



**FEDERAL COURT
OF AUSTRALIA**



ABU DHABI GLOBAL MARKET COURTS
محاكم سوق أبوظبي العالمي

**MEMORANDUM OF GUIDANCE AS TO ENFORCEMENT
BETWEEN
THE FEDERAL COURT OF AUSTRALIA
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.

The Federal Court of Australia

4. The Federal Court of Australia ("the Federal Court") was created by the Federal Court of Australia Act 1976 and began to exercise its jurisdiction on 1 February 1997. It assumed jurisdiction formerly exercised in part by the High Court of Australia and the whole jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy. The Court is a superior court of record and a court of law and equity. It sits in all capital cities and elsewhere in Australia from time to time. The Court's original jurisdiction and related common law jurisdiction is conferred by over 150 statutes of the Parliament. The Court is internationally recognised for its experience, expertise and innovation in 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 law

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 Federal Court, in the absence of a relevant treaty or the foreign court being a court to which the Foreign Judgments Act 1991(Cth) applies, 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 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 judgment debtor to pay that sum. The judgment creditor may bring a claim to enforce that obligation as a debt.
9. The approach of ADGM Courts to the enforcement of judgments of the Federal Court is based upon the English common law and a similar approach is applied.

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

10. In order to be sued upon in the Federal Court, a judgment of ADGM Courts must be final and conclusive. It may be final and conclusive even though it is subject to appeal.
11. The Federal Court will not enforce certain types of judgments of ADGM Courts, for example, judgments ordering the payment of taxes, fines or penalties.
12. ADGM Courts must have had jurisdiction, according to Australian rules of conflict of laws, to determine the subject matter of the dispute, and the parties to the judgment of ADGM Courts and the enforcement proceedings must be the same. In addition, the enforcement proceedings in the Federal Court must be in respect of the money judgment issued by ADGM Courts. The Federal 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 Federal Court, a judgment of ADGM Courts may be challenged in the Federal 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 Australian public policy; and
 - (c) where the proceedings were conducted in a manner which the Federal Court regards as contrary to the principles of natural justice.
- 14.** The Federal 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 judgment debtor has a legal obligation, recognised by the Federal Court, to satisfy a judgment of ADGM Courts.

The requirements for enforcement of judgments of the Federal Court 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 Federal Court in ADGM Courts.
- 16.** In order to be sued upon in ADGM Courts, a judgment of the Federal 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 Federal Court must have had jurisdiction, according to the English rules on the conflict of laws, to determine the subject matter of the dispute. ADGM Courts will generally consider

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



the Federal Court to have had the required jurisdiction only where the party against whom the judgment was given²:

- (a) submitted to the jurisdiction of the Federal Court by voluntarily appearing in the proceedings; or
- (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 Federal 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, Australia; or
- (e) had an office or a place of business in Australia 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 Federal Court has been duly registered by ADGM Courts, the registration of a judgment of the Federal 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;

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*



(b) may be set aside if ADGM Courts are satisfied that the matter in dispute in the proceedings in the Federal Court had previously, to the date of the judgment of the Federal Court, 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 Federal Court. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of the Federal Court will be enforced on the basis that the judgment debtor has a legal obligation, recognised by ADGM Courts, to satisfy a judgment of the Federal Court.

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

20. In order to enforce a judgment of ADGM Courts in the Federal Court, a judgment creditor must file an application in the Federal 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 application.

21. A judgment creditor may obtain a certified copy of a judgment of 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;
- (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. If, following service, the judgment debtor does not respond to the claim, the judgment creditor will be entitled to seek an order for default judgment under Rule 5.23 of the Federal

⁴ See *Practice Direction 4* of ADGM Courts



Court Rules 2011. However, it remains open to the judgment debtor to challenge the jurisdiction of the Federal Court.

- 23.** In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial under Rule 26.01 of the Federal Court Rules, unless the judgment debtor can satisfy the Federal Court that it has a real prospect of establishing at trial one of the grounds set out in paragraph 13 above. Applications for summary judgments are dealt with swiftly, without the need for oral evidence.
- 24.** If the claim on the judgment of ADGM Courts is successful, the judgment creditor will then have the benefit of a judgment of the Federal Court. The judgment creditor will be entitled, if necessary, to use the procedures of the Australian 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 or relating to:
 - (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 court; or
 - (vii) insolvency procedures.

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

- 25.** In order to enforce a judgment of the Federal Court in ADGM Courts, the procedure is very similar.
- 26.** In order to enforce a judgment of the Federal 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 Federal Court; and
 - (b) a draft registration order setting out the required information listed in ADGM Courts Practice Direction 4.
- 27.** A judgment creditor may obtain a certified copy of a judgment of the Federal Court by making an application to the Federal Court. The application may be made without notice and must exhibit a copy of the judgment, which is required to be certified. Where the Federal 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 or by the Registrar. The certified copy of the judgment will be sealed with the seal of the Federal Court.
- 28.** 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. However, it remains open to the judgment debtor to challenge the jurisdiction of ADGM Courts.
- 29.** 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.
- 30.** 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.
- 31.** If the claim on the judgment of the Federal Court is successful, the judgment creditor will then have the benefit of a judgment of ADGM Courts. 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 or relating to:
 - (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) insolvency procedures.

Contacting the Courts

32. Further information about the Federal Court can be obtained:

- (a) by visiting the website of the Federal Court at <http://www.fedcourt.gov.au>; or
- (b) by contacting one of the Registries of the Federal Court. For example, the New South Wales Registry of the Federal Court can be contacted*:
 - (i) at the Federal Court of Australia, Level 17, Law Courts Building, Queens Square, 184 Phillip Street, Sydney, NSW 2000, Australia;
 - (ii) by telephone on +61 29230 8567; or
 - (iii) by email at nswdr@fedcourt.gov.au.

**Addresses for each Registry can be found at: <http://fedcourt.gov.au/contact>.*

33. Further information about ADGM Courts can be obtained:

- (a) by visiting the website of ADGM Courts at <http://www.adgm.com>; or
- (b) by contacting ADGM Courts Registry:
 - (i) by telephone on +971 2 333 8888 / +971 2 333 8976; or
 - (ii) by email at adgmcourtsenquiry@adgm.com.



**FEDERAL COURT
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محاكم سوق أبوظبي العالمي

SIGNED in London, United Kingdom this ٤th day of May 2017 by:

**The Hon. James Allsop AO
Chief Justice
Federal Court of Australia**

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