

GAR KNOW HOW LITIGATION

United Arab Emirates

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Overview

1 Describe the general organisation of the court system for civil litigation.

Onshore jurisdiction

The UAE legal structure has two systems – the Federal Judiciary (controlled by the Federal Supreme Court) and the local judicial departments at the local government level. Each of the Emirates are able to choose which one of the two systems to operate under.

Articles 94 to 109 of the UAE Constitution generally governs these two systems but the detail of certain principles are left to the discretion of local judicial authorities.

Abu Dhabi, Dubai and Ras Al Khaimah uphold their own judicial systems independently from the federal court system and therefore are not overseen by the UAE Supreme Court. The Emirates of Sharjah, Ajman, Fujairah and Umm Al Quwain operate under the Federal Judiciary.

Dubai's courts have three levels of courts and each court has a civil division, a criminal division and a Shari'a division.

The Dubai Court of First Instance

This Court is divided into lower courts for claims less than 10 million dirhams, decided by a single judge and upper courts for claims over 10 million dirhams and are decided by three judges.

The Dubai Court of Appeal

A judgment from the Court of First Instance can be appealed within 30 days of the date of the judgment. Judgments by the Court of Appeal are deemed final if the value of the claim is less than 500,000 dirhams and are decided by three judges.

Dubai Court of Cassation

Court of Appeal judgments may be appealed within 60 days from the date of the judgment and are usually heard by five judges. Any appeal may only be for sums in dispute in excess of 500,000 dirhams, unless the judgment does not involve a financial award. This is the highest Court and a final award cannot be appealed further.

The Dubai International Financial Centre (DIFC)

The DIFC is a common law jurisdiction within the UAE that was established under Dubai Law No.9 of 2004. Pursuant to the Judicial Authority Law 12 of 2004 (as amended), the DIFC Court has exclusive jurisdiction to hear:

- civil or commercial claims to which DIFC is a party;
- civil or commercial claims arising from a contract finalised or performed within the DIFC;
- civil or commercial claims arising from a transaction that has been performed within the DIFC and is related to DIFC activities;
- appeals against decisions made by the DIFC; and
- any claim that the Courts have jurisdiction in accordance with DIFC Laws and Regulations.

The DIFC courts have jurisdiction to hear any local or international cases if expressly agreed by the parties by way of contract, or if the contract involves a DIFC established party. The DIFC Courts have three levels.

Small Claims Tribunal (SCT)

SCT allows parties to commercial contracts to represent themselves without the need for lawyer presence. The parties aim to reach a settlement between before proceeding to a hearing before a judge.

The SCT deals with claims with a value of less than 500,000 dirhams or where the claim relates to the employment or former employment of a party.

Court of First Instance

The Court of First Instance deals with all civil and/or commercial matters. It will also hear disputes within the DIFC jurisdiction and disputes that arise from contracts with an express DIFC jurisdiction clause.

Court of Appeal

The Court of Appeal holds the highest authority in the DIFC. Orders and judgments are final unless there is a question of a conflict of jurisdiction between onshore Dubai courts and the DIFC.

Where there is a conflict of jurisdiction between onshore Dubai courts and DIFC courts, either party can make a challenge that will then be decided by the Joint Judicial Committee, which was constituted in 2016 pursuant to Decree 19.

Abu Dhabi Global Market Courts (ADGM)

The ADGM is a financial free zone situated in Abu Dhabi. It was established pursuant to the UAE Constitution and UAE Federal Law No. 8 of 2004 (Financial Free Zone Law).

The ADGM has its own body of laws with an independent judicial authority and courts that deal with civil and commercial matters. Furthermore, the ADGM courts are established on the ADGM Courts' Regulations, the ADGM Court Rules and the Practice Directions. They comprise the Court of First Instance and Court of Appeal.

Owing to their English law foundations, both the DIFC Rules and the ADGM Court Rules strongly resemble the English Civil Procedure Rules at almost every stage of the proceedings. There are some stages, such as disclosure (Part 13 of the ADGM Court Rules), which differ from the English CPRs.

2 Give an overview of basic procedural principles that govern civil litigation in your jurisdiction.**Onshore**

The UAE Civil Procedure Code, Federal Law No. (11) of 1992 governs the civil procedure in onshore courts. Onshore UAE operates under a civil law system and statutes are the primary source of law. Judgments of the higher courts are not binding and are generally only used as a point of reference. The final decision in any case is at the discretion of the judge hearing the case.

All proceedings in onshore UAE are commenced by the filing of a statement of claim along with any supporting documents and court fees (an online portal may be used to submit the claim and supporting documents). The case management office will then issue a summons for service on the defendant and ensure that the defendant has a chance to file a defence. Once the defence has been filed, the claimant will issue a reply to which the defendant can respond to, the court will then schedule a hearing that will verify that all notifications have been duly completed. The court then appoints an expert who files a report and the parties may comment on that report by way of written submissions. There is no disclosure process and each party will file the documents it wishes to rely on for its case.

Civil matters are predominantly based on the written pleadings of the parties, supported by documentary evidence. All documents filed in court by the litigants must be translated into Arabic, and all court proceedings are in Arabic.

A hearing may not be adjourned more than once without a valid excuse and if there is a valid excuse, the second adjournment is limited to a period of two weeks.

DIFC

The DIFC Court Rules govern the procedure process within the DIFC courts.

A claim in the DIFC is commenced by filing the relevant claim form. The most common claim form is the P7/01 form, which is used for claims outside of the SCT. Form P8/01 is used to commence a Part 8 claim that is used where there is no substantial dispute of fact. For arbitration claims, form P43/01 will be used. Once the claim form has been served on the defendant, the defendant is able to file its defence. The parties are subject to the disclosure process and may make requests for documents they wish the other side to disclose. It is the court's discretion as to what disclosure order to grant.

Unlike the onshore courts, all court proceedings are in English rather than in Arabic. In the case of conflict arising between an onshore court judgment and a DIFC court judgment, the Joint Judicial Committee will decide which judgment shall be enforced.

ADGM

The ADGM Court Procedure Rules 2016 governs the procedure process within the ADGM courts. It follows a similar approach as the DIFC and the English CPRs. The claim form is issued by way of form CFI 1, followed by an acknowledgment of service and then defence. The parties will then be subject to the disclosure procedure where the court is able to make the appropriate order.

3 Describe the general organisation of the legal profession.**Onshore**

To be admitted into the onshore courts, an individual must satisfy federal and local Emirate requirements. Each Emirate adopts specific requirements for local lawyers wishing to obtain a practising certificate; however, to satisfy the standard criteria across all Emirates, you must:

- be a UAE national;
- be at least 21 years of age;
- hold a certificate from a university or higher institute; and
- have carried out a minimum of one year of continuous practical legal training.

DIFC

The process differs for the DIFC courts. An application must include:

- a declaration that the applicant has a minimum of five years' advocacy experience;
- evidence that the applicant can speak English well enough to conduct proceedings; and
- a schedule of oral advocacy experience obtained in disputes proceedings (ADR or litigation).

ADGM

According to Part 9, article 219 Right of Audience of the ADGM's Legal Framework, a right of audience before the ADGM Courts arises where an individual has been practising as lawyer for a continuous period of at least five years. If the individual fails to meet the aforementioned requirement, they may apply directly to the ADGM court to have a right of audience. For matters before the Small Claims and Employment Divisions of the Court of First Instance, any individual may have the right of audience.

4 Give a brief overview of the political and social background as it relates to civil litigation.

The UAE courts do not have a mechanism for collective or class actions – each claim must be filed separately. This, in theory, could result in extra administrative work for those wanting to bring a collective claim and could act as a deterrent.

While mediation and ADR is intrinsic in Arab culture, on balance it is fair to say that parties can be more litigious than in other jurisdictions. There are, for instance, no equivalent pre-action protocol and settlement, or even an attempt to settle, is not mandatory. This being said, parties are encouraged to settle in some respect. For example, article 101 of the Civil Procedure Code allows parties to agree a stay of proceedings for up to six months to attempt settlement.

The DIFC in part 27 of the Rules expressly encourages parties to consider ADR and the Courts may, where necessary, invite parties to use ADR itself.

In general, litigation in Dubai is on a rise. For example, there was a 72 per cent increase in the legal claims filed in the DIFC's Court of First instance in 2020 compared to those filed in 2019.

Jurisdiction

5 What are the sources of law and rules governing international jurisdiction in civil matters?

The main sources of law are the UAE Civil Code (Federal Law No. (5) of 1985), the UAE Civil Procedure Code (Federal Law No. (11) of 1992), and the UAE Federal Arbitration Law (Federal Law No. 6 of 2018).

By virtue of the UAE Civil Procedures Law, UAE courts generally assume jurisdiction of disputes that relate to entities based out of or domiciled in the UAE. Additionally, the courts will also assume jurisdiction to examine the actions against a foreign entity, even if it does not have residence or domicile in the UAE, in certain situations, and in particular if the action is related to an obligation that was executed, concluded, or conditioned in the UAE.

In theory, and pursuant to article 257 of the UAE Civil Code, local courts will not have jurisdiction where the parties to a contract have expressly selected foreign governing law as their jurisdiction. However, in practice, this is slightly more muddled due to another provision of the UAE Civil Code, which states that “the form and substance of contractual obligations shall be governed by the law of the state in which the contracting parties are both resident”, save for certain instances:

- if the contracting parties are ‘residents’ of different states, in which case the governing law will be wherever the contract was concluded; or
- where it is apparent from the circumstances that the intention was for another law to apply.

Further, pursuant to article 19 of the Federal Arbitration Law, an arbitral tribunal will have the authority to rule on its own jurisdiction; there are three main arbitral institutions across three Emirates in the UAE (Dubai, Abu Dhabi and Ras Al Khaimah).

On 9 June 2016, Decree 19 of 2016 established the Joint Judicial Committee (JJC) whose primary task is to resolve conflicts of jurisdiction between the DIFC and Dubai Courts. Among the powers conferred on the JJC is to determine, where there is a conflict of jurisdiction between the onshore Dubai Courts and the DIFC Courts, which court has jurisdiction. Where conflicting judgments are entered by the onshore Dubai Courts and the DIFC Courts in actions involving the same parties and the same subject of dispute, it may also determine which judgment should be enforced.

6 What are the criteria for determining the jurisdiction and venue of the competent court for a civil matter?

The UAE Civil Code gives the court extensive powers to determine matters involving a UAE party. Therefore, it is possible that the UAE will determine jurisdiction over a certain case despite the parties agreeing to a foreign jurisdiction within the contract. As per articles 32 and 34 to 39 of the Civil Procedure Code, the onshore courts will have jurisdiction over certain types of matters, namely:

- those matters relating to property located within the UAE;
- an event that occurs in the UAE; and
- proceedings that involve a transaction that was made or supposedly made in the UAE.

In addition, the UAE will not give effect to jurisdiction clauses providing for a foreign court to determine a dispute in respect of a dispute where the subject matter relates to:

- commercial agency;
- real estate matters connected to the UAE; and
- employment.

This being said, generally, the choice of jurisdiction is a choice between the parties. This choice will be honoured by the courts so long as it does not contradict Shari'a law or the morals of the UAE. It is within the court's discretion, however, to decide whether UAE law should be applied instead.

Parties contracting within the UAE may submit disputes either to the onshore courts, the DIFC, the ADGM, an international court or for arbitration. Where a foreign party is subject to a contract, it is common for the jurisdiction to be outside of the UAE. Mandatory rules of the UAE law may still affect the contractual obligations within a contract that has selected a foreign jurisdiction.

7 Does your jurisdiction commonly attract disputes that have a nexus with other jurisdictions?

Yes. While onshore Dubai and Abu Dhabi tend to be used as seats of arbitration by more domestic parties, particularly Arabic speaking, both the DIFC and the ADGM are popular seats of arbitration for international parties.

Both jurisdictions have established arbitration laws (largely based on the UNCITRAL Model Law) and the supervisory courts tend to support arbitration. These courts also have the benefit of being courts of the UAE and therefore any arbitration award once ratified as a court judgment can be enforced under regional and international treaties to which the UAE is a signatory, including the Riyadh Convention, the GCC Convention and the New York Convention.

8 How will a court treat a request to hear a dispute that is already pending before another forum?

Onshore

In the UAE, the concept of res judicata is addressed in article 92 of the Civil Procedures Law. The parties, at any stage of the proceedings, have the right to argue an action that has already been tried should not be entertained.

Notably, article 49 of the Law on Evidence (Federal Law No. 10 of 1992) places a limitation on the application of the doctrine of res judicata, as the court's findings on a particular issue in the cause of action that has achieved 'finality' cannot be raised again by the same parties.

A court is not likely to entertain a request to hear a dispute that is already pending before another forum. The UAE court may assume jurisdiction to examine the actions against a foreign entity in certain situations, and in return, the UAE courts may extend that courtesy to other international courts where appropriate.

DIFC

Article 24 of the DIFC Court Law states that the Court of First Instance has jurisdiction to ratify any judgment, order or award on any recognised (i) foreign court, (ii) courts of the UAE or Dubai, (iii) arbitral award, (iv) foreign arbitral award or (v) orders for subsequent application for enforcement in the courts of Dubai.

ADGM

The ADGM Courts appear more restrictive than the DIFC Courts. The ADGM requires reciprocity to be established before enforcing judgments or orders from another jurisdiction.

9 How will the courts treat a dispute that is, or could be, subject to an arbitration clause or an agreement to arbitrate, including in interim proceedings?

Onshore

In onshore courts, the defendant will have the right to raise a jurisdictional challenge at the first hearing, otherwise the onshore court can accept jurisdiction. Further, under article 8 of the UAE Arbitration Law, any dispute that contains a valid arbitration agreement and is brought before the court will be rejected if any party to the dispute pleads the existence of the arbitration agreement in relation to the dispute.

Arbitration has consistently grown in popularity as a form of dispute resolution within the UAE. This is supported by the introduction of Arbitration Law No. 6 of 2018 (the onshore UAE's first standalone law on arbitration).

DIFC

The DIFC Arbitration Law provides, under article 23, that the arbitral tribunal may rule on its own jurisdiction, and this includes any objections made in respect of the actual arbitration agreement. It also provides that any plea that the Arbitral Tribunal is exceeding the scope of its authority should be raised during the arbitral proceedings.

ADGM

In respect of the ADGM, parties should take heed of the ADGM Regulations 2015, wherein article 24 states that the arbitral tribunal has the authority to rule on its own jurisdiction, and article 25 stipulates that, a parties objection to the tribunal's lack of jurisdiction should be raised no later than at the first step in proceedings.

10 May courts in your country review arbitral awards on jurisdiction?

Onshore

Article 19 of the Federal Arbitration Law for onshore UAE allows a party to appeal within 15 days of receiving notice that the Tribunal has ruled on its jurisdiction. The court shall then decide the request within 30 days and its decision is not subject to appeal.

DIFC

Chapter 4 of the Arbitration Law for DIFC allows for any party to request, within 30 days of notice, the DIFC Court of First Instance to decide on the matter concerning the tribunal's jurisdiction. The decision will not be subject to appeal.

ADGM

Chapter 4 of the ADGM Arbitration Regulations allows the Court of First Instance to hear any objections as to the tribunal's award for jurisdiction. The application has to be made immediately and the decision of the court is not subject to appeal.

11 Are anti-suit injunctions available?

Onshore

Generally, the onshore courts do not issue anti-suit injunctions. Parties have the right to file claims before any national court they believe has jurisdiction to deal with the dispute (article 104 of the UAE Civil Code).

DIFC

As a common law court, the DIFC Court takes a more flexible approach and may issue anti-suit injunctions – at their discretion – in support of proceedings before them. Certain factors that they will consider include whether:

- the foreign court is the appropriate forum for the dispute;
- the foreign proceedings have been initiated with a disregard of a binding arbitration clause or a DIFC litigation clause; and
- in the circumstances, it is fair to grant the injunction.

ADGM

The ADGM Courts may issue anti-suit injunctions, such applications being made to the ADGM Court of First Instance. In both the DIFC and the ADGM, applicants submitting applications on an ex parte basis will, prior to seeking the anti-suit injunction (or any other form of interim relief), need to establish that the court has jurisdiction. In practice, it appears that the ADGM Courts have yet to deal with anti-suit injunctions; however, their approach as a common law court will likely mirror that of the DIFC's.

12 Which entities are immune from being sued in your jurisdiction? In what circumstances can creditors enforce a court judgment or arbitral award against a sovereign or a state entity?

There is no immunity for domestic or foreign state entities from civil proceedings.

Emirati State parties are not immune from suit (article 41 of the UAE Constitution provides that every person shall have the right to submit complaints to the competent authorities including the judicial authorities), but do enjoy immunity from execution.

Each individual Emirate will have certain specific procedures that may have to be followed to commence civil proceedings against that Emirate or certain government entities. For example, to commence an action against the government of Dubai and any department thereof (including public institutions and corporations), a claimant must first submit a written copy of the full details of the dispute with the Office of the Government of Dubai's Legal Advisor (see Dubai Law No. 3 of 1996 on Government Lawsuits as amended by Dubai Law No. 10 of 2005).

With regards to execution, public property owned by the UAE or any of the Emirates may not be attached. Legislation for the Emirate of Dubai provides that:

- orders against the Ruler can be brought to the attention of His Highness for enforcement; and
- orders against the government can be brought to the attention of the Ruler's Court Director for enforcement.

There is no legislation relating to immunity of foreign state entities.

In addition, a party can enforce judgments against the assets of foreign states unless there is a treaty concluded between the UAE and a foreign state that provides otherwise.

At the federal level, there is no concept of state immunity, and legally, state entities are not immune from being sued. Notably, however, article 247 of the Civil Procedures Law has a general prohibition on seizing public property that is owned by the state or any of the Emirates. The practical effect of this is that even if the state entity is sued, enforcement of the award might not be possible.

At the Emirate level, Dubai law provides that:

- suing a state entity involves several formalities; and
- a suit cannot be filed against the Ruler of Dubai without his approval.

In practice, therefore, the process of filing against a state entity is rigorous and relatively time-consuming; additionally, there is no certainty in enforcing the judgment made.

The DIFC courts have not expressly provided information on this point; however, in *Pearl Petroleum Company Limited & Others v The Kurdistan Regional Government of Iraq*, the Court confirmed that it would uphold properly drafted waivers of sovereign immunity. Enforcement can also be permitted in this forum, which is a significant advantage compared to onshore UAE.

Procedure

13 How are proceedings commenced? To what extent will a court actively lead the proceedings and to what extent will the court rely on the parties to further the proceedings?

Onshore

Filing a statement of claim with the relevant court will commence proceedings in the UAE courts. The claim needs to set out the basis of the dispute and the remedies sought and a court fee will need to be paid. The following information must be included:

- details of the claimant;
- details of the defendant;
- the cause(s) of action relied upon;
- the relief(s) sought; and
- the documents relied on as supporting evidence

Court fees are minimal, which ensures that all parties have equal access to the Courts (see articles 20 to 41 of the Civil Procedures Law for the relevant considerations and requirements).

DIFC / ADGM

Likewise, all proceedings are commenced in the DIFC Courts using either Claim Form P7/01 or P8/01 (Part 7 of the DIFC Rules) and ADGM Courts using Claim Form CFI 1 to six depending on the nature of the claim (Part 5 of the ADGM Court Rules).

A claim form served outside of the DIFC or ADGM but still within the UAE must be accompanied by a certified Arabic translation.

14 What are the requirements for filing a claim? What is the pleading standard?**Onshore**

For the UAE courts, the statement of claim will need to be in Arabic. Although there are no strict requirements in terms of the contents, the document should include the following:

- personal details of the claimant;
- the subject matter and grounds of dispute;
- the cause(s) of action;
- the remedy sought; and
- documents relied on as supporting evidence.

DIFC and ADGM

Likewise, claims within the DIFC and ADGM will need to file a statement of claim with similar information. The document does not need to be in Arabic, but instead English.

15 What are the requirements for answering claims? What is the pleading standard?

The defendant can serve their notice of defence by email, by courier or through a court officer. The defence notice must be served either 14 days after the claim form by way of an acknowledgement of service. If an acknowledgement of service is filed, the defence will be due within 28 days of service of the claim form.

16 What are the rules regarding further briefs and submissions?

Written pleadings are submitted by advocates appearing on behalf of the parties.

Cases within the UAE are not prescribed a set number of written pleadings. While witness examination and oral representations are permitted, in practice, these will not be heard at hearings. Most cases rely on documentary evidence such as written pleadings setting out each party's position and external expert reports. Cases are usually determined by reference to these specific documents rather than oral representations in front of the judge. As explained above, the court will appoint an expert witness to provide assistance and as such, the court tends to adopt the expert's findings within its decision.

17 To what degree are civil proceedings made public?**Onshore**

In onshore UAE, hearings are generally held in public but there are usually few oral hearings. Pleadings and witness statements will not be made publicly available and can only be accessed by the parties and their legal teams. Final court orders are publicly available but without mentioning the parties' names.

DIFC

For the DIFC, the general rule is that the hearings are public and open to the media. The judge can however decide against a public hearing if he or she deems confidentiality to be important (eg, for arbitration).

ADGM

Similarly, all hearings in front of the ADGM will normally be held in public. However, the court may direct that it is necessary for a hearing, or any part of it, to be held in private. For example, if the application is made without notice, it would be unjust to any respondent for there to be a public hearing.

Pretrial settlement and ADR

18 Will a court render (interim) assessments about any factual or legal issues in dispute? What role and approach do courts typically take regarding settlement? Are there mandatory settlement conferences between the parties at the outset of or during the litigation?

It is not mandatory to participate in settlement conferences or to attempt settlement before commencing proceedings in the UAE Civil Procedure Code, the DIFC rules or the ADGM rules.

19 Is referral to mediation or another form of ADR an option, or even mandatory, before or during the litigation?

A referral to mediation or other forms of ADR is not mandatory but it is an option.

Onshore

There are no provisions within the UAE Civil Procedures Law that relate to pre-action conduct and, in particular, there are no provisions that actively encourage settlement before commencing litigation. Article 101 does, however, allow the parties to attempt settlement by staying the proceedings for up to six months should they choose to do so. There are also a number of institutions that offer ADR services (the Mediation Centre, the Reconciliation and Settlement Committee, and the Centre for Amicable Settlement of Disputes).

DIFC

Likewise, the DIFC courts also do not follow any formal pre-action protocols and there are no express provisions within the rules requiring parties to resolve their disputes before commencing litigation. However, unlike the onshore courts, the DIFC is required to promote the overriding objective to deal with cases justly and in a proportionate manner with a view to saving costs. To further this overriding objective, and although not mandatory, the DIFC courts may encourage parties to make use of ADR procedures as per Part 27 of the rules. The DIFC-LCIA Arbitration Centre, adopting the LCIA mediation process, also offers mediation in addition to arbitration services.

ADGM

For mediation in the ADGM, there exists an ADGM Arbitration Centre where parties are able to choose which layout works best for their mediation. This is a court-annexed service that promotes the use of ADR through accredited mediators from the ADGM courts.

Interim relief

20 What are the forms of emergency or interim relief?

Onshore

The onshore courts offer provisional attachment orders as a way to temporarily freeze the assets of a party. The Court must be satisfied that there is both (i) a prima facie case against the defendant for an established sum and (ii) a risk that if the order is not granted the claimant may not be able to enforce any subsequent judgment maintained. The decision to award interim relief is at the discretion of the court hearing the application.

Other forms of relief such as precautionary and summary provisions are available under article 22 of the Civil Procedure Code.

DIFC or ADGM

Since the DIFC and ADGM adopt a common law model, both courts are more open to provide interim and injunctive relief such as, but not limited to, freezing orders, disclosure orders, interim payment orders, property preservation and anti-suit injunctions.

21 What must a petitioner show to obtain interim relief?

As with the common law approach, a petitioner must prove:

- a good arguable case;

- a real risk of the dissipation of assets;
- a serious issue to be tried;
- a balance of convenience (whether one party will be prejudiced more than the other); and
- that damages will not be an adequate remedy. Decisions

22 What types of decisions (other than interim relief) may a court render in civil matters?

Other than interim relief measures or conservatory measures, courts may also grant damages, injunctions, costs, and interest. Parties seeking to enforce these awards must apply to have them ratified by a local court. This involves the process of filing a civil suit. As with other onshore proceedings, certain formalities must be undertaken, including:

- legalising the award – this involves the notarisation and attestation of the award at the UAE embassy level in the country the award was issued in; and
- translation (where required) – all documents presented to courts in onshore UAE should be provided in Arabic.

Following this, the application will be served on the defendants and the matter will proceed as a civil claim. The defendant will have the opportunity to respond.

23 At what stage of the proceedings may a court render a decision? Are motions to dismiss and summary judgment available?

The Civil Procedure Code provides for a summary judgment procedure where a creditor's entitlement is confirmed, urgent and where the claim is for a specified amount. 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.

24 Under which circumstances will a default judgment be rendered?

Default judgment may be pursued where the defendant has failed to acknowledge the claim within the appropriate time period. It may also be made whether or not a claim specifies the sum of money sought.

25 How long does it typically take a court of first instance to render a decision?

The duration of proceedings can vary depending on whether an expert is appointed. In general, a judgment may be made within six to 24 months.

Parties

26 How can third parties become involved in proceedings?

Onshore

The Civil Procedure Law allows for a third party, who was not a signatory to the contract in dispute, to become involved in proceedings. The court also has its own discretion to order that a third party join the litigation in the interests of justice.

DIFC

The DIFC Courts may order a third party to join the proceedings under Rule 20.7.

ADGM

Part 7 of the ADGM Rules allows for third parties to be added to proceedings and specifically grants the Court the power to make judgments binding on non-parties.

Fact-Finding and Evidence

27 Describe the rules of fact-finding in your jurisdiction.

Onshore

There is no process of discovery and inspection of documents at the federal level. Each party is expected to produce documents that it wishes to rely on for its case. In practice, there is a common trend amongst parties to agree to the IBA Rules on the taking of Evidence. Arbitrators may also draw on this (or similar rules) to make such orders.

DIFC or ADGM

In both the ADGM and the DIFC, where the production of documents is disputed, applications can be made to the court to rule on whether the production will take place, and a court may then issue an order for production.

28 Will a court take or initiate the taking of evidence or will it rely on the parties to request the taking of evidence and to present it?

There is no rule stating that the court will initiate the taking of Evidence; however the courts will manage the evidence-taking process in the UAE and will rely on parties to produce relevant evidence. Solicitors may request documents from the court, and the court will in turn consider the probative value of the documents.

29 Is an opponent obliged to produce evidence that is harmful to it in the proceedings? Is there a document disclosure procedure in place? What are the consequences if evidence is not produced by a party?

Onshore

The scope of disclosure is limited in onshore UAE. A party is (generally) not obliged to disclose any document that is harmful to it in the proceedings, unless – as above – the court orders it to produce such documents. There is no document disclosure process in place.

DIFC

In the DIFC Courts, each party will need to submit the following to other parties:

- all documents available to it and on which the party is relying on (including any public documents or documents in the public domain); and
- documents that it must produce by virtue of any DIFC Court rules.

Documents that adversely affect the party's case or support another party's case do not have to be submitted. The DIFC Courts may at any time request that a party produce to them and the other parties any document that it considers relevant or material to the outcome of the case.

ADGM

The default position in the ADGM Courts is that parties must abide by standard disclosure, in other words disclosing all documents on which it will rely at trial.

30 Please describe the key characteristics of witness evidence in your jurisdiction. Is witness preparation allowed?

Witness testimony is considered the oldest and most credible form of evidence in the local courts, whether for civil or criminal matters. Witness familiarisation programmes are available and permitted.

Part 29 of the DIFC Rules governs evidence and in turn, witnesses. A witness statement must indicate which of the statements in it are within the witness's own knowledge and which of the matters rely on information or belief. The witness must also indicate the source of any matters of information or belief. An exhibit is used in conjunction with the witness statement and acts a separate verified document. As with the common law, a witness statement must be accompanied by a statement of truth.

31 Who appoints expert witnesses? What is the role of experts?

Onshore

By virtue of Federal Law No. 10 of 1992, a judge will usually appoint an expert to prepare a report and produce a mandate as to what the report should address. The expert will request any documentation to assist their investigation of the matter from both parties. The expert will then file their report (in Arabic). Parties may choose to retain their own experts to assist them; however, it is unlikely that the local courts will call upon them to give evidence.

DIFC or ADGM

In the DIFC, the Courts or parties may appoint an expert, such experts being governed by RDC Part 31. The scope of the expert's role in both the DIFC and ADGM is similar, insofar as that the expert should be limited to the specific issues related to opinion evidence.

32 Can parties to proceedings (or a party's directors and officers in the case of a legal person) act as witnesses? Can the court draw negative inferences from a party's failure to testify or act as a witness?

In onshore courts, civil matters are based on written submissions supported by documentary evidence and as such, the case is determined on the basis of the written submissions and documentary evidence.

Part 30 of the DIFC Rules govern the use of witnesses by the DIFC Courts and does not expressly exclude any form of witnesses. There is no automatic right to cross-examine a witness; an application must be made by any party wishing to call a witness.

33 How is foreign law or foreign-language documentation introduced into the proceedings and considered by the courts?

Foreign-language documents may be introduced into the proceedings but they must be translated in Arabic by a translator licensed by the Ministry of Justice.

34 What standard of proof applies in civil litigation? Are there different standards for different issues?

UAE Courts generally do not adhere to traditional standards of proof (ie on the balance of probabilities in civil claims). The final decision in any case will be at the judge's discretion.

Appeals

35 What are the possibilities to appeal a judicial decision? How many levels of appeal are there?

Onshore

The right to appeal is an automatic right within onshore UAE courts and therefore no permission is required. Court of First Instance judgments are appealed and a hearing is set before the Court of Appeal. Any appeal of a Court of Appeal judgment will be heard by the Court of Cassation.

DIFC and ADGM

Appealing a Court of First Instance judgment in the DIFC and ADGM requires permission. An application for an appeal in the DIFC can be heard via oral submissions, while such applications in the ADGM are only heard on paper.

36 What aspects of a lower court's decisions will an appeals court review and by what standards?

Onshore

In onshore courts, appeals can be made on factual or legal grounds and must be filed within 30 days of the date of the Court of First Instance judgment.

DIFC

The appeal process for the DIFC is set out in Part 44 of the Rules of the DIFC Courts. The Court of Appeal will allow an appeal if the decision of the Court of First Instance was wrong or unjust because of a serious procedural or other irregularity in the proceedings.

ADGM

Part 25 of the ADGM Civil Rules maintains that no appeal may be brought against any judgment or order given or made in the Small Claims Division except on a question of law. A judgment handed down by the Court of First Instance may be appealed where the appeal has a real prospect of success or there is some other compelling reason why the appeal should be heard.

37 How long does it usually take to obtain an appellate decision?

Any appeals relating to a Court of First Instance, a Court of Appeal and/or a Court of Cassation judgment may be appealed within 30 days. As such, appeals may be used as a strategy to prolong proceedings.

Special proceedings

38 Are class actions available?

There are no laws in place for class action proceedings in onshore UAE courts and within the DIFC and ADGM.

The DIFC and ADGM do have discretion to grant a Group Litigation Order to manage claims that involve and dispute related issues of fact or law.

39 Are derivative actions available?

Generally, director duties are not owed to the shareholder but instead to the company directly. However, the shareholder is able to bring a derivative claim in the name of the company in some circumstances. Derivative actions are governed by article 166 of the UAE Commercial Companies Law and enable a shareholder to claim damages under a liability claim against the directors. A derivative claim cannot be brought by a third party.

The shareholder may only seek damages and will not be granted specific performance or declaratory relief.

40 Are fast-track proceedings available?

A fast-track route exists for the enforcement of admitted debts.

41 Is it possible to conduct proceedings in a foreign language?

For disputes within the onshore courts, all proceedings must be commenced in Arabic and all documents must also be of the same.

All proceedings in the DIFC and ADGM are heard in English.

Role of Domestic Courts In Arbitration Matters

42 In which conditions does your domestic arbitration law apply? Does it apply equally to purely domestic and international arbitrations, and to commercial and investor-state arbitrations?

Federal Law No. 6 of 2018 (the UAE Arbitration Law) applies to all arbitration proceedings that are carried out in the UAE, assuming that the parties have not agreed to apply a different arbitration law.

If parties do agree to apply a different arbitration law, this must comply with the requirements of public order.

The Arbitration Law will not apply to arbitrations seated in the DIFC, which is governed by its own arbitration law. The position is the same for ADGM arbitrations where the Arbitration Regulations apply.

43 Give an overview of instances in which state courts come into play in domestic and international arbitration proceedings.

Regardless of any governing law and governing jurisdiction clauses, UAE will not accept jurisdiction clauses that determine any of the following matters:

- commercial agencies;
- employment; and
- certain real estate matters.

44 Describe the rules governing recognition and enforcement of arbitral awards in your jurisdiction. To what extent do domestic courts review arbitral awards on the substance?

The UAE is a signatory to the New York Convention; however, the enforcement of foreign arbitral awards through the Dubai Courts can be challenging. In practice, parties may face judicial intervention, including a review of the merits of the award or the judgment that the party seeks to enforce.

In Dubai courts, parties have an automatic right of appeal with fairly limited adverse costs consequences. In practice, this means that proceedings can be expensive and time-consuming.

DIFC courts' judgments are enforced in the DIFC in much the same way as the judgments rendered in the Dubai onshore courts. Orders, decisions, and judgments of the DIFC courts are routinely enforced by execution judges in the Dubai onshore courts.

Effects of judgment and enforcement

45 What legal effects does a judgment have?

Onshore

In Dubai onshore courts, parties have an automatic right of appeal with fairly limited adverse costs consequences. In practice, this means that proceedings can be expensive and time-consuming.

Each party is entitled to object to a judgment, and such an objection should be made within 30 days of the judgment. Any decision by the Court of Appeal regarding an objection can then be further appealed to the Court of Cassation. Generally, the above process can take up to four years.

Pursuant to article 53 of the Arbitration Law), a UAE court may refuse to enforce a domestic arbitral award will have certain grounds upon which it can rely.

DIFC

The DIFC courts, in theory, take a pro-arbitration and pro-enforcement approach. Parties will generally be bound by a judgment, and the award will be enforced across the MENA region in the same way as a Dubai-seated award.

ADGM

For an ADGM judgment to be enforced onshore, and pursuant to the 2018 Memorandum of Understanding in relation to enforcement with the courts of the UAE, a particular executory force must be affixed to the judgment, and the judgment must be translated into Arabic by a certified translator.

46 What are the procedures and options for enforcing a domestic judgment?

A judgment issued by an onshore court may be enforced in any other Emirate state by the original execution judge.

Onshore

With regard to arbitration, for the UAE onshore courts, the process begins with an order by the judge to serve a writ of execution on the judgment debtor. Pursuant to the Arbitration Law, orders for ratification and enforcement of an award must be made within 60 days of the application being made by the party, although courts will have the discretion to find that the award should be set aside.

DIFC

It is possible to recognise a domestic judgment in the DIFC, and the grounds for refusing to enforce the arbitral award are significantly more limited than those in the local courts.

ADGM

In respect of the ADGM, the same position as in question 45 applies. The onshore execution judge may take certain actions onshore in respect of a judgment to be enforced within the ADGM.

47 Under what circumstances will a foreign judgment be enforced in your jurisdiction?

The UAE is party to the following international treaties:

- The New York Convention;
- Arab Convention on Judicial Co-operation (the Riyadh Convention);
- Agreement of Execution of Judgments, Delegations and Judicial Notification in the Arab FCC (GCC Treaty).

Arbitral awards issued in the UAE are enforceable in jurisdictions that are parties to these treaties.

As the UAE is party to several international and bilateral treaties, the enforcement of foreign arbitral awards is subject to the applicable treaties. The 2019 Regulations, issued under the UAE's Civil Procedure Code, provide that an application to enforce a foreign award must be made to an enforcement judge. The enforcement judge is then required to give a decision within three days.

Parties often choose the DIFC courts as opposed to the onshore Dubai courts as a means of enforcing foreign arbitral awards. Parties seek to passport arbitral awards (both foreign and domestic) by obtaining recognition and enforcement by the DIFC Courts, which then enables them to enforce against assets in onshore Dubai and beyond under the UAE's international and regional treaties (such as the Riyadh Convention). The DIFC will recognise an arbitral award as binding once it has been ratified by the DIFC Courts.

Costs and Funding

48 Will the successful party's costs be borne by the opponent?

Generally, the UAE onshore courts will make an order for costs in favour of the successful party.

The DIFC and ADGM courts have a wide discretion as to cost orders. This being said, it is most often the case that the unsuccessful party will be liable for some part of the successful party's costs. The courts will take into consideration various information (such as any settlement offers and the conduct of the parties) when deciding on a cost order.

49 May a party apply for legal aid to finance court proceedings? What other options are available for parties who may not be able to afford litigation?

Legal aid is available in the UAE but certain criteria and eligibility requirements must be met.

The DIFC and ADGM offer pro bono services and sessions throughout the year.

50 Are contingency fee arrangements permissible? Are they commonly used?

Contingency fee arrangements between clients and lawyers are prohibited in the UAE on shore courts. They are also prohibited in the DIFC to some extent but the DIFC courts do allow conditional fee arrangements.

Contingency fees and damages based agreements are permitted with the ADGM courts if they comply with the legal requirements.

51 Is third-party funding allowed in your jurisdiction?

Onshore UAE courts, the DIFC and the ADGM all permit third-party funding. There are no specific laws in place that limit what the third party can do and how much it can charge (including fees and interest).

The DIFC offers specific guidance in Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts and the ADGM offers the same in the ADGM Litigation Funding Rules 2019.

52 Are there fee scales lawyers must follow? Are there upper or lower limits for fees charged by lawyers in your jurisdiction?

No fee scales are applicable.



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Deirdre Walker is a dispute resolution lawyer based in Dubai.

Deirdre has experience in all forms of dispute resolution including litigation, mediation and arbitration as well as general commercial dispute resolution with a particular specialism in commercial fraud and interlocutory applications. She has extensive experience of urgent applications for freezing injunctions and ancillary relief and in the recovery of assets.

Deirdre was called to the Bar in 1986 and following a period of 18 months at the Department of Trade & Industry she joined the corporate department of the London practice in 1989. In 1991, she transferred to the dispute resolution department and in 1997 she became a partner.

Deirdre is recommended in *The Legal 500* for her expertise in fraud matters and in *Chambers and Partners* as a leading litigator; she is also an accredited CEDR mediator.



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As a registered Part II practitioner with the DIFC Court, Aarti advises on DIFC and ADGM law (as well as English law). She has a good working knowledge of local laws and practice and regularly co-counsels with local lawyers on litigation matters before the Onshore Courts.

Aarti has broad experience of advising on cross-jurisdictional commercial disputes, and in more recent times she has been advising on complex construction disputes in the UAE, Qatar and Saudi Arabia.

Aarti trained with the firm and has been working in the Middle East since 2015. She is currently completing a masters's in construction law and practice.



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Norton Rose Fulbright is a global legal practice. We provide the world's pre-eminent corporations and financial institutions with a full business law service. We have more than 3800 lawyers based in over 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia. With experience in managing international arbitration across all industry sectors, our lawyers both prevent and resolve disputes by giving practical, creative advice that focuses on our clients' strategic objectives. We have particular strength in financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. We handle all types of institutional and ad hoc commercial arbitrations, including under the rules of the American Arbitration Association, the International Centre for Dispute Resolution, the China International Economic and Trade Arbitration Commission, the Dubai International Arbitration Centre, the Hong Kong International Arbitration Centre, the Houston Maritime Arbitrators Association, the London Court of International Arbitration, the Singapore International Arbitration Centre and the Stockholm Chamber of Commerce. Our lawyers also have extensive experience of bilateral and multilateral investment treaty disputes, such as ICSID, Energy Charter Treaty and NAFTA arbitrations as well as bilateral investment treaty disputes under institutional rules such as those of the ICC and ad hoc arbitrations using the UNCITRAL rules. Our partners, many of whom conduct their own advocacy, also sit as arbitrators in high-value cases and hold or have held positions in the major arbitral institutions, including the ICC and the AAA.

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