

Dispute Resolution 2021

Contributing editors
Martin Davies and Alanna Andrew



Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between April and May 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021
No photocopying without a CLA licence.
First published 2003
Nineteenth edition
ISBN 978-1-83862-647-1

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Dispute Resolution 2021

Contributing editors**Martin Davies and Alanna Andrew****Latham & Watkins LLP**

Lexology Getting The Deal Through is delighted to publish the nineteenth edition of *Dispute Resolution*, which is available in print and online at www.lexology.com/gtdt.

Lexology 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 Lexology 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 Israel, New York, Slovenia and Ukraine.

Lexology 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.lexology.com/gtdt.

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.

Lexology 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 Alanna Andrew of Latham & Watkins LLP, for their continued assistance with this volume.



London
May 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in June 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	5	Hong Kong	103
Martin Davies and Alanna Andrew Latham & Watkins LLP		Bryan O'Hare, Pui Yip Leung, Felix Cheung, Nicole Wong and Soony Tang Hill Dickinson LLP	
Australia	6	India	113
Colin Loveday and Alexandra Rose Clayton Utz		Sakate Khaitan and Dhiraj Mhetre Khaitan Legal Associates	
Austria	14	Indonesia	119
Klaus Oblin, Rouzbeh Moradi and Sharon Schmidt OBLIN Attorneys at Law		Hendrik Alfian Pasaribu and Lia Alizia Makarim & Taira S	
Canada – Quebec	22	Israel	125
James Woods, Marie-Louise Delisle, Joshua Crowe and Joshua Bouzaglou Woods LLP		Alon Pomeranc and Guy Carmi Lipa Meir & Co	
Cayman Islands	29	Japan	131
Guy Manning and Paul Kennedy Campbells		Akira Tanaka and Kazuroo Shiraishi Anderson Mōri & Tomotsune	
China	36	Liechtenstein	138
Jan Holthuis, Li Jiao and Qian Yu Buren NV		Stefan Wenaweser, Christian Ritzberger, Laura Negele-Vogt and Sascha Brunner Marxer & Partner Rechtsanwälte	
Cyprus	46	Luxembourg	146
Andreas Erotocritou, Antreas Koualis and Irena Markitani AG Erotocritou LLC		Annie Elfassi Baker McKenzie	
Denmark	53	Malaysia	152
Morten Schwartz Nielsen and Christian Thuelund Jensen Lund Elmer Sandager		Sharon Chong Tze Ying, Janice Ooi Huey Peng and Muhammad Suhaib Bin Mohamed Ibrahim SKRINE	
Ecuador	61	Malta	165
Agustin Acosta Cardenas, Leyre Suarez and Santiago Paz Paz Horowitz		Joseph Camilleri MAMO TCV Advocates	
England & Wales	67	Nepal	172
Martin Davies, Alanna Andrew and Aisling Billington Latham & Watkins LLP		Anjan Neupane Neupane Law Associates	
Germany	84	Pakistan	180
Karl von Hase Luther Rechtsanwaltsgesellschaft		Yousaf Khosa, Omer Soomro, Mayhar Mustafa Kazi and Shahbakht Pirzada RIAA Barker Gillette	
Greece	92		
Christos Paraskevopoulos Bernitsas Law			

Panama	187	Sweden	237
Khatiya Asvat and Joaquín De Obarrio Patton Moreno & Asvat		Erik Wernberg, Elsa Arbrandt and Saeed Esbati Advokatfirman Cederquist KB	
Philippines	193	Switzerland	246
Manolito Alvarez Manalo and Joan Roshen M Dueñas Ocampo, Manalo, Valdez & Lim Law Firm		Philipp Lindenmayer and Flavio Peter Wenger & Viel Ltd	
Romania	200	Thailand	252
Cosmin Vasile Zamfirescu Racoți Vasile & Partners		Pisut Rakwong and Supachoke Pongdasakorngamjai Pisut & Partners	
Russia	206	Ukraine	258
Dmitry Ivanov Morgan, Lewis & Bockius LLP		Kateryna Manoylenko, Kateryna Tsvetkova and Anastasiia Klian GOLAW	
Serbia	214	United Arab Emirates	264
Nenad Stankovic, Sara Pendjer and Luka Marosiuk Stankovic & Partners NSTLaw		Celine Abi Habib Kanakri, Laurice Elten and Kelsey Evans Kennedys Law LLP	
Singapore	220	United States – California	274
Edmund Jerome Kronenburg and Angelia Thng Braddell Brothers LLP		Peter S Selvin Ervin Cohen & Jessup LLP	
Slovenia	231	United States – New York	284
Bojan Brežan and Maks David Osojnik Schoenherr		Thomas E L Dewey Dewey Pegno & Kramarsky LLP	

United Arab Emirates

Celine Abi Habib Kanakri, Laurice Elten and Kelsey Evans

Kennedys Law LLP

LITIGATION

Court system

1 | What is the structure of the civil court system?

The UAE has both onshore and offshore jurisdictions, which have distinct laws and regulations. The onshore courts, where proceedings are conducted in Arabic, operate a civil law-based system. The offshore jurisdictions, which include the Dubai International Financial Centre in Dubai (DIFC) and the Abu Dhabi Global Market in Abu Dhabi (ADGM), have their own civil and commercial laws and procedures, and their own courts.

UAE onshore courts

The UAE Onshore Courts run in two systems, federal and local. The emirates of Sharjah, Ajman, Fujairah and Umm Al Quwain follow the federal judicial system. However, Abu Dhabi, Dubai and Ras Al Khaimah maintain their own local judicial departments. Both systems have three levels of courts, which are:

- the Court of First Instance for both federal and local cases – this has jurisdiction over all civil, commercial, administrative, labour and personal status cases;
- the Court of Appeal for both federal and local cases – this represents the second stage of litigation and is competent to hear Court of First Instance judgments where the losing party was not satisfied; and
- the Court of Cassation for local cases. All decisions of the Court of Cassation are final and binding and are not subject to appeal. For federal cases, this is the Federal Supreme Court.

There are four types of court: civil courts, commercial courts, labour courts and personal status courts. The courts are divided into two circuits: the minor and major circuits. The minor circuits are formed by a single judge who hears civil, commercial and labour actions the value of which does not exceed 10,000,000 dirhams, counterclaims of any value, personal status claims, common money division claims and labour actions related to wages and salaries of any value. The major circuits are formed of three judges, who have jurisdiction over all civil, commercial and labour actions that do not fall within the jurisdiction of the minor circuits (plus a few other matters such as real estate and bankruptcy).

For certain types of disputes, claimants have other alternatives to the court system, such as the Insurance Disputes Settlement and Resolution Committee for most insurance disputes, the Medical Liability Committee and the Rental Disputes Committee.

UAE offshore courts

The UAE hosts two judicial free zones (DIFC and ADGM) which are independent English language common law jurisdictions, with the DIFC having its own laws modelled on English law and the ADGM largely adopting English law.

DIFC

The DIFC courts have jurisdiction over most civil and commercial matters occurring within the DIFC. The DIFC courts are divided as follows:

- The Small Claims Tribunal (SCT) made up of a single judge who can hear cases where the amount or value of the claim does not exceed 500,000 dirhams; relating to employment law where all parties to the claim elect in writing that it be heard by the SCT; and non-employment related claims where the amount does not exceed 1,000,000 dirhams and all parties elect in writing for the claim to be heard by the SCT.
- The Court of First Instance, made up of a single judge which can hear civil or commercial cases and disputes arising from or related to a contract that has been fulfilled, or a transaction that has been carried out, in whole, or in part, in the DIFC, or an incident that has occurred in the DIFC; objections filed against a decision made by the DIFC's bodies, which are subject to objection in accordance with the DIFC's laws and regulations; and any application over which the court has jurisdiction in accordance with the DIFC's laws and regulations.
- The Court of Appeal, which has jurisdiction over appeals filed against judgments made by the Court of First Instance and interpretation of any article of the DIFC's laws upon the request of any of the DIFC's establishments (with leave). It comprises at least three judges, with the Chief Justice or most senior judge presiding. This court is the highest court in the DIFC courts, and no appeal shall arise from a decision of this court.

ADGM

The ADGM courts have jurisdiction over most civil and commercial matters occurring within the ADGM. The ADGM courts have the following levels:

- The Court of First Instance, which is divided into three categories: the Small Claims Division (SCD), the Employment Division and the Commercial and Civil Division. The Commercial and Civil Division can hear appeals from the SCD based on a question of law. A party requires permission to appeal from an order or judgment in the Court of First Instance to the Court of Appeal. It comprises the Chief Justice and any judge of the ADGM courts directed to sit in that court by the Chief Justice.
- The Court of Appeal consists of the Chief Justice and any judge of the ADGM courts directed to sit in that court by the Chief Justice. It is the highest court, from which there is no further appeal.

Judges and juries

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

UAE onshore courts

Judges have an inquisitorial role and maintain significant discretion. Judges at first instance are tasked with determining the facts of the

case (very often through court-appointed experts, who prepare reports to assist the court) and then ruling on the law. Proceedings in the UAE are based on written pleadings of the parties, which are supported with documentary evidence where there are generally no oral hearings.

The Federal Supreme Court maintains five judges appointed by the Ruler of the UAE, after approval by the Federal Supreme Council. The judges of the Federal Supreme Court cannot be removed and their services cannot be ended except in certain circumstances (<https://u.ae/en/about-the-uae/the-uae-government/the-federal-judiciary>).

The UAE's first female judge, H.E. Judge Kholoud al Dhaheri, was appointed by the Abu Dhabi Judicial Department in 2008. Since then, a number of female judges and public prosecutors have been appointed in the UAE, and these numbers are increasing annually, highlighting the UAE's continued efforts to bridge the gender gap and empower women in the judiciary.

Juries are not involved in civil proceedings before the UAE courts.

UAE offshore courts

On the other hand, the DIFC and ADGM courts have an adversarial system, based on the English system. DIFC courts judges, including the Chief Justice, are appointed by a decree issued by the Ruler of the UAE for a period not exceeding three years, and may be reappointed until they reach the age of 75. ADGM courts judges are nominated by the Chief Justice and subsequently appointed by the ADGM Courts Board.

Limitation issues

3 | What are the time limits for bringing civil claims?

Limitation periods (the time within which a party must file a claim or commence a legal action) are set out in various laws depending on the type of claim. Generally, the limitation periods for civil claims are:

Type of claim	Limitation period	UAE law
Contracts (non-commercial)	15 years	Article 473 of the UAE Civil Code
Contracts (commercial)	10 years	Article 95 of the UAE Commercial Code
Building contracts for defects	10 years	Article 880 of the UAE Civil Code
Disputes relating to cheques	1–3 years	Article 638 of the UAE Commercial Code
Insurance disputes	3 years	Article 1036 of the UAE Civil Code
Tort (causing harm)	3 years	Article 298 of the UAE Civil Code
Sale of goods	1 year	Article 524 of the UAE Civil Code
Employment disputes	1 year	Article 6 of the UAE Labour Law
Disputes in relation to the carriage of goods by sea	1 year	Article 287(a) of the UAE Commercial Maritime Law
Civil guarantees	6 months	Article 1092 of the UAE Civil Code
Commercial guarantees	10 years	Article 95 of the UAE Commercial Code
Rental claims (renewal rights)	5 years	Article 474(1) UAE Civil Code

There is no uniform test for triggering the limitation period. It is very important in each case to check what has triggered the limitation period – for example, whether it was triggered by the harmful act itself, by the discovery of the harmful act, etc.

Certain statutes (for example, article 481 of the UAE Civil Code) suspend the limitation period if a party can demonstrate a 'lawful excuse' for not filing a claim within the relevant time period. What will amount to a 'lawful excuse' is not entirely clear. However, one example

is incapacity on the part of the claimant. The UAE courts have also noted that that the limitation period will be suspended if it appears from the surrounding facts and circumstances of the case that there was an obstacle preventing the claim from being commenced.

For civil claims commenced in the DIFC courts, the limitation periods are:

Type of claim	Limitation period	DIFC law
Breach of contract	6 years	Article 123 of DIFC Contract Law 2004
Joint liability	3 years	Article 9 of DIFC Obligations Law 2005
Negligence, occupiers' liability or misrepresentation	15 years	Article 9 of DIFC Obligations Law 2005
Fraud	No time limit or 6 years if contract-based	Article 9 of DIFC Obligations Law 2005 and Article 123 of DIFC Contract Law 2004
Employment disputes	6 months	Article 10 of DIFC Employment Law 2019

For civil claims commenced in the ADGM courts, the limitation periods are as dictated by English law (for example for breach of contract, six years and for personal injury three years).

Pre-action behaviour

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

Although onshore UAE courts encourage the parties to attempt to resolve their disputes using methods such as mediation prior to commencing court action, this was generally not a legal requirement until very recently. A few exceptions to this included: where the contract required it; in the emirates outside of Dubai, Abu Dhabi and Ras Al Khaimah, where parties to commercial disputes are required to first refer their dispute to the Reconciliation and Settlement Committee; and when a party wished to commence a claim against a public entity. In the latter case, they will require permission from the legal department of that emirate. In the case of Dubai, a party will require permission from the Ruler's Court, who will attempt to reach amicable settlement of the dispute. If it cannot be settled within two months, the claim may proceed.

However, on 31 March 2021, the Dubai Court of First Instance issued Circular No. 2 of 2021 introducing for the first time the concept of a 'pre-trial conference', a concept familiar to common law jurisdictions. The Circular provides that the pre-trial conference will be held between the parties under the supervision of a judge, where the parties are to discuss matters that will assist in the case being disposed of without delay – giving the examples of the possibility of settlement and expediting the trial process, narrowing down the scope of disputed issues and scheduling a procedural timetable for submission of pleadings, documents, expert reports, etc. How the circular will be implemented in practice is yet to be seen.

Otherwise, traditionally, parties have not undertaken as many pre-commencement steps as they would in other jurisdictions (unless expressly required by the contract). The main reasons for this include the fact that the concept of 'without prejudice' does not operate in the UAE courts (so information used in mediation, for example, can potentially be used against you) and the lack of costs consequences (ie, courts only usually order the payment of a very nominal amount of the other side's legal fees, even if a party is unsuccessful).

Some voluntary pre-action steps that a party could take could include seeking a report from an expert frequently retained by the courts to review the evidence and present his or her views. Such a

report, if favourable, could be used to attempt to persuade the other party of your position, or be used as evidential support in proceedings commenced subsequently.

In the DIFC, there are also no formal pre-action protocol procedures. However, the Rules of the DIFC Courts (DIFC Court Rules) imply the use of alternative dispute resolution as part of the overriding objective. In the ADGM courts, the Rules provide that the court will expect the parties to have considered whether mediation might enable the settlement of the dispute prior to the commencement of proceedings, and the court may, on its own initiative or upon the application of any party, make an order referring the dispute or any part of the dispute to court-annexed mediation.

Starting proceedings

5 | 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?

To commence proceedings in the UAE, a claim must be filed at the Case Management Office of the relevant court (ie, the court that has jurisdiction to hear the dispute) either in person or online via the court's electronic portal. The claim needs to set out the basis of the dispute and the remedies sought and attach any supporting documents in Arabic or translated into Arabic by an official translator. A court fee will also need to be paid. In Dubai, the court fee is 6 per cent of the value of the claim, which is capped at a maximum of 40,000 dirhams depending on the claim value (except for labour claims which is 5 per cent of the claim value, capped at 20,000 dirhams) and in Abu Dhabi, the court fee is 5 per cent of the claim amount, which is capped at a maximum of 40,000 dirhams (except for labour claims, which do not require a court fee). Note that these are subject to change. The court bailiffs' office will then serve the claim along with a court notice on the defendant and the first hearing date will be set. This is usually two to three weeks after the claim has been filed.

In the DIFC courts, proceedings are commenced by filing a form under Part 7 or Part 8 of the Rules and paying the court fee. Proceedings are commenced once the court issues a claim form at the request of the claimant. After a claim form has been issued by the court, it must be served on the defendant by the claimant within four months after the date of issue (unless the defendant is outside of the DIFC or Dubai, in which case the claimant has six months).

The ADGM has a similar process where claims must be filed electronically and proceedings are commenced when the court issues the claim form. The claimant has a similar time to serve the proceedings on the defendant (except in the case of the Small Claims Division, where it has 14 or 21 days, depending on whether the defendant is inside or outside Abu Dhabi).

The UAE courts are very efficient and regular dates for pleadings, and eventually judgment, are set within short and reasonable time periods.

Timetable

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

Generally, in the UAE onshore courts, once a claim form is served on a defendant, the court will schedule the first hearing within two to three weeks from the date of service for the defendant to file its defence. After the defence is filed, there may be several rounds of submissions and the court may appoint an expert from its panel of experts. The expert then largely takes over conduct of the case, meets with the parties, reviews the evidence and pleadings, and issues a report to the court. The court then reviews the expert's report and will often adopt the expert's findings and issue judgment. Generally, cases are usually concluded within 12 to 18 months of their commencement.

However, this may be slightly different now in the Dubai courts with the recent introduction of Circular No. 2 of 2021 introducing for the first time the concept of a 'pre-trial conference', where parties can discuss (supervised by a judge) a procedural timetable for submission of pleadings, documents, expert reports, etc.

The processes in the DIFC and ADGM courts are similar. A defendant can file an acknowledgement of service within 14 days after service of the claim form. Assuming it has done so, a defendant who wishes to defend all or part of a claim must file a defence and serve a copy on the claimant within 28 days after service of the claim form (for small claims in the ADGM, a response is required within seven days). If a claimant wishes to file a reply to the defence, it must file and serve the reply on all parties within 21 days after service of the defence. At this stage, the court may issue a summary judgment, issue directions or set a date for a case management conference depending on the case. Generally, the process is quite fast-paced and efficient.

Case management

7 | Can the parties control the procedure and the timetable?

The Case Management Office controls the procedure and timetable in UAE courts. However, a party can request an adjournment of a hearing for extra time to file a proceeding or document. With the recent introduction of Circular No. 2 of 2021 in Dubai Courts, introducing for the first time the concept of a 'pre-trial conference', the parties in Dubai Court proceedings may have some more control over the scheduling of a procedural timetable.

The parties in the offshore courts would have slightly more flexibility to determine the timetable (eg, the parties may attempt to agree the timetable by consent, which the court can endorse). In DIFC and ADGM courts, it is possible for the parties to request the court to issue a consent order to stay the proceedings or extend a deadline.

Evidence – documents

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

There is no duty to preserve documents or other evidence pending trial under UAE law. Further, the parties are not required to share documents with one another.

The ADGM Court Procedure Rules and DIFC Court Rules contain detailed provisions on disclosure of documents, but generally, a party is only required to disclose those documents on which it relies, unless ordered by the court to do otherwise. Courts also have the power to order the preservation of evidence.

Evidence – privilege

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

The concept of legal-professional privilege and 'without prejudice' privilege do not exactly exist within onshore UAE. There are no express provisions within the law covering them, so technically a party can use any document that supports their position in civil litigation. However, UAE lawyers are bound by the duty of confidentiality to their client, so communications between them and their clients would be confidential (subject to some very limited exceptions, such as where the court requires their production).

Similar duties of confidentiality exist in the DIFC and ADGM, where lawyers are required to keep information communicated to them by their client confidential unless such disclosure is authorised by the client, ordered by the ADGM courts or as required by law. The DIFC

Court Rules go further to actually define the term 'privilege', which is stated to be the right of a party to refuse to disclose a document or produce a document or to refuse to answer questions on the ground of some special interest recognised by law.

Evidence – pretrial

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

In general, the parties do not exchange written evidence from factual witnesses in UAE court proceedings. It is usual practice for the court to appoint one of their panel experts to examine the factual matters and produce a report. While such reports are not binding on the courts, they are more often than not adopted by them. The parties do, however, sometimes retain informal witnesses to assist orally during the expert process, and sometimes retain their own experts on particularly technical matters whose reports are exchanged prior to judgment.

The DIFC and ADGM courts have comprehensive rules on evidence admissibility, and it is common for the court to set dates by which the parties are to exchange witness statements. A witness who has provided a statement will be expected to attend the trial to be cross-examined. The courts can also admit expert evidence both orally and through written expert reports. Those experts will also then be required to attend for cross-examination at trial.

Evidence – trial

11 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

In the UAE onshore courts, evidence is presented through written submissions and memorandums. As the parties do not exchange written evidence from witnesses and experts, it is rare that the court would hear oral evidence. However, the parties can file an application to the court requesting permission to present oral evidence. The application is at the discretion of the court only. In addition, courts do not hear oral arguments or submissions from lawyers.

The DIFC and ADGM courts are more akin to the English courts and allow parties to present their evidence by way of both written and oral evidence for witnesses and experts, and are often required to attend for cross-examination at trial.

Interim remedies

12 | What interim remedies are available?

There are a range of interim remedies available in UAE courts, such as precautionary attachment orders to prevent dissipation of assets, travel bans to prevent a defendant from leaving the country while proceedings are ongoing and arrest orders. The granting of interim remedies is a matter for the court's discretion and it is for the applicant to prove that the relevant requirements have been satisfied.

Both the DIFC Court Rules and ADGM Court Procedure Rules provide that they are able to grant a number of interim remedies, including:

- interim injunctions;
- interim declarations;
- property preservation and inspection orders;
- orders for the sale of property;
- freezing orders;
- disclosure and search orders; and
- interim payment orders.

Remedies

13 | What substantive remedies are available?

The substantive remedy available in UAE courts, if (in the case of contract law) a party is unable to give specific performance of an obligation, is monetary damages – direct damages, loss of profits, loss of opportunity, consequential damages and even moral damages. The UAE does not recognise the concept of punitive or exemplary damages. In addition, the court can also award up to 12 per cent interest; however, 9 per cent is usually awarded.

Under the DIFC Law of Damages and Remedies, the primary substantive remedy available is damages. However, a court may also make orders for restitution, specific performance of a contract, declaration as to the rights, liabilities and obligations of a person, an injunction or any other order that the court thinks fit. The measure for damages is the amount of money that would put the person in the same position as they would have been in had they not sustained the wrong to be compensated, plus any other loss caused by the breach. The ADGM courts also have similar powers to award damages as well as make orders for injunctions or specific performance.

Enforcement

14 | What means of enforcement are available?

In UAE courts, enforcement of a final judgment is dealt with by the Court of Execution. A judgment creditor must file a Statement of Execution with the Court of Execution, which is served on the judgment debtor, who then has 15 days to pay the judgment amount. If the judgment amount is not paid within the specified time limit, the judgment creditor may file an application with the Court of Execution requesting them to file an attachment order against the judgment debtor's assets.

In the DIFC courts, a judgment creditor may enforce a judgment for the payment of money by a charge over property, attachment of assets, execution against assets or appointment of a receiver. In the ADGM courts, enforcing a judgment or order for payment of money may be done by taking control of goods, attaching of earnings, obtaining a third-party debt order, charging orders and other orders for things such as possession of land and appointing receivers.

Public access

15 | Are court hearings held in public? Are court documents available to the public?

Technically, hearings in the UAE courts should be held in public. However, in practice, there are usually no oral hearings. The court file (containing the pleadings, judgments, etc) is not available to the public to inspect – only the parties to the proceedings and their lawyers (or another party with a power of attorney from that party) can access the file.

The general rule is that DIFC and ADGM court hearings are public unless the judge determines otherwise. DIFC and ADGM court judgments and orders can be found on their websites. In addition, the ADGM courts' website contains hearing dates and recordings of virtual hearings for some cases.

Costs

16 | Does the court have power to order costs?

The UAE Courts do have the power to order costs. However, they usually only award costs to the successful party for court filing fees, court-appointed experts' fees and a minimal amount for lawyers' fees of approximately 2,000 dirhams. There is no concept of security for costs in the UAE courts.

The general rule with respect to costs in the DIFC courts is that the unsuccessful party will be responsible for settling the successful party's costs. However, the DIFC Court Rules provide that the court must take into consideration all the circumstances when making an order as to costs, including the parties conduct. The ADGM Court Procedure Rules follow a similar framework with respect to costs.

Funding arrangements

17 | 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?

UAE law prohibits conditional and contingency fee arrangements between lawyers and clients. However, conditional fee arrangements (eg, where a lawyer receives an uplift in fees in the event of success, but not a share of the proceeds) are permitted in DIFC and ADGM court proceedings but should comply with certain requirements. Contingency fee arrangements are generally prohibited in DIFC court proceedings.

UAE law does not prohibit third-party funding. However, it is still not widely used in UAE court proceedings. Third-party funding is permitted in both the DIFC and ADGM courts – see for example the DIFC's Practice Direction on Third Party Funding in March 2017 and Part 9 of the ADGM Court Regulations.

Insurance

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

UAE law does not prohibit after the event and other types of costs insurance. However, they are not commonly used in UAE litigation, whether onshore or offshore UAE.

Class action

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

Neither the UAE onshore courts nor offshore courts have any laws or procedures for class action proceedings. However, both the DIFC and ADGM courts have the power to make a Group Litigation Order if there are a number of claims that give rise to common or related issues of fact or law.

Appeal

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

A party has the right to appeal Court of First Instance judgments to the Court of Appeal, generally within 30 days, and it is very common to do so. Court of Appeal judgments can also be appealed to the Court of Cassation, generally within 60 days but only if the value of the lawsuit is more than 10 million dirhams; if there was a violation of law (a mistake in its application or interpretation); if there was an issue with the procedures or jurisdiction that effected the judgment; if there were no grounds or insufficient grounds in the judgment; or it was out of scope from what was requested.

Court of Cassation judgments are final and binding and cannot be appealed. Decisions of the Insurance Dispute Committee and Medical Liability Committee can be appealed to the Court of First Instance within 30 days.

Both the ADGM and DIFC courts provide that decisions of the Court of First Instance can be appealed to the Court of Appeal where permission to appeal has been obtained. Permission will only be granted where the court considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard. Decisions of the Courts of Appeal are final and binding and cannot be appealed.

Foreign judgments

21 | What procedures exist for recognition and enforcement of foreign judgments?

The UAE is a party to several agreements for judicial cooperation in relation to the reciprocal enforcement of foreign judgments between the signatory countries (some of which bind the DIFC courts as well), for example, the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications. In these cases, the party seeking enforcement must apply to the Execution Court to register the judgment (with a certified and legalised copy of the judgment and proof that it is enforceable under the law of the country of origin). The Execution Court's order can be appealed to the Court of Appeal within 30 days.

Where no treaty or agreement exists, pursuant to articles 85–88 of Cabinet Resolution No. 57 of 2018 concerning the Executive Regulations of the UAE Civil Procedure Law, judgments passed in a foreign country may be executed within the UAE courts under the same conditions provided for by the law of the foreign country, provided that certain conditions are adhered with. An application for execution must be made in accordance with article 16 and submitted to the execution judge. The execution judge can then issue his order within 3 days so long as the following are verified:

- that the courts of the UAE are not exclusively competent in the dispute in which the judgment was rendered and that the foreign court is competent in accordance with the rules of international jurisdiction established by their law;
- the judgment is delivered in accordance with the law of the country;
- the litigants in the case in which the foreign judgment was delivered were summoned and duly represented (meaning that foreign summary judgments, for example, are not enforceable in the UAE);
- the judgment has the force of res judicata in accordance with the law that issued it; and
- the judgment does not conflict with a judgment or order rendered by a UAE court and does not contain anything contrary to public order.

The DIFC and ADGM courts have also signed several similar agreements and have the power to ratify foreign judgments. Once the judgment has been ratified by the court it can be enforced within the DIFC or ADGM as any other judgment would, in accordance with the court rules and regulations. Often, the DIFC courts have been used as a conduit jurisdiction to enforce foreign court judgments in Dubai (especially when the subject of the judgment has assets in the DIFC).

Foreign proceedings

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

Generally, requests for evidence from foreign courts would occur through diplomatic channels through the onshore UAE courts and would often be subject to evidence of any arrangements between the UAE court and the foreign court (such as specific treaties).

However, the DIFC and ADGM have written procedures set out for the collection of evidence for use in foreign courts (see Rules 30.65–67 of DIFC Court Rules; Rules 131–134 of the ADGM Court Procedure Rules of 2016 and article 82 of the ADGM Court Regulations). The procedures appear to have been used for the first time recently in the DIFC Court of

First Instance where the court allowed the examination of two UAE-based witnesses based on two requests for judicial assistance from the District Court of the State of Minnesota.

ARBITRATION

UNCITRAL Model Law

23 | Is the arbitration law based on the UNCITRAL Model Law?

Yes. The UAE's onshore arbitration law is set out in Federal Law No. 6 of 2018 (UAE Arbitration Law) and has brought the UAE's approach to arbitration more in line with international standards. UNCITRAL includes the arbitration laws of the UAE, namely the UAE Arbitration Law, the DIFC's Arbitration Law No. 1 of 2008 (as amended in 2013), and ADGM's Arbitration Regulations of 2015 in the list of jurisdictions that have arbitration laws based on the UNCITRAL Model Law.

Arbitration agreements

24 | What are the formal requirements for an enforceable arbitration agreement?

The main requirement for an enforceable arbitration agreement is that it be in writing, otherwise it will be void (article 7(1) of the UAE Arbitration Law, article 12 of the DIFC Arbitration Law and article 14 of the ADGM Arbitration Regulations). An arbitration agreement can be in the form of an arbitration clause in a contract or in the form of a separate agreement.

However, the UAE Arbitration Law contains an additional requirement that the person or representative signing the arbitration agreement must have the authorisation or capacity to conclude the agreement, otherwise it will be null and void (article 4(1)). The courts have taken various approaches in relation to whether a legal representative has the authority to bind the party to an arbitration clause, including requiring 'special authorisation' in the signatory's power of attorney expressly authorising them to conclude an arbitration, and a legal presumption that the signature is that of the legal representative to that entity and they have authority to agree to arbitration.

Choice of arbitrator

25 | 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?

If the arbitration agreement and relevant rules are silent on the number of arbitrators and their appointment, then:

- the UAE Arbitration Law provides that there will be three arbitrators (article 9(1)). In that case, each party will nominate one arbitrator and then those two arbitrators will nominate the third arbitrator. If one of the parties fails to nominate its arbitrator within 15 days of the notice from the other party's request, or if the appointed arbitrators fail to arrive at an agreement regarding the third arbitrator, then the court shall appoint the third arbitrator (article 11(3));
- the DIFC Arbitration Law provides that there will be one arbitrator (article 16(2)). If the parties do not agree on the arbitrator within 30 days of one party's request, then the arbitrator will be appointed by the DIFC Court of First Instance (article 17(3)); and
- the ADGM Arbitration Regulations provide that there will be one arbitrator (article 18(2)). If the parties do not agree on the arbitrator within 30 days of one party's request, then the arbitrator will be appointed by the institution administering the arbitration or if there is none, then the arbitrator will be appointed by the ADGM Court of First Instance (article 19(3)(a)).

In relation to challenging the arbitrators, all three UAE arbitration laws have similar requirements – that arbitrators can only be challenged if circumstances that give rise to serious doubts regarding their impartiality or independence exist, or if it is proven that conditions agreed upon by the parties or prescribed by the law were not satisfied. A party can only challenge for reasons they become aware of after the arbitrator's appointment (article 14 of the UAE Arbitration Law, article 18 of the DIFC Arbitration Law and article 20 of the ADGM Arbitration Regulations).

Arbitrator options

26 | What are the options when choosing an arbitrator or arbitrators?

The parties are free to elect the arbitrator they deem fit (provided that they are independent) even if not registered with any of the local institutions. The UAE has a significant pool of arbitrators to choose from – both locally and internationally – sufficient to meet the needs of even the most complex arbitrations. That said, it is still common to be seeking international expertise for the larger or more complex disputes – most often among English barristers or highly qualified civil lawyers (from both the Middle Eastern region and abroad).

Arbitral procedure

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

The UAE Arbitration Law provides that the parties may agree on the procedures to be adopted in the arbitration, including to agree that a particular institution's arbitral rules will be applicable. If there is no agreement to follow certain procedures, then the Tribunal may determine the procedures it deems appropriate in a manner not inconsistent with the principles of litigation and international conventions to which the UAE is a party (article 23 of the UAE Arbitration Law). The DIFC and ADGM laws provide similarly.

Court intervention

28 | On what grounds can the court intervene during an arbitration?

Generally, the court's ability to intervene in UAE-seated arbitrations is more limited than it used to be before the enactment of the UAE Arbitration Law. A party can approach the court in certain circumstances – for example, a party may request the court to take necessary action to complete the formation of the tribunal if there are difficulties with arbitrator appointment (article 11) or a party can request the court to rule on the tribunal's decision as to its own jurisdiction within 15 days of that decision (article 19).

The DIFC Arbitration Law and ADGM Arbitration Regulations expressly provide that the court shall not intervene in arbitration except to the extent provided in the law – and there are a number of grounds provided in the law, similarly including in relation to the appointment of arbitrators and a review of the decision on jurisdiction.

The parties cannot generally agree to limit the court's powers of intervention unless expressly set out in the law – for example, article 23(3) of the DIFC Arbitration Law provides that the court's ability to intervene is 'subject to the process agreed between the parties'.

Interim relief

29 | Do arbitrators have powers to grant interim relief?

Arbitrators have the power, at the request of a party, to grant interim or precautionary measures that the tribunal considers fit with respect to the subject matter of the dispute, unless the parties agree otherwise

(article 21 of the UAE Arbitration Law, article 24 of the DIFC Arbitration Law and article 28 of the ADGM Arbitration Regulations). The court also has these same powers. These measures include to:

- preserve evidence that may be material to the dispute;
- take necessary measure to maintain goods that constitute part of the subject matter of the dispute;
- preserve assets and property out of which an award can be satisfied;
- maintain or restore the status quo pending determination of the dispute; or
- order an action to be taken to prevent current or imminent harm or prejudice to the arbitral process or refrain from taking an action that may cause harm or prejudice to the process.

The institutional rules also often provide the tribunal with these powers – for example, the DIAC Rules (article 31) provide that a tribunal can grant any interim relief that it deems necessary, including injunctions and measures for conservation of goods.

Award

30 | When and in what form must the award be delivered?

The award must be delivered in writing and signed by at least the majority of the arbitrators.

The UAE Arbitration Law states that it must be provided within the period agreed upon by the parties. If there has been no agreement, then the award must be issued within six months from the date of the first session of arbitration (extendable by six months by the Tribunal and longer, if necessary, by the court). It must contain the names and addresses of the parties, the names, nationalities and addresses of the arbitrators, a copy of the arbitration agreement, a summary of the parties' reliefs, submission and documents, the dispositive part and (if required) the reasons of the award, and the date and place of issuance (articles 41 and 42).

The DIFC Arbitration Law and ADGM Arbitration Regulations appear to be more flexible in this respect and do not contain a time limit within which arbitrators must issue the award. They only state that the award must contain the reasons upon which it is based unless the parties agree otherwise. They also require the award to state its date and the seat it was made, together with fixing the costs of the arbitration (article 38 DIFC Arbitration Law and article 55 ADGM Arbitration Regulations).

Appeal

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

Arbitral awards issued in accordance with the UAE Arbitration Law are final and binding and not subject to any supervision of the Court of Appeal, other than on very limited grounds. The limited grounds on which an arbitral award can be challenged or annulled are set out in article 53 of the UAE Arbitration Law. The grounds are:

- absence of an arbitration agreement (or if it is void or terminated);
- one of the parties, at the time of enforcement, lacks capacity or is of diminished capacity;
- the person lacked the legal capacity to take any action regarding the right, including capacity to enter into the agreement itself;
- if one of the parties was unable to present its case as a result of not being given proper notice of the proceedings, or the arbitral tribunal's violation of the litigation principles or for other reasons beyond its control;
- the arbitral award fails to apply the law agreed upon by the parties;
- if the composition of the tribunal or the appointment of one of the arbitrators is in conflict with the provisions of the law or agreement of the parties;

- if the arbitral proceedings are invalid to the effect that impairs the award, or if the award is rendered after the due time limit; or
- if the award deals with matters not falling within the scope of the arbitration agreement. If those matters can be separated, then the nullity affects exclusively the latter parts only.

The application to annul must be made within 30 days following notification of the award by the party requesting the annulment. The decision made by the court on this action to annul is final and not subject to any appeals (articles 53 and 54 of the UAE Arbitration Law).

The DIFC and ADGM's laws provide slightly more limited grounds for challenge (articles 41 and 57 respectively) but the applications can be made within three months from receipt of the award (not the shorter 30 days required by the onshore UAE laws). The grounds are that:

- a party to the arbitration agreement was under some incapacity, or the agreement was not valid;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the proceedings;
- the award contains decisions beyond the scope of the submission to arbitration (if that section of the award can be separated then only that section will be set aside);
- the composition of the arbitral tribunal or the procedure was not in accordance with the agreement of the parties, unless that agreement is in conflict with the provision of a law from which the parties could not derogate;
- the subject matter of the dispute was not capable of settlement by arbitration under its laws;
- the dispute was expressly referred to a different body or tribunal for resolution (DIFC only); or
- the award was in conflict with the public policy of the UAE.

Enforcement

32 | What procedures exist for enforcement of foreign and domestic awards?

For enforcement in onshore UAE, a slightly different process applies for domestic awards versus foreign awards.

- Enforcement of domestic awards is governed by articles 52–57 of the UAE Arbitration Law. An application first needs to be made to the Court of Appeal to request the confirmation of the award requiring the original award or certified copy, a copy of the arbitration agreement, certified Arabic translation of the award and a copy of the transcript of filing the judgment with the court. The court then confirms and can enforce the award within a period of 60 days from the submission, unless it finds that one of the grounds for annulment is satisfied (article 55). The parties then have 30 days after the Court of Appeal's order to appeal to the Court of Cassation (article 54).
- For the enforcement of foreign awards, the procedure is set out in article 85(2) of Cabinet Decision No. 57 of 2018 (On the Regulation of Federal Law No. 11/1992 on the Civil Procedure). This is the same procedure as the enforcement of foreign judgments except for the award. It must also have been issued on a matter for which arbitration is permissible in accordance with UAE law and is enforceable in the jurisdiction in which it is issued (article 86). An application for execution must be made in accordance with article 16 and submitted to the execution judge. The execution judge can then issue his or her order within three days, so long as the following are verified:
 - that the courts of the UAE are not exclusively competent in the dispute in which the award was rendered and that the foreign tribunal is competent in accordance with the rules of international jurisdiction established by their law;

- the award is delivered in accordance with the law of the country;
- the litigants in the case in which the foreign award was delivered were summoned and duly represented (meaning that foreign summary judgments, for example, are not enforceable in the UAE);
- the award has the force of *res judicata* in accordance with the law that issued it; and
- the award does not conflict with a judgment or order rendered by a UAE court and does not contain anything contrary to public order.

Further, article 88 of the Executive Regulations states that the regulations will not prejudice the provisions of treaties, which would include the New York Convention (Recognition and Enforcement of Foreign Arbitral Awards 1958) to which the UAE is a party.

For enforcement in the DIFC and the ADGM, all awards, regardless of the state or jurisdiction in which they are made, are treated the same, with the same procedure. For enforcement of an award, a party must make an application for enforcement to that court (DIFC court if a DIFC award or ADGM court if an ADGM award). Subject to any challenges to recognition and enforcement, if the court decides to recognise the award, it will issue an order in both English and Arabic. The award creditor must then serve that court order on the award debtor and the award cannot be enforced until 14 days have elapsed or until any set-aside order has been disposed of.

Costs

33 | Can a successful party recover its costs?

The UAE Arbitration Law (article 46) provides the arbitral tribunal with the power to order the payment of arbitration expenses, including the fees and expenses incurred by the tribunal and the appointment of experts by the tribunal. The difficulty with the provision is that it does not expressly provide that arbitrators can order that the unsuccessful party pay the successful party's legal costs (which are often the largest part of the fees and expenses). Some of the institutional rules selected expressly provide the tribunal with this power. In any case, especially where the arbitral rules are silent on the matter of legal costs, it is best practice for parties to agree for the tribunal to have this power either in the arbitration agreement or in the terms of reference once the arbitration commences. If a third-party funder is involved, it would also be best practice for the parties to consider what would happen to those funder's costs and agree this in the terms of reference.

The DIFC Arbitration Law and ADGM Arbitration Regulations expressly provide that the arbitral tribunal must fix the costs of the arbitration in its awards, with the term 'costs' including fees of the tribunal and the reasonable costs of legal representation. Provided the tribunal orders so, a successful party can recover its reasonable costs.

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

34 | What types of ADR process are commonly used? Is a particular ADR process popular?

Alternative forms of party-instigated dispute resolution (such as mediation, conciliation and negotiation) are generally not as common in the UAE as they are in jurisdictions such as the United Kingdom and Australia. This is largely due to the fact that the concept of 'without prejudice' privilege does not exist in the UAE, meaning that parties are more reluctant to engage in without prejudice discussions for fear that what they say will be used against them in later court proceedings. Having said that, mediation appears to be on the rise.

There are a few alternative forms of resolution set up by the courts and also for specific industries, for example:

- in the emirates outside of Abu Dhabi, Dubai or Ras Al Khaimah, all commercial disputes must first be referred to a Reconciliation and Settlement Committee to facilitate settlement and only then can proceedings be filed in court;
- the Special Judicial Committee has exclusive jurisdiction to determine all landlord and tenant disputes;
- the Centre for Amicable Settlement of Disputes in Dubai – where disputes of a certain nature (eg, claims under 100,000 dirhams) must first be referred to the centre for settlement, or parties can elect to approach the centre before commencing proceedings;
- the Insurance Disputes Committee for some insurance-related disputes;
- the Ministry of Labour's settlement process for disputes between employer and employee; and
- Dispute Resolution Boards and other expert determination sometimes used in the construction industry.

The DIFC court, while emphasising its primary role as a form for deciding civil and commercial disputes, encourages parties to consider the use of ADR (such as mediation and conciliation) and can also adjourn the cases to encourage parties to use ADR. The DIFC-LCIA Arbitration Centre has its own set of Mediation Rules which parties can opt into and also has available a schedule of costs for adjudication, expert determination and other ad hoc ADR proceedings in which the DIFC-LCIA Arbitration Centre is the administering institution (pursuant to the rules agreed by the parties).

The ADGM courts provide a court-annexed mediation service, which was set up in 2016 to serve the increasing demand for mediation solutions. A dispute can be referred to court-annexed mediation either voluntarily by all parties to a dispute, or by an order of the court.

Requirements for ADR

35 | 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?

Generally, no (subject to the commercial disputes in the emirates outside of Dubai, Abu Dhabi or Ras Al Khaimah). However, if the contract provides that ADR (such as negotiation or mediation) is required prior to commencing proceedings (especially arbitral proceedings), then it will be necessary to engage in that process to ensure the validity of the award.

The DIFC or ADGM court judges, if they deem it appropriate, can require parties to engage in an alternative dispute resolution process, such as mediation.

MISCELLANEOUS

Interesting features

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

One of the particularly unique and interesting features of litigation in the UAE is the court's heavy use of experts to prepare reports to assist it with its decision making. While in other jurisdictions courts are only likely to retain experts to assist in particularly technical or difficult cases and in addition to the parties' own experts, in the UAE, courts almost always appoint experts to review the facts and evidence and produce a report containing their findings. Although the reports are not binding, often these expert findings are adopted by the courts.

UPDATE AND TRENDS**Recent developments****37 | Are there any proposals for dispute resolution reform? When will any reforms take effect?**

One of the main changes to civil procedure in the UAE over the last year was introduced by Cabinet Decision No. 33 of 2020. The resolution amends certain key provisions of the regulations to the UAE Civil Procedure Code including:

- The removal of the ability for the parties themselves to affect service through 'modern technology'. Under the previous regulations, the parties used to be able to use audio or video calls, text messages, etc to serve summons. However, the new resolution removes the parties' abilities to use these platforms and these modern technology platforms can now only be used by courts and authorised private process servers.
- Increased powers of the Case Management Office (CMO) – the Supervisory Judge of the CMO can now impose sanctions on parties who do not comply, and they can now meet the parties and offer them conciliation. If settlement is reached, they can make a decision stating the substance of the agreement, which will have the force of an executive instrument. Also, any dispute as to whether the claim should continue, lacks jurisdiction, etc, will be decided by the CMO.
- Increased powers of the minor circuit court – now, civil, commercial and labour claims of not more than 500,000 dirhams in value and claims challenging the validity of signatures are to be heard by the minor circuit of the court and disposed of in one hearing. Minor circuit courts can now hear disputes up to 10 million dirhams (previously 1 million dirhams).
- Increased scope of availability of the payment order process – the new law now allows creditors to include damages sought, as well as the outstanding debt and interest. Also, previously, the creditor was only able to file the payment order where the debtor resides, but is now able to file the payment order where the contract was concluded. Further, payment orders for values less than 50,000 dirhams are no longer appealable.
- Further clarity on the requirement for travel bans – the court has clarified that it can only impose a travel ban where there was an unconditional debt of not less than 10,000 dirhams, and the court must be convinced that the debtor might flee the country. If the debt amount is not specified, the applicant is also now required to submit a guarantee to the court to cover the damage in case the travel ban application is found to be 'incorrect'.
- More efficient litigation – now postponements can only be for an urgent reason, and courts are required to issue their final judgment within 100 days from the matter being referred to the CMO.

Coronavirus**38 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?**

We have selected the construction industry as an example.

This is a vital sector of the UAE's economy and, like many other industries, was impacted heavily by the coronavirus pandemic. At the beginning of the initial lockdowns, the construction sector was deemed to be one of the 'vital sectors' that exempted it from government restrictions – so projects were able to remain operational and workers able to


Celine Abi Habib Kanakri

celine.kanakri@kennedyslaw.com

Laurice Elten

laurice.elten@kennedyslaw.com

Kelsey Evans

kelsey.evans@kennedyslaw.com

Office 1101, Conrad Tower
Sheikh Zayed Road
PO Box 212620
Dubai
United Arab Emirates
Tel: +971 4 350 3600
Fax: +971 4 350 3699
www.kennedyslaw.com

commute, subject to obtaining a permit from the Dubai Municipality and often subject to social distancing measures.

In Dubai specifically, towards the beginning of the pandemic (March and April 2020) the Dubai Development Authority introduced a number of measures to attempt to mitigate the impact of the pandemic on the industry, including:

- providing engineering services through an online portal and expanding its functionality;
- introduction of various planning and development stimulus initiatives, such as allowing the payment of the final building permit fees in instalments for fees over 100,000 dirhams, postponing payment of various fines, and increasing the validity period of building permits and other permits by three months;
- implementing a standard checklist of 'construction site hygiene measures' for projects to undertake; and
- introducing virtual inspections and meetings for sites.

Workers were also being protected under other measures by the UAE Ministry of Human Resources and Emiratisation, and the Dubai Municipality – including permitting employers to make temporary arrangements to employment terms (eg, remote working) and imposing precautionary measures to ensure health and safety while at the workplace and accommodation. Other directives also required measures to be implemented by construction companies regarding adequate disinfectants and sanitation at the workplace and accommodation, social distancing in the labour accommodation and during transport on site.

There are also a number of stimulus packages launched by the Dubai government that aim to boost the economy and commercial businesses. The first was in March 2020, worth 1.5 billion dirhams, and there were three others across 2020. The package now totals 7.1 billion dirhams with the introduction of a stimulus package for January to June 2021 worth 315 million dirhams. An overview is set out here. In the construction industry, some of the initiatives are aimed to expedite the payment of financial dues to contractors and refund all financial guarantees for construction activities related to commercial licences.

In terms of best practices, contractors, subcontractors, engineers, etc should now more than ever be keeping accurate and detailed

records of changes on their project sites and the impact that this has been causing to their ability to complete. The more accurate and detailed the records, the stronger any ability to bring or defend a claim will be.

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security			
Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)