

What is ADR?

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Overview

- In the UAE, alternative dispute resolution (ADR) offers three mechanisms of resolving disputes, namely, direct negotiation, mediation and arbitration.
- In past years, the advantages of ADR have partly been overlooked due to unfamiliarity with the dynamics of this system, but the use of ADR is increasing exponentially as the benefits of this “legal gem” are being uncovered.
- Compared to the traditional local court system, ADR offers a relatively cheap, flexible and quick alternative. ADR may also help repair/maintain business relationships. By reducing the parties' concerns with the legal aspects of resolving a dispute, mediation and arbitration processes allow the parties to focus on the commercial aspects of a dispute.
- While mediation and conciliation are voluntary processes that can be used for any sort of dispute, arbitration does not apply to certain disputes such as labour, personal status and commercial agency disputes.
- In an attempt to ensure a lower litigation rate, UAE law imposes a mediation stage before resorting to local courts. This applies to small claims and labour claims. For example, in labour disputes, a claimant, whether an employer or the employee, must approach the Ministry of Labour, or the concerned authority in the case of freezones. The aim is to conduct mediation sessions with the aim of settling the dispute prior to referral to the competent local courts.
- This Practice Note is applicable to onshore, offshore and freezones in the UAE.

Definitions

- *Arbitration*: Involves presenting a dispute to a neutral arbitration committee, distinct from the traditional litigation procedure with the UAE courts. The merits of an arbitration decision cannot be challenged and there are generally very limited manners of appealing an arbitral award. The most prominent arbitral institutions in the UAE are the DIFC-LCIA and the ADCCAC and the Islamic Centre for Reconciliation and Arbitration in Sharjah and Ras Al Khaimah. Ad-hoc arbitration, which is not administered by any arbitral institution, is a process whereby the parties select their own independent arbitrators.
- *ADCCAC*: Abu Dhabi Conciliation and Arbitration Centre.
- *ADR*: Alternative Dispute Resolution.
- *Centre*: The Centre for Amicable Settlement of Disputes.
- *Conciliation*: An alternative means for the amicable resolution of the disputes between the parties which is mandatorily resorted to before filing a case or while the case is heard before the court at the request of the parties, in which they seek assistance of a neutral third party to attempt to reach an amicable settlement signed by the parties which is binding on them.
- *Direct negotiations*: Means negotiation between parties to reach a settlement that can take place without the need for a third party.
- *DIAC*: Dubai International Arbitration Centre.
- *DIFC-LCIA*: Dubai International Financial Centre London Court of International Arbitration.
- *DMCC*: Dubai Multi Commodities Centre.
- *Mediation*: An optional or alternative means for amicable settlement of civil or commercial disputes that have arisen or that may arise between the parties, whether contractual or non-contractual, in which they seek the assistance of a neutral third party, being the mediator, irrespective whether such mediation is consensual or court referred. Mediation processes are characterised by the fact that their outcome will not bind the parties to reach a settlement. It is a voluntary process whereby a party cannot be forced to participate. The mediator can make no binding determinations, they have a duty of confidentiality to both parties, and they must be a neutral third party with no associations with either of the parties.
- *Settlement agreement*: The document prepared by a mediator or the conciliator and signed by the parties, including the settlement reached to resolve the dispute either wholly or partially.

Practical Guidance

Direct negotiations

Prior to the establishment of courts in the UAE, residents preferred and relied on direct negotiations and mediation as their principal resort for resolving disputes. Generally, an elderly and wise individual took the role of a reconciler between the disputing parties.

Meetings or sessions took place, during which the parties deliberated their disputes and ultimately the reconciler came to a decision, or the parties unanimously agreed upon a decision. Although decisions were not legally binding, the parties did respect and abide by the decisions rendered during these meetings.

Such culture relatively exists in present day as disputing parties may opt to resort to negotiating their dispute through a knowledgeable independent individual or even directly between themselves.

This process is certainly more cost effective and quicker than lengthy litigation procedures.

Albeit there are no written rules or guidelines for conducting such negotiations, parties must take into account the following key elements while conducting settlement negotiations with one another:

- Prior to entering into any settlement negotiation, it is important to understand the interests and positions of the other side. Knowing the opposition's strengths and weaknesses will provide a clear and concise guideline for the negotiation process.
- Assessing the goals and objectives will facilitate clear and practical decision making.
- It is always advisable to determine alternative options prior to initiating any negotiations, for example, it is essential to assess the legalities and validity of the claims and demands in case the settlement negotiations did not materialise.
- Illustrating sincerity and commitment are two key elements while negotiating an amicable settlement.
- It is necessary to decide the best mode of communication for achieving the negotiation objectives. There are times when face-to-face is the best way to negotiate, and other times when written communication might be more successful and feasible.

Mediation

Federal Decree-Law No. 40/2023 On Mediation and Conciliation in Civil and Commercial Disputes provides for remote mediation and conciliation meetings through electronic and remote communication which are to be based on the approval from the council or chairman of the local judicial authority.

Mediation involves strictly confidential proceedings. It is a positive and cost-effective method of resolving disputes using a neutral third party with the necessary expertise within the field of the dispute.

Under Federal Decree-Law No. 40/2023, there are two main types of mediation:

- **Consensual mediation:** In enforcing the mediation agreement, the parties may directly resort to the centre to settle the dispute before filing a law suit. The mediation agreement will provide for the appointment of mediator or specify a method for their appointment and also the language of mediation.
- **Court-referred mediation:** Under this mediation process the competent court may issue a decision to refer the dispute to mediation at any stage of the case, either upon its proposal with the consent of the parties or based on their request or while enforcing a mediation agreement.

Procedure

Article 18 of Federal Decree-Law No. 40/2023 provides for mediation procedures as follows:

- The mediator will notify the parties/their authorised representatives to the dispute of the mediation timetable and the date/place.
- The notice will be served through the prescribed legal means including electronic.
- The parties will then attend the sessions in person or be legally represented therein.
- Each party to the dispute will submit a brief memorandum well before the session accompanied by documents and evidence they rely on, though there will be no exchange of these documents between the parties.

Institutes in the UAE in relation to mediation

Federal Decree-Law No. 40/2023 which repealed Federal Law No. 6/2021 On Mediation for the Settlement of Civil and Commercial Disputes creates a new structure for mediating disputes in the UAE. Further, Dubai Law No. 18/2021 On the Regulation of the Conciliation Work in the Emirate of Dubai, repealed and replaced Dubai Law No. 16/2009 On the Establishment of the Centre for Amicable Settlement of Disputes, which originally established the Dubai Centre for Amicable Settlement of Disputes (DCASD) in 2012 and attached it to the local courts. The DCASD which forms part of the Dubai courts allows parties to reach an amicable settlement through the involvement of mediators, reviewing the dispute along with the settlement arrived at and referring it back to the Dubai courts.

With the introduction of Federal Decree-Law No. 40/2023 and Dubai Law No. 18/2021, the UAE has certainly strengthened its dispute resolution mechanism which enables businesses to confidently take the route of an alternative dispute resolution without resorting to arbitration or litigation. The issuance of such laws illustrates the encouragement to increase the use of mediation in Dubai and the UAE. However, mediation will not be resorted to in cases where conciliation has been previously resorted to.

Dubai

The Mediation Centre in Dubai was sponsored by the Private Office of His Highness Sheikh Saeed Bin Ahmed Al Maktoum, and with the support of leading businesses and law firms. It offers traditional Middle Eastern conciliation practices combined with modern mediation techniques. By sourcing independent third parties to act as business mediators, it helps parties resolve disputes out of court, in a commercial and amicable manner. The Mediation Centre is neutral and their business mediations are confidential.

Abu Dhabi

The Mediation and Conciliation Centre in Abu Dhabi specialises in dealing with civil and commercial disputes (including personal status, labour etc.) amicably, without fees, before referring them to the court. Most civil and commercial cases, such as financial claims, may not be submitted to the court before they are viewed by the Mediation and Conciliation Centre. The Mediation and Conciliation Centre is located in Abu Dhabi and has branches in Al Ain and Al Dhafra regions.

The process is initiated by the claimant by way of submitting a statement of claim before the centre whereby hearings will be held. In case of a technical issue, the centre appoints an expert within the field of the dispute who is registered with the court roster in order to render a non-binding opinion. Should the parties fail to reach an amicable settlement, the claimant may escalate the matter to the competent court.

Dubai International Financial Centre (DIFC) and mediation

Another mediation entity is the DIFC courts which have their own set of rules regarding ADR, which is stipulated in part 27 of the [Rules of the DIFC Court](#)^[1 p.7]. The DIFC courts encourage and invite disputing parties to opt for mediation and conciliation as an alternative means to resolve a dispute, rather than imposing mediation as a prerequisite to litigation. It is also important to note that the DIFC courts are competent to adjudicate upon all civil and commercial disputes ranging from financial, debt recovery and employment matters. The DIFC courts exclusively consider all claims arising from the DIFC territory and its operations. Moreover, the DIFC courts look into any other claims in which all relevant parties explicitly agree in writing to use the same.

DIFC-LCIA Arbitration Centre

In 2008, the DIFC-LCIA Arbitration Centre was established to offer mediation as well as arbitration services. The DIFC-LCIA Arbitration Centre has its own rules contained in the LCIA Mediation procedure.

DMCC Disputes Centre Mediation

The DMCC Disputes Centre offers both workplace and commercial mediation services for its member companies. The mediator from the DMCC Disputes Centre will act as an impartial facilitator to assist the parties with their negotiations. However, the mediator does not have the authority to impose any binding decision on the parties but works to facilitate an agreement between the parties and make them understand and agree to the terms of any settlement reached.

Arbitration

The UAE increasingly favours arbitration as a suitable mechanism for alternative dispute resolution and is committed to ensuring that this mechanism develops in the UAE in line with international best practice.

Arbitration offers the choice to have cases heard in accordance with the principles of different legal systems such as:

- civil law principles by choosing Dubai as the seat of arbitration; or
- common law principles by choosing the DIFC as the seat of arbitration.

Nevertheless, it is worth noting that certain arbitration awards, such as those of the DIAC, must be ratified by UAE courts in order to be enforceable.

Earlier arbitration was governed by Federal Law No. 11/1992 On the Civil Procedures Law. On 2 January 2023, Federal Decree-Law No. 42/2022 On the Promulgation of the Civil Procedure Law came into effect. It applies to all legal proceedings before the onshore UAE courts that have yet to be decided on, and repeals Federal Law No. 11/1992.

In May 2018, the President of the UAE issued Federal Law No. 6/2018 on Arbitration. This has recently been amended by Federal Decree-Law No. 15/2023 On Amending Some Provisions of Federal Law No. 6/2018 Concerning Arbitration. Federal Law No. 6/2018 explicitly provides for the procedural rules, and governs arbitration proceedings. Pursuant to the arbitral institution and rules adopted by the parties, arbitration proceedings will proceed before the institution and will be held by a single or multiple arbitrators as contractually agreed.

In the event that the parties did not explicitly agree on the arbitral institution in the arbitration clause within the agreement, then the parties may approach the court to appoint an arbitrator to adjudicate upon the dispute.

Related Content

Legislation

- Federal Decree-Law No. 40/2023 On Mediation and Conciliation in Civil and Commercial Disputes
- Dubai Law No. 18/2021 On the Regulation of the Conciliation Work in the Emirate of Dubai
- Federal Decree-Law No. 42/2022 On the Promulgation of the Civil Procedure Law
- Federal Law No. 6/2018 on Arbitration
- Federal Decree-Law No. 15/2023 On Amending Some Provisions of Federal Law No. 6/2018 Concerning Arbitration

Websites

- [DMCC Disputes Centre Mediation Rules](#)^[2 p.7]
- [DMCC Disputes Centre](#)^[3 p.7]
- [DIFC Court Rules](#)^[1 p.7]

Author



Rajiv Suri

Senior Associate, *Alsuwaidi & Company LLC (UAE)*

r.suri@alsuwaidi.ae

+971545831894

Areas of expertise

Intellectual Property; Corporate.

Education

B.Sc (Hons), LL.B, Delhi University.

Memberships

- Bar Council of Delhi.
- Authorised Legal Consultant by Legal Affairs Department, Government of Dubai, UAE.

Biography

Rajiv is one of the leading expert lawyers with over 28 years of experience specialising in the field of Intellectual Property laws, Commercial and Transactional laws including contracts. He qualified as a lawyer in 1994 after obtaining degree in law and since then has practiced as an Advocate/Legal Consultant.

His expertise lies at handling both contentious and non-contentious issues both in India and UAE. Rajiv advice clients on strategies involving a wide range of intellectual property matters and has been involved in managing corporate portfolios across various industries.

He has also dealt extensively on commercial and transactional matters involving drafting and vetting varied forms of commercial agreements/contracts, technical knowhow agreements, licensing issues including third party/vendor contracts, non-disclosure agreements, manufacturing of goods agreement, business development and service agreement, brand acquisition agreement, assignment deed/s, drafting and execution of Wills in UAE etc.

He has been an author/co-author of articles relating to intellectual property issues for some of the leading legal publications. He has been a speaker at webinars/round table/s on issues relating to intellectual property rights and non-muslim personal law in UAE.

His name appears in UK's whoswholegal.com (WWL) 2008 for UAE, as a ranked prosecution lawyer in Managing Intellectual Property (MIP) 2019, in the list of World's Leading Trademarks professionals by World Trademarks Review (WTR) for the years 2020, 2021, 2022 & 2023 (UAE) and in the list of IP experts compiled by AsiaIP for the years 2021 and 2022.

Rajiv is fluent in Hindi and English.

Notes

1. [^] [p.4] [p.4] <https://www.difcourts.ae/rules-decisions/rules>
2. [^] [p.4] <https://www.dmcc.ae/application/files/6014/8914/5041/DMCCDisputesCentreMediationRules.pdf>
3. [^] [p.4] <https://www.dmcc.ae/free-zone/already-a-member/value-added-services/disputes-centre>