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# United Arab Emirates

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## Introduction

The UAE chapter in this edition describes the UAE legal system from various perspectives, including the judiciary system, its formation, the primary steps of the legal proceedings, and other essential information with respect to the litigation process in the UAE. It is worth noting that this chapter mainly addresses the litigation proceedings before the UAE local courts compared to those before the offshore courts in the UAE.

The analysis included in this chapter is based on the relevant applicable civil codes according to their latest amendments, mainly the new Civil Procedures Code No. 42 of 2022 (CPC) and Law No. 35 of 2022 concerning evidence in civil and commercial transactions and employment.

## UAE judiciary system

The judiciary system in the UAE consists of dual systems – the federal system and the domestic system. The federal system is subject to the federal courts' supervision and constitutes the highest legal body in the UAE. On the other hand, the domestic system lies under the supervision of the domestic courts in each respective emirate.

Articles 94 to 109 of the UAE constitution comprehensively address the relationship between both systems. However, the constitution has left room for other arrangements between the two systems to be regulated in accordance with local laws and regulations, subject to their alignment with the public order and not contradicting the union arrangement.

The constitution also gives each emirate the freedom to select which system to follow. In the UAE, the emirates of Sharjah, Umm Al Quwain, Fujairah, and Ajman follow the federal judicial system only, whereas the emirates of Abu Dhabi, Dubai, and Ras Al Khaimah selected independent systems.

With respect to the federal courts and their competence, Section 5, Articles 99 and 102 of the UAE constitution addresses the competence of the federal courts, including, *inter alia*, rendering judgment in miscellaneous disputes between member emirates in the union, examination of the constitutional legality of the union laws, and interpretation of the constitutional provisions. The federal courts have exclusive jurisdiction to rule over the disputes referred to in the aforementioned articles.

## Court formation

The UAE court system has both onshore and offshore jurisdictions. The former is subject to the civil law system, while the latter includes only two courts: (i) the Court of the Dubai

International Financial Centre (**DIFC**); and (ii) the Courts of the Abu Dhabi Global Markets (**ADGM**), both applying the common law.

In the UAE onshore courts, under both federal and local systems, the litigation process is subject to three tiers of litigation: (a) the court of the first instance (in both federal and local); (b) the court of the second instance (appeal) (in both federal and local), which reexamines the case on its merits based on the grounds that the losing party may deploy to redirect the judgment of the first instance court; and (c) the court of the third tier (the Court of Cassation for local courts and the Federal Supreme Court for federal cases). Court judgments are final and not subject to any other appeal.

In local courts, there is an internal classification of circuits depending on the nature (civil, commercial, real estate) and the quantification (partial or plenary) of the dispute. It is important to note that this internal classification has no impact on the validity of the dispute in its form. In other words, if the claimant fails to file the dispute before the competent circuit, this should not be a defence to the opposing party. In fact, the court will internally transfer the case file to the competent circuit. Nonetheless, such a wrong allocation would be problematic to the claimant seeing as the defendant may take advantage of this situation if the incorrect allocation is related to the quantification of the dispute since the quantification allocation determines the number of judges on the panel. For instance, if the dispute should be examined by a tripartite panel but is examined and determined by a sole judge instead, the judgment would be voided, and the proceedings would then be dismissed.

Concerning the offshore courts, the DIFC courts have jurisdiction over the civil and commercial disputes that arise out of the DIFC and its operations or any other dispute the parties may agree in writing to resolve under the jurisdiction of the DIFC courts. The DIFC courts have no criminal jurisdiction; all criminal disputes should be referred to the competent external local authority (i.e., police stations or public prosecutor).

As to formation, the DIFC consists of three courts: (1) a small claims tribunal (**SCT**), with jurisdiction to preside over (a) employment matters where the claim amount does not exceed AED 500,000 or exceeds said amount but the parties elected in writing that the claim be heard by the SCT, and (b) non-employment matters where the quantification of the dispute does not exceed AED 1,000,000 and the parties elected in writing that the SCT preside over the matter; (2) a court of first instance, with jurisdiction over any civil or commercial matter relating to the DIFC if the dispute arose from or is related to (a) a contract or transaction performed wholly or partially in the DIFC, (b) objections by the DIFC bodies concerning the DIFC laws and regulations, and (c) any application falling under the jurisdiction of the court as per the DIFC laws and regulations. There are four main divisions under the first instance court: the civil and commercial division; technology & construction; arbitration; and digital economy court; and (3) the appeal court, which is subject to at least three judges, having jurisdiction over reexamining the judgments and awards made by the first instance court and interpretation of the DIFC laws' provisions. The appeal court's decisions are final and not subject to further appeal recourse.

The second offshore court is the ADGM, which is a financial-free zone established by Federal Decree No. 15 of 2013 running independent jurisdiction, laws and regulations and subject to two instances of courts – the first and appeal courts: (1) the first instance court (formed of a single judge) has jurisdiction over (a) any civil or commercial dispute involving the global market or any of its authorities or establishments, (b) a dispute arising from or related to a contract or transaction performed wholly or partially in the ADGM, and (c) any appeal against a decision or procedure issued by any of the global market authorities; and (2) the

appeal court (formed of three judges) has jurisdiction over (a) appeals against judgments or awards made by the court of first instance, and (b) interpretation of the global market laws and regulations. Judgments of the appeal court are final and may not be challenged by any appeal method.

### **Jurisdiction**

Concerning territorial (domestic) jurisdiction, the onshore courts generally have jurisdiction over matters where the defendant's domicile is the UAE. If the defendant is outside the UAE, the competent court will be the one located where the defendant lives or his workplace is situated.

In addition to said general rule, the law has given, for certain claims or disputes, competence to specific courts and has sometimes given the claimant different competent courts to choose from. For example, with respect to tort claims, the claimant may also file the claim before the court that is located in the same jurisdiction where the wrong action took place. In commercial matters, the jurisdiction is to the court located where the deal took place or was executed (partially or entirely) or the one that the transaction intended to be implemented within its jurisdiction.

In case there is more than one defendant, the jurisdiction should be at the court in which circuit the residence of one of them exists.

Lastly, it is essential to note that the parties may agree to grant jurisdiction to a specific court to examine the dispute, except for the conflicts expressly stipulated by law, such as those disputes relating to real estate rights or possession, inheritance matters (before the distribution of the heritage), bankruptcy disputes, and insurance claims.

### **Mechanisms for resolving disputes efficiently**

Before elaborating on court proceedings, it is important to highlight the efficiency of the mechanisms for resolving disputes in the UAE. It is notable, in recent decades, that the UAE court system has become one of the most efficient court systems in the MENA region. The reason behind this stems from the stability of the rules and their constant improvement. The stability of the rules helps both law practitioners and non-practitioners to keep a certain level of legal knowledge that ultimately leads to certainty in taking decisions and predicting success prospects before initiating legal proceedings. While the development and improvement of the rules lead to maintaining the legal system, up-to-date developments in the global market and other legal procedures ensure that UAE law protects, with no exclusion, all parties in the different fields and industries.

Not only from the perspective of the applicable laws but also the simplicity of the process, the UAE legal system maintains a high level of simplicity when it comes to resolving disputes. This is mainly due to the recent notable upgrade in relying upon online portals in all the litigation stages. Such a development made it easier for litigation parties to execute their applications, petitions, or other approaches through online portals while receiving the results within a few working days.

### **Use of technology (online filing and searching for claims, pleadings and judgments)**

By speaking about using technology in litigation proceedings, since 2021, the UAE court system has adopted the e-trial mechanism.

The e-trial was one of the main goals adopted by the UAE to confront the obstacles imposed on the legal industry by the COVID-19 pandemic. To smoothly and effectively overcome the pandemic, the UAE government and lawmakers decided to transfer court proceedings in their entirety into the e-trial system. This initiative was formulated by several decrees and legislations, such as Federal Law No. 5 of 2017 concerning the e-trial in penal proceedings and Ministerial Resolution No. 36 of 2021 regarding the e-trial in family status matters.

Since then, the e-trial mechanism has witnessed constant upgrades to the extent that entire court proceedings, including, *inter alia*, submitting pleadings, conduct of the court hearing sessions, and investigations, are currently carried out through virtual portals. Even communication with the judge is carried out through the Smart Applications system, where the party of interest submits the request, and the judge passes his direction directly online within a few working days.

In the interest of confidentiality, only the litigants or any party impleaded in the proceedings can access the case file on the court portal. Nonetheless, concerning precedents, court portals have a vast web gate to a library of precedents (without identifying the litigants), including the highest courts' established concepts and practice directions.

### **Time bars**

Concerning time for starting legal proceedings, UAE law addresses time bar issues independently by imposing certain limitations that the parties must follow to file the claim or take specific legal action. In case of non-compliance with these limitation periods, with no reasonable excuse, the claimant of the right(s) is no longer eligible to claim his rights.

Dates and number of days are as per the Gregorian calendar, and in case the last day falls as a public holiday or non-working day, the limitation extends to the first following working day.

The following are some examples of time bars of the most frequent types of claims:

- contracts (non-commercial) – 15 years from the date the respective party became aware of the breach;
- contracts (commercial) – 10 years from the date the due obligations became due;
- employment disputes – one year from the date of the end of the employment contract;
- civil guarantees – six months from the date the outstanding payments were due;
- tort – three years from the date of the harm or the affected party became aware of the damages; and
- insurance disputes – three years from the date of the rights.

UAE law, through these limitation periods, seeks to establish and maintain stability in the respective parties' legal positions and also applies common sense considering that the party who kept silent, with no excuse, about claiming his rights for the specified period is a reflection of a certain level of negligence that the law should not support or reward.

### **Court proceedings**

By virtue of the e-trial, court proceedings (from the filing process until the issuance of judgments) are entirely online. However, it may sometimes happen that either the litigant requests to meet the judge or for specific actions to be conducted in person. In these situations, it is at the discretion of the tribunal to decide whether or not such a request is crucial enough or, in the interest of justice, that it may affect the examination of the matter.

Pleadings in the UAE are all in writing. However, during the court's hearing session, judges may question the litigants or their legal counsel if they require clarification on certain aspects of the dispute.

With respect to language, the court's language is Arabic. Pleadings and supporting documents must be submitted in Arabic, and the court shall ignore any pleading or supporting evidence presented in other languages. Furthermore, if the litigant or witness is a non-Arab, the court will not accept their statements unless provided in the presence of a translator.

### How to start proceedings

Proceedings begin with filing a statement of claim submitted by the claimant, including the particularisation supported by the necessary evidence documentation. Following registration, the court's registrar reviews the statement to ensure that it includes minimal procedural requirements; otherwise, the registrar will revert the statement for the claimant to amend and rectify. If the statement passes the procedural test, the claimant should, within three working days, pay the court fee to complete the registration; otherwise, the application will be struck off.

Following the completion of the filing, the case passes first through the case management office, which covers the administrative arrangement before referring the case to the judge. The case management office has merely an administrative role in managing the pre-trial proceedings by compiling the litigants' respective memorandums and documents before referring the file to trial.

### **Civil claim procedure timeframes**

Regarding the lifetime of proceedings, it is hard to precisely predict the timeframe of the case. There are different factors affecting this assessment; for instance, the complexity of the subject matter and whether the dispute includes complex technical aspects that require the court to investigate, as well as the number of court hearing sessions. There is no standard for how many times the judge may adjourn the hearing sessions. He may keep examining the parties' arguments and their memorandums until he is satisfied that the matter is ready for determination. Also, it is not uncommon for the court, either the first tier or the appeal, to hand over the matter to a court-appointed expert to examine specific technical aspects or answer some questions the judge may raise. Furthermore, the legal procedures would significantly extend the lifetime of the proceedings, where sometimes the law requires specific functions to be fulfilled, whereby the execution of these requirements takes longer than foreseen. The most common example here is the notification procedure, as the respondent(s) must be duly notified and summoned to take a court stand; otherwise, the court proceedings would be entirely voided, so the judge must ensure the accuracy of the undertaken notification proceedings.

Notwithstanding these factors, in an average, simple court case in the UAE, the three tiers of proceedings would take *circa* 12 to 15 months from registering the case until the closure of the proceedings.

### **Role of judges**

Judges in local courts have an inquisitorial role with a wide range of discretionary powers to decide on the critical details of the case's merits. Generally, judges are free to adopt the procedures they deem fit to serve justice and fairness standards. Nonetheless, as per the hierarchy of the courts, judges of the lower courts are usually supervised by the higher court in practising the powers granted by law to ensure that the court uses its powers to serve the utmost fairness standards.

In the interest of passing more accurate determinations from a technical perspective, judges tend to appoint technical experts to examine the technical aspect of the matter and report the litigants' respective positions to the court. This mechanism is essential and is key in confining the parties' chances to challenge the court's decision. However, this does mean that the party who is reported against loses the chance to challenge the conclusion of the report either before the same court or a higher one.

Judges of the appeal court are on duty to reexamine the case in its entirety; their role is not limited to supervising the lower court practice. However, to a great extent, the first instance determination has an influential role and impacts the direction of the appeal decision. This is mainly due to the exhaustive investigation process that the first-tier courts conduct to reach the challenged determination, primarily since the expert's report supports the decision from the technical perspective.

Regarding cassation courts, they are courts of law whereby their jurisdiction is limited to supervising the performance of the two lower courts in terms of the interpretation of laws and their application on the matter and ensuring that all litigants are given a fair chance to put forward their respective cases and arguments.

Lastly, although the UAE system is not based on previous courts' directions and decisions, precedents that litigants rely upon to support their positions greatly impact the direction of the judgment. Legal precedents in the UAE constitute a library in shaping matters before onshore courts and play a deeply persuasive role. This is in contrast to the offshore courts that have an adversarial system based on the English system. The parties shall go through the dispute relying on precedented court directions to find their evidence and support a winning case.

## **Evidence**

To efficiently understand evidence under UAE law and how the parties could present their claims and respective arguments, a classification would be drawn between the pre-trial and the trial evidence. However, one can say that in both phases, two dominant general rules impact the direction of any dispute: the first is that the onus is on the party (claimant or defendant) who claims validation of a particular argument to submit evidence to support his position; and the second is that the written evidence lies at the top of the list of evidence tools whereby, unless otherwise proven by the other litigant, the content of written evidence is presumed valid.

Concerning the pre-trial phase, parties do not generally exchange written evidence, such as witnesses of facts. Each party has to rely on the available source of evidence under his possession. Nonetheless, it is often common in the UAE that if the party has insufficient evidence in control to help him assess the prospects of success, he can file a claim requesting the appointment of an expert to prepare a technical report on the matter. However, this report is not binding on the parties nor the court examining the case. It is merely advantageous for the party to get access to the evidence under the opposing party's possession and also listen to witnesses of facts.

With respect to the trial phase, UAE law gives the parties various evidence tools to put forward successful arguments. Here are some examples of evidence tools during the trial phase:

- (a) Written evidence: there are no restrictions on the parties to submit any evidence they deem necessary to substantiate their respective arguments. Furthermore, it is the position of UAE law that even in cases where a party does not possess certain evidence, the court may order the production of the requested documents. Lastly, in the interest



of justice, due to the increasing reliance on technology and electronic evidence, the new evidence law includes electronic evidence such as WhatsApp messages and other kinds of online records and statements as presentable evidence tools to the court.

- (b) A court-appointed expert: it is also an effective tool, especially in technical matters, for the party to request a technical expert to examine the technical aspects and give their opinion.
- (c) Witnesses: the litigant may also request the court to listen to an affidavit by witnesses of facts. In case of the witness's presence in court, the court session could be converted into an open investigation where the judge or legal representatives can ask the witness(es) questions to clarify the examining facts.

## Costs

With respect to the associated legal costs and expenses and whether or not the court has the power to order costs, UAE law expressly instructs the court to include the costs in its judgment. In principle, the law states explicitly that the charges should be borne by the party who lost the dispute. However, if there is more than one losing party, the court has the discretion to distribute the costs among them equally or on a *pro rata* basis with the loss amount. Also, in case of a dispute between two litigants, if both parties have partially lost their claims, the court may (a) order each party to bear the costs of his opponent, (b) order them to pay the costs equally, or (c) order only one to settle the costs.

It is essential to clarify that the legal expenses include all the costs incurred throughout the proceedings, including, among other things, court fees, notifications, and expert fees. However, concerning advocacy fees, UAE law does not reimburse the winning party. Courts usually order a minimum fee that does not exceed AED 2,000.

In addition to the costs associated with legal proceedings, the court may also impose fines (ranging from AED 1,000 to AED 10,000) on a party who has deployed malicious arguments to prolong the proceedings, such as claiming forgery despite being confident in the authenticity.

## Litigation funding

Third-party funding (TPF) is an agreement under which a third party to the potential court proceeding (the funder) agrees with one of the litigant parties to support the dispute financially in return for an agreed percentage of the expected outcome.

In principle, UAE law does not prohibit TPF in litigation, but it is still a new concept and not yet widely used in court. Therefore, there are no set regulations or particular legal frames concerning how a TPF agreement would work in the UAE. However, considering that a TPF agreement is a civil arrangement by nature, this agreement shall therefore be subject to the generally applicable civil and commercial rules concerning the parties' respective rights and obligations.

Unlike mainland practice, the DIFC and ADGM courts are both adopting TPF. In the DIFC, Practice Direction No. 2 of 2017 concerning TPF in the DIFC courts, dated 14 March 2017, expressly adopted and managed TPF and set out the requirements and the frame of the funded parties' relationships in terms of DIFC court proceedings.

On the other hand, in the ADGM, the Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 and its amendments, under Part 9, expressly manage TPF under which the regulations lay down the requirements and conditions of the TPF agreement.

For the future of TPF in the UAE, it can be easily observed that such funding is primarily based on the certainty of the legal system and the stability of the applicable laws and regulations; therefore, it is reasonable to predict that TPF in the UAE would quickly become a more familiar and reliable mechanism in the legal practice.

### **Summary judgment and interim relief procedures**

In general, concerning the summary court's jurisdiction, this court has jurisdiction over summary urgent matters, i.e., interim reliefs such as granting attachments over assets or funds whenever the interested party, usually the creditor, has reasonable grounds to trigger the fear of keeping the assets or funds under the possession of the opposing party, usually the debtor.

There are many forms of interim reliefs under UAE law. The law explicitly addresses the interim relief and respective range and the acceptance conditions and provides the cases and forms in which the claimant may pursue such relief; however, precautionary attachments and travel bans are the most familiar interim reliefs pursued by creditors in the UAE.

It is the claimant's right to pursue from the summary court an interim relief to impose an attachment on the defendant's assets or ban the latter from travelling; in all cases, the claimant has a concrete basis for triggering fear of dissipation of the assets or the defendant leaving the country.

As to the procedures, considering the urgency behind the summary application, a claimant who seeks an interim order against his debtor may apply the application, directly to the summary court, via a statement including a list of the assets that are subject to the relief and the reasons behind the fear of keeping them under the possession of the debtor.

The judge, without examining the case on its merits, within one day, has absolute discretion (and without reasoning) over whether or not to accept the interim relief. The judge's evaluation here merely assesses the triggered fears behind such relief. However, during his evaluation, the judge may request the claimant to provide more evidence or data supporting the application, run a brief investigation session, or, if required, communicate with the relevant authorities to assist with the assessment.

The judge's decision is appealable by the claimant in case of rejection or by the defendant in case of acceptance before the same court or the substance court.

Lastly, in case the judge accepts the claimant's application, the latter has to file the substance claim within eight days from the date of the decision, before the competent court claiming the rights that the interim relief was issued to protect; otherwise, the application shall be voided.

### **Class actions**

In principle, the UAE does not legislate class action claims or how they should be presented to courts as they are in their infancy in the UAE. Nonetheless, theoretically, a group of claimants could jointly proceed with a claim against the defendant on the condition that they all have the same interest or right(s), such as in tort claims where all the claimants suffered damages resulting from the same source. However, this scenario could be hard to adopt in contract disputes.

Although class actions are not legalised, there is one exception under employment law to be considered. This exception relates to employment class action disputes. Employment law expressly addresses a scenario where the employer has a conflict with all or a majority of the employees, whereby the employer or the group of employees could file a complaint against the labour office and initiate legal proceedings. However, the law is still silent on the mechanism of forming this claim and how it should be handled before the courts.

## **Enforcement of judgments and awards**

The enforcement of judgments in the UAE is a purely procedural route that the creditor of the decision or the award should go through. At the outset, a distinction should be made between enforcing domestic and foreign judgments and awards, either from a procedural perspective or the jurisdiction.

Regarding local judgments and awards, the execution court within the court that issued the decision only has jurisdiction over the enforcement proceedings; e.g., the execution court in Abu Dhabi has no authority to enforce the judgment issued by Dubai courts.

As to procedures, the creditor of the judgment should attain an enforcement seal by the court that issued the ruling, and then proceed to file the execution writ, including a breakdown of the enforceable payments (i.e., the awarded amount in addition to the legal expenses). The court will notify the debtor of the writ and invite the debtor to clear the claimed amounts within 15 days of receiving the notification. Should the debtor of the award fail to make payment, the claimant can proceed with enforcement action, such as freezing bank accounts, assets, and any other rights or entitlements to the debtor.

For foreign judgments and awards, they are enforceable on a reciprocal basis. Recognition and enforcement of foreign judgments are subject to the same conditions according to the foreign country's law (source of the decision).

As to procedures, the creditor of the award applies a petition to the execution judge, who should decide within five days (with an appealable decision) on the petition after examining the conditions prescribed by law under Article 222 of the CPC. In short, the requirements listed by law are more likely to relate to the form and procedures undertaken in the foreign country. For example, the foreign judiciary had jurisdiction over the matter, the award was final and enforceable under the foreign country's laws, and the parties were duly notified and presented their respective cases.

Concerning the enforcement of international arbitration awards, the same procedures according to Article 222 are applicable as long as the award was issued in an arbitrable matter under UAE jurisdiction.

## **Cross-border litigation**

Concerning litigation across multiple jurisdictions and complex procedural exchanges between jurisdictions, these disputes are generally uncommon in domestic litigation. However, in particular areas of law, UAE law plays an essential role in that regard; for instance, disputes relating to the recognition and enforcement of foreign court decisions and awards, and those pertaining to maritime, global bankruptcy, insolvency, and intellectual property protection. Therefore, UAE law, based on the existing applicable laws and regulations, plays an essential role in cross-border litigation.

## **Mediation and ADR**

Unlike common law practice, in the UAE, ADR generally, mediation specifically, are not formulated mechanisms that parties may use to resolve their conflicts outside the court hall. Nonetheless, UAE law is generally a mediation-friendly jurisdiction. The UAE recently developed initiatives to encourage parties to use mediation instead of filing claims. For example, Dubai Law No. 16 of 2009 established a reconciliation centre in the Dubai courts that is responsible for the reconciliation, within an extendable one month, of specified

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disputes; if the centre successfully reconciles the conflict between the parties, they sign the reconciliation and it becomes final and enforceable against the parties. Also, prior to trial, the case management office invites the parties to first assess the prospect of amicably resolving the conflict before referring the file to the court. Lastly, in specific disputes, such as family status matters and employment disputes, it is mandatory by law that the claimant file the complaint for reconciliation prior to filing the claim before the court; otherwise, the court proceedings will be voided.

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Ahmed has a diverse portfolio of clients from a range of industries, including construction, energy, transport, maritime, banking, technology, and media; however, his main area of focus is construction and infrastructure disputes. He has had considerable involvement in acting for various members of the construction and engineering supply chain, including contractors, subcontractors, and engineering/designers on complex, high-value litigation disputes and local arbitrations. Ahmed has provided clients with legal and strategic advice in several jurisdictions in the Middle East, including Qatar and Saudi Arabia.

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