Challenging Arbitral Awards in the ADGM

Statutory Framework, Waivers and Emerging Jurisprudence



Author

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***Rajiv Suri**, Senior Associate at Alsuwaidi & Company*

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Preface

Arbitration seated in the Abu Dhabi Global Market (ADGM) operates within a legislative framework designed to preserve the finality of arbitral awards while permitting judicial intervention in narrowly defined circumstances.

The ADGM Arbitration Regulations 2015 set out the grounds for setting aside awards, the possibility of waiver and the separate regime governing recognition and enforcement.

This article considers the statutory framework and the developing jurisprudence of the ADGM Courts and Abu Dhabi onshore judiciary, with particular focus on the role of the juridical seat in determining supervisory jurisdiction.



Key Lawyers



Mohammed Alsuwaidi
MANAGING PARTNER

alsuwaidi@alsuwaidi.ae

A leading figure in UAE litigation and arbitration, and an experienced arbitrator. He brings extensive experience in complex disputes and strategic representation before UAE courts and arbitral tribunals.



Reda Hegazy
PARTNER

reda.hegazy@alsuwaidi.ae

Specialises in complex commercial, banking and construction disputes. He leads high-stakes disputes and enforcement matters involving substantial commercial interests.



Merline D'Souza
SENIOR ASSOCIATE

merline@alsuwaidi.ae

Her practice focuses on arbitration and litigation, including procedural challenges, international arbitration, and the recognition and enforcement of arbitral awards and judgments before the UAE's onshore and offshore courts.



Rajiv Suri
SENIOR ASSOCIATE

r.suri@alsuwaidi.ae

Advises on commercial contracts, intellectual property and corporate matters. He also assists clients with disputes involving contractual rights and related enforcement considerations.

1. Summary

This article examines the ADGM statutory framework for challenging arbitral awards, including the grounds for setting aside under section 58, waiver under section 59 and refusal of recognition or enforcement under section 62. It also considers decisions addressing the distinction between supervisory jurisdiction and enforcement jurisdiction, and the importance of the juridical seat.

2. Legal Framework at a Glance

Section 58: sets out the limited grounds and procedure for setting aside an award, including a three-month limitation period and a prohibition on review of the merits.

Section 59: permits parties to waive, in writing, the right to bring an action to set aside an award, subject to minimum safeguards.

Section 62: governs the grounds on which recognition or enforcement of an award may be refused within the ADGM.

3. The Setting-aside Regime under Section 58

Section 58 of the ADGM Arbitration Regulations 2015 establishes that recourse to the court against an arbitral award made in an arbitration seated in the ADGM may be sought only through an application to set aside the award, and that such applications may be heard exclusively by the ADGM Courts. This exclusivity reflects the deliberate architecture of the ADGM as a common-law jurisdiction operating alongside the onshore UAE courts.

An award may be set aside only in limited circumstances. Under section 58(2)(a), the party making the application must furnish proof that:

- a party to the arbitration agreement was, under the law applicable to it, under some incapacity;
- the arbitration agreement is invalid under the law to which the parties have subjected it or, failing any indication, under the law of the ADGM;
- the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present their case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission, provided that separable decisions on matters not submitted may be set aside alone; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the ADGM.

In addition, under section 58(2)(b), the court may set aside an award on its own initiative where it finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of the ADGM, or that recognition or enforcement of the award would be contrary to UAE public policy.

Section 58(2)(c) also imposes a strict limitation period. An application to set aside an award must be made within three months of the date on which the applicant received the award, the notification of the result of any agreed arbitral appeal or review process, or the disposal of a request under section 56, as applicable. The parties may, however, agree in writing to a longer period. Section 58(4) expressly prohibits the court from undertaking a review of the award on its merits, whether on questions of fact or law.

4. Waiver of the Right to Challenge

Section 59 adds a notable degree of party autonomy to this framework. Parties may waive their right to bring an action to set aside an award, either in full or in respect of specified grounds, through an express statement in the arbitration agreement or in a subsequent written agreement.

However, the waiver is not absolute. Even where an effective waiver exists, recognition and enforcement of the award within the ADGM may still be refused on the grounds of non-arbitrability or conflict with UAE public policy.

5. Refusal of Recognition or Enforcement under Section 62

Distinct from set-aside proceedings, section 62 governs the grounds on which recognition or enforcement of awards within the ADGM may be refused. A party resisting enforcement may establish incapacity or invalidity of the arbitration agreement, lack of proper notice, excess of mandate, irregular constitution of the tribunal, or that the award has been suspended or set aside by a competent authority at the seat of arbitration.

In addition, the court may refuse enforcement on its own initiative where it finds that the dispute is not capable of settlement by arbitration under ADGM law or that enforcement would contravene UAE public policy.

The distinction between sections 58 and 62 is substantive rather than merely procedural. Section 58 governs applications to set aside awards, whereas section 62 addresses the circumstances in which recognition or enforcement may be refused.

6. The Emerging Jurisprudence

Abu Dhabi Court of Cassation, Case No. 1045/2022, and A15 v B15 [2024] ADGMCFI 0012

The interplay between the ADGM Courts and the Abu Dhabi onshore courts came into sharp focus in Case No. 1045/2022 before the Abu Dhabi Court of Cassation on 18 January 2023. The case concerned an ICC arbitration whose clause provided that proceedings would take place in Abu Dhabi. During the arbitration, and before the award was rendered, the ICC opened an office in the ADGM. The Abu Dhabi Court of Appeal held, and the Court of Cassation upheld, that the Abu Dhabi Judicial Department (ADJD) courts lacked jurisdiction to hear the annulment application in those particular circumstances.

This decision received important subsequent analysis in A15 v B15 [2024] ADGMCFI 0012, in which the ADGM Court of First Instance considered whether an ICC arbitration was seated in the ADGM or in Dubai. Although the ICC maintained an office in the ADGM and the hearing was conducted there, the Court held that the seat was Dubai because the parties had expressly agreed in the Terms of Reference that the 'place of arbitration' was Dubai and referred to Dubai as the 'legal place' of the arbitration. The Court emphasised that neither the physical location of the hearing nor the location of the arbitral institution's office determines the juridical seat.

Consequently, the award was not an ADGM-seated award for the purposes of section 60(1)(a) of the ADGM Arbitration Regulations 2015, and the ADGM Courts therefore lacked supervisory jurisdiction. Nevertheless, the Court held that it could entertain an application for recognition and enforcement of the award under section 60(1)(c), which covers other arbitral awards sought to be recognised and enforced within the ADGM.

A6 v B6 [2023] ADGMCFI 0005: Opt-in jurisdiction and the governing law of annulment

This case specifically addressed whether the ADGM Courts can set aside an award seated outside the ADGM with the parties' consent. The application concerned an ICC award arising from a subcontract whose arbitration clause provided for arbitration in Abu Dhabi City under the ICC Rules. A6 initially

applied to the Abu Dhabi Court of Appeal to annul the award. That court, and subsequently the Court of Cassation, held that it lacked jurisdiction because the ICC had a branch office in the ADGM.

Undeterred, A6 applied to the ADGM Court. Although the arbitration was seated in mainland Abu Dhabi rather than the ADGM, the Court accepted jurisdiction under Article 13(8) of the ADGM Founding Law, namely Law No. 12 of 2020, amending certain provisions of Law No. 4 of 2013 concerning the Abu Dhabi Global Market. Article 13(8) provides that the Global Market's Courts may hear and adjudicate any civil or commercial claim or dispute where the parties agree in writing to submit the claim or dispute to them, whether before or after the dispute arises.

Critically, however, the Court held that UAE Federal Arbitration Law No. 6 of 2018, rather than the ADGM Arbitration Regulations, governed the annulment application because the arbitration was seated in mainland Abu Dhabi. The Court rejected the arguments based on public policy, natural justice, procedural irregularities and alleged errors in the tribunal's assessment of the evidence, finding that none satisfied the statutory grounds for setting aside under Article 53 of the Federal Arbitration Law. It also declined the request to partially set aside the award and 'reopen' the arbitration before a new tribunal.

A32 v B32 [2026] ADGMCFI 0018: The seat determines the supervisory forum

The most recent development in this line of authority, A32 v B32 (together with the related A35 v B35), consolidates the position. The parties had agreed that the seat of arbitration was Abu Dhabi outside the ADGM. A32 challenged the award before the ADGM Courts, while B32 (as A35) sought to enforce it, with A32 (as B35) defending the enforcement application.

The central issue was whether the ADGM Court possessed supervisory jurisdiction to annul an award seated in onshore Abu Dhabi. Considering its earlier decisions in A6 v B6 and A15 v B15, the Court reaffirmed that the seat of arbitration determines which court exercises supervisory jurisdiction over the award. Because the seat was onshore Abu Dhabi, the ADGM Arbitration Regulations 2015 conferred no jurisdiction on the ADGM Court to set aside the award.

At the same time, the Court drew a clear distinction between setting aside an award and enforcing it. The absence of jurisdiction to annul the award did not preclude the ADGM Court from exercising its separate jurisdiction to recognise and enforce it within the ADGM. The application to set aside was accordingly dismissed, and B32 was permitted to proceed with enforcement.

7. Conclusions and Practical Implications

Three important points emerge from this framework and its judicial elaboration.

First, the grounds for challenge are deliberately limited. Section 58 confines relief to setting aside awards on specified statutory grounds, including procedural and jurisdictional defects, excludes review of the merits, and imposes a strict three-month limitation period. Parties contemplating a challenge must act promptly and frame their complaints within the statutory grounds.

Second, the juridical seat is decisive. The accumulated jurisprudence, from the Abu Dhabi Court of Cassation's decision in Case No. 1045/2022 through A15 v B15, A6 v B6 and A32 v B32, establishes that neither the location of the hearing, the location of the arbitral institution's office nor the parties' consent

to a forum's jurisdiction displaces the fundamental principle that the seat determines the supervisory court.

Third, enforcement jurisdiction operates separately from supervisory jurisdiction. Even where the ADGM Courts cannot annul an award, they may still recognise and enforce it within the ADGM. Conversely, awards may be resisted on the distinct grounds set out in section 62, while safeguards concerning non-arbitrability and UAE public policy survive express waivers under section 59.

For practitioners, the lesson is one of careful drafting and awareness of the appropriate forum from the outset. The designation of the seat, the choice of institutional rules and any express agreement to submit disputes to a particular court will together determine the forum in which any future challenge or enforcement application may be pursued.

About the Author:

Rajiv Suri is a Senior Associate at Alsuwaidi & Company with nearly three decades of experience in the UAE and India. He advises on dispute resolution and arbitration under DIAC, DIFC, ICC and ADGM frameworks, alongside intellectual property, corporate and commercial matters. He is a member of the Bar Council of Delhi, an authorised legal consultant with the Government of Dubai and a Volunteer Lawyer under the ADGM Courts Pro Bono Scheme. His work has earned recognition from leading legal publications, including Who's Who Legal, WTR, MIP, AsiaIP and Leaders League.



Rajiv Suri
SENIOR ASSOCIATE

r.suri@alsuwaidi.ae

Contact

For advice on challenging arbitral awards, arbitration proceedings and related legal matters in the UAE, please contact Rajiv Suri at r.suri@alsuwaidi.ae or visit www.alsuwaidi.ae.

Our Geographical Reach



Dubai

252 Emarat Atrium Building
Sheikh Zayed Road
PO Box 300, Dubai UAE

P +971 4 321 1000
E info@alsuwaidi.ae

Abu Dhabi

1001 B Blue Tower
Khalifa Street
PO Box 591, Abu Dhabi UAE

P +971 2 626 6696
E abudhabi@alsuwaidi.ae

Ajman

602 ACCI Tower
Sheikh Humaid Bin Rashed Road
PO Box 227, Ajman UAE

P +971 6 742 1333
E ajman@alsuwaidi.ae