IN-DEPTH

Dispute Resolution

UNITED ARAB EMIRATES

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In-Depth: Dispute Resolution (formerly The Dispute Resolution Review) provides an indispensable overview of the civil court systems in major jurisdictions worldwide. It examines the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. It is also forward-looking, with astute analysis of likely future trends and developments.

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United Arab Emirates

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Introduction

The United Arab Emirates (UAE) is a federation of seven emirates, Sharjah, Ajman, Fujairah and Umm Al Quwain, which follow the federal judicial system, and Abu Dhabi, Dubai and Ras Al Khaimah, which have retained their own local laws and systems for matters not expressly reserved for the federal judiciary under the Constitution.

To adapt to evolving business requirements, the UAE has amended its Constitution to allow for the establishment of two more legal jurisdictions: the Dubai International Financial Centre (DIFC) (in 2004) and the Abu Dhabi Global Market (ADGM) (in 2013). The DIFC and ADGM are financial free zones. They have their own 'offshore' laws that are modelled on common law principles in respect of civil and commercial matters and their own (opt-in) courts.

A dual legal system is implemented 'onshore' with legal principles drawn primarily from Islamic sharia and also influenced by other civil law systems (e.g., Egypt and France). The sharia law system works seamlessly alongside the dominant civil law principles in the civil and criminal courts and particularly within the personal status courts. The UAE Constitution (as amended) provides the primary source of law and paves the way for the promulgation of federal codes.[2]

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i Structure of the courts

The UAE has adopted a 'mixed legal system' in which multiple civil, common, customary and sharia law systems operate concurrently. Multiple courts also exist within the relevant legal systems.

Onshore

There are two systems: the federal judiciary, which is presided by the Federal Supreme Court (the highest judicial authority), and the local judicial departments in each emirate.

At the federal level, the UAE Ministry of Justice (MOJ) supervises courts and prosecution departments. The Constitution sets out the legal principles, which allow each emirate to choose whether it will be subject to the federal judiciary or maintain its own judicial system.-[3]

Three levels of adjudication exist in both the federal and local systems: courts of first instance (CFIs), courts of appeal and the Court of Cassation. Courts of appeal allow appeals on issues of fact as well as of law, whereas the Court of Cassation limits appeals to questions of law.

Specific circuits are formed within each level to adjudicate specific matters such as commercial, criminal and labour. The execution courts oversee the enforcement of final and binding judgments.

DIFC and ADGM

The DIFC courts consist of a CFI (inclusive of the Small Claims Tribunal (SCT) and specialist divisions such as the Arbitration Division and Technology and Construction Division) and a court of appeal. The ADGM courts consist of a CFI (including a Civil Division, Employment Division and Small Claims Division) and a court of appeal.

ii Framework for alternative dispute resolution procedures

Onshore

The UAE has witnessed a fast-evolving alternative dispute resolution (ADR) regime in recent times with a specific pro-enforcement shift observed in the courts. ADR measures include arbitration and mediation among other pre-litigation measures offered by various institutions.

The Federal Arbitration Law,[4] which is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the UNCITRAL Model Law), has been fundamental in recognising arbitration as the preferred mode of ADR. It specifically governs arbitration seated onshore.

As far as other ADR procedures are concerned, they are mostly recognised as contractual arrangements between the parties. Settlement agreements arising out of such processes are recognised as enforceable in court. A conciliatory process exists for claims under the value of 500,000 dirhams prior to their referral to court. The promulgation of the Federal Mediation Law[5] in 2021 has further strengthened the ADR regime.

DIFC and ADGM

The DIFC previously had its own arbitration centre (the DIFC-LCIA), which has recently been abolished. Arbitration seated in the DIFC is governed by the DIFC Arbitration Law.[6] The ADGM has its own arbitration centre with its own arbitration regulations.[7]

Year in review

i Onshore

Widespread legal reforms have recently been introduced. The year 2023 saw the continued promotion of arbitration and other ADR mechanisms. In the DIFC, after abolition of the DIFC-LCIA and consolidation of all arbitration centres in Dubai, the Dubai International Arbitration Centre (DIAC) is fast evolving into the arbitration institution of choice for disputants in the UAE.[8] Onshore, the Federal Arbitration Law was amended to pave way for proceedings to be held virtually, expanding the purview of Article 33, which provided for hearings to be confidential by extending its scope to arbitration proceedings as a whole (as opposed to being limited to hearings alone), and to remove the prohibition over appointment of persons who are on the board or administrative bodies of an arbitration institution as arbitrators in proceedings administered by that institution, provided that certain conditions are met.

A major overhaul of several UAE pieces of legislation was witnessed in 2023. A new Civil Procedure Law came into force on 2 January 2023,[9] repealing the old Civil Procedure Law. Significant amendments include all cases before CFIs to be adjudicated by a single judge regardless of the value of the claim (earlier cases with a value of over 10 million dirhams were adjudicated by a three-judge panel). Similarly, claims not exceeding 500,000 dirhams cannot be appealed before the Court of Cassation, raising the threshold from 200,000 dirhams under the old Law. With a view to expediting proceedings, time periods for certain actions have been reduced, such as the period to appeal a judgment before the Court of Cassation now being reduced to 30 days (from 60 days), as well as execution notices being reduced to seven days (from 15 days). A provision for refund of 90 per cent of court fees has been introduced in cases where a claim is dismissed due to lack of jurisdiction.

A new Evidence Law also came into force on 2 January 2023,[10] repealing the old Evidence Law. Introduction of principles of standard of proof (evidence that is more probable or more likely) for conflicting evidence, wider disclosure in commercial disputes allowing a party to seek a court order obligating the opponent to present evidence in certain cases, permitting parties to rely on custom to establish their claim and obligating court-appointed experts to disclose any relationship with the parties or interest in the case are some of the features of the new Evidence Law with a view to promoting good faith and efficiency in litigation.

The old Commercial Transactions Law was also repealed and replaced by the new Commercial Transactions Law.[11] Major amendments include the reduction of legal age to practise commercial activities to 18 years (instead of 21), the reduction of a cap on interest in commercial transactions in the absence of an agreement to 9 per cent (down from 12 per cent), the prohibition of compound interest as supplementary compensation and a reduction of the limitation period on bringing new claims to five years (instead of 10). Provisions in furtherance of decriminalisation of bounced cheques (which came into effect in 2021) are also seen in the new Commercial Transactions Law. Procedures for cheque-related offences have been clarified in the new Law.

The UAE also enacted a new Criminal Procedures Law,[12] which came into effect on 1 March 2023. It empowers the public prosecution to take conservatory measures regarding

assets suspected of relating to a crime, such as tracing, locating and attaching, and appointing a guardian over those. The concept of plea bargaining has also been introduced where a defendant makes a clear admission in exchange for reduction in penalty (limited to certain offences).

In November 2023, the UAE promulgated a new Bankruptcy and Restructuring Law,[13] which is set to come into force on 1 May 2024, repealing the current Bankruptcy Law.[14]

These are just a few examples of amendments to, and the introduction of, various laws, including the new Labour Law and Executive Regulations for the Consumer Protection Law. Overall, the UAE is steadfast in its vision to align with international best practices whether in terms of business activities and operations or the legislative framework supporting its robust growth.

ii DIFC and ADGM

DIFC

On 6 September 2023, the DIFC Court of Appeal, in a landmark decision,[15] significantly narrowed the scope of the DIFC court's interim relief (including injunctive relief) in support of foreign proceedings where there is no underlying case in the DIFC court or where it does not otherwise satisfy any of the jurisdictional gateways laid out in DIFC law.[16]

Historically, the view of many practitioners and judges in the DIFC court was that the rules of the DIFC court granted jurisdiction for a wide range of interim relief in respect of foreign proceedings with no other obvious connection with the DIFC.

The Court of Appeal determined that:

1. an applicant must always first prove that one of the jurisdictional gateways is satisfied and the DIFC court has prima facie jurisdiction under the Judicial Authority Law;
2. unless clear expressive words intending to extend the DIFC court's jurisdiction beyond the established jurisdictional gateways are set out in a DIFC court rule, the DIFC Court Rules will not automatically create additional general powers to grant interim relief where prima facie jurisdiction is not established;
3. just because a defendant or respondent does not dispute the jurisdiction of the DIFC court within the requisite time limits, the defendant has not automatically submitted to the jurisdiction of the DIFC court. The burden remains on the party seeking the relief to satisfy the DIFC court that it has jurisdiction to grant the requested relief; and
4. DIFC court Rule 24.25 cannot be read in isolation and does not expressly state that the DIFC courts have jurisdiction to grant interim relief outside of the ambit of the DIFC Law.[17]

ADGM

The ADGM court, in the first decision of its kind in relation to onshore Abu Dhabi-seated arbitration, determined that it did have jurisdiction to set aside an arbitral award where parties have agreed to the jurisdiction of the ADGM, retrospectively or otherwise, and this agreement would satisfy one of the jurisdictional gateways under the ADGM's founding law.

Following a suite of decisions in the Abu Dhabi federal courts in connection with applications to set aside an arbitral award, the claimant brought fresh proceedings before the ADGM CFI to have the arbitral award set aside.[18] In its application, the claimant relied on an earlier judgment of the Abu Dhabi Court of Cassation that the ADGM court had jurisdiction to decide the application on the basis that the arbitration was conducted in accordance with the International Chamber of Commerce (ICC) Rules and that the ICC has a representative office in the ADGM.

The ADGM court considered whether or not the retrospective opting in to the jurisdiction of the ADGM court by parties was sufficient to establish the ADGM court's jurisdiction in accordance with the ADGM founding law.[19]

In another case, the ADGM Court of Appeal put to rest any ambiguity over the precedential value of English court judgments and confirmed that, as far as the ADGM courts are concerned, English law has direct precedential value and that the body of precedent contained within English common law provides predictability.[20] The ADGM is therefore bound by the doctrine of judicial precedent in the English courts and, unlike in the DIFC courts, English court judgments are, in fact, binding in the ADGM and not just persuasive. This is a distinct difference between the two common law jurisdictions in the UAE.

The ADGM courts have also announced a ground-breaking development that enables the enforcement of commercial judgments on blockchain.

Court procedure

i Overview of court procedure

Onshore

The Civil Procedure Law[21] governs the rules of litigation.

DIFC and ADGM

The DIFC and ADGM courts adopt their own laws and civil procedural rules, which are largely based on English law and the civil court procedure rules applied by the English courts. In the DIFC court, the following rules govern civil procedures:

1. the Rules of the DIFC Court 2014;
2. the DIFC Courts Law of 2004; and
3. relevant practice directions.

In the ADGM court, the following rules govern civil procedures:

1. the ADGM Court Procedure Rules 2016;
2. the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015; and
3. practice directions.

ii Procedures and time frames

Onshore

Claims are generally commenced in the relevant CFI, unless they are under a certain monetary value where amicable settlement through conciliation is encouraged.[22] Court fees vary between emirates, although recent trends are observed in an effort to make court fees uniform across emirates.[23] Once notifications are served appropriately, the relevant court will list the first hearing for appearance of the defendant and for lawyers to file their power of attorney.

A streamlined process of submissions via various memoranda, such as the statement of claim, defence and responses, follows until the court is satisfied that all relevant documents and arguments are on record.

Generally, matters are determined based on written pleadings and documentary evidence. The court commonly relies on expert reports prepared by court-appointed experts (particularly for technical matters such as accountancy).

It usually takes three to eight months to obtain a determination by the CFI. Complex cases may take longer. Appeals are heard more quickly. A full and final binding determination of a dispute may take around 24 months or more.

DIFC

Proceedings are commenced by service of a claim form. The form will vary depending on the nature of the claim. There are three types of claim form:

1. Form P53/01 for the SCT,[24] which is the appropriate route for claims:
    - with a value of less than 500,000 dirhams;
    - relating to employment claims or if the claim value exceeds 500,000 dirhams and all parties consent in writing to the SCT having jurisdiction (or both); or
    - for non-employment claims in which the parties elect in writing to the SCT with jurisdiction and the claim value is less than 1 million dirhams;
2. Form P8/01 for claims that are unlikely to involve a substantial factual dispute (Part 8 claims) or where a rule or practice direction in relation to a specified type of proceeding requires or permits the use of the Part 8 procedure;[25]
3.

Form P7/01 is used for most claims if they do not fall within items (a), (b), (c) or (d); and

4. Form P43/01 is used for any arbitration-related matters.

Claims heard in the SCT are generally concluded within four to six weeks of successful service. Part 8 claims can also be expeditiously concluded (within six to eight months of filing) since they do not involve substantial factual disputes. Generally, Part 7 claims can be resolved within six to 18 months but will depend on the complexity of the claim and the extent of the pleadings, document production, witness statements or expert reports required. In addition, Form P43/01 is used for any arbitration-related matters.

ADGM

There are six types of claim forms:

1. CFI 1 is the standard claim form;
2. CFI 2 is used to initiate small claims;
3. CFI 3 for employment claims;
4. CFI 4 for judicial review;
5. CFI 5 for enforcement of arbitration awards; and
6. CFI 6 for claims (that are unlikely to involve a substantial factual dispute) commenced under the Rule 30 Procedure.[26]

The timelines are similar to those in the DIFC court.

iii Urgent or interim applications available and their time frames

Onshore

Travel bans and precautionary attachment orders may be availed of even before filing a substantive claim if certain conditions are met. To obtain a travel ban, an applicant must prove that there is a quantified debt that is unconditionally due and the defendant is an immediate flight risk. A travel ban can be sought as an interim remedy pending the filing of a main claim valued at a minimum of 10,000 dirhams.[27]

Travel bans may also be obtained in execution proceedings where the judgment debtor does not comply with a final judgment. It is treated as an urgent application and a decision is generally passed within three to five working days.

Similarly, a precautionary attachment against a defendant's assets may be obtained within three to five working days to prevent a defendant from dissipating its assets to evade liability.[28] The court must be satisfied that there is an immediate risk of dissipation or that the claimant's rights against these assets are at risk of being prejudiced. The applicant must undertake to indemnify the defendant if the attachment is obtained fraudulently. Where a precautionary attachment is obtained as an interim measure, substantive proceedings

must be initiated within eight days of obtaining the attachment. Otherwise, the attachment order will be set aside.

Interim orders may also be used as a basis for recognition and enforcement of foreign decisions as well as in support of ongoing foreign proceedings, thereby providing a degree of assurance to litigants that their rights are preserved. The criteria to determine what measures are available, and under which jurisdiction, depend on the case.

DIFC and ADGM

A litigant can obtain interim remedies in both the DIFC and ADGM courts at any time, prior to proceedings commencing (if the matter is urgent), during the proceedings themselves or after judgment is issued.[29] Such remedies can also be obtained on an *ex parte* basis if the court allows. The types of interim remedies that can be granted by the DIFC court are set out at Rule 25 of the DIFC Court Rules and Part 10, Rule 71 of the ADGM Court Procedure Rules. Some examples of the interim remedies that can be granted include:

1. interim injunctions;[30]
2. interim declarations;[31]
3. orders for the custody, preservation, inspection or sale of property;[32]
4. freezing orders;[33] and
5. search orders and orders for the production of information or documents, or both.[34]

The procedure for seeking an interim remedy before either the DIFC court or the ADGM court includes filing an application notice with the court, which must be supported by evidence (particularly if being brought on an *ex parte* basis).[35] Generally, interim remedies can be obtained in a few days or weeks, depending on the urgency.

iv Class actions

Onshore

UAE laws do not provide for class action lawsuits. Theoretically, a group of claimants may collectively commence proceedings against a single defendant. However, this would not work in a contractual claim, as each claimant would have to file a separate claim for breach of a contract.

DIFC and ADGM

Class actions are possible in the DIFC court[36] and in the ADGM court.[37] These courts can make group litigation orders (GLOs) where there are a number of claims giving rise to the GLO issues. The claims must have common or related issues of fact or law to be considered as GLO issues. Class actions are not common in either the DIFC court or the ADGM court. The ADGM court has, however, been fairly recently established; therefore, such claims may become more common in the future.

v Representation in proceedings

Onshore

The MOJ licenses advocates and legal consultants within the jurisdiction. Only advocates licensed by the MOJ have rights of audience before the onshore courts. Currently, only Emirati nationals can obtain rights of audience. However, a recent change to the law that governed the legal profession[38] suggests that the MOJ may be amenable to licensing non-Emiratis, provided that certain criteria are met. The new law regulating the legal profession[39] that came into effect on 2 January 2023 appears to allow partners at international firms to obtain a licence to have rights of audience in certain instances.

Before representing a party, an advocate must be duly authorised by way of a notarised power of attorney to appear before the courts on behalf of a party.

There is no prohibition on litigants representing themselves. Corporates may also be represented by their duly authorised personnel. However, the language of the court is Arabic and any written or oral submission must be made in Arabic. Notwithstanding the above, the Civil Procedure Law now empowers the chair of the federal judicial council or the head of the local judicial body to allow certain proceedings to be conducted in English.[40] Given the diverse demographic in the UAE, the general requirements present a practical barrier to self-representation in onshore proceedings for non-Arabic-speaking expatriates.

DIFC

Only legal practitioners who are registered under Part I of the DIFC Academy of Law's Register of Practitioners can represent clients in the DIFC CFI and court of appeal. These practitioners can:

1. access the e-Registry and file documents;
2. sign statements of truths;
3. correspond with the Registry regarding their cases; and
4. correspond with opposing counsel.

Only practitioners who are registered under Part II can appear before the court at hearings.

Litigants in the SCT may be represented at a hearing by a non-lawyer or lawyer only after obtaining permission from the SCT. Permission will be given if it appears reasonable and necessary in the circumstances.[41]

ADGM

The ADGM court permits individuals who have been practising or employed as a lawyer for a continuous (minimum) five-year period immediately prior to appearing before the court to have rights of audience.[42] Parties in the Small Claims Division may be legally represented or they can represent themselves. The Small Claims Division may give permission to a party who is not a natural person to be represented by an employee or director who is not

a lawyer, if satisfied that the person is likely to be able to present the party's case efficiently and assist the court in reaching a just result.

vi Service out of the jurisdiction

Onshore

Service out of the jurisdiction is usually by diplomatic channels. Upon application, the courts transmit the notice and relevant documents to the MOJ, which, in turn, transfers them to the Ministry of Foreign Affairs for dispatch to the UAE embassy in the country in which the documents will be served. Service is then effected upon the defendant in accordance with the laws of that jurisdiction.

The Civil Procedure Law grants the onshore courts jurisdiction over natural persons who are not resident in the UAE in the following cases:

1. the claim relates to real estate in the UAE;
2. an obligation concluded (wholly or partially) in the UAE;
3. a contract required to be authenticated in the UAE;
4. a bankruptcy declared in the UAE; or
5. another defendant to the claim is a resident of the UAE.[43]

The Civil Procedure Law also provides for service to be effected via alternative means, such as by email.[44] For service out of jurisdiction, the laws of the jurisdiction where service is intended to be made must also allow for service via alternative methods. These rules apply to both initiation of claims and subsequent procedures. They apply to all defendants, whether natural persons or corporates.

DIFC

Where a party to the proceedings is located outside of the DIFC but within Dubai, documents initiating proceedings against an individual or company (such as the claim form) must be served in accordance with Part 9 of the DIFC Court Rules.[45] Where an individual or company is located outside of the DIFC and Dubai, permission to serve the relevant party with the claim form is not required. However, it is the responsibility of the party serving process to ensure that he or she complies with the provisions of any treaty or rules of service in force in the place in which service is required.[46] A party can also seek permission from the court to serve an individual or company by alternative means (such as by email); however, the applicant would have to justify to the court why this method of service is being sought.[47] An order for alternative service can cover service of the claim form and subsequent documents to be served in the proceedings. RDC 9.64 also contains relevant provisions in relation to service of documents other than the claim form.

ADGM

Where a claim form is to be served on an individual or a company outside ADGM but within the UAE, it may be served in accordance with Part 4 or in accordance with the rules of service of the jurisdiction in which it is to be served.[48]

Where a claim form is to be served abroad (i.e., outside the ADGM and the UAE), it may be served by any method permitted by an applicable treaty or convention or the rules regarding service of the place in which it is to be served.[49]

Where a party is resident or domiciled outside of the ADGM or the facts giving rise to the claim did not occur within the ADGM, pleadings can still be served outside of the ADGM, provided that the ADGM court has jurisdiction.[50] Permission to serve a claim from outside the ADGM is not required.[51]

vii Enforcement of foreign judgments

Onshore

The best strategy for recognising and enforcing a foreign judgment will depend on a number of factors, such as the jurisdiction in which the decision was issued, the jurisdiction in which it is intended to be enforced and the availability of assets.

The foreign judgment must first be recognised by the relevant onshore court. Once recognised, enforcement measures can be initiated. Applications for recognition are filed directly with the relevant execution court. This provides a fast-track *ex parte* procedure, whereby the judge generally issues a decision within five working days.[52]

The Civil Procedure Law classifies foreign judgments as 'judgments and orders which have been issued by a foreign state which are capable of enforcement and execution in the UAE'.

Foreign money judgments endorsed by courts in a foreign jurisdiction can be recognised and enforced onshore in accordance with any applicable treaty entered into with the relevant foreign jurisdiction. In the absence of a treaty, the Civil Procedure Law sets out the substantive law and procedure for the enforcement of foreign judgments and arbitration awards.

Decisions issued in a foreign state can be enforced in the UAE under the same conditions of enforcement that apply in the issuing jurisdiction. In other words, without a relevant treaty in force, there is a need for reciprocity between the UAE and the issuing state in respect of recognition and enforcement. Demonstrating reciprocity would include evidencing that an equivalent UAE decision would be capable of enforcement in the issuing state. Other prerequisites include that the UAE courts should not have had exclusive jurisdiction to hear the matter and that the foreign decision must not conflict with a judgment or order of the UAE courts, or be contrary to public order and morals. Additionally, the UAE courts would not enforce a default judgment or decisions made without notice. These prerequisites emphasise the importance of proper service. The Civil Procedure Law explicitly requires the UAE courts to verify that the parties have been properly served and given an opportunity to appear.

Enforcement under a bilateral treaty is a slightly different process. A ratification application must be filed with the CFI and the terms of the treaty govern enforcement of the foreign judgment.

DIFC

The DIFC CFI has jurisdiction to ratify foreign judgments, orders or awards.[53] The foreign judgment must satisfy the common law tests for enforcement. It must be a final judgment, capable of enforcement, be rendered by a recognised court that had jurisdiction and not be subject to grounds that would render it unenforceable (e.g., obtained by fraud or contravening UAE public policy). Once the judgment is ratified, it can then be enforced onshore through the relevant legal mechanisms in place between the DIFC court and the onshore courts. The DIFC court may currently still be used as a conduit court to recognise and enforce foreign judgments against assets located onshore in the UAE, even if there is no connection with the DIFC.

ADGM

There must be reciprocity between the ADGM courts and the foreign court in order for a foreign judgment to be recognised and enforced.[54] Reciprocity can be shown either through the existence of a treaty or once the Chief Justice is satisfied that substantial reciprocity of treatment will be assured as regards the recognition and enforcement in that foreign country of ADGM court judgments.[55] There is a two-stage process for recognition and enforcement. First, there is an *ex parte* process for registration of the foreign judgment. This is followed by enforcement through the Abu Dhabi courts in accordance with the relevant memoranda of understanding.[56] Unlike the DIFC court, the ADGM court cannot be used as a conduit court for enforcing a foreign judgment against a judgment debtor's assets located in Abu Dhabi.

viii Assistance to foreign courts

Onshore

Interim measures for the enforcement (e.g., attachment and garnishment over assets) of foreign decisions are available. UAE law supports the grant of interim measures as a basis for recognition and enforcement of foreign decisions as well as in support of ongoing foreign proceedings. The criteria to determine what measures are available will depend on the specific case.

DIFC and ADGM

The DIFC court has the power to make orders in respect of obtaining evidence in the DIFC as appropriate in order to assist a foreign court. Such an order could relate to, inter alia, the examination of witnesses, production of documents, or inspection or photography of property.[57] In the ADGM court, Part 16 of the Court Procedure Rules sets out the rules for giving evidence to, and gathering evidence from, other judicial authorities.[58]

ix Access to court files

Onshore

In the onshore courts, proceedings and documents related thereto are not matters of public record. Such records are available only to the parties to the proceedings and their authorised representatives.

DIFC and ADGM

The DIFC and ADGM courts are public forums; therefore, pleadings can be easily accessed by the public from the respective court registries or e-registries. However, certain cases are classified by the DIFC Court Registry as 'private', and the pleadings in these court cases will then not be accessible to a member of the public without the consent of the Registry. Arbitration claims are also confidential.

x Litigation funding

Onshore

Nothing in UAE law prohibits third-party litigation funding or acquisition of debts. While it is not very common, it is seen to be increasing in popularity, especially in high-value claims.

DIFC and ADGM

Third-party funding of litigation is possible for proceedings commenced in the ADGM and DIFC courts. The requirements in relation to funding are set out in a Practice Direction issued by the DIFC court in March 2017[59] and in Litigation Funding Rules enacted by the ADGM court on 16 April 2019.[60]

Legal practice

i Conflicts of interest and Chinese walls

Onshore

The legal profession is regulated under the new Law Regulating the Legal Profession.[61-] Local advocates and law firms are prohibited from acting against a client in a dispute of which the lawyers have prior knowledge. They are also prohibited from disclosing information that they have obtained in the course of acting for their clients. Confidentiality obligations are broader under the new Law than they were previously. Law firms, advocates and legal consultants in Dubai are regulated by the Dubai Legal Affairs Department (DLAD). They must abide by the governing law and the applicable regulations set forth by the DLAD.[62]

DIFC and ADGM

Duties to clients, the courts and conflicts of interest are dealt with in:

1. the Mandatory Code of Conduct for Legal Practitioners (in the DIFC court) (the Code);[63] and
2. the ADGM Court Rules of Conduct[64] (the Rules of Conduct).

The Code and the Rules of Conduct set out the professional standards by which lawyers must abide when dealing with clients or the DIFC and ADGM courts. For example, the Code states that:

> practitioners shall not agree to act for a client in any matter before the Court if the Practitioner owes a separate duty to act in the best interests of another client and (1) those clients are competing with each other for the same objective and (2) the Practitioner does not have the written consent of each client to act for the other client.[65]

The DIFC court publishes its decisions taken against legal professionals for breaches of the Code on the DIFC website. The ADGM courts are able to order costs sanctions in cases of breach. The Code and the Rules of Conduct are silent on the permissibility of Chinese walls.

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

The Federal Anti-Money Laundering and Combating the Financing of Terrorism Law[65-66] applies to the legal profession. It is a requirement to conduct comprehensive due diligence on prospective clients prior to onboarding. The prospective client must provide proof of identification, proof of address and confirmation of source of funds and identify politically exposed persons, among other requirements. Lawyers are also obligated to report suspicious transactions to the Central Bank's Financial Information Unit, such as a client who conceals information regarding ultimate beneficial ownership, communicates through unknown and unrelated intermediaries or provides false documents. Legal professionals must identify and report suspicious activities to mitigate any risk of involvement in illicit transactions. Law firms must formulate internal anti-money laundering and counterterrorism financing policies for proper monitoring and regulation.

iii Data protection

Onshore

On 2 January 2022, the UAE Federal Personal Data Protection Law (PDPL)[67] came into effect. The PDPL is consent focused. Subject to limited exceptions, it is prohibited to process personal data without the consent of the data subject. One exception is where the processing 'is necessary to initiate any procedures of legal claim or defense of rights or is related to judicial or security procedures'. The PDPL requires that appropriate technical and regulatory measures be taken to ensure the security of personal data and once the purpose has been completed (e.g., deletion or anonymisation). The permissibility of the transfer or sharing of personal data to other law firms or legal processing outsourcers may

require the data subject's consent. In particular, transfers to another jurisdiction (whether to the DIFC, the ADGM or internationally) are subject to the cross-border transfer provisions of the PDPL. An adequate level of protection for data must be deemed to be in place in that jurisdiction. If such protection is not in place, similar steps or derogations as with the DIFC and ADGM (discussed below) can be used to enable the transfer.

DIFC and ADGM

The DIFC Data Protection Law No. 5 of 2020 (DPL) and accompanying Data Protection Regulations apply to controllers and processors registered in the DIFC. The DPL sets out the basis on which data can be lawfully processed, including:

1. with the consent of the data subject;
2. where it is necessary for a contract to which a data subject is a party; and
3. where a controller has to comply with laws.

The applicability of these provisions to a legal matter will depend on the case. Where there is an intention to share the data with other law firms or legal processing outsourcers, then consent of the data subject is required. That consent must be unambiguously and clearly given by an affirmative act.

The ADGM Data Protection Regulations 2021 (DPR) apply to the processing of personal data by a controller or processor in the ADGM, regardless of whether the processing takes place in the ADGM. The DPL has similar provisions to the DPR regarding consent and necessity.

For both the DIFC and ADGM, any transfer to another jurisdiction, which includes onshore UAE, DIFC, ADGM or internationally), can take place only where the other jurisdiction has an adequate level of protection or, if not, where appropriate safeguards are applied. Both the DIFC and the ADGM require that processors, which includes law firms, must maintain proper systems of control and consider appropriate deletion or anonymisation (or both) of data once the purpose has been fulfilled.

Documents and the protection of privilege

i Privilege

Onshore

Lawyer–client correspondence is considered confidential. The UAE does not have any express provision in respect of legal professional privilege. The duty of confidentiality that is applicable to lawyers has similarities with legal privilege. However, parties have the right to use any document that may support their claim in civil litigation, and the common law concept of privilege does not apply.

Lawyers will also be subject to the regulations of the jurisdiction in which they are enrolled. For example, a solicitor licensed by the Solicitors Regulatory Authority of England and Wales may be subject to its regulations, despite practising the profession in the UAE.

DIFC and ADGM

There is no specific legislation in the DIFC or ADGM dealing with privilege. However, under the DIFC Code of Conduct,[68] a duty of confidentiality is imposed on lawyers to treat all information communicated to them by their client in a confidential manner (unless disclosure of it is authorised by the client, ordered by the court or required by law). Furthermore, 'privilege' is defined within the glossary of the DIFC Court Rules and states that a party can refuse to disclose a document or refuse to answer questions on the ground of some special interest recognised by law. The ADGM court has similar provisions under its Rules of Conduct for lawyers.[69]

ii Production of documents

Onshore

Disclosure obligations, as they apply in common law jurisdictions, do not apply in the onshore courts, although there has been a recent shift with the promulgation of the new Evidence Law where disclosure may be ordered by courts in certain circumstances. This is still largely untested. Generally, parties are free to file documents in support of their position, and there is no obligation to provide documents that may be adverse to their position.

At the execution stage, judgment creditors can request the court to issue directives to any natural or legal persons. The court can also request public authorities to disclose information relating to a judgment debtor's assets.

DIFC

The document production process is set out in Part 28 of the DIFC Court Rules. Parties should seek to agree in advance the parameters of any search of electronic documents, including electronic databases and search terms.[70]

Each party may produce the documents upon which he or she relies in support of his or her claim (except for documents that have already been submitted by another party), as well as any documents required to be produced by law.[71] This is known as the 'standard production'. A 'document' is defined as 'anything in which information of any description is recorded'. The definition extends to electronic documents and metadata.[72]

Following standard production, the parties may serve 'requests to produce' (usually in the form of Redfern Schedules), requesting the other party to produce relevant documents that fall within the categories listed in the requests (even if the documents are located outside of the jurisdiction). The request must explain the relevance and materiality of the categories. The requesting party must also set out why it is believed that the documents are in the other party's 'possession, custody or control'.

The opposing party then has an opportunity to object to the production of any documents in the request and must set out why it would be unreasonably burdensome for it to be produced.[73]

The last step of document production entails all parties producing any relevant documents that fall within the ambit of the request, unless any valid objections can be put forward.[74] Any duty of disclosure continues until proceedings are concluded.

ADGM

The document production process is set out in Part 13 of the ADGM Court Procedure Rules 2016. The process is similar to that in the DIFC court.

The court may dispense with or limit standard disclosure, or the parties may agree to do so in writing. The court may also make an order for further or specific disclosure or for inspection of documents in the possession of any party.

Where extensive production is envisaged, parties should seek to exchange preliminary production requests in draft form before standard production occurs.[75]

Alternatives to litigation

i Overview of alternatives to litigation

In 2009, the forum for amicable settlement of disputes was created in Dubai[76] to facilitate settlement of lower-value disputes through conciliation. The Center for Amicable Settlement of Disputes provides conciliation services for matters that meet the relevant threshold.[77]

The Federal Law on Mediation[78] facilitates settlement through mediation if provided for in the parties' contract.

The Federal Arbitration Law[79] governs UAE-seated arbitration. The UAE is also signatory to the New York Convention.

ii Arbitration

Onshore

The Federal Arbitration Law[80] provides the framework for UAE-seated arbitration. Coupled with the Civil Procedure Law, which provides the framework for post-arbitral proceedings (such as ratification, enforcement and nullification), the UAE provides for a robust arbitration regime.

As noted above, the new DIAC Rules were promulgated in early 2022. They allow for an expedited, efficient and user-friendly regime.

Other arbitration institutions in the UAE include the Abu Dhabi Conciliation and Arbitration Centre and the Sharjah International Commercial Arbitration Centre. The UAE has witnessed a major increase in disputes referred to arbitration in recent years.

The Federal Arbitration Law sets out the grounds upon which an arbitration award can be challenged.[81] These grounds are generally in line with the UNCITRAL Model Law and include lack of capacity, procedural irregularities and discrepancies in the award.

The parties have 30 days to challenge the validity of an award, after which the judgment creditor has the right to initiate ratification and enforcement.[82] Award debtors also have the opportunity to appeal a ratification order. This appeal must also be filed within 30 days of obtaining the order.

The Civil Procedure Law provides the enforcement framework. It is similar to that of the enforcement of foreign judgments.[83] A foreign arbitration award first needs to be recognised by the relevant UAE court. Only after a foreign decision is recognised can enforcement measures be initiated.

The Executive Regulations are consistent with the New York Convention. Generally, it appears that the fast-evolving jurisprudence is indicative of an increasingly robust pro-enforcement regime in the UAE.

ADGM and DIFC

Arbitration in the DIFC and ADGM is governed by the DIFC Arbitration Law[84] and the ADGM Arbitration Regulations 2015, respectively. Previously, the DIFC had established a partnership with the London Court of International Arbitration (LCIA). The DIFC-LCIA Arbitration Centre operated with its own rules based on the LCIA Rules. However, the DIFC-LCIA was recently abolished.[85] Its operations were merged under the ambit of DIAC, and the new DIAC Arbitration Rules 2022 apply. The ADGM has the ADGM Arbitration Centre. It also hosts a representative office for the ICC Court Secretariat in Abu Dhabi.

Part 4 of the DIFC Arbitration Law sets out the procedure for recognising a foreign arbitration award in the DIFC court. The grounds[86] upon which the DIFC court may refuse to recognise an arbitral award (domestic or foreign) are modelled on those set out in the New York Convention.[87] In terms of procedure, an *ex parte* application is made to the DIFC court, using an arbitration claim form. Within (usually) a few weeks, the court will determine the application and if satisfied that there is a prima facie valid award that has not been satisfied, the DIFC court will issue an order enforcing the award. The order must then be served on the opposing party, which will have 14 days to apply to set the order aside.[88] It is also currently possible to use the DIFC court as a conduit court to recognise and enforce foreign awards against assets located onshore in Dubai, even where there is no connection with the DIFC.

Articles 60 to 62 of the ADGM Arbitration Regulations set out the procedures to enforce an arbitral award and the grounds upon which the court may refuse recognition and enforcement. Unlike the DIFC court, the ADGM court has made it clear that it cannot be used as a conduit for enforcing a foreign award against assets located in Abu Dhabi.

Before it was abolished, parties in the UAE generally preferred using the DIFC-LCIA because it was seen as more accessible and efficient. It remains to be seen whether DIAC

will enjoy the same success as the DIFC-LCIA. The new 2022 DIAC Rules mark a welcome move towards a modern and effective arbitration regime in Dubai.

iii Mediation

Onshore

The Federal Mediation Law[89] brings into force the framework for mediation and sets out the obligations of mediators. It provides for judicial and non-judicial mediations. Judicial mediations refer to cases wherein the court refers a dispute to mediation at any stage in the proceedings, whether owing to a proposal by the parties or for the purpose of implementing a mediation agreement. In any event, the courts have been encouraging mediation, through various committees and centres, for some time. Mediation is still not very common but is expected to increase.

DIFC and ADGM

The DIFC Court Rules require the courts to 'further the overriding objective by actively managing cases including . . . encouraging the parties to use an alternative dispute resolution procedure if the courts consider that appropriate'. Part 27 of the DIFC Court Rules makes provision for the use of ADR, which encompasses mediation. Judges may invite the parties to consider whether their dispute could be resolved via ADR.[90] The court also has discretion to adjourn the proceedings to encourage the parties to use ADR. At the costs stage, a party may be penalised for failure to properly engage in an ADR process.

The ADGM Court Procedure Rules 2016 set out that a dispute may be referred to court-annexed mediation either voluntarily by the parties before or after commencement of proceedings or by an order of the court. The court has discretion to make such an order at any time, but, in the normal course, it will do so at the first case management conference.-[91] At the costs stage, the parties' conduct in engaging with the mediation may be taken into account.

iv Other forms of ADR

Various institutions (e.g., the Chambers of Commerce for each emirate or the UAE Insurance Authority) have set up ADR centres. However, ADR is still rarely a mandatory precursor to litigation.

Outlook and conclusions

i Onshore

There is an increase in the number of expedited litigation procedures such as summary procedures for unequivocal debts and for bounced cheques. Many of these procedures provide mechanisms for immediate *ex parte* judgments, with decisions expected within seven working days.

The updated DIAC Rules also provide for expedited arbitration. For example, a single arbitrator can be appointed and certain steps can be foregone (e.g., case management conferences, document production and oral hearings if certain conditions are met).

In terms of enforcement of foreign judgments, the MOJ issued a circular to the Dubai courts in 2022, marking a significant development in the enforcement of English court judgments. Courts generally test reciprocity with an open mind and from a wide perspective.

The UAE continues in its drive to provide expedited proceedings as well as ADR mechanisms by continuously evolving and revamping its legal framework to suit needs, thereby providing an increasingly efficient dispute resolution regime with the best interests of residents and businesses in mind.

ii DIFC and ADGM

In the recent case of *TIG v. El Fadil*,[92] the DIFC Court of Appeal clarified that English (or other common law) principles and doctrines cannot be imported wholesale into DIFC law. The Court of Appeal clarified that DIFC law is statute-based. If DIFC law is silent on an issue, that lacuna cannot automatically be filled by reference to another jurisdiction's principles. In this case, the English torts of malicious prosecution and abuse of process were found not to apply as they are not codified in DIFC law. The jurisprudence of other common law jurisdictions can still be relied upon to interpret DIFC legislation, where appropriate. The fact that disputes in the DIFC court are to be determined in accordance with particular 'waterfall' provisions[93] and that the laws of England and Wales appear last in that list do not mean that the DIFC law 'defaults' to English law. Rather, the Court of Appeal has made it clear that the waterfall provisions in DIFC law are the chosen law provisions.

Endnotes

1. Karim Mahmoud is a partner, Maria Lezala is a senior associate, and Abdul Hannan Mian and Harriet McLaughlin are associates at Hadef & Partners LLC. ^ Back to section
2. Article 121 of the Constitution of the United Arab Emirates, 2 December 1971 (as amended). ^ Back to section
3. Articles 94 to 109 of the UAE Constitution. ^ Back to section
4. Federal Law No. 6 of 2018 on Arbitration (as amended by Federal Law No. 15 of 2023). ^ Back to section
5. Federal Law No. 6 of 2021 on Mediation. ^ Back to section
6. DIFC Law 1 of 2008. ^ Back to section
7. Arbitration Regulations 2015. ^ Back to section

8 Dubai Decree No. 34 of 2021. ^ Back to section

9 Federal Law No. 42 of 2022 ^ Back to section

10 Federal Law No. 35 of 2022 ^ Back to section

11 Federal Law No. 50 of 2022 ^ Back to section

12 Federal Law No. 38 of 2022 ^ Back to section

13 Federal Law No. 51 of 2023. ^ Back to section

14 Federal Law No. 9 of 2016 (as amended). ^ Back to section

15 *Sandra Holdings v. Al Saleb* CA 003/2023. ^ Back to section

16 Article 5 of Law No. 12 of 2004 in respect of the Judicial Authority at Dubai International Financial Centre (as amended). ^ Back to section

17 Article 5(A)(1)(a)-(d) and 5(A)(2) of Law No. 12 of 2004 in respect of the Judicial Authority of the Dubai International Financial Centre (as amended). ^ Back to section

18 *A6 v. B6* [2023]. ^ Back to section

19 Article 13 of Abu Dhabi Law No. 4 of 2013 concerning the Abu Dhabi Global Market. ^ Back to section

20 *AC Network Holding Limited and others v. Polymath Ekar SPV1 and others* [2023] ADGMCA 002. ^ Back to section

21 Federal Law No. 42 of 2022. ^ Back to section

22 Dubai Law No. 18 of 2021 governs conciliation in the Emirate of Dubai conducted by the Center for Amicable Settlement of Disputes established under law and functioning under supervision of the Dubai courts. ^ Back to section

23 The Emirate of Ras Al Khaimah in November 2023 promulgated RAK Law No. 16 of 2023 aligning its court fees with those in Dubai and Abu Dhabi. ^ Back to section

24 Rule 53 of the DIFC Court Rules. ^ Back to section

25 Rule 8 of the DIFC Court Rules. ^ Back to section

26 https://www.adgm.com/adgm-courts/forms-fees-and-guides. ^ Back to section

27 Articles 324 of the Civil Procedure Law. ^ Back to section

28 Articles 247 to 251 of the Civil Procedure Law. Back to section

29 Rules 25.6 of the DIFC Court Rules and 72(1) of the ADGM Court Procedure Rules 2016. Back to section

30 Rules 25.1(1) of the DIFC Court Rules and 71(1)(a) of the ADGM Court Procedure Rules 2016. Back to section

31 Rules 25.1(2) of the DIFC Court Rules and 71(1)(b) of the ADGM Court Procedure Rules 2016. Back to section

32 Rules 25.1(3) of the DIFC Court Rules and 71(1)(c) of the ADGM Court Procedure Rules 2016. Back to section

33 Rules 25.1(6) of the DIFC Court Rules and 71(1)(f) of the ADGM Court Procedure Rules 2016. Back to section

34 Rules 25.1(7) and 25.1(9) of the DIFC Court Rules and 71(1)(g), 71(1)(h) of the ADGM Court Procedure Rules 2016. Back to section

35 Rules 23.2 and 25.8 to 25.10 of the DIFC Court Rules and 64(3), 72(3) and 72(7) of the ADGM Court Procedure Rules 2016. Back to section

36 Rules 20.72 to 20.78 of the DIFC Court Rules in relation to GLOs. Back to section

37 Rule 63 of the ADGM Court Procedure Rules 2016. Back to section

38 Federal Law No. 23 of 1991 (repealed). Back to section

39 Federal Law No. 34 of 2022. Back to section

40 Article 5 of the Civil Procedure Law. Back to section

41 Rule 53.55 of the DIFC Court Rules. Back to section

42 Part 9, Rule 219 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015. Back to section

43 Civil Procedure Law. Back to section

44 Article 9 of the Civil Procedure Law. Back to section

45 See specifically Rules 9.2, 9.3, 9.4 and 9.9 of the DIFC Court Rules. Back to section

46 See Rule 9.53 of the DIFC Court Rules. Back to section

47 See Rule 9.32 of the DIFC Court Rules. ^ Back to section

48 Rule 15(6) of the ADGM Court Procedure Rules 2016. ^ Back to section

49 Rule 15(7) of the ADGM Court Procedure Rules 2016. ^ Back to section

50 Part 4 – Service of Documents of the ADGM Court Procedure Rules 2016. ^ Back to section

51 Rule 15(5) of the ADGM Court Procedure Rules 2016. ^ Back to section

52 Articles 222 to 225 of the Civil Procedure Law. ^ Back to section

53 Article 24(1)(a) of the DIFC Court Law. ^ Back to section

54 Chapter 10 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015. ^ Back to section

55 Article 171 (Chapter 10) of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015. ^ Back to section

56 Rule 298(1) and (3) of the ADGM Court Procedure Rules 2016 (as amended). ^ Back to section

57 Rules 30.65 and 30.66 of the DIFC Court Rules. ^ Back to section

58 Article 132 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015. ^ Back to section

59 Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts (PD 2/2017). ^ Back to section

60 ADGM Courts Litigation Funding Rules 2019. ^ Back to section

61 Federal Law No. 34 of 2022 regarding the Regulation of the Legal Profession. ^ Back to section

62 DLAD Charter for the Conduct of Advocates and Legal Consultants in the Emirate of Dubai. ^ Back to section

63 Part C of the Code – Duties owed to clients. ^ Back to section

64 ADGM Court Rules of Conduct 2016. ^ Back to section

65 DIFC Court Order No. 4 of 2019; Part C, Paragraph 13(A) of the Code. ^ Back to section

66 Federal Law No. 20 of 2018 amended by Law No. 26 of 2021 together with its Implementing Regulations; see Cabinet Decision 10 of 2019 and Cabinet Decision 24 of 2022. ^ Back to section

67 Federal Law No. 45 of 2021. ^ Back to section

68 Code of Conduct of Legal Practitioners and the Supplementary Code of Conduct Practice Direction(Part C SPD C-7(i) and SPF C-15(i)). ^ Back to section

69 Article 7(6) of the ADGM Rules of Conduct 2016. ^ Back to section

70 RDC 28.23. Furthermore, the factors that may be relevant to determining the reasonableness of a search for electronic documents are set out in RDC 28.21. ^ Back to section

71 RDC 28.15. ^ Back to section

72 RDC 28.1 and 28.2. ^ Back to section

73 RDC 28.27 and 28.8. ^ Back to section

74 RDC 28.26. ^ Back to section

75 ADGM Court, Practice Direction 6 – Disclosure. ^ Back to section

76 Dubai Law No. 16 of 2009. ^ Back to section

77 Dubai Law No. 18 of 2021. ^ Back to section

78 Federal Law 6 of 2021 on Mediation in Civil and Commercial Disputes. ^ Back to section

79 Federal Law No. 6 of 2018 on Arbitration (as amended by Federal Law No. 15 of 2023). ^ Back to section

80 Federal Law No. 6 of 2018 (as amended by Federal Law No. 15 of 2023). ^ Back to section

81 Articles 53 and 54 of the Federal Arbitration Law. ^ Back to section

82 Article 55 of the Federal Arbitration Law. ^ Back to section

83 Articles 222 to 225 of the Civil Procedure Law. ^ Back to section

84 DIFC Law No. 1/2008, as amended by the Arbitration Law Amendment Law, DIFC Law No. 6/2013 (DIFC Arbitration Law). ^ Back to section

85 Decree No. 34 of 2021 concerning the Dubai International Arbitration Centre. ^ Back to section

86 Article 44 of the DIFC Arbitration Law. ^ Back to section

87 Article V of the New York Convention. ^ Back to section

88 RDC 43.70. ^ Back to section

89 Federal Law No. 6 of 2021. ^ Back to section

90 Rule 78 of the ADGM Court Procedure Rules 2016. ^ Back to section

91 Rules 78 and 306 of the ADGM Court Procedure Rules 2016. ^ Back to section

92 *The Industrial Group v. El Fadil Hamid* [2022] CA 005/006 (20 September 2022). ^ Back to section

93 DIFC Law No. 3 of 2004 on the Application of Civil and Commercial Laws in the DIFC. ^ Back to section

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