ADGM Courts and Arbitrations Administered by the ICC ADGM Office: A Revisited Look at the Onshore/Offshore Divide in Light of Recent UAE Decisions

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Introduction

Throughout 2022 onwards, multiple judgments of the Abu Dhabi Cassation and Appeals Courts took the view that an ICC arbitration "seated" in Abu Dhabi but administered by the ICC office in the Abu Dhabi Global Market (ADGM) came under the exclusive jurisdiction of the ADGM Courts rather than the onshore Abu Dhabi Courts. The outcome generated significant debate over whether the mere presence of an ICC office in the ADGM could, by itself, shift supervisory jurisdiction away from the courts of onshore Abu Dhabi.

In August 2024, the ADGM Court itself addressed whether an ICC arbitration might fall under its supervisory jurisdiction simply because it was administered by the ICC ADGM branch and some of the hearings took place in the ADGM, despite the parties having originally designated "Dubai" as the seat. The ADGM Court ultimately emphasized that **party autonomy** in specifying the seat prevailed over the physical location of the ICC office or any hearings.

At the same time, two recent judgments of the Dubai Cassation

Court—**Case 460 of 2023** and **Case 805 of 2022**—clarified that, while courts should consider whether the agreement explicitly identifies the seat, the **factual** place of arbitration and the **actual** operations of the arbitral institution are equally important. Even though these Dubai cases involved the Emirates Sports Arbitration Center rather than the ICC, they reflect the principle that determining which local court has jurisdiction depends on where the institution in question functioned and conducted its proceedings, rather than on a nominal reference alone.

The ADGM Court's August 2024 Decision

In A15 v B15, the claimant sought to have its ICC award recognized and enforced under section 61 of the ADGM Arbitration Regulations 2015, arguing either that the ADGM was the seat or, alternatively, that the court could exercise enforcement jurisdiction by treating the award as foreign. The underlying subcontract had referred to the UAE as the place of arbitration, with the ICC Rules governing. Procedurally, the Terms of Reference specified "Dubai" as the legal seat, but the arbitration hearings had been held in the ADGM. The ADGM Court concluded that the parties' explicit choice of "Dubai" as the seat should not be overridden simply because the ICC branch in the ADGM administered the arbitration. It considered the seat of arbitration a legal concept, determined above all by **party autonomy** and the relevant contractual documentation, rather than by the physical location where hearings happened or where the ICC had its local office. Accordingly, the court decided that, under section 60(1)(a), it did not have supervisory jurisdiction but still had authority to recognize and enforce the award under section 60(1)(c).

The Abu Dhabi Courts' Position

In contrast, several onshore Abu Dhabi judgments—among them decisions numbered 101/2022, 87/2022, 81/2022, 57/2023, 53/2021, and 635/2022—adopted a starkly different stance when

dealing with the ICC ADGM branch. These courts generally held that, where an arbitration agreement referred to Abu Dhabi and the ICC administered the proceedings through its ADGM office, the seat was effectively deemed the ADGM, with **exclusive** supervisory power vested in the ADGM Courts. Their reasoning often drew on Article 18 of Federal Law No. 6/2018 (the UAE Federal Arbitration Law), together with the principle that the ICC ADGM office was regarded as an "ADGM establishment." The result was that if parties specified Abu Dhabi as the place of arbitration but employed the ICC's local presence in the ADGM, the onshore Abu Dhabi courts would refuse jurisdiction and direct all challenges or annulment actions to the ADGM.

Dubai Cassation Court Judgments

In Dubai Cassation Court Cases 460 of 2023 and 805 of 2022, the court examined the extent to which it had jurisdiction over annulment applications involving the Emirates Sports Arbitration Center, whose headquarters are in Abu Dhabi but which has branches in other Emirates. The facts concerned whether the arbitration had been conducted in a recognized branch within Dubai, or whether it remained centralized in Abu Dhabi. In Case 460 of 2023, the court found that the arbitration had taken place at the Dubai branch and consequently assumed jurisdiction. In Case 805 of 2022, it concluded there was insufficient evidence that the place of arbitration was in Dubai; the arbitral proceedings were in Abu Dhabi, so the Dubai courts had no valid basis to intervene. These two cases illustrate that **factual** determination of where the center held its sessions or from which branch it operated can be decisive. The courts would not simply rely on a notional reference to "Dubai" or "Abu Dhabi" if that reference did not match the practical and administrative reality.

Synthesis of Approaches

The ADGM Court, in its August 2024 judgment, prioritized the written choice of seat in the parties' agreement. It would not

accept that simple administrative involvement by a branch office or the convenience of holding hearings in the ADGM could nullify a clear contractual arrangement specifying "Dubai." In so doing, it adhered to the principle that party autonomy is paramount in defining the seat. Meanwhile, the onshore Abu Dhabi courts appear to consider that, wherever the ICC's ADGM office administers an Abu Dhabi-related dispute, the matter is necessarily seated in the ADGM, thus excluding onshore Abu Dhabi jurisdiction. By contrast, the Dubai courts highlight the **actual** conduct of arbitration would bear weight: if the evidence shows the arbitration happened in Dubai, they assume jurisdiction; if it took place elsewhere, they decline jurisdiction. Although the various rulings do not center on the exact same arbitration centers or identical contractual wording, they underscore that practical facts and **precise** drafting can be as significant as textual references in determining the seat.

Practical Implications

These developments underscore the **essential** need for clarity. When drafting dispute-resolution clauses, parties should unambiguously specify the seat and the intended supervisory court, taking care to distinguish between references to Abu Dhabi onshore courts, the ADGM, the Dubai onshore courts, or the DIFC. Equally important is the reality of where the arbitration will be administered. If parties choose "Dubai" but rely on a center headquartered outside the Emirate, they risk an onshore court ruling that it lacks jurisdiction because the proceedings were not genuinely held within its boundaries. Conversely, the ADGM Court may decline to exercise supervisory authority if the seat is expressed as "Dubai," even if the actual hearing occurred in the ADGM. Such potential misalignments can lead to contested proceedings over set-aside or enforcement applications, creating uncertainty, delay, and additional legal costs.

The potential for contradictory rulings exists. Onshore courts

may direct parties to the ADGM if an ICC branch there is used in practice, while the ADGM Court might defer to another Emirate if the contract says the seat is elsewhere. These outcomes reinforce the message that contracting parties ought to identify **precise** seat provisions, ensuring they do not inadvertently empower or disempower an intended court.

Conclusion

The question of which court exercises jurisdiction over ICC arbitrations with a connection to the ADGM, or indeed any arbitration center across different Emirates, now turns heavily on two factors: the parties' **express** designation of the seat and the **factual** location or branch where the arbitration was administered. The ADGM Court's August 2024 ruling shows that it will respect contractual seat clauses without automatically accepting jurisdiction simply because the ICC office or hearings took place within ADGM territory. Yet the onshore Abu Dhabi courts and the Dubai courts have demonstrated a willingness to interpret seat designations with reference to practical realities of administration. For parties and counsel involved in UAE-seated arbitrations—whether through the ICC's ADGM branch or other arbitration centers—**careful drafting** and deliberate planning about where the tribunal will function remain the best safeguards to avoid the complexities arising from this evolving and sometimes divergent jurisprudence.

Wasel & Wasel was counsel on record in this matter A15 v B15 before the ADGM Courts.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com