

# Litigation and enforcement in United Arab Emirates: overview

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## MAIN DISPUTE RESOLUTION METHODS

### 1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

Commercial disputes in the United Arab Emirates (UAE) are generally resolved through litigation in the courts or arbitration. Arbitration is becoming an increasingly popular way to resolve disputes. The UAE is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and the UAE courts in the main enforce foreign arbitral awards.

Conciliation and Mediation are less common. In the Emirate of Dubai, a Centre for the Amicable Settlement of Disputes was established in 2009. Disputes of a certain nature, (such as, disputes involving banks and claims under AED100,000) must be referred to the Centre to attempt settlement before litigation can commence.

The UAE has a civil law system, and an inquisitorial approach is taken by the bench. Litigation is entirely court-driven, and the court has control over scheduling of hearings, appointment of experts and so on. The UAE courts do not adhere to the traditional common law standards of proof such as the balance of probability test in civil claims or the beyond all reasonable doubt test in criminal matters. The final decision in any case is at the discretion of the judge(s) hearing the case.

#### General overview and court structure

The UAE is a federation of seven Emirates. All member Emirates, except for Dubai and Ras Al Khaimah, are part of a federal judicial system. Dubai and Ras Al Khaimah have independent judicial systems. In every Emirate, the court system consists of the:

- Court of First Instance.
- Court of Appeal.
- Court of Cassation (however, Ras Al Khaimah does not have a Court of Cassation).

#### The legal system

The legal system in the UAE is based on the Constitution of the United Arab Emirates 1971 (Constitution). The federation has sovereignty in all matters assigned to it under the Constitution. The individual member Emirates have sovereignty over their own territories in all matters not in the exclusive jurisdiction of the federation, as set out in the Constitution.

In addition, each Emirate has a hereditary ruler who exercises considerable sovereignty over his own Emirate. The seven rulers, as members of the Supreme Council, collectively exercise sovereignty over the UAE.

The civil law system and the Sharia are the main sources of legislation (*Constitution*).

#### Civil law system

The UAE operates under a civil law system and statutes are the primary source of law. Judgments of the higher courts are not binding on the lower courts (although they can be a useful guide). Each case is decided on its own merits and facts.

All court proceedings are in Arabic. All non-Arabic documents filed in court by the litigants must be translated into Arabic by a translator licensed by the Ministry of Justice.

The judicial system in the UAE is essentially inquisitorial in nature. In each case, the judge will investigate the facts and apply the law to the facts in reaching his judgment. There is no concept of a jury trial.

All proceedings in UAE civil matters are based on the written pleadings of the parties, supported by documentary evidence. In general, there is no oral hearing in civil cases. There is a widespread practice for both the federal and the Dubai courts to refer matters to court-appointed experts for findings of fact in a variety of areas, including:

- Finance.
- Accounting.
- Other technical matters.

Experts' reports are not binding and can be challenged by the parties, but they are usually considered persuasive by the courts. Oral evidence can only be given to establish a fact in a civil case with the permission of the court and the right to cross-examine witnesses is severely restricted.

The UAE courts do not adhere to the traditional common law standard of proof such as the balance of probability test in civil claims or the beyond all reasonable doubt test in criminal matters. The final decision in any cases is at the discretion of the judge(s) hearing the case.

#### The Sharia

Broadly, the Sharia is a body of religious, ethical and legal rules. The fundamental roots of Islamic Sharia are:

- **The Koran.** This is a collection of divinely ordained rules.
- **The Sunna.** This consists of the precepts and sayings of the Prophet (*Hadith*), and an account of his actions.

Sharia is founded on familiar concepts of justice and equity, and the practical result in commercial matters is often the same as would be reached under Western law. For example, Sharia strives to give effect to the intention of the parties in matters of contract. However, the parties' intention may be differently construed by jurists in the two systems. For example, one scholar has argued persuasively that in many cases traditional Sharia would release the parties to a contract from performance for reasons of changed circumstances or frustration of purpose, where English law would bind the parties to their contract.

## The Dubai International Financial Centre (DIFC)

In addition to the civil law system and the Sharia, the DIFC has its own body of laws, with an independent judicial authority and courts which deal with matters arising in the DIFC.

The DIFC has a common law judicial system, and proceedings are conducted in English.

Although the jurisdiction of the court was initially limited to the geographical area of the DIFC, Dubai Law No. 16 of 2011 allows the DIFC Court to hear local or international cases and to resolve commercial disputes with the consent of all parties. This chapter does not cover the DIFC courts and procedures.

In some recent cases, the DIFC Court has held that it has jurisdiction to recognise and enforce foreign arbitration awards under the New York Convention and domestic arbitration awards made within the Emirate of Dubai but outside the DIFC. The DIFC Court of Appeal has also held that the DIFC Court can enforce foreign money judgments in Dubai.

Judgments of the DIFC Court can be enforced in Dubai outside the geographical area of the DIFC under a protocol between the DIFC Court and the onshore Dubai Court.

## COURT LITIGATION

### Limitation periods

#### 2. What limitation periods apply to bringing a claim and what triggers a limitation period?

Law No. 5 of 1985 regarding civil transactions (Civil Code) contains general rules relating to limitation. In general, a claim is time-barred after 15 years, unless a specific provision states otherwise. However, there are many exceptions to the general rule. Several statutes contain limitation periods, depending on the type of dispute. In addition, there are several specific provisions dealing with time bars under Law No. 18 of 1993 regarding commercial procedure (Commercial Code).

Subject to the exceptions, the limitation period is generally:

- 15 years for contract disputes.
- Three years for disputes relating to cheques.
- Three years for insurance disputes.
- Three years for causing harm (tort).
- Ten years for building contracts (defects).
- One year for carriage of goods by sea.
- One year for employment-related disputes.

There is no single rule as to what triggers a limitation period. In some instances (such as claims under a bill of lading) the limitation period is triggered by the cause of action. In other instances (such as employment matters and charterparties) the limitation period commences from the end or termination of the relevant contract.

### Court structure

#### 3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

There are no specialist courts. All commercial cases are heard by the civil courts, usually consisting of:

- Three judges in the Court of First Instance.
- Three judges in the Court of Appeal.
- Five judges in the Court of Cassation.

These judges may not have specialist knowledge of commercial matters.

However, commercial disputes must first be referred to a Reconciliation and Settlement Committee (Committee), appointed by the Ministry of Justice (*Federal Law No. 26 of 1999 regarding establishing reconciliation committees in the Federal Courts (Reconciliation Committee Law)*). The Committee facilitates settlement and usually hears parties in person.

If a claim cannot be settled, the claimant can file a claim in the Court of First Instance; if the parties reach a settlement, they record and sign its terms. This agreement is binding and enforceable.

This procedure does not apply in Dubai or Ras Al Khaimah.

Under Dubai law No. 16 of 2009, a Centre for Amicable Settlement of Disputes (Centre) was established in Dubai. The Centre can hear *inter alia*:

- Disputes relating to partition of common property.
- Disputes relating to debts up to a maximum value of AED100,000.
- Disputes involving a bank.
- Disputes where the parties have agreed to refer the matter to the Centre in ongoing litigation, regardless of the value of the dispute.

These disputes must be referred to the Centre before the parties can file for proceedings before the Dubai Courts. Time limitation periods are suspended while the matter is before the Centre.

Labour disputes and disputes relating to personal status cannot be referred to the Centre.

### Rights of audience

#### 4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

### Rights of audience/requirements

Only Arab advocates (that is, UAE national lawyers and lawyers from certain other Arab countries who must satisfy specified criteria before a licence is issued) have rights of audience in the UAE. A party can represent itself in court.

In general, there is no oral hearing in civil cases (*see Question 18*). The case is conducted using written memoranda and documentary evidence, and the matter is often referred to an expert registered with the court (*see Question 19*). Oral evidence can only be given to establish a fact in a civil case with the permission of the court and the right to cross-examine witnesses is severely restricted (*see Question 18*).

### Foreign lawyers

Legal consultants are usually international law firms and foreign lawyers licensed to advise on UAE law, but are not permitted to appear in court. However, some foreign legal consultants are actively involved in litigation and often prepare all the submissions to be filed in court. Depending on the amount of assistance provided by legal consultants, advocates' fees may be considerably reduced.

## FEES AND FUNDING

#### 5. What legal fee structures can be used? Are fees fixed by law?

Fees are not fixed by law. Lawyers usually charge a fee which is calculated as a percentage of the amount of the claim. For example, the fee charged for acting in the Court of First Instance does not usually exceed 10% of the claim amount (although there is no cap on the amount that can be charged). The percentage rate typically charged depends on the following factors:

- The amount of the claim.
- The complexity of the matter.
- Whether the services of legal consultants are used (*see Question 4, Foreign lawyers*).

Additional fees are usually charged for acting in the:

- Court of Appeal (an additional 50% of the fee charged for acting in the Court of First Instance).
- Court of Cassation (25%).

Additional fees are usually charged for acting in relation to a counterclaim.

Lawyers sometimes agree to bill based on hourly rates. The law does not permit contingency fee arrangements.

## 6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

### Funding

Commercial litigation is usually funded by the client personally. Advocates usually require advance payment of the fee.

### Insurance

The practice of obtaining insurance to cover legal costs is not generally common or required. Insurance is often not cost-effective.

## COURT PROCEEDINGS

### Confidentiality

## 7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

Hearings are generally held in public (for exceptions to this rule, see *Question 9*). However, there is usually little or no oral hearing (*see Question 4*). Also, the public cannot inspect the court file (which contains a record of the proceedings, including pleadings, evidence, court orders, and so on). Only the parties to the litigation and their lawyers have access to these records. Therefore, although all proceedings are in theory public, they remain virtually confidential in practice. There is also provision to exclude the public from the hearing (*Article 76, Law No. 11 of 1992 (as amended) regarding the Law of Civil Procedure (Civil Procedure Code)*), but only in exceptional circumstances.

### Pre-action conduct

## 8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

The Civil Procedure Code does not contain any provisions relating to pre-action conduct. However, in certain Emirates, commercial disputes must be referred to a Committee before a claim can be filed (*see Question 3*).

### Main stages

## 9. What are the main stages of typical court proceedings?

### Starting proceedings

Proceedings are started by filing a claim (known as a plaint in the UAE) in the relevant court office on payment of the required court fee. On application by

the claimant, payment of court fees can be deferred in exceptional cases (for example, where the claimant is an accident victim).

The court fee depends on the value of the claim, and has a maximum cap (except in cases filed before the Abu Dhabi Court). Generally, the court fee is:

- In Dubai: 6% of the claim value, subject to a maximum of AED20,000 if the claim value is less than AED500,000, a maximum of AED30,000 if the claim value is between AED500,000 and AED1,000,000 or a maximum of AED40,000 if the claim value is more than AED1,000,000. If provisional orders are sought, a further fee of 50% of the initial filing fee is payable, subject to a maximum of AED10,000 if the claim value is less than AED500,000, a maximum of AED15,000 if the claim value is between AED500,000 and AED1,000,000, or a maximum of AED20,000 if the claim value is more than AED1,000,000.
- In the federal courts: 4% of the claim for the first AED100,000 and 5% of the amount over AED100,000 (up to a maximum of AED30,000). This fee is payable either on an application for provisional relief, or on filing the substantive suit.
- In Abu Dhabi: from 1 January 2014, the court fee for civil or commercial claims is 3% of the claim value. There is no cap on this fee.

The claim must:

- Meet procedural requirements.
- Include the names and addresses of the parties to the action. Recently, the practice of the court is to also require e-mail addresses for all the parties.
- Include details of the claim.

The court issues a summons with a hearing date endorsed on it for service on the defendant, with a copy of the claim and any supporting documents filed by the claimant. Documents in support of the claim are usually annexed to the claim and must be translated into Arabic.

The lawyers acting for the parties must be authorised by a duly executed power of attorney:

- If executed in the UAE, the power of attorney must be signed before the court notary.
- If executed abroad, the power of attorney must be duly notarised and authenticated by the UAE embassy or consulate in the country in which the power of attorney is executed. The power of attorney must then be duly authenticated by the UAE Ministry of Foreign Affairs and translated into Arabic by a translator licensed by the Ministry of Justice.

### Notice to the defendant and defence

A court officer serves the summons, claim and attached documents on the defendant. The court officer requires the defendant (or an employee if the defendant is a corporate entity) to sign a copy of the summons acknowledging receipt. If the court officer is unable to serve the defendant before the allocated hearing date, the court adjourns the case for another date. If personal service is not possible, provision is made for service by publication.

If the proceedings are to be served on a defendant abroad, the summons is served through consular channels. Under this method, the court forwards the documents, through the UAE Ministry of Justice and the UAE Ministry of Foreign Affairs, to the UAE embassy in the country where the defendant is resident. The papers are then served on the defendant under the law and procedures of the country in which the defendant is resident. This procedure can be long. The UAE court requires proof of service.

The defendant is generally represented by lawyers duly authorised by a power of attorney (*see above, Starting proceedings*). If there is insufficient time for a power of attorney to be executed and filed, the lawyers can request an adjournment (which is usually granted). The defendant can file an answer (that is, a response to the claim).

### Amendments to the UAE Civil Procedures law

Federal Law no. 10 of 2014 (New Law) amended several articles of Federal Law no. 11 of 1992 (UAE Civil Procedures Law). The New Law came into

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effect on 1 March 2015. The aim of the New Law was to strengthen and streamline certain aspects of civil procedure in the UAE. Some key changes include amendments aimed at expediting the process of notification and service such as:

- Empowering the court to authorise a plaintiff or their attorney to carry out the service process.
- The statutory time within which the service processor can serve court documents is extended to take place between 7am and 8pm, originally the time ended at 6pm.
- In cases where it is difficult to notify the opposing party (whether through deliberate avoidance or otherwise), it is now possible to use modern alternatives, such as, the use of e-mail addresses or other modern methods of communication (which will be identified at a later stage by the Ministry of Justice).
- Service of documents is no longer limited to the opposing party; it can also be done by service on any of that party's employees. For merchant ships, the New Law permits the service to be effected on the ship's crew and the ship's agent where the ship has already sailed.
- In cases where one of the parties is domiciled overseas, service of papers can be effected through the means agreed on by the parties rather than having to go through diplomatic channels as was previously the case.
- The New Law also allows the commencement of claims and appeals (except appeals to the Court of Cassation) electronically.

### Subsequent stages

Once an answer has been filed, the trial is adjourned for the claimant to respond. Further adjournments (usually at intervals of about two to four weeks) are given so that memoranda can be filed by the parties. Once the court believes that the case has been sufficiently pleaded, it reserves the matter for judgment. The entire proceeding is based on written submissions supported by documentary evidence. The court usually appoints an expert to assist it and usually accepts the expert's report (*see Question 19*).

Proceedings in the UAE courts are court-driven and the parties have little, if any, control over the pace at which the matter proceeds.

## INTERIM REMEDIES

### 10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

The Civil Procedure Code provides for a summary judgment procedure where all of the following apply:

- A creditor's entitlement to payment is confirmed in writing.
- The claim is for a specific or liquidated sum (provided that the claim is based on a commercial document, such as a cheque, promissory note or bill of exchange).
- The claim is against the drawer or guarantor.

A demand for payment must be made to the defendant at least five days before submitting an application for summary judgment. The application is then made in duplicate to the court, together with the supporting commercial documents. The amount claimed must be the same as set out in the demand for payment.

If the court gives summary judgment in favour of one of the parties, it endorses its order on one of the copies of the application for summary judgment. This is served on the defendant, who has 15 days to apply to have it set aside, setting out the relevant grounds. Once the application to set aside is made, there is what amounts to a full trial on the matter. All arguments are pleaded and the Court of First Instance adjudicates on all defences, including preliminary defences such as jurisdiction, time-bar, and so on, in its final judgment.

Except where the conditions set out above apply, there is no other provision for summary judgment. Injunctive relief and interim remedies are not generally available (*see Question 12*).

### 11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

There is no provision requiring a party to provide security for costs and the courts do not make orders for security for costs. In any event, when giving judgment in a matter, the court generally awards only token amounts in legal fees (*see Question 22*). Therefore, the successful party cannot recover a major portion of the costs incurred in litigation.

### 12. What are the rules concerning interim injunctions granted before a full trial?

#### Availability and grounds

Injunctive relief and interim remedies are not generally available, apart from:

- Summary judgment (*see Question 10*).
- Interim attachment orders (*see Question 13*).
- In certain specific situations (*see Question 14*).

There is no standard burden of proof which has to be met in order to successfully apply for injunctive relief. The decision to award injunctive relief is at the discretion of the court hearing the application.

#### Prior notice/same-day

Applications for preliminary relief are made *ex parte* and are usually determined on the day of the application or the next working day.

#### Mandatory injunctions

Mandatory injunctions are not available in the UAE.

#### Rights to vary or discharge order and appeals

Interim *ex parte* orders may be sought to be set aside by filing a petition. There is no set time limit to file a petition and petitions are heard *inter partes*. A party wanting to appeal a decision on a petition, may do so within ten days from the date of the decision. Thereafter, the decision can be appealed to:

- The Court of Appeal, within 30 days from the date of the decision of the First Instance Court.
- The Court of Cassation, on a question of law (if the value of the dispute exceeds AED200,000) within 60 days of the Court of Appeal's decision.

Where interim orders are obtained under the Civil Procedure Law, the claimant must file a substantive suit on the merits within eight days of the interim order being granted. One of the reliefs sought in the proceedings would ordinarily include an order confirming the provisional order. The defendant would ordinarily include a request that the interim order be vacated. The judgment of the court is appealable in the ordinary way.

### 13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

#### Availability and grounds

The courts can make provisional orders, including provisional attachment of assets to secure a claimant's claim (attachment orders). The court must be satisfied that there is both a:

- *Prima facie* case against the defendant.



- Risk that if the order is not granted the claimant may not be able to enforce any judgment subsequently obtained.

The application for an attachment order must specify the assets sought to be attached. The court does not usually grant a general attachment order over unspecified assets. The New Law (*see Question 9*) provides that in cases where movables are to be seized, the person applying for the attachment order is required to provide a comprehensive description of the things he wishes to seize as part of the attachment order.

Attachment orders are awarded at the judge's discretion and the claimant must prove the need for attachment. Evidence must be provided establishing that there is an imminent danger of assets being removed in a way that would negate the effect of any judgment subsequently obtained.

If an attachment order is granted, a substantive claim must be started within eight days of the order. If the attachment order secures claims made in proceedings abroad, the substantive claim usually seeks only an order validating the attachment and does not seek a judgment on merits.

#### Prior notice/same day

Urgent relief applications (other than for the appointment of an expert to examine evidence that might be lost) are made *ex parte* and are usually determined on the day of the application or the next working day.

#### Main proceedings

The main proceedings need not be in the same jurisdiction. In limited circumstances, the Civil Procedure Code confers jurisdiction on UAE courts to grant summary and provisional relief (such as an attachment order) in circumstances where they do not have jurisdiction in the substantive dispute.

#### Preferential right or lien

Attachment does not create preferential rights or liens over the attached asset in favour of the claimant.

#### Damages as a result

The claimant is liable for damages if the order was obtained maliciously or with the intention of causing harm or damage to the defendant. However, the mere fact that an attachment order is subsequently vacated does not make the claimant liable for damages. To succeed, it must be established that the claimant acted in bad faith, which is difficult. Therefore, even in a case of wrongful seizure of an asset, the aggrieved party is usually not able to recover compensation, as bad faith is difficult to establish. However, there has been a recent decision of the Dubai Court in which damages were awarded for the wrongful arrest of a vessel under the Federal Maritime Law.

#### Security

The court may require the applicant to produce a bank guarantee, or a letter of indemnity or other counter-security, before it makes an attachment order.

### 14. Are any other interim remedies commonly available and obtained?

In limited circumstances where there is a serious risk of the defendant leaving the country, the court can, on the claimant's application, make either or both of the following orders:

- An order prohibiting the defendant from leaving the country.
- An order for the defendant to surrender his passport. If the defendant fails to comply, the court can order that he provide a guarantee to secure the claim and that he be detained in custody if he fails to comply with that order.

The courts can also make urgent orders in certain circumstances. For example, if there is a risk that evidence may be destroyed, lost or removed from the jurisdiction, the court can appoint an expert to examine the subject matter and prepare a report. An application for this is made on notice to the respondent.

## FINAL REMEDIES

### 15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

The main remedy available in commercial disputes is compensatory damages. The courts can also make an order confirming a right (for example, they can order the return of property). There is no standard burden of proof that needs to be met to make a successful claim for damages. The decision to award damages is at the discretion of the court hearing the case.

If an attachment order has been granted earlier in the proceedings, the court in its final judgment makes an order confirming or discharging the attachment order.

The courts do not generally make orders for declaratory relief (for example, a declaration of status or a declaration that a person is entitled to a particular right) or grant relief in the form of permanent injunctions.

In contracts for the sale of immovable property in Dubai, specific performance to compel the sale is not available.

## EVIDENCE Disclosure

### 16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

There is no process of discovery and inspection of documents. Each party files the documents that it wishes to rely on for its case and there is no obligation on a party to file a document which is damaging to its case. In practical terms, there is extremely limited discovery available.

Under Article 18 of the Evidence Law, a party to litigation can request the court to compel his opponent to submit any useful written document or paper in his possession, in the following limited instances:

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

Any expert appointed by the court (*see Question 19*) can also request copies of documents, but cannot compel a party to produce a document (*Law No. 10 of 1992 regarding the law of proof under civil and commercial transactions (Law of Evidence)*). A party is required to present the evidence on which it relies on in support of its claims/defence. However there is no obligation to disclose documents that are relevant or helpful to the other party. No time limits apply.

#### Privileged documents

### 17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

#### Privileged documents

Communications between lawyer and client are privileged. In any event, disclosure obligations are very limited (*see Question 16*).

The concept of "without prejudice" correspondence is not recognised. Any correspondence marked "without prejudice" and brought into existence expressly for the purpose of furthering genuine settlement negotiations can be filed in court and relied on. Any admissions or offers made in this correspondence may be prejudicial to the party making the admissions or offers. Therefore, settlement negotiations are not usually documented.

## Other non-disclosure situations

Lawyers must not disclose information provided by the client without the client's permission. The Federal Law on the Regulation of the Legal Profession precludes a lawyer from divulging a secret or testifying on facts or information that came to his knowledge through his professional interactions with his client, unless the disclosure of such information prevents the perpetration of a crime.

## Examination of witnesses

### 18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

#### Oral evidence

All proceedings in civil matters are based on written submissions supported by documentary evidence. The court does not hear oral argument from the parties' lawyers. The case is determined on the basis of the written submissions and documentary evidence.

Although a witness statement can be filed in court, it has very little evidentiary value and is almost invariably challenged.

#### Right to cross examine

Oral evidence is not usually allowed. If a party wishes to call a witness, an application must be made to the court, but these applications are rare. If an application is granted, the witness can be cross-examined. However, the judge closely supervises the testimony of the witness, questions the witness and controls both examination and cross-examination.

## Third party experts

### 19. What are the rules in relation to third party experts?

#### Appointment procedure

Law No. 7 of 2012 concerning Expert Evidence before the Courts and the Law of Evidence govern the appointment of experts. The court can appoint an expert at any stage to investigate any matters in which the court considers it requires assistance. The court usually appoints an expert for findings of fact in a variety of issues including financial, accounting or other technical matters.

The expert is selected from a list of experts maintained by the court. It is difficult for the parties to reach agreement, as any name that is suggested by one party is invariably treated with suspicion by the other party. If the parties fail to agree, the court generally orders that an expert be appointed from the court's list and the parties do not typically have control over who is appointed.

#### Role of experts

The expert must comply with certain procedures set out in the federal laws (*see above, Appointment procedure*). These include holding meetings with the parties and their lawyers, and keeping minutes of these meetings.

Once the expert has prepared and filed his report in court, a date is fixed for the parties to comment on the report. The expert's report does not bind the judge. However, the court usually adopts the expert's findings. The expert provides independent advice to the court and does not represent the interests of any party.

#### Right of reply

As there are no oral hearings, the expert is not questioned by either party or the court. However, once the expert has filed the report, the parties are given an opportunity to comment on the report. This is done by written submissions. If the court considers that the matter requires further investigation, it can refer the matter back to the expert. The court can also order that another expert be appointed to prepare a report, if this is deemed necessary.

## Fees

When making the order for the appointment of an expert, the court also orders one of the parties to pay an amount into court for the expert's fees. The claimant is usually ordered to make the payment. The court can order further payments. The final judgment of the court contains a determination as to which party must pay the expert's fees.

## APPEALS

### 20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

#### Which courts

An unsuccessful party has the right to appeal from the Court of First Instance to the Court of Appeal.

#### Grounds for appeal

It is possible to appeal in relation to findings of both fact and law. The Court of Appeal hears the whole matter again and the parties can file further submissions and evidence.

#### Time limit

The appeal must be filed within 30 days of the date on which the Court of First Instance delivers its judgment. This time limit can be extended in certain circumstances. The appellant files the grounds for appeal, together with any further evidence that it wishes to rely on. A hearing date is allocated for the respondent to file submissions in answer. Further hearing dates can be fixed by the court for exchange of further submissions. When the Court of Appeal considers that the matter has been sufficiently pleaded, it reserves the matter for judgment.

Except in Ras Al Khaimah, there is a right of further appeal to the Court of Cassation on a point of law, subject to certain monetary limits (among other things). The time limit for filing the appeal is 60 days from the date that judgment is delivered by the Court of Appeal. This time limit can be extended in certain circumstances.

The Court of Cassation can either give final judgment in the matter or remit the matter back to the Court of Appeal for further findings. If the case is remitted back to the Court of Appeal, there will be further hearings in the Court of Appeal and the parties again have a right to appeal to the Court of Cassation on a point of law.

## CLASS ACTIONS

### 21. Are there any mechanisms available for collective redress or class actions?

The UAE courts do not have a mechanism for class or collective action. Each claim must be filed separately.

## COSTS

### 22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

The courts generally only award nominal or token amounts in legal fees. These rarely exceed AED2,000, regardless of the fees actually incurred. However, the winning party can recover the court fees and the expert's fees (*see Question 9, Starting proceedings*). The court does not have a role in managing and/or controlling costs.

### 23. Is interest awarded on costs? If yes, how is it calculated?

Interest is not awarded on costs.

## ENFORCEMENT OF A LOCAL JUDGMENT

### 24. What are the procedures to enforce a local judgment in the local courts?

The main ways to enforce a local judgment are:

- Attachment and sale of the debtor's property (movables).
- Attachment of stocks, bonds and shares.
- Attachment and sale of real estate.
- Bankruptcy proceedings (this is unusual).
- In exceptional circumstances, imprisonment of the defaulting debtor.

Enforcement is sought before an execution judge, who is assisted by court officials to enforce the court order.

## CROSS-BORDER LITIGATION

### 25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

UAE law recognises the principle of freedom of contract. Therefore, in theory, an express foreign choice of law clause in a contract should be recognised by the UAE courts. However, the courts are normally reluctant to apply foreign laws on public policy grounds (a principle which has been broadly construed).

Even if a UAE court decides to apply foreign law in a particular case, that law must be proved to the court as an issue of fact. However, even in this situation, the foreign law might be ignored in practice. Further, even if a foreign law is applied, there is no assurance that a court will interpret it in a manner that is consistent with its application in the jurisdiction of origin.

There are certain areas of commercial dealing in which the courts do not uphold a foreign choice of law, including:

- Commercial agencies or distributorship.
- Real property.
- Employment.
- Government contracts.
- Certain situations where goods have been carried by sea.
- Some insurance contracts.

### 26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

The UAE courts have jurisdiction to hear actions filed against both:

- A UAE national.
- Foreign persons having a domicile or a place of residence in the UAE.

Under the Civil Procedure Code, in certain circumstances the UAE courts also have jurisdiction over actions against foreign persons who have no domicile or place of residence in the UAE. If the UAE courts have jurisdiction, they ignore a choice of jurisdiction clause.

The position is different if the contract provides for disputes to be referred to arbitration in a foreign jurisdiction. The UAE courts recognise these types of clause and the Civil Procedure Code contains provisions enabling the court to stay a civil claim filed in respect of a contract containing an arbitration clause, provided that the defendant relies on the arbitration clause at the first hearing of the claim.

The courts also ignore a choice of jurisdiction clause in certain types of commercial matters, including commercial agencies or distributorship, real property, employment and government contracts.

### 27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

The Civil Procedure Code does not expressly address the question of service of foreign legal proceedings. The only recognised method of service of foreign legal proceedings is service by the court bailiff in the manner set out for service of domestic UAE proceedings (*see Question 9, Notice to the defendant*). However, the parties may agree on a different mode of service (*Federal Law no. 10 of 2014*).

In this case, the document must be forwarded by the foreign court to the UAE embassy in that jurisdiction through the relevant Ministry of Foreign Affairs. It is then forwarded by the UAE embassy to the UAE Ministry of Foreign Affairs, which forwards the documents to the UAE Ministry of Justice for service on the defendant by the relevant UAE court. Service is effected by a court officer.

The UAE is not a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965. It has, however, signed bilateral treaties with various countries for judicial co-operation.

The UAE is also a signatory to the 1983 Convention on Judicial Co-operation between States of the Arab League (Riyadh Convention), to which several Arab countries have acceded. The courts give effect to any provisions contained in bilateral treaties or in the Riyadh Convention with regard to service of legal process.

### 28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

The Civil Procedure Code does not contain any provisions for the taking of witness evidence for use in proceedings in another jurisdiction. The Riyadh Convention has provisions relating to, among other things, the taking of evidence from witnesses for use in judicial proceedings in member states. The court also gives effect to any provisions in judicial co-operation treaties with other countries in relation to the taking of evidence.

## Enforcement of a foreign judgment

### 29. What are the procedures to enforce a foreign judgment in the local courts?

The UAE has treaties with various countries for judicial co-operation and recognition of judgments and arbitration awards. The UAE is also a signatory to the Riyadh Convention. The Riyadh Convention has provisions relating to, among other things, the recognition and enforcement of judgments rendered in member states.

In relation to a judgment from a Riyadh Convention member state or a state with which the UAE has a treaty, the jurisdiction of the court of origin is generally not reviewed (subject to particular exceptions that may be provided in the relevant treaty).

The party seeking enforcement must apply to register the judgment by producing a duly certified and legalised copy of the judgment, together with proof that it is enforceable under the law of the country of origin. The application is made to the Court of First Instance and, on ratification of the judgment, a summons is filed in the execution court for enforcement of the judgment. There have, however, been cases where this procedure has not been followed (in relation to a judgment given in a Riyadh Convention state), where the application was made direct to the court of execution (without first applying for ratification to the Court of First Instance) and the court of execution permitted enforcement.

In relation to judgments from countries with which the UAE does not have a bilateral treaty, the provisions of the Civil Procedure Code must be satisfied. The primary test is whether reciprocal arrangements for the enforcement of judgments exist between the UAE and the country in which the judgment is given. There are further provisions which must be complied with, including the following:

- The UAE courts must not have jurisdiction over the substantive dispute in relation to which the foreign judgment was obtained.
- The judgment must have been issued by a competent court under the law of that country.
- The defendant must have been summoned and represented in the foreign proceedings.
- The judgment must be final and binding under the law of the country in which the judgment was given.
- The judgment must not be inconsistent with a judgment or order already issued by a court in the UAE, and not contrary to UAE principles of morality and public order.

The requirement that the UAE courts must not have jurisdiction over the substantive dispute may cause difficulties when enforcing a judgment against a defendant resident or domiciled in the UAE, as the UAE courts have jurisdiction in relation to such a defendant (*see Question 26*). If the requirements of the Civil Procedure Code discussed above cannot be satisfied, a civil claim must be filed in the relevant UAE court and the foreign judgment can be filed in evidence. The court will, however, examine the merits of the case.

Recently, the DIFC Court of Appeal held that the DIFC Court can enforce foreign money judgments in Dubai, which would become an independent local judgment enforceable against assets held in Dubai.

## ALTERNATIVE DISPUTE RESOLUTION

### 30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

ADR is generally understood to mean methods of dispute resolution other than through the intervention of courts or arbitration. There is no statutory framework for enforcing decisions of boards set up for the purpose of conciliation, mediation or expert evaluation. There are also no specific dispute resolution boards. Chambers of Commerce of each of the Emirates have their own arbitration and conciliation rules. There is however no mechanism to enforce an order of a conciliation board.

Disputes before the federal courts must be referred to the Committee (*see Question 3*). If the parties come to an agreement before the Committee, that agreement is binding and enforceable. In the absence of an agreement, any order of the Committee is not enforceable. The Committee usually refers the dispute to the courts if a settlement is not reached.

In Dubai, in landlord and tenant disputes, a Special Judicial Committee constituted by law (*Dubai Law No. 2 of 1993 setting up a special judicial committee for the resolution of disputes between landlords and tenants*) has exclusive jurisdiction to determine all disputes. The Special Judicial Committee's order is final, binding and enforceable. There is a new Centre for Amicable Settlement of Disputes in Dubai (*see Question 3*).

In addition, all disputes between employer and employee must be first referred to the Ministry of Labour for settlement. However, an order made by the Ministry is not final and binding. In the absence of any mutual agreement, the final determination is before the courts.

Further, all of the above procedures are subject to the sovereign right of a ruler to dispense justice to his subjects (*see Question 1, The legal system*).

### 31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

*See Question 30.* With the exception of references to the Committee, and references to the Centre for Amicable Settlement of Disputes in Dubai (which are required by law), ADR does not form part of court procedures. The courts cannot compel ADR.

### 32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

The purpose of the hearing before the Committee is to attempt to settle the dispute amicably. The parties or their legal representatives make oral representations and try to negotiate a settlement. Documents can be filed, but as the purpose is to try to settle the case, this is unusual. Documents produced or admissions made in hearings before the Committee are not privileged (*see Question 16*).

The hearing before the Committee takes place in a room to which the public has access.

In Arbitration, the parties can agree on the method of giving evidence. It is common to see a mix of both witness statements and oral testimony. Oral testimony must be given under oath. Arbitration is considered confidential in the UAE.

### 33. How are costs dealt with in ADR?

In arbitration and rent committee hearings, costs are ordinarily dealt with in the final award. The courts, in enforcing costs orders from arbitrations, generally require evidence that the parties have agreed to give the arbitrators the power to grant costs.

### 34. What are the main bodies that offer ADR services in your jurisdiction?

The Committee and the Centre for Amicable Settlement of Disputes, the DIFC-LCIA Arbitration Centre, the Dubai International Arbitration Centre and the Abu Dhabi Commercial Conciliation and Arbitration Centre all offer conciliation and arbitration services. (*see Question 3*)



## PROPOSALS FOR REFORM

### 35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

While a new arbitration law has been in the pipeline for several years, it has not yet come to fruition.

## ONLINE RESOURCES

### Ministry of Justice

W [www.elaws.gov.ae](http://www.elaws.gov.ae)

**Description.** This website is available in both Arabic and English and is maintained by the Ministry of Justice of the United Arab Emirates. This website is not regularly maintained.

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#### Publications

- *Banking Regulation, Getting the Deal Through, 2016 (co-author of the UAE chapter).*
- *Acquisition Finance, Getting the Deal Through, 2016 (co-author of the UAE chapter).*
- *The Restructuring Review, The Law Reviews, 2015 (co-author of the UAE chapter).*
- *Arrest of Vessels, Maritime Law Handbook 2015, Kluwer Law International (co-author of UAE chapter).*
- *Lending and taking security in the United Arab Emirates, Practical Law Company Global Guide, 2015/16 (co-author of the UAE chapter).*
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- *Arrest of Vessels in the UAE, The Oath Magazine, October 2014.*
- *Dispute Resolution: Volume 2, Arbitration Global Guide, 2011 (co-author of UAE chapter).*
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