

ABU DHABI GLOBAL MARKETS: NEW REGULATIONS

LITIGATION & REGULATION


APPLICATION OF ENGLISH LAW REGULATIONS

The Application of English Law Regulations (in this section, the “**Regulations**”) provide for the application of English common law and certain English statutes in the Abu Dhabi Global Market, however, these Regulations should not be considered in isolation of the regulatory framework within which the Abu Dhabi Global Market exists, notably Abu Dhabi Law No. 4 of 2013 (“**Founding Law**”) and Federal Law No. 8 of 2004 (“**Financial Free Zones Law**”). Significant points of interest in these provisions are as follows:

1. **English Common Law and the Scheduled Acts** – as mentioned, the Regulations provide that English common law (including equity) and certain specific statutes (concerning a range of matters including contract, tort, trusts and partnerships, as set out in the Schedule) (“**Scheduled Acts**”) shall apply and form part of the law of the Abu Dhabi Global Market. In the event of inconsistency or conflict, any Applicable Abu Dhabi Law or Abu Dhabi Global Market enactment shall prevail over both English common law and the Scheduled Acts (Regulations, Section 1(2) and Section 2(2)).
2. **Abu Dhabi Global Market Courts** – the Abu Dhabi Global Market Courts comprise a two tier structure consisting of a Court of First Instance and Court of Appeal (Founding Law, Article 13(1) and 13(9)). An initial draft of the Regulations released at the consultation stage provided that the jurisprudence of the UK courts shall be taken into account and that

decisions of the UK Supreme Court shall bind the Abu Dhabi Global Market Courts. These provisions have been removed from the final Regulations enacted by the Board earlier this year. The jurisprudence of the UK courts may still influence the Abu Dhabi Global Market Courts, despite this not being entrenched in statute, but shall not be binding.

3. **Jurisdiction** – whilst parties are permitted to contract out of the jurisdiction of the Abu Dhabi Global Markets in favour of any other court or arbitral institution (Founding Law, Article 13(7)), it seems that in order for the Abu Dhabi Global Market Courts to have jurisdiction over a matter there needs to be a connection to the Abu Dhabi Global Market. This includes where a dispute arises from or related to a contract or transaction made wholly or partially in the Abu Dhabi Global Market or an event occurring therein (Founding Law, Article 13(6)). Until November 2011 parties had to have a sufficient connection to the Dubai International Financial Centre (“**DIFC**”) in order for the DIFC Courts to have jurisdiction, but since that date contracting parties have been able to expressly agree to opt into the DIFC jurisdiction, irrespective of whether they or their contracts have any connection with the DIFC, thus making it a more accessible jurisdiction than it appears the Abu Dhabi Global Market will be.
4. **Governing Law** – when contracting with an Abu Dhabi Global Market Business Entity, Abu Dhabi Global Market law is the default law, however, parties are able to state otherwise provided that their choice of governing law does not “*prejudice*” Abu Dhabi



Global Market regulations or executive resolutions (Founding Law, Article 22(4)). It is not clear what would amount to prejudice in this context and we await further guidance on this point.

5. **Enforcement Regime** – the Founding law alludes to an enforcement regime suggesting that Abu Dhabi Global Market Court judgments and arbitral decisions approved by the Abu Dhabi Global Market Courts shall be enforceable outside of the jurisdiction, and vice versa (Article 13(11) and 13(12)). More information is needed on how it is intended this will work in practice; however, if the Abu Dhabi Global Market emulates the approach adopted in the DIFC concerning the ability to enforce a judgment outside of the DIFC but within the UAE, then this could constitute a key benefit of Abu Dhabi Global Market. It is vital that any enforcement regime is clear and workable so that, to the extent possible, it limits the risk that the onshore courts may rehear a case and apply the laws of the relevant Emirate (resulting in delays and increased costs).
6. **Applicability of Federal Law** – financial free zones in the UAE (which likely includes the Abu Dhabi Global Market) remain subject to federal anti-money laundering legislation and ‘*all provisions of Federal law, with the exception of the Federal civil and commercial laws*’ (Financial Free Zones Law, Article 3). Federal criminal law, together with other non-civil and non-commercial federal law, will likely have continued application in the Abu Dhabi Global Market, as is the case in the DIFC.
7. **Applicability of Abu Dhabi Law** – the position in relation to the applicability of Abu Dhabi law in the Abu Dhabi Global Market is not as clear; it seems that Abu Dhabi law will only apply to the extent that it is made applicable pursuant to Abu Dhabi Global Market Regulations (Founding Law, Article 22(7)).

COMMENTARY

In summary, whilst the Regulations provide us with some guidance as to what we can expect from the Abu Dhabi Global Market, a more vivid picture will emerge with time. What is clear is that English common law provides a solid foundation which should instil a sense of confidence and certainty in those that already have, or are looking to obtain, interests in Abu Dhabi. If the Abu Dhabi Global Market employs a similar approach to that seen in the DIFC – where English Civil Procedure Rules form the basis of its own procedural rules, English has been adopted as the official language of the courts and there is an established practice of making judgments publicly available – then we can expect the Abu Dhabi Global Market to become a similarly accessible and attractive jurisdiction for international parties.

Whilst it seems that a connection to the Abu Dhabi Global Markets is currently a prerequisite for the Abu Dhabi Global Market Courts to have jurisdiction over a matter, in the future the Abu Dhabi Global Market may well become an opt-in jurisdiction just as the DIFC has. A further consideration is that whilst it has not yet been confirmed whether there will be an independent arbitration centre within the Abu Dhabi Global Market (albeit Article 13(11) of the Founding Law suggests this may well be the case), the establishment of such a centre may open up an additional arbitral forum, resulting in a situation similar to Dubai, where the offshore DIFC-LCIA arbitration centre, and the onshore Dubai International Arbitration Centre (“**DIAC**”) operate in parallel. Much will depend on the introduction of further regulations and procedures, which we eagerly await.