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Abu Dhabi Global Market Court of Appeal Deepens ADGM's Wholesale Adoption of English Law

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The Court's decision also distinguishes the ADGM and DIFC's approaches to English law. A unique feature of the ADGM—certainly within the region—is that the English common law, as it stands from time to time, not only applies and has legal force in the jurisdiction, but also forms part of the ADGM's laws. This is enshrined in Article 1(1) of the Application of English Law Regulations 2015 ("**Regulations**"). On 17 November 2023, the ADGM Court of Appeal published an important decision in *AC Network Holding Ltd. v. Polymath Ekar SPV1*, confirming, among other things, that whilst ADGM judges "*are not sitting as English law judges*", "*they are bound to apply the rule laid down by the* [Regulations]". Lord Hope contrasted this with the position in the Dubai International Financial Center ("**DIFC**"): "*The position in the Dubai International Financial Centre is different. Common law rules in various areas have been codified, and it is only if those rules or the laws of other relevant legal systems do not provide an answer that the laws of England and Wales are applied*." This decision provides clarity to parties contracted to resolve disputes before the ADGM courts, and emphasises the unique position of English law in the ADGM, which the Court of Appeal observed "*lies at the heart of the system of law that was created for the ADGM*". **Context and Factual Background** With the adoption of the Regulations in 2015, the ADGM opted to fully transplant English law as its applicable private law.[1] The result is that the entire, constantly updated, corpus of English common law applies in the ADGM. However, as the *AC* case demonstrates, there remained some doubts as to the full effect of this legal transplant. *AC* concerned the sale of shares in a car-sharing company operating in Dubai, Abu Dhabi and Saudi Arabia. In 2020, the company's minority shareholders were compelled, pursuant to a "Drag Along Notice" ("**Notice**") issued by the majority shareholders, to sell their shareholding to a third party. The minority shareholders challenged the validity of the Notice on the ground that the third party purchaser was not a '*bona fide purchaser'* as required by the Shareholders' Agreement ("**Agreement**"). Rather, they claimed that the purchaser was actually the majority shareholder himself, merely acting through a corporate veil. The minority shareholders sued the majority for the economic torts of intentionally procuring a breach of the Agreement as well as of conspiracy to use unlawful means to breach the Agreement. The Agreement was governed by English Law and any disputes arising under the Agreement were subject to the exclusive jurisdiction of the ADGM courts. **Court of First Instance** The ADGM Court of First Instance agreed with the minority shareholders that the Notice was invalid, insofar as the majority shareholder, by standing on "*both sides of the fence*," had effectively expropriated the company's shares in bad faith. However, the Court did not find that this breach was intentional, with the majority shareholder having received assurance from its legal counsel that the transfer was lawful.[2] In considering the unlawful means conspiracy claim, the Court was faced with a question of English law: did this claim also require knowledge of the unlawfulness of the conduct? In answering this question, the minority shareholders pointed to a 2021 decision of the English Court of Appeal in *Racing Partnership*, where a majority of judges held that such knowledge was not required.[3] However, the ADGM Court of First Instance declined to follow this decision, holding that while Article 1(1) of the Regulations made English court decisions and precedent "*highly relevant,*" it did not bind ADGM courts.[4] Instead, it was the ADGM Court of First Instance's duty to ascertain the "*correct position*" in English law, which may

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not be reflected in the latest case law.[5] In this analysis, the ADGM Court of First Instance found that *Racing Partnership* confused rather than settled English law, with the correct position being that knowledge was, in fact, a requirement to establish the tort of conspiracy by unlawful means. Having already found that the majority shareholder lacked knowledge that his conduct was unlawful, the minority shareholders' claims were dismissed.[6] **Court of Appeal** On appeal, the minority shareholders claimed that the Court of First Instance had erred in its application of English law, and consequently, the Regulations. They argued that Article 1(1) of the Regulations required that the ADGM courts apply English law including respecting the doctrine of precedent, the principle that within a single legal system, lower courts are bound by the prior decisions of higher courts. The ADGM Court of Appeal agreed. In its reading, Article 1(1) of the Regulations required ADGM courts to apply English law principles, which would necessarily include the bedrock doctrine of precedent.[7] With some exceptions, a lower court would thus be required to apply decisions of higher courts even if they felt that the decision was faultily reasoned or had an unjust result.[8] In this context, the ADGM Court of Appeal found that the English Court of Appeal's decision *Racing Partnership* was binding authority in the ADGM.[9] With knowledge of the illegality of its conduct no longer required, the ADGM Court of Appeal found the majority shareholder was liable for conspiracy to use unlawful means to breach the Agreement.[10] **Implications** The ADGM Court of Appeal's decision in *AC* has profound implications in the ADGM. As the decision recognises, respect for the doctrine of precedent injects predictability into the ADGM's application of English law, which was the primary reason for the Regulations in the first place. No longer will ADGM judges be encouraged (or permitted) to depart from latest English case law to undertake novel (and potentially complex) analyses of the 'correct' position under English law. Instead, the practice before the ADGM courts will be greatly synthesised with that before English courts, providing relief to clients and lawyers already familiar with these courts and their rulings. *AC* also has the notable effect of further entrenching the ADGM's wholesale adoption of English common law, which stands in contrast to other special economic zones and financial zones in the region (including in the UAE). For example, the DIFC explicitly codified various common law rules as DIFC law with adjustments, with English common law only applied to fill gaps in these existing DIFC codes.[11] The merit of the ADGM model—evidenced by the ADGM's growing attractiveness to foreign investors worldwide—is its immediate familiarity to clients and lawyers well-versed with English law. The *AC* decision is another welcome step in the right direction. _____ [1] Application of English Law Regulations 2015, art. 1(1) ("*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*".) [2] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶ 16. [3] *Racing Partnership v. Done Bros Ltd.* [2021] Ch 233 [4] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶ 18. [5] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶ 19. [6] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶ 19. [7] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶ 25. [8] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶¶ 32-33. [9] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶ 45. [10] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶ 46. [11] *AC Network Holding Ltd. v. Polymath Ekar SPV1* [2023] ADGMCA 0002, ¶ 2.

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