

A low-angle, upward-looking photograph of several modern skyscrapers against a dramatic sky at sunset or sunrise. The sun is a bright, glowing orb in the center-right, casting long, golden rays across the sky and reflecting off the glass facades of the buildings. The clouds are tinged with orange and yellow. The perspective creates a sense of height and grandeur.

A&C Legal Guides

Guide to Litigation and Arbitration
in the UAE 2021

PART 1: Introduction & Onshore Courts

Preface

This guide has been written as an aid to provide users and potential users of legal services with an overview of the legal processes within the United Arab Emirates (UAE) which may be available in any given situation. Depending on the contract and/or place of business a dispute will either be decided within the Civil Law process in onshore UAE or the common law process to be found offshore within the free zones of Dubai International Finance Centre (DIFC) or Abu Dhabi Global Markets (ADGM). Additionally, many contracts provide for arbitration which removes jurisdiction from the Courts. This guide allows the user to understand the different processes that are available with the UAE and to consider which of the legal processes will be or are likely to be applicable to their contract and/or dispute.

Whilst we hope that users of this guide will find it helpful in understanding the ways in which the legal processes can be used to resolve their disputes or to safeguard their position it is always advisable to discuss the dispute and best way to pursue or defend a claim with a suitable lawyer who understands not only the nature of the issue or dispute but also the processes which will have to be navigated. This will additionally provide the user with a clear idea of the costs involved and whether those costs may be recoverable or not. This in turn will lead to a commercial decision as to the way forward, be it litigation, arbitration or settlement.



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About the author

Robert Sliwinski is a Barrister, Chartered Arbitrator, Accredited Adjudicator and Mediator, Quantity Surveyor and Dispute Board Member.

Robert has over 35 years' experience of the construction industry with particular emphasis on all forms of alternative dispute resolution. Robert specialises in all aspects of the property and construction representing parties as well as undertaking appointments as arbitrator, adjudicator, expert determiner, mediator and dispute board member.

As counsel Robert has represented clients in litigation within court system up to and including the Court of Appeal and in domestic and international arbitrations. Cases undertaken by Robert include legal and contractual interpretation, construction and engineering contracts, tort, development agreements and professional negligence. In a recent case heard by the High Court in London Robert was able to successfully argue that a construction company that was 'balance sheet' insolvent was solvent as defined by the Insolvency Act 1986.

As an arbitrator Robert has been involved in matters concerning professional negligence, property, landlord & tenant, delay analysis, costs, variations, defects, interpretation of contracts, repudiation, and many other aspects of contract in the areas of building, civil engineering, mechanical & electrical, waste-water treatment and process engineering. He has most recently been joint arbitrator on a multi-million dollar case between a joint venture contractor and national government in a dispute involving the construction of an airport runway and as a member of an ICC panel arbitration also between a joint venture and a national government involving the construction of a major road project.

Robert has received over 400 appointments from the CI Arb, CIC, AICA, CEDR, RICS and directly by the parties to act as the adjudicator. Robert has also worked as an expert determiner and mediator covering a wide range of issues within the arenas of construction and engineering, professional negligence, contract, development agreements and landlord & tenant.

Robert works closely with the parties and their experts allowing his clients to understand each decision made and the effect on the overall dispute and process being employed. Robert believes that an informed client makes the best choices in furtherance of matter under consideration or of the dispute that is being pursued/defended.

Licenses, Memberships and Panels

- DIFC – LCIA
- Dubai International Arbitration Centre
- International Chamber of Commerce (UAE)
- Sharjah International Commercial Arbitration Centre Saudi
- Centre for Commercial Arbitration
- ArbDB Chambers in London
- The Chartered Institute of Arbitrators
- The Honourable Society of Middle Temple
- New York State Bar (USA)
- The Construction Industry Council
- The Law Society (2004 to 2010)
- Asian International Arbitration Centre
- Hong Kong International Arbitration Centre
- Technology and Construction Solicitors
- Association Federation Internationale des Ingenieurs-Conseils International (FIDIC)
- Technology and Construction Bar
- Association UK Adjudicators
- Royal Institution of Chartered Surveyors (1987 to 2018)
- Royal Society for the Encouragement of Arts, Manufacture & Commerce
- Asian Institute of Alternative Dispute Resolution
- Dispute Resolution Board Foundation
- Centre for Effective Dispute Resolution (CEDR)
- London Court of International Arbitration (LCIA)

An aerial photograph of a city skyline, likely Dubai, taken from a high vantage point. The sun is low on the horizon, creating a strong golden glow and lens flare across the right side of the image. The city is filled with numerous skyscrapers and modern buildings. In the foreground, a body of water (theDubai Canal) is visible with a few boats. The text "Table Of Contents" is overlaid in a large, white, serif font in the lower-left quadrant of the image.

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PART 1

A | Introduction

Alsuwaidi & Company is a leading Emirati law firm in the UAE with offices in Abu Dhabi, Dubai and Ajman. With eminent Emirati and International lawyers dealing with both civil and common law jurisdictions we are uniquely equipped to advise on disputes and conduct litigation & arbitration within the GCC region and beyond.

Alsuwaidi & Company was established in 1997 by Mohammed Alsuwaidi and has since grown into one of the foremost law firms in the UAE helping to support business and individuals in navigating a wide variety of complex and commercial challenges allowing them to prosper and thrive in this most complex of legal environments. As a firm Alsuwaidi always puts its clients' interests first and brings its deep knowledge

of the nuances found in cultural and social variations encountered in both commercial and private environments.

In this guide to litigation and arbitration we set out the unique and diverse practices encountered within the UAE which encompasses both civil and common law jurisdictions. Parties trying to resolve their disputes without a good understanding of their rights and options may find themselves with unforeseen outcomes which can and should be avoided. In presenting this guide we hope to ensure a better understanding of the various processes that are encountered along with a party's options in navigating a sometimes-difficult path to their best advantage.

1.1 Litigation

Alsuwaidi & Company's litigation practice is one of the most renowned and successful in the UAE and with a track record of over 90% wins since inception, our lawyers are robust in representing their clients' interest.

We are known in the local market for implementing creative strategies and for winning cases, utilising our diverse group of leading international and regional lawyers. We have the expertise to manage large-scale and complex litigation cases, which incorporate multi-jurisdictional issues, and we frequently represent regional and international clients in all courts across the UAE, including the DIFC, the ADGM and Court of Cassation. We are adept in handling urgent applications and injunctions, ensuring all our clients' needs are dealt with in an orderly and cost-effective manner. Nothing is left to chance, and we work in our clients' best interest so their businesses can flourish and grow.

1.2 Arbitration and Alternative Dispute Resolution

Our alternative dispute resolution practice is skilled in managing local and international arbitrations. We are able to offer bespoke advocacy services and lawyers who are qualified arbitrators under the rules of all leading arbitral institutions, including Dubai International Arbitration Centre (DIAC) and the International Chamber of Commerce (ICC).

Our arbitration practice encompasses a range of matters including general commercial, construction, energy, and oil and gas disputes. Our dispute resolution team has extensive experience in dealing with matters such as the enforcement of foreign arbitral awards and monetisation of judgements.

1.3 Jurisdictions

1.3.1 Onshore Courts

The onshore courts are the main centres of litigation in the UAE, governed by civil laws and procedural laws in Arabic. For those who are not conversant with civil law procedures the hurdles encountered can seem formidable at first, not least because all proceedings and documents are in Arabic.

1.3.2 Offshore Courts

The designation of an offshore court is given to those courts set up within free zones where they have been given the freedom to adopt their own civil and commercial laws and procedures. Whilst not all free zones have adopted their own laws and procedures the Abu Dhabi Global Market (ADGM), Dubai International Financial Centre (DIFC) and the Qatar Financial Centre (QFC) have. All of these free zones adopt a common law system with common law procedures and are conducted in English. For many parties there may be a choice of which jurisdiction to resolve their disputes in and where this choice exists the procedures that are to be adopted and the actions that can be taken become an important consideration depending on the nature and type of dispute to be dealt with.

1.3.3 Arbitration

Away from litigation the parties may agree or have agreed to arbitration within their contracts. Arbitration may be conducted in onshore or offshore jurisdictions and can involve the laws and procedures from both the civil and common law. This is a matter of choice by the parties when entering into their contracts and it is important to decide at the outset what substantive law is to govern the contract and what procedural law will govern the arbitration itself. In most arbitration centres within the GCC region a system based on common law procedures is adopted.



1.4 Power of attorney

1.4.1 Why are they needed?

It is important to understand the requirement within the UAE for anyone acting on behalf of a company or individual to have the authority to so act. In the main this is either set out within the company's memorandum of association and/or minutes of board meeting.

Before any action can be taken on behalf of a client, a Power of Attorney (POA) will need to be provided giving the law firm the authority to represent them. This is a particular requirement in the UAE and in the GCC region generally. The POA puts in place an agency relationship which allows the law firm to take steps on behalf the client and which will bind the client. Without such a relationship any actions by the law firm will not bind the client and will have no effect.

It should also be noted that the offshore courts such as found in the ADGM, DIFC and QFC do not require a POA in order to represent clients. It is accepted within these courts, as in most common law jurisdictions, that a lawyer has the authority to represent his or her client and a specific document showing such authority is unnecessary. Should any question arise then a simple confirmation by the client will suffice.

The POA should be carefully worded so that the devolved powers given to the agent are clearly set out and do not allow arguments as to its validity or the power so given to the lawyer in representing his or her client. It is not unusual for POAs to be challenged in order to derail proceedings and such challenges by the opposing party are commonplace. Accordingly, a POA must be put in place at the commencement of any action and, if possible, at the time when an instruction is given to the law firm to undertake proceedings.

In Article 55(2) of Federal Law No. 11 of 1992 (UAE Civil Procedures Law), it sets out the requirement that a legal advisor must be able to prove that he or she has the power to represent the client in relation to the matter that is being dealt with. We set out below some essential elements that should be considered and provided for in the POA.

1.4.2 Scope


POAs can be widely drafted to provide the law firm with general powers to act on behalf of a client. For long standing clients, this is sensible as it allows the law firm to act on different matters at different times without having to provide a new POA for each and every matter. Conversely, for clients who will only occasionally need the services of a law firm it may be better to draw up specific POAs for each matter setting out in detail the acts that are authorised by the client. Where the matter is a dispute, the POA should encompass all actions that may need to be taken on behalf of the client including filing for and conduct of the proceedings, negotiations, settlement, interim/conservatory steps, appeals, enforcement, etc. If steps that become necessary are left out of the POA, a new and separate POA will have to be provided otherwise the matter could grind to a halt.

1.4.3 Language

It may seem obvious but as the POA will need to be provided to the courts it will have to be set out in Arabic. In many cases, the POA will also be bi-lingual (for example Arabic and English) so that the client, if not an Arabic speaker, will know what has been drafted and of course what they are signing. No client should be asked to sign a document that they cannot read.

1.4.4 Representation

The POA should include the names of the lawyers representing the client as well as some additional lawyers to ensure that the representation being given to the client is not interrupted due to the lawyer handling the matter no longer being able to so do.



1.4.5 Validity and Notarisation

All POAs will need to be notarised by a Public Notary who is authorised by the Courts. The Notary will not only witness the signatures but will also examine the POA to ensure that it is compliant and that the person granting the powers in the POA does in fact have the authority themselves to devolve such powers through the POA. In this respect, the Notary will need to be sure and examine the documents being provided as proof of such authority allowing the grant of the powers set out in the POA. It is not unusual for the POA to be rejected by the Notary such that amendments may be needed, or other proof of authority provided before it can be notarised. It is therefore very important the any necessary POA is prepared in good time so that issues do not arise in the carrying out of the lawyers' duties.

1.4.6 Arbitration

Arbitration needs special mention when discussing POAs. Arbitration is a contractual process that derives its powers from an agreement by the parties. The agreement to arbitrate is usually set out in the contract but is an agreement that may be entered into at any time.

The arbitration agreement is a stand-alone agreement even when set out as a clause within a contract. This is necessary to allow an arbitral tribunal to decide disputes that may include the validity of the contract. Additionally, arbitration agreements limit

the court's powers to deal with disputes arising out of or in connection with the contract and will require a party to grant specific powers to its agent that allows the agent to enter into the arbitration agreement on behalf of the party. Without the grant of such powers the arbitration agreement will be invalid. This is reflected in the UAE Federal Law on Arbitration (Articles 4 and 53.1(b) of Federal Law No. 6 of 2018) and Article 58(2) of the Civil Procedures Law. If the person signing the contract did not have power to enter into an arbitration agreement, then the arbitration itself and/or any subsequent award can be challenged in court. Failure to abide by these requirements can and will lead to an award being set aside and not enforceable.

It is advisable for any party entering into an arbitration to ensure that the requisite authority can be evidenced and to carefully word the POAs showing an unambiguous chain of authority that extends to the legal representatives. These should be sufficiently well drafted so as to allow the agents/legal representatives signing the Terms of Reference in an arbitration to also have the power to enter into arbitration agreements which can ensure that even where a questionable arbitration agreement has been provided it will have been legitimised within the Terms of Reference.

Any intention to arbitrate a dispute will need very careful consideration of the formalities behind the agreement and to ensure that the representatives have the power to conduct the arbitration on behalf of a party.



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The Different Forums For Resolving Disputes

In order to avoid confusion, we discuss below all of the forums used within the UAE setting out each stage of the processes including pre-action processes, interim/conservatory steps, preparation and evidence, trial, appeals, enforcement and costs.



2.0 The Onshore Courts

2.1 Pre-Action Stage

The Pre-Action Stage can be overlooked when trying to issue a claim in the Courts. However, it is important to consider what, if any, pre-action steps should be taken to ensure that when the claim is issued it will be as watertight as possible. It is therefore imperative for any Claimant to discuss the claim with their lawyers to obtain good legal advice and to map out the strategies to be used to attain the Claimant's objectives.

The following matters should be ascertained before commencing a claim:

1. The identity of the Defendant. Whilst this may appear obvious it is always wise to be sure of the Defendant's identity before issuing a claim in the Courts. Who is responsible for the loss which may have been incurred or is there a joint responsibility for the loss?
2. Is the Defendant solvent and not a man of straw? It is pointless expending large sums of money chasing a Defendant when there is no prospect of recovery even if the claim is successful.
3. Have the contractual provisions that allow the claim to be made been complied with? In many contracts, the right to relief may depend on complying with specific notifications which, if not complied with, may result in the ability to make a claim or obtain relief being lost. This may require a careful consideration of the contractual wording and the law governing the contract.
4. What is the Dispute Resolution Mechanism, is one specified at all? Are there options given by the contract as to how a dispute should be resolved, is there a tiered process that must be followed before commencing a claim in the Courts (or arbitration). If the tiered process is not complied with, would this make any claim invalid due to a failure of jurisdiction.
5. What are the merits of the claim? The claim may not be as strong as the Claimant would like and good advice as to its merits is sensible so that a commercial decision can be made.
6. How good is the evidence upon which the claim is being brought? If documents are not within the Claimant's possession can they be obtained, can evidence held by third parties be obtained or safeguarded?
7. Can the Claimant afford to fund the claim or is it prudent to investigate third party funding?

2.2 Limitation

General rules relating to limitation periods in 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 certain exceptions, the limitation periods are:

- Contracts — Fifteen years (Article 473 of the Civil Transactions Law).
- Cheques — One to Three years (Article 638 of the Commercial Transactions Law).
- Insurance — Three years (Article 1036 of the Civil Transactions Law).
- Maritime Insurance — Two years (Article 399 of the Maritime Commercial Law).
- Torts (causing harm) — Two years (Article 298 of the Civil Transactions Law).
- Construction Contracts (Defects) — Ten years (Article 880 of the Civil Transactions Law).
- Carriage of Goods by Sea — One year (Article 287(a) of the Maritime Commercial Law).
- Employment — One year (Article 6 of the Labour Law).

2.3 Disclosure

Unlike common law processes, the civil courts do not have a process for disclosure. Thus, any evidence must be that in the possession of the Claimant or obtainable from a third party and be capable of proving the claim that is being made. Does the Claimant have original documents or simply copies? Civil Courts often require original documents to be produced and if this is not possible, it can affect the outcome of the claim.

2.4 Language

The onshore courts' proceedings are conducted under the Arabic language and any documents that are not in Arabic will need to be translated by official translators. This of course gives rise to the risk that the translated document does not properly reflect the original which could cause difficulty in proving the claim as that document's meaning could be misunderstood.

2.5 Legal Notice

It is common before any legal proceedings are commenced for the Claimant to send, by way of their lawyers, a Legal Notice briefly setting out the background of the dispute, contract or other requirements and the claim itself which if not complied with in a specified amount of time will lead to court proceedings being instigated. The UAE Law requires Legal Notices in the case of termination of a contract or where a Landlord wishes to evict a tenant. In other cases, the Claimant should be advised by their lawyer whether a Legal Notice is required by law or not. If a Legal Notice is a prerequisite to the commencement of proceedings, then any claim commenced without a Legal Notice will find itself open to challenge by the Defendant.

2.6 Interim Remedies

Precautionary Attachments can be obtained in order to freeze the assets of a Defendant who may attempt to conceal or dispose of their assets prior to any judgement that may be made against them. In order to obtain the grant of a precautionary attachment, the court will need to be satisfied that the application is justified and necessary. To do this, the Claimant would need to show the court that there is a good claim against the Defendant and that there is a real risk of dissipation of the Defendant's assets that would prevent the Claimant from being able to enforce any judgement that the court hands down. The grant of a precautionary attachment is discretionary, however, if the court is not initially satisfied that the evidence supports the Claimant's application, they may require the Claimant to provide any additional evidence that they deem necessary to grant the application. Further, it should be noted that the Civil Procedure Law requires a substantive claim to be issued within 8 days of the court's grant of the Claimant's application for the precautionary attachment.

Other interim remedies that are available in the onshore courts include the grant of a payment order (Cabinet Resolution No. 33 of 2020) without having to bring an action before the Court of First Instance and where the applicant can show that the debt is due for immediate payment and that the whole claim is for a debt of a specified amount or a moveable of a specified type and amount. Additionally, the court can issue a travel ban where the debt is over AED10,000 or where it is necessary to prevent a child being taken abroad.

2.7 Commencing a Claim

A party wishing to commence a claim in the onshore courts will need to ensure that the claim is commenced in the correct court by reference to both the Emirati state (where the Defendant is domiciled and where the damage has occurred) and the nature of the dispute being referred. Articles 20 to 41 of the Civil Procedures Law (Federal Law No. 11 of 1992) should be considered.

On deciding which court is the appropriate court the claim should be registered with the Case Management Office by submitting the Statement of Claim. This can be done electronically.

The Statement of Case must contain the following details:

- 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 workplace, 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;
- the documents being relied upon, and if not in Arabic an official translation into Arabic; 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) are notified.

Service of the summons upon the Defendant is by the Court and will occur after the hearing date has been set. The UAE Executive Regulations of Civil Procedures Law, as amended, provides that the service of the summons shall be carried out at the Claimant'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 lawyer, to serve the summons although this cannot be by electronic means.

The summons may be served upon the Defendant wherever they are found, or at their domicile, or place of abode, or to their lawyer. If the Process Server is unable to find or serve the Defendant, a copy of the summons may be left with a spouse, relative, in law or servant living with them. If the Process Server cannot serve the summons in any other way, it can be served by affixing it to the door of Defendant's home or office.

Service of the summons may be affected by the Court by using Recorded Voice or Video calls, SMS, Smart Applications, Emails, Fax, any other modern technological means or as agreed by the parties.

If the summons cannot be served for whatever reason the hearing will be adjourned to a later date and the Court can serve the summons by notification, normally by trying to effect service at the Defendant's last known address. If this fails, 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 and will be deemed to have been served.

In the case of cross border service, any international, bi-lateral or regional treaties or conventions will need to be considered. Our lawyers will be able to advise on any steps that need to be taken in such cases.

2.8 Challenges to Jurisdiction

It is not unusual for a Party, normally the Defendant, to try and avoid the action brought against it by challenging the court's jurisdiction and thus have the matter thrown out.

Jurisdiction is authority granted to Forum or Tribunal that has been legally constituted to administer and decide matters brought before it. Jurisdiction can be chosen in certain circumstances by a provision within the contract between the parties or simply by the place in which the parties reside, or where the contract has been constituted. It is important for parties that are engaged in dispute resolution to understand what jurisdiction governs their contract or other matter that is disputed between them. If a party does not challenge the Forum or Tribunal's jurisdiction at an early enough juncture it may be found that they have waived their right to challenge that Forum or Tribunal. Thus, if there is a question of jurisdiction to be raised this should be undertaken at the earliest possible opportunity.

In the UAE, the court's jurisdiction arises for the Civil Procedure Law (Article 20 to 23 of Federal Law no. 11 of 1992) which states:

Article 20 "With the exception of the real actions related to a real estate abroad, the courts shall have the jurisdiction to examine the actions prosecuted against the citizen and the actions prosecuted against the foreigner who has residence or domicile in the state."

Article 21 "The courts shall have jurisdiction to examine the actions against the foreigner who has no residence or domicile in the state in the following cases:


1. If he had an elected domicile.
2. If the action is related to real estates in the state, a citizen's heritage, or an open estate therein.
3. If the action is concerned with an obligation concluded, executed, or its execution was conditioned in the state or related with a contract required to be authenticated therein or with an incident occurred therein or bankruptcy declared at one of its courts.
4. If the action has been instigated by a wife who has a domicile in the state, against her husband who had a domicile therein.
5. If the action is concerned with an alimony of one of the parents or the wife or with a sequestered or with a minor, or with his next of kin or with a custody on fund or on person, in case that the claimer of the alimony, the wife, the minor or the sequestered has a residence in the state.

6. If the action is concerned with the civil status and the plaintiff is a citizen or a foreigner who has domicile in the state, provided that the defendant had not a determined domicile abroad or the national law is imperatively applicable on the action.

7. If one of the defendant has a domicile or residence in the state."

Article 22 "The courts shall have jurisdiction to settle the primary issues and the interlocutory requests on the original action falling under its jurisdiction, and they shall also have jurisdiction to decide on every request related to such actions and which the good course of justice requires its examination therewith. They shall also have jurisdiction to order summary and precautionary measures which shall be executed in the state even if they were not related to the principal action."

Article 23 "If the defendant has not appeared and the court does not have jurisdiction to examine the action in accordance with the preceding articles, the court shall automatically decide its lack of jurisdiction."



Despite international recognition that parties are free to decide the jurisdiction that governs their contracts it is unlikely that an onshore court would refuse to hear a matter where the jurisdiction falls within their domain and is covered by the above noted provisions. This can lead to conflicts between different Emirates where actions have been started by each party in different states. In such cases, the Union Supreme Court will decide the matter of jurisdiction. It is therefore wise, when choosing UAE jurisdiction, to ensure that any contract sets out which Emirati laws will govern it.

In most cases the only time when an onshore court will cede jurisdiction is when a valid arbitration clause has been agreed between the parties and ideally this should be written into the contract itself.

2.9 Judgement in Default

Where a Defendant does not respond to the claim served upon it within the time stipulated by the court rules or at all, the court may at the first hearing give judgement to the Claimant. Unlike some other jurisdictions, the Onshore courts do not have a procedure where the Claimant makes an application for judgment in default but rather it is a matter of the court's discretion whether at the first or perhaps a subsequent hearing to give judgement in favour of the Claimant. At the first or subsequent hearing the Claimant's advocate may request the court to issue its judgement following the Defendant's failure to respond.

2.10 Case Management

Case management is the process where the Court directs and controls how the case proceeds and what steps are to be taken to ensure that the case is dealt in a sensible and time efficient manner. It is the Case Management Office, an adjunct of the Court, which registers the case, serves notices and exchanges memoranda and documents to the parties. A date will be set for the first hearing and this is normally about 10 days from service of the summons upon the Defendant(s). The Court thereafter sets dates for each further hearing and will direct whether an expert is required to produce a report. Only when the court is satisfied that all evidence and memoranda has been received as is considered necessary will they consider and write a judgement.

As will be appreciated the parties will have little input into the case management save where applications are made or as noted above, judgement in default is requested.

2.11 Evidence

a. Disclosure of Documents

The Onshore Courts only require parties to provide the documents that they rely upon in support of their case and are under no obligation to produce documents that may support the Defendant's case.

However, under Article 18 of the Federal Law No. 10 of 1992 on Evidence in Civil and Commercial Transactions ("UAE Evidence Law"), a party will be entitled to make a request to the Court to order the other party to produce a document where:

1. The law permits production; or
2. The document is a document that is jointly held by the parties (ie where the document is for the benefit of both parties and/or shows the parties' mutual obligations and rights; or
3. Where the other party has relied on the document at any stage of the proceedings.

In reality, the ability of a party to obtain documents from the other party is extremely limited and can have a significant effect on the litigation and party's chances of success. If a party does not have the documents that can prove its claim, then there will be a good chance that the claim will fail. It should also be borne in mind that the Court will give pre-eminence to original, signed and official documents which allows parties to request that the originals of documents relied upon are produced which can cause significant delays to the proceedings.

b. Admissibility and Burden of Proof

The Onshore Courts do not have rules that limit the admissibility of evidence as would be found in common law jurisdictions. Rules relating to privilege and hearsay do not exist and it would be unusual for a court to refuse the admissibility of evidence that is provided by a party even where such evidence would be considered as inadmissible in other jurisdictions. The Court is concerned with the authenticity of any evidence that is presented and indeed will order the production of original documents where necessary.

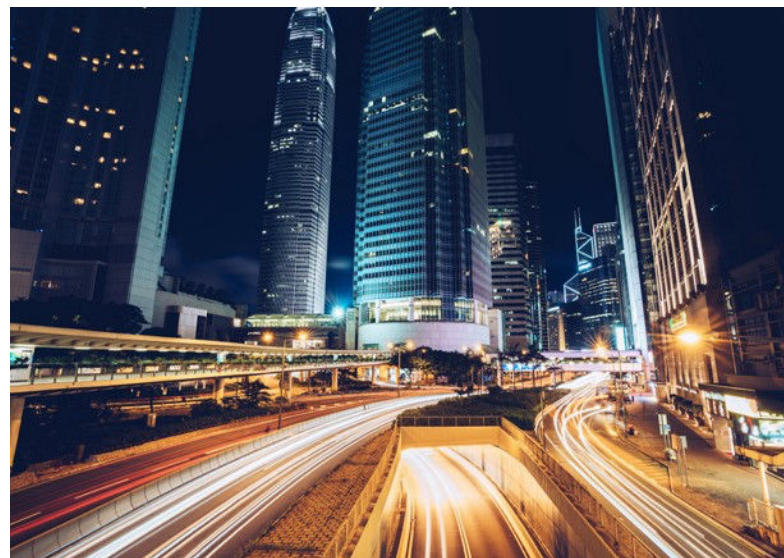
The burden of proof is simply stated under Article 1 of the UAE Evidence Law as being that "the Plaintiff has to prove his right, and the Defendant has to disprove it".

The evidence provided by the parties is weighed by the court and they will come to their conclusions without recourse to a specific standard to be applied. All the Court needs to do is to accept that the Plaintiff has proven their case or that the Defendant has disproved the Plaintiff's case.

c. Expert Evidence

In accordance with Federal Law No. 7 of 2012 (On the Regulation of Expertise before the Judicial authorities) the onshore Courts use experts to investigate the evidence in the case that has been brought before them and to investigate any issue of disputed law. Such experts are appointed by the Court on its own initiative and will advise the Court on the central legal issues in the case. The experts may have closed sessions with the parties and their legal representatives where the legal representative can informally advocate his client's case. The expert will gather evidence in these closed sessions and when completed will write a report that is then provided to the court. If witness evidence is to be considered at all it will be during this stage and by verbal or written statements to the expert. More usually the expert will be asking questions rather than expect submissions and witness statements being provided.

Whilst the Court does not have to accept the expert's report and conclusions it is unusual for the Court not to do so. It is important to understand that the expert's report is the most important document that the Court possesses as it often will decide the case when adopted by the Court. Accordingly, the interaction with the expert(s) will be vitally important and must be approached with great care and a clear understanding of the case and evidence that needs to be presented.





2.12 Case Preparation

The Onshore Courts do not hold trials where the case is presented, and the evidence examined orally. There is no 'trial' of the matter. The case is presented by the advocates in documentary form (Memorandum) with each party presenting their memorandum at each hearing as directed by the Court. In most cases, the advocate will be in attendance to answer any questions by the court which are mainly in relation to the service of documents and other administrative issues. It is thus imperative that care is taken with the case preparation including the evidence that is needed to prove the case as well as a consideration of the tactics to be used.

The hearings are conducted in Arabic and as they are mainly administrative and there is therefore no need for the legal representative to attend and it is quite usual for local counsel to be instructed to appear at the hearings. The proceedings will be held in Arabic which means that all documents relied on will need to be translated by a Ministry of Justice certified translator and in the case of oral evidence a court appointed translator will need to be in attendance should the witness not speak Arabic or where permission is granted an employee of the witness' embassy can act as translator.

Whilst it is the case that witness generally do not appear at the hearing it is permissible for, on application to the Court, for a witness to provide oral evidence. This is rare and good reasons for such a request will be needed before the Court will allow oral evidence to be given. Even if oral evidence is allowed it is by no means certain that cross-examination of the witness will be allowed, and where it is such cross-examination will be closely controlled by the Court. If a witness is required to give oral evidence they will attend court and swear a religious oath in accordance with their religion.

Before the written memoranda are provided to the court, the parties must ensure that all relevant documents that are to be relied upon are translated into Arabic and that all Powers of Attorney are in place. When the final written memoranda have been received by the Court the Court will, if they are satisfied that all submissions and evidence have been provided, will notify the parties that the matter is closed and that the Court will proceed to Judgement.

The Court of First Instance can take between 3 and 6 months to provide its judgment, if no expert is appointed. And between 9 and 12 months to provide its judgment, if an expert is appointed.

2.13 Court of Appeal

Any party may appeal from judgement of the Court of First Instance. This is a right and does not require permission from the Court of First Instance or the Court of Appeal. An appeal may be on factual or legal grounds with the Court of Appeal consisting of three judges rehearing the substantive dispute.

It should be noted that a party must file its appeal within 30 days of the Court of First Instance Judgement.

The Court of Appeal can take between 3 and 5 months to provide its judgement.

2.14 The Court of Cassation

The Emirates of Dubai and Ras Al Khaimah have their own Courts of Cassation with all other Emirates having a right of Appeal from judgements of their Courts of Appeal to the Federal Supreme Court based in Abu Dhabi. In all cases an appeal to the Court of Cassation or the Supreme Court may only be on a point of law.

Any appeal to the Court of Cassation or Supreme Court must be filed within 60 days of the Court of Appeal Judgement. In certain circumstance this time limit may be extended but party are advised not to rely on a possible extension as any application to extend can be refused.

The Court of Cassation or Supreme Court can either remit the matter back to the Court of Appeal for further substantive hearings and a further judgement or give final judgement from which there is no further appeal. Should the matter be remitted back to the Court of Appeal then any judgement given by the Court of Appeal will again be capable of an appeal to the Court of Cassation or Supreme Court.

The Court of Cassation or Federal Supreme Court can take between 3 and 5 months to provide its judgement.



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