

Legal 500

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United Arab Emirates

Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in United Arab Emirates.

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United Arab Emirates: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

The main methods of resolving commercial disputes in the United Arab Emirates ("UAE") are litigation, arbitration, and mediation. The enactment of the Federal Decree Law No. 40 of 2023 on Mediation and Conciliation in Civil and Commercial Disputes has promoted the development of mediation as method of alternative dispute resolution.

2. What are the main procedural rules governing litigation in your jurisdiction?

In the UAE, there are two court systems: the onshore courts and the offshore ones.

The onshore UAE court system:

The civil procedure code, enacted by Federal Decree Law No. 42 of 2022 ("CPC") along with the Federal Decree Law No. 35 of 2022, promulgating the law of evidence in civil and commercial transactions, lay down the guiding principles of trial and specifies the rules governing civil and commercial litigation before onshore UAE courts at each court level. Trials are conducted based on the adversarial system, and legal proceedings primarily occur through written submissions, wherein parties submit memoranda and responses, with limited oral submissions.

The offshore UAE courts:

These courts are established within the Dubai International Financial Centre ("DIFC") and the Abu Dhabi Global Market ("ADGM"). DIFC and ADGM are autonomous jurisdictions within the UAE, possessing their own laws based on common law system and conducted in English. The procedural rules governing civil and commercial litigation closely resemble those followed in common law courts.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

The UAE, a federation of seven Emirates including Abu Dhabi, Dubai, and Ras Al Khaimah, operates under both federal and local laws. In disputes, federal law holds

precedence over local legislation. Abu Dhabi, Dubai, and Ras Al Khaimah maintain independent local court systems, while the other Emirates utilize federal courts, including a federal supreme court based in Abu Dhabi.

The court system is divided into civil, criminal, and personal status branches, each with specialized circuits. Civil matters, ranging from commercial to maritime disputes, are handled by civil courts, while criminal courts oversee criminal justice, and sharia courts manage personal status affairs.

Additionally, as cited above, the DIFC and the ADGM courts operate as autonomous jurisdictions within the UAE, governed by common law systems and English language proceedings. DIFC courts, established in 2006, offer resolution of disputes under English common law. Similarly, ADGM courts, founded in 2015, apply English law regulations. Both systems consist of first instance and appeal courts, with final judgments rendered by the court of appeal.

Overall, while the focus remains on the UAE's onshore court system, the DIFC and ADGM courts provide alternative avenues for legal resolution within the UAE, especially for matters involving international parties or contracts.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

In typical onshore courts proceedings, parties submit their memoranda to the court's case management office until the case is trial-ready. This phase is supervised by a judge, who might establish deadlines. Generally, it takes 6-8 weeks to reach the trial stage. However, this timeline could extend, especially in complex cases or if a court expert is appointed. During the trial, proceedings before the court of first instance usually last 6-9 months.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Hearings at the civil courts typically occur online. Access to case details and filed documents is available to any

party with interest upon request and payment of a fee. Generally, proceedings are conducted publicly, and cameras are not permitted in court but exceptions exist for specific cases, such as when confidentiality is necessary, and hearings can be held privately either in court or in a judge's chamber. While judgments are made public, their wording may be adjusted to protect trade secrets.

6. What, if any, are the relevant limitation periods in your jurisdiction?

The UAE's regulations on time limits for legal actions are detailed in several laws, including Federal Law No. 5 of 1985, promulgating the UAE civil transactions law (as amended), the commercial transactions law, the labor law, and the maritime law. Typically, claims must be filed within 15 years, unless specific laws state otherwise. Consequently, the time limits vary based on the nature of the claim, for instance claims arising from:

- a. contracts: 15 years as per article 473 of the civil transactions law.
- b. attorney's fee: 5 years as per article 475 of the civil transactions law.
- c. bill of exchange: 3 years as per article 618 of the commercial transactions law.
- d. insurance claims: 3 years as per article 1036 of the civil transactions law, except for marine insurance which has one (1) year time limit as per article 309 of the maritime law.
- e. supply contract: 2 years as per article 476 of the civil transactions law.
- f. privileged debts against the ship: 1 year, except for ship supplies like bunkering, which have a 6-month time limit as per article 37 of the maritime law.
- g. compensation claims arising from a marine collision: 1 year as per article 241(1) of the maritime law.
- h. claim for contribution to general average losses: 1 year as per article 277 of the maritime law.
- i. supply of defective goods with hidden defect: 6 months as per article 108(1) of the commercial transactions law

These time limits usually begin when the debt or obligation is due and can be enforced in court by either party. The time limit may stop running or reset under certain circumstances, such as taking a legal action or acknowledging the debt.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any,

are the consequences of non-compliance?

Certain legal matters in the UAE necessitate sending a formal legal notice before initiating legal proceedings. This requirement arises, for instance, for supply of defective goods pursuant to article 108(1) of the commercial transactions law and air cargo claims pursuant to article 364(1) of the commercial transactions law. Similarly, in cases of disputes between employees and employers concerning their rights under the labour law, the concerned party must file a request with the relevant labour department. The department then facilitates an attempt at amicable resolution between the parties. If such resolution fails, the matter will be referred to the appropriate court. Non-compliance with pre-action notices or procedures would result in dismissal of the lawsuit.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Upon setting a hearing date, the court must ensure that the defendant is served with summons or notification. Unless otherwise stated by regulations or the case management office, the claimant or their legal representative may be permitted by the court to serve summons using modern technology. Thus, service of summons can be conducted through various modern means such as recorded voice, SMS, or emails subject to agreement between the parties and approval from the court. Service of summons to entities outside the UAE not reachable through technological means, or as agreed by the parties, shall be considered effective if transmitted through the diplomatic channels of the defendant's country of residence.

If the defendant refuses to accept service, it will be considered as personally served. If the server cannot find the defendant, the summons may be left with their spouse, relative or employee. Alternatively, the server may attach the summons to the defendant's door at their home or office. However, if service of summons fails, the hearing may be postponed for further notification. The claimant or their representative may request the court to verify the defendant's address and phone number, which may involve engaging relevant authorities like the department of economic development (DED) and the general directorate of residency and foreigners' affairs (GDRFA) for address confirmation, and/or telecom companies for phone number confirmation. If serving the summons remains unsuccessful, the court may order its

publication by the claimant in a widely circulated Arabic newspaper within the UAE, and in an English newspaper if the defendant is not an Arabic speaker.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

The determination of the court's jurisdiction relies primarily on several factors, such as the nature of the lawsuit. For instance, article 33 of the CPC specifies that the court's jurisdiction is contingent upon the defendant's domicile. If the defendant doesn't have a domicile, jurisdiction extends to the area where they reside or work.

In commercial disputes, the defendant has the right to choose the court where legal proceedings will take place. This choice can be:

- The court in the jurisdiction where the defendant resides.
- The court in the jurisdiction where the agreement was fully or partially carried out.
- The court in the jurisdiction where the contract was meant to be fulfilled.

In maritime disputes concerning ship arrest, as outlined in article 40 of the CPC, the court where the ship is at berth holds jurisdiction to issue a ship arrest order. Moreover, according to article 60 of the maritime law, the court where the ship arrest occurred has jurisdiction to handle the case's merits under the following circumstances:

- If the maritime debt originated in the UAE.
- If the claimant maintains habitual residence or a head office in the UAE.
- If the maritime debt arose during a voyage when the ship was temporarily detained.
- If the maritime debt stems from a collision or assistance within the jurisdiction of the court.
- If the debt is secured by a maritime mortgage on the detained ship.

As for ship mortgage disputes, the competent court is determined by article 48 of the maritime law, which stipulates that it is the court within whose jurisdiction the ship is located.

10. How does the court determine which law governs the claims in your jurisdiction?

Pursuant to article 19(1) of the civil transactions law, parties entering into contracts have the liberty to designate the governing law for their agreements, with

due regard for fundamental principles of public policy. For instance, in matters pertaining to real estate, the principle of territoriality is paramount, necessitating the application of the law of the jurisdiction where the property is situated. This is elucidated in article 19(2) of the civil transactions law. In the absence of a stipulated choice by the parties, UAE law shall be directly applied by the courts.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

If both parties fail to attend, the court may decide to rule on the matter or to cancel the claim pursuant to article 53 of the CPC. If the claimant and defendant settle amicably, the case can be withdrawn. Additionally, within the first hearing, parties maintain the right to petition the judge to consider jurisdictional issues that might lead to dismissal without exploring the merits of the claim. These procedural challenges commonly center on the existence of a valid arbitration agreement. Apart from these scenarios, UAE law lacks a specific mechanism for a party to pursue early dismissal of a claim.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

Under UAE law, provisional orders are indeed provided for pursuant to articles 100(4), 247, 248, 249 and 252 of the CPC and article 53 of the maritime law, these interim orders can be issued by either the trial judge or the judge of urgent matters on an *ex parte basis*, wherein the applicant must demonstrate that imminent harm necessitates interim relief urgently to protect their rights.

The judge can, upon the request of any of the parties, either in consideration of a guarantee or without it, order provisional and conservatory measures for the protection of rights and the prevention of harm. The available interim measures vary as they may be required. These include, but are not limited to, ship arrest or precautionary attachment of other assets to secure a claimant's claim or an order of affixing seals, making an inventory of assets, discharging a vessel, putting goods under custody, selling perishable goods, and making a report on the status quo of a situation.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual

timetable?

Once a statement of claim has been submitted, the claimant must present all relevant documentary evidence supporting their assertions during the initial hearing, including documentation substantiating the claims made within the lawsuit. Typically, these documents, which must be translated in Arabic are required to be submitted before the case management office. The litigation process primarily unfolds through written submissions.

Following the filing of the statement of claim by the claimant, the defendant is allotted a period to submit their statement of defense along with all supporting documents, the duration of which is determined by the case management office. Additional submissions may be permitted by the same office. Thereafter, the case management office may appoint a court expert or forward the full file to the adjudicating judges. The whole process before the case management office would last between 6-8 weeks if the latter does not appoint an expert.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Although each party bears the responsibility of proving the evidence supporting their case, they are not obliged to disclose potentially damaging documents or information as is the case for mandatory disclosures in some common law jurisdictions. Exceptionally, if one party requires evidence from the other, they must obtain approval from the judge for investigative measures, whether during litigation or beforehand. These measures range from requesting specific evidence to authorizing a court-appointed expert to search for and duplicate emails and electronic files.

While privileged or confidential information, including trade secrets, does not automatically preclude an investigative measure, the judge may implement protective measures if deemed necessary. Considering that the CPC does not explicitly prohibit document disclosure, such matters are typically governed by other regulations, such as bank secrecy laws, professional regulations concerning medical practice and patient rights, attorney-client privilege, and similar provisions.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give

oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Parties typically present written affidavits from witnesses, although judges may opt for oral examinations upon request or *ex officio*. Witnesses, upon swearing an oath of truth, may provide verbal evidence where permitted. Certain individuals, such as relatives or agents to principals, may be disqualified from acting as witnesses in relevant litigations.

During oral examinations, conducted in the presence of parties and/or their counsels, the judge oversees proceedings and takes an active role in examining witnesses, while the opposing party may submit questions for the judge to ask but cannot directly address the witness. Unlike common law jurisdictions, there is no provision for cross-examination.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Expert evidence is commonly utilized in legal proceedings, especially in cases involving technical or trade-related matters, the court typically appoints an expert, either by its own or upon a party's request. Experts are chosen from lists maintained by the court and their findings may undergo scrutiny by both parties and the court itself. The process often involves multiple stages, including revisions to the expert's initial report. Court-appointed experts are obligated to update the court on their progress and adhere to the adversarial principle.

Typically, the expert's opinion is conveyed through a written report submitted to the court and shared with both parties. However, if the court deems the report insufficient, it may summon the expert to clarify matters, with both parties present. Despite the expert's conclusions not binding the court, in complex cases, each party may appoint its own expert, whose report serves as evidence presented to the court.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

According to article 159(1) of the CPC, final decisions issued by the court of first Instance are subject to appeal before the court of appeal, except for decisions

concerning claims of less than AED50,000, which are not appealable. The appeal must be filed within 30 calendar days from the date of the Court's judgment if delivered in the presence of the parties or from the date of the decision's notification if issued in absentia. However, for urgent matters such as the appointment of a custodian to manage a company, or for ship mortgage foreclosure, as outlined in article 161 of the CPC, this deadline is shortened to 10 days.

The decision of the court of appeal can be further appealed before the court of cassation or the federal supreme court, as the case may be, except for decisions ruling on claims of less than AED500,000, which are not appealable in cassation as per article 159(2) of the CPC. Again, the appeal must be lodged within 30 calendar days from the date of the court's judgment if delivered in the presence of the parties or from the date of the decision's notification if issued in absentia.

As for interim decisions, interested parties can file a grievance before the judge of the urgent matters or the court having jurisdiction. There is no deadline to file such a grievance as per article 250(3) of the CPC.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

Enforcement before onshore courts:

Pursuant to article 225 of the CPC, the UAE incorporates the following multilateral treaties into its domestic laws for the reciprocal recognition and enforcement of foreign judgments:

1. Riyadh Arab Agreement for Judicial Cooperation (6 April 1983), signed by the UAE and other 19 Arab countries.
2. Gulf Cooperation Council Convention for the Execution of Judgments, Delegations, and Judicial Notifications (1996), signed by six GCC member states, including the UAE.

Enforcement of judgement rendered outside the UAE requires an *exequatur* to be granted after fulfilling some procedure requirements outlined in article 222 of the CPC, this latter treats enforcement of domestic and foreign judgments equally.

Enforcement before offshore courts:

A. DIFC courts:

In addition to the multilateral treaties cited above, the DIFC Courts have bilateral memoranda of understanding

with various foreign courts, including:

- a. Memorandum of Guidance with the High Court of England and Wales.
- b. Memorandum on Enforcement with the Supreme Court of Singapore.
- c. Memorandum of Guidance with the High Court of Hong Kong.
- d. Memorandum of Guidance on Understanding the Enforcement of Money Judgments with the Federal Court of Malaysia.

After fulfilling some procedure requirements outlined in the DIFC laws, this latter treats enforcement of domestic and foreign judgments equally and to ensure ratification and enforcement of a foreign judgment:

- a. The judgment must be final and conclusive.
- b. Certain types of judgments, like those ordering tax payments, fines, or penalties, are not enforceable.
- c. The foreign court must have had jurisdiction under the DIFC Rules on Conflict of Laws.

B. ADGM Courts:

Like DIFC courts, ADGM courts enforce foreign judgments, but reciprocity must be established.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

UAE courts shall award lawyers' fees and other legal costs to a successful litigant, pursuant to article 133 of the CPC and article 52(1) of the Federal Decree-Law No. 34/2022 regulating the advocacy and legal consultancy professions read together. Indeed, article 133 of the CPC states that:

"1- Upon issuance of the judgment or decision terminating the litigation, the court shall rule on the expenses of the lawsuit *sua sponte*.

2- The expenses of the lawsuit shall be imposed upon the losing party, and the costs of the translation of the notice and the attorney fees estimated by the court in accordance with the controls and standards specified in the Legal Profession Law shall be included in the expenses."

From its side article 52(1) of the Federal Decree-Law No. 34/2022 regulating the advocacy and legal consultancy

professions states "[a]n attorney shall receive his/her fees in accordance with the contract drawn up between him/her and his/her client [...]"

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

In the UAE, class or collective actions are generally absent from court procedures, except for labour disputes. These disputes, outlined in a ministerial decision of 2018 on settling collective labour disputes resolution and the Cabinet Resolution No 46 of 2022 Concerning Formation of Collective Labour Disputes Committee involve employer-employee conflicts over basic labour rights with a minimum requirement of 100 workers.

While class actions aren't prevalent, interested parties can still intervene or join lawsuits if they meet specific criteria. Additionally, in insolvency and bankruptcy cases, all creditors must participate jointly in the proceedings.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Pursuant to article 96 of the CPC, a litigant may involve anyone with legal standing in the case at its inception or at a later stage before the closure of the hearings. Also, pursuant to article 97 of the CPC, any party with vested interests can intervene in the ongoing proceedings. This intervention is permissible if the third party is sufficiently linked to the claims of the parties involved. Such involvement may take two forms: firstly, the third party may choose to join the proceedings to assert its own claim or support a party's claim; secondly, a party involved in the case may summon a third party with a claim against it. Additionally, pursuant to article 98 of the CPC, a judge holds the authority, either autonomously or at a party's request, to consolidate two sets of proceedings if their link warrants a joint examination or resolution in the interest of justice.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third-party funding for litigation remains uncommon in the UAE and it is mostly used in arbitration proceedings, which are significantly more expensive than litigation proceedings before local courts. While not explicitly

prohibited in the UAE, its applicability in local courts remains untested. However, there are indications of its growing acceptance, particularly within the DIFC and ADGM court systems. Indeed, the DIFC courts, operating under a common law framework, introduced Practice Direction No 2 of 2017, aligning with English law on third-party funding. Similarly, the ADGM courts established the Litigation Funding Rules 2019, explicitly permitting third-party litigation funding under section 225(3)(a) and (d) of the ADGM courts regulations.

No explicit regulation exists stipulating that third-party funders can be held responsible for the expenses accrued by the opposing party before local courts and neither the DIFC nor the ADGM regulations specify the minimum or maximum funding thresholds for third-party funders. However, the DIFC rules stipulate that a funder must possess qualifying assets, comprising cash and/or cash equivalents, totaling at least USD5 million or its equivalent in foreign currency, before entering into a litigation funding agreement.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

Court proceedings have gradually transitioned to digital platforms, with the UAE courts implementing various exceptional measures such as videoconference hearings and expert meetings, which remain in use today.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

Apart from the affordability of litigation, a primary benefit of resolving international commercial disputes in the UAE lies in its specialized courts, namely the DIFC and ADGM courts. These courts are tailored to bolster the appeal of the UAE jurisdiction, particularly concerning disputes in employment, commerce, and finance. Comprising English-speaking judges, these courts adopt the procedural framework of English courts, facilitating proceedings conducted entirely in English, including oral hearings, witness testimony, and cross-examination. Conversely, a notable drawback is observed in UAE local courts, which lack the rules of disclosure or discovery and confine oral hearings to written submissions only.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

The anticipated growth area for commercial disputes in the UAE over the next five years is expected to be in the realm of tax disputes. The recent introduction of corporate tax in the UAE, coupled with traders' unfamiliarity with this system, is likely to result in a surge in the number of tax-related disputes.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

The onset of the COVID-19 pandemic prompted UAE courts to embrace technology, shifting towards remote hearings conducted via videoconferencing which became

an integral to the new normal, with courts expected to increasingly adjudicate commercial litigation cases remotely as technology advances. The proliferation of technology may also catalyse the adoption of novel processes aimed at enhancing productivity in handling commercial litigation cases.

Legal technology tools, encompassing case management, document review, and predictive analytics, are witnessing heightened utilization. These tools have the capacity to automate certain litigation tasks, thereby improving efficiency and cost-effectiveness. Notably, the integration of artificial intelligence into document review processes, driven by the surge in electronic document productions, exemplifies how legal technology continues to streamline the litigation process.

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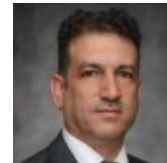
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