

# Dispute Resolution

*Contributing editors*

**Martin Davies and Kavan Bakhda**



**2018**

GETTING THE  
DEAL THROUGH

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# Dispute Resolution 2018

*Contributing editors*

**Martin Davies and Kavan Bakhda**  
**Latham & Watkins**

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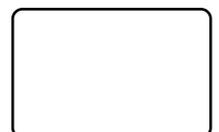


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# Preface

## Dispute Resolution 2018

Sixteenth edition

**Getting the Deal Through** is delighted to publish the sixteenth edition of *Dispute Resolution*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Bermuda, Ghana, Greece, Korea and United Arab Emirates.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Martin Davies and Kavan Bakhda of Latham & Watkins, for their continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
June 2018

# United Arab Emirates

Jonathan Brown and Raymond Kisswany

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## Litigation

### 1 Court system

#### What is the structure of the civil court system?

It is important to be aware of the multiple legal systems within the United Arab Emirates (UAE) and how they interact with one another. The following is a general background into the jurisdictional makeup of the UAE and the various court systems within it.

The UAE is a federation comprising seven Emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Fujairah and Ras Al Khaimah. Abu Dhabi is the capital of the UAE. In each Emirate, UAE Federal Law applies as well as the laws enacted by each Emirate. In case of conflict, UAE Federal Law has primacy.

Each Emirate is a separate legal jurisdiction. Abu Dhabi, Dubai and Ras Al Khaimah have their own separate local court systems. In these three Emirates, there is no federal supreme court to which appeals can be made. As such, the highest court is the Court of Cassation (CC) in each respective Emirate. Below the CC is the Court of Appeal (CA) and below that is the Court of First Instance (CFI).

The other Emirates use the Federal Courts. In these Emirates, there is a CFI. Decisions of the CFI may be appealed to the CA of that Emirate. Decisions of the CA may be appealed to the Federal Supreme Court (FSC). The FSC also retains jurisdiction in matters that include disputes between Emirates or between any one or more Emirate and the Federal Government as well as questions into the constitutionality of Federal or Emirate laws.

The UAE is an Arabic language civil law-based legal system except in respect of two independent financial free zones, which are the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). The DIFC and ADGM form separate legal jurisdictions. As such, UAE civil and commercial laws do not apply in these two free zones; instead, the DIFC and ADGM have enacted their own laws, which are substantially based on English law. However, while DIFC laws have existed for a number of years, ADGM laws are still being drafted and enacted. In order for the DIFC courts or ADGM courts to have jurisdiction, it must be expressly adopted as the governing jurisdiction in the parties' agreement or it will automatically apply if one of the parties is based in the DIFC/ADGM or the agreement is executed within the DIFC/ADGM or performed (at least partially) within the DIFC/ADGM unless the parties have expressly provided for some other jurisdiction or arbitration to apply.

Both the DIFC and ADGM have their own English language common law court system, with international judges from England and other Commonwealth countries as well as Emirati judges. The DIFC courts have been operating since 2007. The ADGM courts started operating in 2016. There are various other free zones in the UAE, which have their own regulations and procedures, but are governed by UAE Federal Law and do not have their own court systems, thus falling under the jurisdictional supervision of the court system of the Emirate in which they are located.

It is important to emphasise that UAE laws are not capable of interpretation with a high degree of certainty, as no system of binding judicial precedent exists in the UAE legal system. The DIFC courts and ADGM courts, however, being common law courts, have a system of binding judicial precedent. The DIFC courts also frequently refer to

English and other Commonwealth judgments, which are treated as highly persuasive. The ADGM courts are also expected to do so.

The information provided in this chapter concerns UAE laws and procedures of the UAE courts. The position under DIFC and ADGM law and the procedures of the DIFC and ADGM courts are not covered in this chapter.

---

### 2 Judges and juries

#### What is the role of the judge and the jury in civil proceedings?

Civil proceedings are mostly based on written submissions where parties to a particular case submit memoranda and replies. Oral submissions are limited.

Juries are not a function of the UAE legal system. Judges have an inquisitorial role, especially trial judges. Judges at first instance are tasked with determining the facts of the case and then ruling on the law. Trial judges have wide-ranging powers and discretion where they are permitted to pose questions to the parties or their lawyers. Experts play a significant role in assisting judges in determining the facts of cases (discussed in greater detail below).

The UAE has taken great strides to bridge the gender gap in various public and private sectors. The UAE tied for first place in women's literacy and secondary and tertiary education enrolment by the World Economic Forum's *Global Gender Gap 2016 Report*. There are a number of female judges and public prosecutors, and these numbers are increasing annually.

---

### 3 Limitation issues

#### What are the time limits for bringing civil claims?

Time limits for civil claims are not contained in a single limitation statute; rather, civil time limits are in various legislations and those time limits vary depending on the nature of the claim. UAE Federal Law No. 5 of 1985 concerning the Civil Transactions Law, as amended (Civil Code), section 3 contains general rules relating to time limits for civil claims. Civil Code article 473 provides for a 15-year time limit for general contractual claims. It is important to determine the cause of action for a civil claim in order to determine the respective time limit. Important time limits are as follows:

- insurance: three years;
- tort: three years;
- building contracts for defects: 10 years;
- employment: one year;
- carriage by sea: one year;
- charterparty: one year;
- priority rights against vessels: one year (extended to three years);
- carriage by air: two years; and
- carriage by land: six months (domestic), one year (international).

Parties are unable to contract to suspend time limits; however, Civil Code article 481 permits the suspension of time limits where the claim could not be brought for a 'lawful excuse'. The term 'lawful excuse' is not defined in the Civil Code and is at the discretion of the trial court.

#### 4 Pre-action behaviour

##### Are there any pre-action considerations the parties should take into account?

The UAE does not require pre-litigation action. An aggrieved party may immediately commence legal proceedings against a breaching party. That said, it is usual for aggrieved parties to send letters before action. Moreover, the UAE has been attempting to ease the strain on the court system by encouraging parties to submit civil disputes to alternative dispute resolution forums such as reconciliation committees. Abu Dhabi and Dubai have established alternative dispute resolution centres for settling disputes with the aim of reducing the burden on parties and the court system. This is discussed in further detail in questions 34 and 35.

Concepts such as exchange of documents or disclosures do not exist in the UAE legal system.

#### 5 Starting proceedings

##### How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

In order to appear on behalf of clients before UAE courts, lawyers are required to possess a validly executed power of attorney (POA). Note that the UAE is not a signatory to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention). Therefore, POAs executed abroad must be signed in the following manner:

- signed before a notary or its equivalent in the country;
- legalised by the Ministry of Foreign Affairs where signed;
- attested by the UAE embassy;
- translated into Arabic;
- authenticated by the UAE Ministry of Foreign Affairs; and
- approved by the UAE Ministry of Justice.

Note that the above process usually takes approximately 10 to 14 working days to complete. Lawyers are unable to commence legal actions in the UAE courts without a valid POA.

Legal proceedings are considered to have commenced against a defendant when the claimant files a Statement of Claim with the CFI and pays the appropriate court fees. The CFI's Office of Case Management will schedule the first hearing and instruct the court bailiff to serve the summons on the defendant(s). UAE Federal Law No. 11 of 1992 concerning the Civil Procedures Law was amended in 2005 and 2014 (CPL) and now permits service of summons through other means, including email or 'similar modern technology means specified by virtue of a decision issued by the Minister of Justice'. Service of summons on defendants located outside the UAE, in the absence of a bilateral or multilateral treaty, must be through diplomatic channels.

Court fees vary between the Emirates depending on whether the Emirate is under the Federal Court system or its own local system. For example, in Dubai, court fees to file a Statement of Claim are based on a percentage of the claim amount up to a maximum of AED 40,000. Court fees are recoverable by the successful party.

All evidentiary documents must be translated to Arabic prior to submission in court pleadings. All translations into Arabic must be done by a Ministry of Justice-approved translator.

#### 6 Timetable

##### What is the typical procedure and timetable for a civil claim?

Once served with the summons, a defendant is to submit their Statement of Defence. From there, adjournments are given, which for civil claims depend on the complexity of the case, the amount of pleadings between the parties and whether an expert is appointed. Generally, proceedings at first instance take between six to 18 months depending on the factors discussed above. See question 20 for the timetable to appeal.

As stated before, civil proceedings are based on the written submissions of the parties. Typically, when one party submits a memorandum, the other party will request an adjournment of the hearing in order to review and reply. Adjournments are generally in the range of two to four weeks.

#### 7 Case management

##### Can the parties control the procedure and the timetable?

The Office of Case Management controls a case's timetable and overall case management prior to the case being assigned to a trial judge. Afterwards, the trial judge controls the procedure and timetable.

Trial judges normally extend adjournments when parties to a case request additional time in order to finalise settlement negotiations.

#### 8 Evidence – documents

##### Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

UAE law does not provide for a duty to preserve documents pending trial, nor are parties required to share documents with one another. The concept of discovery or disclosure does not exist under UAE law. The closest form of discovery or disclosure under UAE law is a court-appointed expert.

UAE Federal Law No. 10 of 1992, as amended, concerning Evidence Law in Civil and Commercial Transactions (Evidence Law) articles 69 to 92 legislate for the appointment of court experts. The court, at its discretion, may decide to appoint one or more experts from those registered on the court's schedule. Alternatively, the parties may request the court to appoint one or more experts; the court will honour this request and appoint an expert from those registered on the court's schedule. In either of the aforesaid circumstances, the court must specify:

- the expert's mandate;
- the deadline for submitting the final expert's report; and
- the expert's fees.

The court has the discretion to rely on the expert's report in its judgment, require the expert to revisit his or her mandate or appoint a new expert. In practice, the court usually appoints an expert where the factual matrix of the case is disputed by the parties. Experts are tasked with determining the factual matters of the case by meeting with the parties (the expert may meet with the parties separately or together), and can demand a variety of documentary evidence and discuss matters with witnesses. Once satisfied, the expert will produce a final report, which the parties may challenge. The court seeks to appoint experts with experience and background related to the case they are tasked with (eg, an insurance broker).

The court relies heavily on the expert's final report. Therefore, it is important to ensure the expert receives all the information requested and is well informed of the facts of the case.

#### 9 Evidence – privilege

##### Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

All communications between lawyers and clients are privileged, with minimal exceptions (eg, criminal investigations against the lawyer).

Communications and advice from an in-house lawyer are not privileged in a similar manner to external lawyers. However, as discussed in question 8, parties are not required to disclose documents, information or communications with one another.

Importantly, any written communication between the parties is not privileged, even when marked 'without prejudice'. Parties in litigation may rely on any such written communications.

#### 10 Evidence – pretrial

##### Do parties exchange written evidence from witnesses and experts prior to trial?

Party-appointed expert evidence is not relied on under UAE law; instead, the court will generally only consider court-appointed experts (see question 8). The majority of factual matters are examined by the court-appointed expert and provided in his or her final report.

**11 Evidence – trial****How is evidence presented at trial? Do witnesses and experts give oral evidence?**

The vast majority of proceedings are conducted through written submissions. Courts do not hear oral arguments or submissions from lawyers. Oral evidence before the court is rare. An application must be made by a party wishing to call a witness to provide oral testimony. If granted, the opposing side may cross-examine the witness.

**12 Interim remedies****What interim remedies are available?**

The most common interim remedy is a precautionary attachment (the closest proximate to a freezing injunction in the UAE). Precautionary attachments may be sought prior to commencing substantive proceedings or at any time during the course of the proceedings.

CPL article 252 provides the legal process for seizing assets to ensure satisfaction of a foreign or local court judgment or arbitration award in circumstances where there is a justifiable risk and apprehension that the assets will be disposed of prior to the final judgment or award being issued. An attachment order will be issued to protect the interests of the claimant if the UAE court is convinced that there is such a risk of dissipation. The purpose of a precautionary attachment order is to secure a genuine claim. Such a claim can be founded on court proceedings or arbitration proceedings pending in the UAE or abroad.

Precautionary attachments are applied for through an ex parte application (ie, on the application of one party alone) and are usually granted or refused within a few days of being presented to the judge. The court has the discretion whether or not to make the order. UAE courts, especially Dubai courts, have in recent years become reluctant to grant precautionary attachment orders. The usual reason for the court declining to do so is a failure by the applicant to convince the court that there is a risk the debtor may dissipate his or her assets before a judgment is enforced. The courts have in the past considered there to be no or low risk of dissipation of assets where the party is a long-standing UAE onshore company. Generally, the courts have held that the risk of dissipation of assets meets the threshold to obtain attachments over the assets of companies based in free zones owned by foreign nationals.

Although it may be possible to apply for and obtain a precautionary attachment order, preserving the attachment may be more difficult to achieve. There are several procedural requirements and judicial hurdles that must be overcome.

**13 Remedies****What substantive remedies are available?**

The most common remedy is monetary damages. Damages are predominantly based on actual losses, but, under strong evidence, loss of profits may also be awarded. Punitive damages are not available for breaches of contract; however, they may be awarded in extreme circumstances for torts claims.

Post-judgment interest of up to 12 per cent may be awarded. Generally, 9 per cent is awarded.

An aggrieved party may seek specific performance of a contract or a declaration (eg, return of goods). Such measures are rare, however, mostly because of the lack of summary judgments, as well as an automatic right to appeal.

**14 Enforcement****What means of enforcement are available?**

Enforcement of a final judgment is conducted through the Court of Execution (CE). There are many enforcement procedures at a judgment creditor's disposal, too many to be discussed in this chapter.

The most common type of enforcement procedure is an executive attachment.

A judgment debtor is provided 15 calendar days to pay a judgment against him or her (after the judgment creditor has filed a Statement of Execution).

After 15 calendar days and payment not having been made, the judgment creditor may file an application with the CE explaining that payment has not been made and therefore seeks the CE's assistance in locating assets belonging to the judgment debtor in order to satisfy

the judgment. The judgment creditor will typically list various banks and any other private or public entities that may register or hold assets belonging to the judgment debtor. The CE will issue an order requiring those entities to disclose information regarding the judgment debtor's assets; for example, the CE will order a banking institution to disclose any bank accounts belonging to the judgment debtor. The judgment creditor must then file another application seeking to attach assets discovered pursuant to the CE's order and that those assets are transferred to the CE's Treasury in order to satisfy the judgment. Movable assets, such as vehicles, machinery, ships, planes, etc, may also be attached and eventually auctioned through a judicial sale procedure. A company's trade licence may also be the target of enforcement.

**15 Public access****Are court hearings held in public? Are court documents available to the public?**

All hearings are open to the public, unless the court deems otherwise, which is extremely rare. However, court documents are available only to the parties and their lawyers.

**16 Costs****Does the court have power to order costs?**

Courts have the power to order costs; generally court filing fees and court-appointed experts' fees are awarded to the successful party. However, lawyers' fees are only nominally awarded (normally approximately AED 1,000 to AED 2,000).

**17 Funding arrangements****Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?**

Contingency or conditional fee arrangements such as 'no win, no fee' or 'no cure, no pay' are not permitted under UAE legal professional rules as they fall under the remit of gambling. The most common fee arrangements are time spent or, in some instances, fixed fee.

Third-party litigation funding is still in its infancy in the UAE.

**18 Insurance****Is insurance available to cover all or part of a party's legal costs?**

Insurance to cover a party's legal costs is not available in the UAE.

**19 Class action****May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?**

UAE law does not legislate for class action lawsuits or how such suits would be brought or heard in UAE courts. In theory, a group of claimants may collectively commence legal proceedings against a single defendant. This theory may work in tort claims where various claimants suffered harm as a result of a single defendant (eg, a group of passengers on a bus). However, this is difficult in contract cases as each individual claimant has a separate breach of contract claim.

**20 Appeal****On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?**

Leave to appeal is not required. There is an automatic right to appeal CFI decisions to the CA if the amount in dispute is over AED 20,000 and the appeal is commenced within 30 calendar days of the CFI judgment. There is an automatic right of appeal of CA decisions to the CC if the amount exceeds AED 200,000 and the appeal is commenced within 60 calendar days of the CA judgment. Most cases are eventually adjudicated by all three tiers of courts because the aforesaid limits are relatively low and only nominal lawyers' fees are recoverable.

## 21 Foreign judgments

### What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments may be enforced in the UAE based on bilateral or multilateral agreements (eg, the Riyadh Arab Agreement for Judicial Cooperation (Riyadh Convention)).

CPL article 235 legislates the procedure to enforce foreign judgments in the absence of a reciprocal agreement. The foreign judgment must satisfy the following conditions:

- UAE courts did not have original jurisdiction over the dispute;
- the foreign court was competent to hear the dispute;
- the foreign judgment is final;
- parties to the litigation were properly served and represented (ie, default judgments cannot be enforced); and
- the foreign judgment is not in conflict with a previously issued UAE judgment, nor is the foreign judgment contrary to UAE public policy.

A judgment creditor will be required to make an application to the CFI requesting enforcement of the foreign judgment. The judgment debtor must be served and provided with an opportunity to defend the action. The CFI's decision is appealable to the CA, which in turn is appealable to the CC.

As stated above, the DIFC and ADGM courts have their own procedures in enforcing foreign judgments, which are not covered in this chapter.

## 22 Foreign proceedings

### Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

UAE procedural law does not provide for obtaining oral or documentary evidence for use in civil proceedings in foreign jurisdictions. The UAE is a party to several multilateral and bilateral judicial assistance treaties (eg, between Gulf Cooperation Council states and with the UK), which facilitate the taking of evidence by means of letters rogatory.

## Arbitration

## 23 UNCITRAL Model Law

### Is the arbitration law based on the UNCITRAL Model Law?

The UAE does not have a standalone arbitration law; however, it is hoped that a draft law, based on the UNCITRAL Model Law, will be enacted shortly. Until such time, arbitration is legislated under the provisions of CPL articles 203–218.

## 24 Arbitration agreements

### What are the formal requirements for an enforceable arbitration agreement?

Arbitration agreements must be in writing (CPL article 203(2)). It is generally recommended that both parties sign the actual arbitration agreement itself where the arbitration agreement is contained as a clause in a contract.

The person(s) signing the arbitration agreement must have specific capacity (CPL article 203(4)). Where the parties are corporate entities, capacity to enter into an arbitration agreement on behalf of the company is permitted to the managing director (ie, the individual named on the Trade Licence of the company) or a person with a valid power of attorney that specifically empowers him or her to sign an arbitration agreement.

Arbitration agreements in insurance policies must be in a separate contract, apart from the policy itself (Civil Code article 1028(d)).

Public joint stock companies are only permitted to agree to arbitration if so granted in the company's articles of association or are 'embodied by nature in the company's objectives'. Where one of these two conditions does not apply, arbitration may be approved by the shareholders in a general assembly (UAE Federal Law No. 2 of 2015 concerning the Commercial Companies Law (Companies Law) article 154. The chairman of the company is deemed to be the company's representative and his or her signature is deemed to be the board of

directors' signature. These powers may be delegated by the chairman (Companies Law article 155).

## 25 Choice of arbitrator

### If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The current provisions of the CPL provide that, in any case where arbitrators have not been appointed, UAE courts will, on an application by one or both parties, appoint arbitrators (CPL article 204(1)). Such appointments by the court cannot be appealed (CPL article 204(2)). The court may also appoint an arbitrator where a sitting arbitrator neglects his or her duties or fails to satisfy his or her mandate (CPL article 207(3)).

A party may object to the appointment of an arbitrator under the same rules provided for objecting to a judge (CPL article 207(4)). Such reasons include bias and conflict of interest. A recent amendment (Federal Decree No. 7 of 2016) to UAE Federal Law No. 3 of 1987 concerning the Penal Code (Penal Code) specifies that 'contravention of the requirements of the duties of neutrality and integrity, while acting in his capacity as an arbitrator . . . shall be punished by temporary imprisonment [three to 15 years]' (Penal Code article 257).

## 26 Arbitrator options

### What are the options when choosing an arbitrator or arbitrators?

Generally, parties are able to select arbitrators of their choosing. There are several international and local arbitral bodies in the UAE, each with their own unique arbitration rules and list of arbitrators. Arbitral bodies in the UAE have internationally recognised arbitrators as well as regional and local arbitrators capable of conducting arbitrations in Arabic.

## 27 Arbitral procedure

### Does the domestic law contain substantive requirements for the procedure to be followed?

The CPL provides certain substantive requirements for arbitration. CPL article 207(1) requires arbitrators to accept appointments in writing. CPL article 208(1) requires the arbitrator, within 30 days of appointment, to notify the parties of the date of the first hearing and deadlines for submitting pleadings and defences. CPL article 208(2) permits the continuation of arbitration proceedings on one party's submissions if the other party does not submit its pleadings on time. CPL article 208(3) requires the arbitrators to jointly consider the case, provide a reasoned award and sign the award.

CPL article 209(2) requires a stay of arbitral proceedings if a matter unrelated to the arbitrators' authority arises or in relation to a criminal matter, primarily an accusation of a falsification of a document. Furthermore, CPL article 209(2)(a), (b) and (c) require a stay of arbitral proceedings in situations where court assistance is required, such as witnesses that fail to appear before the tribunal or demands for a party to produce documents.

CPL article 211 requires arbitrators to administer an oath on witnesses.

## 28 Court intervention

### On what grounds can the court intervene during an arbitration?

UAE courts have supervisory jurisdiction over arbitrations seated in the UAE; specifically the courts hear applications for the removal of arbitrators as well as appeals against the arbitral award. Courts may also intervene where witnesses fail to appear before the tribunal and in any matters that fall outside the tribunal's mandate.

## 29 Interim relief

### Do arbitrators have powers to grant interim relief?

There are no specific provisions providing arbitrators powers to grant interim relief. Institutional arbitration centres' rules will often provide such powers to some extent; however, UAE courts retain jurisdiction to provide interim relief such as precautionary attachments (freezing orders), security for costs and production of documents.

## 30 Award

### When and in what form must the award be delivered?

The award must be delivered within six months from the commencement of proceedings absent any provisions to the contrary in the arbitration agreement between the parties (CPL article 210(1)). The parties may agree, expressly or implicitly, to extend such deadlines (CPL article 210(2)). Deadlines are suspended where the arbitration is stayed for any reason (see question 27) and are resumed when the arbitration is resumed (CPL article 210(3)).

The award must be delivered in the UAE (generally meaning signed in the UAE); otherwise, the award will be treated as a foreign arbitral award (CPL article 212(4)). The award must be based on a majority opinion and must include dissenting opinions; additionally, the award must include a copy of the arbitration agreement and the parties' submissions and evidential documents (CPL article 212(5)). The award must be in Arabic unless the parties agreed to another language and, where the award is in a language other than Arabic, it must be translated into Arabic (CPL article 212(6)).

## 31 Appeal

### On what grounds can an award be appealed to the court?

Domestic awards must be ratified by the UAE courts. The award may be challenged at this stage.

The appeal must be in regards to procedural grounds based on CPL article 216, which usually involves one or more of the following grounds of appeal:

- validity of the arbitration agreement based on the authority of the person executing the agreement (CPL article 203(4));
- the arbitrators were improperly appointed (CPL articles 206 and 207);
- failure to adhere to the time limits in issuing the award (CPL articles 208(1) and 210);
- failures of the tribunal to suspend the arbitration when required to do so pursuant to CPL article 209;
- procedural irregularities during the hearings, such as a failure to administer an oath on witnesses (CPL article 211);
- procedural irregularities in the award itself, such as the tribunal failing to act jointly when considering the case, providing a reasoned award and signing the award (CPL article 208(3)); or
- any issues relating to UAE public policy.

## 32 Enforcement

### What procedures exist for enforcement of foreign and domestic awards?

Enforcement of domestic awards is the same as for UAE court judgments (see question 14).

Awards delivered in the DIFC may be enforced in Dubai (and vice versa) pursuant to DIFC Law No. 16 of 2011 (amending DIFC Law No. 12 of 2004) (Judicial Authority Law). If the claimants succeed in the merits of their enforcement application before the DIFC courts, the claimants should be able to take a DIFC court judgment for enforcement before the Dubai CE. The Judicial Authority Law provides that the Dubai courts do not have discretion or jurisdiction to review the merits of a DIFC court judgment. An enforcement order obtained in Dubai should theoretically be enforceable throughout the UAE by reference to article 11 of the UAE Federal Law No. 11 of 1973 on Judicial Relationships Amongst Emirates, which provides that: '[A]ny order deciding civil or commercial rights or damages, concerning penal affairs or personal affairs, issued by a judicial body in one of the emirates member of the federation, shall, according to the rules of this law be executable in any other emirate member of the federation.'

## Update and trends

The UAE does not have a standalone arbitration law; however, a draft law is being finalised and is expected to be enacted soon. It is understood that the new arbitration law will clarify and resolve some of the lingering issues in domestic arbitrations as well as the enforcement of domestic and foreign awards.

Enforcement of foreign arbitration awards is dealt with under CPL articles 235 to 238, as is the enforcement of foreign judgments. CPL article 235(2) provides the conditions that the UAE courts must consider when enforcement of a foreign judgment or award is sought in the UAE. Article 236 specifically provides that the terms of article 235 shall apply to arbitration awards. CPL article 238 exempts the UAE courts from applying the provisions set out in CPL article 235 if these conflict with the terms of an international convention to which the UAE is a party. The UAE became a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NY Convention) in August 2006 and it entered into force on 19 November 2006 (discussed in detail below). The UAE courts have in the past applied the requirements of CPL article 235 and used them as a pretext for a quasi review of the merits of foreign awards in order to refuse their enforcement. However, it is safe to say that, provided these conditions have been complied with, such tactics will only result in a delay of the inevitable enforcement of such an award. Pursuant to CPL article 235(2), the UAE courts are empowered to refuse and in practice have in the past refused the enforcement of foreign awards on grounds such as:

- lack of proper jurisdiction of the tribunal at the place of arbitration;
- deficient issuance of the arbitral award at the place of arbitration;
- improper summoning or representation of one of the parties in foreign arbitration proceedings; or
- contradiction of the foreign award with a previous UAE judgment or its violation of public policy.

Therefore, enforcing a foreign arbitration award before the UAE courts is essentially a two-pronged process. The first prong is that the procedural requirements as laid down in CPL article 235(2) have to be met. Only after the foreign arbitration award meets the procedural requirements above will the UAE court consider the enforcement procedures as laid down in CPL articles 239 to 243 (ie, the execution procedures).

In August 2006, the UAE became a signatory, without reservation, to the NY Convention, which was then ratified by UAE Federal Decree No. 43 of 2006. The Federal Decree approving the NY Convention entered into force on 19 November 2006. Broadly speaking, the intention of the NY Convention is to ensure that an arbitral award obtained in one NY Convention member state can be enforced in any other NY Convention member state as easily as if it were a domestic arbitration award. In theory, the NY Convention is a highly effective treaty that provides a process for the reciprocal enforcement of arbitral awards between the now 159 signatory states worldwide. Moreover, recent decisions of the Dubai CC and other courts in the UAE have substantially solidified this position. The NY Convention provides in article III that 'each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon', provided that such awards satisfy the conditions as set forth in the NY Convention. This is the procedure as contained in the CPL as discussed above. There have now been a number of UAE court decisions where foreign arbitral awards have been recognised in accordance with the NY Convention without re-examination of the merits, which has created a great degree of comfort for the legal community. However, as the procedure for seeking ratification is the same procedure as for any other claim, the process can take a long time as it will probably be necessary to go through all three tiers of the UAE courts.

## 33 Costs

### Can a successful party recover its costs?

CPL article 218 permits arbitrators to award arbitration fees as well as the arbitrators' fees against the unsuccessful party. Costs of the successful party may be awarded as part of the arbitral award. The court, on application by one of the parties, may amend any such award.

**Alternative dispute resolution****34 Types of ADR****What types of ADR process are commonly used? Is a particular ADR process popular?**

While litigation and arbitration remain the main forms of dispute resolution in the UAE, mediation and conciliation are becoming increasingly popular alternatives. Many institutional centres offer mediation in addition to arbitration. At the contractual stage, parties may provide for binding mediation provisions under institutional centres' rules. Generally, such agreements will be part of an 'escalation' clause, whereby, should mediation not lead to a settlement of the dispute, the parties may litigate or arbitrate the dispute.

Some Emirates, namely Abu Dhabi and Dubai, have established centres for mediation and conciliation which are ancillary to the courts.

Settlements obtained through mediation or conciliation are contractual in nature and may be enforced through the UAE courts.

**35 Requirements for ADR****Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?**

As stated in question 34, Abu Dhabi and Dubai have established alternative dispute resolution centres for settling disputes with the aim of reducing the burden on parties and the court system.

In Abu Dhabi, civil, labour or personal status disputes must first be submitted to the Reconciliation and Settlement Committee (RSC) or the Family Guidance Section (FGS), which attempt to settle disputes between parties amicably. The parties may apply for a no objection letter from the RSC or the FGS where settlement is impossible. Abu

Dhabi courts cannot commence proceedings unless the matter has been first presented to the RSC or the FGS and a no objection letter has been issued.

In Dubai, the Centre for Amicable Resolution of Disputes (CARD) commenced operations in 2012. CARD may consider mediating:

- disputes that involve the distribution of undivided property;
- if the value of the dispute does not exceed AED 50,000;
- with a request to commission an expert either individually or related to another request;
- if one of the parties is a bank; or
- disputes originally commenced in the Dubai courts where the parties request mediation (this must be approved by the judge).

Certain actions fall outside the jurisdiction of CARD. Disputes that are under the purview of CARD cannot be commenced in the Dubai courts unless the dispute is submitted to CARD and a decision by CARD is made referring the dispute to the Dubai courts.

Similar ADR centres are being considered by other Emirates in the UAE.

**Miscellaneous****36 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?**

It is important to note the significance of reliable legal translation when disputes arise. The majority of commercial contracts, communications and other information between the parties will be in English. However, UAE courts conduct proceedings in Arabic and only consider Arabic translations of documents. Ensuring the accuracy of translation is essential to the success of a party's case, especially in detailed and nuanced cases.



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