

UAE

Reciprocal Enforcement of Judgments in Abu Dhabi and ADGM

A Memorandum of Understanding was recently signed between the Government of Abu Dhabi and its financial Free Zone, Abu Dhabi Global Market (**ADGM**), setting out the framework for the reciprocal enforcement of judgments, decisions, orders and arbitral awards ratified or recognised by the courts in on-shore Abu Dhabi and the courts in ADGM.

One of the main advantages for parties who choose to litigate or arbitrate their disputes in ADGM will be the ease of enforcement on-shore in Abu Dhabi of any such resulting judgment, decision, order or ratified arbitral award of ADGM. They will be able to be referred, in the prescribed manner, for enforcement against assets on-shore in Abu Dhabi and should be enforced without review of the merits (and vice versa).

The ADGM arbitration framework has been modelled on the UNCITRAL Model Law. And parties do not require a connection to the ADGM in order to choose the ADGM as the seat of arbitration.

The Arbitration Regulations 2015 will apply to any arbitration where the seat of the arbitration is ADGM. The Arbitration Regulations 2015 will also apply where the recognition and enforcement of an award (regardless of where the award was made) is sought in ADGM.

In addition, the International Chamber of Commerce (**ICC**) has established its first representative office in ADGM which facilitates ICC-administered arbitration proceedings in the region. However, there is no restriction on parties choosing another arbitral institution to administer their arbitration within ADGM.

Opening of ADGM Arbitration Centre

The ADGM Arbitration Centre (**ADGMAC**) opened in the fall of 2018. It is a hearing facility that is equipped with state-of-the art technology. ADGMAC is not an arbitration institution itself which means that the facilities can be used by parties regardless of which institution they choose to administer their arbitration. As well, parties may choose the arbitration rules which will apply to their arbitration.

Amendment to Penal Code concerning Arbitrators

Another positive development recently took place in relation to arbitration in the UAE. The federal Government amended Article 257 of the UAE Penal Code. As a consequence, Article 257 no longer exposes arbitrators to criminal sanctions for failing to maintain integrity and impartiality in the discharge of their duties.

The new Article 257 provides that:

“Any person who, while acting in the capacity of an expert, translator or investigator appointed by a judicial authority in a civil or criminal case, or appointed by an administrative authority, confirms a matter contrary to what is true and misrepresents that matter while knowing the truth about it, shall be sentenced to imprisonment for a minimum term of a year and a maximum term of five years.” (emphasis added).

Even though experts, translators and investigators are still within the scope of the revised Article 257, it seems that it is limited to those “*appointed by a judicial authority in a civil or criminal case or appointed by an administrative authority*”.

It remains to be seen how this provision will be applied but it is hoped that experts, translators and investigators appointed by the parties in the context of an arbitration will not be caught by the ambit of the amended Article 257 and that this development will continue to maintain Dubai as one of the leading arbitration jurisdictions in the world.

OMAN

New Escrow Law

Sultani Decree 30/2108 relating to Escrow Accounts for Real Estate Development Projects (the **Escrow Law**) was recently adopted in Oman and will come into effect in May 2019. The Escrow Law aims to regulate real estate developers and to protect funds paid to developers by purchasers of off-plan properties.

Before the Escrow Law, developers operating in the Sultanate were largely unregulated. The Escrow Law is similar to the Dubai Escrow Law issued in 2008.

Generally, the Escrow Law applies to developers selling units off-plan in real estate development projects for residential, commercial, industrial and tourism purposes. The regulations to be issued by the Minister of Housing (in co-ordination with the Ministry of Tourism and the Central Bank of Oman) have not been issued yet but should contain more details as to the operational aspects of the new Escrow law.

Under the new framework, developers will need to obtain a licence and register on a special register at either the Ministry of Tourism (for tourism complexes) or the Ministry of Housing (for all other real estate development projects).

The main focus of the Escrow Law is the obligation for developers to set up an escrow account with a local bank for each real estate development project it is operating. The relevant Ministry of Housing or Ministry of Tourism, as applicable, will have to approve the escrow account arrangements.

All payments received from purchasers of off-plan properties (or their banks, if a mortgage has been obtained) are to be paid into a dedicated escrow account to avoid commingling of funds. Developers who obtain third party mortgage finance to supplement construction funding from off-plan sales will also be required to deposit the loan proceeds into such escrow account.

In addition, to ensure that the funds are only used for the actual costs of construction, the developer will need to submit an application for withdrawal to the local bank which will act as escrow agent, together with a certificate from the consultant engineer for the project as to the amount required.

The Ministry of Housing and the Ministry of Tourism will have a monitoring role and will have the authority to stop payments being made from the escrow account. The Ministries will also have the right to step in to try to resolve any issue causing any interruption in the construction of a project.

The Escrow Law is a good development for the protection of off-plan purchasers in respect of the use of funds and to ensure that they are used only to finance the construction of the particular development. However, it does not guarantee that the real estate development project will be completed on time or at all.

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