law (Federal Law No. 43 of 2023) UAE Arbitration Law (Federal Law No. 6 of 2018)
Cases Cited:	*A15 v B15* [2024] ADGMCFI 0012 *A17 v B17* [2025] ADGMCFI 0001 *Abu Dhabi Commercial Bank PJSC v Manghat* [2024] ADGMCFI 0010 *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35 *AIG Europe SA v John Wood Group Plc* [2021] EWHC 2567 (Comm): [2022] EWCA Civ 781 *Bankers Trust Co v PT Jakarta International Hotels and Development* [1999] 1 All ER (Comm) 785 *Bankers Trust Co v PT Mayora* (Unreported, 20 January 1999, Commercial Court) *Carmon Reestrutura-Engenharia e Servicos Tecnios Especiais, (SU) LDA v Cuenda* [2024] DIFC CA 003

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	Dubai Court of Cassation No. 51/1992 (24 May 1992) *Ecobank Transnational Incorporated v Tanoh* [2016] 1 WLR 2231 (CA) *Enka Insaat Ve Sanayi AS v OOO Insurance Co Chubb* [2020] UKSC 38 *Ledger v Leeor* [2022] DIFC ARB 16 *Nest Investment Holding Lebanon SAL v Deloitte and Touche (ME)* [2018] DIFC CA 011 *Nuriel v Nuzhat* [2024] DIFC ARB 018 *QBE Europe SA/NV v Generali Espana de Seguros y Reaseguros* [2022] EWHC 2062 (Comm) *Transfield Shipping Inc v Chiping Xinfa Huaya Alumina Co Ltd* [2009] EWHC 3629 (QB) *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30
Case Number:	ADGMCFI-2025-198
Parties and representation:	Andrew Stevens instructed by Holman Fenwick Willan Middle East LLP for the Claimants Nicholas Craig KC instructed by Clyde & Co LLP for the Defendant

JUDGMENT

The anti-suit injunction claim

1. On 10 June 2025, A22 and B22 filed a claim with Abu Dhabi Global Market ("**ADGM**") Courts (the "**Claim**")[1] seeking an anti-suit injunction to prevent C22 from continuing a proceeding in onshore Abu Dhabi (the "**Onshore Proceeding**") that it had brought against A22 and B22 (collectively, the "**Companies**") in the Court of First Instance of the Abu Dhabi Judicial Department in the Emirate of Abu Dhabi (the "**Onshore Court**").

2. In the Claim, the Companies sought relief in the following terms: "*Final and/or interim prohibitory [or mandatory] injunctive relief*". In doing so, they expressly raised the likelihood that questions of jurisdiction would arise. Among the issues raised was the fundamental question as to whether (and if so on what basis) this Court can grant anti-suit injunctions.

3. The Onshore Proceeding has its origin in a contract into which a third-party entity not a party to the Claim ("**D22**") entered with A22 (the "**Contract**").[2] As a result of an insurance

[1] Brought under the ADGM Court Procedure Rules 2016, Rule 30.

[2] The circumstances in which the onshore claim has been brought are set out at paragraphs 12–22 below.

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event that occurred while that contract was being undertaken, C22 (as D22's insurer) was required to indemnify D22 for specified losses.[3]

4. The anti-suit injunction is sought by the Companies to restrain C22 from continuing the Onshore Proceeding on the grounds that it has been issued contrary to the terms of an (allegedly) valid arbitration agreement contained in the Contract. C22 disputes the existence of a valid arbitration agreement by which it is supposedly bound, and opposes the grant of anti-suit relief.

5. On 8 July 2025, C22 responded to the Claim by filing an application seeking a declaration that this Court does not have jurisdiction, or should not exercise its jurisdiction, to hear the Claim (the "**Jurisdiction Application**"). While the statutory jurisdiction of the ADGM Courts to issue an anti-suit injunction is a central issue, other grounds on which C22 relies go to whether any jurisdiction that does exist should be exercised. Without being exhaustive, these include:

   a. B22 has no legal standing to seek the relief claimed;

   b. The seat or place of arbitration under the alleged arbitration agreement is not the ADGM; and

   c. The Onshore Proceeding is well advanced, and the Companies have participated and/or submitted to the jurisdiction in it.

6. In consequence, C22 contends that this Court has no jurisdiction to issue an anti-suit injunction to restrain the Onshore Proceeding or (alternatively) that it should not exercise any jurisdiction that it does possess.

7. On 10 July 2025, I gave directions for the filing and service of evidence in relation to the Jurisdiction Application. Further directions were given on 16 July 2025 (the "**16 July Order**"), when it became apparent that there was some urgency in having (at least) an interim anti-suit injunction application heard before 13 August 2025.

8. The 16 July Order contained timetabling orders to enable a prompt hearing of an on-notice application for an interim anti-suit injunction. In reasons appended to the 16 July Order,[4] I explained the basis on which an urgent hearing would proceed as follows:

> "*1. The [Companies] wish to proceed with an urgent application for interim anti-suit injunctive relief. In view of the suggestion that a binding decision might be given imminently by the [Onshore Court], I am satisfied that a sufficient degree of urgency has been demonstrated for the purpose of listing a hearing of the Interim Injunction Application. For the avoidance of doubt, no hearing will be fixed for the substantive claim for final relief until the Interim Injunction Application has been determined.*

[3] See paragraphs 21 and 22 below.

[4] While the orders made on 16 July 2025 were subsequently varied, the underlying basis for them did not change.

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2. *The Jurisdiction Application will be heard contemporaneously to ensure that [C22's] response to the Interim Injunction Application covers the question of jurisdiction, by way of defence to that application.*

3. *I have decided that any matters of UAE law are to be dealt with by way of submissions as opposed to expert evidence. Accordingly, the parties are to file legal submissions on relevant questions of UAE law. The directions ensure that each party will have an opportunity to respond to any issue of UAE law that might be raised by the other.*"

(Emphasis added)

9. The Companies filed and served their interim anti-suit injunction application on 24 July 2025 (the "**Interim Injunction Application**"). The hearing of the Interim Injunction Application and the Jurisdiction Application (together "the **Applications**") took place by audio-visual link on 6 August 2025. Having heard from counsel and considered their comprehensive and helpful submissions, I reserved my decision, to be given during the week of 11 August 2025. That was on the basis that the next hearing of the Onshore Proceeding has been fixed for 21 August 2025, and the Companies were fearful that the Onshore Court may give a dispositive judgment against them at that time.

10. Although the Applications were heard at short notice, a bundle of documents comprising almost 3,000 pages was put before me, including skeleton submissions from Mr Andrew Stevens, for the Companies, and Mr Nicholas Craig KC, for C22. To meet the needs of the parties, a formal order dismissing the Interim Injunction Application was made on 13 August 2025, with reasons to follow. These are my reasons for declaring that I had jurisdiction to try the Claim and the Interim Injunction Application. They also explain why the Interim Injunction Application was dismissed.

11. These reasons draw together my analysis of the relevant issues, based on the parties' helpful submissions. Where I do not refer to those submissions directly, it is because to do so would have lengthened this judgment unnecessarily. The need to provide a prompt and reasoned decision is paramount. The fact that I have not commented on any particular submission should not be taken as an endorsement or otherwise of it.

Context

12. D22 provided services as a contractor for a separate party also not a party to the Claim ("**E22**") in undertaking various upgrades to facilities at an oil field in Saudi Arabia (the "**Project**"). This work included the addition of a platform.

13. D22 took out a policy of insurance (the "**Policy**") with C22 to cover it for work of that type. The Policy was described as a "*Construction All Risks Policy*" and was in force for the period from 29 December 2019 to 31 May 2022. The Policy incorporated the JRC Generic Scope of Work 2019-006 and JRC Upstream Construction Marine Warranty Surveyor Endorsement (JR 2019-006A), which required certain project activities to be approved by a

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marine warranty surveyor ("**MWS**") to mitigate risks associated with, for example, carriage of goods by sea. A22 was in the business of providing services as a MWS.

14. On 17 November 2020, D22 issued an Invitation to Tender (the "**Invitation**"), directed to securing MWS services required in connection with the loadout and transportation of various items for the Project. The Invitation provided that any quote was to be on D22's own "*terms and conditions for general services, Rev 2 dated September 2018/21, and as duly amended under Appendix C*". An arbitration agreement was set out in the amended article 21 to those terms. The same article states that the governing law is the "*Laws of Abu Dhabi*".

15. A22 submitted a successful tender on 23 November 2020. On 18 March 2021, D22 issued a Letter of Intent to A22. Clause GG of the Letter of Intent constituted an instruction for A22 to make necessary arrangements for and to commence the agreed works, subject to A22's "*undertaking to enter into a formal [Service Order] on the basis of [that] Letter of Intent*" and the documents to which it referred. The same clause stated that the formal Service Order "*when signed … shall cancel and supersede [the] Letter of Intent and thereafter be of no force and effect*". The Letter of Intent did not incorporate (or refer to) any arbitration agreement, and was not (in express terms) made subject to D22's Terms and Conditions for General Services.

16. The extent of the services to be provided by A22 were agreed at (what was called) a "*kick-off meeting*" on 20 April 2021. The physical work was undertaken in or about October 2021.

17. On or about 6 October 2021, a number of reactors and transformers were loaded onto a barge at Port A, Abu Dhabi. On 17 October 2021, the barge was towed by a vessel to Port B, in Saudi Arabia. All items were to be fixed to the platform. On arrival at Port B, it was discovered that the reactors and transformers had been damaged in transit.

18. Subsequent investigations determined that the cause of the damage was the inadequacy of the sea fastenings. On 31 October 2021, D22 gave notice to C22 of a loss under the Policy. It claimed a sum of USD 14,685,355.44 (or its equivalent of AED 53,931,967.85). On 28 July 2022, C22 declined cover under the Policy.

19. At the time of declinature, no Service Order had been signed by D22 and A22, as contemplated by the Letter of Intent.[5] In fact, the Service Order was not issued until 11 October 2022 (the "**2022 Service Order**"); almost one year after notification of the claim had been given and three months after the notice of declinature of claim.[6] Clause 4.1 of the 2022 Service Order stated that it was subject to "*[D22's] Terms and Conditions for General Services, Rev 2 dated September 18, 2001 and as duly amended under Annexure III*". The terms set out in Annexure III reflected those to which the Invitation to Tender had referred. They included a statement of the governing law (clause 21.1) and the arbitration

[5] See paragraph 15 above.
[6] See paragraph 18 above.

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agreement (clause 21.2), to which reference had been made in Appendix C of the Invitation of 17 November 2020.[7]

20. The purported arbitration agreement provided that any disputes arising out of the 2022 Service Order were to be "*finally resolved by arbitration seated in Abu Dhabi, by a three-man arbitration panel under the rules of arbitration of the International Chamber of Commerce*" (the "**ICC**"). It added the mode of appointment of the three arbitrators. The parties have agreed that any question of validity of the arbitration agreement is a question to be determined as a matter of onshore UAE law. While the Companies have suggested that the location of the ICC Middle East and North Africa Case Management Office in the ADGM means that is the seat of the arbitration, C22 disputes that proposition.[8] I do not need to make a finding on that issue as it does not affect the outcome of my decision.

21. Following declinature of its claim, D22 issued a complaint against C22 for failure to honour the Policy. An insurance expert appointed by the (onshore Abu Dhabi) Insurance Dispute Resolution Committee (the "**Committee**") determined that the MWS (engaged by D22) had failed to ensure the adequacy of the sea fastenings and ought not to have approved the vessel to leave from Port A, given the weather forecast for "*Storm Geo*".

22. The Committee issued a formal decision on 13 February 2023, ordering C22 to indemnify D22 in full. While C22 appealed that decision up to the Abu Dhabi Court of Cassation, it did not prevail. C22 was ordered to pay AED 54,529,714.89 (approximately USD 14.5 million) to D22. C22 has paid that sum.

The Onshore Proceeding

23. On 29 October 2024, C22 commenced the Onshore Proceeding against D22 and B22. At that time, A22 was not named as a defendant. At least initially, the primary purpose of C22's claim against D22 was to obtain documents to determine whether C22 was suing the correct entity. As insurer, C22 had little (if any) visibility over the contractual arrangements between D22 and the Companies.

24. According to Mr Faisal Alhazmi, a partner in the law firm instructed by C22 on the Claim, the present iteration of the Onshore Proceeding against D22 includes an allegation that, should the 2022 Service Order represent the final form of the Contract, D22 breached its duties under the Policy (and the general law) by waiving C22's right of subrogation against the Companies. It is said that D22's conduct amounts to a breach of article 294 of the UAE Commercial Maritime Law (Federal Law No. 43 of 2023) which, according to Mr Alhazmi, "*expressly obliges an insured party to take all necessary steps to preserve the insurer's rights against third parties*". Mr Alhazmi also opines that D22's actions would have been in contravention of the principle of good faith governing insurance contracts in the UAE. On those bases, C22 now asks the Onshore Court to order that D22 refund the insurance

[7] See paragraph 14 above.

[8] This issue was discussed in *A15 v B15* [2024] ADGMCFI 0012, at paragraphs 40-48. At paragraph 48, applying UAE law, this Court rejected the argument that the seat of the arbitration was in ADGM. Given the context in which that decision was reached, it cannot (in my view) be treated as determinative on the facts of this case.

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indemnity of AED 54,529,714.89 paid by C22 pursuant to the decision of the Committee, as previously upheld by the onshore Courts.[9]

25. On 5 December 2024, C22 requested the Onshore Court to add A22 as a party to the Onshore Proceeding. From that point, both Companies were before the Onshore Court. Mr Alhazmi has given evidence that the claims brought by C22 against both B22 and A22 are "*direct and independent*" causes of action arising out of their role in allegedly causing the insured loss. To the contrary, the Companies characterise the Onshore Proceeding as having been brought under asserted subrogation rights which became operative after the insurance moneys were paid to D22. As a result, the Companies have a different view as to the applicability of the arbitration agreement should it be found, ultimately, to have been validly incorporated into the Contract, through the 2022 Service Order.

26. An unusual feature of this case is that A22 does not intend to commence arbitration proceedings against C22. Its view is that C22, while subrogated to D22's rights, is not a party to the Contract itself. Although the Companies deny that B22 was a party to the contract of which the arbitration agreement is said to be part, they contend that any issue of jurisdiction over B22 should be determined by a duly constituted arbitral tribunal, not by a court.

27. In the course of oral argument, Mr Craig reiterated C22's view that the claim against B22 was not based on any asserted subrogated right. Rather, it was premised on an independent cause of action arising under article 124 of Law No. 5 of 1985 concerning the issuance of the Civil Transactions Law of the UAE (the "**Civil Code**"). That provision is aimed at various acts which cause "*harm*" to another; specific provisions concerning harmful acts arising out of tort or delict are codified in articles 282-293 of the Civil Code.

28. On 21 November 2024 a Case Management Office ("**CMO**") hearing took place in the Onshore Proceeding. At that time, A22 had not been joined as a party to that proceeding.[10] There is a measure of dispute as to whether B22 raised an objection to jurisdiction on the basis of the asserted arbitration agreement. For the purposes of the Interim Injunction Application, I assume (without deciding) that a timely objection was made.

29. On 6 December 2024, A22 was added as a party to the Onshore Proceeding. A further CMO hearing took place on 18 December 2024. A22 contends that, at that hearing, it too challenged jurisdiction based on the asserted arbitration agreement. To the extent that some dispute about that may remain, for the purposes of the Interim Injunction Application I assume (without deciding) that such a challenge was made in a timely manner.

30. Notwithstanding their objections to jurisdiction, both Companies participated in preliminary procedures during which the Onshore Proceeding was referred to a panel of experts. Both Companies made submissions on their respective jurisdictional challenges and the merits. On 17 May 2025, a preliminary report was provided by a panel of experts

[9] See paragraph 22 above.
[10] See paragraph 25 above.

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appointed by the Onshore Court. That was adverse to the Companies. They made further submissions on 22 May 2025. The final experts' report was issued on 28 May 2025.

31. The Companies were dissatisfied with the final report. The partner of the law firm acting for the Companies, Mr Robert Lawrence, provided a witness statement in these proceedings in which he asserted that the panel of experts had "*ignored every point*" that the Companies had made in response to the preliminary report. The final report was adverse to the positions taken by the Companies on the merits of the dispute.

32. No ruling has yet been given by the Onshore Court on the jurisdictional objection based on the asserted arbitration agreement. It is common ground that the onshore proceeding is to be called on 21 August 2025. It is unclear whether a final determination will be given on that day, or an adjournment granted for further evidence or submissions to be made.

The issues

33. In order to decide the Interim Injunction Application, I need to determine the following issues:

    a. Do ADGM Courts have jurisdiction to entertain the application?

    b. If jurisdiction were to exist, should this Court exercise it in favour of the Companies?

Analysis

(a) Jurisdiction

34. Unlike the Courts of England and Wales, service is not a basis of jurisdiction in the ADGM. Rather, the jurisdiction of ADGM Courts is statutory in nature. The presence of a defendant within the ADGM has no immediate importance to a claimant's ability to establish the Court's jurisdiction to determine his or her claim.[11] In this case, the primary question is whether ADGM Courts have a statutory jurisdiction to issue an anti-suit injunction.

35. The ADGM was established pursuant to UAE federal legislation and Abu Dhabi Law No. (4) of 2013, as amended by Abu Dhabi Law (No. 12) of 2020 (the "**Founding Law**"). ADGM Courts were established pursuant to articles 10 and 13 of the Founding Law. Any judgment of ADGM Courts is issued in the name of the Ruler of Abu Dhabi.[12] ADGM Courts are regarded as courts of the Emirate of Abu Dhabi.[13]

36. Article (13)(1) of the original version of the Founding Law referred only to ADGM Courts being "*of two degrees, first instance courts (formed of a single judge) and courts of appeal (formed of three judges)*". The 2020 amendments added the following words to article (13)(1):

[11] *Abu Dhabi Commercial Bank PJSC v Mang*hat [2024] ADGMCFI 0010, at paragraphs 15 and 16. See also *A17 v B17* [2025] ADGMCFI 0001, at paragraphs 55–57.
[12] Founding Law, article (13)(2).
[13] Founding Law, article (13)(1), set out at paragraph 36 below.

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"... Without prejudice to the provisions of this law and the Global Market Regulations, the Global Markets Court's shall be considered as courts of the Emirate, with jurisdiction over disputes and matters in accordance with the provisions of this law and the Global Market Regulations".

37. The question whether a provision of the Founding Law or a "*Global Market Regulation*" confers jurisdiction on this Court is "*a question of construction in light of the particular provision of the Law or Regulation in question, when seen in the context of the statute or regulation as a whole and the purpose which lies behind the provision and the statute*".[14]

38. Article (13)(7) of the Founding Law provides the bases on which jurisdiction is conferred on the Court of First Instance. Article (13)(7) provides:

> *"7. The Court of First Instance and (sic) 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."*
>
> (Emphasis added)

39. The term "*Global Market Regulations*" is defined in article (1)(1) of the Founding Law. They are: "*Any regulations or resolutions related to the Global market and issued by the Board of Directors*" of the ADGM. Both the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**ADGM Courts Regulations**") and the ADGM Arbitration Regulations 2015 (the "**ADGM Arbitration Regulations**"), to which counsel referred in oral argument, are "*Global Market Regulations*".

[14] *Abu Dhabi Commercial Bank PJSC v Manghat* [2024] ADGMCFI 0010, at paragraph 15, adopting the same approach as that taken by the Dubai International Financial Courts in *Nest Investment Holding Lebanon SAL v Deloitte and Touche (ME)* [2018] DIFC CA 011 at paragraph 39.

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40. In my view, both the ADGM Courts Regulations and the ADGM Arbitration Regulations fall within the ambit of article (13)(7)(d) of the Founding Law.[15] The next step is for the Companies to identify some specific provision within either of those Regulations to provide the jurisdiction to issue an anti-suit injunction.

41. Mr Stevens relied on section 41 of the ADGM Courts Regulations as the principal source of jurisdiction for the interim anti-suit injunction application. Section 41(1) and (2) provides:

> ***"41. Powers of the Court of First Instance with respect to injunctions and receivers***
>
> *(1) The Court of First Instance may by order (whether interim or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.*
>
> *(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.*
>
> ...."

42. Section 41 of the ADGM Courts Regulations has its origins in section 37 of the Senior Courts Act 1981 (UK) (the "**Senior Courts Act**"). I am satisfied that, on its true interpretation, section 41 should be interpreted in the same way in which the Supreme Court of the United Kingdom has construed section 37 of the Senior Courts Act.[16] Relevantly, section 37 provides:

> ***"37. Powers of High Court with respect to injunctions and receivers.***
>
> *(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.*
>
> *(2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.*
>
> ...."

43. Anticipating an argument that Mr Craig had raised to support the proposition that this Court was not entitled to exercise jurisdiction under the ADGM Arbitration Regulations,[17] Mr Stevens submitted that the Courts of England and Wales had decided that the jurisdiction to make anti-suit injunctions (whether directed to domestic or foreign proceedings) derived from the broad provisions of section 37(1) and (2) of the Senior Courts Act. He contended that because the Board of Directors of the ADGM had adopted the powers contained in section 37, through enactment of section 41 of the ADGM Courts Regulations, I should accept that jurisdiction exists under that provision. By way of analogy, Mr Stevens relied on

[15] Article 13(7)(d) is set out at paragraph 38 above.
[16] See paragraphs 47–50 below.
[17] See paragraphs 49–51 below.

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an earlier decision of this Court, in *A17 v B17,*[18] in which this Court held that worldwide freezing orders could be made under the broad jurisdiction conferred by section 41 of the ADGM Courts Regulations.

44. In *A17 v B17*, at the request of the respondents to a worldwide freezing order application, this Court revisited its earlier decision in *Abu Dhabi Commercial Bank PJSC v Shetty*.[19] This involved a review by Justice Sir Andrew Smith of the "*extensive English authority in support of [an] argument about in personam jurisdiction*".[20] The Judge confirmed his earlier decision on the grounds that, unlike the English courts, ADGM Courts' jurisdiction is not based upon personal jurisdiction over defendants or service of proceedings upon them.[21]

45. Section 16 of the ADGM Courts Regulations supports the view that this Court's jurisdiction is based on statute rather than some link between the person or service upon him or her. Section 16(1) and (2) provides:

> ***"16. General Jurisdiction of the Court of First Instance***
>
> *(1) The Court of First Instance shall be a superior court of record.*
>
> *(2) Subject to the provisions of these Regulations, there shall be exercisable by the Court of First Instance all such jurisdiction as is conferred on it by –*
>
> *(a) Articles 13(7) and (8) of the ADGM Founding Law;*
>
> *(b) an Applicable Abu Dhabi Law;*
>
> *(c) these Regulations;*
>
> *(d) any other ADGM enactment; or*
>
> *(e) any request, in writing, by the parties to have the Court of First Instance determine the claim or dispute."*

(Emphasis added)

46. Section 16(2)(c) makes it clear that the Court of First Instance may exercise any jurisdiction conferred upon it by the ADGM Courts Regulations.[22] In addition, the term "*ADGM enactment*" (to which section 16(2)(d) refers) includes the ADGM Court Procedure Rules 2016, Rule 71 of which provides that this Court may issue such interim remedies as are necessary in the interests of justice.[23] I consider that the powers conferred by sections 16

[18] *A17 v B17* [2025] ADGMCFI 0001.
[19] *Abu Dhabi Commercial Bank PJSC v Shetty* [2021] ADGMCFI 0004, at paragraph 21.
[20] *A17 v B17 [2025]* ADGMCFI-0001, at paragraph 52.
[21] Ibid, at paragraph 55.
[22] Section 16(2)(c).
[23] The term "*ADGM enactment*" is defined in section 227(1) of the ADGM Courts Regulations as including "*any rules made under ADGM regulations, including court procedure rules*".

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and 41 of the ADGM Courts Regulations are more than ample to support the view that this Court has jurisdiction to issue an anti-suit injunction.

47. As Mr Stevens submitted, the fundamental purpose of an anti-suit injunction arising out of an arbitration agreement is to uphold the principle of *pacta sunt servanda* (agreements must be kept), even for foreign seated arbitrations. In *UniCredit Bank GmbH v RusChemAlliance LLC*[24], following its earlier decision in *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC*,[25] the Supreme Court of the United Kingdom held that "*the source of the court's power to grant an injunction to restrain foreign court proceedings brought in breach of an arbitration agreement is … section 37 of the Senior Courts Act 1981*".[26] Section 41 of the ADGM Courts Regulations provides the same jurisdiction as section 37 of the Senior Courts Act.[27]

48. Delivering the judgment of the Supreme Court in *UniCredit*, Lord Leggatt made it clear that the section 37 jurisdiction could be exercised whether or not arbitral proceedings were "*on foot or proposed*".[28] Adopting the approach articulated by Lord Mance in *AES Ust-Kamenogorsk,* Lord Leggatt said that the Court's power under section 37 "*may be exercised for the purpose of enforcing the negative promise not to bring court proceedings contained in the arbitration agreement regardless of whether arbitration proceedings are in existence or are anticipated*".[29]

49. During the course of his argument, Mr Craig suggested that this Court's jurisdiction to enforce an arbitration agreement by issuing an anti-suit injunction in this case had been removed by section 12 of the ADGM Arbitration Regulations. Section 12 limits the Court's role to intervening in matters governed by those Regulations. A mandatory form of words is used: "*…no court shall intervene except to the extent so provided in these Regulations*" (with emphasis added). Mr Craig emphasised that section 1(c) of the Arbitration Act 1996 (UK) (the "**Arbitration Act**") (the equivalent provision to section 12) states that the Court "*should not intervene*" (with emphasis added).

50. Delivering the judgment of the Supreme Court of the United Kingdom in *AES Ust-Kamenogorsk,* Lord Mance held that the use of the word "*should*" *in* section 1(c) of the Arbitration Act was a "*deliberate departure*" from the more prescriptive "*shall*", which has its origins in article 5 of the UNCITRAL Model Law on International Commercial Arbitration. As Lord Mance said, the word "*should*" … "*implies a need for caution, rather than an absolute prohibition, before any court intervention*".[30]

51. Had the Companies been seeking anti-suit injunctive relief based on a power contained in the Arbitration Regulations, I consider that Mr Craig's submission would have been

[24] *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30, at paragraphs 72-75.
[25] *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35, at paragraph 48.
[26] *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30, at paragraph 90.
[27] Section 41 of the ADGM Courts Regulations and section 37 of the Senior Courts Act are set out at paragraphs 41 and 42 above.
[28] Ibid.
[29] Ibid, adopting what was said at paragraph 48 of *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35.
[30] *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] UKSC 35, at paragraphs 31 and 33.

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unanswerable.[31] However, I accept Mr Stevens' submission that section 12 of the Arbitration Regulations does not apply because relief is being sought under section 41 of the ADGM Courts Regulations. The ability of the Court to issue anti-suit injunctions on this basis has been confirmed by the Supreme Court of the United Kingdom on at least the two occasions to which I have referred.[32]

52. For those reasons, I hold that this Court has jurisdiction to issue an interim anti-suit injunction in this case. The next question is whether it should do so, on either a prohibitory or mandatory basis.

(b) Should the jurisdiction be exercised?

53. For the purposes of the Interim Injunction Application, in determining whether jurisdiction should be exercised, I shall assume (without deciding) that:

a. C22's claims against both A22 and B22 are derived from subrogated rights under the Policy in favour of D22;

b. B22 has standing to bring an anti-suit injunction application even though it is not shown as a party to the contract with D22;

c. The seat of the arbitration (if a valid agreement exists) is the ADGM; and

d. The same legal principles apply whether the injunction sought is prohibitory or mandatory in nature.

54. I make those assumptions in favour of the Companies' claims, as they do not affect the way in which my discretion will be exercised.

55. The different ways in which the parties characterise the claims made in the Onshore Proceeding present some difficulty in identifying the appropriate discretionary approach to apply. That is because the courts have developed principles that apply to both contractual and quasi-contractual claims; some extend to non-contractual claimants.[33]

56. While there are nuanced differences in the way in which applications for anti-suit injunctions might be considered in respect of those categories of claims, the ultimate test that the Court must apply is whether it is "*just and convenient*" to make an order; those being the words used in the empowering statutory provision, section 41(1) of the ADGM Courts Regulations.[34] That is consistent with the way in which the issue has been addressed in England and Wales, where it has been said that the "*touchstone*" for making an order is what the "*ends of justice require*".[35]

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[31] This would have applied to the Companies' reliance on section 31 of the Arbitration Regulations 2015.

[32] See paragraph 47 above.

[33] *QBE Europe SA/NV v Generali Espana de Seguros y Reaseguros* [2022] EWHC 2062 (Comm), at paragraphs 9–22. See also *J.P. Morgan International Finance Ltd v Werealize.com Ltd* [2025] EWHC 1842 (Comm) at paragraphs 70–73.

[34] Section 41(1) and (2) is set out at paragraph 41 above.

[35] *QBE Europe SA/NV v Generali Espana de Seguros y Reaseguros* [2022] EWHC 2062 (Comm), at paragraph 10.

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57. Various factors may inform the Court's decision as to whether it is appropriate, in any given case, to make an interim or final anti-suit injunction. The authorities, while referring to specific circumstances, are not intended to put the Court in a straitjacket. Rather, they provide a list of factors that have arisen in the decided cases that must be balanced in order to determine whether it is "just and convenient" to issue an anti-suit injunction.

58. The factors that have been identified in the authorities are not exhaustive. Some may apply with more force than others in particular cases. In my view, their importance lies in their use as a framework for analysing whether it is appropriate to exercise the jurisdiction to make an anti-suit injunction. They are not intended to provide a list of factors, all of which must be slavishly considered on an individual basis in every case irrespective of their relevance to the circumstances under consideration.

59. For present purposes, I need go no further than to cite principles adopted by Foxton J in *QBE Europe SA/NV v Generali Espana de Seguros y Reaseguros,*[36] His Lordship referred to the following:[37]

    a. The touchstone for making an order is what the ends of justice require;

    b. The jurisdiction should be exercised with caution;

    c. The applicant must establish with a "*high degree of probability*" that there is an arbitration agreement governing the dispute in question; and

    d. A defendant must show "*strong reasons*" why relief should not be granted, if such an agreement can be established to that standard.[38]

60. Having identified those principles, Foxton J elaborated on two, both of which are relevant to the present application. One was respect for comity. The other concerns the existence of a mandatory provision of foreign law which may override a contractual choice of forum.[39] The Judge took the view that neither was to be regarded as a "*strong reason*" for the Court not to give effect to an arbitration agreement. In my view, Foxton J was speaking of a circumstance in which one or other of those factors stood alone, rather than in combination with others.

61. Returning to Foxton J's formulation of principles, the first question is whether the Companies have established to "*a high degree of probability*" that there is a valid arbitration agreement governing the dispute in question. The term "*high degree of probability*" necessarily carries with it the need for a judicial evaluation of the likelihood or otherwise of a valid arbitration agreement being established at the necessary time. That assessment is a matter of judgment.

[36] Ibid, at paragraph 10.
[37] Ibid, at paragraph 10.
[38] Ibid, at paragraph 10.
[39] Ibid, at paragraph 11.

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62. I have considered whether the "*high degree of probability*" factor should be regarded as a jurisdictional pre-requisite to the issue of an anti-suit injunction or a threshold requirement to the exercise of jurisdiction. I take the view that it falls within the second of those categories. That becomes clear from the line of authorities from which the "*high degree of probability*" test developed.

63. In *QBE Europe,* Foxton J took his "*summary of… key principles*"[40] from an earlier judgment of the Commercial Court in *AIG Europe SA v John Wood Group Plc*.[41] *AIG Europe SA* had adopted the "*high degree of probability*" test from earlier decisions of the English courts. In *AIG Europe,* Jacobs J referred to that test as "*one of long standing and boast[ing] an impeccable pedigree*".[42] Among the cases to which the Judge referred was a decision of the Court of Appeal of England and Wales, in *Ecobank Transnational Incorporated v Tanoh*.[43]

64. In *Ecobank,* Christopher Clarke LJ (with whom Sir Terence Etherton C and Patten LJ agreed) reviewed the authorities on this topic under the heading: "*Threshold test*". The line of cases that he discussed started with *Bankers Trust Co v PT Jakarta International Hotels and Development*,[44] through to *Transfield Shipping Inc v Chiping Xinfa Huayu Alumina Co Ltd,*[45] a judgment that Christopher Clarke LJ had given at first instance. In *Ecobank,* the Court of Appeal expressed the test in the following way:[46]

> "*89. In Midgulf International Ltd v Groupe Chimiche Tunisien* [2009] EWHC 963 (Comm) *Teare J held, following Bankers Trust v Jakarta International Hotels and Development [1999] 1 Lloyd's Rep. 910 at p.913, which itself followed Colman J in Bankers Trust Co. v. PT Mayora Indah (20 January 1999, Unreported) and American International Speciality Lines Insurance v Abbott Laboratories [2003] 1 Lloyd's Rep 267 at p.275, that an applicant for an anti-suit injunction had to show a high degree of probability that there was an arbitration agreement that governed the dispute in question. In Transfield Shipping I followed this line of authority.*
>
> *90. Mr Coleman submits that the rationale for requiring a high probability test is that if an injunction is granted it is likely to be final because, in practice, it will end the foreign proceedings for at least sufficient time to enable the arbitration to take place before any judgment is granted in those proceedings. By comparison in the present case the judgments have been granted. The effect of any order will be to restrain enforcement pending further order of the court or the arbitration tribunal. If the arbitration tribunal decides that the African proceedings do not*

[40] See paragraph 59 above.
[41] *AIG Europe SA v John Wood Group Plc* [2021] EWHC 2567 (Comm), at paragraph 58.
[42] Ibid, at paragraph 58(f).
[43] *Ecobank Transnational Incorporated v Tanoh* [2016] 1 WLR 2231 (CA).
[44] *Bankers Trust Co v PT Jakarta International Hotels and Development* [1999] 1 All ER (Comm) 785 at 788-789, adopting Colman J's observations in *Bankers Trust Co v PT Mayora* (Unreported, 20 January 1999, Commercial Court).
[45] *Transfield Shipping Inc v Chiping Xinfa Huaya Alumina Co Ltd* [2009] EWHC 3629 (QB) at paragraphs 51-58.
[46] *Ecobank Transnational Incorporated v Tanoh* [2016] 1 WLR 2231 (CA), at paragraphs 89-90.

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breach the arbitration agreement, Mr Tanoh will be free to enforce those judgments."

65. Applying that threshold test, the issues raised in the submissions that I received on UAE law (which the parties have agreed applies)[47] create doubt as to whether there is a valid arbitration agreement. While the existence of a valid arbitration agreement is arguable, it cannot be said that there is a "high degree of probability" that one does exist. Without a valid arbitration agreement, there is nothing for any anti-suit injunction to support or protect. My reasons for deciding that the threshold has not been met are summarised as follows.

66. First, the starting point for identification of UAE law as to the circumstances in which an arbitration agreement might be incorporated by reference is the UAE Federal Arbitration Law of 2018 (the "**UAE Arbitration Law**").[48] Articles 5(3) and 7(2)(b) of the UAE Arbitration Law now provide expressly for incorporation by reference. In *Nuriel v Nuzhat*[49] the DIFC Court of First Instance opined that the relevant question was whether "*a reasonable person reviewing the contract as a whole [would] interpret the said reference as amounting to an agreement to arbitrate*".[50] Some decisions by the onshore UAE Courts may fairly be described as more conservative in nature. Before forming any concluded view on the current position under UAE law and its applicability to the facts of this case, further submissions from the parties would be required**.** As matters presently stand, I am satisfied there is a good arguable case but not one that there is a high probability of establishing.[51]

67. Second, I refer to the timing of the 2022 Service Order, which was provided almost a year after the peril that gave rise to D22's insurance claim. That incident occurred on 31 October 2021. While the insurance claim was declined on 28 July 2022, the 2022 Service Order was not issued until 11 October 2022. A secondary question is whether, if the arbitration agreement were incorporated by reference, the failure to describe the dispute (which arose after the insurance incident) rendered it invalid under UAE law.[52]

68. Third, I refer to the involvement of B22. It is not a party to the Contract in which it is said that the arbitration agreement resides.

69. If I were wrong on the threshold issue,[53] I would, in any event, have exercised my discretion not to make an interim order. The two factors that, in tandem, would have led me to that result are comity and delay.

70. As to comity, ADGM Courts are courts of the Emirate of Abu Dhabi[54] and must show respect to the processes of the onshore courts. I agree with observations made by Justice Michael Black, sitting in the DIFC Court of First Instance, in *Ledger v Leeor*.[55] The Judge took the

[47] See paragraph 20 above.
[48] UAE Federal Law No. 6 of 2018.
[49] *Nuriel v Nuzhat* [2024] DIFC ARB 018.
[50] Ibid, at paragraphs 17–20.
[51] To similar effect, see *Transfield Shipping Inc v Chiping Xinfa Huaya Alumina Co Ltd* [2009] EWHC 3629 (QB), at paragraph 59.
[52] Article 5(2) of the UAE Arbitration Law.
[53] See paragraph 59(c) and (d).
[54] Founding Law article (13)(1), set out at paragraph 36 above.
[55] *Ledger v Leeor* [2022] DIFC ARB 16, at paragraph 48.

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view that the DIFC Courts cannot interfere simply because a party is dissatisfied with the procedures in the onshore Dubai courts. In a case where the onshore courts are seized of a dispute (including as to their own jurisdiction) they should ordinarily be left to resolve it according to applicable law. In this case, the Companies do appear to have developed a dissatisfaction for the way in which the Onshore Court is conducting the proceeding. In particular, it has suggested that the expert panel appointed by the Onshore Court took no account of submissions made on its preliminary report.[56] I am not prepared to allow that expressed dissatisfaction to influence the exercise of my discretion to grant or refuse the interim Injunction Application.[57]

71. I have assumed (without deciding) that the Companies have challenged the jurisdiction of the Onshore Court. The submissions on UAE law suggest that it is not unusual for decisions on jurisdiction to be deferred until judgment on the merits is given. This Court should respect that process, even though it is not one that it would typically follow. As matters stand, the Companies may or may not succeed on their challenge to the onshore Court's jurisdiction. Even if the Onshore Court rejected the objection, appeal rights exist. As a matter of comity, I am not persuaded that it is appropriate to interfere in the processes of the Onshore Court when the Companies have been participating in them since 2024 and judgment may be delivered as soon as 21 August 2025.

72. On the question of delay, the Companies' conduct militates against relief. While I acknowledge that there are cases in which delay has been found not to be a disentitling conduct, the Court of Appeal of England and Wales has held that "*both discretionary considerations and the need for comity mean that an applicant for anti-suit relief needs to act with appropriate despatch*".[58] The Court, "*[w]hilst recognising that delay is not necessarily a bar to relief, and [acknowledging] the importance of upholding the rights of those who are the beneficiaries of exclusive jurisdiction agreements,*" confirmed the court's ability to refuse relief on grounds of delay if the circumstances of the particular case so demanded.[59]

73. In this case, the anti-suit injunction was only sought after it became clear that the panel of experts had provided a preliminary report adverse to the Companies. The Onshore Proceeding began on 29 October 2024. A22 was joined on 5 December 2024. The preliminary expert report was provided on 17 May 2025. The Claim was filed, on 10 June 2025. Notwithstanding Mr Stevens' protestations as to relevance, I am influenced by the fact that the application for anti-suit relief was made after the Companies became aware of the adverse preliminary view formed by the expert panel appointed by the Onshore Court, about six months after the panel's inquiries began.

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[56] See paragraphs 30 and 31 above.

[57] In *A17 v B17* [2025] ADGMCFI 0001, at paragraph 65, Justice Sir Andrew Smith observed, in relation to the question whether a fully reasoned decision of the DIFC Court of Appeal in *Carmon Reestrutura-Engenharia e Services Tecnios Especiai, (SU) LDA v Cuenda* [2024] DIFC CA 003 should be followed: "*...for reasons of comity this Court would not differ from it without good reason to do so*". That was on the basis that the DIFC was also a common law court of the Financial Free Zone of the UAE.

[58] *Ecobank Transnational Incorporated v Tanoh* [2016] 1 WLR 2231 (CA), at paragraph 137.

[59] Ibid.

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74. When the cumulative impact of the comity and delay factors is assessed, there are "*strong reasons*"[60] not to grant an interim anti-suit injunction.

Conclusion

75. For those reasons, on 13 August 2025 the Court made orders:

a. Declaring that it had jurisdiction to try the Interim Injunction Application and the Claim.

b. Dismissing the Interim Injunction Application.

c. That by 4.00 pm on 25 August 2025, the Claimants shall inform the Registry in writing whether they wish to pursue the Claim in these proceedings. If they do, a virtual case management conference (the "**CMC**") will be convened via video-link on the first available date after 25 August 2025. The parties shall liaise with the Registry to fix the date for the CMC if required.

d. That costs be reserved.

e. That the parties have liberty to apply.

Re-Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
1 September 2025

[60] See paragraph 59(d) above.