



ADGM COURTS

سوق أبوظبي العالمي

06 February 2024 03:54 PM



In the name of  
**His Highness Sheikh Mohamed bin Zayed Al Nahyan**  
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE  
COMMERCIAL AND CIVIL DIVISION  
BETWEEN**

**FAISAL HAMAD MUBARAK AL AYAR**

Claimant

and

**PAUL KLINKHAMER**

Defendant

**JUDGMENT OF JUSTICE WILLIAM STONE SBS KC**



<b>Neutral Citation:</b>	[2024] ADGMCFI 0002
<b>Before:</b>	Justice William Stone SBS KC
<b>Decision Date:</b>	6 February 2024
<b>Hearing Date(s):</b>	29 January 2024
<b>Decision:</b>	<ol style="list-style-type: none"> <li>1. The Application is granted, and the Court declares that it has no jurisdiction to try the Claim.</li> <li>2. The proceedings be dismissed.</li> <li>3. Costs of and occasioned by the Application and by the dismissal of these proceedings are to be to the Defendant, such costs to be summarily assessed if not agreed.</li> <li>4. By <b>4:00 pm on 20 February 2024</b> the Claimant shall file and serve a response to the Defendant's Statement of Costs if so advised.</li> <li>5. Liberty to apply.</li> </ol>
<b>Date of Orders:</b>	6 February 2024
<b>Catchwords:</b>	Jurisdiction of the Court. Section 16(2) of the ADGM Courts Regulations. Articles 13(7) and (8) of the Founding Law. Whether claim " <i>involving</i> " the Global Market or any of the Global Market Authorities or Establishments. <i>Forum Non Conveniens</i> . Service of proceedings. Personal service.
<b>Legislation Cited:</b>	<p>ADGM Courts Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015</p> <p>Abu Dhabi Law No. (4) of 2013 (as amended by Abu Dhabi Law No. (12) of 2020)</p>
<b>Cases Cited:</b>	<p>A6 v B6 [2023] ADGMCFI 0005</p> <p><i>Union Properties P.J.S.C &amp; Anor v Trinkler &amp; Partners Ltd &amp; Others</i> [2023] ADGMCFI 0009</p> <p><i>Goel &amp; Ors v Credit Suisse (Switzerland) Limited</i> [2021] DIFC CA 002</p> <p><i>Investment Group Private Limited v Standard Chartered Bank</i> [2015] DIFC CA 004</p> <p><i>Spiliada Maritime Corp v Cansulex</i> [1987] AC 460</p>
<b>Case Number:</b>	ADGMCFI-2023-180
<b>Parties and representation:</b>	<p><b>Claimant's Legal Representative</b></p> <p>Dr Shaun Morgan (LLM), Franklin Morgan Legal Advisory LLC</p> <p><b>Defendant's Legal Representative</b></p> <p>Yash Bheeroo of 3 Verulam Buildings, London (instructed by Pinsent Masons LLP)</p>



## JUDGMENT

### The Application

1. This is the application of the Defendant, Mr Paul Klinkhamer, made pursuant to Rule 38 of the ADGM Courts Procedure Rules 2016 (the “**CPR**”), challenging the Court’s jurisdiction to try the claim brought against him by the Claimant, Mr Faisal Hamad Mubarak Al Ayar (the “**Application**”).
2. The Application was brought by an application notice dated 29 November 2023, whereby the Defendant seeks an order declaring that the Court has no jurisdiction to try the claim or, in the alternative, that the Court will not exercise its jurisdiction, together with an order for the dismissal of the claim with costs.
3. Six witness statements have been filed for the purposes of this Application: three witness statements by Ms Seema Bono of Pinsent Masons LLP filed on behalf of the Defendant on 29 November 2023, 8 December 2023, and 12 January 2024 respectively; and three witness statements filed on behalf of the Claimant by Mr Obaid Bin Touq Al Marri of Franklin Morgan Legal Advisory LLC (“**Franklin Morgan**”), on 12 December 2023, 5 January 2024 and 10 January 2024 respectively.

### The Facts

4. The Defendant is a Dutch national who is an investor and corporate business consultant. He resided in the UAE from July 2011. There is a dispute between the parties as to when the Defendant stopped residing in the UAE. In any event, I am satisfied that he now resides permanently outside of the UAE. The Defendant says he resides in Portugal, where he has lived since leaving the UAE. His wife is the daughter of the Claimant, with whom he is currently involved in divorce proceedings in Portugal: these divorce proceedings initially were instituted in the onshore Dubai Courts, but it appears that jurisdiction was declined.
5. The Claimant, who pending finalisation of the divorce remains the father-in-law of the Defendant, is a Kuwaiti national and a prominent businessman who prior to retirement held a senior position in a large investment company in Kuwait.
6. In his claim filed on 25 October 2023, the Claimant seeks to recover repayment of the sum of USD 500,000, together with interest, which the Claimant says was given to the Defendant as a loan in the form of payments effected under three promissory notes respectively dated 14 July 2015 (in the amount of USD 250,000), 11 August 2016 (in the amount of USD 125,000) and 14 September 2016 (in the amount of USD 125,000) (the “**Promissory Notes**”); interest is claimed at the rate of 6% per annum on the first note and at the rate of 7% per annum on the latter two notes, so that the total claim as now made in terms of principal plus accumulated interest stands at USD 839,834.48.
7. Dispute surrounds the Promissory Notes: in essence the Claimant says that they were a loan to the Defendant, and the Defendant refutes this and says that these monies were transferred to him purely for investment purposes. The Defendant accepts that he signed the 14 July 2015 promissory note at the Claimant’s office in Kuwait, but has no recollection of signing the latter two; he further contends that the 14 July 2015 promissory note was signed on the basis of the Claimant’s representation that it would not be enforced.
8. In this Application, the Court is in no position to resolve the various disputes of fact which have arisen regarding the Promissory Notes, and expresses no opinion thereon. However, there is no dispute that the sum of USD 500,000 was transferred in tranches into the personal bank account of the Defendant at Abu Dhabi Commercial Bank (“**ADCB**”), Abu Dhabi (Khalidiya Branch).



9. This case before the ADGM Courts is **not** the Claimant's first attempt to recover these funds pursuant to civil litigation in the UAE.
10. The Claimant earlier issued a like claim in the DIFC Courts (the "**DIFC Proceedings**") to that subsequently issued with this Court. The claim before the DIFC Courts was issued on 1 September 2023, and the legal representative of the Claimant acting in those proceedings also was Franklin Morgan.
11. It appears that Franklin Morgan attempted to serve the Defendant with the DIFC claim form by email on 8 September 2023, and that the Defendant responded by email dated 22 September 2023 refuting the validity of the purported service.
12. The Court has not had sight of any DIFC Courts' Order disposing of those proceedings. By Order dated 8 January 2023, this Court, then seised with the Application, requested clarification on the status of the DIFC Proceedings, and the third witness statement of Mr Al Marri has provided some of the information this Court was seeking.
13. The Court has been shown an email dated 19 October 2023 from Ms Alanood Al Riyami of the DIFC Courts' Registry to Mr Morgan of Franklin Morgan, wherein it is recorded that the case "*was escalated to the Judge, who reverted with the following: "The DIFC Courts have no jurisdiction to hear and determine this claim." In the case file, and the agreement between the parties, there is no opt-in clause to DIFC or anything in connection with the DIFC.*"
14. In his third witness statement (at paras 12 and 13), Mr Al Marri explained that the reference in his earlier witness statement to the DIFC Proceedings being "*stopped*" was used to state that:
 

*"12 ... [A]ny and all proceedings initiated between the Claimant and the Defendant in relation to CFI-064-2023 have been discontinued and there is no current Claim or proceedings before the DIFC Courts pursuant to the indebtedness of Paul Klinkhamer to Faisal Al Ayyar relating to the three Promissory Notes...*

*13. For the avoidance of doubt, there is no current, open or pending proceedings before the DIFC Courts relating to the same subject matter and litigation between the Claimant and Defendant in these proceedings before the ADGM Courts."*
15. At the hearing, Dr Morgan clarified that "*[w]e have not got a discontinuation notice or a closure of the case file...*". In any event, at the very least it appears that the DIFC Proceedings are no longer active, nor are they being pursued by the Claimant – and effectively they have been discontinued. Accordingly, for the purpose of the Application this Court is prepared to proceed on this basis, and accepts that no issue arises in terms of *lis alibi pendens*.
16. Although the legitimacy of service of these proceedings is disputed, this case successfully has come to the attention of the Defendant, an acknowledgment of service having been filed on his behalf by his solicitor on 15 November 2023, and the Application was filed two weeks thereafter. As the acknowledgment of service form states, a defendant does not lose any right that he may have to dispute the Court's jurisdiction by filing and serving an acknowledgment of service. Nor is there any requirement that the document acknowledging service be endorsed with any statement that, notwithstanding such acknowledgment, the right to object to the Court's jurisdiction, or the exercise thereof, is preserved.

### **Jurisdiction of the ADGM Courts: The Statutory Framework**

17. The jurisdictional parameters of ADGM Courts are statutory, and are set out in the ADGM Courts Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**ADGM Courts Regulations**") and Abu Dhabi Law No. (4) of 2013 as amended by Abu Dhabi Law No. (12) of 2020 (the "**Founding Law**").



18. The ADGM Courts Regulations set out, in section 16, the “*General Jurisdiction of the Court of First Instance*”, which is a superior court of record. Section 16(2) provides that:

*“...there shall be exercisable by the Court of First Instance all such jurisdiction as is conferred on it by –*

- a. Articles 13(7) and (8) of the ADGM Founding Law;*
- b. an Applicable Abu Dhabi Law;*
- c. these Regulations;*
- d. any other ADGM enactment; or*
- e. any request, in writing, by the parties to have the Court of First Instance determine the claim or dispute.”*

19. Article 13(1) of the Founding Law provides that the scope of the Court’s general jurisdiction over disputes is to be determined in accordance with the Founding Law and ADGM’s Regulations. Article 13(7) provides as follows:

*“The Court of First Instance and [sic] shall have exclusive jurisdiction to consider and decide on matters according to the following:*

- a. Civil or commercial claims and disputes involving the Global Market or any of the Global Market Authorities or and of the Global Market Establishments;*
- b. Civil or commercial claims and disputes arising out of or relating to a contract entered into, executed or performed in whole or part in the Global Market, or a transaction entered into or performed in whole or in part in the Global Market, or to an incident that occurred in whole or in part in the Global Market;*
- c. Any appeal against a decision or procedure issued by any of the Global Market Authorities according to the Global Market Regulations;*
- d. Any request, claim or dispute which the Global Market’s Courts has the jurisdiction to consider under the Global Market Regulations;*
- e. Any issues concerning the interpretation of any articles of the Global Market Regulations.”*

20. Article 13(8) recognises the ‘opt in’ jurisdiction referenced in section 16(2)(e) of the ADGM Courts Regulations, and specifies that ADGM Courts “*may hear and adjudicate any civil or commercial claim or dispute where the parties agree in writing to file such claim or dispute with them whether before or after the claim or dispute arises.*”

21. In terms of the remaining categories set out in section 16(2)(b)-(d):

- a. an “Applicable Abu Dhabi Law” referred to in sub-section (b) is defined in Part 10 of the ADGM Courts Regulations as “a law issued after the enactment date of these Regulations by His Highness the Ruler of the Emirate of Abu Dhabi which expressly provides for the law to have application in the [ADGM] ...”;*
- b. sub-section (c) relates to any situation where the ADGM Courts Regulations confers jurisdiction on the Court beyond section 16(2); and*



- c. sub-section (d) relates to an ADGM enactment specifically conferring jurisdiction on the Court.
22. In summary, therefore, pursuant to section 16(2) of the ADGM Courts Regulations this Court is able to exercise jurisdiction over a claim or dispute through one of the statutory 'jurisdictional gateways' thus provided.

### The Argument

23. Mr Bheeroo, appearing for the Defendant, stressed the significance of the statutory jurisdictional framework, and submitted that the Claimant had failed to demonstrate that this case satisfies any of these requirements. Mr Bheeroo's unequivocal position was that this Court has no jurisdiction to try this case pursuant to the provisions of the ADGM Courts Regulations or the Founding Law.
24. He also attacked the legitimacy of the service of the claim form on the Defendant, and contended that no basis existed under CPR 24 permitting service on the Defendant out of the jurisdiction.
25. Mr Bheeroo's alternative case was that if and in so far as he be wrong in his primary contention, and that jurisdiction be found to exist, then he invoked the doctrine of *forum non conveniens*, and submitted that the facts of this case "*weigh heavily*" against this Court being considered as the natural or convenient forum for the trial of these proceedings, citing *Spiliada Maritime Corp v Cansulex* [1987] AC 460, and in particular the speech of Lord Goff (at pp 476-477).
26. On behalf of the Claimant, Dr Morgan spread his net wide, both in his skeleton argument and latterly in oral submission.
27. In his skeleton argument he noted that the Claimant has "*a real issue*" which it is reasonable for the ADGM Courts to try, relying in this context on the provision of CPR 24.2(a), and observed that this is the only English law court in the Middle East with "*the requisite provisions of law*" to hear this dispute. There could, he said, have been no 'opt in' clause in "*July 2015*", given that "*the ADGM Courts only opened in May 2016*", and that when the parties agreed to English law as the governing law of the Promissory Notes, there had been no need to specify the ADGM Courts as there is no other Court or forum in Abu Dhabi utilising English law, and thus it was "*by absolute default*" that the only Court applicable to hear this claim is the ADGM Courts.
28. Dr Morgan also suggested (at para 12 of his skeleton argument) that it was not possible to provide any "*nexus*" linking this claim to ADGM Courts "*nor is it needed, as the Defendant was clearly a resident of Abu Dhabi at the time of signing the promissory notes, received the funds to his personal bank account in the Abu Dhabi Commercial Bank, and had submitted to English law as the prevailing law for the interpretation of the promissory notes.*"
29. However, in contrast to the written proposition that no such nexus was required, during oral argument Dr Morgan changed from this initial position and accepted (correctly) that the jurisdiction of the ADGM Courts was rules-based. When asked by the Court to identify the relevant jurisdictional provision applicable to this case he submitted that indeed there was "*a narrow gateway*" to be found within the wording of Article 13(7)(a) of the Founding Law: this Claim was, he said, a commercial claim or dispute involving a "*Global Market Establishment*". The Global Market Establishment in this instance was said to be the existence within ADGM of an entity related to ADCB, described by Dr Morgan as "*ADCB Asset Management Leasing*" (and latterly described by Mr Bheeroo as "*ADCB Asset Management*"). In any event, Dr Morgan described this entity as having "*offices in the ADGM jurisdiction ... albeit it is a subsidiary, a wholly owned subsidiary... of ADCB*" (latterly also described by Dr Morgan as a "*branch or a division*"), the presence of which, by parity of reasoning with a DIFC case (neither produced nor properly cited, but which Dr Morgan named as *Goel v Credit Suisse*) should be considered as sufficient to substantiate a claim for invocation of ADGM Courts' jurisdiction.



30. In his argument, Dr Morgan further prayed in aid an earlier decision of this Court in *A6 v B6* [2023] ADGMCFI 0005, in which this Court held (at [14]) that there existed a “*narrow exception*” for ADGM Courts to assume jurisdiction and decided the application in that case on its merits; he went on to note that although in this case the establishment of jurisdiction might, as he put it, be “*an absolute stretch... a very narrow proposition*”, nevertheless the Court remained in a position to exercise its discretion to allow this case to proceed, absent which there was a “*real risk*” of the Claimant being shut out from bringing forward a genuine claim, and being left without an appropriate court or forum in which to find a remedy.
31. As to the secondary issue of *forum conveniens*, Dr Morgan maintained that that the ADGM Courts were the only English law court in the Middle East, seated in Abu Dhabi, and the “*only court with the requisite provisions of law to hear this dispute*”. He further argued that pursuant to article 26(1) of the UAE Civil Code, the domestic courts did not have jurisdiction where the parties to a contract expressly included a foreign governing law clause.
32. In terms of the legitimacy of service of these proceedings on the Defendant, Dr Morgan said that: (i) the Claimant had followed the CPR in effecting such service; (ii) that the process server had given evidence of service of the claim form in accordance with the relevant provisions; (iii) and that it was “*impossible*” for the Defendant to maintain its position that the claim had not been properly served, particularly as the Defendant had filed an acknowledgment of service.

## Decision

### Does the Court have jurisdiction?

33. Jurisdiction either exists or it does not, and the Court has no residual discretion to vary the specific statutory parameters laid down in the ADGM Courts Regulations and the Founding Law.
34. The jurisdictional framework of the ADGM Courts is rules-based, and it is plain that the Court has jurisdiction to try a claim where jurisdiction is conferred under the five categories set out in section 16(2)(a)-(e) of the ADGM Courts Regulations.
35. Prior to the hearing, it had appeared that the Claimant was not contending that the facts of this case fitted within any of the jurisdictional categories set out in Article 13(7) of the Founding Law. This was unsurprising since, as pleaded, the claim has no connection to the ADGM, and does not concern the ADGM or any ADGM authority or establishment: on the Claimant’s own case: (i) the Promissory Notes were all executed in Kuwait; (ii) the transfer of monies pursuant to these Promissory Notes was from a Kuwaiti Bank to an *onshore* Abu Dhabi bank, ADCB; and (iii) no part of the commercial transaction between Claimant and Defendant had occurred in, nor had any connection with, the ADGM.
36. However, reliance by Dr Morgan during oral submission on the provisions of Article 13(7)(a) of the Founding Law, and the existence within ADGM of what was referred to by Dr Morgan as a subsidiary (or branch or division) of ADCB, necessitated reconsideration (and some post-hearing research).
37. In principle, Dr Morgan’s Article 13(7)(a) argument, which had found no place in his skeleton, faced two difficulties:
- a. *First*, there was no evidence whatever before the Court as to the ADCB entity within ADGM upon which he relied, including its precise legal status, which is potentially significant in terms of whether this was a subsidiary (which would be separately incorporated) as opposed to a branch (which would render the ADCB potentially amenable to the ‘branch jurisdiction’ argument which had found favour in *Investment Group Private Limited v Standard Chartered Bank* [2015] DIFC CA 004: in that case, the DIFC Court of Appeal held that the existence of



a licensed branch of the Standard Chartered Bank (“**SCB**”) registered in the DIFC was in itself sufficient for the SCB, incorporated in the UK, to qualify as a “*Licensed DIFC Establishment*”, and thus to bring itself within the DIFC’s ‘jurisdictional gateway’ in relation to claims involving Licensed DIFC Establishments under Article 5A(1)(a) of Dubai Law No 12 of 2004, as amended by Dubai Law No 16 of 2011).

- b. *Second*, the present civil dispute is solely between two private individuals, and does not *qua* party “*involve*” a Global Market Establishment, the definition of which term is found in Article 1 of the Founding Law and covers any company registered in the ADGM by any ADGM authority. Mr Bheeroo made this point, and emphasised that no findings would be necessary in respect of a bank to dispose of the issue between these two individuals. Whilst of course this is true, in principle I do not consider that in itself ‘party status’ necessarily is dispositive of the Article 13(7)(a) issue: in this regard I respectfully agree with the observation of Justice Sir Andrew Smith in *Union Properties P.J.S.C & Anor v Trinkler & Partners Ltd & Others* [2023] ADGMCFI 0009 (at para [58]) that:

*“I cannot accept that section 13(7)(a) requires a party to a claim or dispute to be a Global Market Authority or a Global Market Establishment. The word “involving” must be given a wider meaning if sensible effect is to be given to the concepts of a claim or dispute “involving” the Global Market, and of a claim or dispute “involving” a Global Market Authority; and the word bears the same meaning when the question is whether a claim or dispute involves a Global Market Establishment”.*

In *Union Properties, op cit.*, one of the parties in fact was a Global Market Establishment, which is not the situation in the present case. Further (on the assumption that the entity in question was ADCB Asset Management), there is no evidence that: (i) this entity had any part to play or activity relevant to the undisputed fact that the Claimant had deposited the funds in question into the Defendant’s personal account in the onshore Khalidiya branch of ADCB; and (ii) any part of these monies had at any time been transferred into any account within the ADCB entity in ADGM. On any basis, therefore, this cannot be said to be a claim or dispute “*involving*” a Global Market Establishment.

38. Nor does the decision in *Goel & Ors v Credit Suisse (Switzerland) Limited* [2021] DIFC CA 002, the case originally invoked by Dr Morgan in support of his argument, assist. *Goel* was a case about personal guarantees signed in May 2016 by four individuals. These guarantees were novated from Credit Suisse AG (a Swiss company, but also a “*DIFC Establishment*”) to a subsidiary of Credit Suisse AG, Credit Suisse (Switzerland) Limited (“**CSSL**”) which was *not* a DIFC Establishment. When CSSL applied to the DIFC Courts for a world-wide freezing order against the guarantors, the latter challenged the DIFC Courts’ jurisdiction on the basis that CSSL was not a DIFC Establishment, and that the jurisdiction agreements within the guarantees did not constitute a binding ‘opt in’ to the DIFC Courts. The Court of Appeal upheld the decision at First Instance, and decided that although the novation of the guarantees had removed any grounds to claim jurisdiction on the basis that Credit Suisse AG was a DIFC Establishment, nevertheless there was a valid and binding ‘opt in’ agreement under the guarantees because the expression “*Dubai Courts*” was to be construed to include the DIFC Courts. Accordingly, given the specific basis upon which that case was decided, it is unclear how or why it might be thought that *Goel* is relevant to the present case. *Goel* was not a case where the Court found that there was ‘branch jurisdiction’ (or ‘subsidiary jurisdiction’, as Dr Morgan alluded to) of the kind confirmed in *IGPL v SCB, op cit.*
39. Accordingly, this argument, initially propounded at the hearing of the Application and absent any supporting evidence, is rejected. On the evidence before it, the Court finds that the present claim is *not* one which falls within Article 13(7)(a) of the Founding Law.





40. Nor on the facts does the issue of an Article 13(8) 'opt in' jurisdiction arise. At the hearing, Dr Morgan contended that it "*would have been quite impossible*" to require a specific opt-in clause as "*the transaction occurred in 2015*" and "*ADGM Courts were not yet in existence*". However, it is relevant to note that ADGM Courts' 'opt in' jurisdiction was enshrined in the Founding Law which was enacted in 2013. While it is true that the ADGM Courts Regulations were enacted in December 2015 and the CPR in May 2016 (after the 14 July 2015 promissory note), there was no good reason why the parties could not have incorporated an ADGM Courts' opt-in clause in the 11 August 2016 and 14 September 2016 promissory notes if they wished to do so. They did not. Furthermore, there was nothing to preclude a post-dispute 'opt in' between the present parties, as for example occurred in *A6 v B6, op cit*. This was a case prayed in aid by Dr Morgan as an example of the Court's readiness to assume jurisdiction in what was described in that case as a "*narrow exception*", and wherein the agreement on the part of *both* parties involved to ask the court to decide the issue (on an application to set aside an arbitral award) was characterised as an 'opt in' for the purpose of establishing a 'jurisdictional gateway'.
41. It follows that the Claimant has failed to establish, by reference either to section 16(2) of the ADGM Courts Regulations or to Article 13(7) or (8) of the Founding Law, any juridical basis upon which the ADGM Courts can exercise jurisdiction in this dispute, and the Court so holds.

### **Forum Non Conveniens**

42. In light of the finding that the Court has no jurisdiction in this dispute, there is no necessity to decide the Defendant's alternative case that these proceedings should be stayed on the ground that the ADGM Courts are not the natural or proper forum for these proceedings, and that the proper forum is Kuwait, the place of execution of the Promissory Notes, or alternatively Portugal, where the Defendant says he now resides.
43. This alternative element in this case was but lightly canvassed by both parties.
44. Mr Bheeroo submitted that the Kuwaiti courts would be the proper and competent forum for resolution of this dispute and observed that in terms of 'connecting factors' the case is more closely connected with Kuwait, wherein: (i) the Promissory Notes were allegedly signed; (ii) the payments of the three instalments constituting the USD 500,000 were from a Kuwaiti bank account; and (iii) the payment ostensibly due under the Promissory Notes are to be paid at Kuwait.
45. For his part, Dr Morgan did not specifically rely on the *forum non conveniens* argument, noting at the outset of his oral submission that "*I won't even get into the FNC doctrine*", albeit by necessary inference from his submissions it is clear that he regards the ADGM Courts as the *forum conveniens*. However, his 'connecting factors' all appear to point to *onshore* Abu Dhabi; he says that the Defendant was a resident of Abu Dhabi at the time of signing the Promissory Notes, and had received the funds into his personal bank account with the ADCB.
46. Dr Morgan stressed throughout that the ADGM Courts were the only courts in the Middle East exclusively applying English law, expressed on their face to be the governing law of the Promissory Notes. In so far as he suggested that the choice of governing law is determinative of the choice of jurisdiction, this submission is not one with which the Court can agree: selection of governing law of a financial instrument, in this instance English law, does not *of itself* render the ADGM Courts the natural and proper forum for hearing this dispute. Dr Morgan's conclusion (at para 13 of his skeleton argument) that "*there is no other Court or forum applicable or even meeting the criteria which the ADGM Court has to govern and hear this claim*" puts the case ambitiously high. The contention that the ADGM Courts are the *only* natural and proper forum in the Middle East to hear this dispute is undermined by the fact that the Claimant first chose to pursue his claim in another forum, being the DIFC Courts.



## Service of Proceedings

47. The issue of service of proceedings in this case has aroused vigorous dispute. In practical terms this an arid debate, given that the Defendant has made the Application and appeared at the hearing through counsel, and in order to do so has acknowledged service of the proceedings, albeit he contends that such service was illegitimate and did not conform to the CPR.
48. The case papers contain an email to the Defendant dated 1 November 2023 from Franklin Morgan, acting for the Claimant, purporting to serve the claim form, which communication was met with a detailed email response from the Defendant dated 8 November 2023. In that response, the Defendant noted that, as the Claimant well knew: (i) he had not lived in the UAE since September 2020; (ii) his current residence was in Portugal; and (iii) in order to serve the claim form outside the UAE pursuant to CPR 15(7) it must be served in accordance with the rules regarding service in Portugal. The Defendant added that in order to serve a claim form out of the jurisdiction, pursuant to CPR 25, the Claimant was required to file a notice containing a statement of the grounds upon which it was it was entitled to serve out, that this had not been done, and that until rectified there could not be said to have been proper service.
49. This email effectively was a mirror image of the earlier email response he had sent to Franklin Morgan on 22 September 2023 when purportedly served with the DIFC Proceedings; notwithstanding these complaints, however, the Defendant formally acknowledged service of the ADGM Courts' proceedings on 15 November 2023.
50. On 2 November 2023, a certificate of service was filed on behalf of the Claimant, supported by a witness statement dated 1 November 2023 of the process server, Mr Abdolkhalegh Ghazi Kaabi. In his witness statement, Mr Kaabi says that he served the claim form in accordance with Part 4 of the CPR, r.15(3)(a) and (c) and that it was served *"by me personally"* on the Defendant in compliance with CPR 16 at his last known place of residence in Abu Dhabi by leaving it at the residence, and also was attempted to be served at the Defendant's last known place of employment at Guardian Office Tower, Abu Dhabi, although at that venue there had been a refusal to accept the documents.
51. In his skeleton argument, Dr Morgan maintained that in the matter of service *"the Claimant had followed the Court Practice Rules in initiating proceedings before the ADGM Courts and service of the Claim Form"* in accordance with the relevant itemised provisions of CPR 15 and 16, and noted that the Defendant had acknowledged service, so that *"it is therefore impossible to state that the Claim was not properly served"*.
52. For his part, Mr Bheeroo (at paras 25 and 26 of his skeleton argument) disputed the legitimacy of the service purportedly made; he said that assuming the Claimant was entitled to serve out of the jurisdiction pursuant to CPR 24(1), which was denied, the Claimant certainly had failed to serve the claim form in Portugal, which ought to have been carried out in accordance with CPR 15(7), and took exception to the fact that there had been purported service at places where, he said, it was known that the Defendant was not located. As a consequence *"false representations"* had been made to the Court about service, including the fact that the Defendant was served personally on the Defendant in the UAE, and thus the certificate of service *"must be knowingly false"*, as Mr Kaabi must have known that personal service could not have been effected under CPR 16(1) in a situation where there was knowledge of the Defendant's actual whereabouts and fixed abode in Portugal.
53. In light of the primary conclusion of the Court upon this Application as to the existence of jurisdiction, the issue of the legitimacy of service does not loom large. Suffice to say that the Court is of the view that the purported personal service was *not* legitimately effected in accordance with the CPR. It is also noted that service of the claim form was also purportedly said to be effected by email, however no oral submissions were made on this point at the hearing although Mr Bheeroo (at para 27 of his skeleton argument) sought to rely on the fact that the

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Defendant had earlier communicated to the Claimant that he was not willing to accept service by electronic means.

54. Although Mr Bheeroo was keen to hold on to the service point, analytically it takes this case no further in substantive terms. The adequacy or otherwise of service of legal process may have resonance in circumstances where, for example, there is no engagement by the Defendant in the purported process, which may then result in default judgment which thereafter is sought to be set aside, but this is not one of those cases.

### Conclusion

55. The Application is granted and the proceedings are to be dismissed.
56. As to costs, the parties agreed that these are to follow the event, and thus the Defendant must have his costs of and occasioned by this application and by the proceedings.
57. The Court notes that a statement of costs has been filed on behalf of the Defendant, but prior to summary determination thereof, those acting for the Claimant are to have a short period of time in which to respond to that statement.



Issued by:

Linda Fitz-Alan  
Registrar, ADGM Courts  
6 February 2024