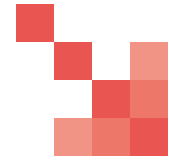


# United Arab Emirates



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## TYPES OF DISPUTE RESOLUTION

### 1. Please give a brief overview of the main dispute resolution methods used in your jurisdiction to settle large commercial disputes, identifying any recent trends.

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

#### General overview and court structure

The UAE is a federation of seven Emirates established in 1971. All the member Emirates, except for Dubai and Ras Al Kaimah, are part of a federal judicial system. Dubai and Ras Al Kaimah have independent judicial systems. In all of the Emirates except Ras Al Khaimah, the court system consists of the following three tiers:

- Court of First Instance.
- Court of Appeal.
- Court of Cassation.

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

#### The legal system

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

In addition, each Emirate has a hereditary ruler who exercises considerable sovereignty over his own Emirate. The seven rulers, as members of the Supreme Council, collectively exercise sovereignty over the Union. Despite each ruler's individual authority, there has developed a growing awareness of the practical need to operate as a sovereign state. As a result, in its relatively short history, the UAE has developed into a sovereign state more closely knit today than when it originally came into existence.

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

- Islam is the official religion.
- The *Shari'a* is a main source of legislation (see below, *The Shari'a*).
- Arabic is the official language of the UAE (*Article 7, Constitution*).

#### The Shari'a

The *Shari'a*, in its broad sense, is a body of religious, ethical and legal rules. The fundamental roots of Islamic *Shari'a* are:

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

There are supplementary sources of Islamic *Shari'a*. However, this chapter is primarily concerned with the *Shari'a* in its narrow sense - as a body of legal rules.

To say that the *Shari'a* should govern judicial decisions is to refer to a process rather than to specify a result. *Shari'a* 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. *Shari'a*, 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 scholarly commentator on commercial law in the Arabian Gulf States has argued persuasively that traditional *Shari'a* 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.

#### Civil law system

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.

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.

### The Dubai International Financial Centre (DIFC)

In addition to the above 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. The DIFC courts and procedures are not covered in this chapter.

## COURT LITIGATION - GENERAL

### 2. What limitation periods apply to bringing a claim and what triggers a limitation period? Please briefly set out any different rules for particular areas of law relevant to large commercial disputes, for example contract, tort and land disputes.

Limitation periods are not dealt with in any one particular statute. Instead, they are discussed in various statutes. General rules relating to time limitation are set out in UAE Federal Law No. 5 of 1985, the Civil Transactions Law (Civil Code). In general, a claim is time-barred after 15 years, unless a specific provision states otherwise. However, the Civil Code is exhaustive, consisting of 1,528 Articles. 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 (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:

- Contracts: 15 years.
- Cheques: three years.
- Insurance: three years.
- Causing harm (tort): three years.
- Building contracts (defects): ten years.
- Carriage of goods by sea: one year.
- Employment: one year.

### 3. Please give a brief overview of the structure of the court where large commercial disputes are usually brought. Are certain types of dispute allocated to particular divisions of this court (for example, IP, competition or maritime disputes)?

There are no specialist courts such as commercial, maritime or IP divisions. All commercial cases are heard by civil courts, usually consisting of:

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

These judges may not necessarily have specialist knowledge of commercial matters.

However, recent federal legislation requires commercial disputes to be first referred to a Reconciliation and Settlement Committee (Committee), appointed by the Ministry of Justice (*Federal Law No. 26 of 1999 with regard to Establishing Reconciliation Committees in the Federal Courts*). The Committee attempts to facilitate settlement and usually hears parties in person.

If a claim cannot be settled, the claimant can file a claim in the Court of First Instance. If the parties reach a settlement, they record and sign its terms. This agreement is binding and enforceable. This procedure does not apply in Dubai and Ras Al Khaimah.

The answers to the following questions relate to procedures that apply in the civil courts.

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

Rights of audience in the UAE courts is limited to Arab lawyers (that is, UAE national lawyers and lawyers from certain other Arab countries who have to satisfy specified criteria before a licence is issued).

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

### Legal consultants

Legal consultants are usually international law firms licensed to advise on law and are not permitted to appear in court. Legal consultants often prepare all the memoranda to be filed in court. Depending on the amount of assistance provided by legal consultants and the relationship they have, lawyers' fees may be considerably reduced when the services of legal consultants are used.

## FEES AND FUNDING

### 5. What legal fee structures can be used? For example, hourly rates, task-based billing, and conditional or contingency fees? Are fees fixed by law?

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

- The amount of the claim.
- The complexity of the matter.

- Whether the services of legal consultants are used (see *Question 4, Legal consultants*).

Additional fees are usually charged for acting in the Court of Appeal and the Court of Cassation. These are typically 50% (Court of Appeal) and 25% (Court of Cassation) of the fee charged for acting in the Court of First Instance. Additional fees are usually charged for acting in relation to a counterclaim.

Sometimes, lawyers may agree to bill based on hourly rates. Contingency fee arrangements are not permitted by law.

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

### Funding

Commercial litigation is usually funded by the client personally. Advocates usually require advance payment of the fee for acting in the Court of First Instance. Advance payment of the fee for acting in the Court of Appeal and Court of Cassation is also usually required.

### Insurance

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

## COURT PROCEEDINGS

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

The general rule is that hearings are held in public (for exceptions to this rule, see *Question 9*). However, there is usually little or no oral hearing (see *Question 4*). Also, the 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 have access to such records.

Therefore, although all proceedings are in theory public, they remain virtually confidential in practice. There is also provision to exclude the public from the “hearing” (*Article 76, UAE Federal Law No. 11 of 1992 (as amended), the Law of Civil Procedure (Civil Procedure Code)*), although this is exceptional.

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

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

### 9. Please briefly set out the main stages of typical court proceedings, including the time limits (if any) for each stage, any penalties for non-compliance and the role of the courts in progressing the case. In particular:

- How a claim is started.
- How the defendant is given notice of the claim and when the defence must be served.
- Subsequent stages.

#### Starting proceedings

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, and has a maximum cap. The general rule is that the maximum court fee is:

- AED30,000 (about US\$8,170) (or 7.5% of the claim) in Dubai. If provisional orders are sought, a further fee of 50% of the initial filing fee is payable.
- 4% of the claim for the first AED100,000 (about US\$27,300) and 5% of the amount over AED100,000, up to a maximum of AED30,000, 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 with 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 court issues a summons with a hearing date endorsed on it for service on the defendant, with a copy of the plaint and any supporting documents filed by the claimant.

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

#### Notice to the defendant

The defendant is served by a court officer, who leaves the summons, plaint and attached documents with the defendant. The defendant (or an employee if the defendant is 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.

If the proceedings are to be served on a defendant 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 where the defendant is resident. The papers are then served on the defendant according to the law and procedures of the country in which the defendant is resident. This procedure can be long and drawn out. The UAE court requires proof of service.

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

### Subsequent stages

Once an answer has been filed, the trial is adjourned for the claimant to respond. Further adjournments (usually at intervals of about two to four weeks) are given so that memoranda can be filed by the parties. Once the court believes that the case has been sufficiently pleaded, it reserves the matter for judgment. The entire proceeding is based on written submissions supported by documentary evidence. There is usually no oral evidence of witnesses in civil matters (*see Question 18*). The court usually appoints an expert to assist it and, more often than not, accepts the expert's report (*see Question 19*).

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

## INTERIM REMEDIES

### 10. What actions can a party bring for a case to be dismissed before a full trial (for example, summary judgment or for a claim to be struck out)? On what grounds must such a claim be brought? Please briefly outline the procedure that applies.

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

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

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

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

defences, including preliminary defences such as jurisdiction, time-bar and so on, in its final judgment.

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

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

There is no provision requiring a party to provide security for costs and the courts do not make orders for security for costs. In any event, when giving judgment in a matter, the court generally awards only token amounts in legal fees (*see Question 21*). Therefore, the successful party cannot recover a major portion of the costs incurred in litigation.

### 12. In relation to interim injunctions granted before a full trial:

- Are they available and on what grounds are they granted?
- Can they be obtained without prior notice to the defendant and on the same day in urgent cases?
- Are mandatory interim injunctions to compel a party to do something available in addition to prohibitory interim injunctions to stop a party from doing something?

Injunctive relief and interim remedies are not generally available, apart from summary judgment (*see Question 10*), interim attachment orders (*see Question 13*) and in other specific situations (*see Question 14*).

### 13. In relation to interim attachment orders to preserve assets pending judgment or a final order (or equivalent):

- Are they available and on what grounds must they be brought?
- Can they be obtained without prior notice to the defendant and on the same day in urgent cases?
- Do the main proceedings have to be in the same jurisdiction?
- Does attachment create any preferential right or lien in favour of the claimant over the seized assets?
- Is the claimant liable for damages suffered as a result of the attachment?
- Does the claimant have to provide security?

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

- A prima facie case against the defendant.
- A risk that if the order is not granted, the claimant may not be able to enforce any judgment that is subsequently obtained.

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

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

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

The application for an attachment order must specify the assets sought to be attached. The court does not normally grant a general attachment order over unspecified assets that have not been identified. The court may require a bank guarantee, or a letter of indemnity and/or other counter-security, to be produced by the applicant before an attachment order is made.

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

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

The claimant is liable for damages if the order was obtained maliciously and/or with the intention of causing harm or damage to the defendant. However, the mere fact that an attachment order is subsequently vacated does not make the claimant liable for damages. To succeed, it must be established that the claimant acted in bad faith. This is a difficult task. Therefore, even in a case of wrongful seizure of a vessel, the aggrieved party is usually not able to recover compensation, as bad faith cannot be established.

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#### 14. Are any other interim remedies commonly available and obtained? If yes, please give brief details.

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In limited circumstances, if there is a serious risk of the defendant fleeing the country, the court can, on application by the claimant, make an order prohibiting a defendant from leaving the country and/or to surrender his passport. If the defendant fails to comply with an order to surrender his passport, the court can order that he provide a guarantee to secure the claim and that he be detained in custody if he fails to comply with the order.

The courts also have jurisdiction to make urgent orders in certain circumstances. For example, if there is a risk that evidence may be destroyed, lost or removed from the jurisdiction, the court can

appoint an expert to examine the subject matter and prepare a report. An application for this is made on notice to the respondent.

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### FINAL REMEDIES

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#### 15. What remedies are available at the full trial stage (for example, damages and injunctions)? Are damages just compensatory or can they also be punitive?

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The main remedy available in commercial disputes is compensatory damages. The courts can also make an order confirming a right (for example, they can order the return of property).

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

The UAE courts generally do not make orders for declaratory relief (for example, a declaration of status or a declaration that a person is entitled to a particular right).

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

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### EVIDENCE

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

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There is no process of discovery and inspection of documents as occurs in Anglo-American jurisdictions. A party to a dispute is under no obligation to disclose all documents in its possession. Each party files the documents that it wishes to rely on for its case and there is no obligation on a party to file a document which is damaging to its case. In practical terms, there is extremely limited discovery available.

Any expert appointed by the court (*see Question 19*) 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 (Law of Evidence).

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#### 17. Are any documents privileged (that is, they do not need to be shown to the other party)? In particular:

- Would documents written by an in-house lawyer (local or foreign) be privileged in any circumstances?
  - If privilege is not recognised, are there any other rules allowing a party not to disclose a document (for example, confidentiality)?
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#### Privileged documents

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

16). The concept of “without prejudice” correspondence 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 admissions or offers. For this reason, settlement negotiations are not usually documented.

#### Other non-disclosure situations

Lawyers are not allowed to disclose information provided by the client without the client’s permission.

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

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

Usually, oral evidence is not allowed. If a party wishes to call a witness, an application must be made to the court. Such applications are rare. If such an application is granted, there is a right to cross-examine the witness. However, the judge closely supervises the testimony of the witness, questions the witness and controls both examination and cross-examination.

Although a written statement (or affidavit) of a witness can be filed in court, these will have very little, if any, evidentiary value and are almost invariably challenged by the opponent.

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#### 19. In relation to third party experts:

- How are they appointed (for example, are they appointed by the court or by the parties)?
  - Do they represent the interests of one party or provide independent advice to the court?
  - Is there a right to cross-examine (or reply to) expert evidence?
  - Who pays the experts’ fees?
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#### Appointment procedure

Appointment of experts is dealt with both under UAE Federal Law No. 8 of 1974 and the Law of Evidence. The court can appoint an expert at any stage to investigate any matters in which the court considers it requires assistance. It is common practice for the court to appoint an expert for findings of facts in a variety of issues including financial, accounting or other technical matters.

The expert is selected from a list of experts maintained by the court. In most cases, it is difficult for the parties to reach agreement,

as any name that is suggested by one party is invariably treated with suspicion by the other party. If the parties fail to agree, the court generally orders that an expert be appointed from the court’s list, and the parties do not typically have control over who is appointed.

#### Role of experts

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

Once the expert has prepared and filed his report in court, the parties are given an opportunity to comment on the report and a date is fixed for this purpose. The expert’s report is not binding on the judge. However, the court usually adopts the expert’s findings. The expert provides independent advice to the court and does not represent the interests of any party.

#### Right of reply

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

#### Fees

When making the order for the appointment of an expert, the court also orders one of the parties to pay an amount into court for the expert’s fees. Usually, but not always, the claimant is ordered to make the payment. The court can order further such payments. The final judgment of the court contains a determination as to which party must pay the expert’s fees.

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### APPEALS

#### 20. In relation to appeals of first instance judgments in large commercial disputes:

- To which courts can appeals be made?
  - What are the grounds for appeal?
  - Please briefly outline the typical procedure and timetable.
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#### Appeal courts

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

#### Grounds

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

## Procedure and timetable

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

## Further appeal

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

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

## COSTS

### 21. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors do the court consider when awarding costs (for example, any pre-trial offers to settle)?

The courts generally only award nominal or token amounts in legal fees. These rarely exceed AED2,000 (about US\$545), regardless of the fees actually incurred. However, the winning party may recover the court fees as well.

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

Interest is not awarded on costs.

## ENFORCEMENT

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

The main ways to enforce a local judgment are:

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

- In exceptional circumstances, incarceration of the defaulting debtor.

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

## CROSS-BORDER LITIGATION

### 24. Do local courts respect the choice of law in a contract (that is, if the parties agree that the law of a foreign jurisdiction will govern the contract)? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

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

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

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

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

### 25. Do local courts respect the choice of jurisdiction in a contract (that is, if the parties agree that claims will be brought in the courts of a foreign jurisdiction)? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

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

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

Under the Civil Procedure Code, in certain circumstances the UAE courts also have jurisdiction over actions against foreigners who have no domicile or place of residence in the UAE. If the

UAE courts have jurisdiction, they ignore a choice of jurisdiction clause.

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

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

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**26. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, please briefly outline the procedure to effect service in your jurisdiction. Is your jurisdiction party to any international agreements affecting this process?**

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The Civil Procedure Code does not expressly address the question of service of foreign legal process. The only method of service of foreign legal proceedings recognised as a matter of UAE law is service by the court bailiff in the manner set out for service of domestic UAE proceedings (see *Question 9, Notice to the defendant*).

Service in this manner requires the use of diplomatic channels. The document must be forwarded by the foreign court to the UAE Embassy in that jurisdiction through the relevant Ministry of Foreign Affairs. It is then forwarded by the UAE Embassy to the UAE Ministry of Foreign Affairs which, in turn, forwards the documents to the UAE Ministry of Justice for service on the defendant by the relevant UAE court. Service is effected by a court officer.

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

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

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**27. Please briefly outline the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction. Is your jurisdiction party to an international convention on this issue?**

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

effect to any provisions in judicial co-operation treaties with other countries in relation to the taking of evidence.

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**28. What are the procedures to enforce a foreign judgment in the local courts?**

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

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

The party seeking enforcement must apply to register the judgment by producing a duly certified and legalised copy of the judgment, together with proof that it is enforceable under the law of the country of origin. The application is made to the Court of First Instance and, on ratification of the judgment, a summons is filed in the execution court for enforcement of the judgment. There have, however, been cases where this procedure has not been followed (in 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 bilateral treaty, the provisions of the UAE Civil Procedure Code must be satisfied. The primary test is whether reciprocal arrangements for the enforcement of judgments exist between the UAE and the country in which the judgment is given. There are further provisions which must be complied with, including the following:

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

The requirement that the UAE courts must not have jurisdiction over the substantive dispute may cause difficulties when enforcing a judgment against a defendant resident or domiciled in the UAE, as the UAE courts have jurisdiction in relation to

such a defendant (*see Question 25*). If the requirements of the Civil Procedure Code discussed in the bullet points above cannot be satisfied, a civil claim must be filed in the relevant UAE court and the foreign judgment can be filed in evidence. The court will, however, examine the merits of the case.

## ALTERNATIVE DISPUTE RESOLUTION

### 29. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Please briefly outline the procedures that are typically followed, and any rules that apply.

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

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

In Dubai, in landlord and tenant disputes, a Special Judicial Committee constituted by law (*Dubai Law No. 2 of 1993 setting up a Special Judicial Committee for the Resolution of Disputes between Landlords and Tenants*) has exclusive jurisdiction to determine all disputes. The Special Judicial Committee's order is final, binding and enforceable.

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

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

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

*See Question 29.* The answers to the following questions refer only to procedures before the Committee (*see Question 3*).

### 31. Is ADR confidential?

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

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

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

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

No costs orders are made.

### 34. Is ADR used more in certain industries? If yes, please give examples.

*See Question 29.*

### 35. Please give brief details of the main bodies that offer ADR services in your jurisdiction.

*See Question 29.*

## REFORM

### 36. Please summarise any proposals for dispute resolution reform and state whether they are likely to come into force and, if so, when.

The UAE has now satisfied the requirements of the New York Convention.

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