
THE DISPUTE RESOLUTION REVIEW

THIRD EDITION

EDITOR
RICHARD CLARK

LAW BUSINESS RESEARCH

THE DISPUTE RESOLUTION REVIEW

Reproduced with permission from Law Business Research Ltd.

This article was first published in The Dispute Resolution Review, Third Edition
(published in April 2011 – editor Richard Clark).

For further information please email
Adam.Sargent@lbresearch.com

THE DISPUTE RESOLUTION REVIEW

Third Edition

Editor
RICHARD CLARK

LAW BUSINESS RESEARCH LTD

PUBLISHER
Gideon Robertson

BUSINESS DEVELOPMENT MANAGER
Adam Sargent

MARKETING MANAGERS
Nick Barette
Hannah Thwaites

EDITORIAL ASSISTANTS
Nina Nowak
Lydia Gerges

PRODUCTION MANAGER
Adam Myers

PRODUCTION EDITOR
Kathryn Smuland

SUBEDITOR
Davet Hyland
Sarah Morgan

EDITOR-IN-CHIEF
Callum Campbell

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2011 Law Business Research Ltd
www.TheLawReviews.co.uk

© Copyrights in individual chapters vest with the publisher and with the contributors.

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of March 2011, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN: 978-1-907606-05-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: +44 844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

AFRIDI & ANGELL

AKINCI LAW OFFICE

APPLEBY

ARTHUR COX

ASHTAR AUSAF ALI & ASSOCIATES – ADVOCATES AND SOLICITORS

ASTERS

BÄR & KARRER AG

BLAKE DAWSON

BONELLI EREDE PAPPALARDO

BREDIN PRAT

BUFETE HERNÁNDEZ-ROMO

BUGGE, ARENTZ-HANSEN & RASMUSSEN (BA-HR)

CAMPOS FERREIRA, SÁ CARNEIRO & ASSOCIADOS

COLLAS CRILL

CRAVATH, SWAINE & MOORE LLP

CROCI, SILVA & CAJINA ABOGADOS

DE BRAUW BLACKSTONE WESTBROEK

DITTMAR & INDRENIUS

DORDA BRUGGER JORDIS RECHTSANWÄLTE GMBH

ELVINGER, HOSS & PRUSSEN

ESTUDIOS PALACIOS LLERAS SAS

FONTES & TARSO RIBEIRO ADVOGADOS

FULBRIGHT & JAWORSKI LLP IN ASSOCIATION WITH MOHAMMED

AL-GHAMDI LAW FIRM

HENGELER MUELLER

HUTABARAT HALIM & REKAN

JUN HE LAW OFFICES

KARANJAWALA & COMPANY

LAMBADARIOS LAW FIRM

LASZCZUK & PARTNERS

LIEPA, SKOPINA/BORENIUS

LOGAN SABAPATHY & CO

LOYENS & LOEFF

MAGISTERS

MANNHEIMER SWARTLING ADVOKATBYRÅ AB

MARVAL, O'FARRELL & MAIRAL

MOTIEKA & AUDZEVICIUS

NISHIMURA & ASAHI

OGILVY RENAULT LLP

PELLEGRINI & URRUTIA

QUEVEDO & PONCE

RUDOLPH, BERNSTEIN & ASSOCIATES INC

SLAUGHTER AND MAY

SOFUNDE, OSAKWE, OGUNDIPE & BELGORE

SZECSKAY ATTORNEYS AT LAW

TASSOS PAPADOPOULOS & ASSOCIATES LLC

TOMAIER & TOMAIEROVÁ, LAW FIRM

TSMP LAW CORPORATION

TUCA ZBÂRCEA & ASOCIATII

URÍA MENÉNDEZ

URÍA MENÉNDEZ - PROENÇA DE CARVALHO

VLASOVA, MIKHEL & PARTNERS

YULCHON

CONTENTS

Editor's Preface xv
	<i>Richard Clark</i>
Chapter 1	ARGENTINA..... 1
	<i>Martin Campbell</i>
Chapter 2	AUSTRALIA 27
	<i>Sergio Freire, Amanda Lees, Chris Goddard and Wen-Ts'ai Lim</i>
Chapter 3	AUSTRIA 53
	<i>Christian Dorda and Felix Hörlsberger</i>
Chapter 4	BELARUS..... 68
	<i>Olga Grechko and Kira Bondareva</i>
Chapter 5	BELGIUM..... 85
	<i>Geert Bogaert, Etienne Kairis and Aude Mahy</i>
Chapter 6	BERMUDA 106
	<i>Kiernan Bell</i>
Chapter 7	BRAZIL 116
	<i>Marcus Fontes, Max Fontes and Júlia Elmôr</i>
Chapter 8	BRITISH VIRGIN ISLANDS 134
	<i>Eliot Simpson</i>
Chapter 9	CANADA 147
	<i>William McNamara and Randy Sutton</i>
Chapter 10	CAYMAN ISLANDS 163
	<i>Katie Brown</i>

Chapter 11	CHILE.....	185
	<i>Enrique Urrutia and Julio Pellegrini</i>	
Chapter 12	CHINA.....	196
	<i>Xiao Wei, Zou Weining and Stanley King Wan</i>	
Chapter 13	COLOMBIA	208
	<i>Hugo Palacios Mejía and Oscar Tutasaura Castellanos</i>	
Chapter 14	CYPRUS.....	221
	<i>Nicos G Papaefstathiou</i>	
Chapter 15	CZECH REPUBLIC.....	232
	<i>Jan Tomaier and Matúš Hanuliak</i>	
Chapter 16	ECUADOR.....	248
	<i>Alejandro Ponce Martínez</i>	
Chapter 17	ENGLAND & WALES.....	263
	<i>Richard Clark and Damian Taylor</i>	
Chapter 18	FINLAND	284
	<i>Petteri Uoti and Johanna Jacobsson</i>	
Chapter 19	FRANCE.....	294
	<i>Tim Portwood</i>	
Chapter 20	GERMANY.....	308
	<i>Henning Bälz and Carsten van de Sande</i>	
Chapter 21	GREECE.....	324
	<i>Prokopis Dimitriadis</i>	
Chapter 22	GUERNSEY.....	333
	<i>Christian Hay and James Tee</i>	

Chapter 23	HONG KONG.....	349
	<i>Mark Hughes</i>	
Chapter 24	HUNGARY	366
	<i>Zoltán Balázs Kovács and Dávid Kerpel</i>	
Chapter 25	INDIA.....	381
	<i>Raian Karanjawala and Manik Karanjawala</i>	
Chapter 26	INDONESIA.....	403
	<i>Pheo M Hutabarat</i>	
Chapter 27	IRELAND.....	426
	<i>Andy Lenny, Claire McGrade, Gareth Murphy and Sara Carpendale</i>	
Chapter 28	ISLE OF MAN.....	439
	<i>Christopher Cope, Fletcher Craine and Claire Collister</i>	
Chapter 29	ITALY.....	456
	<i>Monica Iacoviello, Vittorio Allavena and Andrea Carlevaris</i>	
Chapter 30	JAPAN	479
	<i>Hiroyuki Tezuka and Yutaro Kawabata</i>	
Chapter 31	JERSEY	493
	<i>Fraser Robertson and Davida Blackmore</i>	
Chapter 32	KOREA.....	509
	<i>Young Seok Lee and Sae Youn Kim</i>	
Chapter 33	LATVIA	521
	<i>Dace Kalnmeiere</i>	
Chapter 34	LITHUANIA.....	532
	<i>Ramunas Audzevicius, Tomas Samulevicius and Mantas Juozaitis</i>	

Chapter 35	LUXEMBOURG	547
	<i>Léon Gloden</i>	
Chapter 36	MALAYSIA	559
	<i>Sylvia Cotter</i>	
Chapter 37	MAURITIUS	573
	<i>Gilbert Noel</i>	
Chapter 38	MEXICO	583
	<i>Miguel Angel Hernández-Romo Valencia</i>	
Chapter 39	NETHERLANDS.....	597
	<i>Ruud Hermans and Margriet de Boer</i>	
Chapter 40	NIGERIA.....	616
	<i>Babajide Ogundipe and Lateef Omoyemi Akangbe</i>	
Chapter 41	NORWAY	630
	<i>Jan B Jansen</i>	
Chapter 42	PAKISTAN	643
	<i>Ashtar Ausaf Ali, Ahmed Uzair and Zoya Chaudary</i>	
Chapter 43	PERU	656
	<i>Claudio C Cajina and Marcello Croci G</i>	
Chapter 44	POLAND.....	666
	<i>Justyna Szpara and Agnieszka Kocon</i>	
Chapter 45	PORTUGAL.....	680
	<i>João Maria Pimentel</i>	
Chapter 46	ROMANIA	692
	<i>Levana Zigmund</i>	

Chapter 47	RUSSIA.....	705
	<i>Dmitry Dyakin and Alexander Vaneev</i>	
Chapter 48	SAUDI ARABIA	715
	<i>Mohammed Al-Ghamdi, John Lonsberg, Jonathan Sutcliffe and Sam Eversman</i>	
Chapter 49	SINGAPORE.....	733
	<i>Thio Shen Yi, Karen Teo and Peter John Ladd</i>	
Chapter 50	SOUTH AFRICA	747
	<i>Gerhard Rudolph and Estelle Bester</i>	
Chapter 51	SPAIN	772
	<i>Esteban Astarloa</i>	
Chapter 52	SWEDEN	792
	<i>Jakob Ragnwaldh and Niklas Åstenius</i>	
Chapter 53	SWITZERLAND.....	801
	<i>Daniel Hochstrasser</i>	
Chapter 54	TURKEY	811
	<i>Ziya Akinci and Cemile Demir Gokyayla</i>	
Chapter 55	UKRAINE	825
	<i>Oleksiy Didkovskiy, Andriy Pozhidayev and Yaroslav Petrov</i>	
Chapter 56	UNITED ARAB EMIRATES	835
	<i>Bashir Ahmed</i>	
Chapter 57	UNITED STATES.....	846
	<i>Nina M Dillon and Timothy G Cameron</i>	
Appendix 1	ABOUT THE AUTHORS	863
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ...	899

Chapter 56

UNITED ARAB EMIRATES

*Bashir Ahmed**

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

The United Arab Emirates ('the UAE') is a federation of seven emirates, all of which (with the exception of Dubai and Ras Al Khaimah) are part of the federal judicial system; the emirates of Dubai and Ras Al Khaimah have separate judicial systems. In all of the emirates except Ras Al Khaimah,¹ the court system consists of the following three tiers:

- a* Court of First Instance;
- b* Court of Appeal; and
- c* Court of Cassation.

The UAE is governed by a Constitution that was promulgated in 1971. Each of the seven emirates comprising the UAE ceded certain elements of its sovereignty to the federation and retained some elements for itself. Accordingly, the Constitution provides that the union shall exercise executive and legislative jurisdiction in defined matters and legislative jurisdiction only in certain other defined matters. All matters not assigned to the exclusive jurisdiction of the union are vested with each emirate.

The Constitution provides, among other things, that in the UAE:

- a* Islam is the official religion;
- b* the shariah is a main source of legislation and may thus be described as the 'common law' of the UAE (see *infra*); and
- c* Arabic is the official language of the UAE (Article 7 of the Constitution).

i The shariah

The shariah, in its broad sense, is a body of religious, ethical and legal rules. However, we are primarily concerned with the shariah in its narrow sense: as a body of legal rules.

* Bashir Ahmed is a partner at Afridi & Angell.

1 Ras Al Khaimah has only a Court of First Instance and Court of Appeal.

Shariah itself includes different schools of thought on a number of legal issues. However, it is founded on familiar concepts of justice and equity, and the practical result in commercial matters is often, though not always, the same as would be reached under western jurisprudence. Shariah, like Anglo-American law, strives to give effect to the intention of the parties in matters of contract. It is possible, however, that the intention of the parties will be differently construed by jurists in the two systems. For example, one recent commentator on commercial law in the Arabian Gulf States has argued persuasively that traditional shariah would release the parties to a contract from performance for reasons of changed circumstances or frustration of purpose in many situations where English law would instead bind the parties to their contract.

ii Civil law system governing disputes in the UAE

The UAE operates under a civil law system, and statutes are the primary source of law. There is no doctrine of binding precedent, and judgments of the higher courts are not binding on the lower courts (although they can be a useful guide as to how a court may react in cases with similar issues in dispute). Each case is decided on its own merits and facts. Relatively recent federal legislation requires commercial disputes to first be referred to a reconciliation committee appointed by the Ministry of Justice. The reconciliation committee attempts to facilitate a settlement, failing which the parties may proceed with filing an action in the courts. This procedure is not applicable in Dubai and Ras Al Khaimah.

There is a widespread practice for both the Federal and the Dubai courts to refer matters to court-appointed experts for findings of facts in a variety of issues including financial, accounting or other technical matters. Experts' reports are not binding and may be challenged by the parties but are more often than not considered persuasive by the courts.

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

Court procedure in civil and commercial matters is governed by UAE Federal Law No. 11 of 1992 as amended ('the Federal Procedure Code'), which regulates both the federal and the local emirate courts.

iii The Dubai International Financial Centre (DIFC)

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

iv Arbitration

The Dubai International Arbitration Centre ('the DIAC') is Dubai's leading arbitration institution. The DIAC has jurisdiction to hear disputes where the parties have agreed in writing to submit their future or existing disputes to the DIAC.

The DIFC/LCIA Arbitration Centre was established in February 2008 and is based at the DIFC. The centre is a partnership between the London Court of International Arbitration ('the LCIA') and the DIFC. The centre has jurisdiction to hear disputes

where the parties have agreed in writing that arbitration will be conducted under its rules.

The Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC) is Abu Dhabi's main arbitration institution.

The International Islamic Centre for Reconciliation and Commercial Arbitration (IICRCA) is a dispute resolution forum for the Islamic finance industry, based in Dubai. The centre can settle commercial and financial disputes between commercial or financial institutions, and between those entities and third parties, that have agreed to settle their disputes under shariah law. Again, the agreement of the parties is required for the IICRCA to have jurisdiction.

v Specialist tribunals

The Federal Ministry of Labour and Social Affairs has been entrusted with responsibility for conciliation of labour disputes under the UAE Labour Law, Federal Law No. 8 of 1980. All labour disputes must be referred to the Ministry of Labour and Social Affairs for conciliation proceedings prior to filing a suit in a UAE court.

The UAE Commercial Agencies Law² refers all disputes in relation to the termination of a duly registered agency contract to a committee established under the Agencies Law by the Ministry of Economy and Commerce. The Ministry has formally adjudicated such disputes only rarely and has instead enforced its authority by refusing to register a new agency until any such dispute is resolved.

Landlord and tenant disputes in the Emirate of Dubai must be referred to a rent committee. The courts enforce the decisions of the rent committee.

The Dubai Property Court is an arm of the Dubai Court of First Instance, which now has exclusive jurisdiction to deal with property disputes in the Emirate of Dubai where the parties have agreed to the jurisdiction of the Dubai courts to settle disputes.

The Dubai Real Estate Regulatory Agency (RERA), a specialist arm of the Dubai government's Land Department, regulates the real estate market in Dubai and can mediate disputes referred to it between developers and purchasers.

v The framework of ADR procedures

The parties opting for arbitration to resolve their disputes are free to determine the procedural rules that apply in ad hoc arbitration. If the arbitration is undertaken under the auspices of an institution, the procedural rules issued by that institution will apply.

Parties referring their case for settlement to the newly established Centre for Amicable Disputes in Dubai ('the Centre') will present their cases to a panel of experts, presided by a judge of the Dubai Court of First Instance, having supervisory jurisdiction over the dispute. Any limitation periods affecting the dispute are suspended from the date that the dispute is registered with the Centre.

Although the panel itself will be made up of experts, the Centre may, if it considers it appropriate to do so, seek the assistance of an external expert to give evidence on relevant technical issues. The Centre will be responsible for deciding the issues that the

2 Federal Law No. 18 of 1981.

expert report must address, the date that the report is due, the amount of the expert's fees and may also determine which party is to be responsible for those fees.

An incentive to settle is provided to participants in the form of a refund of half of the up front fees payable for registration of a dispute with the Centre upon the parties reaching settlement.

If settlement is reached, a settlement agreement must be signed by all the parties. A settlement agreement signed under the auspices of the Centre will be directly enforceable in the Dubai courts as a writ of execution. It is therefore not necessary for a party to the settlement to bring proceedings for breach of contract against a non-performing party.

II THE YEAR IN REVIEW

The reporting of judgments in the UAE is still at a very preliminary stage. There is no full, regular and recent reporting of judgments in the UAE and it is therefore difficult to give an overview of the recent decisions. Further, it is normal practice to include an express provision for confidentiality in an arbitration agreement and the arbitration proceedings are conducted in confidentiality, thereby making it difficult to obtain recent decisions with regard to any arbitration or any other dispute resolution proceedings conducted between parties in the UAE.

Although the UAE civil courts are still the main forum for recourse in commercial disputes, arbitration is becoming increasingly popular. Alternative dispute resolution ('ADR') has yet to be extensively employed in a systematic manner. However, calls for an ADR system have gained momentum in the wake of the economic crisis in the country. In June 2009, the UAE Minister of Justice announced that an ADR system would be introduced to help solve financial disputes through mediation and arbitration. Dubai has recently promulgated Law No. 16 of 2009 to establish the Centre for Amicable Settlement of Disputes.

III COURT PROCEDURE

i Overview of the court procedure

Proceedings are started by filing a plaint (that is, the claim made by the claimant) in the relevant court office on payment of the required court fee. Exceptionally, on application by the claimant, payment of court fees can be deferred in appropriate cases (for example, where the claimant is an accident victim).

The court fee depends on the value of the claim. The general rule is that the court fee is:

- a* 7.5 per cent of the claim subject to a maximum of 30,000 dirhams in Dubai, and if provisional orders are sought, a further fee of 50 per cent of the initial filing fee is payable; or
- b* 4 per cent of the claim for the first 100,000 dirhams and 5 per cent of the amount over 100,000 dirhams, up to a maximum of 30,000 dirhams, in the federal courts; this fee is payable either on an application for provisional relief, or on filing the substantive suit.

The plaint must conform to the procedural requirements and must include the names and addresses of the parties to the action and details of the claim. Documents in support of the claim are usually annexed to the plaint.

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 defendant is served by a court officer, who leaves the summons, plaint and attached documents with the defendant. The defendant (or an employee of the defendant in a corporate entity) is requested 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.

The defendant is generally represented by lawyers duly authorised by a power of attorney. 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 plaint). 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. There is usually no oral evidence of witnesses in civil matters. The court usually appoints an expert to assist it and, more often than not, accepts the expert's report.

The number of gearings depends on the complexity of the issues and the circumstances in each case. Proceedings in the UAE courts are court-driven and the parties have little, if any, control over the pace at which the matter proceeds. If the court appoints an expert, the case takes longer to reach judgment. In a relatively straightforward case, the judgment of the Court of First Instance can be expected within about one year from the date of filing the claim (excluding any extraordinary time required for serving a defendant residing abroad). However, this estimate can easily be exceeded. Cases have been known to last seven or eight years (or more) before reaching the stage of the final judgment of the Court of Cassation. Cases in Dubai are often resolved more speedily than cases in the other emirates.

ii Case management tracks and procedures for ordinary applications

The UAE courts are still developing case management tracks and procedures, and apart from Dubai and Abu Dhabi, which have established electronic case management systems within the past two years, most of the other emirates are in the process of organising a functional case management system. The DIFC Court has also introduced an online case management system.

iii Limitation periods

Limitation periods are not dealt with in any one particular statute. General rules relating to time limitation are set out in UAE Federal Law No. 5 of 1985, the Civil Transactions

Law ('the Civil Code'). In general, a claim is time-barred after 15 years, unless a specific provision states otherwise. In addition, there are several specific provisions which deal with time bars under UAE Federal Law No. 18 of 1993, the Law of Commercial Procedure ('the Commercial Code'), which governs commercial transactions. Further, there are several other statutes that have specific provisions relating to time limitation. Therefore, there are many exceptions to the general rule.

Subject to these exceptions, the following limitation periods can be taken as a general guide:

- a* contracts: 15 years;
- b* cheques: three years;
- c* insurance: three years;
- d* causing harm (tort): three years;
- e* building contracts (defects): 10 years;
- f* carriage of goods by sea: one year; and
- g* employment: one year.

iv Class actions

UAE law does not make any specific provisions with regard to class action suits and how class action suits will be heard by UAE courts.

v Representation in proceedings

The UAE laws do not restrict any party to litigation from representing itself in the UAE courts.

vi Service out of jurisdiction

If the proceedings are to be served on a person abroad, the summons is served through consular channels. Under this method, the documents are forwarded by the court through the UAE Ministry of Justice and the UAE Ministry of Foreign Affairs to the UAE Embassy in the country of the defendant being served. The papers are then served on the defendant in accordance with the law and procedures of the country in which the defendant is served. This procedure is long and drawn out. The UAE court will require proof of service. The rules are the same if the party being served is a natural person or an artificial person.

vii Enforcement of foreign judgments

The UAE has treaties with various countries for judicial cooperation and recognition of judgments.

The UAE is also a signatory to the Riyadh Convention to which several Arab countries have acceded. The Riyadh Convention has provisions relating to, inter alia, recognition and enforcement of judgments rendered in Member States. In relation to a judgment from a state that is a signatory to the Riyadh Convention or to one with which the UAE has a treaty, the jurisdiction of the court of origin generally will not be reviewed (subject to particular exceptions that may be provided for 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 respect of 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 treaty, the provisions of the UAE Civil Procedure Code must be satisfied. The primary test is whether the reciprocal arrangements for the enforcement of judgments exists between the UAE and the country in which the judgment is rendered. There are further provisions with which compliance is required, which include the requirement that:

- a* the UAE courts must not have jurisdiction in respect of the substantive dispute in relation to which the foreign judgment was obtained;
- b* the judgment must have been issued by a competent court in accordance with the law of that country;
- c* the defendant was summoned and represented in the foreign proceedings;
- d* the judgment is final and binding and in accordance with the law of the country in which the judgment was rendered;
- e* the judgment is not inconsistent with a judgment or order already issued by a court in the UAE; and
- f* the judgment is not contrary to UAE principles of morality and public order.

The requirement that the UAE courts must not have jurisdiction in respect of the substantive dispute may cause difficulties in the enforcement of a judgment against a defendant who is resident or domiciled in the UAE as the UAE courts have jurisdiction in relation to such defendant.

viii Assistance to foreign courts

The UAE provides assistance to a foreign court provided they have entered into a judicial cooperation treaty with the country with respect to providing such assistance.

Pursuant to the UAE Federal Law No. 39 of 2006 ('the Judicial Cooperation Law') the UAE can give assistance to any other country in criminal matters provided a treaty to that effect has been signed by both UAE and the country concerned. The Judicial Cooperation Law also covers aspects of judicial assistance, immunity of witnesses and experts before a foreign judiciary and mechanisms of executing penalties.

Pursuant to the Judicial Cooperation Law, judicial authorities in the country may cooperate with their foreign counterparts on criminal issues, on the basis of reciprocal treatment. This law, however, does not constitute any right to any country to claim proceeding in any international judicial cooperation on criminal matters. As for the extradition of persons, the Judicial Cooperation Law provides for the extradition of defendants or convicted persons to the foreign judicial authority to be interrogated, stand trial or serve sentences.

ix Access to court files

The court file (which contains a record of the proceedings, including pleadings, evidence, court orders and so on) is not open for inspection to the public. Only the parties to the litigation and their lawyers can have access to such records.

There is no publication of judgments or public access to court records. However there is public access to ongoing proceedings in the courts of UAE.

x Litigation funding

There is no express restriction on disinterested third-party litigation funding. However, this practice is not common in UAE.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

There are no set rules or laws to manage conflicts of interests within the UAE and it is solely based upon individual and organisational practices adopted by different law firms.

Chinese walls are not restricted in UAE and are largely dependent upon firm-to-firm practice. There are no strict rules as to what kind of measures may be adopted with regard to practising Chinese walls and it is largely left to the discretion of the individual practitioners as well as to the law firms as to what measures they would adopt in order to avoid possible conflicts while dealing with clients .

ii Money laundering, proceeds of crime and funds related to terrorism

The UAE laws do not impose any specific obligations upon lawyers practising in UAE with respect to anti-money laundering. However UAE laws prohibit any individual or establishment from engaging in money-laundering or terrorist-financing activities. The DIFC has a code of regulations regarding money laundering and terrorist funding, which specifically regulates all lawyers or legal consultancy firms established within the DIFC district and requires them to take specific measures in order to prevent money laundering and terrorist-financing activities.

Federal Law No. 4 of 2002 on Money Laundering and Criminalisation (‘the UAE Money Laundering Law’) stipulates penalties on any individual who intentionally commits or assists in the commission of offences with respect to any ‘property’ (in this case referring to narcotics and psychotropic substances, kidnapping, piracy and terrorism, any offence in relation to provisions of the Environmental Law, Federal Law No. 24 of 1999, illicit dealing in firearms and ammunition, bribery, embezzlement and damage to public property, deceit, breach of trust and other related offences under international treaties) such as:

- a* concealing the illicit source of the transfer, conveyance or deposit of proceeds from such property;
- b* acquiring, possessing or using the proceeds from such property; or
- c* concealing or camouflaging any details in relation to the source of the property or transfer and movement of the property.

The aforementioned provisions apply to individuals as well as to commercial, financial and economic establishments. Any individual or establishment including any lawyer or law firm in UAE involved in any act of money laundering or terrorist financing may be criminally liable for either a term of imprisonment of up to seven years or a fine of between 30,000 and 300,000 dirhams (or both) and the proceeds of the property will be confiscated from such individual or establishment.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

There are no set laws or rules governing privilege in the UAE jurisdiction, probably as a result of the absence of discovery or disclosure obligations.

Communications between lawyer and client are privileged. In any event, disclosure obligations are very limited (see Section V, ii, *infra*). The concept of ‘without-prejudice’ correspondence used in Anglo-American jurisdictions is not recognised in the UAE. Even correspondence exchanged between the parties 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 such correspondence may be prejudicial to the party making such offers. For this reason, settlement negotiations are not usually documented.

Lawyers are not allowed to disclose information provided by the client without the client’s permission. This applies to all lawyers practising in UAE including foreign lawyers as well as in-house counsel.

ii Production of documents

There is no process of discovery or inspection of documents like that which occurs in Anglo-American jurisdictions. A party to a dispute is under no obligation to disclose all documentation in its possession. Each party files the documents it wishes to rely on for its case and there is no obligation on a party to file a document that is damaging to or that may prejudice its case. In practical terms, there is extremely limited discovery available. An expert appointed by the court can also request copies of documents, but cannot compel a party to produce a document. This is governed by UAE Federal Law No. 10 of 1992 concerning the Law of Proof under Civil and Commercial Transactions (‘the Law of Evidence’).

Any document that is issued outside the state and is notarised by entities representing the state in which the document was issued or by the competent authorities is accepted as evidence by the courts. However, there are no specific provisions regarding electronically stored documents in the Law of Evidence, and it is silent upon discovery and production of such documents.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

The UAE has recently adopted legislation in which the disputes are required to be first referred to a conciliation committee appointed by the Ministry of Justice before being referred to the courts. In addition, the ADR system is gaining momentum in the UAE. Dubai passed legislation in September 2009 for the establishment of a separate Centre for Settlement of Disputes through Conciliation, which encourages parties to settle their dispute out of court before resorting to litigation.

There are also other existing conciliatory schemes available in the federal courts, where all cases coming before federal judges are first referred to a conciliation desk presided over by a junior judge of the federal court. However, the scheme is not mandatory as regards the respondent to the dispute, who is allowed to choose whether or not to participate in the conciliation or proceed straight to litigation.

ii Arbitration

Arbitration proceedings have become increasingly popular as a means of settlement of disputes within the UAE and many parties are resorting to settling their disputes through arbitration proceedings.

The Dubai Chamber of Commerce and Industry established the DIAC, which is in effect a rebranding of the commercial conciliation and arbitration services that have been available since 1994. The DIAC has issued Rules of Commercial Conciliation and Rules and maintains a list of arbitrators. The ADCCAC in Abu Dhabi also has an arbitration centre that has issued its own set of procedural rules. Foreign arbitration institutions, most notably the ICC, are also often used in large commercial disputes.

As previously mentioned, the DIFC/LCIA Arbitration Centre was established in February 2008 and is based in the DIFC. The centre is a partnership between the London Court of International Arbitration (LCIA) and the DIFC.

There are no rights of appeal available from an arbitration proceeding in the UAE.

The enforcement of arbitral awards has been exposed as a potential problem due, in the main, to the requirement for court ratification of awards.

The DIFC arbitration law, which is based on UNCITRAL Model Law, provides a legislative framework for enforcing arbitral awards made in the seat of the DIFC, which is a finance-free zone in Dubai subject to its own legal and regulatory regimes. The law provides that the DIFC Court is bound by the terms of any treaties entered into by the UAE with respect to the enforcement of judgments, orders and awards. In addition, awards recognised by the DIFC Court are enforceable both within the DIFC and outside the free zone, pursuant to certain requirements. While the Dubai courts will necessarily have a role in ratifying awards that require enforcement outside the DIFC's jurisdiction, the DIFC Judicial Authority Law provides that the Dubai courts will not have the ability to review the merits of the award.

The UAE federal arbitration legislation (applicable to arbitrations held outside the DIFC) is currently contained only in a short section of the UAE Civil Procedure Code and requires court ratification of awards.

The New York Convention was adopted by the UAE in 2006 and applies to all arbitration proceedings conducted in the UAE. However, no significant decisions have yet been made after the adoption of the New York Convention by the UAE.

In recent years, arbitration has experienced significant growth in the Middle East. By way of example, the DIAC registered 77 new cases in 2007, 100 in 2008, 292 new cases in 2009 and 422 in 2010.

iii Mediation

There are no laws or rules governing mediation in UAE and mediation is usually a strictly private business regulated by agreement between the parties.

The DIFC has promulgated mediation rules, which may be resorted to by parties wishing to settle their disputes through such means instead of litigation in courts. The parties are free to agree on the procedure of mediation and also to appoint a mediator.

iv Other forms of alternative dispute resolution

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 mediation or expert evaluation, and there are no provisions for Referees under the UAE laws. For a better idea of other specialist tribunals available in UAE, see Section I, v, *supra*.

VII OUTLOOK AND CONCLUSIONS

An ADR system is expected to be established in UAE to enable speedy disposal of cases and provide an alternative solution to feuding parties. New legislation aimed at providing alternative means of settling disputes, which would require minimal intervention by the UAE courts, is awaited. In the meantime, arbitration is finally gaining increasing acceptance as a means of dispute resolution.

Among the most recent developments is the Dubai Decree No. 57 of 2009, Establishing a Tribunal to decide the Disputes Related to the Settlement of the Financial Position of Dubai World and its Subsidiaries ('the Decree').

The Decree established a special tribunal with the power to supervise the financial reorganisation of Dubai World and its subsidiaries, and with jurisdiction to hear and determine disputes relating to the restructuring of the debt of Dubai World and its subsidiaries. The tribunal is composed of three senior international judges from the Dubai International Finance Centre (DIFC) Court. The Decree is one of the first of its kind in the UAE to establish a special tribunal solely for the purposes of resolving disputes related to a particular company, and can be seen as the UAE's attempt to take a further step towards establishing an ADR system in the region.

Appendix 1

ABOUT THE AUTHORS

BASHIR AHMED

Afridi & Angell

Bashir Ahmed joined Afridi & Angell in 1988 and became a partner in 1993. For a period of 18 months he was seconded to the regional office of an international bank as counsel for their Middle East and South Asia operations. He advises clients in cross-border, private equity, licensing and maritime issues. He has extensive experience advising international and domestic banks on a wide range of matters including loan and credit facilities, syndications and regulatory matters and has also advised on a number of mining, refinery and infrastructure projects.

Mr Ahmed is a regular contributor of the United Arab Emirates chapters in leading publications including the *PLC Cross-border Handbook: Dispute Resolution, Doing Business in... Handbooks* (Lex Mundi and Practical Law Company publication) and the *Restructuring Review*.

Mr Ahmed is admitted to the New York State Bar Association, the Lahore High Court Bar Association and the International Bar Association.

AFRIDI & ANGELL

PO Box 9371
Emirates Towers, Level 35
Sheikh Zayed Road
Dubai
United Arab Emirates
Tel: +971 4 330 3900
Fax: +971 4 330 3800
dubai@afриди-angell.com
www.afриди-angell.com