PRACTICE NOTE

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Enforcement of Security (ADGM)

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A Practice Note that explores the options available to a lender for enforcing security interests in the Abu Dhabi Global Market (ADGM). This Practice Note provides guidance on the ADGM's distinct legal framework, which applies English common law, and its implications for various types of security, including mortgages, fixed and floating charges, pledges, and liens. It outlines key pre-enforcement considerations for lenders, such as assessing the debtor's solvency and reviewing the validity of security documentation under ADGM law. This Practice Note also examines different enforcement procedures, from self-help remedies to court-ordered actions and the appointment of a receiver. Additionally, it explores alternatives to enforcement, such as standstill agreements and debt restructuring, and addresses critical insolvency and jurisdictional considerations, including the cross-border recognition of judgments between the ADGM and onshore UAE courts. This Practice Note also discusses potential defences a security provider might raise and offers practical insights on strategy, costs, and timing.

Enforcing Security in the ADGM

Scope

This Note examines the enforcement of security interests within the Abu Dhabi Global Market (ADGM), a financial free zone located within the United Arab Emirates (UAE). It focuses on the commonly recognised forms of security in the ADGM including mortgages, charges (fixed and floating), pledges, liens, and assignments by way of security over tangible and intangible assets. The considerations set out below apply to security granted by entities registered or operating within the ADGM, as well as security held by creditors over assets located within the ADGM's jurisdiction.

This Note is subject to the following limitations:

- It focuses on the ADGM's distinct legal framework which operates separately from UAE federal law and the laws of other Emirates, although coordination between these systems remains relevant for enforcement purposes.
- It is possible that security over certain specific assets (such as aircraft and ships, for example) may be subject to additional regulatory, treaty-based, or federal law requirements which are not the subject of this Note.

The first question when considering enforcement in the ADGM is to determine whether an asset in respect of which enforcement is sought is located within the ADGM. The location of the asset determines whether the proprietary aspects of the security (such as its creation, validity, and priority as an interest in the asset, and the remedies available against the asset itself) are governed by ADGM law. Whether an asset is characterised as movable or immovable is itself determined by the law of the country where the asset is situated (Dicey, Morris, and Collins *on the Conflict of Laws* (16th Ed., 2022) (Dicey) at 23R-001). The following principles then apply:

- All rights over or in relation to **immovable property** (generally land and buildings) are governed by the law of the country where the immovable property is situated at the relevant time (*lex situs*) (Dicey, Morris, and Collins on the Conflict of Laws (16th Ed., 2022) at 24R-068).
- Rights in relation to **tangible movable property** (such as goods, equipment, and inventory) are generally governed by the law of the country where the movable property is situated at the time of the relevant transfer or dealing; in the enforcement context, the relevant time is generally the time at which the security is enforced (Dicey at 25R-001).

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There are certain situations where additional issues or restrictions apply. This note does not consider enforcement over the following assets:

- Assets subject to sovereign immunity protections.
- Assets held by the debtor on trust for a third party or where the debtor only has a bare power of appointment (and no proprietary interest).
- Contract rights that are non-assignable by contract terms or statute (see Goode and Gullifer on Legal Problems of Credit and Security, 7th Ed., at 1-57 and 3-36).
- Rights to personal obligations.
- Rights whose assignment would offend public policy (such as assignments depriving a debtor and family of all means of support or assignments of a bare right of litigation) (see Goode and Gullifer on Legal Problems of Credit and Security 7th Ed., at 3-36 and 3-37).

Additionally, as set out above, certain assets must be enforced through specialised regimes (such as registered aircraft or vessels under international conventions). Moreover, assets tied to federally regulated activities under the onshore UAE laws may require specific requirements to transfer, sell, or assign them, which consequently may present practical enforcement obstacles. For example, shares in, or the licence of, an entity carrying on a telecommunications business regulated by the UAE Telecommunications and Digital Government Regulatory Authority (TDRA) may not be capable of being transferred or enforced against without prior regulatory approval; similar restrictions can arise in other federally regulated sectors, such as banking and insurance.

For more information on the ADGM generally, see Practice Note, Legal and Regulatory Framework: Overview (ADGM).

Applicable Laws and Regulations: Overview

Pursuant to the ADGM's Application of English Law Regulations 2015 (English Law Regulations), the ADGM applies English common law (including the principles and rules of equity) as it stands from time to time and:

- So far as applicable to the circumstances of the ADGM.
- Subject to modifications as those circumstances require.
- Subject to any amendment made pursuant to any ADGM enactment.

(Section 1(1)(a) to (c), English Law Regulations).

However, future changes to English law do not automatically apply to ADGM law unless specifically enacted through ADGM legislation (section 1(1)(d), English Law Regulations). When conflicts arise between English common law and Abu Dhabi law or ADGM regulations, the latter take precedence (section 1(2), English Law Regulations). Importantly, if English law abolishes or modifies a common law principle, that original principle continues to apply in the ADGM, unless specifically changed by ADGM enactment (section 1(3) to (4), English Law Regulations). Further, in applying English common law, ADGM judges must equally apply the doctrine of precedent, the application of which has been said to be "*essential to a correct understanding of what the English common law is on the point at issue*" (ADGM Court of Appeal in *AC Network Holding Ltd v Polymath Ekar SPV1 [2023] ADGMCA 0002*, paragraph 25; see also paragraphs 27 to 34).

In addition to the common law, certain English law statutes, which are listed in the Schedule to the English Law Regulations apply in the ADGM as and to the extent they were in force in England at the date of enactment of the English Law Regulations (section 2(1), English Law Regulations). The 2022 Amendment No. 1 added to section 2(1) the words "or at the date of such amendments to these Regulations as are set out in the first column of the Schedule," so scheduled statutes may also apply as at the date of specified amendments (for example, the Insurance Act 2015). These apply to the extent specified, subject to any omissions, insertions, or modifications and subject to any relevant amendment (whenever made) pursuant to any applicable Abu Dhabi law or ADGM enactment (section 2(1)(a) to (b), English Law Regulations). Moreover, subsequent amendments to any statutes in England do not automatically apply unless ADGM law expressly adopts them (section 2(1)(c), English Law Regulations).

Further, there are a number of ADGM statutes and regulations which are relevant, including the following:

- Real Property Regulations 2024 (Real Property Regulations).
- Companies Regulations 2020 (Companies Regulations).
- Insolvency Regulations 2022 (Insolvency Regulations).
- ADGM Court Procedure Rules 2016 (ADGM Court Procedure Rules), in relation to enforcement.

In addition to the above, the Financial Services and Markets Regulations 2015 (FSMR) may also be relevant if the security involves financial collateral (such as shares, bonds, or derivatives) or if the enforcement is being carried out by an FSMR-regulated bank.

Types of Security in the ADGM

The types of security under ADGM law are generally the same as their English law counterparts, particularly given the ADGM's adoption of English common law and equity. Commonly used types of security instruments include charges (fixed and floating), mortgages, pledges, and liens.

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There is no requirement that a security agreement in respect of ADGM assets be governed by ADGM law: the parties may choose a foreign law to govern the contractual terms of the security document, and that choice will be effective as a matter of contract. However, the proprietary aspects of the security (its creation, perfection, and priority as an interest in the asset) are governed by the law applicable to the asset itself irrespective of the parties' choice (see Scope). In practice, security over ADGM assets is typically created under ADGM-law documents, which ensures the proprietary requirements are satisfied and simplifies enforcement before the ADGM Courts.

Charges

A charge is an agreement between a creditor and debtor by which a specific asset or class of assets is appropriated to the satisfaction of a debt, giving the creditor a specifically enforceable right to resort to the asset and its proceeds to discharge the indebtedness. A charge does not transfer ownership of the asset to the creditor, but is merely an encumbrance that travels with the asset. This distinguishes a charge from a mortgage, where ownership (or a lesser interest) is transferred by way of security and re-transferred on discharge (see Mortgages).

Charges may be fixed or floating. The classification of the charge into either category turns on the degree of control over the charged assets:

- A fixed charge is one where the chargee has control over the asset and the chargor cannot deal with it without the chargee's consent.
- A floating charge, by contrast, is a charge which provides security over a class of assets (present and future) that changes in the ordinary course of business, with the company free to deal with those assets until the charge crystallises and attaches to a specific asset.

On default, the chargee may seek remedies including sale of the charged asset or appointment of a receiver, though unlike a mortgagee, a chargee cannot take possession or foreclose. Fixed charges generally take priority over floating charges. A floating charge permits the chargor to continue dealing with the charged assets in the ordinary course of its business until the charge crystallises. It follows that a third party who acquires a charged asset before crystallisation for value, in good faith, and without notice that the charge has crystallised or that the disposal falls outside the ordinary course of business, takes the asset free of that floating charge. The distinction between fixed and floating charges has significant practical implications for:

- Enforcement rights.
- Priority against other creditors.
- The treatment of preferential creditors.
- Prescribed part provisions in insolvency.

The definition of a charge under section 784(7) of the Companies Regulations is broad, and explicitly includes a mortgage. These regulations apply whenever an ADGM company creates a charge over its property or undertaking, with specific exclusions for charges such as a charge in favour of a landlord on a cash deposit given as security in connection with the lease of land (section 784(6)(a), Companies Regulations). The regulations recognise various forms of security interests. The filing must specify whether the instrument:

- Contains a floating charge covering the whole company undertaking.
- Is a fixed charge over specific assets like land, ships, aircraft, or intellectual property (IP).

(Section 787(2), Companies Regulations).

Furthermore, once a charge is registered, any person taking a subsequent charge over the same property is deemed to have notice of it (section 799, Companies Regulations).

A charge filing statement and a certified copy of the instrument creating the charge must be delivered to the Registrar (section 784(2) and (3), Companies Regulations). Crucially, section 784(4) of the Companies Regulations sets a strict deadline of 21 days from the date of creation (which is generally the date of delivery for deeds) to complete this filing. However, the "period allowed for delivery" for a company applying to continue under section 102 of the Companies Regulations is the date the continuance application is made to the Registrar (section 784(4A), Companies Regulations). Failure to comply with this timeline has certain consequences:

- The charge becomes void against a liquidator, administrator, or creditor of the company (section 791(3), Companies Regulations).
- If the security becomes void due to non-registration, the money secured by it becomes immediately payable (section 791(4), Companies Regulations).
- This registration regime applies to every charge created by an ADGM company (which for these purposes includes a mortgage under section 784(7), Companies Regulations), subject to two qualifications:
- Section 784 does not apply to the excluded charges listed in section 784(6) of the Companies Regulations, which comprise:
  - a charge in favour of a landlord on a cash deposit given as security in connection with a lease of land; and
  - any charge excluded from the section by the Companies Regulations or any other ADGM law.

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- Section 784 does not apply to any charge created or otherwise arising under a collateral arrangement (section 281(2)(a), Insolvency Regulations, which disapplies both section 784 and section 791 of the Companies Regulations). Certain assets are also subject to separate or additional registration and perfection requirements, such as registered mortgages of real property under the Real Property Regulations (sections 66(1) and 67(1), Real Property Regulations).

Mortgages

A mortgage involves transferring ownership in an asset (or some other interest possessed by the transferor) with an express or implied condition that ownership will return to the debtor once the debt is discharged and any other obligations fulfilled. Both tangible and intangible assets can be mortgaged. Mortgages can be either legal or equitable in nature.

Under the Real Property Regulations, amortgage is defined as an:

> *"interest in real property held by a lender (mortgagee) as security for repayment of indebtedness, where default under that indebtedness entitles the mortgagee to foreclose on the secured interest in real property pursuant to the terms and conditions of the mortgage instrument and other documentation relating to the indebtedness and as described in Part 9 of these Regulations."*

(Section 1(g), Real Property Regulations).

Mortgages operate only as charges on property rather than transferring ownership (section 68(1), Real Property Regulations). The mortgagor retains an equity of redemption which cannot be waived by agreement or clogged by the mortgagee's actions, although parties may agree to prepayment premiums or restricted repayment periods (section 68(2), Real Property Regulations).

Real property or any registered interest in real property (including registered leases) may be mortgaged by registering a mortgage (section 66(1), Real Property Regulations). For its registration, a mortgage must include:

- A description sufficient to identify the real property.
- The interest being mortgaged.
- A description of the debt or liability secured.
- A maturity date.

(Section 67(1), Real Property Regulations).

Registered mortgages may be varied through registering an instrument of variation (section 69(1), Real Property Regulations). Variations cannot add or remove parties to the mortgage and do not affect subsequent registered mortgagees unless they consent (section 69, Real Property Regulations).

Registered mortgages may be discharged (wholly or partially) by registering a discharge of mortgage (sections 70(1) to (2), Real Property Regulations). Before exercising any power, mortgagees must serve 30 days' notice on the mortgagor, any guarantor or surety, and any other registered mortgagee or chargee, giving the mortgagor an opportunity to remedy the default (section 72(3) and (4), Real Property Regulations). In exercising a power of sale, the mortgagee must take reasonable care to obtain market value for the real property at the time of sale (section 73, Real Property Regulations).

Importantly, for mortgages registered over Al Reem Island property before 1 January 2025, the mortgagee must first apply to the ADGM Court and obtain an order before exercising any of the implied powers (section 72(3)(b), Real Property Regulations). The Registrar must see a copy of that order before registering a transfer on sale (section 75(1), Real Property Regulations), and a receiver's powers are subject to the same restriction (section 77(1)(a), Real Property Regulations).

Mortgagees exercising a power of sale must (in this order):

- Apply proceeds to discharge any prior registered interests or pay into court a sum to satisfy these obligations.
- Hold any remaining money on trust to pay sale costs and expenses.
- Discharge the mortgage debt (principal, interest, costs, and other secured liabilities).
- Pay later registered interests in order of priority.
- Pay any residue to the person entitled to the mortgaged property.

(Section 76, Real Property Regulations).

Where a mortgage entitles the mortgagee to appoint a receiver, the receiver (appointed by the court on the mortgagee's application) may do anything the mortgagor could have done and act as the mortgagor's agent (section 77(1) and (3), Real Property Regulations). On application by a registered mortgagee, the court may make an order for foreclosure (section 78(1), Real Property Regulations). On registration of the foreclosure order, the mortgagor's interest vests in the mortgagee free from all liabilities under mortgages or other interests registered after the mortgage, except for leases and other interests that bind the mortgagee (section 78(3), Real Property Regulations).

A prior mortgagee may make further advances to rank in priority to later mortgages where the prior mortgage expressly authorises these advances (regardless of notice of the later mortgage) or where the later mortgagee agrees to the further advances (section 79(1), Real Property Regulations). This right applies where the prior

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mortgage is registered, regardless of whether the later mortgage is registered (section 79(2), Real Property Regulations).

An equitable mortgage arises in two main circumstances:

- Where the mortgagor has only an equitable interest to grant (such as a beneficiary's interest under a trust).
- Where the transaction fails to meet the formal requirements for a legal mortgage (including, for example, a failure to register the mortgage in accordance with the Real Property Regulations or otherwise to comply with any applicable registration requirements), but the parties intended to create security.

Equity prioritises substance over form and if the intention is to create security for a debt, courts will recognise it as a mortgage regardless of its form (*Brighton and Hove City Council v Audus* [2009] EWHC 340 (Ch)).

The equitable mortgagee possesses many of the same powers and duties as a legal mortgagee, including the right to payment from sale proceeds, and must act in good faith for the purpose of obtaining repayment (*Co-operative Bank Plc v Phillips [2014] EWHC 2862 (Ch)*; *Aegean Baltic Bank SA v Renzlor Shipping Ltd [2020] EWHC 2851 (Comm)*). While an equitable mortgage is valid between the parties even without registration, it may be defeated by a bona fide purchaser for value of the legal estate without notice.

Pledge

A pledge is a possessory security interest where a debtor (the pledgor) transfers possession (whether actual or constructive) of movable property to a creditor (the pledgee) as security for a debt or obligation, while ownership remains with the pledgor. The pledgee therefore acquires a special interest in the asset, conferring a right to possession and a power of sale on default, but not full ownership. This distinguishes pledges from mortgages, where title transfers to the mortgagee, and from liens, which only confer a right to detain goods without a corresponding power of sale (see *Marcq v Christie Manson & Woods Ltd (t/a Christie's)* [2003] EWCA Civ 731, at paragraph 39). See also Mortgages and Liens.

Possession is fundamental to the validity and continuation of a pledge. Delivery may be actual (physical transfer) or constructive (such as delivery of keys, documents of title like bills of lading, or warehouse attornment). Only property capable of actual or constructive delivery may be pledged, including goods, negotiable instruments, securities, commodities, and documents of title. Pure intangibles generally cannot be pledged unless represented by a document conferring rights through possession (see Goode and Gullifer on Legal Problems of Credit and Security (7th Ed.), at 1-44 to 1-45).

On default, the pledgee may sell the pledged property to recover the debt, provided they act in good faith and obtain a proper price through public or private sale after giving reasonable notice to the pledgor; the pledgee must account for any surplus after satisfying the debt and return it to the pledgor (Chitty on Contracts (36th Ed.), at 36-131). The pledgee owes duties to take reasonable care of the pledged property, preserve it in good condition, account for any income or benefits derived from it, and cannot use it for their own purposes without consent (Snell's Equity (35th Ed.), at 43-008).

Liens

A lien is a right to retain possession of property belonging to another person until a debt or obligation is satisfied. Common law liens are possessory, meaning the holder must have lawful possession and can only retain (not sell) the property until the claim is satisfied, with possession being essential such that if lost, the lien is extinguished. These arise by operation of law rather than agreement. Common law liens may be particular (allowing retention only for charges related to the specific goods, such as a repairer's lien) or general (allowing retention for a general balance due, even if unrelated to the particular goods), although general liens are less common.

Equitable liens differ as they do not depend on possession but confer a proprietary interest akin to a charge, enforceable in equity through court orders for sale or payment from a fund. These arise automatically by operation of law in certain relationships, such as for unpaid vendors of land or solicitors' fees from litigation proceeds. Liens can be excluded by express agreement or where inconsistent with the terms of any underlying contract.

Alternatives to Enforcing Security

Where a borrower is in potential or actual default under a loan agreement, creditors or lenders have several options available beyond immediate enforcement of security. The appropriate course of action depends on the specific circumstances, the nature of the default, the borrower's financial position, and the lender's commercial objectives. However, a few common alternatives to security enforcement actions are set out below.

Waivers and Reservation of Rights Letters

A waiver involves the lender or creditor formally agreeing not to exercise their rights in respect of a specific default or breach. Waivers may be:

- One-time waivers (limited to a specific occurrence of a default).
- Continuing waivers (covering ongoing or repeated defaults of the same nature).

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- Conditional waivers (applicable only on the satisfaction of certain conditions).

Creditors should exercise caution when granting waivers, as they may be construed as variations to the loan agreement. The terms and limits of any waiver should be stated strictly to ensure the creditor or lender's rights are more generally protected.

Reservation of rights letters provide a middle ground, where the lender acknowledges a potential default but explicitly reserves all its rights and remedies under the loan documents. These types of letters serve several purposes:

- They preserve the lender's position.
- They avoid any argument that the lender has waived its rights through inaction or delay.
- They maintain pressure on the borrower to remedy the situation.
- They provide a written record of the lender's position.

A reservation of rights letter typically states that:

- The lender is aware of the circumstances constituting the potential default.
- Nothing in the letter should be construed as a waiver of any rights.
- The lender expressly reserves all rights and remedies.
- The borrower is required to remedy the default within a specified timeframe.
- The principles of waiver, election, and estoppel that govern this analysis apply in the ADGM as they do under English common law (pursuant to the application of English Law under section 1, English Law Regulations). A waiver or reservation of rights letter that is effective as a matter of English law will therefore be effective in the ADGM.

Standstill and Forbearance Agreements

A standstill agreement is an arrangement whereby the lender agrees not to exercise its enforcement rights for a specified period while the parties explore options for resolving the situation. Generally, a standstill agreement includes a defined standstill period during which enforcement is suspended. It may also specify:

- Certain conditions that must be maintained during the standstill.
- Any trigger events that would end the standstill.
- Confirmation that the agreement does not constitute a waiver of the underlying default.

Standstill agreements are particularly useful where the borrower is experiencing temporary difficulties but where there are nonetheless realistic prospects of recovery.

A forbearance agreement is a more formal arrangement than a standstill, whereby the lender agrees to forbear from exercising its rights and remedies in respect of specified defaults, generally subject to strict conditions. Unlike a standstill, a forbearance agreement:

- Usually involves more extensive conditions and monitoring.
- May include interim financial covenants or milestones.
- Provides for automatic termination on breach of forbearance conditions.
- May grant the lender additional rights or security during the forbearance period.

Amendment and Restatement

Where defaults arise from changed circumstances or the original loan terms prove unworkable, the parties may agree to amend and restate the loan documents. This approach involves formally modifying the terms of the loan agreement to address the issues giving rise to default. Amendments may include:

- Relaxation of financial covenants to reflect changed circumstances.
- Extension of maturity dates or restructuring of the repayment schedule.
- Adjustment of pricing to reflect increased risk.
- Provision of additional security or guarantees.
- Changes to permitted activities or negative covenants.

An amendment and restatement effectively cures the default by changing the underlying obligations, provides a fresh start with terms that are achievable for the borrower, and allows for comprehensive restructuring of the relationship while maintaining continuity.

Debt Restructuring

Debt restructuring encompasses a broader range of solutions that may involve substantial changes to the debt structure itself. Options include:

- Debt-for-equity swaps where lenders convert some or all debt into equity in the borrower.
- Debt-for-asset swaps involving transfer of assets to the lender in satisfaction of debt.
- Payment-in-kind arrangements where interest accrues rather than being paid in cash.
- Subordination of existing debt to new money facilities.
- Partial debt forgiveness in return for improved terms on remaining debt.

Restructuring may be implemented through consensual workout arrangements with all creditors or through formal insolvency or restructuring procedures. The choice

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between these approaches depends on factors such as the number and sophistication of creditors involved, the complexity of the capital structure, whether dissenting creditors exist who may need to be bound by a formal process, and the urgency of the situation.

Strategic Considerations

When determining which approach to take, lenders should consider:

- The likelihood of recovery from the borrower or debtor.
- Whether the difficulties with repayment are temporary or structural.
- Whether enforcement costs outweigh the benefits of a negotiated solution.
- Any impact on other borrowers.
- Regulatory and reputational factors.

In practice, these options may be used sequentially, beginning with informal discussions and reservation of rights, progressing through standstill or forbearance if needed, and ultimately moving to formal restructuring or enforcement if other measures fail.

Pre-Enforcement Considerations

Before initiating security enforcement in the ADGM, parties should assess whether enforcement would be effective and strategically sound, considering the following factors:

- The security provider's solvency and financial position should be assessed. If the security provider is solvent with sufficient unencumbered assets, enforcement may yield full recovery, whereas insolvency raises concerns about competing creditor claims, potential preference or transaction avoidance risks, statutory priorities that may rank ahead of secured claims and the impact of any moratorium that may arise from formal insolvency proceedings. Lenders should seek to obtain current financial information, assess liquidity and asset values, identify other known creditors and their potential claims, and consider whether the security provider is approaching insolvency.
- Lenders should thoroughly review the security agreement itself. Among other things, lenders must:
  - verify the governing law clause (confirming whether ADGM law or foreign law governs the security and ensuring the choice of law is valid and enforceable);
  - confirm that the scope of security covers the relevant assets and obligations being enforced (including whether security extends to specific debts, future advances, or contingent obligations); and
  - identify any limitations, carve-outs, or exclusions that may restrict enforcement rights.
- Lenders should confirm that the security is valid and enforceable as a matter of ADGM law. Lenders may wish to, in this respect, obtain searches of the ADGM Register to confirm their security is properly registered and to identify any competing security interests or subsequent registrations that may affect priority.
- Lenders should carefully confirm that an event of default under the underlying agreement has in fact occurred and verify that all contractual requirements have been satisfied including cure periods and notice requirements.

Lenders may also face various restrictions when enforcing security in the ADGM. Contractual restrictions can include:

- Intercreditor agreements that impose standstill periods preventing junior creditors from enforcing while senior creditors pursue recovery.
- Turnover provisions requiring payment to senior creditors first.
- Any relevant consent requirements (for example, requirements to obtain majority lender consent under a syndicated facility, to act on the instructions of a security agent under an intercreditor agreement, or to obtain the consent of hedging counterparties or other secured parties before taking enforcement action).

Equally, lenders should also be mindful of statutory restrictions such as those in respect of moratoriums or consent requirements from the administrator or the court. Additional restrictions may include freezing injunctions, third-party rights over charged assets, and regulatory requirements for licensed entities.

When enforcing security, lenders must strategically decide whether to pursue security enforcement alone, obtain a debt judgment first, or combine both approaches. Pure security enforcement focuses on exercising contractual remedies like appointing receivers or selling charged assets and applying proceeds to the debt. Alternatively, obtaining a judgment establishes the debt amount definitively and allows enforcement against both charged and uncharged assets through execution, third-party debt orders, or charging orders. While combining approaches provides broader enforcement options and potentially better recovery, it increases costs and may delay access to secured assets. Most lenders begin with security enforcement as the quickest route when charged assets are sufficient, reserving debt claims for any deficiency. Where debt amounts are disputed or security validity is uncertain, obtaining judgment first may be preferable to establish liability before enforcement.

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Enforcement Procedures

Secured creditors in the ADGM have several distinct routes available to enforce their security interests, each with different procedures, costs, timing implications, and levels of court involvement. The key routes to enforcement include:

- Self-help enforcement.
- Court ordered enforcement.
- Enforcement through court appointment of a receiver or administrative receiver.
- Enforcement through taking possession or foreclosure.

Self-Help Enforcement

For many secured creditors, the most efficient path to recovery is self-help enforcement. Provided the security document explicitly grants this power, a creditor can seize and sell movable assets like shares or receivables directly. This route is favoured for its speed and cost-efficiency, bypassing court fees entirely. However, this route requires careful adherence to the terms of the security enforcement agreement and creditors should ensure that any contractual requirements under the terms of the security enforcement agreement are properly met including for instance, any requirements to provide notice prior to enforcement.

Court Ordered Enforcement

Court ordered enforcement involves obtaining a court order or judgment to enforce security rights. Court ordered enforcement is generally suitable:

- In the absence of self-help enforcement rights.
- Where self-help enforcement is impractical.
- Where there are likely to be disputes as to the validity of the security.
- Where there are complex and high-value assets involved which would benefit from judicial oversight.
- Where debtors are non-cooperative (such as where they refuse to provide access to assets, fail to deliver possession, or obstruct self-help enforcement).
- Potentially where there are multiple stakeholders (such as creditors, guarantors, or multiple parties with interests in the assets, for example) and where court supervision may assist with navigating competing claims and ensuring procedural fairness for all stakeholders.

Secured creditors may commence court enforcement procedures by filing a claim under Rule 27 of the ADGM Court Procedure Rules (this procedure is broadly similar to an English Part 7 claim). Following the October 2025 amendments, the alternative procedure (former Rules 30 to 34, ADGM Court Procedure Rules) was abolished. All claims, including those involving disputed security validity, defaults, or contested sums, must now commence as an ordinary claim. For lower value or less complex matters, the newly introduced Fast Track (Part 40, ADGM Court Procedure Rules) provides a proportionate and streamlined alternative. Real estate disputes are handled by the Real Property Division (Part 41, ADGM Court Procedure Rules).

As regards charging orders in particular, subject to the provisions of any other ADGM law, the court may, on a claim by a person who has obtained a charging order over an interest in property (including real property), order the sale of the property to enforce the charging order (Rule 276, ADGM Court Procedure Rules). Creditors seeking an order for sale must file an ordinary claim and comply with the updated evidentiary requirements under the reissued ADGM Courts Practice Direction 10 on Enforcement (Practice Direction 10).

Although slower and more expensive than self-help, court enforcement provides certainty and protection for the creditor. The court can grant various relief including orders for sale, possession, or foreclosure. This route is often preferred when enforcing security over real property or when dealing with potentially contentious enforcement scenarios.

The ADGM Courts may also grant interim remedies in support of enforcement where a secured creditor requires urgent relief. The court may grant, among other things:

- Interim injunctions (including freezing injunctions restraining a party from removing assets located in the ADGM or from dealing with any assets whether located in the ADGM or not).
- Orders for the detention, custody, preservation, or inspection of relevant property.
- Orders appointing a receiver.

(Rule 71, ADGM Court Procedure Rules).

Once judgment has been obtained, the ADGM Court Procedure Rules also provide a range of post-judgment enforcement mechanisms, including orders to obtain information from a judgment debtor (Part 30, ADGM Court Procedure Rules), third party debt orders (Part 31, ADGM Court Procedure Rules), charging orders, stop orders, and stop notices (Part 32, ADGM Court Procedure Rules), writs of control over goods (Part 39, ADGM Court Procedure Rules), and the general provisions governing enforcement of the court's judgments (Part 35, ADGM Court Procedure Rules). The procedural requirements for each method are set out in Practice Direction 10.

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The ADGM Court Procedure Rules do not impose mandatory pre-action protocols, and there is no requirement to attempt mediation before commencing proceedings. However, the ADGM Courts operate a court-annexed mediation service (see Part 36, ADGM Court Procedure Rules and ADGM Courts Practice Direction 13 on Court-Annexed Mediation), and the parties' conduct in seeking to resolve the dispute may be taken into account in the exercise of the court's discretion as to costs.

As to limitation, the Limitation Act 1980 and the Foreign Limitation Periods Act 1984 apply in the ADGM pursuant to the Schedule to the English Law Regulations. A claim for breach of contract must therefore generally be brought within six years from the date on which the cause of action accrued (section 5, Limitation Act 1980) or, where the relevant agreement was executed as a deed, within twelve years (section 8, Limitation Act 1980).

More detail on the forms, applicable fees and procedural flowcharts is available at the ADGM Court's website.

Enforcement Through Court Appointment of a Receiver or Administrative Receiver

This route involves the court appointing an independent third party (receiver or administrative receiver) to take control of and manage the secured assets. Rule 237 of the ADGM Court Procedure Rules provides the court authority to appoint a receiver for enforcement, allowing appointment at any stage including:

- Before proceedings start.
- During existing proceedings.
- Specifically on or after judgment.

This appointment is initiated through an application that may be made without notice (Rule 238(1), ADGM Court Procedure Rules). An order appointing a receiver must be served by the party who applied for it:

- On the person appointed as receiver unless the court orders otherwise.
- On every other party to the proceedings.
- On other persons as the court may direct.

(Rule 239, ADGM Court Procedure Rules).

The court may direct that before a receiver begins to act (or within a specified time) they either:

- Give security.
- Undertake that they have sufficient security for the purposes of their role as a receiver.

If the receiver fails to provide either of the above by the date specified, the court may terminate the receiver's appointment (Rule 240, ADGM Court Procedure Rules).

The court maintains active oversight throughout the enforcement process to ensure compliance and clarity. The receiver is permitted to apply to the court at any time for directions to assist in carrying out their functions (Rule 242, ADGM Court Procedure Rules). Conversely, if a receiver fails to comply with any rule, practice direction, or court order, Rule 244(1) of the ADGM Court Procedure Rules empowers the court to compel their attendance at a hearing to explain the non-compliance, after which the court may make any order it considers appropriate (Rule 244(2), ADGM Court Procedure Rules).

On completion of their duties, a receiver themselves or any party may apply for the receiver to be discharged (Rule 241(1), ADGM Court Procedure Rules). The discharge order serves a dual purpose:

- It directs the payment of any remaining money or transfer of assets to the appropriate persons.
- It provides for the cancellation of any security guarantees originally provided by the receiver.
- (Rule 241(3), ADGM Court Procedure Rules).

This route is beneficial when:

- Assets require active management before sale (such as operating businesses or complex property portfolios).
- There are multiple creditors with competing interests.
- The creditor wants to maintain distance from the enforcement process.

The receiver provides professional, independent oversight and can help maximise asset values through proper management. However, this route involves the receiver's costs and fees, which come out of the enforcement proceeds. It is commonly used for security over business undertakings or where ongoing operations must continue during the enforcement process.

Enforcement Through Taking Possession or Foreclosure

Taking possession involves the secured creditor physically taking control of the secured assets, particularly relevant for tangible property and real estate. Foreclosure is the legal process by which the creditor obtains absolute ownership of the secured asset in satisfaction of the debt.

Section 78 of the Real Property Regulations grants the court the power to order foreclosure in favour of a registered mortgagee (lender). Unlike the power of sale or receivership (where the asset is sold to a third party to pay off the debt), foreclosure transfers the title of the

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property directly to the lender, effectively extinguishing the borrower's equity of redemption (their right to buy the property back by paying the debt).

These methods of enforcement are most applicable to mortgages and charges over real property. While possession can be quick if self-help is available, foreclosure typically requires judicial oversight to ensure fairness and protect the debtor's interests.

A mortgagor or chargor has several means of challenging these procedures. The mortgagor may:

- Remedy the default within the 30 days' notice period required before a mortgagee exercises any power (section 72(3) and (4), Real Property Regulations).
- Dispute the occurrence or continuation of the default (see sections 72(1) and 74, Real Property Regulations).
- Oppose the mortgagee's application for a foreclosure order, which is a discretionary, court-supervised remedy (section 78, Real Property Regulations).

The mortgagor may also apply to the court for an injunction to restrain an improper exercise of the power of sale without being required to pay into court or otherwise offer to redeem (section 74, Real Property Regulations). Until a foreclosure order is registered, the mortgagor retains its equity of redemption and may redeem the property by paying the sums secured. The debtor may also challenge the underlying security or the enforcement process on the grounds discussed in Potential Defences or Challenges Raised by the Security Provider, and may seek relief where the secured creditor has failed to comply with its duties (for example, the duty to take reasonable care to obtain market value on a sale (section 73, Real Property Regulations)).

Insolvency Considerations

A secured creditor has the standing to initiate insolvency proceedings in the ADGM. A creditor may make applications to the court for an administration order (section 8(1)(c), Insolvency Regulations) or present a petition for the winding-up of a company (section 202(1)(e), Insolvency Regulations). Moreover, a secured creditor who is the *holder of a qualifying charge* has the power to appoint an administrator out of court, meaning a person who holds one or more debentures of the company secured either:

- By a qualifying charge which relates to the whole or substantially the whole of the company's property.
- By a number of qualifying charges and other forms of security which together relate to the whole or substantially the whole of that company's property.

(Section 21, Insolvency Regulations).

If an application for an administration order is made by a person *other* than the holder of a qualifying charge, the holder of a qualifying charge may intervene and apply to the court to have a specified person of their choice appointed as administrator instead (section 38, Insolvency Regulations). The court must also dismiss an administration application if an administrative receiver is already in office, unless either:

- The person who appointed the receiver consents to that administration order.
- The security is liable to be released or discharged under sections 257 to 259 of the Insolvency Regulations.

(Section 41, Insolvency Regulations).

The initiation of administration imposes a wide-ranging moratorium. Once an administration application is made or a notice of intention to appoint is filed, an interim moratorium takes effect (section 46, Insolvency Regulations). While a company is in administration, no steps may be taken to enforce security over the company's property (section 45(2), Insolvency Regulations) or to repossess goods under a hire-purchase agreement (section 45(3), Insolvency Regulations) without the consent of the administrator or the permission of the court. Similarly, in the case of a winding-up, once a winding-up order is made or a provisional liquidator is appointed, generally no action or proceeding can be continued or commenced against the company or its property without the leave of the court (section 209, Insolvency Regulations).

However, specific exceptions exist under the Convention on International Interests in Mobile Equipment (2001) (Cape Town Convention) and the Protocol to the Cape Town Convention on Matters Specific to Aircraft Equipment (2001) (Cape Town Protocol) which are implemented through Part 12 (sections 307 to 314) and Schedules 14 and 15 of the Insolvency Regulations.

During administration, an administrator's statement of proposals cannot include any action that affects the right of a secured creditor to enforce their security without that creditor's consent (section 103(1), Insolvency Regulations). The administrator may dispose of property subject to a floating charge as if it were not subject to that charge, with the charge holder having the same priority in respect of acquired property as they had in respect of the property disposed of (section 99, Insolvency Regulations). However, to dispose of property subject to a fixed charge, the administrator must obtain an order from the court, which will only be granted if it promotes the purpose of the administration (section 100(1) to (2), Insolvency Regulations). The same applies to goods subject to a hire-purchase agreement (section 101, Insolvency Regulations).

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The net proceeds (and any deficiency to market value) must be applied towards discharging the sums secured (section 100(3), Insolvency Regulations).

Practitioners should also be aware of Chapter 9A of the Insolvency Regulations (sections 109A to 109B), which provides for priority funding with adequate-protection safeguards. This regime directly affects secured creditors' priority in ADGM administrations and has no UK counterpart.

In a winding-up, a secured creditor generally relies on their security to satisfy their debt, however, a liquidator has the power to sell the company's property (schedule 4, paragraph 2, Insolvency Regulations). If a liquidator sells assets on behalf of a secured creditor, specific remuneration rules apply based on whether the charge is fixed or floating (schedule 12, paragraph 10, Insolvency Regulations).

Jurisdictional Considerations

Enforcement can become complex when assets and entities straddle the ADGM and onshore jurisdictions. If a non-ADGM entity grants security over ADGM assets (for example, shares), the ADGM Courts generally assume jurisdiction based on the location of the asset (lex situs) (see Scope). However, the entity's corporate capacity may still remain governed by onshore law, creating potential conflicting principles. Conversely, if an ADGM entity grants security over assets located onshore, the ADGM Courts can issue a judgment for the debt, but execution against the physical asset requires the involvement of the onshore courts. While the ADGM-Abu Dhabi Judicial Department (ADJD) Memorandum of Understanding streamlines this, creditors still must, in these scenarios, be subject to onshore procedural requirements.

In summary, under the ADGM-ADJD Memorandum of Understanding (signed on 11 February 2018, and now underpinned by Article 13 of the ADGM founding law (Abu Dhabi Law No. 4 of 2013 Concerning ADGM), as amended by Abu Dhabi Law No. 12 of 2020), judgments, decisions, orders, and ratified arbitral awards of the ADGM Courts and the Abu Dhabi Courts are reciprocally recognised and enforced.

To execute, the judgment creditor must obtain a certified copy of the relevant judgment or arbitral award bearing the requisite executory formula, translated into Arabic, and submit it to the ADJD, together with a letter identifying the action to be taken. The ADJD execution judge then applies the onshore execution procedures under the UAE civil procedure legislation to the assets in question, without revisiting the underlying judgment. The practical effect is that the ADGM Courts determine the creditor's entitlement, while seizure and sale of onshore assets is carried out through the ADJD execution courts in accordance with onshore procedural requirements (including translation requirements and the payment of applicable fees). The procedure is set out in Practice Direction 10 (Enforcement) and the procedural guides published on the ADGM Courts' website.

Similar challenges may arise where the security provider located outside of the UAE grants security over assets in the ADGM.

In respect of foreign insolvency proceedings, the ADGM has adopted the UNCITRAL Model Law on Cross-Border Insolvency (1997). This means that if a security provider enters insolvency proceedings in another jurisdiction, the foreign officeholder can apply to the ADGM Court for recognition. If the foreign proceeding is recognised as the foreign main proceeding, an automatic stay (moratorium) is triggered immediately. This effectively blocks secured creditors from enforcing their security over ADGM assets without specific leave of the court, thereby preventing a disorderly grab race for assets and ensuring the foreign administrator can control the estate globally.

Potential Defences or Challenges Raised by the Security Provider

Security providers facing enforcement may raise various defences challenging the validity, enforceability, or exercise of security rights. Understanding these common defences enables lenders to structure security arrangements defensibly and respond effectively to challenges that arise during enforcement.

Alleged Inadequate Security Instrument

One of the most frequently asserted defences is that the security instrument itself is defective, invalid, or unenforceable due to non-compliance with legal or formal requirements. Security providers may particularly assert that the security failed to comply with specific ADGM statutory or regulatory requirements, rendering it unperfected, unenforceable, or invalid. Examples include:

- A failure to register the security interest with the Registrar within the 21-day period prescribed by section 784(2) and 784(4) of the Companies Regulations, rendering the security void (so far as any security on the company's property or undertaking is conferred by it) against a liquidator, administrator, or creditor of the company (section 791(3), Companies Regulations).
- Security over shares in ADGM companies that was not registered in the company's register of members as required by the ADGM Companies Regulations.
- Security over IP that was not recorded with relevant IP registries.

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- Failure to comply with specific formalities required for particular asset types such as aircraft, vessels, or regulated financial assets.

Alleged Improper Execution of Security Instrument

Security providers may also contend that the security document was not properly executed, signed, or delivered according to applicable legal requirements. Common arguments may include that:

- Signatories lacked actual or ostensible authority to bind the security provider (for example, directors signing without board authorisation or beyond their delegated powers).
- Execution formalities required under the security provider's constitutional documents were not followed (such as requirements for multiple signatories, board resolutions, or shareholder approvals for granting security over specific assets).
- The security was executed as a deed but did not comply with deed formalities (such as requirements for attestation or delivery, for example).

Lenders can mitigate these defences through:

- Careful drafting.
- Ensuring all execution formalities are observed.
- Completing all necessary registrations and perfection requirements.
- Properly assessing the security provider's capacity and authority.

Alleged Non-Occurrence of an Event of Default

Security providers also frequently challenge enforcement by asserting that no valid event of default has occurred. Moreover, even where default has occurred, enforcement may be challenged:

- As premature on the basis that the lender failed to comply with relevant contractual requirements such as notice requirements, contractual cure periods, obtaining necessary consents or approvals from other lenders or creditors (such as majority lender or intercreditor consent requirements).
- Not satisfying conditions in the security documents itself (such as requirements for demand, acceleration, or specific procedural steps before enforcement).

Lenders can protect against these challenges:

- By maintaining detailed records documenting defaults with contemporaneous evidence of breaches.
- Ensuring compliance with all notice and procedural requirements.
- Ensuring any lender votes or consents required by syndication or intercreditor arrangements are properly obtained and documented.

Other Defences

Security providers may also raise legal arguments seeking to rescind the security, for instance, they may assert that consent was obtained through misrepresentation, duress, undue influence or for example, that there was no valid consideration in respect of the grant of the security.

Practical Considerations

Enforcing security in the ADGM involves several cost considerations that secured creditors should factor into their decision-making. In particular, these considerations will likely include:

- Legal costs.
- Court-related fees for enforcement proceedings.
- Valuation and asset realisation costs (including the costs of carrying out professional valuations, or instructing specialised brokers and auctioneers, for example).
- Receiver or administrator fees and expenses (if applicable).

In relation to enforcement costs, creditors should consider whether the security documentation provides for recovery of enforcement costs from the debtor.

Deciding when to seek to enforce the security is also highly relevant. Premature enforcement may crystallise losses and damage business relationships, whilst on the other hand, delay may allow asset dissipation.

Some relevant factors in relation to timing may include:

- Whether an event of default has clearly occurred and any cure period has expired.
- The debtor's financial position.
- Market conditions for asset disposal.
- Potential competing claims from other creditors that might trigger a race to enforce.

Creditors should seek to develop a clear enforcement strategy aligned with their commercial objectives including:

- Considering court-based enforcement as well as out-of-court enforcement.
- Considering whether to appoint a receiver to take control of assets and business operations.
- Considering whether to pursue guarantors or other security simultaneously.

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- Whether to negotiate a consensual sale or restructuring rather than forced liquidation.

The existence of multiple secured creditors might also require coordination and taking collective strategic decisions.

Creditors should also consider:

- Whether they have ongoing commercial relationships with the debtor or its affiliates which might be impaired.
- The reputational impact in the market of bringing any enforcement action.
- Whether the debtor's cooperation is needed for efficient asset realisation.

Potential Risks for a Secured Creditor

There are a number of risk considerations relevant to the creditor's enforcement actions. These include for instance:

- The risk of challenges by the debtor (including in relation to the validity of the security, the occurrence of defaults, and the enforcement process itself).
- The risk of unexpected prior-ranking security assets or competing claims (which could potentially reduce recovery).
- Regulatory and compliance risks in relation to the enforcement of security over regulated businesses (which may require regulatory approvals).

The creditor should also keep in mind notice requirements which may arise:

- Under the security agreement itself.
- Under statutory provisions: For example, paragraph 4 of the Taking Control of Goods and Commercial Rent Arrears Recovery Rules 2015 sets out the requirements of any valid notice of enforcement; and the Insolvency Regulations also prescribe the standard content of notices they require (see paragraph 22 and Schedule 1 generally, Insolvency Regulations).

It is useful for practitioners enforcing security to have on hand templates for:

- Default and demand letters.
- Notice of appointment of receivers.
- Court claim forms.
- Asset sale agreements or tender documents.
- Notification forms for the Registrar.

The ADGM Courts website also provides court forms, practice directions, and procedural guidance.

Post Enforcement

On the realisation of assets, an ADGM receiver is strictly bound by the statutory order of priority outlined in section 155 of the Insolvency Regulations:

- Proceeds must be applied first to satisfy all costs, expenses, and remuneration incurred by the receiver, ensuring the enforcement process itself is funded.
- Following this, the receiver must discharge any debts or claims secured by a security that has priority over the instrument under which they were appointed.
- Only after these claims are settled can the funds be applied to the debt owed to the appointing secured creditor.

The enforcement process formally concludes with specific notification and accounting requirements designed to ensure transparency. On ceasing to act, a receiver must file a notice of vacation of office with the Registrar within 14 days (section 159(6), Insolvency Regulations). Additionally, the receiver is required to prepare a final abstract of accounts detailing their receipts and payments during the final period of their appointment; this abstract must be sent to the Registrar, the company, and the appointing creditor within two months of them ceasing to act (section 157, Insolvency Regulations). Failure to comply with these reporting duties constitutes a contravention liable to a fine.

Key Takeaways

For creditors seeking to enforce security in the ADGM, there are a number of key points which merit emphasis:

- Successful enforcement begins with robust security documentation that clearly defines events of default, provides flexible enforcement mechanisms, and includes comprehensive creditor protections.
- Enforcement is expensive and time-consuming. Creditors should realistically assess likely recovery against costs and timing before commencing enforcement. In many cases, negotiated workouts or consensual asset sales yield better net recovery than forced enforcement.
- Once the decision to enforce is made, acting decisively can preserve asset value and prevent debtor dissipation. Creditors should seek to coordinate with other secured parties under intercreditor arrangements and ensure procedural compliance to avoid challenges.
- While security provides legal rights, effective enforcement requires balancing legal entitlements with commercial realities including asset realisation values, reputational concerns, and the potential for recovery through alternative means.

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- Meticulous compliance with procedural requirements, intercreditor obligations, and post-enforcement formalities is essential. Failures can result in challenges to enforcement, personal liability, or loss of priority.

Enforcing security in the ADGM requires specialised knowledge of ADGM law, court procedures, and cross-border considerations. Early instruction of qualified legal counsel and other professionals such as receivers, valuers, and tax advisors significantly improves enforcement outcomes.

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