

GAR KNOW HOW LITIGATION

United Arab Emirates

Deirdre Walker, Aarti Thadani,
Alexander Field and Ina Lamce
Norton Rose Fulbright

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Overview

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

Onshore jurisdiction

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

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

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

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

The Dubai Court of First Instance

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

The Dubai Court of Appeal

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

Dubai Court of Cassation

Court of Appeal judgments may be appealed within 60 days from the date of the judgment and are usually heard by five judges. Any appeal may only be for sums in dispute in excess of 500,000 dirhams, unless the judgment does not involve a financial award. This is the highest court from which there is no appeal.

The Dubai International Financial Centre (DIFC)

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

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

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

Small Claims Tribunal (SCT)

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

The SCT deals with three types of claims:

- claims with a value of 500,000 dirhams or less;
- employment-related claims where the amount does not exceed 500,000 dirhams and, provided that the parties have agreed that the SCT should hear the case, then employment-related claims in excess of 500,000 dirhams can also be heard by the SCT; and
- non-employment-related claims where the amount in dispute does not exceed 1 million dirhams, provided that the parties have agreed in writing that the SCT should hear the dispute.

Court of First Instance

Dubai Law No. 12 of 2004 (Judicial Authority Law) establishes the DIFC Courts and grants them jurisdiction. The Judicial Authority Law establishes two levels of courts: the Court of First Instance and the Court of Appeal.

By the Judicial Authority Law, the Court of First Instance has jurisdiction to hear civil or commercial claims arising from entities that are in the DIFC, licensed by the DIFC, or connected with the DIFC. The Court of First Instance can also hear claims arising out of contracts performed or concluded within the DIFC, or claims arising from activities that took place in the DIFC. The Court of First Instance also has jurisdiction to hear appeals against administrative decisions of DIFC authorities. The Court of First Instance also has jurisdiction to hear disputes arising from contracts that submit disputes to the jurisdiction of the DIFC Courts.

Court of Appeal

Per the Judicial Authority Law, the Court of Appeal is the highest authority in the DIFC. Orders and judgments are final unless there is a question of a conflict of jurisdiction between onshore Dubai courts and the DIFC.

Where there is a conflict of jurisdiction between onshore Dubai courts and DIFC Courts, either party can make a challenge that will then be decided by the Joint Judicial Committee, which was constituted in 2016 pursuant to Decree 19 of 2016 "On the Formation of the Judicial Committee for the Courts of Dubai and the Courts of the Dubai International Finance Centre". Jurisdictional disputes between onshore and DIFC Courts remain a complex area of law in the UAE.

Abu Dhabi Global Market Courts (ADGM)

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

The ADGM has its own body of laws with an independent judicial authority and courts that deal with civil and commercial matters. Furthermore, proceedings in the ADGM courts are governed by ADGM Courts' Regulations, the ADGM Court Rules and the Practice Directions. They comprise a Court of First Instance and a Court of Appeal. The Court of First Instance has three divisions: (i) Civil Division; (ii) Employment Division; and (iii) Small Claims Division.

Both the DIFC Rules and the ADGM Court Rules in many ways resemble the English Civil Procedure Rules (the CPRs). However, there are notable differences that practitioners and parties should be aware of, for instance, disclosure (Part 13 of the ADGM Court Rules, see DIFC Court Rules Rule 28.15), which differ from the English CPRs. For example, under the DIFC and ADGM rules, a party is required to give standard disclosure of documents on which it relies. These tend to be documents which help rather than adversely affect its case. However, under the English CPRs, standard disclosure requires a party to disclose documents on which it relies and the documents that adversely affect its own case [CPR 31.6].

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

Onshore

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

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

Civil matters are predominantly based on the written pleadings of the parties, supported by documentary evidence. All documents filed in court by the litigants must be translated into Arabic, and all court proceedings are in Arabic. As explained further below in this chapter, onshore courts prefer documentary evidence and rarely rely upon witness evidence. Where a witness does give testimonial evidence, they are required to swear a religious oath (see articles 4 of the Civil Procedure Code).

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

DIFC

The DIFC Court Rules govern the procedure within the DIFC Courts.

A claim in the DIFC is commenced by filing the relevant claim form. The most common claim form is the P7/01 form, which is used for claims outside the SCT. Form P8/01 is used to commence a Part 8 claim and is used where there is no substantial dispute of fact. For arbitration-related claims, form P43/01 will be used. Once the claim form has been served on the defendant, the defendant will need to file an acknowledgment of service that is then followed by its Defence. A copy of the defence must be served on every other party.

The parties are subject to the standard disclosure process found in English courts, namely a party must disclose all documents available to it and upon which that party seeks to rely. The DIFC Court may require a party to disclose further documents upon an application by a party. It is at the Court's discretion as to what disclosure order to make.

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

Evidence at a hearing will generally be given by way of witness testimony and witness statement or affidavit. A witness statement may generally be used except in support of certain orders (such as freezing orders), which require sworn evidence and an affidavit to be produced. Witness statements set out a witness' evidence in chief and so should be in the witness's own words. Witness statements should refrain from engaging in argument. A witness may be cross-examined on their witness statement and/or on documents on the record.

ADGM

The ADGM Court Procedure Rules 2016 governs the procedure within the ADGM Courts. It follows a similar approach as the DIFC and the English CPRs. The claim form is issued by way of form CFI

1, followed by an acknowledgment of service and then a defence. The parties will then undergo the disclosure process.

Parties litigating in the ADGM must disclose all documents upon which they seek to rely apart from documents already disclosed by another party. The Court can make disclosure orders at its discretion. The parties can agree to do away with general disclosure or to limit the scope of disclosure.

As in the DIFC, witness evidence carries substantial weight. Witnesses will generally give evidence by way of a witness statement. Affidavits are required for certain types of orders or where the Court so orders. A witness statement will stand as the witness' evidence in chief and so generally a witness will affirm its contents before being cross-examined. As such, it is important that the witnesses' own words are used when drafting the statement.

3 Describe the general organisation of the legal profession.

Onshore

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

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

(Article 6 of Federal Law No. 23 of 1991 on the Regulation of the Legal Profession)

DIFC

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

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

ADGM

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

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

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

Historically, parties in the UAE were not open to methods of alternate dispute resolution. The UAE has instituted a number of measures to encourage parties to resolve their disputes through other means outside of the court process. In 2012, the Centre for Amicable Resolution of Disputes was opened as a joint venture between the Dubai Courts and the Department of Economic Development, with the aim of facilitating mediation as an alternative to parties engaged in court disputes.

In April 2021, the UAE enacted Federal Law No. 6 of 2021 "On Mediation for the Settlement of Civil and Commercial Disputes", which instituted a formal mediation framework in the UAE.

In addition, Article 101 of the Civil Procedure Code allows parties to agree a stay of proceedings for up to six months to attempt settlement:

“The action may be ceased if the litigant parties has agreed on the discontinuation of the progression therein for a period of six months, maximum, from the date of the court’s statement of their agreement, and such cessation shall not have influence on any determined time-limit which the law had appointed for some procedure.”

The DIFC in part 27 of the Rules expressly encourages parties to consider ADR and the Courts may, where necessary, invite parties to use ADR itself. See for example, Rule 27.1:

“While emphasising its primary role as a forum for deciding civil and commercial cases, the Court encourages parties to consider the use of alternative dispute resolution (such as, but not confined to, mediation and conciliation) as an alternative means of resolving disputes or particular issues.”

More recently in March 2022, the UAE announced plans to join the Singapore Convention on Mediation. If the UAE does accede to the Convention, this will facilitate enforcement of UAE-based settlements among member nations.

Jurisdiction

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

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

By virtue of the UAE Civil Procedures Law, UAE courts generally assume jurisdiction of disputes that relate to entities based out of or domiciled in the UAE. Additionally, the courts will also assume jurisdiction to hear claims against a foreign entity, even if it is not resident or domiciled in the UAE if the act complained of relates to an obligation executed, concluded, or conditioned in the UAE.

In theory, and pursuant to article 26(1) of the UAE Civil Code, local courts will not have jurisdiction where the parties to a contract have expressly included a foreign governing law clause:

“Should the governing law be a foreign one, its domestic provisions shall be applied, to the exclusion of the private international law provisions.”

However, in practice, this is slightly more nuanced due to article 19 of the UAE Civil Code, which states that “[c]ontractual commitments in form and context shall be governed by the law of the State where the common residence of the contracting parties is located”, save in certain instances namely:

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

Further, pursuant to article 19(1) of the Federal Arbitration Law, an arbitral tribunal will have the authority to rule on its own jurisdiction:

“he Arbitral Tribunal may rule on a plea that the Tribunal does not have jurisdiction, including a plea based on the nonexistence or validity of the Arbitration Agreement, or that such agreement does not govern the subject-matter of the dispute. The Arbitral Tribunal may rule on such matter, either as a preliminary question or in a final arbitral award on the merits of the dispute.”

There are three main arbitral institutions across three Emirates in the UAE (Dubai, Abu Dhabi and Ras Al Khaimah).

DIFC

The DIFC takes its jurisdiction from the Judicial Authority Law, which, as described above, empowers the DIFC Courts to hear disputes arising between DIFC entities, or from contracts or actions executed in the DIFC, or where parties have submitted themselves to the DIFC Courts' jurisdiction. Accordingly, the DIFC Courts have broad authority to exercise jurisdiction over entities that are entirely foreign to the DIFC and to the UAE where one of the jurisdictional gateways has been satisfied.

Where the DIFC Courts become more complex is where a dispute arises that contains both a gateway to the DIFC Courts and a gateway to onshore Dubai courts. Where this is the case, the Joint Judicial Committee (JJC) (established by Dubai Decree 19 of 2016) will have jurisdiction to determine the appropriate court to hear the dispute. This is a complex area of Dubai-based litigation.

Where conflicting judgments are entered by the onshore Dubai courts and the DIFC Courts in actions involving the same parties and the same subject of dispute, the JJC may also determine which judgment should be enforced.

ADGM

The ADGM Courts have jurisdiction over claims involving the ADGM, parties contracting or executing actions within the ADGM, or where parties have submitted to the ADGM Courts jurisdiction. See article 13 of the ADGM Founding Law, which confirms that the ADGM as an "opt-in" jurisdiction. As such, there is no need for parties to be physically located in the ADGM, nor to be based in the UAE.

Unlike the DIFC and Dubai onshore courts, there is not yet a law to determine jurisdictional disputes between the ADGM Courts and Abu Dhabi onshore courts.

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

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

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

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

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

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

Parties contracting within the UAE may submit disputes either to the onshore courts, the DIFC, the ADGM, an international court or for arbitration. While recent developments (such as the updated Federal Arbitration Law in 2018) have indicated a push by the UAE to allow parties to determine their own dispute resolution forum, the broad jurisdiction of the UAE courts (see articles 20 to 41 of the UAE Civil Procedure Law, in particular their jurisdiction over entities resident in the UAE) means that there remains a possibility that UAE onshore courts may decide to take jurisdiction, notwithstanding a conflicting contractual dispute resolution clause.

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

Yes, forum shopping is common in the UAE. While onshore Dubai and Abu Dhabi tend to be used as seats of arbitration by more domestic parties, particularly Arabic-speaking, both the DIFC and the ADGM are popular seats of arbitration and court litigation for international parties.

Both jurisdictions have established arbitration laws (largely based on the UNCITRAL Model Law) and act as supervisory courts to support arbitration. Moreover, the courts in both the ADGM and DIFC are pro-enforcement of foreign awards and judgments and will rarely reopen a foreign award for re-hearing on the merits. In contrast, onshore courts have a greater propensity to require a merits re-hearing of foreign awards or judgments before enforcement. The ADGM and DIFC courts also have the benefit of being courts of the UAE and therefore any arbitration award once ratified as a court judgment by them can be enforced under regional and international treaties to which the UAE is a signatory. Such treaties include the Riyadh Convention, the GCC Convention and the New York Convention.

As a result, the ADGM, and DIFC in particular, have become popular forums for “passporting” foreign awards or judgments into the UAE for enforcement against local assets. Particularly in the DIFC, this has resulted in a complex jurisprudence regarding jurisdiction disputes between DIFC and onshore entities, which are resolved by the Joint Judicial Committee (established by Decree 19 of 2016).

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

Onshore

Onshore courts do not have a strict doctrine of *lis pendens*. As described above, UAE courts have broad jurisdiction over entities resident in the UAE and are free to hear matters notwithstanding pendency in another forum. A party wishing to assert *lis pendens*, would instead have to argue that the UAE courts lack jurisdiction in the first instance.

To the extent that proceedings have already been heard in another forum, onshore courts do abide by a principle of *res judicata*, which is codified in article 92 of the Civil Procedures Law. The parties, at any stage of the proceedings, have the right to argue that an action that has already been tried should not be entertained. The elements to establish *res judicata* are that the UAE courts must not have had jurisdiction over the substantive dispute, the foreign judgment must have been issued by a competent authority, the foreign judgment must be final and binding in the jurisdiction of issue, and the foreign judgment or award cannot be inconsistent with the laws, public policy or morality of the UAE.

Article 49 of the Law on Evidence (Federal Law No. 10 of 1992) places emphasis on the doctrine of *res judicata*:

Judicial judgments and decisions terminating the dispute and performance orders that have acquired the force of res judicata shall have a binding force as to matters adjudicated, and no proof shall be admitted disproving the presumption resulting therefrom...

DIFC

DIFC Courts recognise the doctrine of *lis pendens*, and would, in the appropriate circumstances, not hear a matter already being heard by another forum between the same parties. However, the DIFC Courts have held that where parties have agreed to refer a dispute to the DIFC Courts for resolution, “it should not readily be found that invoking that jurisdiction is an abuse of process”. See the recent decision of *Al Buhaira National Insurance Company v Horizon Energy LLC*, DIFC CFI 098/2021 at paragraph 49.

To the extent that hearings have already been heard and determined in a foreign tribunal, article 24 of the DIFC Court Law states that the Court of First Instance has jurisdiction to ratify any judgment, order or award of any recognised (i) foreign court, (ii) courts of the UAE or Dubai, (iii) arbitral award, (iv) foreign arbitral award or (v) orders for subsequent application for enforcement in the courts of Dubai.

Further, the DIFC Court of First Instance will comply with the terms of any treaty that the UAE has entered into for the mutual enforcement of judgments.

ADGM

The position of the ADGM Courts regarding *lis pendens* is not yet clear, however, one would expect it to be similar to the position established by DIFC Courts.

To the extent that foreign proceedings have concluded, the ADGM courts will not entertain a matter that has already been validly heard and disposed of between the same parties, arising from the same facts. Where the appropriate conditions are met, the ADGM Courts will refrain from hearing the matter, see *Laktineh & Co Ltd (Anor) v Cayan Real Estate and Development* [2020] ADGMCFI 0001.

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

Onshore

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

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

DIFC

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

A ruling by a tribunal that it does have jurisdiction, regarding either the entirety of a dispute or a certain aspect of a dispute, may be appealed to the DIFC Courts under article 23. Where the DIFC Courts determine that there is a valid arbitration agreement, they will not hear a claim arising from that contract (or that is captured by that arbitration agreement). A judgment on these issues is not appealable.

Where a dispute is *prima facie* covered by arbitration, the DIFC Courts will generally refrain from hearing the dispute, save to issue interim orders to preserve the status quo between the parties while they pursue arbitration.

ADGM

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

Rulings of a tribunal's jurisdiction may be appealed to the ADGM Courts for consideration. The ADGM Court's judgment is not appealable. Similar to the DIFC Courts, where the ADGM Courts consider a dispute is *prima facie* covered by an arbitration agreement, they will generally refrain from hearing the issue, save to order interim relief in support of the parties' pursuing arbitration.

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

Onshore

Article 19 of the Federal Law No. 8/2018 for onshore UAE allows a party to appeal within 15 days of receiving notice that the Tribunal has ruled on its jurisdiction. The court shall then decide the request within 30 days and its decision is not subject to appeal.

DIFC

Article 23(3), Chapter 4 of the Arbitration Law for DIFC allows for any party to request, within 30 days of notice, the DIFC Court of First Instance to decide on the matter concerning the Tribunal's jurisdiction. The decision will not be subject to appeal.

ADGM

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

11 Are anti-suit injunctions available?

Onshore

The UAE adopts a civil law approach and generally, the onshore courts do not issue anti-suit injunctions.

DIFC

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

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

ADGM

The ADGM Courts may issue anti-suit injunctions, such applications being made to the ADGM Court of First Instance. In both the DIFC and the ADGM, applicants submitting applications on an ex parte basis will, prior to seeking the anti-suit injunction (or any other form of interim relief), need to establish that the court has jurisdiction.

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

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

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

Each individual Emirate will have certain specific procedures that may have to be followed to commence civil proceedings against that Emirate or certain government entities. For example, to commence an action against the government of Dubai and any department thereof (including public institutions and corporations), a claimant must first submit a written copy of the full details of the

dispute with the Office of the Government of Dubai's Legal Advisor (see Dubai Law No. 3 of 1996 on Government Lawsuits as amended by Dubai Law No. 10 of 2005).

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

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

At the federal level, there is no concept of state immunity, and legally, state entities are not immune from being sued.

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

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

Procedure

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

Onshore

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

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

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

DIFC/ADGM

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

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

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

Onshore

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

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

DIFC

As per Rule 17.43, the statement of case must specifically set out the following matters:

- full and specific details of any allegation of fraud, dishonesty, malice or illegality;
- details of any misrepresentation;
- details of all breaches of trust;
- notice or knowledge of a fact;
- details of unsoundness of mind or undue influence;
- details of wilful default; and
- any facts relating to mitigation of loss or damage.

ADGM

Proceedings are instituted by a claim form that must be served upon the defendant party either personally, at their place of residence, in accordance with the ADGM Courts Procedures Regulations. A single claim form can be used for all claims conveniently disposed of in the one set of proceedings, and should set out the particulars of the case and the relief or final orders that the claimant seeks.

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

Onshore

Once a defendant has received the statement of claim, they are required to submit an acknowledgment of service followed by its defence pleading at a time ordered by the Court. Pleadings must be filed along with all documents upon which the defendant wishes to rely, including translations if any documents are in a foreign language.

Case management orders will then be made by the Court.

DIFC

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

ADGM

Part 6 of the ADGM Court Procedures Regulations provides that a statement of defence must be filed within 28 days of the service of the claim. Failure to do so can result in a default judgment. The statement of defence should set out those issues that it requires the claimant to prove, those that the defendant admits, and what issues it denies. When filing a defence, the party is also entitled to bring counterclaims, in a similar manner as a primary claim is brought.

16 What are the rules regarding further briefs and submissions?

Onshore

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

Cases within the UAE are not prescribed a set number of written pleadings. While witness examination and oral representations are permitted, in practice, these will not be heard at hearings. Most cases rely on documentary evidence such as written pleadings setting out each party's position and expert reports, prepared by court-appointed experts. Cases are usually determined by a report prepared by a court-appointed expert, which relies heavily upon specific documents rather than oral representations. The court tends to adopt the expert's findings within its decision.

Amicus briefs are not permitted.

DIFC

Parties may amend their claims with the permission of the Court or the consent of all parties. Amendments may encompass factual issues, legal arguments or relief sought.

Amicus briefs are not common, though DIFC regulatory agencies such as the Dubai Financial Services Authority, leave open the possibility of applying to be heard as an amicus in appropriate cases.

ADGM

Parties may amend their statements of case at any time before it has been served upon the other party. Once it has been served, amendments must be consented to by all parties or done with the Court's permission. Such amendments may be factual or legal, and also provide for an amendment to the relief sought. Particulars of a case may be served with or after the service of the claim form.

Skeleton arguments before hearing should fundamentally reflect the case as it has been pleaded by the parties.

As yet there have been no amicus briefs filed before the ADGM Courts.

17 To what degree are civil proceedings made public?

Onshore

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

DIFC

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

ADGM

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

Pretrial settlement and ADR

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

It is not mandatory to participate in settlement conferences or to attempt settlement before commencing proceedings in the UAE Civil Procedure Code, the DIFC rules or the ADGM rules. Unlike in the UK and other jurisdictions, there are no mandatory pretrial mediation or negotiation protocols. However, as discussed further below (question 19, Mediation), onshore courts, ADGM and DIFC Courts can all order parties to mediate disputes.

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

Onshore

In onshore courts, a referral to mediation or other forms of ADR is not generally mandatory. There are no provisions within the UAE Civil Procedure Law that mandate pre-action negotiation or mediation and, in particular, there are no provisions that actively encourage settlement before commencing litigation. While article 101 of the Civil Procedure Law does allow parties to stay proceedings for up to six months, while they attempt to find a settlement. One of the big issues with mediation in the UAE has traditionally been a lack of confidentiality around documents or statements produced in the mediation process. Traditionally, communications made during mediations could be relied upon in court proceedings, and this has made parties reticent to compromise, lest they undermine their position in court.

However, the UAE has encouraged mediation over recent years. In April 2021, the UAE passed Federal Law No. 6 of 2021 On Mediation for the Settlement of Civil and Commercial Disputes, which attempts to create a more structured framework within which parties may mediate their disputes. The Mediation Law provides for greater certainty and structure around a voluntary referral by the parties to mediation and creates a regime for parties to draw up a mediation agreement and formally appoint a mediator. The Mediation Law also empowers UAE courts to refer parties to a mediation at any stage in the proceedings. One of the most significant changes in the Mediation Law is the codification of the confidentiality of mediation proceedings. No doubt, more certainty regarding the confidentiality of proceedings will make parties more willing to compromise and come to an amicable settlement.

There are a number of institutions that offer ADR services. These include the Mediation Centre – Dubai, which has a specific goal to facilitate the timely resolution of disputes to promote economic growth in the Emirate of Dubai. The Reconciliation and Settlement Committee operates in the Federal Courts to facilitate mediated dispute resolution. The Centre for Amicable Settlement of Disputes is Dubai based entity that operates in onshore Dubai courts; parties may voluntarily submit their dispute to the Centre for a one-month mediated process, failing which the matter may be referred to the courts.

While mediation remains voluntary for the most part, recent developments in UAE's mediation laws demonstrates a strong desire to give mediation a greater role in resolving disputes.

DIFC

Likewise, the DIFC courts also do not follow any formal pre-action protocols and there are no express provisions within the rules requiring parties to resolve their disputes before commencing litigation. However, unlike the onshore courts, the DIFC is required to promote the overriding objective to deal with cases justly and in a proportionate manner with a view to saving costs. To further this overriding objective, and although not mandatory, the DIFC courts may encourage parties to make use of ADR procedures as per Part 27 of the rules. Rule 27.2 specifically sets out the following advantages of ADR:

- significantly helps parties to save costs;
- saves parties the delay of litigation in reaching finality in their disputes;
- enables parties to achieve settlement of their disputes while preserving their existing commercial relationships and market reputation;
- provides parties with a wider range of solutions than those offered by litigation; and
- is likely to make a substantial contribution to the more efficient use of judicial resources.

ADGM

For mediation in the ADGM, there exists an ADGM Arbitration Centre where parties are able to choose which layout works best for their mediation. This is a court-annexed service that promotes the use of ADR through accredited mediators from the ADGM Courts. While a court can refer the parties to a dispute to arbitration, mediation is not a mandatory pretrial step (ADGM Court Procedure Rules 2016, Part 36).

Interim relief

20 What are the forms of emergency or interim relief?

Onshore

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

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

DIFC or ADGM

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

21 What must a petitioner show to obtain interim relief?

Onshore

Unlike in common law systems, there is no strict standard of proof that must be met by a plaintiff to secure relief. The decision to award interim relief is at the court's discretion (the same is true of final orders).

DIFC and ADGM

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

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

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

Onshore

Onshore courts rarely order injunctions. Often, parties wishing to prevent a party from taking a specific action will be required to refer their dispute to a public prosecutor and allow the prosecutor to consider taking the requested action.

DIFC and ADGM

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

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

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

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

The Civil Procedure Code provides for a summary judgment procedure where a creditor's entitlement is confirmed, urgent and where the claim is for a specified amount. A demand for payment must be made to the defendant at least five days before submitting an application for summary judgment. The application is then made in duplicate to the court, together with the supporting commercial documents.

24 Under which circumstances will a default judgment be rendered?

Onshore

Under article 29 of the UAE Civil Procedure Law, a default judgment may be obtained where the defendant has failed to attend when summoned.

DIFC and ADGM

A claimant may obtain a default judgment if:

- the defendant has not filed an acknowledgment of service or a defence to the claim; and
- the relevant time for doing so has expired.

(See Part 13 of the DIFC Rules and Rule 39 of the ADGM Rules).

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

The duration of proceedings can vary depending on a number of factors – the nature of the proceedings, the Court's schedule and in the case of onshore proceedings whether an expert is appointed.

Parties

26 How can third parties become involved in proceedings?

Onshore

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

DIFC

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

- it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings; or
- there is an issue involving the new party and an existing party that is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the Court can resolve that issue.

The Court also has the power to enforce any judgment or order against a person who is not a party to the claim (article 20.38).

ADGM

Part 7 of the ADGM Rules allows for third parties to be added to proceedings. It should be noted that a third party may only be added or substituted if he has given consent in writing and that consent has been filed with the Court. Further, the ADGM Rules at article 58 specifically grant the Court the power to make judgments binding on non-parties.

Fact-Finding and Evidence

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

Onshore

There is no process of discovery and inspection of documents by parties in onshore courts. Instead, where the facts are disputed by the parties, the fact finding process is generally undertaken by a court appointed expert. Articles 69 to 92 of UAE Federal Law No. 10 of 1992 (Evidence Law) govern the expert appointment process, and requires these experts to be either employees of the UAE or otherwise registered on a register of experts maintained by the courts. Alternatively, if the parties can agree upon an expert, the Court will appoint that expert. In appropriate circumstances, multiple experts may be appointed.

The expert's appointment shall set out their mandate, including the scope of their appointment, the deadline for their report, and any amendments to the trial schedule to accommodate the creation of the report.

The expert may interview the parties and other witnesses. The expert may interview or take statements from individuals of the expert's own accord, or at the request of one of the parties. The expert may also request documents from the parties, third parties to the dispute, and governmental bodies.

Upon the completion of their investigation, the expert is required to submit a report to the Court setting out the facts of the case. The report should record the steps that the expert took to uncover the evidentiary record, the evidence they relied upon, and the expert's opinions and conclusions on the case. If there are multiple experts, each may submit an independent report, if they do not agree with the reports of the experts.

It is open to the parties to challenge the report's conclusions, and the Court may discuss the report with the expert and the adversaries, and direct the expert to answer any questions that arise from it or to complete any deficient or incorrect aspects of the report.

The Court is not bound by the expert's report, but in practice, courts place great weight on the reports when making their rulings. As a result, parties should ensure that they cooperate to the maximum extent possible to ensure the expert has an accurate record of the evidence before they submit their report.

DIFC and ADGM

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

Witness examination is also a crucial aspect of fact finding in both jurisdictions. Witnesses must give sworn statements of their testimony and will be subject to cross-examination by the opposing party's advocate.

Expert evidence also plays a crucial role, however, unlike in onshore courts, expert witnesses are party appointed.

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

Onshore

As described above, where the facts are disputed, a court will appoint an expert to conduct an investigation into the facts and present a report. While the report is not determinative, it will often establish the factual matrix upon which the Court then makes its rulings. Parties may feed into this process by providing evidence as the expert may require and can comment on the report.

In the DIFC and ADGM, the Court relies upon the parties to present the evidence. The Court takes a less inquisitive role in the fact-finding process.

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

Onshore

As discussed above, fact finding in onshore courts is generally conducted by a court appointed expert. As a result, strictly speaking there is no duty of disclosure between the parties. Rather, the expert may request documents from the parties and third parties. Beyond the parties submitting documentary evidence with their pleadings, the expert investigation process is generally the extent of disclosure in onshore courts.

DIFC

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

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

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

ADGM

The default position in the ADGM Courts is that parties must abide by standard disclosure (see Rule 86,) in other words disclosing all documents on which they will rely at trial, except for documents that have already been submitted by a party. In the course of standard disclosure, there is no obligation for a party to disclose documents that might harm its case.

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

Onshore

Witness statements can be filed in onshore courts, however, documentary evidence is preferred and witness statements generally have little evidentiary weight.

Witness testimony is governed by Chapter 3 of the Evidence Law. Generally, onshore courts favour documentary evidence and the Evidence Law generally restricts witness testimony to those issues already established by the documentary record. Exceptions to this general position are where a party is unable to recover documents or cannot place them before the Court for moral reasons, where documents have been lost, or where documents have been compromised in some manner. Onshore courts may also allow witness testimony in exceptional circumstances.

A party must apply to the onshore courts in order to be allowed to lead witness testimony. That application should set out the facts that are to be proved with the testimony. Testimony may only be given with the permission of the Court, which has discretion to allow any individual to provide testimony if it considers it will establish the truth of the dispute. Onshore courts may call individuals not a party to the dispute to give testimony.

Where testimony is allowed, the Evidence Law restricts testimony to matters that the witness has personally seen or experienced. Narrow exceptions to allow hearsay evidence exist in the event that a witness has passed away, or where a parent provides testimony for their under-age child.

Where a court allows one party to lead witness testimony to establish certain facts, the other party shall be afforded the opportunity to refute that evidence with its own testimony.

Where a witness provides oral evidence, they are to provide it alone, without the presence of other witnesses. A witness must give testimony under oath.

Cross-examination of witnesses is rare. Generally, examination of a witness is conducted by a court (or a court appointed expert as the case may be). Advocates can examine the witness, however, the Court will closely monitor and control the examination.

In summary, witness evidence is exceptional and often afforded little weight in onshore proceedings, which tend to be resolved by the documentary record.

DIFC and the ADGM

Part 29 of the DIFC Rules governs evidence and witnesses in the DIFC, Part 14 of the ADGM Courts Procedures Regulations governs the same in the ADGM Courts. A witness statement must indicate which of the statements in it are within the witness's own knowledge and which of the matters rely on information or belief. The witness must also indicate the source of any matters of information or belief. An exhibit is used in conjunction with the witness statement and acts a separate verified document. As with the common law, a witness statement must be accompanied by a statement of truth.

When preparing witnesses for trial, they may be familiarised with the materials and the process of cross-examination but should not be coached on what answers to provide in cross-examination.

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

Onshore

There are no formal party-appointed expert witnesses in onshore proceedings. The closest that onshore courts come to expert witness evidence is the court-appointed expert, discussed above. To the extent that there are issues that an expert witness would traditionally address that are in dispute between the parties, onshore courts will require the court-appointed expert to address those issues in their report. In practice, parties may appoint experts to assist the court-appointed expert in his or her enquiries.

DIFC or ADGM

In the DIFC, the Courts or parties may appoint an expert, such experts being governed by the DIFC Rules Part 31 or Part 17 of the ADGM Court Regulations in the ADGM. The scope of the expert's role in both the DIFC and ADGM is similar, insofar as that the expert should be limited to the specific issues related to opinion evidence. Both sets of procedural rules stipulate that the expert has an overriding duty to the court to assist the Court on matters within the expert's expertise, irrespective of their retainer with a party to the case.

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

Onshore

As above (section: Witnesses of Fact), onshore courts generally resolved proceedings on the basis of documentary evidence. While party witnesses can provide witness statements and, in rare circumstances, oral testimony, courts generally assign such evidence less weight than the documentary record.

The conduct of a witness under examination may be considered by a judge and false testimony may be considered in the judgment, and even referred to the public prosecutor. If a witness is called by onshore courts to provide testimony and refuses to attend the witness may face legal consequences. While a court may make adverse inferences if a witness failed to testify, this may be less of an issue given the minor role witness evidence generally plays in onshore proceedings.

DIFC

Part 30 of the DIFC Rules govern the use of witnesses by the DIFC Courts and does not expressly exclude any form of witnesses. An application in Form P30/1 must be made by any party wishing to call a witness and each witness must have its own separate witness summons.

Adverse inferences can be drawn from a party's failure to testify where appropriate.

ADGM

Part 14 of the ADGM Courts Procedures Regulations provide for the rules governing witnesses and the taking of witness evidence. The Regulations do not expressly prohibit anyone from giving evidence. The ADGM Courts may make adverse findings in respect of a witness's failure to appear.

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

Onshore

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

Onshore courts are generally reluctant to apply foreign laws, and it is not common for them to do so. Foreign law would be considered a matter of fact to be proved by way of evidence.

DIFC

DIFC Courts may readily apply foreign laws. Unlike in English courts, the DIFC Courts are not bound to treat foreign law as a fact to be proven by expert evidence. Article 50 of the DIFC Court Law (No. 10 of 2004), allows DIFC Courts to apply rules of evidence that the court considers "appropriate" in the circumstances. Additionally, article 50 of Law on the Application of Civil and Commercial Laws in the DIFC (Law No. 3 of 2004), provides that the Court may determine the applicable laws governing a dispute based on a series of mutually exclusive options.

Hence, depending on the circumstances, DIFC Courts will deal with foreign law as the English courts do (ie, as a fact to be proven), or they may simply allow parties to assert the foreign law by way of submission as one would with English law in English courts.

DIFC proceedings are conducted in English and foreign language documents should be translated accordingly.

ADGM

ADGM Courts treat foreign law issues as a matter of expert evidence, The ADGM Court Regulations, Regulation 73 provides that: “any person who is suitably qualified” based on knowledge or experience “may give expert evidence as to the law of another jurisdiction”.

ADGM proceedings are conducted in English and foreign language documents should be translated accordingly.

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

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

Appeals

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

Onshore

The right to appeal a first instance decision is an automatic right when litigating in onshore courts and therefore no permission is required. Appeals can be made on both fact and law. Appeals from the Court of First Instance to the Court of Appeal must be made within 30 days.

Appeals of judgments by a Court of Appeal must be made to the Court of Cassation in Dubai, Abu Dhabi or Ras Al Khaimah. Judgments of the Court of Appeal in the other Emirates must be made to the Union Supreme Court. Generally, appeals to the Court of Cassation or the Supreme Court will only be made on points of law and are subject to monetary limits.

DIFC and ADGM

Appealing a Court of First Instance judgment in the DIFC and ADGM requires permission. Permission may be granted on a range of issues, including points of law, procedural irregularities or applications for a rehearing.

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

Onshore

As above, in onshore courts, appeals against first instance decisions can be on factual or legal grounds and must be filed within 30 days of the date of the Court of First Instance judgment. Appeals to superior courts will only be made on legal grounds and are subject to monetary limits.

DIFC

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

ADGM

Part 25 of the ADGM Civil Rules maintains that no appeal may be brought against any judgment or order given or made in the Small Claims Division except on a question of law. A judgment handed down

by the Court of First Instance may be appealed where the appeal has a real prospect of success or there is some other compelling reason why the appeal should be heard.

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

Onshore

Any appeals from a Court of First Instance decision must be appealed to the Court of Appeal within 30 days of the decision.

Decisions from the Court of Appeal may be appealed to the relevant Court of Cassation; the appeal must be lodged within 60 days of the first instance judgment.

Appeal proceedings can be lengthy, sometimes taking up to 18 months to get a decision from either level of the appellate courts (ie, the Court of Appeal or the Court of Cassation). Further, the appellate court may determine the matter before it finally, or it may return the matter back to a lower court to make a determination in light of the appellate court's clarification. As such, the appellate process is lengthy and appeals may be strategically deployed to delay and prolong proceedings.

DIFC

The DIFC has two primary court tiers: the Court of First Instance and the Court of Appeal. Decisions of the Court of First Instance may only be appealed with permission. Permission can be granted either by the Court of First Instance that issued the decision or to the Court of Appeal. The appeal notice must be made no later than 21 days of the first instance decision (or within a time period prescribed by the Court).

If the Court of First Instance refuses permission to appeal, a further application to appeal can be made to the Court of Appeal within 21 days of the lower court's refusal.

Appeals are generally limited to a review of the decision of the lower court and the Court of Appeal will generally not allow new evidence to be admitted.

Given the nature of the court hierarchy and more limited scope of review, DIFC Court appeals are generally conducted more swiftly compared to appeals in the onshore courts.

ADGM

Like the DIFC, the ADGM Courts consist of two tiers: the Court of First Instance and the Court of Appeal.

A decision of the Court of First Instance may be appealed to the Court of Appeal with permission from a Court of First Instance judge, which may be obtained by filing a request within 14 days of the decision. If the appeal request is denied, then the party may file an additional application for permission to appeal to the Court of Appeal within 28 days of the initial refusal.

The Court of Appeal will only hear appeals on narrow grounds and will not reopen the original decision to consider new evidence unless there are exceptional circumstances.

As with the DIFC Courts, due to a flatter court hierarchy and limited grounds for appeal, appeals are generally disposed of more quickly than in onshore courts.

Role of Domestic Courts In Arbitration Matters

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

Onshore

Federal Law No. 6 of 2018 (the Federal Arbitration Law) applies to all arbitration proceedings that are seated onshore in the UAE. Arbitrations seated in the DIFC and ADGM have their own arbitration

laws, as described below. The Federal Arbitration Law partly adopts the UNCITRAL Model Law on International Commercial Arbitration, and adopts many of the conventions that arbitration practitioners will be familiar with (ie, separability, arbitration agreements must be written, etc). The Federal Arbitration Law also allows arbitration agreements to be made in the course of correspondence or via electronic messages. Similarly, the Tribunal is empowered to hold hearings by electronic means, question witnesses remotely and sign awards electronically.

The Federal Law also designates the local Court of Appeal as a supervisory court, and provides that the Tribunal may issue interim measures that onshore courts can enforce.

Arbitrations conducted in accordance with the Federal Arbitration Law are to be conducted in Arabic, unless the parties agree otherwise.

DIFC

The DIFC Arbitration Law (No. 1 of 2008) is largely based upon the UNCITRAL Model Law. It applies to all arbitrations seated in the DIFC.

The DIFC Arbitration Law promotes an arbitration-friendly environment by allowing parties to direct the arbitration as required and empowering tribunals to determine the issues before them, while still allowing for courts to take firm supervisory actions (such as interim or preliminary injunctions) as needed. Tribunals are expressly empowered to order interim measures, and the DIFC Courts are given jurisdiction to enforce those orders as necessary.

ADGM

The ADGM Arbitration Regulations were most recently amended in 2020 and apply to all arbitrations connected to the ADGM or where the parties have agreed to submit to the jurisdiction of the ADGM. The Regulations provide for interim measures to preserve the status quo between parties; for tribunals to summarily dispose of claims; and for the ADGM Courts to exercise a supervisory jurisdiction.

Like the Federal Arbitration Law and the DIFC Arbitration Law, the Regulations allow tribunals to utilise technology in their resolution of disputes, including to hear witnesses and conduct hearings remotely.

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

Onshore

Under the Federal Arbitration Law, onshore courts exercise a supervisory jurisdiction over arbitration proceedings seated in the UAE. Onshore courts may intervene (upon the application of a party) to appoint an arbitrator in the event that one cannot be appointed through the other mechanisms set out in the Law.

Articles 18 and 21 of the Law provides that the Chief Justice of the relevant onshore court may order interim or conservatory measures either before or during arbitration proceedings. As such, parties (or the Tribunal) may approach the court for injunctive relief, orders to preserve evidence, and to request security for costs, among other relief.

Article 35 also allows the Tribunal or one of the parties to request the onshore court's assistance in taking evidence, this may include third-party disclosure orders or orders directing a party to provide witness evidence.

Article 39 allows onshore courts to enforce interim awards made by the Tribunal.

While tribunals are empowered to determine their own jurisdiction under the Federal Arbitration Law, if a tribunal determines that it has jurisdiction, this decision can be appealed to the relevant onshore court within 15 days (article 19). The Court's decision on jurisdiction shall not be appealable. Arbitration proceedings may continue while the court deliberates, however, if the Court rules that the Tribunal does not have jurisdiction, then the party that requested the arbitration proceedings should continue pending the onshore Court's determination shall bear the costs of the arbitration.

Onshore courts have a variety of other supervisory functions under the Federal Arbitration Law to ensure that proceedings are not frustrated.

DIFC

The DIFC Arbitration Law governs the role of the DIFC Courts in intervening in arbitrations. The Law requires DIFC Courts not to intervene in arbitrations unless expressly allowed to under the Law.

The parties may approach the DIFC Courts for interim measures before or during proceedings (section 15). Further, parties may approach the DIFC Courts for the enforcement of interim awards issued by the Tribunal (article 24). Similarly, the Courts may be requested to assist with the taking of evidence (article 43).

A Tribunal's ruling that it does not have jurisdiction may be appealed to the DIFC Court of First Instance within 30 days of the Tribunal's decision (section 23). The Court's decision is not appealable.

Much like the ADGM Courts and the onshore courts, the DIFC Courts have jurisdiction to perform a number of the functions that an arbitral institution generally would, in the event that there is no such institution prescribed by the parties. For example, the DIFC Courts may appoint one or more arbitrators if the parties cannot agree upon one and there is no other mechanism for appointment (section 17); for resolving challenges to arbitrators (section 19); for the termination of an arbitrator's mandate where they do not or cannot act (section 20); and for the appointment of a substitute arbitrator (article 21), among other provisions.

ADGM

The ADGM Arbitration Regulations prescribe the role of ADGM Courts to intervene in the arbitration procedure. Much like onshore courts, ADGM Courts are empowered to appoint one or more arbitrators where there is otherwise no agreement upon a tribunal or mechanism for appointing one (Regulation 19). Likewise, the Court is the last resort to resolving challenges to an arbitrator's appointment (Regulation 21), or in determining substitute arbitrators (Regulation 23). The ADGM Courts act as a backstop for a number of other functions that an arbitral institution would normally perform, in the event that there is no arbitral institution.

The ADGM Courts can hear appeals on decisions of the Tribunal regarding its jurisdiction; the Tribunal's rulings on jurisdiction are not subject to appeal (Reg 27).

The ADGM Courts may enforce interim measures issued by a tribunal and the ADGM Courts may also issue their own interim measures, at the request of a party, at any time before or during the proceedings (Regulations 30 and 31). The Court's ability to grant interim measures is not limited to only arbitrations that are connected to the ADGM, and may be issued against entities that are not party to the arbitration proceedings. The Courts may also, upon the request of the Tribunal or a party, assist in taking evidence or the production of documents.

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

Onshore

The UAE is a signatory to the New York Convention. However, the enforcement of foreign arbitral awards through the onshore courts can be challenging. There are a number of grounds pursuant to which the onshore court may refuse to enforce an arbitral award, including: that there was no valid arbitration agreement; a party was not given a right to present its case; if the award conflicts with the public order and morality of the UAE; or the subject matter is not capable of being settled by arbitration (Federal Arbitration Law, article 53). If the court considers it appropriate, it will set aside the award.

In onshore courts, parties have a right to appeal a decision to set aside an award to the Court of Cassation. As parties face limited adverse costs consequences for lodging an appeal, challenges to awards and appeals against those challenges, can be used as a means of slowing enforcement proceedings.

Foreign awards (or awards rendered in proceedings that were conducted in English) that are sought to be enforced in onshore courts must be translated into Arabic and certified, before the courts will consider them.

If the onshore court upholds the award, it will do so within 60 days of receipt.

DIFC

There are only narrow grounds upon which a foreign arbitral award will be refused enforcement, such as if a party to the arbitration was incapacitated; if there was a lack of proper notice given to one of the parties; if the subject matter of the dispute was not capable of settlement by arbitration under DIFC law; or if enforcement would be contrary to UAE public policy.

DIFC Courts will not reopen the subject matter of the dispute to consider the merits of the foreign award.

ADGM

Articles 60 to 62 of the Arbitration Regulations concern enforcement. Also, like the DIFC, the ADGM Courts will not consider the merits of the foreign award and will limit their review of the foreign award to a set of narrow criteria, including if the subject matter of dispute was not capable of settlement in accordance with the laws of the ADGM or if the enforcement of the award is contrary to public policy. Other narrow exceptions, similar to those in the DIFC, apply.

The ADGM will also not reopen the merits of the award.

Special proceedings

41. Are class actions available?

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

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

42. Are derivative actions available?

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

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

The ADGM and DIFC both provide for derivative actions or unfair prejudice claims. These claims can be brought where the interests of one class of shareholder is being prejudiced as compared to another class of shareholders. In both jurisdictions, the courts have broad powers to order relief as it sees fit, including allowing claims to be brought in the name of the company, buy-out orders and any other order the court sees fit.

43. Are fast-track proceedings available?

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

44. Is it possible to conduct proceedings in a foreign language?

For disputes within the onshore courts, all proceedings must be commenced in Arabic. All documents must also be in Arabic, or if in a foreign language, translated into Arabic and certified.

All proceedings in the DIFC and ADGM are heard in English. Foreign language documents should be translated accordingly.

Effects of judgment and enforcement

45 What legal effects does a judgment have?

Judgments of the onshore courts are persuasive authorities on points of law for future cases. However, there is no strict doctrine of precedent and as such future courts are free to depart from their findings of fact and/or law on the same issue.

DIFC and ADGM Courts operate a more stringent doctrine of legal precedent and future courts will be bound by decisions on legal issues.

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

Depending on the jurisdiction (onshore or DIFC or ADGM) different rules apply regarding enforcement of a judgment (from each of these different jurisdictions). Broadly speaking, DIFC Court judgments and Dubai Court judgments benefit from a regime of mutual enforcement and recognition of judgments.

The position is similar with regards to ADGM Court judgments and Abu Dhabi Court judgments.

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

The UAE is party to the following international treaties:

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

DIFC

DIFC Courts RDC 45.8 defines a foreign judgment as a foreign judgment made by an entity other than the DIFC. The DIFC Courts will enforce foreign judgments where they are final and binding (however, similar to the ADGM Courts, simply because a judgment is under appeal does not mean it is not final and binding, and may still be enforced). A party seeking to enforce a foreign judgment would make an application to commence an order claim under Part 7 of the DIFC RDCs, with an accompanying witness statement and draft recognition and enforcement order. Unless the foreign judgment is challenged, enforcement is usually straightforward and prompt.

ADGM

Chapter 10 of the ADGM Courts Regulations provides that the ADGM may recognise and enforce judgments of foreign courts, where that judgment is final and conclusive and rendered by a recognised court. Recognised courts are courts of countries with a mutual recognition and enforcement treaty with the UAE. Simply because the foreign award is being appealed in the foreign jurisdiction does not mean that the judgment will not be final and conclusive. A party with a foreign judgment in its favour would need to bring an enforcement application to the Court of First Instance within 56 years of the foreign judgment being rendered. The Regulations specifically provide that the Court should not “re-examine the merits of the judgment” (Regulation 173).

Costs and Funding

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

In onshore courts, the claimant will be required to pay a filing fee along with the statement of claim. The filing fee is based upon a percentage of the amount claimed. Generally, a successful claimant will be able to recover their filing fees.

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

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

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

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

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

Contingency fee arrangements between clients and lawyers are prohibited in the UAE onshore courts. They are also prohibited in the DIFC. The DIFC courts have provided guidance that indicates that while contingency fees are banned, conditional fee arrangements, such as an uplift to fees in the event of a successful outcome, are allowed.

Contingency fees and conditional fee arrangements are allowed in the ADGM, which sets out strict guidelines for such billing structures. Contingency fees are only allowed if the fee is subject to a maximum limit, expressed as a percentage of damages, and must be agreed in compliance with regulations promulgated by the ADGM Courts' Chief Justice. Conditional fee arrangements are allowed if they refer to an uplift of fees that would otherwise be billed.

51 Is third-party funding allowed in your jurisdiction?

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

The DIFC offers specific guidance in Practice Direction No. 2 of 2017 on Third-Party Funding in the DIFC Courts, which requires that a party entering into a funding agreement notify the other parties to the dispute and the Court of the agreement. Such disclosure only requires the notification of the other funders' name, and does not require sharing the funding agreement itself. The Court does have the power to compel disclosure of the funding agreement, however. The Court may take into consideration whether a party is funded when hearing applications for security for costs or making costs determinations and can make costs orders against funders.

The ADGM sets out detailed directions regarding cost funding in the ADGM Litigation Funding Rules 2019. The Regulations set out requirements that a funder must meet to fund litigation and set out several requirements that a valid funding agreement must contain. The Regulations require that funders have assets of at least US\$5 million, and not be owned by a lawyer or law firm with a party in the proceedings. Additionally, the funder must require that the funded party receives independent legal advice regarding the funding agreement. Further, the funding arrangement must provide that the funder submits to the jurisdiction of the ADGM courts.

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

No fee scales are applicable.



Deirdre Walker

Norton Rose Fulbright

Deirdre Walker is a dispute resolution lawyer based in Dubai.

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

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

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



Aarti Thadani

Norton Rose Fulbright

Aarti Thadani is a senior litigation and disputes lawyer based in the Middle East. She advises on international arbitration and litigation, with a particular focus on construction, real estate, hospitality and banking disputes.

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

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

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



Alexander Field

Norton Rose Fulbright

Alexander is an Australian qualified disputes lawyer practising in Dubai with a focus on commercial litigation and arbitration. His practice consists mainly of commercial and cross border arbitrations and he has acted for mining companies, private equity firms, distributors, high net worth individuals and manufacturers in the Middle East and abroad.

Alexander has advised clients in relation to a range of disputed matters including arbitrations conducted under the DIFC-LCIA, UNCITRAL and ICC Rules, and litigation in Australian and DIFC courts in connection with disputes governed by the laws of England and Wales, Australia, the UAE, the DIFC and Zambia.



Ina Lamce

Norton Rose Fulbright

Ina Lamce is a litigation and dispute resolution lawyer. Ina advises on international arbitration and litigation and works on a range of complex commercial disputes. She has experience advising clients in relation to insurance policies, regulatory proceedings, and general cross-jurisdictional commercial disputes.

Ina trained with the firm in London and has been working with the Middle East since qualifying.

Norton Rose Fulbright

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

Norton Rose Fulbright (Middle East) LLP
4th Floor Gate Precinct Building 3
Dubai International Financial Centre
Dubai
United Arab Emirates
Tel: +971 4 369 6300

www.nortonrosefulbright.com

Deirdre Walker

deirdre.walker@nortonrosefulbright.com

Aarti Thadani

aarti.thadani@nortonrosefulbright.com

Alexander Field

alexander.field@nortonrosefulbright.com

Ina Lamce

ina.lamce@nortonrosefulbright.com