



ABU DHABI GLOBAL MARKET COURTS
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MEMORANDUM OF GUIDANCE AS TO ENFORCEMENT

BETWEEN

THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE'S REPUBLIC OF CHINA

AND

ABU DHABI GLOBAL MARKET COURTS

Purpose and nature of this Memorandum of Guidance

1. This Memorandum of Guidance ("Memorandum") between the High Court of the Hong Kong Special Administrative Region of the People's Republic of China ("the HK High Court") and Abu Dhabi Global Market Courts ("ADGM Courts") aims to provide general information concerning the procedures for the recognition and enforcement of monetary judgments in their respective jurisdictions.
2. This Memorandum has no legal effect whatsoever under domestic law or international law. It does not constitute any agreement or arrangement or legislation or judicial precedent and it does not supersede or affect any existing laws, judicial decisions or court rules. It is not intended to be exhaustive or comprehensive. It does not create, alter or govern any existing legal rights or relations between the two courts or in relation to any third party.
3. The HK High Court and ADGM Courts believe that this Memorandum and the goodwill demonstrated by entering into it will provide litigants involved in business and financial cases before the two courts with some clarity and guidance they may require regarding the processes for the recognition and enforcement of monetary judgments in the respective jurisdictions. This Memorandum is not, however, intended to be a substitute for seeking legal advice in any specific case. Litigants wishing to enforce a HK High Court judgment in ADGM Courts or *vice versa* are advised to consult local lawyers of the jurisdiction in which enforcement is sought.



The HK High Court

4. The HK High Court is a court of unlimited civil and criminal jurisdiction in the Hong Kong Special Administrative Region of the People's Republic of China. It consists of the Court of First Instance ("HKCFI") and the Court of Appeal ("HKCA").
5. Both HKCFI and HKCA are superior courts of record. HKCFI is the court with original jurisdiction within the Hong Kong Special Administrative Region of the People's Republic of China at which civil actions and proceedings may be commenced at first instance. The civil jurisdiction of HKCA includes appeals from any judgment or order of HKCFI in any civil cause or matter as well as appeals under section 63 of the District Court Ordinance (Cap 336). The District Court of the Hong Kong Special Administrative Region of the People's Republic of China is not part of the HK High Court but also has jurisdiction, concurrent with the HK High Court, to hear and determine any action founded on contract, quasi-contract or tort where the amount of the claim does not exceed HK\$1 million.
6. Under Article 82 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Basic Law"), the power of final adjudication of the Hong Kong Special Administrative Region of the People's Republic of China is vested in the Court of Final Appeal of the Region which has jurisdiction to hear, *inter alia*, civil appeals from HKCA and HKCFI under sections 22 and 27B of the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

ADGM Courts

7. 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 composed 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 law

8. There is currently no agreement or arrangement in place pursuant to which either court's judgments may be enforced by the other court. In the Hong Kong Special Administrative Region of the People's Republic of China, neither the Judgments (Facilities for Enforcement) Ordinance (Cap. 9) nor the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) applies to the enforcement of judgments obtained in ADGM Courts.
9. Article 8 of the Basic Law provides that the laws previously in force in Hong Kong, including the common law, shall be maintained (subject to exceptions that are not relevant for present purposes).



10. In the HK High Court, in the absence of a relevant agreement or arrangement, a foreign judgment (including an ADGM Courts judgment) may be enforced by a claim made at common law, in accordance with the principles and practice described below.
11. Under the 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 is imposed upon the judgment debtor to pay that sum. The judgment creditor may bring a claim to enforce that obligation as a debt.
12. The approach of ADGM Courts to the enforcement of a judgment of the HK High Court is based upon the English common law and a similar approach is applied.

General information on the requirements for enforcement of ADGM Courts judgments in the HK High Court

13. In order to be the subject of an action for enforcement in the HK High 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.
14. The judgment must also be in the nature of a money award, i.e. for the payment of a debt or a definite sum of money, rather than an unliquidated sum or one that requires the judgment debtor to act in a particular way or to refrain from doing something. The HK High Court will not enforce a foreign decree for specific performance or certain types of ADGM Courts' money judgments, for example, judgments ordering the payment of taxes, fines or penalties.
15. ADGM Courts must have had jurisdiction, according to Hong Kong's rules of the conflict of laws, to determine the subject matter of the dispute. The HK High 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 of the proceedings, in respect of the subject matter of the proceedings, to submit to the jurisdiction of ADGM Courts.



16. Moreover, the proceedings must not be brought in contravention of an agreement under which the dispute in question was to be settled otherwise than by proceedings in ADGM Courts, unless the person against whom the judgment was given in such circumstances either agreed to the bringing of the proceedings or otherwise submitted to the jurisdiction of ADGM Courts.
17. Where the above requirements are established to the satisfaction of the HK High Court, a judgment of ADGM Courts may be challenged in the HK High Court only on limited grounds. Those grounds include but are not limited to where:
 - (a) the judgment was obtained by fraud;
 - (b) the judgment is contrary to the public policy of the Hong Kong Special Administrative Region of the People's Republic of China in the sense that giving effect to the judgment would violate the most basic notions of morality and justice; and
 - (c) the proceedings were conducted in a manner which the HK High Court regards as contrary to the principles of natural justice.
18. The HK High Court will not re-examine the merits of an ADGM Courts judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. An ADGM Courts judgment will be enforced on the basis that the judgment debtor has a legal obligation, recognised by the HK High Court, to satisfy that judgment.

General information on the requirements for enforcement of the HK High Court's judgments in ADGM Courts

19. Similar principles to those set out above will be applied to determine whether a judgment of the HK High Court may be the subject of an application for registration in ADGM Courts.
20. In order for a judgment of the HK High Court to be the subject of an application for registration in ADGM Courts, it must satisfy the following conditions¹:
 - (a) it is either final and conclusive as between the judgment debtor and the judgment creditor or requires the former to make an interim payment to the latter. A judgment shall be deemed to be 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.

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



- 21.** The HK High Court must have had jurisdiction to determine the subject matter of the dispute according to the rules of the conflict of laws applied by ADGM Courts. The HK High Court shall be deemed to have had jurisdiction where the person against whom the judgment was given²:
- (a) submitted to the jurisdiction of the HK High Court by voluntarily appearing in the proceedings; or
 - (b) was the 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 HK High 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, the Hong Kong Special Administrative Region of the People's Republic of China; or
 - (e) had an office or a place of business in the Hong Kong Special Administrative Region of the People's Republic of China and the proceedings were in respect of a transaction effected through or at that office or place.
- 22.** Where the above requirements are established to the satisfaction of ADGM Courts, and a judgment of the HK High Court has been duly registered in ADGM Courts, the registration of a judgment of the HK High 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; or
 - (ii) the judgment was obtained by fraud; or
 - (iii) the rights under the judgment are not vested in the person by whom the application for registration was made; or
 - (iv) the judgment is contrary to public policy in the Emirate of Abu Dhabi or ADGM; or

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

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



- (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 HK High Court had previously, to the date of the HK High Court judgment, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.
23. ADGM Courts will not re-examine the merits of a HK High Court judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A HK High Court judgment will be enforced on the basis that the judgment debtor has a legal obligation, recognised by ADGM Courts, to satisfy a judgment of the HK High Court.

General information on the procedure for enforcement of ADGM Courts judgments in the HK High Court

24. In order to enforce a judgment of ADGM Courts in the HK High Court, a party must commence an action in the HK High Court on the basis of the judgment. An action is generally commenced by a Writ of Summons which must be served on the judgment debtor in accordance with the relevant provisions of the Rules of the High Court (Cap. 4A) (“RHC”).
25. Where the judgment debtor is outside the Hong Kong Special Administrative Region of the People’s Republic of China, the judgment creditor, as plaintiff, must apply for leave to serve the Writ of Summons out of the jurisdiction in accordance with Order 11 of RHC. The application for leave is generally made without notice (*ex parte*) to a Master of the HK High Court and must be supported by an affidavit. The affidavit should include all relevant facts and exhibit a certified copy of the ADGM Courts judgment. The affidavit must state:
- (a) that Order 11, rule 1(1)(m) of RHC applies, that is, that the claim is made to enforce an ADGM Courts judgment, and any other grounds on which the application is made;
 - (b) that in the deponent's belief, the plaintiff has a good cause of action; and
 - (c) in what place the defendant is, or probably may be, found.
26. A judgment creditor may obtain a certified copy of an ADGM Courts 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;

⁴ See ADGM Courts Practice Direction 4



- (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.
- 27.** If, following service of the Writ of Summons, the judgment debtor does not respond to the claim, the judgment creditor will be entitled to obtain judgment in default under Order 13 of RHC. However, it remains open to the judgment debtor to dispute the jurisdiction of the HK High Court under Order 12, rule 8 of RHC.
- 28.** If the judgment debtor acknowledges service of the Writ of Summons, the judgment creditor must file and serve a Statement of Claim (if he has not done so already), setting out in a summary form the material facts relied on in support of the claim. The Statement of Claim should contain a statement that ADGM Courts had jurisdiction on the grounds set out in paragraph 15 above.
- 29.** If, following service of the Statement of Claim, the judgment debtor fails to file its Defence within the time prescribed by RHC, the judgment creditor may apply for judgment in default under Order 19, rule 2 of RHC. It should be noted that judgments obtained under Orders 13 or 19 of RHC are liable to be set aside by the HK High Court.
- 30.** In some cases, a judgment creditor may be entitled to apply to obtain summary judgment without trial under Order 14 of RHC, unless the judgment debtor can satisfy the HK High Court that there are issues to be tried in relation to one or more of the grounds set out in paragraphs 16 and 17 above or that there ought for some other reason to be a trial. The application for summary judgment must be made by summons supported by an affidavit verifying the facts on which the claim is based and stating that in the deponent's belief there is no defence to that claim. A certified copy of the ADGM Courts judgment should be exhibited. Applications for summary judgment are dealt with swiftly, without the need for oral evidence. It should be noted that any judgment given against a party who does not appear at the hearing of an application for summary judgment may be set aside or varied by the HK High Court on such terms as it thinks just.



- 31.** If the claim on the ADGM Courts judgment is successful, the judgment creditor will then have the benefit of a HK High Court judgment. The judgment creditor will be entitled, if necessary, to use the procedures of the Hong Kong Courts to enforce the judgment in the Hong Kong Special Administrative Region of the People’s Republic of China, including seeking:
- (a) garnishee 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 land and certain types of property in favour of the judgment creditor;
 - (c) orders:
 - (i) for sale of land over which the judgment creditor has the benefit of a charging order;
 - (ii) requiring judgment debtor to provide information about his assets;
 - (iii) appointing enforcement officers to seize and sell the judgment debtor’s goods (“writs of fieri facias”);
 - (iv) appointing receivers;
 - (v) for committal for contempt of court; or
 - (vi) relating to insolvency procedures.

The availability of any of the above modes of enforcement depends on the circumstances of each case and is subject to the relevant provisions in the RHC and other applicable laws of the Hong Kong Special Administrative Region of the People’s Republic of China.

General information on the procedure for enforcement of the HK High Court’s judgment in ADGM Courts

- 32.** In order to enforce a judgment of the HK High 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 HK High Court; and
 - (b) a draft registration order setting out the required information listed in ADGM Courts Practice Directions 4.



- 33.** A judgment creditor may obtain a sealed copy of a HK High Court judgment from the Registry of the HK High Court.
- 34.** 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.
- 35.** 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.
- 36.** In most cases, a judgment creditor will be entitled to apply to obtain summary judgment 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 22 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
- 37.** If the claim on the HK High Court judgment 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 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:
 - (i) for possession of land;
 - (ii) for 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) for committal for contempt of court; or
 - (vii) relating to insolvency procedures.



Contacting the Courts

38. The HK High Court can be contacted as follows:

- (a) by visiting the website of the Hong Kong Judiciary at <http://www.judiciary.gov.hk>; or
- (b) by contacting the Registry of the HK High Court:
 - (i) at Lower Ground 1st Floor, High Court Building, 38 Queensway, Hong Kong;
 - (ii) by telephone at (852) 2523 2212; or
 - (iii) by email at enquiry@judiciary.gov.hk.

39. 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.



SIGNED in London, United Kingdom on this 5th day of May 2017 by:

The Hon Mr Justice Andrew Cheung
Chief Judge of the High Court

**High Court of the Hong Kong Special Administrative
Region of the People's Republic of China**

Lord David Hope of Craighead KT
Chief Justice

Abu Dhabi Global Market Courts