
CHAMBERS GLOBAL PRACTICE GUIDES

Litigation 2023

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UAE: Law & Practice

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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, 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, 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, Court of Appeal, and 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 divided according to the subject matter/jurisdiction such as civil cases, criminal cases, or 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.

DIFC and ADGM Court Systems

This chapter concentrates on the Onshore UAE Court System; however, it should be noted that there are two additional and separate court systems within the UAE. These are courts set up within the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). DIFC and ADGM are autonomous jurisdictions within the UAE having their own laws based on the common law systems and are conducted in English.

The structure of the DIFC and ADGM courts is set out below.

DIFC Courts

The Dubai International Finance Centre Courts (DIFC Courts) are part of the sovereign state of Dubai, UAE following the establishment of the Dubai International Finance Centre (DIFC) under Dubai Law No 9 of 2004. At the same time the

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DIFC Courts of First Instance and Court of Appeal were established.

In 2006 the DIFC Courts began operations allowing parties to have their disputes considered and dealt with under an English language common law system. This allowed for a common law legal system within a civil law legal system. Whilst initially limited to the free zone in Dubai, the DIFC Courts have jurisdiction since 2011 to hear any local or international case where either parties or the contract come within the DIFC jurisdiction or where the parties have expressly agreed that the DIFC Courts should have jurisdiction over their contract and/or dispute.

The DIFC Courts are made up of the Small Claims Tribunal, the Court of First Instance, and the Court of Appeal.

Small Claims Tribunal (SCT)

The SCT has been set up within the DIFC Court jurisdiction to deal with claims that are less than AED500,000 in value. The SCT can be used for all commercial contracts that are either within the DIFC Courts' jurisdiction or have an express DIFC Courts' jurisdiction clause within the terms of the contract. The SCT is set up to allow parties to represent themselves without the need for lawyers. The first part of the SCT process is for a consultation between the parties and the court with the intention of reaching a settlement. If this fails, then the matter proceeds to a hearing before a judge.

The Court of First Instance

The Court of First Instance deals with all claims for civil or commercial matter and disputes which are within the DIFC Courts' jurisdiction or have an express DIFC Courts' jurisdiction clause within the terms of the contract. This allows the DIFC Courts to hear any local or international

case and to resolve commercial disputes with the consent of all parties. At the time of entering into a contract the parties can decide to use either the local court system which is based on civil law procedures or the DIFC Courts under the common law procedure.

Technology and Construction Division (TCD)

Within the DIFC Courts' system 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.

The TCD is designed as a specialist court that is experienced in and capable of dealing with 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".

The Court of Appeal

The Court of Appeal lays down the final orders and judgments of the DIFC Courts. This is the highest court from which there is no further appeal.

The only orders and judgments of the Court of Appeal that can be challenged are those that fall within the ambit of the Judicial Tribunal where there is a question of conflicts of jurisdiction between the Dubai Courts and the DIFC Courts and the decision regarding which judgment

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should be enforced where conflicting judgments exist.

ADGM Court

The Abu Dhabi Global Market Court (ADGM Court) was set up in 2015 following the Application of English Law Regulations 2015, as enacted under Article 6(1) of the Abu Dhabi Law No 4/2013, and ADGM Courts, Civil Evidence, Judgments, Enforcements and Judicial Appointments Regulations 2015, as enacted under Article 10(3) and 13 of the ADGM Founding Law. The regulation allowing the application of English law is specific to the Abu Dhabi Global Market and specifically allows English common law to be the applicable law in the ADGM. Additionally, certain English statutes have been codified so as to apply (in a modified form) Contract Rights of Third Parties Act 1999, Partnership Act 1890 and matters related to real property as codified in the Real Property Regulations 2015 (Abu Dhabi Law No 3 of 2015).

The ADGM Courts comprise the Court of First Instance and Court of Appeal. Judgments of the Court of Appeal are final.

The ADGM Courts do not have jurisdiction to deal with family matters.

As with the DIFC Courts, parties either come within ADGM's jurisdiction or they may opt into the ADGM's jurisdiction where they choose their contacts to be governed by the ADGM Courts or by Arbitration.

The Court of First Instance

The Court of First instance is divided into three categories, the Commercial and Civil Division, the Employment Division, and the Small Claims Division for disputes where the claim does not exceed USD100,000.

The Court of Appeal

The Court of Appeal lays down the final orders and judgments of the ADGM Courts. This is the highest court from which there is no further appeal.

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. 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, 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 preserve the dignity of a family. Although all proceedings are public, they are essentially confidential in practice. Only the parties to the litigation and their attorneys have access to court documents.

The Ministry of Justice requires that 80% of litigation sessions are held on a virtual platform and that this is intended to be on a permanent basis. These virtual hearings are attended by the legal representatives of the disputing parties, the parties themselves or related individuals therein, if required. The virtual hearings are available to the general public with the exception of hearings related to, among others, national security and personal status.

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

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of Justice and must be registered as 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 DIFC Courts, which adopt the common law legal system, issued Practice Direction No 2 of 2017 (PD), which creates rules that are similar to the English law position with regard to third-party funding.

Similarly, the 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.

Both the PD and the Rules expressly require the funder and the funded party to enter into a litigation funding agreement.

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. Similarly, the UAE Federal Arbitration Law, DIFC Arbitration Law, and ADGM Arbitration Law also do not address third-party funding. Thus the subsequent questions below will be answered based on the practices and provisions of the DIFC Courts and that of ADGM Courts.

2.2 Third-Party Funding: Lawsuits

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 are defined within Section 225(8) of the Regulations and include “any sort of proceedings for resolving disputes (not just proceedings in court) whether commenced or contemplated”.

However, it is expressly stated in the Regulations that any third-party funding cannot be for proceedings that 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.

Under Part 1, Article 2(d) of the Rules a funded party means a litigant and includes a liquidator or a judicial manager.

Third-party funding is available to 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 maximum amount that a third-party funder will or may fund.

However, the Rules provide that a funder must have qualifying assets (cash and/or cash equiva-

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lents) 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 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. Third-party funders 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 Rules, do not permit contingency fee arrangements where they are based on success fees. 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 under the DIFC Court Rules.

As for ADGM Courts, only a conditional fee agreement that satisfies all the conditions under Section 222 of the Regulations 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, like when a party wishes to terminate a contract, or a landlord wishes to evict its tenant.

Or, in instances when there is an employee and employer dispute relating to any of the rights provided to any of them under provisions of the Labour Law, they shall file a request to the labour department concerned. This department shall summon the two parties to the dispute to settle the dispute amicably. If an amicable settlement is not possible, the said 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:

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- 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

Federal Law No 11 of 1992, UAE Civil Procedures Law, states that 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 wish to bring a claim. They can bring a case 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. This may be by way of electronic registration.

The statement of claim shall include details as laid down in Article 16 of the Cabinet Resolution of 57 of 2018.

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 then be notified.

Any request to amend the statement of claim should be 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 Regulations of Civil Procedures Law, maintained by Cabinet Resolution No 75 of 2021 Amending Certain Provisions of Cabinet Resolution No 57 of 2018 (Cabinet Resolution No 75 of 2021), pleas which are not related to public order such as the plea to challenge local jurisdiction, or that the dispute should not be heard by the court which is seised of the case, or the refutation of nullity (not related to public order) and all other pleas related to discontinuing procedures, shall lapse if they are not raised before the Case Management Office.

3.5 Rules of Service Service of Summons

Service of summons or notification by the court upon the defendant will occur after the hearing date has been set. The UAE Executive Regulations of Civil Procedures Law as amended provides that the service of a summons shall be

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undertaken on a party's request, or by order of the court, or the Case Management Office through the Process Server or in the manner as may be specified by the Regulations. The court may permit the claimant or their attorney to serve the summons using modern technological means unless the regulations or Case Management Office requires otherwise.

Summons can be served upon the defendant wherever they can be found, or at their domicile, or place of abode, or upon their attorney. If it cannot be served for a reason attributable to the defendant or if they refuse receipt, it shall be deemed as having been served on them personally. If the Process Server is unable to find or serve the defendant at their domicile or at their place of abode, a copy of the summons shall be left with their spouse, relative, relative in law, or servant living with them. If this is not possible, the Process Server can serve the summons by affixing the summons to the door of the defendant's home or office.

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

Failure to Serve

If the defendant cannot be served in accordance with the process, the hearing is likely to be adjourned for further notification by the court. The plaintiff or their representative may request the court to investigate the defendant's address. The court will order an investigation in relation to the defendant's address. The court will send letters of inquiry to the relevant authorities including the Department of Economic Development (DED) and the General Directorate of Residency and Foreigners Affairs (GDRFA).

Those authorities will provide the court with the defendant's address as held in their records. The court will order the service of summons at any new address in relation to the defendant.

Other Procedures

In the event the service of summons fails, the court will order service of the 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 relevant State and in another newspaper issued in a foreign language where the defendant is a foreigner.

The service of a summons to a person/corporation outside UAE who cannot be served through technological means, or as agreed between the parties, shall be effective if it is sent through the 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 save for labour disputes. Each claim must be filed separately. A collective labour dispute, as explained in Ministerial Decision No 749/2018 on Settling Collective Labour Disputes, is any dispute between an employer and their workers, on any of the basic labour rights stipulated in the labour contract, for all the workers or a group thereof in

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an establishment, provided that the number of workers involved in the dispute is not less than 100. The subject of the dispute involves a common interest of all or a group of employees in an establishment, in an occupation or trade, or in a professional sector.

3.8 Requirements for Cost Estimate

A cost estimate is not required by the court. It is 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 Civil Procedure Law and its amending Cabinet Decisions provide for an expedited procedure for seeking judgment if the creditor's entitlement to payment is established electronically or in writing.

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.

Another 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 a travel ban against a debtor if the credi-

tor has serious reasons to believe that the debtor may abscond abroad where the unconditional debt owed is over AED10,000.

A travel ban may also be issued to prevent 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

Payment Order

The payment order process provides an expedited way to obtain a judgment for payment in clear-cut debt cases. A payment order may be awarded to a creditor if it can be shown that the creditor has a straightforward and uncontested debt due and owing to them. Article 62(3) of the Cabinet Decision No 75 of 2021 recently confirms that the payment order process shall not preclude the creditor from claiming interest, compensation or taking any precautionary measure. This is a welcome change as a payment order had previously only been applicable to a claim for a fixed debt with interest.

The recent changes brought by the Cabinet Decision No 75 of 2021 are also clarified by Article 68 (bis), which provides that the Court of First Instance, besides the payment order judge, shall have jurisdiction over claims that satisfy the conditions for obtaining a payment order.

4.3 Dispositive Motions

One of the more common dispositive motions exercisable by the courts is where a litigant abandons a lawsuit. Where neither of the parties to the lawsuit have attended a court hear-

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ing, the court shall decide the claim. Where it is fit for being adjudicated, it will decide upon its cancellation.

Pursuant to Article 27(2) of the Cabinet Decision No 75/2021, the court may decide on the cancellation of the claim if the claimant fails to attend any session where the defendant appears, unless the latter requests a judgment to be issued.

4.4 Requirements for Interested Parties to Join a Lawsuit

Further to Article 95 of the UAE 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 that action. This can be through usual procedures, or by a request presented orally at the session in the presence of the litigants and which shall be entered in its process record. However, no intervention is admissible after the close 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 initially pays the costs of interim applications. However, those costs may be submitted for approval during the execution stage.

4.7 Application/Motion Timeframe

The relevant timeframes for a court to deal with an application or motion vary.

Precautionary Attachment

Before issuing an order, the judge may carry out a summary investigation where the documents supporting an application are insufficient.

If the supporting evidence and/or documents are deemed in order by the judge, an order is usually handed down within three days of the application having been made.

Payment Order

In relation to a petition for a payment order, provided the procedural rules are complied with, the court will grant an order within three days from the submission of the petition.

5. Discovery

5.1 Discovery and Civil Cases

The Law of Proof in Civil and Commercial Transactions allows an adversary to request the court to compel the submission of material documents or paper in the following instances:

- where the law allows that they are required to present or submit them;
- where the document is a joint document and relates to the interests of both parties; or
- if the adversary has based their claim on the document during any stage of the lawsuit.

5.2 Discovery and Third Parties

The court is permitted under 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 litigation can file the documents that they wish to rely on for their case. There is no obligation on a party to file a docu-

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ment that is detrimental to their claim/case. The court may also compel a party to submit the required documents.

5.4 Alternatives to Discovery Mechanisms

There is no process of discovery and inspection of documents under UAE Law. Each party files documents that it wishes to rely on for its 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:

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

Furthermore, if 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 the court relies heavily upon expert reports prior to issuing its judgment.

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 representation of a client,

unless such disclosure is required to prevent the perpetration of a crime.

The role of in-house counsel in terms of privileged communications with clients is dealt with in the Code of Ethics. This states that such information is to be kept confidential regardless of whether the representation is adviser, 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 as set out as follows:

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

However, it should be noted that the "without prejudice" concept in negotiations, settlement discussions, compromises and mediations, as found in common law jurisdictions, is not recognised in the UAE.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

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

- summary proceedings (see 4. Pre-trial Proceedings); and

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- 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

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

6.3 Availability of Injunctive Relief on an Ex Parte Basis

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

6.4 Liability for Damages for the Applicant

Occasionally, the court may order the applicant to provide 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 attachments on the debtor's movables or debts with third parties, even if they are deferred, suspended on a condition, or the subject of a dispute.

6.7 Consequences of a Respondent's Non-compliance

Whether a respondent complies or not (in terms of interim attachment) it 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 real properties.

7. Trials and Hearings

7.1 Trial Proceedings

The commencement of claims is undertaken electronically. The court will register the case and a hearing date will usually be set within one to two weeks.

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 for the presence of technicalities in a 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 between the parties.

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The supervising judge assigned for the case 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 within 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.

Copies of documents may be relied upon: Dubai Court of First Instance issued Circular No 1 of 2021 on 18 February 2021. The circular stipulates that copies of documents are admissible, and any objection thereto must be sufficiently supported or risk the consequence of being fined.

7.5 Expert Testimony

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

7.6 Extent to Which Hearings Are Open to the Public

Pursuant to a statement released by the Ministry of Justice on 7 July 2021, following His Highness Sheikh Mohammed bin Rashid Al Maktoum's direction on 20 June 2021, the Ministry of Justice will hold 80% of litigation sessions virtually before the end of 2021.

These virtual hearings would be attended by the legal representatives of the disputing parties, the parties themselves or related individuals, if required. The virtual hearings are available to the general public as an audience with the exception of hearings related to, among others, national security and personal status (see **1.3 Court Filings and Proceedings**).

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 appoint expert(s) for evaluation of the facts. The appointed expert(s) may be in the field of 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 persuasive by the judge, who may deliver their final judgment with reference to the report.

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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 six to nine months before a judgment is adjudicated in the Court of First Instance. Nonetheless, timeframes vary on a case-to-case basis.

At the appeal stage (before the Court of Appeal) the duration of the proceedings is typically three to six months.

The final appeal stage takes place before the Court of Cassation. The approximate duration from the filing of the appeal to the issuance of a judgment is three to six months.

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 and submit to the court in the next hearing. The court will then record the settlement agreement in its final judgment.

8.2 Settlement of Lawsuits and Confidentiality

Settlement of lawsuits is public and as such will 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 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. The General Assembly of the Dubai Court of Cassation issued Resolution No 1 of 2021 on 9 June 2021, pursuant to which the parties may now expect the courts to award an interest rate of five percent annually on the outstanding debt until the full payment is made.

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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.

The Rules of the Dubai International Financial Centre Courts 2014 (45.26) and ADGM Court Procedure Rules 2016 (179) deal with interest on judgments in the DIFC and ADGM courts respectively.

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, in exceptional circumstances, may authorise and deliver the sentences, decisions and orders related to that case.

The public prosecutor is authorised by law to enforce judgments issued in all criminal cases brought before the courts and they 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. The order

for execution shall be submitted on a petition by the concerned party to the execution judge. The judge shall issue his decision within a maximum of five working 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 order or morals.

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.

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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 appeal to the Cassation Court on questions of law.

10.3 Procedure for Taking an Appeal

Generally, parties have 30 days from the date of a civil Court of First Instance judgment 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 accused and 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 and notification expenses are to be paid by a claimant when registering the case and parties pay their respective attorney's fees. The court has the discretion to order which party should pay the expert fees and usually splits the costs during the 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 pay the court fees and expenses and these may be claimed during execution stage.

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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 prolong 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 (ADR)

12.1 Views of ADR Within the Country

The recent effort to increase the efficiency of ADR institutions can be seen through Decree No 34 of 2021 Concerning the Dubai International Arbitration Centre (DIAC) (the “Decree”) which took effect on 20 September 2021. The Decree supersedes several laws and abolishes the Emirates Maritime Arbitration Centre (EMAC) and the Dubai International Finance Centre’s (DIFC) Arbitration Institute (DAI), being the administering body of the DIFC-LCIA (London Court of International Arbitration). This is aimed at providing a streamlined arbitration practice and promoting Dubai as a global arbitration hub.

Federal Law No 6 of 2021 (Mediation Law) and Dubai Law No 18 of 2021 (Mediation Centre Law) both created a forum for the amicable settlement of disputes in order to encourage and increase the use of mediation/conciliation.

Previously under Law No 16 of 2009 (now repealed by the aforementioned laws) only disputes referred to the Centre by a Competent Judge could be adjudicated. However, parties are now free to bring disputes to the Centre by mutual agreement.

The new law also allows private entities to establish mediation centres which would have official recognition from the courts.

12.2 ADR Within the Legal System

The UAE legal system actively promotes ADR. The UAE courts facilitate mediation through committees including commercial dispute resolution committees, family guidance committees, settlement and reconciliation committees, rental dispute committees, and labour dispute resolution committees. Subject to the nature of the dispute and/or the value of the claim, in some Emirates like Abu Dhabi and Dubai it is not possible to proceed to the regular courts until an appearance has been made before the dispute resolution committee. The Court Management Office (CMO) is mandated to offer conciliation. The supervising judge of the CMO may issue a decision recording the same and such decision shall have the force of a writ of execution.

The ADGM courts provide a court-annexed mediation service, which was set up in 2016 to serve the increasing demand for mediation solutions.

The DIFC or ADGM court judges, if they deem it appropriate, can require parties to engage in an alternative dispute resolution process, such as mediation.

12.3 ADR Institutions

Some of the more notable institutions and/or centres are the Dubai International Arbitration Centre (DIAC), Abu Dhabi Global Markets Arbitration Centre (ADGMAC), Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCAC), and the International Islamic Centre for Reconciliation and Arbitration (IICRA).

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Pursuant to the Decree, the EMAC and the DIFC Arbitration Institute are integrated into DIAC as one unified arbitration centre. Both DIFC and LCIA have recently released statements, confirming that there is consultation taking place between LCIA and the Government of Dubai for the management of existing and future cases going forward considering the Decree, where arbitrating and/or mediating parties have agreed to bind themselves under the DIFC-LCIA Rules.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

The enforcement of domestic arbitral awards is regulated by the UAE Federal Arbitration Law No 6 of 2018 (the “UAE Arbitration Law”).

The enforcement of foreign arbitral awards is regulated by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (NYC) which the UAE ratified on 19 November 2006 without any reservation, which means that even arbitral awards issued in a non-contracting country of the NYC may be recognised and enforced in UAE under the NYC. The NYC was adopted into UAE laws by Federal Decree No 43 of 2006.

13.2 Subject Matters Not Referred to Arbitration

The UAE Arbitration Law provides that where matters cannot be submitted for conciliation, arbitration is not allowed. These matters include, but are not limited to, the following:

- commercial agency and distributor disputes (which are expressly subject to the exclusive jurisdiction of UAE Courts);

- labour disputes subject to the exclusive jurisdiction of UAE Courts, following a referral in the first instance to the competent department of the Ministry of Labour and Social Affairs;
- disputes of personal status (of a familial nature); and
- disputes of a criminal nature.

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

For the enforcement of domestic awards, the award is to be confirmed by the competent Court of Appeal in whose jurisdiction the arbitration was conducted by following the procedure of confirmation set forth in Article 55 of the UAE Arbitration Law. Then the award creditor will

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obtain an execution order to enforce the award against the debtor.

Once the execution order has been obtained, the creditor shall proceed pursuant to Cabinet Resolution No 57 of 2018, which regulates the enforcement procedures in addition to the above, by applying to the execution judge to open an execution case, upon which a summons notice will be served on the debtor requesting payment of the debt with 15 days from the date of the notification.

For the enforcement of foreign awards, an execution order must be obtained in accordance with procedures set out in Article 85 of the Cabinet Resolution No 57 of 2018. The execution order may only be issued if the conditions required for the enforceability of the foreign arbitral award stated in Articles IV and V of the NYC are fulfilled.

14. Outlook and COVID-19

14.1 Proposals for Dispute Resolution Reform

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

14.2 Impact of COVID-19

The UAE courts were proactive in temporarily suspending 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 making use of e-submission facilities. There was no suspension of operation of limitation periods.

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Alsuwaidi & 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, help 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 the client's needs in all forums. Alsuwaidi & 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.

Authors



Mohammed R. Alsuwaidi is the managing partner and founder of Alsuwaidi & Company. Mohammed has been appointed as an arbitrator on over 70 arbitrations and has been called

upon as a UAE law expert in international arbitrations. He holds several professional associations, including board member for the Islamic Lawyers Association and the Arbitration Council in the Kingdom of Saudi Arabia, vice president of the Dubai Swiss Business Council and member of the UAE Bar Association. Mohammed has authored a number of articles, including "Cyber Blackmailing, Ensuring Validity of Arbitration Agreements in the UAE" and "The Legitimacy of Arbitration as a Means of Dispute Resolution".



Robert Sliwinski is a barrister, chartered arbitrator at Alsuwaidi & Company, accredited adjudicator and mediator, quantity surveyor and dispute board member. He is registered

to handle all matters before the DIFC Courts (Parts I & II). As an arbitrator, Robert has been involved in a wide array of matters, many concerning property-related disputes. He has most recently acted as an arbitrator in matters before Dubai International Arbitration Centre (DIAC), DIFC-LCIA Arbitration Centre, International Chamber of Commerce (ICC) and the Chartered Institute of Arbitrators as well as direct ad hoc appointments by the parties in dispute.

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Reda Hegazy of Alsuwaidi & Company has more than 29 years' experience in commercial litigation in the UAE. During this time, he has also conducted several arbitrations. Reda leads

the litigation team in commercial, construction, employment, medical negligence, and real estate. He has extensive knowledge and expertise in the UAE laws and the courts which he applies strategically to dispute matters, legal consultation, and any client matter to generate a positive outcome. Furthermore, he boasts an exceptional track record. Reda has held a number of prominent positions as legal adviser to government and quasi-government entities. This included being involved in the legal committee that drafted federal housing laws in the UAE.



Merline Dsouza is an Associate at Al Suwaidi & Company. A qualified Lawyer from India, she specialises in regional criminal practice and her practice encompasses matters relating to

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