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Litigation

United Arab Emirates
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Al Suwaidi & Company

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UNITED ARAB EMIRATES

Law and Practice

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1. General

1.1 General Characteristics of the Legal System

The UAE follows a civil law system, which is inspired by the Roman and French legal systems as well as the Egyptian civil codes of law. Although the core principles of law in the UAE are rooted in sharia law, a predominant proportion of the UAE's legislation combines Islamic and European principles of civil law. The court system is usually inquisitorial, and precedent is generally not recognised (although judgments delivered by higher courts are usually applied by lower courts). Legal proceedings are based largely on written submissions in which parties to a specific case submit memoranda and responses and oral submissions are limited. However, the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) formed by special laws follow the common law system.

1.2 Court System

The UAE is a federation which comprises of seven Emirates, namely Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Fujairah and Ras Al Khaimah. In each Emirate, UAE Federal Law applies as well as the laws of each Emirate. In case of conflict, UAE Federal Law has supremacy. Abu Dhabi, Dubai and Ras Al Khaimah have their own separate and independent local court systems comprising of the Court of First Instance, the Court of Appeal, and the Court of Cassation at the respective local level. In these three Emirates, there is no federal supreme court to which appeals after cassation can be made. Therefore, in these three Emirates, the highest court is the Court of Cassation.

The other Emirates (Sharjah, Ajman, Umm Al Quwain and Fujairah) use the Federal Courts. In these Emirates, there is a Court of First Instance. Decisions of the Court of First Instance may be appealed to the Court of Appeal of that Emirate. Decisions of the Court of Appeal may be appealed to the Federal Supreme Court which is situated in the capital of United Arab Emirates, Abu Dhabi.

There are three main branches within the court structure which are bifurcated based on subject matter jurisdiction such as civil cases, criminal cases, and personal status cases. Each level of court has a circuit to investigate the various types of cases according to specialty and jurisdiction. The Civil Court hears all claims ranging from commercial matters to maritime disputes. Administration of criminal justice is carried out through the Criminal Courts. The Sharia court is primarily responsible for matters of personal status such as marriage, divorce, custody and inheritance.

The court circuits are major and minor which differ depending on the value, the type of the case, and the number of judges.

In addition, there are two separate courts namely, Dubai International Financial Centre (DIFC) Court and the Abu Dhabi Global Market (ADGM) Court in UAE. Both follow common law and the proceedings in each of these are conducted in English. Both the DIFC and the ADGM has a Court of First Instance and a Court of Appeal. The Appeal Courts in both jurisdictions are courts of final instance and thus no appeal can be made against their decisions.

1.3 Court Filings and Proceedings

Court filings are initiated by the plaintiff or their representative by submitting a statement of claim and supporting documents to the Case Management Office. Once the matter is accepted for registration and payment of filing fees is made, a docket number will be allocated to the matter. Only the parties to the litigation and/or their legal representative whose power of attorney is valid and accepted by the courts, will have access to the case file.

Unless the court deems otherwise in exceptional circumstances, all hearings are open to the public. The court may, at its own discretion or at the request of any party, decide to hold a closed hearing to maintain public order, observe morals or to preserve the dignity of a family. Although all proceedings are in theory public, they remain virtually confidential in practice. However, only the parties to the litigation and their attorneys have access to court documents.

Since the COVID-19 pandemic, civil courts in the UAE are conducting remote hearings via teleconference and videoconference. Most of the courts are physically accessible only to lawyers as courts are largely operating online.

1.4 Legal Representation in Court

Only UAE national lawyers and lawyers from certain other Arab countries with a valid licence are allowed to appear before the UAE courts. The lawyers must be licensed by the UAE's Ministry of Justice and must be registered in the role of practising lawyers.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Litigation funding is not prohibited in the UAE. Commercial litigation is generally funded by the litigating parties personally and there is no express provision for third-party litigation funding.

Notably, the Dubai International Financial Centre (DIFC) Courts, which adopt the common law legal system, recently issued Practice Direction No 2 of 2017 (PD), which creates

rules that are similar to the English law position in regard to third-party funding.

Similarly, the Abu Dhabi Global Market (ADGM) Courts enacted the Litigation Funding Rules 2019 on 16 April 2019 ("the Rules"), pursuant to Section 225(3)(a) and (d) of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 ("the Regulations") which expressly allows for third-party litigation funding.

Third-party funding is not common and there have not been any express regulations governing third-party litigation funding for the local jurisdiction in the UAE, thus the subsequent questions below will be answered based on the practices and provisions by the DIFC Courts and that by ADGM Courts.

2.2 Third-Party Funding: Lawsuits

It can be understood from the PD that the types of lawsuits available for third-party funding relate to "any proceedings involving the Funded Party for resolving disputes filed in the DIFC Courts whether commenced or contemplated" as defined under Clause 2(h) of the PD.

Similarly, "Proceedings" under the Rules is defined in Section 225(8) of the Regulations to include "any sort of proceedings for resolving disputes (and not just proceedings in Court) whether commenced or contemplated".

However, it is expressly stipulated in the Regulations that any such funding must not be for proceedings which relate to conditional fee arrangements which do not satisfy the conditions given under Section 222 of the Regulations or for proceedings of any such description as may be prescribed by the Chief Justice.

2.3 Third-Party Funding for Plaintiff and Defendant

Under Clause 2(a) of the PD, a funded party is defined as a party to Proceedings before the DIFC Courts which has entered into a Litigation Funding Agreement with a Funder.

It is given under Part 1, Article 2(d) of the Rules that a funded party means a litigant and it includes a liquidator or a judicial manager.

Third-party funding is thus available to the both the plaintiff and defendant.

2.4 Minimum and Maximum Amounts of Third-Party Funding

Both the PD and the Rules are silent as to the minimum or a maximum amount that a third-party funder will or may fund.

However, it is provided in the Rules, that a funder must have qualifying assets of not less than USD5 million or the equivalent amount in foreign currency as a prerequisite to entering into a litigation funding agreement.

2.5 Types of Costs Considered under Third-Party Funding

Third Party Funders may fund the attorney's fees, court fees, translation fees, and other disbursements necessary to pursue the claim from initial filing to final judgment, including conservatory measures such as preliminary attachments or appointment of receivers. More importantly, third party funder should consider funding the ratification (in case of arbitral awards or foreign judgments) and execution of final judgments, including all expenses for finding assets or liquidating attached assets.

2.6 Contingency Fees

The UAE Law, as well as the DIFC court proceedings, do not permit contingency fee arrangements. However, conditional fee arrangements where the legal representatives receive an uplift in fees, as opposed to a share in the proceeds in the event that the client is successful, are permitted in the DIFC court proceedings.

As for ADGM Courts, a conditional fee agreement which satisfies all the conditions under Section 222 of the Regulations only shall be enforceable.

2.7 Time Limit for Obtaining Third-Party Funding

Both the PD and the Rules are silent as to the time limits relating to when a party to the litigation should obtain third-party funding. However, the PD indicates that a party may enter into a litigation funding agreement. The funded party must adhere to the rules prescribed for notification of various parties of the said agreement on different timelines.

The same is indicative under the Regulations for ADGM Courts, that a litigant may enter into a litigation funding agreement before or after the commencement of the proceedings. The funded party must similarly comply with the notification rules prescribed under the Regulations.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

For certain matters, UAE Law requires a party to send its counterparty a legal notice prior to initiating any legal proceedings; including when a party wishes to terminate a contract, or a landlord wished to evict a tenant.

Another instance of pre-action is in accordance with Article 6 of the Federal Law No 8 of 1980 (the "Labour Law"), if an employer or an employee or any beneficiary thereof has a dispute relating to any of the rights provided to any of them under provisions of the Labour Law, they shall file a request thereof to the labour department concerned. This labour department shall summon the two parties to the dispute to settle the dispute amicably. If an amicable settlement is not possible, the said the labour department shall refer the dispute to the court concerned.

There is no penalty as such for failing to comply. Where a pre-action notice or procedure is required and a party files an action without complying, the case will be dismissed.

3.2 Statutes of Limitations

General rules relating to limitation periods in the UAE are contained in Federal Law No 5 of 1985, UAE Civil Transaction Law. Usually, a claim cannot be brought after 15 years, unless specific provisions state otherwise.

Subject to the exceptions, the limitation periods are generally:

- for contracts, a limitation period of 15 years (Article 473 of the Civil Transactions Law);
- for cheques, a limitation period of one to three years (Article 638 of the Commercial Transactions Law);
- for insurance, a limitation period of three years (Article 1036 of the Civil Transactions Law);
- for maritime insurance, a limitation period of two years (Article 399 of the Maritime Commercial Law);
- for torts (causing harm), a limitation period of two years (Article 298 of the Civil Transactions Law);
- for building contracts (defects), a limitation period of ten years (Article 880 of the Civil Transactions Law);
- for the carriage of goods by sea, a limitation period of one year (Article 287(a) of the Maritime Commercial Law); and
- for employment, a limitation period of one year (Article 6 of the Labour Law).

3.3 Jurisdictional Requirements for a Defendant

As per Federal Law No 11 of 1992, UAE Civil Procedures Law, a court's jurisdiction lies in the defendant's domicile. If they have no domicile, then the jurisdiction would be the area of their residence or work.

In commercial cases, the plaintiff can choose the court to which they can bring a claim. They can bring it to either:

- the court in the jurisdiction where the defendant resides;
- the court in the jurisdiction where the agreement was made or executed in whole or in part; or

- the court in the jurisdiction where the contract was supposed to have been executed.

3.4 Initial Complaint

A claim brought by a plaintiff must first be registered by submitting the plaintiff's statement of claim with the Case Management Office. The plaintiff may also do so by way of electronic registration.

The statement of claim must contain the details as follows:

- the plaintiff's name, title, identification number (if any) or copy of ID card or any other document issued by a Government authority proving the plaintiff's identity, profession, domicile, workplace, telephone number, fax or email; if the plaintiff has no domicile in the state, they shall name an elected domicile as well as their representative's name, title, profession, domicile, workplace, fax number or email;
- the defendant's name, title, identification number (if any), profession, domicile or elected domicile, residence, workplace, telephone number and their representative's name, title, profession, domicile, workplace if they work for others, but in case the defendant or their representative have no given residence or work place, the last residence, domicile, workplace, postal address, fax number or email address shall be mentioned;
- the court before which the lawsuit is filed;
- the date of submission of the statement of claim to the case management office;
- the subject matter of the lawsuit, requests and grounds thereof; and
- the plaintiff's signature or their representative's, after verifying their identities.

Once the matter has been registered and the case management office has collected the court fees, a case number will be allocated, and a first hearing date will be scheduled. The defendant(s) shall thereafter be notified.

Any request to amend the statement of claim is best raised when the matter is still before the Case Management Office.

Recent Amendments

Following the recent amendment by the Cabinet Resolution No 33 of 2020 of the Executive Regulations of Civil Procedures Law, if a party wishes to raise pleas which are not related to public order such as the plea to challenge local jurisdiction or the dispute should not be heard by the court before which the case is transferred or the refutation of nullity (not related to public order) and all other pleas related to discontinuing procedures, the party should be aware that the right to raise such pleas shall

lapse if such pleas are not raised before the Case Management Office.

3.5 Rules of Service

Service of Summons

Service of summons by the court will start after setting the hearing date and the summons/notification shall be served to the defendant. UAE Executive Regulations of Civil Procedures Law as amended provides that the service of summons shall be done on the basis of the party's request or by order of the court or the Case Management Office through the Process Server or in the manner specified by the Regulations. The court may permit the claimant or their attorney to serve the summons except by service of process using modern technological means. It is also possible to serve through private companies or offices.

Summons can be served to the defendant wherever found or at their domicile or place of abode or to their attorney. If the Process Server is unable to find or serve the defendant at their domicile or their place of abode, a copy of the summons shall be left with the spouse, relative, relative in law or servant living with them. If not, the Process Server can serve the summons by affixing the summons to the door of defendant's home/office.

Service of summons may be affected by recorded voice or video calls, SMS, smart applications, emails, fax, any other modern technological means or as agreed by the parties and approved by Court.

Failure to Serve

If the defendant cannot be served as per the process, the hearing will most likely be adjourned for further notification by the court or for notification by guidance. Service of Summons by guidance requires that the plaintiff or their representative goes into the court and directs the court to the defendant's address for service of summons.

If service of summons by guidance fails, the court, most likely, will order investigation of the defendant's address. The court will send letters of inquiry to the relevant authorities including the Dubai Economic Department (DED) and the Department of Naturalization and Residency Dubai (DNRD).

The authorities will provide the court with the defendant's address held on their records. If those details are different to the court, the court will order service of summons on any new address found for the defendant. If the court fails to serve notice on the defendant at the new address, the plaintiff or his service of summons will again assist the court through notification by guidance to the new address.

Other Procedures

In the event both procedures fail, the court will order service of summons by publication. The plaintiff or their representative will carry out this procedure by arranging publication with a newspaper of general circulation issued in Arabic in the State and in another newspaper issued in a foreign language, if necessary, should the party to be served be a foreigner at least three days prior to the next scheduled hearing.

To allow for fair procedure in respect of the defendant, the court has the discretion to order notification by guidance and notification by publication several times.

The service of summons to a person/corporation outside UAE who cannot be served through technological means, through private companies or offices or as agreed between the parties shall be affected through diplomatic channels of the defendant's country of domicile.

3.6 Failure to Respond

Upon successful notification, the defendant will be instructed by the court at the scheduled hearing to submit a defence/reply to the statement of claim/complaint.

If the defendant fails to attend the hearing, the court will issue its judgment in the absence of the defendant.

3.7 Representative or Collective Actions

The UAE courts do not have a mechanism for class or collective actions. Each claim must be filed separately, except for, collective labour disputes. Collective labour disputes are any disputes between the employer and their employees involving a common interest of all or a group of the employees at a certain firm, in an occupation or trade, or operating in the professional sector.

A collective labour dispute, as explained in the Ministerial Decision No 749/2018 on Settling Collective Labour Disputes, is any dispute between an employer and his workers, on any of the basic labour rights stipulated in the labour contract, for all the workers or a group thereof in an establishment, provided that the number of workers involved in the dispute is not less than 100.

3.8 Requirements for Cost Estimate

It is not required but is a common practice for lawyers to provide cost estimates of potential litigation and legal fees. The court fee depends on the value of the claim, and generally has a maximum cap. The professional fees paid to lawyers handling the claims shall be either in a lump sum or on an hourly basis, depending on factors such as claim amount, nature of the case, etc.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

The UAE's Civil Procedure Law and Executive Regulations provide for a summary proceeding if the creditor's entitlement to payment is established in writing. This includes the outstanding amount owing to the creditor by the debtor or if the creditor holds a financial instrument.

There are other interim remedies, of which the most common is a precautionary attachment. This is applied when there is a concern that the right of the plaintiff may be jeopardised as a result of, for instance, the debtor concealing or transferring their assets. For the competent court to grant the precautionary attachment, the creditor must establish a prima facie case based on documentary evidence.

The other interim measure is a travel ban. A creditor may submit an application to the competent Judge or the circuit head, as the case may be, to request for a travel ban against a debtor if the creditor has serious reasons, with which the debtor is feared to escape abroad and if the debt owed is over AED10,000 and is unconditional.

A travel ban may also be issued for the prevention of a child in custody from travelling in cases set out by Articles 149 to 151 of the Federal Law No (28) of 2005 on Personal Status. Further to an order being issued for either a precautionary attachment or for a travel ban, a substantive or a civil claim must be started within eight days from the date of the order or the order shall be considered null and void.

4.2 Early Judgment Applications

Order of Payment

An Order of Payment may be awarded to a creditor if it can be established that the creditor has a clear-cut debt due and owed to them. Article 62 of the Executive Regulations of the Civil Procedure Law stipulates that if a creditor's right as to a debt due and payable is established, electronically or by a document, and the entire debt is claimed by the creditor is a fixed amount of money or a certain movable of known type and quantity, the said creditor may apply for a payment order by way of a petition under the said Article with the exception of having to file a first instance claim.

Provided the procedural rules are rightly adhered to, the order shall be issued within three days, at most, from the date of petition submission. The petition shall be considered as having the same effects as filing of a lawsuit from the date of its submission, even if the court had no competent jurisdiction.

Amendments

It should be noted that pursuant to the recent amendments, the scope of reliefs that a petitioner may request in his/her payment order petition has been expanded to include claims for compensation, apart from the outstanding debt and interest, stemming from the performance of a commercial contract or the person having the right is a creditor.

Further, a creditor may now submit a petition for a payment order to the court in whose jurisdiction the agreement was made or was performed in whole or in part or in the court in whose jurisdiction the contract should have been performed. Prior to the amendment, a petition could only be filed in the jurisdiction where the debtor was domiciled.

More importantly, the amended provisions stipulate that depending on the outcome of the payment order petition, the parties may file a grievance against the order if the value of the petition is less than AED50,000. The judgment rendered based on the said grievance is not subject to appeal. Where the value of the payment order more than AED50,000, a dissatisfied party may file an appeal (as opposed to a grievance) against the payment order.

Failure to Appear

Another instance where an early judgment may be passed is in the event that a served defendant fails to appear, the court may rule for judgment and such judgment shall be deemed to have rendered in presentia for the defendant who was appropriately notified but failed to appear. The defendant is deemed to have appeared if they appear in person, through their representative, before the Case Management Office, at any court hearing, before the expert, arbitrators or if they deposit their reply.

It should be noted that a plaintiff's case may be struck out before trial or substantive hearing of the plaintiff's claim. One such instance is when a plaintiff fails to attend a court hearing and the defendant requests the court to strike out the case. The defendant may not, however, in absence of the plaintiff, request a judgment to be passed against the plaintiff.

4.3 Dispositive Motions

One of the more common dispositive motions exercisable by the courts is one where litigants abandon a lawsuit. When neither of the parties to the lawsuit have attended a court hearing, the court shall decide on the claim, if it deems making a decision valid, or otherwise it will decide upon its cancellation. If 30 days have passed and none of the parties have requested for case progression or attended after the progression therein, the claim would be dismissed as null and void. CMO shall, upon the lapse of the 30 days mentioned, refer the claim to a competent Judge to issue a decision in this regard.

4.4 Requirements for Interested Parties to Join a Lawsuit

Further to Article 95 of the UAE's Civil Procedures Law, anyone having an interest to join a lawsuit may intervene in the action by seeking judgment for themselves with a request related to the action. This shall be through usual procedures of the action, or with a request presented verbally at the session in the presence of the litigants which shall be entered in its process record. However, no intervention is admissible after the closure of pleadings.

4.5 Applications for Security for Defendant's Costs

There is no provision that explicitly allows a party to guarantee costs and the courts do not grant orders for security for costs.

4.6 Costs of Interim Applications/Motions

The applicant advances the costs of interim applications. However, when granted, the file for precautionary measures are joined with the main case. Hence, when the court orders the payment of fees by the losing party, the costs of interim applications will be included.

4.7 Application/Motion Timeframe

The relevant timeframes for a court to deal with an application or motion vary. Before issuing the order, the Judge may carry out a summary investigation should they see that the documents supporting an application are insufficient.

Once a precautionary attachment application is properly supported with the details of the assets to be attached and the details of the respondent, the application is heard by the court on an ex-parte basis and an order is usually officially formulated within three days of an application being made. As such, it is redundant to request that the application or motion be dealt with on an urgent basis.

In relation to a petition for a payment order, it is prescribed under the law that provided the procedural rules are complied with, an order will be issued within a maximum of three days from the submission of the petition.

5. Discovery

5.1 Discovery and Civil Cases

As per the Law of Proof in Civil and Commercial Transactions, an adversary may request the court to compel the submission of material documents or paper, detained by themselves, in the following instances:

- if the law allows that they are required to present or submit them;

- if the document is joint between themselves and their adversary and relates to the interest of both parties; or
- if the adversary based their claim on it during any stage of the lawsuit.

5.2 Discovery and Third Parties

The court is permitted under the UAE law to compel third parties to present documents in their possession.

5.3 Discovery in This Jurisdiction

There is no set process of approach to discovery in UAE. Parties to a litigation can file the documents that they wish to rely on for their case. There is no obligation on a party to file a document that is detrimental to their claim/case and the court may also compel a party to submit certain documents.

5.4 Alternatives to Discovery Mechanisms

There is no process of discovery and inspection of documents under the UAE Law. Each party files documents that it wishes to rely on for their case. In practice, there is extremely limited discovery available.

Pursuant to Article 18 of the Law of Proof under Civil and Commercial Transactions, a party may request the court to compel their opponent to submit any useful written document or paper in their possession as follows:

- if the law allows them to ask for their submission or delivery;
- if the document is joint between them and their opponent; or
- if the opponent based their claim on it in any stage of the lawsuit.

Further, if there are any technical areas in which the court believes that an expert should be appointed, the appointed expert will review the documents, meet with the parties to discuss the case and provide a report to the court.

It is also within the powers of the expert to demand the parties to disclose any documents deemed necessary for evaluation by the expert. This is important as expert reports are heavily relied on by Judges when issuing judgments.

5.5 Legal Privilege

Communications between a lawyer and a client are considered confidential in the UAE. Article 42 of the Advocacy Law provides that a lawyer is to keep confidential the communications made in furtherance of their professional representation of a client, unless such disclosure is required to prevent the perpetration of a crime.

The role of in-house counsels in terms of privileged communications with clients can be referred to in the Code of Ethics, which states that such information is to be kept confidential regardless of whether the representation is advisor, non-contentious or contentious in nature.

5.6 Rules Disallowing Disclosure of a Document

Generally, any communications between a lawyer and their client are, prima facie, considered confidential. Any such communication cannot be disclosed except in the circumstances set out as follows:

- where a client provides their written consent to the disclosure of the confidential information;
- where the court compels the disclosure of the confidential information to the extent required by such court; or
- where the lawyer, lawyer's partners or employees are accused of a crime or civil claim arising out of professional negligence.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Generally, injunctive relief is not available in UAE. However, the UAE law provides for the following:

- summary proceedings (see **4. Pre-trial Proceedings**); and
- provisional orders such as precautionary attachment of assets to secure a claimant's claim or an order prohibiting the defendant from leaving the country.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

An order for an interim attachment is usually issued within three days of an application being made to the competent court.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Precautionary attachments or provisional applications are generally heard by the court on an ex parte basis.

6.4 Liability for Damages for the Applicant

Occasionally, the court may order the applicant provides for a counter-security or an undertaking to cover any damages that the defendant may suffer should the action prove unjustifiable.

6.5 Respondent's Worldwide Assets and Injunctive Relief

In the context of an interim attachment, only assets of the respondent within the jurisdiction of the court granting such an order can be attached.

6.6 Third Parties and Injunctive Relief

In the context of an interim attachment, a creditor may request the court of competent jurisdiction or a Judge of summary matters to impose attachment on their debtor's movables or debts with third parties, even if they are deferred, suspended on a condition, or a subject of dispute.

6.7 Consequences of a Respondent's Non-compliance

Whether a respondent complies or not (in terms of interim attachment) is generally immaterial as the properties are usually attached through a third party, ie, the banks for attachment of the debtor's bank accounts, the Road and Transport Authority for attachment of the debtor's car and the Land Department for attachment of the debtor's properties.

7. Trials and Hearings

7.1 Trial Proceedings

The UAE Law allows for the commencement of claims electronically, in addition to the delivery of the statement of claim to the Case Management Office. On complying with the procedural formalities, the court will register the case and a hearing date may be set within one to two weeks depending on the nature and type of the case, and the court's calendar.

Following notification of the summons, the court will set another hearing date allowing the defendant to respond to the claimant's statement of claim.

If the court finds reasonable grounds to believe the presence of technicalities in the case, it will appoint a court expert to review the documents and to provide a report to the court. The appointment of an expert, and subsequent report will aid the court in delivering its judgment based on the assessed information.

7.2 Case Management Hearings

A lawsuit shall be brought to the court by registering the case before the Case Management Office (CMO) as per UAE Civil Procedure Law. The CMO shall handle and manage the case before trial, including filing and supervising the service of the lawsuit, managing and exchanging of submissions, documents and expert report among parties.

The supervising judge assigned for the lawsuit may meet with the parties and attempt to reconcile them. Where reconciliation between parties is achieved, the supervising judge may issue a decision recording the reconciliation and such decision shall have the power of an executive instrument. If not, the CMO shall then endorse the lawsuit to a competent court chamber.

7.3 Jury Trials in Civil Cases

There is no concept of jury trial practiced in the UAE.

7.4 Rules That Govern Admission of Evidence

In general, the Federal Law No 10 of 1992, concerning the Law of Evidence, governs the rules regulating the admission of evidence. This is, of course, supplemented by provisions of other statutes such as the Civil Transactions Law, depending on the nature of the dispute.

Any evidence retained by means of electronic records is governed by the Electronic Transactions and Commerce Law No 2 of 2002.

7.5 Expert Testimony

If the court believes there is a necessity for it, the court shall appoint an expert to assist and evaluate the matter. The reports submitted by the court-appointed experts are generally accepted by the courts in the UAE.

7.6 Extent to Which Hearings are Open to the Public

Unless the court deems otherwise in exceptional circumstances, all hearings are open to the public. However, due to the current exceptional circumstances caused by the COVID-19 pandemic, civil courts in the UAE are conducting remote hearings via teleconference and videoconference.

7.7 Level of Intervention by a Judge

Hearings before the UAE courts are administrative in nature and are usually a means of allowing parties to submit their arguments with memoranda. The judge will investigate the facts of each case and occasionally direct parties for production of certain relevant documents. Where the judge finds the documents supporting a claim or application are insufficient, the judge may conduct a summary investigation.

Investigation ordered by judges are commonly performed by the court's appointment of experts. Such may be in accounting, construction, banking, intellectual property or other technical fields. Appointed experts are tasked to review documents, meet with the parties for discussion and where necessary, conduct site inspections, and gather necessary material to submit the expert's report. Expert reports submitted before the court are considered as persuasive by the judge, who may deliver their final judgment based on the same.

A date set is usually set for the submission of such a report, and the judge may set another hearing for submission should, in their opinion, the expert requires a longer time to deliberate their findings. Once the report is submitted, the judge may set a further hearing for the parties to submit their concluding or

commentary memoranda or send the report back to the expert for further evaluation before the final judgment is delivered.

7.8 General Timeframes for Proceedings

Generally, cases in which an expert is not appointed may last between three to six months before the Court of First Instance. A case involving an expert can last for two years before judgment is adjudicated in the Court of First Instance. Nonetheless, timeframes vary on a case to case basis.

Notably, a recent amendment further to Cabinet Resolution No 33 of 2020 stipulates that a court shall render its decision bringing an end to the litigation within a period not exceeding 100 days from the date of first hearing. It remains to be seen how strictly the courts would comply with this amendment.

8. Settlement

8.1 Court Approval

Once a case is filed and the court exercises its jurisdiction, the court has control over the case. Parties may execute a settlement agreement, but to give effect to such settlement and close the case, they must present an original of such settlement to the court. If the matter is a matter capable of composition, the court will render a judgment based on the settlement agreement.

8.2 Settlement of Lawsuits and Confidentiality

Settlement of lawsuits are public as such will have to be recognised by the court. The details of settlement agreements will be included in the case records, and only parties involved in the matter will have access to this.

8.3 Enforcement of Settlement Agreements

Settlement agreements are recognised by the courts so the judgment adopting the settlement can be executed as any court judgment would.

8.4 Setting Aside Settlement Agreements

In the event the UAE courts find that the provisions contained in a particular settlement agreement are unlawful or against public policy, it can be set aside through a court order or by the agreement of the parties to the settlement agreement.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

The court shall award the successful litigant the compensatory damages and, depending on the nature of the case, an order confirming a right. However, it is at the discretion of the court hearing the case to grant any award.

The court shall also confirm in its final judgment to the successful litigant, whether a precautionary attachment order has been granted in the proceedings.

9.2 Rules Regarding Damages

The damages available in commercial disputes are compensatory damages only.

Fines imposed by the criminal court are payable to the UAE government and not awarded as compensation to the victim.

9.3 Pre and Post-Judgment Interest

Claimants may demand interest of up to 12% on the claim from the date of filing a lawsuit. However, in practice, UAE courts usually decide on a 9% interest rate from the date of filing a lawsuit until full payment of the claimed amount.

The calculation of the interest on the claimed amount halts only when the defendant or debtor commences the payment process, as stipulated under Article 189 of the Civil Procedure Law. If the defendant or debtor does not commence the process to make full payment under Article 189, the interest accrues even in execution stage, ie, post judgment.

9.4 Enforcement Mechanisms of a Domestic Judgment

The judgment is enforced under the supervision of the execution Judge at the Court of First Instance and the procedures decided before the Court of First Instance shall be applicable. The execution judge shall be exclusively authorised to execute the execution document and decide to enforce a local judgment through attachment and sale of the judgment debtor's assets. Moreover, the execution judge is also authorised to deliver the sentences, decisions and orders related thereto, in exceptional circumstances.

The public prosecution is authorised by law for enforcement of judgment issued in all criminal cases brought before the courts and it may directly seek the assistance of public authority, as and when necessary in enforcement of judgments

9.5 Enforcement of a Judgment from a Foreign Country

The judgment and orders passed in a foreign country may be ordered for execution and implementation within the UAE under the same conditions decided in the law of that country. Articles 85-88 of Section 4 of Cabinet Resolution No 57 of 2018, provides for expedited enforcement by submission of a petition to the execution Judge. The judge shall issue their decision no more than three days from the date of submission of the petition. However, the judge has to verify the following before ordering execution:

- that UAE courts do not have exclusive jurisdiction over the matter decided by foreign court;
- that the decision is from an authorised foreign court;
- that litigants have been summoned and properly represented;
- that a decision has acquired the power of res judicata; and
- that a decision does not conflict with a previous decision by UAE Courts and it is not against public morals or public policy.

This decision may be appealed in accordance with the rules and procedures established for the appeal of court decisions.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

State Courts and Federal Courts have two levels of appeals from a first instance court judgment. When the claim is not capable of pecuniary estimate, or the claim amount exceeds AED50,000, the first instance court judgment may be appealed before the Appeal Court. When the claim is not capable of pecuniary estimate, or the claim amount exceeds AED500,000, it can be further appealed before a Court of Cassation.

10.2 Rules Concerning Appeals of Judgments

Court of First Instance judgments may be brought for appeal before the Appeal Court on questions of facts and law. Court of Appeal judgments may only be brought for cassation appeal to the Cassation Court on questions of law only.

10.3 Procedure for Taking an Appeal

Generally, parties have 30 days from the date of a civil Court of First Instance judgment, or notification thereof, to file an appeal before the Appeal Court.

In criminal cases, the Attorney General of the Public Prosecution also has 30 days to appeal while an accused has 15 days from the date of judgment to file an appeal before the Appeal Court.

Parties have 60 days from date of a civil appeal judgment, or notification thereof, and 30 days from date of criminal court appeal judgment to file an appeal before the Cassation Courts.

Please note that a complainant in a criminal case may only participate in an appeal proceeding if a civil claim is attached to the criminal case, otherwise, only the public prosecution may appeal.

10.4 Issues Considered by the Appeal Court at an Appeal

An appeal of a Court of First Instance judgment opens the whole case for a re-hearing and review as to questions of facts and law. No new claims may be included, but new points that were not explored at first instance may be considered. Cassation appeals are only as to questions of law.

10.5 Court-Imposed Conditions on Granting an Appeal

When the Appeal Court tries a case, grants an appeal and renders an appeal judgment, such judgment is already enforceable. However, in certain instances, the appeal court grants the appeal and remands the case to a lower court for re-trial.

10.6 Powers of the Appellate Court after an Appeal Hearing

After hearing an appeal, the Appeal Court may render a judgment on the merits which shall be enforceable, or it may order for the case to be remanded to a lower court for re-trial.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

The costs of litigation are borne by the parties. Court fees are to be paid by a claimant to register the case, parties pay their respective attorney's fees, and expenses such as notifications are borne by the party notifying. The court has the discretion to order which party should pay the expert fees and usually splits the costs during proceedings but orders the losing party to pay it in its award.

Court fees and expenses are recoverable while attorney's fees have limited recoverability as courts usually award a nominal amount from AED500 to AED2,000 for attorney's fees. However, in recent cases, the courts have awarded full legal fees, hence, the chance of recovery of legal fees has increased. The judgment also includes which party shall shoulder the court fees and expenses and these may be claimed during execution stage.

11.2 Factors Considered When Awarding Costs

The party at fault is usually ordered to pay all costs unless the court finds that the other party has contributed to the prolonging of the case, in which case costs may be apportioned.

11.3 Interest Awarded on Costs

Interest is not awarded on costs.

12. Alternative Dispute Resolution

12.1 Views of Alternative Dispute Resolution within the Country

Alternative dispute resolution (ADR) is becoming widely accepted in the UAE. Foreign individuals and company investors usually prefer ADR as these proceedings offer more flexibility, confidentiality and opportunity to set the language of the proceedings. Mediation and arbitration are the most popular methods of ADR in the UAE.

12.2 ADR within the Legal System

The UAE legal system actively promotes ADR. The UAE courts facilitates mediation through committees including commercial dispute resolution committees, family guidance committees, settlement and reconciliation committees, rental dispute committees and labour dispute resolution committees. In some Emirates like Abu Dhabi and Dubai, it is no possible to proceed to the regular courts until an appearance has been made before the dispute resolution committee. Recently, Court Management Office (CMO) has been mandated to offer conciliation. In case of reconciliation, the supervising judge of the CMO may issue a decision recording the same and such decision shall be executory.

12.3 ADR Institutions

There are a number of institutions offering and promoting alternative dispute resolutions in most of the Emirates. These institutions each have a set of rules and regulations related to, and actively promote, ADR. Some centres cater to particular industries such as Emirates Maritime Arbitration Centre (EMAC). Most notable are the Dubai International Arbitration Centre (DIAC), Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCAC), DIFC-LCIA Arbitration Centre and the International Islamic Centre for Reconciliation and Arbitration (IICRA).

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

Arbitration in the UAE is largely governed by Federal Law No 6 of 2018 or the new UAE Arbitration Law. The UAE is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Cabinet Resolution No 57 of 2018 as amended or the Executive Regulation of Civil Procedures Law Chapter III on Execution are also applicable.

13.2 Subject Matters Not Referred to Arbitration

Matters in which composition or settlement feature are not allowed to be referred to arbitration. Further, matters of public policy, such as employment and criminal cases, are not allowed

to be referred to arbitration. Certain real estate and lease disputes, as well as disputes involving registered commercial agencies, are not subject to arbitration because of specific provisions of special laws.

13.3 Circumstances to Challenge an Arbitral Award

Article 53(1) of the UAE Arbitration Law enumerates grounds for challenging an arbitral award including when:

- there is no arbitration agreement;
- it is void or time-barred;
- due to the lack of capacity of a party;
- if a party was unable to present their case;
- the award excludes application of law on which the parties agreed to apply;
- the composition of the tribunal or the arbitral procedure is not in accordance with the parties' agreement or the UAE Arbitration Law;
- the arbitral procedures are void;
- the award decided questions not covered by arbitration agreement;
- the subject matter of dispute is one of the questions where no arbitration can be conducted; or
- the award violates public order and public morals of the UAE.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Article 55 of the UAE Arbitration Law provides that whoever wishes to enforce an arbitration award shall apply to the chief justice to approve the arbitration award and to order its enforcement. The chief justice, or any delegated judge, may order the approval and enforcement of the arbitration award within 60 days from the date of approval and enforcement application is filed, unless the judge finds that there are one or more reasons the arbitration award cannot be given, based on Article 53(1).

Another procedure that provides for a more expeditious enforcement is under Chapter III Section 4 of Cabinet Resolution No 57 of 2018. Articles 85-88 provide for expedited enforcement by submission of a petition to the execution judge. The judge shall issue their decision within no more than three days from the date of submission of the petition. This decision may be appealed in accordance with the rules and procedures established for the appeal of court decisions.

14. Recent Developments

14.1 Proposals for Dispute Resolution Reform

There are no proposals for dispute resolution reform as of time of this writing.

14.2 Impact of COVID-19

The UAE courts acted proactively and temporarily suspended all in-person court hearings and proceedings in March 2020. However, being technologically equipped and having laws in place for remote communication technology, the courts immediately resumed proceedings conducting remote hearings, expert meetings, and availing of e-submission facilities. There was no suspension of operation of limitation periods.

UNITED ARAB EMIRATES LAW AND PRACTICE

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Al Suwaidi & Company is a full-service law firm, rooted in regional know-how. Since the firm's inception in 1997, it has supported leading businesses across the UAE and beyond, assisting them in navigating complex and commercial challenges. The firm's goal is to bring legal certainty to clients and, in doing so, helping them to innovate, grow, and thrive. The firm has built a reputation for knowledge and expertise and its formidable standing in the Dubai and Abu Dhabi courts is second to

none. With offices in Dubai, Abu Dhabi and Ajman, the firm's regional expertise is consolidated by wider knowledge of international legal systems and boasts a number of qualified arbitrators and lawyers registered to practice in the DIFC Courts, enabling the provision of client's needs in all forums. Al Suwaidi & Company has the expertise to manage large-scale, complex and multi-jurisdictional litigation cases and the disputes practice consists of 26 legal practitioners, supported by a wider team.

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