



JUDICIARY OF
ENGLAND AND WALES



ABU DHABI GLOBAL MARKET COURTS
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**MEMORANDUM OF GUIDANCE AS TO ENFORCEMENT
BETWEEN
THE COMMERCIAL COURT, QUEEN'S BENCH DIVISION, ENGLAND AND WALES
AND
ABU DHABI GLOBAL MARKET COURTS**

Introduction

1. The purpose of this memorandum is to set out the parties' understanding of the procedures for the enforcement of each party's money judgments in the other party's courts. This memorandum is concerned only with judgments requiring a person to pay a sum of money to another person.
2. This memorandum has no binding legal effect. It does not constitute a treaty or legislation, is not binding on the judges of either party and does not supersede any existing or future laws, judicial decisions or court rules. It is not intended to be exhaustive and is not intended to create or alter any existing or future legal rights or relations or to create any binding arrangements for the reciprocal enforcement of each party's money judgments.
3. The parties desire and believe that the cooperation demonstrated by this memorandum will provide a mutual understanding of their laws and judicial processes and will improve public perception and understanding.

Commercial Court, Queen's Bench, England and Wales

4. The Commercial Court is a specialist court within the Queen's Bench Division of the High Court of England and Wales ("the Commercial Court"). It deals with complex cases arising out of business and financial disputes, both national and international, which fall within its jurisdiction. It was established as a separate court within the Queen's Bench Division by section 3 of the *Administration of Justice Act 1970* (now section 6(1)(b) of the *Senior Courts Act 1981*), although a specialist Commercial List had operated since 1895 for the hearing of commercial cases, to which specifically designated judges with commercial experience were assigned. The Commercial Court is internationally recognised for its experience and expertise in commercial dispute resolution.

Abu Dhabi Global Market Courts

5. Abu Dhabi Global Market Courts (“ADGM Courts”) form part of the judicial system of the United Arab Emirates. They are Courts that directly apply the common law of England and Wales and were established by Abu Dhabi Law No. (4) of 2013. They are comprised of a Court of First Instance and a Court of Appeal. They deal with civil and commercial cases and disputes having a connection with Abu Dhabi Global Market (“ADGM”) and any request which ADGM Courts have the jurisdiction to consider under their Regulations.

Application of the common of England and Wales

6. There is currently no treaty in place pursuant to which either party's judgments may be enforced by the other party's courts.
7. In the Commercial Court, in the absence of a relevant treaty, a foreign judgment may be enforced by a claim made at common law, in accordance with the principles and practice described below.
8. Under the English common law, where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another, a legal obligation arises on the debtor to pay that sum. The creditor may bring a claim to enforce that obligation as a debt.
9. The approach of ADGM Courts to the enforcement of Commercial Court judgments is based upon the English common law and the same approach is applied.

The requirements for enforcement of ADGM Courts judgments in the Commercial Court

10. In order to be sued upon in the Commercial Court, a judgment of ADGM Courts must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
11. The Commercial Court will not enforce certain types of ADGM Courts judgments, for example, judgments ordering the payment of taxes, fines or penalties.
12. ADGM Courts must have had jurisdiction, according to the English rules of the conflict of laws, to determine the subject matter of the dispute. The Commercial Court will generally consider ADGM Courts to have had the required jurisdiction only where the person against whom the judgment was given:
- (a) was, at the time the proceedings were commenced, present in the jurisdiction of ADGM Courts; or
 - (b) was a claimant, or counterclaimant, in the proceedings; or
 - (c) submitted to the jurisdiction of ADGM Courts; or

- (d) agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of ADGM Courts.
13. Where the above requirements are established to the satisfaction of the Commercial Court, a judgment of ADGM Courts may be challenged in the Commercial Court only on limited grounds. Those grounds include (but are not limited to):
- (a) where the judgment was obtained by fraud;
 - (b) where the judgment is contrary to English public policy; and
 - (c) where the proceedings were conducted in a manner which the Commercial Court regards as contrary to the principles of natural justice.
14. The Commercial Court will not re-examine the merits of a judgment of ADGM Courts. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of ADGM Courts will be enforced on the basis that the defendant has a legal obligation, recognised by the Commercial Court, to satisfy a judgment of ADGM Courts.

The requirements for enforcement of Commercial Court judgments in ADGM Courts

15. Similar principles to those set out above will be applied to determine whether a party may sue on a judgment of the Commercial Court in ADGM Courts.
16. In order to be sued upon in ADGM Courts, a judgment of the Commercial Court must satisfy the following conditions¹:
- (a) it is either final and conclusive as between the judgment creditor and the judgment debtor or requires the latter to make an interim payment to the former. A judgment shall be deemed final and conclusive notwithstanding an appeal may be pending against it or it may still be subject to appeal; and
 - (b) there is payable under it a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.
17. The Commercial Court must have had jurisdiction, according to the English rules on the conflict of laws, to determine the subject matter of the dispute. The Commercial Court shall be deemed to have had jurisdiction where the person against whom the judgment was given²:
- (a) submitted to the jurisdiction of the Commercial Court by voluntarily appearing in the proceedings; or

¹ See Section 172(1) of *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015*

² See Section 175(2) of *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015*



- (b) was a claimant, or counterclaimant, in the proceedings; or
 - (c) had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the Commercial Court; or
 - (d) was at the time when the proceedings were instituted resident in, or being a body corporate was registered under the laws of, England and Wales; or
 - (e) had an office or a place of business in England or Wales and the proceedings were in respect of a transaction effected through or at that office or place.
18. Where the above requirements are established to the satisfaction of ADGM Courts, and a judgment of the Commercial Court has been duly registered in ADGM Courts, the registration of a judgment of the Commercial Court³:
- (a) shall be set aside if ADGM Courts are satisfied that:
 - (i) where the judgment was given in default, the judgment debtor was not duly served with the documents which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
 - (ii) the judgment was obtained by fraud;
 - (iii) the rights under the judgment are not vested in the person by whom the application for registration was made;
 - (iv) the judgment is contrary to public policy in the Emirate of Abu Dhabi or ADGM; or
 - (v) the proceedings were conducted in a manner which ADGM Courts regard as contrary to the principles of natural justice;
 - (b) may be set aside if ADGM Courts are satisfied that the matter in dispute in the proceedings in the Commercial Court had previously, to the date of the Commercial Court judgment, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.
19. ADGM Courts will not re-examine the merits of a judgment of the Commercial Court. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of the Commercial Court will be enforced on the basis that the defendant has a legal obligation, recognised by ADGM Courts, to satisfy a judgment of the Commercial Court.

³ See Section 175(1) of *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015*

The procedure for enforcement of ADGM Courts judgments in the Commercial Court

- 20.** In order to enforce a judgment of ADGM Courts in the Commercial Court, the judgment creditor must issue a claim form in the Commercial Court, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the claim form.
- 21.** A judgment creditor may obtain a certified copy of an ADGM Courts judgment by making an application to ADGM Courts. The application may be made without notice and must be supported by the following⁴:
- (a) a copy of the judgment which the judgment creditor seeks to enforce;
 - (b) where the judgment creditor seeks to enforce an arbitral award, a copy of any order of ADGM Courts recognising the award;
 - (c) a draft of any execution letter which is sought;
 - (d) a statement that the judgment is final and executory and the grounds on which that is said to be the case; and
 - (e) if interest is claimed on the judgment debt, a statement setting out details of:
 - (i) the amount of interest claimed and the sum on which it is claimed;
 - (ii) the date range over which interest has accrued; and
 - (iii) the rate, or if applicable, rates of interest applied during the period in which interest has accrued.
- 22.** Where the judgment debtor is outside of the United Kingdom, the judgment creditor must apply for permission to serve the claim out of the jurisdiction in accordance with Rules 6.36 and 6.37 and Part 23 of the Civil Procedure Rules 1998. The application must include a certified copy of the ADGM Courts judgment and a witness statement setting out:
- (a) that paragraph 3.1(10) of Practice Direction 6B applies, that is, that the claim is made to enforce an ADGM Courts judgment;
 - (b) that the judgment creditor believes that the claim has a reasonable prospect of success;
 - (c) the judgment debtor's address or, if not known, in what place the judgment debtor is, or is likely, to be found; and

⁴ See Practice Direction 4 of ADGM Courts

clearly bringing to the Court's attention any matter which, if the judgment debtor were represented, the judgment debtor would wish the Court to be aware of. This includes any matters which might tend to undermine the judgment creditor's application.

23. If, following service, the judgment debtor does not respond to the claim, the judgment creditor will be entitled to obtain judgment in default under Part 12 of the Civil Procedure Rules 1998. However, it remains open to the judgment debtor to challenge the jurisdiction of the Commercial Court.
24. If the judgment debtor acknowledges service, the judgment creditor must file and serve Particulars of Claim, setting out a concise statement of the facts relied on in support of the claim. The Particulars of Claim should contain a statement that the ADGM Courts had jurisdiction on the grounds set out in paragraph 12 above.
25. In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial under Part 24 of the Civil Procedure Rules 1998, unless the judgment debtor can satisfy the Commercial Court that it has a real prospect of establishing at trial one of the grounds set out in paragraph 13 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
26. If the claim on the ADGM Courts judgment is successful, the judgment creditor will then have the benefit of a judgment of a Commercial Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the English Courts to enforce the judgment, including seeking:
 - (a) third party debt orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
 - (b) charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;
 - (c) orders for:
 - (i) possession of land;
 - (ii) sale of land or other property over which the judgment creditor has the benefit of a charge;
 - (iii) requiring judgment debtors to provide information about their assets;
 - (iv) appointing enforcement officers to seize and sell the judgment debtor's goods;
 - (v) appointing receivers;
 - (vi) committal for contempt of courts; or

(vii) relating to insolvency procedures.

The procedure for enforcement of Commercial Court judgments in ADGM Courts

- 27.** In order to enforce a judgment of the Commercial Court in ADGM Courts, a judgment creditor must file a claim form in ADGM Courts supported by:
- (a) an affidavit setting out the required information listed in ADGM Courts Practice Direction 4 and attaching a certified copy of the judgment of the Commercial Court; and
 - (b) a draft registration order setting out the required information listed in ADGM Courts Practice Direction 4.
- 28.** A judgment creditor may obtain a certified copy of a judgment of the Commercial Court by making an application to the Commercial Court. The application may be made without notice and must exhibit a copy of the judgment, which is required to be certified. Where the Commercial Court provides a certified copy of the judgment, it will provide a copy of the judgment on which will be endorsed a certificate that it is a true copy. The certificate will be signed by a Judge. The certified copy of the judgment will be sealed with the seal of the Commercial Court.
- 29.** There is no requirement to obtain the permission of ADGM Courts before serving proceedings outside ADGM or the Emirate of Abu Dhabi under Rule 23 of the ADGM Court Procedure Rules 2016 ("ADGM Court Procedure Rules"). However, it remains open to the judgment debtor to challenge the jurisdiction of ADGM Courts.
- 30.** If, following service, the judgment debtor does not acknowledge service or does not file a defence, the judgment creditor will be entitled to obtain judgment in default under Rules 39 to 41 of the ADGM Court Procedure Rules.
- 31.** In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial under Part 9 of the ADGM Court Procedure Rules, unless the judgment debtor can satisfy ADGM Courts that it has a real prospect of establishing at trial one of the grounds set out in paragraph 18 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
- 32.** If the claim on the judgment of the Commercial Court is successful, the judgment creditor will then have the benefit of an ADGM Courts judgment. The judgment creditor will be entitled, if necessary, to use the procedures of ADGM Courts to enforce the judgment, including:
- (a) third party debt orders, requiring third parties who are indebted to the judgment debtor to pay the sum owed to the judgment creditor;
 - (b) charging orders, imposing charges over the judgment debtor's property in favour of the judgment creditor;

- (c) orders for:
 - (i) possession of land;
 - (ii) sale of land or other property over which the judgment creditor has the benefit of a charge;
 - (iii) requiring judgment debtors to provide information about their assets;
 - (iv) appointing enforcement officers to seize and sell the judgment debtor's goods;
 - (v) appointing receivers;
 - (vi) committal for contempt of courts; or
 - (vii) relating to insolvency procedures.

Contacting the Courts

33. The Commercial Court can be contacted as follows:

- (a) by visiting the website of the Commercial Court at <https://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/high-court/queens-bench-division/courts-of-the-queens-bench-division/commercial-court/>; or
- (b) by contacting the Registry or Listing Office of the Commercial Court:
 - (i) at Ground Floor, 7 Rolls Building, Fetter Lane, London, EC4A 1NL;
 - (ii) by telephone on +44 (0)207 947 6826; or
 - (iii) by email at comct.issue@hmcts.gsi.gov.uk or comct.listing@hmcts.gsi.gov.uk.

34. ADGM Courts can be contacted as follows:

- (a) by visiting the website of ADGM Courts at <http://www.adgm.com>; or
- (b) by contacting ADGM Courts Registry:
 - (i) by telephone at +971 2 333 8976; or
 - (ii) by email at adgmcourtsenquiry@adgm.com.



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SIGNED in London on the 6th day of December 2016 by:

William Blair

Mr Justice Blair
Judge in Charge of the Commercial Court
Commercial Court, Queen's Bench Division,
England and Wales

Jarid Hope

Lord Hope of Craighead KT
Chief Justice
Abu Dhabi Global Market Courts