

MEMORANDUM OF GUIDANCE AS TO ENFORCEMENT OF MONEY JUDGMENTS

BETWEEN

THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

AND

ABU DHABI GLOBAL MARKET COURTS

Introduction

1. The purpose of this Memorandum of Guidance (“MOG”) 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 MOG is concerned only with judgments requiring a person to pay a sum of money to another person.
2. This MOG does not create any binding legal obligations on the parties. This MOG does not constitute a treaty or legislation, is not binding on the judicial officers 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 in the other party’s courts.
3. The parties desire and believe that the cooperation demonstrated by this MOG will provide a mutual understanding of their laws and judicial processes and will improve public perception and understanding.

The Supreme Court of Singapore

4. The Supreme Court of Singapore is a superior court of law. It comprises the Singapore High Court and the Singapore Court of Appeal. The Singapore International Commercial Court is a division of the Singapore High Court and part of the Supreme Court of Singapore.

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.

The requirements for enforcing judgments of ADGM Courts in the Supreme Court of Singapore

6. There is currently no treaty in place pursuant to which either party's judgments may be enforced by the other party's courts. In the absence of a relevant treaty, a foreign judgment may be enforced in the Supreme Court of Singapore by a claim made at common law.
7. The approach of the Supreme Court of Singapore is similar to the position found in the English common law. Where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another (i.e., a money judgment), a legal obligation arises on the debtor to pay that judgment debt. This legal obligation to pay is separate from the underlying cause of action that gave rise to the judgment. The creditor may then bring a claim at common law to enforce that obligation as a debt.
8. The judgment of ADGM Courts must be final and conclusive on the merits of the case, and for a fixed or ascertainable sum of money. The fact that there is an appeal to a higher court does not prevent the judgment from being final and conclusive.
9. The Supreme Court of Singapore will not enforce a judgment of ADGM Courts which would amount to the direct or indirect enforcement of any foreign penal, revenue or public law, or that orders the person against whom the judgment was given to do anything else apart from the payment of the judgment sum.
10. ADGM Courts must have had jurisdiction, according to the conflict of laws rules determined to be applicable by the Supreme Court of Singapore, to determine the subject matter of the dispute. The Supreme Court of Singapore 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 or resident in the jurisdiction of ADGM Courts;
 - (b) was the claimant, or counterclaimant, in the proceedings;
 - (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.
11. Where the above requirements are established to the satisfaction of the Supreme Court of Singapore, a judgment of ADGM Courts may be challenged in the Supreme Court of Singapore only on limited grounds. Those grounds include, but are not limited to:
 - (a) where the judgment was procured by fraud;
 - (b) where the enforcement of the judgment would be contrary to Singapore public policy; and

- (c) where the proceedings in which the judgment was obtained were conducted in a manner which the Supreme Court of Singapore regards as contrary to the principles of natural justice.

12. The Supreme Court of Singapore 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 Supreme Court of Singapore, to satisfy a judgment of ADGM Courts.

The requirements for enforcing judgments of the Supreme Court of Singapore in ADGM Courts

13. Similar principles to those set out above will be applied to determine whether a party may sue on a judgment of the Supreme Court of Singapore in ADGM Courts.

14. In order to be sued upon in ADGM Courts, a judgment of the Supreme Court of Singapore 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.

15. The Supreme Court of Singapore must have had jurisdiction² according to the English rules on the conflict of laws, to determine the subject matter of the dispute. The Supreme Court of Singapore shall be deemed to have had jurisdiction where the person against whom the judgment was given²:

- (a) submitted to the jurisdiction of the High Court of Singapore or the Singapore International Commercial 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 High Court of Singapore or the Singapore International Commercial Court; 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*

- (d) was at the time when the proceedings were instituted resident in, or being a body corporate was registered under the laws of, Singapore; or
- (e) had an office or a place of business in Singapore and the proceedings in the High Court of Singapore or the Singapore International Commercial Court were in respect of a transaction effected through or at that office or place.

16. Where the above requirements are established to the satisfaction of ADGM Courts, and a judgment of the Supreme Court of Singapore has been duly registered in ADGM Courts, the registration of a judgment of the Supreme Court of Singapore³:

- (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 accordance with the laws of Singapore, 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 in the Supreme Court of Singapore 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 Supreme Court of Singapore had, previously to the date of the Supreme Court of Singapore judgment, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

17. ADGM Courts will not re-examine the merits of a judgment of the Supreme Court of Singapore. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of the Supreme Court of Singapore will be enforced on the basis that the judgment debtor has a legal obligation, recognised by ADGM Courts, to satisfy a judgment of the Supreme Court of Singapore.

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

The procedure for enforcement of judgments of ADGM Courts in the Supreme Court of Singapore

18. In order to enforce a judgment of ADGM Courts in the Supreme Court of Singapore, the judgment creditor must commence an action by filing a writ of summons in the Supreme Court of Singapore, 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 writ.
19. 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.
20. Where the judgment debtor is outside of Singapore, the judgment creditor will have to seek the leave of court to serve the writ out of jurisdiction in accordance with Order 11 of the Singapore Rules of Court. The application for leave should be supported by an affidavit:
- (a) exhibiting a certified copy of the ADGM Courts' judgment;
 - (b) stating that the claim is brought to enforce an ADGM Courts' judgment (see Order 11, Rule 1(m) of the Singapore Rules of Court);
 - (c) stating that the judgment creditor believes that it has a good cause of action; and
 - (d) stating the place or country the judgment debtor is, or probably may be found.
21. If, following service, the judgment debtor does not respond to the claim by entering an appearance, the judgment creditor will be entitled to obtain judgment in default of appearance under Order 13 of the Singapore Rules of Court.

⁴ See Practice Direction 4

22. If the judgment debtor acknowledges service and enters an appearance, the judgment creditor must file and serve a statement of claim setting out the material facts which are relied upon for the claim, and the necessary particulars of the claim.
23. In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial under Order 14 of the Singapore Rules of Court, unless the judgment debtor can show that there is a triable issue in relation to a defence, which include, but are not limited to, the grounds set out in paragraph 11 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
24. If the claim on the ADGM Courts' judgment is successful, the judgment creditor will then have the benefit of a judgment of the Supreme Court of Singapore. The judgment creditor will be entitled, if necessary, to use the procedures of the Supreme Court of Singapore to enforce the judgment under Order 45 of the Singapore Rules of Court.

The procedure for enforcement of judgments of the Supreme Court of Singapore in ADGM Courts

25. In order to enforce a judgment of the Supreme Court of Singapore 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 the ADGM Courts Practice Direction 4 and attaching a certified copy of the judgment of the Supreme Court of Singapore; and
 - (b) a draft registration order setting out the required information listed in the ADGM Courts Practice Direction 4.
26. A judgment creditor may obtain a certified copy of a judgment of the Supreme Court of Singapore by making an application in accordance with the Supreme Court of Singapore Practice Directions or the Singapore International Commercial Court Practice Directions (as the case may be).
27. 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.
28. 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.

29. 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 16 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.

30. If the claim on the judgment of the Supreme Court of Singapore 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 within ADGM 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 means or any other matter about which information is needed to enforce a judgment or order;
 - (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.

Term of MOG

31. This MOG shall commence on the date of this MOG. Either party may terminate this MOG by giving the other party six (6) months' notice in writing.

Variation of MOG

32. This MOG may be varied in writing and any such variation shall be signed by both Parties.

Contacting the Courts

33. Further information about the Supreme Court of Singapore can be obtained:

- (a) by visiting the website of the Supreme Court of Singapore at <http://www.supremecourt.gov.sg>; or
- (b) by contacting the Registry of the Supreme Court of Singapore:
 - (i) at Level 2, 1 Supreme Court Lane, Singapore 178879
 - (ii) by telephone at +65 6336 0644; or
 - (iii) by email at supcourt_registry@supcourt.gov.sg.

34. 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 at +971 2 333 8888/ +971 2 333 8976; or
 - (ii) by email at adgmcourtsenquiry@adgm.com.

SIGNED on the 8th day of March 2017.

Justice Quentin Loh
on behalf of
Sundaresh Menon
Chief Justice
Supreme Court
Republic of Singapore



Lord Saville of Newdigate PC
on behalf of
Lord Hope of Craighead KT
Chief Justice
Abu Dhabi Global Market Courts

