



A&C Legal Guides

**Guide To Litigation and Arbitration
in The UAE 2021**

PART 2: Offshore Courts

ALSUWAIDI & COMPANY

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.

About the author



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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's 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)

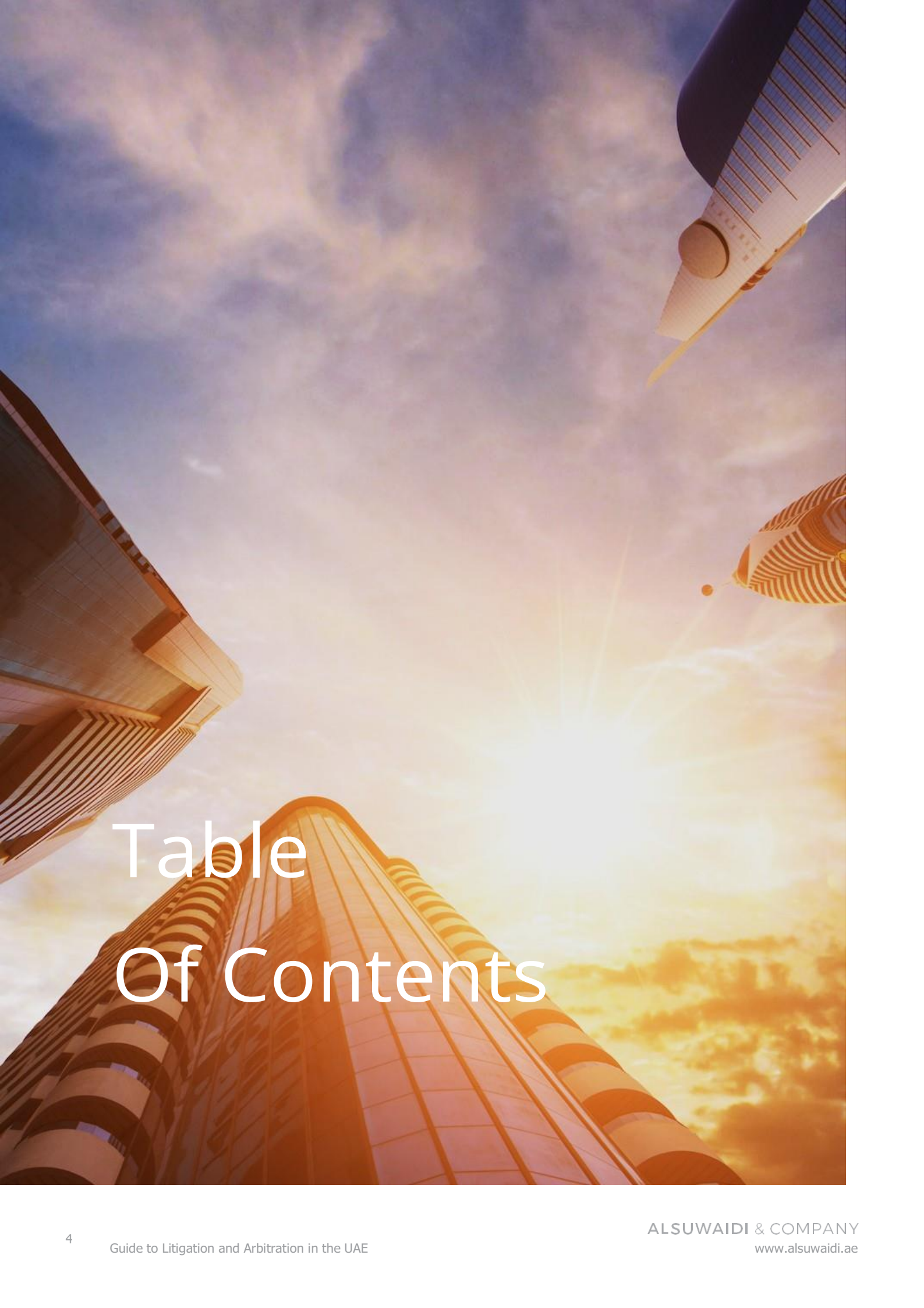


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PART 2

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Introduction

3.0 THE OFFSHORE COURTS

The Offshore Courts are located in the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Markets (ADGM). Both of these are 'Free Zones' meaning that they have been granted power by the UAE Federal authorities to set up and enact their own laws and legal practises. Both of these free zones have chosen to enact common law as the governing law with courts that have legal systems that are similar to the courts found in England and Wales. This has resulted in a significantly different set of rules and processes to that found in the Onshore Courts in the UAE and any party using these courts must be alive to the need to prove their case using oral evidence and to abide by the burden of disclosure of all relevant documents in a dispute, not just those documents upon which the party wishes to rely upon to prove their case.

The Offshore Courts are not restricted to using Emirati Advocates to present a party's case with lawyers conversant in the common law procedure being able to act and present cases before those courts. The DIFC and ADGM Courts have systems for the registration of suitably qualified and experienced lawyers for the preparation and presentation of cases. If a lawyer is not registered, then they would be unable to act in these courts. Al Suwaidi & Company is registered and able to act in all courts throughout the UAE including the DIFC and ADGM Courts.



3.1 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 so as 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 in order 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 has to 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?
8. Are the Offshore Courts the correct forum for the dispute?

3.2 Limitation

In the DIFC Courts the following limitations will apply:

- Breach of Contract – Six Years from a breach of contract or from knowledge of Fraud. (Article 123 DIFC Law 6 of 2004)
- The parties to a contract may reduce the limitation to a period of not less than one year. (Article 22 DIFC Law 7 of 2005)
- Law of Obligations – 15 Years from cause of action. (Article 9 of DIFC Law 5 of 2005)
- Employment Claims – Six months from date of termination or from the date of the matter complained of. The court may dis-apply this period if circumstances justify the court in so doing. (Articles 10 & 61 DIFC Law 2 of 2019)

3.3 Disclosure

Disclosure is set out within DIFC Court Rules 28 and ADGM Court Rules 86. These rules are reflective of each other and relate to electronic and hard copy documents. The parties are required to produce those documents upon which they rely, and such other documents as may be required by law, rule or practice direction.

Where a Party considers that documents in the possession or control of the other party have not been produced, they can/may request the production of particular documents or classes of documents by an application to the Court. Any such application must set out not only the documents required to be produced but also the reason why the document(s) are relevant and material to the dispute and would assist the court in the trial of the matter.

3.4 Language

The Offshore Courts are conducted in English.

3.5 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. Whilst a legal notice may not be a prerequisite to commencing a claim in the DIFC and ADGM Courts it is advisable to serve such a notice as this will allow the other party to recognise that an action is to be commenced and allows for the possibility of settlement prior to any such action being commenced.

3.6 Interim Remedies

The Offshore Courts being based on common law procures are fully conversant in dealing with applications for interim remedies which include anti-suit injunctions, interim injunctions, freezing orders, disclosure orders, interim payment orders, interim declarations, orders for the sale of property and property preservation orders.

Whilst both the DIFC and ADGM Courts have similar rules in respect of interim remedies it is the case that the DIFC Courts Rules are wider in their reach giving guidelines as to the manner and detail required in the application for interim remedies. It is of course important to ensure that the Court has jurisdiction under its Rules to consider and decide any such application for interim relief and to ensure that the relevant tests for interim relief are applied. The various tests that are used within the English Courts are a useful guide and should be followed. Generally, the Courts will expect to see the following:

- A good arguable case;
- A serious question is to be decided;
- Whether damages would be an adequate remedy rather than an injunction; and
- A consideration of the balance of convenience.

In an application for a freezing order the courts will wish to know the nature and location of the assets and whether there is a serious risk of dissipation of those assets.

It is also to be noted that in many urgent cases it is possible to make an ex-parte application to obtain the order so long as the applicant is willing to undertake to pay any damages that arise should the order be rescinded when the Court hears submissions at an interparty hearing which will be set down shortly after the ex-parte hearing and issue of the requested order.

3.7 Commencing a Claim

A claim is commenced in the Offshore Courts and will need to comply with the relevant Court Rules. Those rules are set out below for both the DIFC and ADGM Courts.

a. DIFC Courts

All claims to be commenced in the DIFC Courts are encouraged to be filled electronically using the online e-filing system of the DIFC Court. This by far the most effective method for filing a case.

i) Small Claims Tribunal (SCT)

The SCT is empowered to deal with disputes that do not exceed AED500,000, where the dispute involves employment issues of any value (where the parties agree to the SCT hearing the matter), or where the parties agree that their dispute can be dealt with by the SCT so long as the value of the dispute does not exceed AED1,000,000.

The claim is commenced in the SCT by requesting the SCT Registrar to provide a claim form, filling in the claim form which shall include the reasons for the remedy that is required and paying the relevant Court fee.



ii) Court of First Instance

Part 7 Claims

This is the most widely used type of claim issued in the DIFC Courts. The claim form is intended for matters that are in excess of AED500,000 or otherwise would be suitable for the SCT and which involves matters of fact and law. The claim is commenced by filling in the claim form and paying the relevant Court Fee.

Part 8 Claims

A Part 8 Claim should only be used where the dispute does not require matters of fact to be decided (or at least where the matters of fact in dispute are minor in nature) or where the Court rules/practice direction require a Part 8 Claim. Any Claim should make clear that it is a Part 8 Claim and clearly set out the matter to be decided along with the remedy that is required. In most cases a Part 8 Claim is used to decide the interpretation of a particular contractual clause and/or an issue of law. The claim is commenced by filling in the claim form and paying the relevant Court Fee.

iii) Technology and Construction Division (TCD)

Within the DIFC Courts system there is a specialist division that deals exclusively with matters and disputes related to technology and construction matters. Part 56 of the DIFC Court Rules allows claims to be heard by the TCD if they involve the following types of claim:

- building or other construction disputes;
- engineering disputes;
- claims by and against engineers, architects, surveyors, accountants and other specialised advisers relating to the services they provide;
- claims by and against the DIFC or any DIFC Body relating to their statutory duties concerning the development of land or the construction of buildings;
- claims relating to the design, supply and/or installation of computers, computer software and related network and information technology systems and services;
- claims between landlord and tenant for breach of a repairing covenant;
- claims between neighbours, owners and occupiers of land in trespass, nuisance, etc;
- claims arising out of fires;
- claims involving taking of accounts where these are complicated; and
- challenges to decisions of arbitrators in construction and engineering disputes.

This list is not exhaustive.

The TCD is designed as a specialist Court that is experienced in and capable of considering complex engineering and technical matters with a set of tailored rules allowing such disputes to be dealt with more effectively and efficiently than may be the case before the general Court of First Instance. As noted by Chief Justice Michael Hwang:

“The TCD has been designed around the particular characteristics of highly complex technology and construction disputes, which can be resolved much more speedily and efficiently with the oversight of specialist judicial expertise”.

iv) Court Fees

The SCT fees are based on 2% of the value of any employment matter with a minimum fee of USD100. For all other matters the fee is based on 5% of the claimed amount with a minimum fee of USD100.

The Court of First Instance Fees are also based on 5% of the claimed amount with a minimum fee of USD1,500 and a maximum of USD130,000. It should also be noted that currently the percentages and caps are as follows:

Up to USD500,000	5% of the value of the claim and/or the property with a minimum of USD1,500
USD500,000 - USD1 million	USD25,000 + 1% over USD500,000
USD1 million - USD5 million	USD30,000 + 0.5% over USD1 million
USD5 million - USD10 million	USD50,000 + 0.4% over USD5 million
USD10 million - USD50 million	USD70,000 + 0.15% over USD10 million
Over USD50 million	USD130,000

If the claim is non-monetary Part 8 claim the fee is set at USD5,000.

b. ADGM Courts

All claims to be commenced in the ADGM Courts are encouraged to be filled electronically using the online e-filing system of the ADGM Court. This by far the most effective method for filing a case.

i) Small Claims Division (SCD)

The claim is commenced in the SCD by requesting the SCD Registrar to provide a claim form, filling in the Claim Form (CFI 2) which shall include the reasons for the remedy that is required and paying the relevant Court fee. The maximum sum claimable under the SCD is USD100,000.

iii) Employment Division

To commence an employment Claim Form (CFI 3) is used. The claim is commenced by filling in the claim form and paying the relevant fee.

ii) Court of First Instance

Claim Form (CFI 1) should be used for claims in excess of USD100,000. If the matter does not involve a substantial issue of fact the Court's simplified procedure Rule 30 and Claim form (CF 6) can be used. In both cases the claim is commenced by filling in the claim form and paying the relevant Court fee.

iv) Court Fees

SCD fees are 1.5% of the value of the claim with a minimum of USD100 and a maximum of USD1,500.

Employment Division fees are 1.5% of the value of the Claim with a minimum of USD100 and a maximum of USD1,500.

Money and/or property claims exceeding USD100,000 are as follows:

USD100,001 - USD500,000	2.5% of the value of the claim
USD500,000 - USD1 million	USD12,500 + 2% over USD500,000
USD1 million - USD5 million	USD22,500 + 0.5% over USD1 million
USD5 million - USD10 million	USD42,500 + 0.25% over USD 5million
Over USD10 million	USD 55,000 + 0.15% over USD 10 million to a maximum of USD65,000

If the claim is non-monetary or unquantified damages claim the fee will be USD2,500.

3.8 Service of the Claim

a. DIFC Courts

i) Small Claims Tribunal

The Court will serve the claim on behalf of the Claimant.

ii) Court of First Instance

Following receipt of the Claim the DIFC Court will issue the claim and the Claimant will have 4 months in which to serve the claim upon the Defendant unless the Defendant is outside the of the DIFC or Dubai when a period of 6 months will be allowed.

Service by the Claimant can be by personal service, courier, leaving the claim at a specified place (where no address for service has been specified and the Defendant does not have legal representation) or by means of electronic communication. It should be noted that in some cases the claim is to be served by the Court.

Following service of the Claim (where not served by the Court) the Claimant is within 7 days to file a certificate of service unless the Defendant has within that period filed the Acknowledgement of Service.

Special rules apply to service of the claim outside of the DIFC or Dubai.

b. ADGM Courts

i) Small Claims Division

The Court will serve the claim on behalf of the Claimant.

ii) Court of First Instance and Employment Division

Following issue of the claim by the Court the Claimant will have 4 months to serve the claim upon the Defendant unless the Defendant is outside the of the ADGM when a period of 6 months will be allowed.

Service by the Claimant can be by personal service, by email or other electronic communication, by serving at a specified place in accordance with Rule 17 or, where authorised by the Court, by an alternative method or at an alternative place.

Following service of the Claim (where not served by the Court) the Claimant is within 21 days to file a certificate of service unless the Defendant has within that period filed the Acknowledgement of Service.

It is to be noted that both DFC and ADGM have rules that allow service of the claim such that the Defendant cannot avoid the claim by refusing service or by not giving their current address.

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.



3.9 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 a 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, 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.

Rule 12.1 of the DIFC Courts and Rule 38.1 of the ADGM Court Procedure are very similar and allow a Defendant to *'apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have'*. In order to make such an application in either Court the Defendant must file and serve an Acknowledgement of Service and support the application with written evidence. In the DIFC Court an application must be made with 14 days of filing the Acknowledgement of Service whilst in the ADGM Court such an application must be made within 28 days of filling the Acknowledgement of Service.

Jurisdiction will be ceded by the DIFC and ADGM Courts where a binding arbitration clause has been agreed between the parties and, ideally, this should be written into the contract itself.

Additionally, where it is clear that another court has jurisdiction (for example the Dubai Courts) the DIFC and ADGM Courts will cede jurisdiction.

3.10 Default Judgement

The rules in relation to 'Default Judgement' in the DIFC and ADGM Courts are in essence similar however the DIFC Court rules are more detailed. Despite this the processes in both courts allows the Claimant to apply for default judgement where the Defendant has failed to acknowledge the claim or provide a Defence.

The Default Judgement cannot be appealed in either court but may, on application of the Defendant, be set-aside and the Defence allowed to be issued and served. Any application to set-aside would need to show a good reason why the Defendant had failed to serve the Acknowledgement of Service and/or Defence as well as showing that the Defence had a real prospect of success or that there is some other good reason why the judgement should be set-aside. The Defendant is likely to be ordered to pay the costs of the application even if successful. The case would thereafter proceed normally as if the Default Judgement had not occurred.

3.11 Case Management

Unlike the Onshore Courts the Offshore Courts have case management conferences (CMC) which allow the parties to make proposals as to the way in which the case is to progress and allows consideration of the case, disclosure, witnesses, expert witnesses and the trial length and date. The powers for case management are to be found at Part 4 and Part 26 of the Rules of DIFC Court and Part 12 of the ADGM Court Rules.

The DIFC Court will set down a CMC of its own accord or by application from by the Claimant within 14 days of the date on which the Defendant has served its Defence. The CMC may be ordered to be in person before the judge or by electronic or telephone as considered appropriate. With relatively straightforward matters the Court may simply consider the papers/bundle provided by the parties and issue its Order for Directions without the need for any further input by the parties. Of course, if no Defence is served within the requisite time, the Claimant can apply for Default Judgement and the need for CMC will disappear.

The ADGM Court will automatically set down a date for the CMC which will be within 14 days of the Defence being served. The CMC will be by telephone or video conference although in certain cases the Court may order the CMC to be in person.

Parties in the DIFC Court prior to the CMC are to lodge a bundle with the Court including a completed CMC Information Sheet, the Statement of Case, Statement of Defence, Counterclaim and Defence to Counterclaim, Court Orders, Agreement (if possible) regarding disclosure of documents and directions as may be appropriate and a memorandum containing a short description of the case, a short summary of the procedural history and an agreed list of the important issues, both evidential and legal.

Parties in the ADGM Court prior to the CMC are to lodge a completed directions questionnaire, agreed directions (if possible) and an agreed list of significant issues in the case.

In both Courts the judge will consider and discuss with the parties the case and the directions that are necessary to ensure efficient and smooth progress of the case and will deal with any issues as to disclosure, witnesses and experts (if the need for and nature of experts is known).

It is usually unnecessary for the parties to attend the CMC as the court will normally only deal with the administration of the case and will not need to hear from the parties themselves. The Court will only expect the legal representatives to attend, be it on telephone, video conferencing or in person.

It should be noted that the Court has a wide range of powers and can make orders from applications by either party or make orders of its own initiative.



3.12 Evidence

The way in which evidence is attained and used in Offshore Court proceedings is comprehensive and relies on both parties producing documents, witnesses and expert witnesses to support and prove their case. Unlike the Onshore Courts it is expected and indeed demanded by the court rules that all relevant evidence is produced including any evidence that is unhelpful to a Party's case. In this regard the powers of the court in ordering production of documents is wide and if a party can be shown to be deliberately withholding evidence the courts has powers to take a view on that Party's behaviour and draw adverse inferences that could harm that Party's case.

It is thus vitally important for a Party to have properly investigated the evidence that is relevant to the case and disclose all such evidence as required under the Court's Rules.

Part 29 of the Rules of the DIFC Court governs the use and admission of evidence. Part 31 of the Rules of the DIFC Courts governs the use and admission of expert evidence.

Parts 14 to 16 of the ADGM Court Rules govern the use and admission of evidence. Part 17 of the ADGM Court Rules governs the use and admission of expert evidence.

In both the DIFC Court and the ADGM Court evidence is introduced through witness statements and those witnesses, including expert witnesses, will be expected to attend court to be cross-examined by the other party's legal representative.

Whilst the rules in respect of evidence are wide ranging and can appear to be complex the thrust of those rules is to ensure that both parties can present their case with the benefit of all the relevant evidence and to allow the courts to make their judgement based on all the relevant evidence available and of course the parties' submissions in relation to that evidence.

3.13 Confidentiality

Unlike the Onshore Courts the Offshore Courts have rules that protect communications that contain offers that are intended to settle the dispute between the parties. These are known as 'without prejudice' communications and so long as the parties make it clear that such communications are on a 'without prejudice' basis they cannot be produced in court for any reason save for an offer to settle in accordance with Part 32 of Rules of the DIFC Court and Part 18 of the ADGM Court Rules.

In respect of other confidential documents any party which wishes to withhold documents on the basis of confidentiality would need to show good reason why those documents should not be disclosed. The other party can make an application for disclosure and the court will decide whether disclosure should be allowed or not. As set out at Part 28.28 of Rules of the DIFC Courts reasons for avoiding disclosure will include legal privilege and grounds of commercial or technical confidentiality and political or institutional sensitivity that a court determines is compelling. The ADGM Courts does not set out specific grounds for avoiding disclosure, but it is likely they will follow similar rules as stated by the DIFC Court.

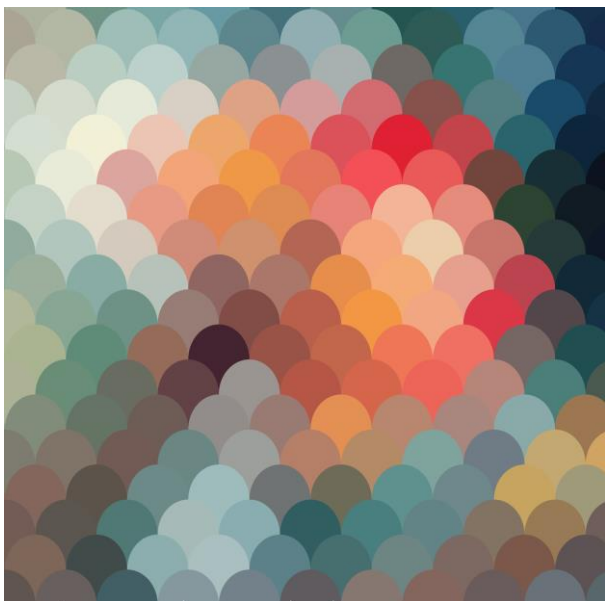
Where a party considers that certain documents should not be disclosed, we recommend that the status of those documents should be discussed with their legal representatives.



3.14 Case Preparation

As the focus of litigation in the Offshore Courts is towards the final hearing of the dispute it is imperative that the parties take time to prepare their case so that they are able to make the best case possible and are ready and able to counter the evidence and legal submissions that will be made by the other party. The Offshore Courts expect the entire case to be put to them in the final hearing and as a consequence the final hearing, depending on the subject matter, can last from a day up to a few weeks or more. Accordingly careful consideration of steps needed to be undertaken prior to the hearing is of the utmost importance.

Prior to the hearing a 'Pre-Trial Review' (PTR) may be undertaken. In the DIFC the procedure is set out at Part 26 of the RDC where it is noted that if the Court considers it appropriate it will order a PTR between 4 and 8 weeks before the hearing. The ADGM procedure is slightly different and, as set out at Part 12 Section 82, allows for a pre-trial check list to be sent out by the Court to be completed by the parties and returned. If the Court considers that a PTR is necessary, it will notify the parties setting a date.



The PTR is used to ensure that all the necessary actions for trial have been completed or are being completed. In both Courts, and prior to the PTR itself, the parties are expected to agree a timetable for the hearing with timings for oral submissions, factual witnesses and expert witnesses as well as a highlighting any differences between the parties as to the conduct of the hearing. Where there are differences between the parties the judge will provide directions at the PTR to resolve those differences and that all necessary steps have been taken to ensure that the hearing commences on time and is kept to the time allocated for the hearing. Where possible a list of issues to be decided by the Court should also be agreed.

The Claimant is usually expected to prepare the hearing bundles following discussions between the parties as to those documents that should be included. The Court is concerned to keep the bundles to a manageable size and would wish to avoid all and every document to be included. It is also the case that the relevant documents upon which the parties will rely are, where possible, to be agreed and included in the bundles. Where the bundles are voluminous a bundle of the core documents should also be agreed which will ensure that time is not wasted in constantly finding and opening different files during the examination of the factual and expert witnesses. The Courts encourage the use of electronic bundles, but this is to be agreed prior to or at the PTR. Bundles should be lodged with the Listing Office at least 14 days (7 days for ADGM) before the hearing.

As a matter of course the Court will record the hearing and transcripts can be requested by the parties. If Translators are to be used, they must be approved court translators details of which are to be provided and agreed prior to or at the PTR.

Where witnesses are unavailable for personal attendance at the hearing evidence can be given by video link or similar. Reasons for the unavailability of a witness to give evidence in person is required. During 2020 the emergence of a pandemic has caused many hearings to be by video link and this has had the effect of the courts and legal representatives becoming much more familiar with the use of video links as well as problems that can sometimes arise in its use.

Where witnesses are unsure about the procedure in Court or are nervous it is permissible for the witnesses to be given an explanation of the court process as well as providing an understanding of how the evidence is to be given and how to respond to cross-examination (witness familiarisation).

3.15 The Hearing

The hearing in the courts will be presided over by a single judge. All parties are to be in the court room when the Judge enters, all parties will bow as a sign of respect. The judge will allow counsel to summarise their case before the witness evidence is given. The Claimant's witnesses will usually give evidence first. In most cases the evidence in chief will be the witness statement with, where necessary, some supplementary question by the Claimant's counsel. The Defendant's counsel will proceed to cross-examine the witness in detail putting the Defendant's case to the witness, as is appropriate to that witness. Following the cross-examination, the Claimant's counsel will be allowed to re-examine the witness to clarify any issues that arose under cross-examination. Re-examination that did not arise out of the cross-examination will not be allowed.

Once the Claimant's witnesses have given evidence it will be the turn of the Defendant's witnesses to give their evidence in chief, be cross-examined and if necessary re-examined. On completion of each witnesses' evidence the judge may ask questions, occasionally the judge may interrupt counsel's examination to ask a question but usually the judge allows examination to proceed without interruption.

The expert witnesses, if used, will give evidence at the conclusion of the factual witnesses' evidence and will be examined in the same way with the expert's report acting as the evidence in chief. Occasionally it will be agreed that the experts give their evidence at the conclusion of all the factual witnesses (both Claimant and Defendant) to allow their evidence to be examined at the same time. This process is known as 'hot tubbing' and allows for the experts to interact and discuss the issues in dispute with the judge normally conducting the questioning. Counsel will thereafter be allowed to ask the experts questions that they consider have not yet been dealt with.

Once the factual and expert evidence has been provided both counsel will be allowed to summarise their case and comment on the evidence that has been given. These submissions may be given orally or, where the matter is complex, in writing within a set period of time after the conclusion of the hearing. The court may set down a date and time for those submissions to be made before the court rather than just being provided in writing. This allows the judge to raise questions to counsel in order to clarify any outstanding matters.

The Court will hand down its judgement either orally, in simple matters, or in writing after the conclusion of the hearing and receipt of the closing submissions.

3.16 Court of Appeal

In both the DIFC and ADGM courts permission is needed to appeal.

a. DIFC Courts

Part 44 of the RDC governs appeals setting out the following:

- an application to appeal can be made at the hearing when the court hands down the judgment.
- an application to appeal can be made to the Court of First Instance within 21 days of the date when judgement was handed down, or as otherwise directed by the Court of First Instance.
- an application to appeal can be made to the Court of Appeal within 21 days of the date when judgement was handed down, or as otherwise directed by the Court of First Instance: and

- where the Court of First Instance refuses to allow an appeal an application to appeal can be made to the Court of Appeal within 21 days of the Court of First Instance's refusal.

b. ADGM Courts

Part 25 of the ADGM Court Procedure Rules governs appeals setting out the following:

- an application to appeal can be made to the Court of First Instance within 21 days of the date when judgement was handed down;
- an application to appeal can be made to the Court of Appeal within 21 days of the date when judgement was handed down; and
- where the Court of First Instance refuses to allow an appeal an application to appeal can be made to the Court of Appeal within 7 days of the Court of First Instance's refusal.

Permission to appeal will be allowed where it is found that the appeal would have a real prospect of success or some other compelling reason to allow permission to appeal.

The Appeal Courts will review the judgement of the lower court (they do not have a rehearing) and may refuse the appeal and affirm the lower court's judgement, annul, or set aside the lower court's judgement or make any other order the Court of Appeal considers appropriate.

In both the DIFC and ADGM the judgement of the Court of Appeal is final.

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