

ADGM's Highest Court Upholds the Direct Enforceability of English Common Law and Its Canon of Precedents

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On November 17, 2023, the Court of Appeal, the highest judicial body of the Abu Dhabi Global Market (“ADGM”), issued a landmark judgment in *AC Network Holding Ltd v Polymath Ekar SPVI* (the “**Judgment**”) confirming that English common law precedents are directly enforceable within the ADGM.¹ The Judgment is the first ADGM case to clarify in detail how the ADGM’s incorporation of English common law into its legal system works in practice.

Established in 2013 as a financial free zone within the United Arab Emirates (“UAE”), the ADGM has become a pre-eminent global financial center, attracting trade and investment from all around the world. At the heart of its success is a regulatory framework centered on the ‘ease of doing business’. Such ‘ease of doing business’ is buttressed by the predictability and familiarity of the ADGM’s legal system, founded on English common law.

The Judgment confirms the direct applicability of English common law and its extensive but ever-changing set of precedents as the pillar of the ADGM’s legal system. This provides some contrast to the Dubai International Financial Centre (“DIFC”) (the UAE’s other leading financial free zone) which has replicated key aspects of English law through certain statutes and regulations, but not made English common law generally and directly enforceable. The ADGM free zone also differs from the legal system of “mainland” UAE, which is based on civil law.

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¹ *AC Network Holding Limited v Polymath Ekar SPVI*, [2023] ADGMCA 0002.

<https://www.adgm.com/documents/courts/judgments/2023/nov-2023/adgmca-2023-001---judgment--appeal-17112023-sealed.pdf>

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This Judgment arrives during a golden moment for the ADGM as ‘the world’s capital of capital’, with a record number of financial institutions, asset management and investment firms and family offices opening branches within the free zone². In April 2023, the ADGM’s geography was expanded tenfold, with Al Reem Island added to the free zone’s jurisdiction.³

Factual Background

The case concerned a shareholder dispute regarding Ekar Holding Limited (the “**Company**”), an ADGM-incorporated parent company for a Middle Eastern car rental business. The Company was backed by a consortium of shareholders, including certain private equity and family office investors. Following a period of deadlock over COVID-related emergency funding, a group of majority shareholders (the “**Majority**”) sought to oust the Company’s minority shareholders (the “**Minority**”) from the business by initiating a compulsory drag-along sale. The Majority served a drag-along notice on the Minority, which permitted a seemingly third party entity called Lux 2 Invco (“**Lux**”) to buy the Company’s entire share capital for US\$1. Under the shareholders’ agreement, the Majority had a right to drag-along the Minority in connection with a sale to a “*Proposed Purchaser*” which was defined as a “*bona fide purchaser...who has made an offer on arm’s length terms*”. However, the Minority discovered that Lux was an entity with similar beneficial ownership as one of the Majority shareholders. Consequently, the Minority sued the Majority and their agents regarding: (i) breach of contract and (ii) the tort of unlawful means conspiracy.

The ADGM Court of First Instance (lower court) held that the drag-along purchase was a breach of contract, because Lux had the same beneficial owner as a Majority shareholder and the nominal value sale was not made on

an arm’s length basis.⁴ But the Court of First Instance found that because the Majority’s agent believed that the Lux purchase was legal (in reliance on certain law firm advice that the contract’s wording permitted any third party, even if affiliated to a shareholder, to be a drag-along purchaser), there was no unlawful means conspiracy as knowledge of the unlawfulness by the Majority’s agent was a necessary component of such claim. In making its judgment, the Court of First Instance refused to apply the finding of the most recent English court precedent on unlawful means conspiracy – a 2021 case called *Racing Partnership v Done Bros Ltd* (the “**Racing Case**”), which concluded that knowledge of the unlawfulness of one’s act intended to harm a claimant was not required to substantiate an unlawful means conspiracy claim.⁵ The ADGM Court of First Instance stated that there “*is a dissonance in the current state of English law on the point*” and that while the latest English law judgment on the topic (the Racing Case) was “*highly relevant*” for consideration, an ADGM Court was not sitting as an English court of first instance and, therefore, was not bound as a matter of *stare decisis* (which itself encapsulates the doctrine of precedent) to apply the decision of the English Court of Appeal in the Racing Case. Instead of following the latest English law judgment, the ADGM Court of First Instance applied an older English law judgment – a 2008 case called *Meretz Investments NV v ACP Ltd* (the “**Meretz Case**”) which it considered to be the better view of the law on the issue at dispute– to conclude that knowledge of the illegality is required to prove unlawful means conspiracy⁶. Note that both the Meretz Case and the Racing Case were decided at the same level of the English court system (the English Court of Appeal) but the Racing Case being the newer English law judgment should have taken priority, if the ADGM Court of First Instance had decided to apply the English common law doctrine of precedent.

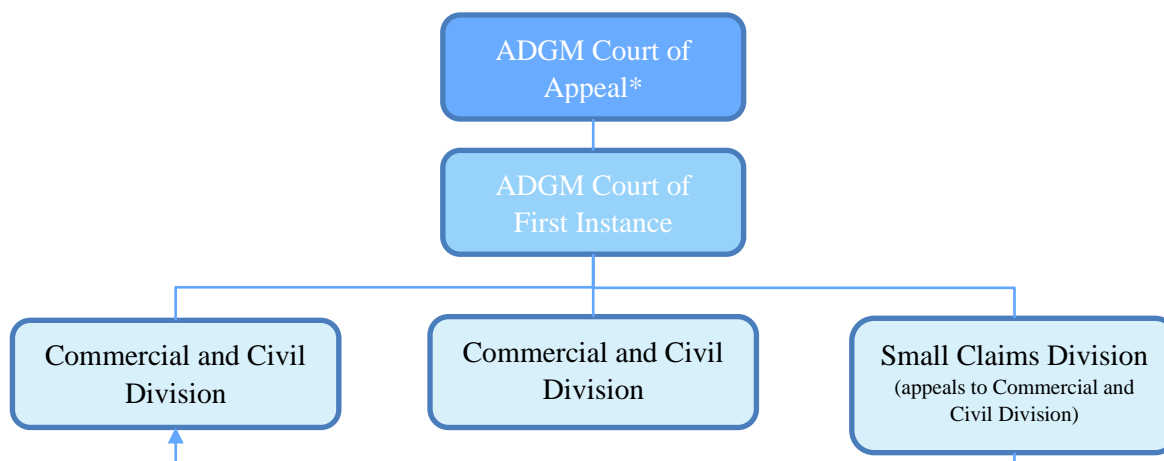
² “Abu Dhabi continues to be the destination of choice for global players with ADGM’s record-breaking numbers for first half of 2023”. <https://www.adgm.com/media/announcements/adgms-record-breaking-numbers-for-first-half-of-2023>

³ “Abu Dhabi Expands its International Financial District Tenfold”. <https://www.adgm.com/media/announcements/abu-dhabi-expands-its-international-financial-district-tenfold>

⁴ *AC Network Holding Limited v Polymath Ekar SPV1*, [2022] ADGMCFI 0009. <https://www.adgm.com/documents/courts/judgments/2022/2022-nov/adgmcfi-2020-015---judgment-15112022-sealed.pdf>

⁵ *The Racing Partnership v Done Bros Ltd* [2021] Ch 233.

⁶ *Meretz Investments NV v ACP Ltd* [2008] Ch 244.



**Article 13(11) of Abu Dhabi Law No. (4) of 2013, as amended:*

“Judgments of the Court of Appeal are final and may not be challenged by any method of appeal”

Judgment of ADGM Court of Appeal confirms English common law doctrine of precedent is binding on ADGM courts

In a subsequent judgment, the ADGM Court of Appeal (“CA”) (the ADGM’s highest court) reversed the Court of First Instance’s finding on unlawful means conspiracy. In doing so, the CA cited the ADGM’s Application of English Law Regulations 2015 (the “**ADGM Common Law Regulations**”) which provide that: “*the common law of England (including the principles and rules of equity), as it stands from time to time, shall apply and have legal force in, and form part of the law of the Abu Dhabi Global Market*”.⁷

In interpreting the ADGM Common Law Regulations, the CA held that the doctrine of precedent (*stare decisis*) is a core feature of English common law and requires that a single decision be always a binding precedent as regards courts below that from which it emanated. The result is that, if English common law is to be directly applicable in the ADGM, such doctrine of precedent must naturally be directly binding on all ADGM courts. The CA explained that although ADGM judges “*are not sitting as English judges*”, they are nonetheless bound to apply the proper hierarchy of English law precedents in reaching their decisions on what the correct position is under English law regarding a dispute.

The CA held that because the Racing Case was the most recent English judgment on the subject of unlawful

means conspiracy and had given the prior Meretz Case full consideration, it had “*settled the question of whether knowledge of the unlawfulness*” is required to establish the relevant claim (concluding it is not). As such, an ADGM court could not decide to apply the older Meretz Case on alleged grounds that the Racing Case was decided with faulty reasoning.

Conclusion

By upholding the direct applicability of English common law, the CA’s Judgment has also upheld the predictability and familiarity that comes with operating multinational businesses in the ADGM financial centre. Opting to directly incorporate English common law principles into its legal system, the ADGM can rest on the foundation of hundreds of years of established English law precedent. Moreover, the Judgment confirmed that the ADGM has adopted English common law on an ‘ever green’ basis, meaning that as relevant English case law changes, ADGM law evolves automatically.

This differs from the DIFC route of codifying only specific aspects of English law, effectively creating a new hybrid legal regime of its own. English case law may still have persuasive authority in the DIFC’s courts, but there is no natural presumption of English law’s direct applicability as it exists within the ADGM’s system.

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⁷ Article 1(1) of the Application of English Law Regulations 2015. The Article is subject to a number of qualifications, but none of them were deemed relevant in the case at hand.