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1. Define mediation in the United Arab Emirates

Pursuant to Article (1) of the United Arab Emirates (UAE) Federal Decree-Law No. (40) of 2023 ("Mediation Law"), mediation is defined as "An optional and alternative method for amicable settlement of civil and commercial disputes that have arisen or might arise between Parties to a legal contractual or non-contractual relationship, by engaging a neutral third party (Mediator), whether such Mediation is based on the mutual consent of the parties involved or a court order".

2. What is the role of a mediator in the United Arab Emirates?

The Mediation Law and the Dubai International Arbitration Centre (DIAC) indicate that a mediator is a neutral, natural or legal person engaged by the parties, the court, or by a centre, i.e., the Mediation and Conciliation Centre, DIAC or the International Chamber of Commerce (ICC) to act as a facilitator in attempting to reach an amicable resolution of a dispute.

3. How does mediation differ from arbitration or litigation?

There are a number of differences, the main ones being as follows:

- **Facilitation.** Unlike litigation or arbitration, where a binding decision/award is issued in favour of one party, a mediator's primary goal is to assist the parties in reaching an amicable resolution. As a voluntary appointment, a mediator facilitates discussions and negotiations and does not issue a decision. Both parties need to actively engage and make genuine efforts to reach an amicable resolution. The mediator's role is to facilitate rather than to determine.
- **Confidentiality.** Confidentiality is paramount in arbitration and is also a primary characteristic in mediation as confirmed in Article (5) of the Mediation Law. Local litigation, however, is technically public in nature.
- **Costs.** Mediation can be more cost effective than arbitration and litigation. Article 5.1 of the DIAC Mediation Rules 2023 ("DIAC Rules") (which were issued on 12 July 2023 and came into force on 1 October 2023) stipulates that the parties should agree the mediation fees with the mediator. In a DIAC arbitration, for example, the arbitrator's fees are determined based on the total amount in dispute.
- **Timeframe.** Mediation is considered to be a quicker process than both arbitration and litigation. The Mediation Law provides that the duration of mediation cannot exceed three months — be it consensual or court ordered — as stated in Articles 12(2)(d) and 14(2)(c) respectively of the Mediation Law. This period can be renewed for a similar duration only once. On the other hand, arbitration or litigation can be more time consuming and may drag on for months or years, especially where challenges to awards or appeals are filed.

4. Are there specific rules and regulations regarding mediation?

The Mediation Law has redefined the mediation landscape in the UAE by implementing the following:

- Establishing requirements of a mediation agreement; for example, the agreement should be in writing and the person signing it should have *locus standi*.

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- Embracing confidentiality. Both the Mediation Law and the DIAC Rules allow the parties to discuss matters on a without-prejudice basis. It is questionable as to whether this principle is recognised under UAE law, but Article (5) of the Mediation Law states: "the documents and information presented therein or the agreements or compromise made by the Parties involved may not be invoked before any court or any entity whatsoever". This principle was further upheld in the Dubai Court of Cassation's recent decision in case No. 486/2024, which provided that any statements made during settlement talks should not be considered as an admission or held against the party that made them.
- Judicial and non-judicial mediation. The Mediation Law sets the mechanisms to be followed for judicial mediation, i.e., court ordered mediation, which allows the court to refer a dispute to mediation at any time during the proceedings. On the other hand, non-judicial mediation provides for the parties to agree to have recourse to mediation via the Mediation and Conciliation Centre at any time.
- Mediator lists. Mediators can be added to the list if they are listed in the expert rosters of the Ministry of Justice or by the local judicial authorities, as provided at Article (10).
- Articles (18) and (19) provide for specific mediation procedures and the mediator's conduct during the sessions respectively.
- Article (20) identifies the mediator's powers including the right to hear third parties, review documents and to engage experts but expressly confirms that the mediator will have no investigative power.

5. Is your jurisdiction encouraging mediation instead of going to court to settle disputes?

The UAE supports the use of mediation as can be seen from the following:

- Several offshore jurisdictions such as the Abu Dhabi Global Market (ADGM) and the Dubai International Finance Centre (DIFC) offer access to mediation. The ADGM Courts offer a court-annexed mediation. Additionally, on 29 June 2021, the DIFC circulated Practical Guidance Note 1 of 2021 – Judicial Referral to Mediation (PGN 1/2021), which allows the DIFC court to refer parties to mediation.
- On 16 March 2022 the UAE expressed its intention to join the United Nations Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention") although it has not yet done so.
- In 2023, the UAE Ministry of Justice launched an electronic e-mediation platform called "Wasata", which can be translated as "mediation" or "influence". Wasata offers the settlement of disputes with registered mediators in both Arabic and English.
- On 25 July 2024, the UAE issued Ministerial Decision No. 341/2024 (Decision No. 341/2024) on the regulation of the functions of a mediator in criminal mediation. The main aim behind such legislation is to widen the scope of mediation in the UAE and to allow mediation proceedings to be conducted between the victim and the defendant.

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- Recently, in 2025, the Dubai Legal Affairs Department made mediation training mandatory for all practising lawyers as part of its Continuing Legal Professional Development (CLPD) programme.
- Based on the aforementioned, the UAE clearly encourages the use of mediation in resolving disputes between parties and its prevalence is likely to increase. This is particularly relevant in the Middle East where the traditional *majlis* was akin to early mediation.

6. Can courts mandate parties to mediate?

- In the DIFC Courts, Paragraph 1 of PGN 1/2021 stipulates that "the Court shall have a discretion to refer parties to mandatory mediation at any time".
- Similarly, Practice Direction 13 – Court-Annexed Mediation (Practice Direction 13) in the ADGM Courts provides that "the court may, at any stage of proceedings, either on its own initiative or upon the application of any party, refer the parties to court-annexed mediation where, in the opinion of the Court, mediation appears appropriate".
- Article (14) of the Mediation Law provides that the competent court can issue a decision to refer a dispute to mediation subject to the consent of the parties.

7. Can courts penalise a party for refusing to mediate or failing to properly engage?

Yes. Article (26)(4) of the Mediation Law allows the competent court to make a costs order against any party that fails to attend a mediation after having originally agreed to do so.

8. Can mediation happen at any time before or during court proceedings? When does it tend to happen and who are the drivers of this?

Article (14)(1) of the Mediation Law and paragraph 1 of PGN 1/2021 along with paragraph 13.20 of Practice Direction 13 provide that mediation can take place at any time during the proceedings.

There are two main drivers for this:

- Firstly, the courts can, on their own initiative, refer parties to mediation but the practice is different in onshore and offshore courts. Onshore courts must seek the consent of the parties prior to referring them to mediation. The DIFC and ADGM Courts have the freedom to refer the dispute to mediation without seeking approval from the parties.
- Secondly, parties can opt to mediate at any time during proceedings. Both ADGM and DIFC Courts allow a party to refer a dispute to mediation as provided in paragraph 13.20 of Practice Direction 13 and paragraph 4 of PGN 1/2021 respectively. However, the Mediation Law adopts slightly different wording at Article (14)(1) and explicitly mentions that the parties, i.e., jointly, should request the court to refer a dispute to mediation.

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9. In what situations is mediation considered most effective?

- **Labour disputes.** As of 1 January 2024, the Ministry of Human Resources & Emiratisation (MOHRE) is assisting parties in settling disputes where the amount in dispute is AED 50,000 or less. MOHRE emphasised that the process streamlined the resolution of labour complaints, and this process will help reduce the occurrence of labour disputes and safeguard the rights of all parties concerned.
- **Family matters.** Parties often find it better to discuss their concerns openly in front of a neutral third party instead of exposing such concerns before a court and the public. That way the parties can talk freely with no restraints and enjoy a constructive and collaborative dialogue with the facilitation of the mediator.
- **Construction disputes.** Mediation has not been as popular as hoped in the construction industry, but dispute boards remain a viable option. With the growth of major projects across the region, it remains feasible that dispute boards will increase in popularity but, for the time being, the preference remains determinative methods of resolution.

10. Can all disputes, including commercial fraud disputes, be subject to mediation?

Not all disputes can be subject to mediation. Article (28) of the Mediation Law lists six exceptions that cannot be mediated. These are:

- summary and interim orders and cases;
- cases to which the government is a party;
- rental cases heard by rental dispute committees;
- labour cases;
- personal status cases; and
- any other cases required to be heard before a centre, committee or other body with similar competence.

Commercial fraud is not expressly mentioned amongst the exclusions to the Mediation Law, and has its standalone statute, "Federal Law No. (42) 2023 on Combating Commercial Fraud" which provides, at Article (22), for conciliation in respect of any of the acts that occur in violation of the provisions of this law, its regulations and the decisions issued in implementation thereof.

11. Are dispute resolution clauses mandating mediation common in contracts? If so, are such provisions enforceable in the courts?

Often contracts will involve a contractual clause requesting parties to try to settle amicably. This is standard in construction contracts where the parties follow a tiered dispute resolution mechanism. Some clauses may explicitly refer to mediation and could even designate an institute to handle the mediator's appointment or the parties might name a neutral third party to assign a mediator.

In the UAE, clauses amounting to preconditions to arbitration will generally be determined at a jurisdictional level. In a recent case before the Dubai Court of Cassation, the court considered the effect of preconditions to arbitration. Prior to initiating arbitration proceedings, the claimant, on more than one occasion, requested the respondent to meet in an attempt to resolve the dispute in an amicable manner.

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The respondent refused to meet, which left the claimant with no option but to initiate arbitration proceedings. Ultimately, an award was issued in favour of the claimant, which was then challenged in court by the respondent, all the way to the Court of Cassation. The respondent asserted, amongst other thing, that the claimant had failed to adhere to the required preconditions to arbitration having failed to instigate amicable settlement meetings. The court rejected the respondent's claim and arrived at a different conclusion to that usually followed in the UAE. The court considered that non-compliance with these preconditions to arbitration pertains to the admissibility of the claim, thereby, making the pre-conditions enforceable and thus this can probably allow arbitrators to stay proceedings to enforce amicable settlement discussions.

12. How do mediations become legally binding and what are the common agreed terms between the parties to a mediation?

Ratified settlement agreements are binding on parties and have the same probative force as court judgments, as stipulated under Article (25) of the Mediation Law. Agreements may be ratified through the court system or may be executed before a Notary Public who verifies the execution of the agreement.

The parties are free to agree on the terms of the mediation agreement, which can be entered into either before or after a dispute arises. A settlement agreement will generally be considered valid provided that the standard conditions of a contract are met. Article (9) of the Mediation Law requires the agreement to mention the subject matter of the dispute and the appointment method of the mediator. In addition, the agreement will determine the language of the mediation; note that if it is not in the Arabic language then the parties will have to translate all documents and statements into Arabic for any enforcement proceedings in the onshore courts. The parties can also agree on the mediator's fees and the duration, as provided by Article 15(3) of the Mediation Law.

13. How can I become a mediator in the United Arab Emirates?

There are several routes to becoming a mediator in the UAE:

- To seek appointment via court, the mediator should be listed on the mediator's list created by the federal judicial inspection department or local judicial authority, as provided in Article (10) of the Mediation Law.
- The ADGM and DIFC both provide accredited mediation training from notable institutes such as the Centre for Effective Dispute Resolution (CEDR) and the International Mediation Institute (IMI).

These courses equip potential mediators with the necessary skills and tools to sit as mediators.

14. Is there a single governing body for mediators?

No. The governance of mediation in the UAE is spread across several entities:

- The local courts are the judicial body with oversight of the Mediation Law in the UAE. Offshore jurisdictions (ADGM and DIFC) have their own rules and procedures concerning mediation.

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- Additionally, several centres such as DIAC, the Saudi Centre for Commercial Arbitration (SCCA) and the ICC have their own mediation rules which parties have the autonomy to adopt.

15. What ethical codes of conduct are mediators subject to?

Article (39) of the Mediation Law provides that the council or the president of the local judicial authority is to issue a Code of Professional Conduct for Mediators and Conciliators. At the time of writing, this code is yet to be issued.

16. What are the stages of the mediation process?

In relation to the mediation process:

- At the outset, the parties should express their intention to mediate and clarify the rules that should be followed.
- The process differs depending on whether it is a court-ordered or consensual mediation and whether institutional rules, such as those in the DIAC Rules, are being adopted. Regardless of how the process is started, there should be a referral/application to mediate, whether from the parties, the competent court, or a centre. The referral/application must contain, amongst other things, the parties' details, the subject of mediation, and the timeframe for the proceedings.
- A mediator will then be appointed pursuant to either the parties' nomination or by court or institutional appointment.
- The mediator will hold sessions collectively or individually with all parties concerned to discuss the subject matter of the mediation and their claims or pleas, as provided at Article (19) of the Mediation Law. The mediator will endeavour to take whatever actions he/she deems appropriate to facilitate an agreement between the parties. Should the matter involve specific subject matter expertise, then Article (20)(3) of the Mediation Law grants the mediator the power to engage experts to provide technical/technological consultancy as they deem appropriate, provided that such experts are registered with the Ministry of Justice or local judicial authorities.
- Upon conclusion of the discussions and where the parties have reached a settlement agreement, the mediator will facilitate the preparation and execution of a settlement agreement.

17. How easy is the process of mediating in the United Arab Emirates? What are the obstacles to mediation?

The process of mediation is not difficult and the Mediation Law, along with the rules of other prominent centres and offshore courts, have set the rules and made access to mediation relatively easy. For example, Appendices 1 and 2 of the DIAC Rules provide the parties with a template highlighting what information is required from them in both the application for mediation and its response.

Obstacles can be generally categorised into:

- **Cultural diversity.** The UAE has residents from more than 150 nations. Individuals may be influenced by their culture and, therefore, might have differing views on

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dispute resolution. For example, one party may suggest engaging in an amicable resolution process whereas the other party may interpret this as a sign of weakness. It is crucial for parties to understand the culture of their counterparty prior to determining the means of dispute resolution. In an ideal world, this happens at the time of contract procurement when the parties really get to know each other and relationships are on a good footing.

- **Preference to resolve matters through courts and arbitral tribunals.** This is partially related to cultural differences between the parties, in that there can be a general perception in some cultures that decisions or awards should be determinative.

18. Is there a lack of awareness and understanding about mediation and its benefits? If so, what are some common misconceptions?

Discussion of mediation has been on the rise for the past few years as parties consider alternative forms of dispute resolution. Additionally, training from centres and institutes, and seminars conducted by accredited mediators, has helped provide both practitioners and parties with appropriate tools to pursue mediation.

Notwithstanding these training efforts, there remains a general lack of understanding of the merits of mediation. Some common misconceptions may arise surrounding:

- **The UAE not being a signatory to the Singapore Convention.** Although the UAE announced that it intends to become the 56th signatory to the Singapore Convention during RESOLVE 2022, to date it has not done so.
- **Enforceability issues.** Parties often do not appreciate the effects of a settlement agreement. Once ratified, a settlement agreement has the same probative force as a court judgment and, as such, it is not open to re-litigate the dispute. This is clarified in Article (25) of the Mediation Law, which states that "a ratified settlement agreement shall be binding on, and irrevocable by the Parties." Further education is required to explain this concept to party litigants.
- **Mediation often being seen as a minor step before court or arbitral proceedings.** Some contracts contain a tiered dispute clause which provides for mediation as a preliminary step prior to court or arbitration proceedings. In this case, parties often see the process as an administrative step rather than a genuine attempt to resolve matters. With construction disputes, in particular, it is not uncommon to see a global claim from one party which is flat-out rejected by the other. If this global claim is broken down into its constituent parts, the parties have a chance to really narrow the dispute. While mediation may not resolve all their issues, it could allow for a much quicker and cheaper determinative resolution.

19. What are perceived to be the advantages and disadvantages of mediation in the United Arab Emirates?

The advantages to mediation are perceived to be the following:

- **Preservation of relations.** Unlike in litigation or arbitration, mediation plays a pivotal role in rescuing the relationship between the parties either by a transformative or facilitative dialogue.

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- **Confidentiality.** All dialogues and documents are kept confidential during the mediation proceedings, unless agreed otherwise by the parties and the mediator. As noted above, such discussions may be protected by the concept of privilege.
- **Time and cost.** Mediation proceedings are usually faster and more cost effective than other dispute resolution mechanisms.
- **Parties reaching a settlement and not a decision.** Whether the mediator sits with the parties collectively or through organised caucuses, the outcome would be the same, i.e., it will be the parties who will decide whether the settlement will be achieved or not.
- **Ease of enforceability.** Settlement agreements can be enforced through the execution courts rather than litigating the whole dispute.

The disadvantages to mediation can be:

- **Delaying tactic.** Mediation can be used as a delaying tactic by a party to stall proceedings where there is no genuine intention to settle the dispute. This is often considered effective, especially in the local court system where there are no meaningful costs awarded against the losing party.
- **Fear of jeopardising the case.** Mediation discussions are conducted on a "without-prejudice" basis, however, it is often the case that the parties will not speak openly for fear of that information being used against them. The Mediation Law confirms the privileged nature of these discussions, but it will take time for parties to become comfortable with the concept and, indeed, for the courts to confirm that this privilege will be respected.
- **Perceived technical problems.** Some disputes can be of a highly technical nature, for example, construction and infrastructure related projects. There may be a fear that, for example, a court appointed mediator might not have sufficient time to grasp the technicalities, putting the whole process at risk of simply wasting time. However, it is for the parties to control this process and to at least narrow the issues for the mediator.
- **Limited powers of the mediator.** Unlike a court judge or a tribunal, the mediator has limited authority and does not enjoy any inquisitorial powers. This is established under Article (20) of the Mediation Law.

20. Can mediations take place remotely?

Yes. Article (4) of the Mediation Law allows the parties and the mediator/conciliator to convene remotely in accordance with the controls and procedures issued. This is also evidenced in Wasata, the UAE's legal e-mediation platform that launched in 2023 (see above, Question 5).

21. Have you seen an increase in the use of mediation in disputes since 2020?

Mediation of disputes is on the rise in the UAE.

- The DIAC Annual Report of 2023 showed the registration of its first mediation case in November 2023 shortly after DIAC introduced the DIAC Rules in October of the same year.

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- The ICC's Dispute Resolution 2023 statistics showed the registration of a mediation case in the UAE under the ICC's auspices, whereas there were none in the previous year.
- The Dubai Chamber of Commerce, operating under the umbrella of Dubai Chambers, announced that it successfully resolved 77% of the mediation cases received during the first six months of 2024, achieving a significant increase over the 62% settled during the same period in 2023.
- The Ajman Chamber noticed an increase in its mediation cases from 76 registered in 2022 to 84 registered in 2023.

22. Is Artificial Intelligence (AI) being used in mediation?

Yes. ADGM offers a "Mediation in the Metaverse" service that started in November 2022. Participants can log in from anywhere around the globe, hence reducing their carbon footprint and improving the efficiency of dispute resolution.

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Humayun is a Partner in the Dispute Resolution department at Hadef & Partners, specialising in contentious construction and commercial arbitration matters. He is an experienced arbitration practitioner with 20 years' experience of representing clients in arbitrations seated in various jurisdictions including Dubai, Abu Dhabi, Oman, Bahrain, Kuwait, Qatar and Saudi Arabia. These have been governed by prominent institutional rules, including those of the DIAC, SCCA, LCIA and ICC, as well as *ad hoc* and UNCITRAL Rules. Such disputes have been resolved under a variety of national laws. Humayun also advises construction clients during the execution of their projects. Working in a Project Counsel role, Humayun advises on contractual entitlements and on correspondence, notices, variation and claim submissions brought during the life cycle of the project. He has worked on a variety of projects across the Middle East including building, construction, engineering, rail, infrastructure, healthcare, mining, and oil and gas projects.

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Karim is an Associate in the Dispute Resolution practice at Hadef & Partners. He is a Member of the Chartered Institute of Arbitrators and a Member of the Young ICCA. Karim has extensive knowledge of *ad hoc* and institutional arbitration. He also has strong experience in drafting, setting case strategies, and crafting statements of all types. He frequently acts as counsel before several arbitral institutions (ICC, LCIA, DIFC-LCIA, SIAC and DIAC) under disputes arising from construction, oil and gas, real estate purchase agreements, and commercial transactions. Karim also advises in pre-dispute matters and negotiations. In addition, Karim has considerable experience with litigation cases before the UAE courts. He serves as a guest lecturer on international arbitration in numerous universities, and is an administrative manager for MetaverseLegal (a decentralised page dedicated to legal implications of the Metaverse). Prior to joining Hadef & Partners, Karim worked in boutique firms specialising in dispute resolution, mainly in the UAE. Karim has also dealt with disputes in Qatar.

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