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The cover features several large, dark green leaf-like shapes scattered across the background, creating a natural, organic feel. The leaves vary in size and orientation, with some pointing upwards and others downwards.

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# Litigation

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# Law and Practice

*Contributed by Al Suwaidi & Company*

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**Al Suwaidi & Company** is a full-service law firm, with a pro-active and commercial approach. Since the firm's creation in 1997, it has recruited high-calibre and experienced lawyers with international backgrounds assigned to its offices in Dubai, Abu Dhabi and Ajman. The team works closely together in a collegiate environment and continues to win praise from clients for impressive results. It punches above its weight, particularly in litigation and arbitration. The firm's litigation department consists of leading advocates and is supported by lawyers from other specialised departments within the firm. Lawyers and legal experts are

assisted by an excellent team of dedicated and professional paralegal staff. Its clients benefit from the advice given by experienced and accessible lawyers. It acts for individuals, including those of high-net-worth, local and international companies, from start-ups, to SMEs, to corporate multinationals. Al Suwaidi & Company have the expertise to manage large-scale and complex litigation cases, even when they bring with them multi-jurisdictional elements. The firm thrives on delivering the best possible results, adapting to the constantly changing commercial and legal landscape.

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## 1. General

### 1.1 General Characteristics of Legal System

The UAE follows the civil law system, inspired by the Roman and French legal systems and the Egyptian civil codes of law. Although the core principles of law in the UAE are based on Shari'a law, most of UAE's legislations consist of a mix of Islamic and European concepts of civil law. The court system is usually inquisitorial, precedent is generally not recognised (although judgments delivered by higher courts are usually applied by lower courts). The legal proceedings are based largely on written submissions in which parties to a specific case submit memoranda and responses and oral submissions are limited.

### 1.2 Court System

The UAE is a federation which comprises of seven Emirates, namely Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Fujairah and Ras Al Khaimah. In each Emirate, UAE Federal Law applies as well as the laws of each Emirate. In case of conflict, UAE Federal Law has supremacy. Abu Dhabi, Dubai and Ras Al Khaimah have their own separate local court systems. In these three Emirates, there is no federal supreme court to which appeals can be made. Therefore, in these three Emirates, the highest court is the Court of Cassation, below the Court of Cassation is the Court of Appeal and subordinate to that is the Court of First Instance.

The other Emirates use the Federal Courts. In these Emirates, there is a Court of First Instance. Decisions of the Court of First Instance may be appealed to the Court of Appeal of that Emirate. Decisions of the Court of Appeal may be appealed to the Federal Supreme Court which is situated in the capital of United Arab Emirates, Abu Dhabi.

There are three main branches within the court structure which are bifurcated based on subject matter jurisdiction such as civil cases, criminal cases and personal status cases. Each level of court has a circuit to look into the various types of cases according to specialty and jurisdiction. The Civil Court hears all claims ranging from commercial matters to maritime disputes. Administration of criminal justice is carried out through the Criminal Courts. The Shari'a court is primarily responsible for matters of personal status such as marriage, divorce, custody and inheritance.

The court circuits are major and minor which differ depending on the value, the type of the case, and the number of judges.

### 1.3 Court Filings and Proceedings

Unless the court deems otherwise in exceptional circumstances, all hearings are open to the public. The court may, at its own discretion or at the request of any party, decide to hold a closed hearing to maintain public order, observe morals or to preserve the dignity of a family. Although all

proceedings are in theory public, they remain virtually confidential in practice.

However, only the parties to the litigation and their attorneys have access to court documents.

### 1.4 Legal Representation in Court

UAE national lawyers and lawyers from certain other Arab countries who must satisfy specified criteria before a license is issued have rights of audience in the UAE.

## 2. Litigation Funding

### 2.1 Third-Party Litigation Funding

Commercial litigation is generally funded by the litigating parties personally. Although there is no express provision for Third-Party Litigation Funding, it is not prohibited in UAE.

However, the Dubai International Financial Centre (DIFC) Courts which adopts the common law legal system recently issued Practice Direction No 2 of 2017 (PD) which creates rules that are similar to the English law position in regard to third-party funding.

Similarly, the Abu Dhabi Global Market (ADGM) Courts enacted the Litigation Funding Rules 2019 on 16 April 2019 ("the Rules"), pursuant to Section 225(3)(a) and (d) of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 ("the Regulations") which expressly allows for third-party litigation funding.

Since it is not common and there have not been any express regulations governing third-party litigation funding for the local jurisdiction in the UAE, the subsequent questions below will be answered mostly based on the practices and provisions by the DIFC Courts and that by ADGM Courts.

### 2.2 Third-Party Funding: Lawsuits

It can be understood from the PD that the rules governing litigation funding apply to "any proceedings involving the Funded Party for resolving disputes filed in the DIFC Courts whether commenced or contemplated". The aforesaid is a definition for "Proceedings" as can be found under Clause 2(h) of the PD.

Similarly, "Proceedings" under the Rules is defined in Section 225(8) of the Regulations to include "any sort of proceedings for resolving disputes (and not just proceedings in Court) whether commenced or contemplated".

However, it is expressly stipulated in the Regulations that any such funding must not relate to proceedings which cannot be the subject of an enforceable conditional fee arrangement

or to proceedings of any such description as may be prescribed by the Chief Justice.

## 2.3 Third-Party Funding for Plaintiff and Defendant

Under Clause 2(a) of the PD, a funded party is defined as a party to Proceedings before the DIFC Courts which has entered into a Litigation Funding Agreement with a Funder.

It is given under Part 1, Article 2(d) of the Rules that a funded party means a litigant and it includes a liquidator or a judicial manager.

Third-party funding is thus available to the both the plaintiff and defendant.

## 2.4 Minimum and Maximum Amounts of Third-Party Funding

Both the PD and the Rules are silent as to the minimum or a maximum amount that a third-party funder will or may fund.

However, it is given in the Rules that a funder must have qualifying assets of not less than USD5 million or the equivalent amount in foreign currency as a prerequisite to entering into a litigation funding agreement.

## 2.5 Types of Costs Considered under Third-Party Funding

A third-party funder may have to fund costs sought by a defendant. According to the Rules of the DIFC Courts (RDC) Rule 25.103 it is stated that the defendant may seek an order for security for costs against someone other than the claimant, and the court can make such an order if it is satisfied and deems it just to do so, provided one or more of the conditions in Rule 25.104 applies.

The PD sets out that the DIFC Courts have inherent jurisdiction to make cost orders against third parties, including funders, where the court deems appropriate.

The PD further states that the court may take into account the fact of disclosure of TPF when deciding on the application for security for costs, although the fact the party is funded shall not by itself be determinative.

As for the ADGM Courts, Article 15 of the Rules states that the litigation funding agreement must clearly state that the funder submits to the jurisdiction of ADGM Courts for the purposes of disputes relating to costs as between the funded party and any other party to the proceedings. Such an express statement is then taken into account when cost orders are made by the court.

## 2.6 Contingency fees

The UAE Law, as well as the DIFC court proceedings, do not permit contingency fee arrangements. However, conditional fee arrangements where the legal representatives receive an uplift in fees, as opposed to a share in the proceeds in the event that the client is successful, are permitted in the DIFC court proceedings.

## 2.7 Time Limit for Obtaining Third-Party Funding

Both the PD and the Rules are silent as to the time limits relating to when a party to the litigation should obtain third-party funding. However, the PD indicates that a party may enter into a litigation funding agreement. The funded party must adhere to the rules prescribed for notification of various parties of the said agreement on different timelines.

The same is indicative under the Regulations for ADGM Courts, that a litigant may enter into a litigation funding agreement before or after the commencement of the proceedings. The funded party must similarly comply with the notification rules prescribed under the Regulations.

# 3. Initiating a Lawsuit

## 3.1 Rules on Pre-action Conduct

The Code of Civil Procedure provides no provisions relating to pre-action conduct. However, in certain Emirates, commercial disputes must be referred to a Committee before a claim can be filed.

## 3.2 Statutes of Limitations

General rules relating to limitation periods in UAE are contained in Federal Law No 5 of 1985, UAE Civil Transaction Law. Usually, a claim cannot be brought after 15 years, unless specific provisions state otherwise.

Subject to the exceptions, the limitation periods are generally:

- for contracts, a limitation period of 15 years (Article 473 of the Civil Transactions Law);
- for cheques, a limitation period of one to three years (Article 638 of the Commercial Transactions Law);
- for insurance, a limitation period of three years (Article 1036 of the Civil Transactions Law);
- for maritime insurance, a limitation period of two years (Article 399 of the Maritime Commercial Law);
- for torts (causing harm), a limitation period of two years (Article 298 of the Civil Transactions Law);
- for building contracts (defects), a limitation period of ten years (Article 880 of the Civil Transactions Law);
- for the carriage of goods by sea, a limitation period of one year (Article 287(a) of the Maritime Commercial Law); and

- for employment, a limitation period of one year (Article 6 of the UAE).

### 3.3 Jurisdictional Requirements for a Defendant

As per Federal Law no 11 of 1992, UAE Civil Procedures Law, a court's jurisdiction lies in the defendant's domicile. If they have no domicile, then the jurisdiction would be the area of their residence or work.

In commercial cases, the plaintiff can choose the court to which they can bring a claim. They can bring it to either:

- the court in the area where the defendant resides;
- the court in the area where the agreement was made or executed in whole or in part; or
- the court in the area where the contract was supposed to have been executed.

### 3.4 Initial Complaint

Article 16 of the Regulations of Civil Procedure Law stipulates that a claim brought by a plaintiff is to first, be registered with the case management office by submitting the plaintiff's statement of claim. The plaintiff may also do so by way of electronic registration.

The statement of claim must contain the details as follows:

- the plaintiff's name, title, identification number (if any) or copy of ID card or any other document issued by a Government authority proving the plaintiff's identity, profession, domicile, workplace, telephone number, fax or email; if the plaintiff has no domicile in the state, they shall name an elected domicile as well as their representative's name, title, profession, domicile, workplace, fax number or email;
- the defendant's name, title, identification number (if any), profession, domicile or elected domicile, residence, workplace, telephone number and their representative's name, title, profession, domicile, workplace if they work for others, but in case the defendant or their representative have no given residence or work place, the last residence, domicile, workplace, postal address, fax number or email address shall be mentioned;
- the court before which the lawsuit is filed;
- the date of submission of the statement of claim to the case management office;
- the subject matter of the lawsuit, requests and grounds thereof; and
- the plaintiff's signature or their representative's, after verifying their identities.

Once the matter has been registered and the case management office has collected the court fees, a case number will be allocated, and a first hearing date will be scheduled. The defendant(s) shall thereafter be notified.

Provided that a defendant is present during a hearing session, whether personally, by their proxy or legal representative, a plaintiff may request to amend their initial motions.

### 3.5 Rules of Service

Notification of the summons by the court will start after setting the hearing date and the summons/notification shall be served to the defendant.

Article 5 of the Federal Law no 11 of 1992, UAE Civil Procedures Law, states that the notification shall be done on the basis of the party's request or as set by law. The court may permit the claimant or their attorney to serve the notification. It is also possible to notify through the company, private bureau or other means.

If the notification server (whoever undertakes the notification process) fails to undertake the notification, they shall refer to the authorised judge or the circuit head, as the case may be, to order whatever change they desire to apply to the notification method.

The notification/summons can be served validly to a person/corporation outside UAE through diplomatic channels of the defendant's country of domicile.

### 3.6 Failure to Respond

If the defendant, after receiving the notification, fails to attend the hearing, the court will issue its judgment in the absence of the defendant.

### 3.7 Representative or Collective Actions

The UAE courts do not have a mechanism for class or collective actions. Each claim must be filed separately.

### 3.8 Requirements for Cost Estimate

The court fee depends on the value of the claim, and generally has a maximum cap. The professional fees paid to lawyers handling the claims shall be either in a lump sum or on an hourly basis, depending on factors such as claim amount, nature of the case, etc.

## 4. Rules on Pre-action Conduct

### 4.1 Interim Applications/Motions

The UAE's Civil Procedure Code provides for a summary proceeding if the creditor's entitlement to payment is established in writing. This includes the outstanding amount owing to the creditor by the debtor or if the creditor holds a financial instrument.

There are other interim remedies, of which the most common is a precautionary attachment. This is applied when there is a concern that the right of the plaintiff may be jeop-

ardised as a result of, for instance, the debtor concealing or transferring their assets.

The power to review these interim applications rests not with the case management office but with a judge who has competent jurisdiction to sit in summary proceedings.

## 4.2 Early Judgment Applications

A payment order may be awarded to a creditor if it could be established that the creditor has a clear-cut debt due and owing to them. Article 62 of the Regulations of the Civil Procedure Law stipulates that if a creditor's right as to a debt due and payable is established, electronically or by a document, and the entire debt is claimed by the creditor is a fixed amount of money or a certain movable of known type and quantity, the said creditor may apply for a payment order by way of a petition under the said Article with the exception of having to file a first instance claim.

Assuming all the rules set out in Article 63 are complied with, the order shall be issued within three days, at most, from the date of petition submission. The petition shall be considered as having the same effects as filing of a lawsuit from the date of its submission, even if the court had no competent jurisdiction.

There is a possibility that the other party's case may be struck out before trial or substantive hearing of the claim on a party's application. One of such instances is when a plaintiff fails to attend a court hearing and the defendant requests the court to strike out the case. The defendant may not, however, in absence of the plaintiff, request a judgment to be passed against the plaintiff.

By virtue of Article 29 of the Regulations, subject to Article 28 (1) of the Regulations, if a duly served defendant fails to appear, the court may rule for judgment and such judgment shall be deemed to have rendered in presentia for the defendant duly notified but failed to appear.

## 4.3 Dispositive Motions

One of the more common dispositive motions exercisable by the courts is one where there is a non-attendance by the litigants. When neither of the parties to the lawsuit have attended a court hearing, the court shall decide on the claim, if it deems making a decision valid, or otherwise it will decide upon its cancellation. If 30 days have passed and none of the parties have requested for case progression or attended after the progression therein, the claim would be dismissed as null and void. The case management office shall, upon the lapse of the 30 days mentioned, refer the claim to a competent judge to issue a decision in this regard.

## 4.4 Requirements for Interested Parties to join a Lawsuit

Pursuant to Article 95 of the UAE's Civil Procedures Law, anyone having an interest to join a lawsuit may intervene in the action by seeking judgment for themselves with a request related to the action. This shall be through usual procedures of the action, or with a request presented verbally at the session in the presence of the litigants which shall be entered in its process record. However, no intervention is admissible after the closure of pleadings.

## 4.5 Applications for Security for Defendant's Costs

There is no provision that explicitly allows a party to guarantee costs and the courts do not grant orders for security for costs.

## 4.6 Costs of Interim Applications/Motions

Lawyers' fees awarded are nominal. The costs may be recoverable in the main case.

## 4.7 Application/Motion Timeframe

The relevant timeframes vary. Before issuing the order, the judge may carry out a summary investigation should they see that the documents supporting an application are insufficient.

In the context of precautionary attachments, the timeframe may vary depending on the discovery of assets to be attached. If the attachment has not been accomplished in one day, it may be accomplished in successive days and the execution agent shall undertake what is necessary to preserve the attached items needed until the report has been completed. The report shall be signed whenever the attachment procedures are finished.

Precautionary attachments are heard by the court on an ex parte basis and a judgment is usually handed down within 24 to 48 hours of an application being made. As such, it is redundant to request that the application or motion be dealt with on an urgent basis.

# 5. Discovery

## 5.1 Discovery and Civil Cases

As per the Law of Proof in Civil and Commercial Transactions, an adversary may request the court to compel the submission of material documents or paper, detained by themselves, in the following instances:

- if the law allows that they are required to present or submit them;
- if the document is joint between themselves and their adversary and relates to the interest of both parties; or
- if the adversary based their claim on it during any stage of the lawsuit.

### 5.2 Discovery and Third Parties

The court is permitted under the UAE law to oblige third parties to present a document in their possession.

### 5.3 Discovery in This Jurisdiction

There is no set process of approach to discovery in UAE. Parties to the litigation file the documents that it wishes to rely on for its case. There is no obligation on a party to file a document that is detrimental to its claim/case and the court may also oblige a party to submit a document.

### 5.4 Alternatives to Discovery Mechanisms

There is no process of discovery and inspection of documents under the UAE Law. Each party files the documents that it wishes to rely on for its case. In practice, there is extremely limited discovery available.

Pursuant to Article 18 of the Law of Proof under Civil and Commercial Transactions, a party may request the court to compel their opponent to submit any useful written document or paper in their possession as follows:

- if the law allows him or her to ask for their submission or delivery;
- if the document is joint between him or her and their opponent; or
- if the opponent based their claim on it in any stage of the lawsuit.

Further, if there are any technical areas in which the court believes that an expert should be appointed, the appointed expert will review the documents, meet with the parties to discuss the case and provide a report to the court.

It is also within the powers of the expert to demand the parties to disclose any documents deemed necessary for evaluation by the expert. This is important as expert reports are heavily relied on by judges when issuing judgments.

### 5.5 Legal Privilege

Communications between a lawyer and a client are considered confidential in the UAE. Article 42 of the Advocacy Law provides that a lawyer is to keep confidential the communications made in furtherance of their professional representation of a client, unless such disclosure is required to prevent the perpetration of a crime.

The role of in-house counsels in terms of privileged communications with clients can be referred to in the Code of Ethics, which states that such information is to be kept confidential regardless of whether the representation is advisor, non-contentious or contentious in nature.

### 5.6 Rules Disallowing Disclosure of a Document

Generally, any communications between a lawyer and their client are, prima facie, considered as confidential. Any such

communication cannot be disclosed except in the circumstances set out as follows:

- where a client provides their written consent to the disclosure of the confidential information;
- where the court compels the disclosure of the confidential information to the extent required by such court; or
- where the lawyer, lawyer's partners or employees are accused of a crime or civil claim arising out of professional negligence.

## 6. Injunctive Relief

### 6.1 Circumstances of Injunctive Relief

Generally, injunctive relief is not available in UAE. However, the UAE law provides for the following:

- summary proceedings (see 4. Rules on Pre-action Conduct); and
- provisional orders such as precautionary attachment of assets to secure a claimant's claim or an order prohibiting the defendant from leaving the country.

### 6.2 Arrangements for Obtaining Urgent Injunctive Relief

The judgment is usually issued within 24 to 48 hours of an application being made to the competent court.

### 6.3 Availability of Injunctive Relief on an Ex Parte Basis

Precautionary attachments or provisional applications are generally heard by the court on an ex parte basis.

### 6.4 Liability for Damages for the Applicant

Sometimes, the court may order that the applicant provides for a counter-security or an undertaking to cover any damages that the defendant may suffer should the action prove unjustifiable.

### 6.5 Respondent's Worldwide Assets and Injunctive Relief

In the context of an attachment order, only assets of the respondent within the jurisdiction of the court granting such an order can be attached.

### 6.6 Third Parties and Injunctive Relief

Article 116 of the Civil Procedure Regulations stipulates that a creditor may request the court of competent jurisdiction or a judge of summary matters to impose attachment on their debtor's movables or debts with third parties, even if they are deferred, suspended on a condition, or a subject of dispute.

## 6.7 Consequences of a Respondent's Non-compliance

There will be no issue of non-compliance as the properties are usually attached through a third party, ie, the banks for attachment of the debtor's bank accounts, the Road and Transport Authority for attachment of the debtor's car and the Land Department for attachment of the debtor's properties.

## 7. Trials and Hearings

### 7.1 Trial Proceedings

UAE Law allows for the commencement of claims electronically, in addition to the delivery of the statement of claim to the Case Management Office. After complying with the procedural formalities, the court will register the case and a hearing date may be set within one to two weeks depending on the nature and type of the case and the court's calendar.

Following the notification of the summons, the court will set another hearing date allowing the defendant to respond to the claimant's statement of claim.

If the court finds reasonable grounds to believe the presence of technicalities in the case, it will appoint a court expert to review the documents and to provide a report to the court. The appointment of an expert, and subsequent report, will aid the court in delivering its Judgment based on the assessed information.

### 7.2 Case Management Hearings

A legal action shall be brought to the court by registering the case before the Case Management Office as per UAE Civil Procedure Law.

The Case Management Office manages the initial pleadings, which shall then be endorsed to a Court chamber.

### 7.3 Jury Trials in Civil Cases

There is no concept of jury trial practiced in UAE.

### 7.4 Rules That Govern Admission of Evidence

In general, the Federal Law No 10 of 1992, concerning the Law of Evidence, governs the rules regulating the admission of evidence. This is, of course, supplemented by provisions of other statutes such as the Civil Transactions Law, depending on the nature of the dispute.

Any evidence retained by means of electronic records is governed by the Electronic Transactions and Commerce Law No 2 of 2002.

### 7.5 Expert Testimony

If the court believes there is a necessity for it, the court shall appoint an expert to assist and evaluate the matter. The

reports submitted by the court-appointed experts are generally accepted by the courts in UAE.

### 7.6 Extent to Which Hearings are Open to the Public

Unless the court deems otherwise in exceptional circumstances, all hearings are open to the public.

### 7.7 Level of Intervention by a Judge

The intervention by a judge during hearings consists of, inter alia, setting hearing dates for administration of matters between the parties, considering the memoranda and documents submitted by either the parties and/or an expert (in the event one is appointed) for delivery of judgment, and occasionally directing the parties for production of certain relevant documents or conducting a summary investigation, should the judge see that documents supporting a particular claim or application are insufficient.

The hearings before the UAE courts are administrative in nature and are usually a way of allowing parties to submit their arguments with memoranda.

A judge would usually set hearings two to three weeks apart, or as many as the judge believes are required for each party to adequately state their stance, either through a memorandum, documents or an expert.

In cases where a judge deems it necessary to appoint an expert, the expert reports submitted before the Court will be heavily relied on by the judge to deliver the final judgment. The judge's role in conducting the case will be minimal here as the expert is appointed to review the documents and meet with the parties for discussion in order to submit the expert's report.

There will be a date set for the submission of such a report, and the judge may set another hearing for submission should, in their opinion, the expert need a longer time to deliberate their findings. Once the report is submitted, the judge may set a further hearing for the parties to submit their concluding or commentary memoranda, or send the report back to the expert for further evaluation before the final judgment is delivered.

### 7.8 General Timeframes for Proceedings

Generally, cases in which an expert is not appointed can last between nine and 18 months before the Court of First Instance. A case involving an expert can last for two years before judgment is adjudicated in the Court of First Instance. Nonetheless, timeframes vary on a case to case basis.

## 8. Settlement

### 8.1 Court Approval

Once a case is filed, the control will already be with the court. Parties may execute a settlement agreement, but in order to give effect to such settlement and close the case, they have to present an original to the court. If the matter is a matter capable of composition, the court will render a judgment based on the settlement agreement.

### 8.2 Settlement of Lawsuits and Confidentiality

The fact of settlement will be public as far as it will have to be recognised by the court. However, the details of the settlement agreement will be included only in the case records, to which only the parties involved will have access.

### 8.3 Enforcement of Settlement Agreements

Settlement agreements should be recognised by the Courts so the judgment adopting the settlement can be executed as a regular judgment.

### 8.4 Setting Aside Settlement Agreements

In the event the UAE Courts find that the provisions contained in a particular settlement agreement are unlawful or against public policy, it can be set aside through a court order or by the agreement of the parties to the settlement agreement.

## 9. Damages and Judgment

### 9.1 Awards Available to Successful Litigant

The court shall award the successful litigant the compensatory damages and, depending on the nature of the case, an order confirming a right. However, it is at the discretion of the court hearing the case to grant the awards.

The court shall also confirm in its final judgment to the successful litigant, whether a precautionary attachment order has been granted in the proceedings.

### 9.2 Rules Regarding Damages

The damages available in commercial disputes are compensatory damages only. Fines imposed by the criminal court are payable to the UAE government and not awarded as compensation to the victim.

### 9.3 Pre and Post-Judgment Interest

Claimants may demand interest of up to 12% on the claim from the date of filing a lawsuit. However, in practice, UAE courts usually decide on a 9% interest rate from the date of filing a lawsuit until full payment of the claimed amount. The calculation of the interest on the claimed amount halts only when the defendant or debtor commences the payment process, as stipulated under Article 189 of the Civil Procedure Law. If the defendant or debtor does not commence the

process to make full payment under Article 189, the interest accrues even in execution stage, ie, post judgment.

### 9.4 Enforcement Mechanisms of a Domestic Judgment

The judgment is enforced under the supervision of the execution judge at the Court of First Instance and the procedures decided before the Court of First Instance shall be applicable. The execution judge shall be exclusively authorised to execute the execution document and decide to enforce a local judgment through attachment and sale of the judgment debtor's assets. Moreover, the execution judge is also authorised to deliver the sentences, decisions and orders related thereto, in exceptional circumstances.

### 9.5 Enforcement of a Judgment from a Foreign Country

The judgment and orders passed in a foreign country may be ordered for execution and implementation within the UAE under the same conditions decided in the law of that country. Articles 85-88 of Section 4 of Cabinet Resolution No 57 of 2018, provides for expedited enforcement by submission of a petition to the execution judge. The judge shall issue their decision no more than three days from the date of submission of the petition. This decision may be appealed in accordance with the rules and procedures established for the appeal of court decisions.

## 10. Appeal

### 10.1 Levels of Appeal or Review to a Litigation

State Courts and Federal Courts have two levels of appeals from a first instance court judgment. When the claim is not capable of pecuniary estimate, or the claim amount exceeds AED50,000, the first instance court judgment may be appealed before the Appeal Court. When the claim is not capable of pecuniary estimate, or the claim amount exceeds AED500,000, it can be further appealed before a Court of Cassation.

### 10.2 Rules Concerning Appeals of Judgments

Court of First Instance judgments may be brought for appeal before the Appeal Court on questions of facts and law. Court of Appeal judgments may only be brought for cassation appeal to the Cassation Court on questions of law only.

### 10.3 Procedure for Taking an Appeal

Parties have 30 days from the date of a civil Court of First Instance judgment, or notification thereof, to file an appeal before the Appeal Court. In criminal cases, a public prosecutor also has 30 days to appeal while an accused has 15 days from the date of judgment to file an appeal before the Appeal Court. Parties have 60 days from date of a civil appeal judgment, or notification thereof, and 30 days from date of criminal court appeal judgment to file an appeal before the

Cassation Courts. Please note that a complainant in a criminal case may only participate in an appeal proceeding if a civil claim is attached to the criminal case, otherwise, only the public prosecution may appeal.

## **10.4 Issues Considered by the Appeal Court at an Appeal**

An appeal of a Court of First Instance judgment opens the whole case for a re-hearing and review as to questions of facts and law. No new claims may be included, but new points that were not explored at first instance may be considered. However, for criminal cases, appellant Accused will not be harmed by an appeal. Cassation appeals are only as to questions of law.

## **10.5 Court-Imposed Conditions on Granting an Appeal**

When the Appeal Court tries the case, grants an appeal and renders an appeal judgment, this judgment is already enforceable. However, in certain instances, the appeal court grants the appeal and remands the case to a lower court for re-trial.

## **10.6 Powers of the Appellate Court After an Appeal Hearing**

After hearing an appeal, the Appeal Court may render a judgment on the merits which shall be enforceable, or it may order for the case to be remanded to a lower court for re-trial.

## **11. Costs**

### **11.1 Responsibility for Paying the Costs of Litigation**

The costs of litigation are borne by the parties. Court fees are to be paid by a claimant in order to register the case, parties pay their respective attorney's fees, and expenses such as notifications are borne by the party notifying. The Court has the discretion to order which party should pay the expert fees and usually splits the costs. Court fees and expenses are recoverable while attorney's fees have limited recoverability because the courts usually award a nominal amount from AED500 to AED2,000 for attorney's fees. The judgment also includes which party shall shoulder the court fees and expenses and these may be claimed during execution stage.

### **11.2 Factors Considered When Awarding Costs**

The Party at fault is usually ordered to pay all costs unless the Court finds that the other party has contributed to the prolonging of the case, in which case costs may be apportioned.

### **11.3 Interest Awarded on Costs**

Interest is not awarded on costs.

## **12. Alternative Dispute Resolution**

### **12.1 Views of Alternative Dispute Resolution Within the Country**

Alternative dispute resolution (ADR) is becoming widely accepted in the UAE. Foreign individuals and company investors usually prefer ADR as they these proceedings offer more flexibility, confidentiality and the opportunity to set the language of the proceedings. Mediation and arbitration are the most popular methods of ADR in the UAE.

### **12.2 ADR Within the Legal System**

The UAE legal system actively promotes ADR. The UAE Courts facilitates mediation through committees including commercial dispute resolution committees, family guidance committees, settlement and reconciliation committees, rental dispute committees and labour dispute resolution committees. In some Emirates like Abu Dhabi and Dubai, it is no possible to proceed to the regular courts until an appearance has been made before the dispute resolution committee.

### **12.3 ADR Institutions**

There are a number of institutions offering and promoting alternative dispute resolutions in most of the Emirates. These institutions each have a set of rules and regulations related to, and actively promote, ADR. Some centres cater to particular industries such as Emirates Maritime Arbitration Centre (EMAC). Most notable are the Dubai International Arbitration Centre (DIAC), Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCAC), DIFC-LCIA Arbitration Centre and the International Islamic Centre for Reconciliation and Arbitration (IICRA).

## **13. Arbitration**

### **13.1 Laws Regarding the Conduct of Arbitration**

Arbitration in the UAE is largely governed by Federal Law No 6 of 2018 or the new UAE Arbitration Law. The UAE is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Cabinet Resolution No 57 of 2018 or the Regulation of Civil Procedures Law Chapter III on Execution are also applicable.

### **13.2 Subject Matters not Referred to Arbitration**

Matters in which composition or settlement feature are not allowed to be referred to arbitration. Also, matters of public policy, such as employment and criminal cases, are not allowed to be referred to arbitration. Certain real estate and lease disputes, as well as disputes involving registered commercial agencies, are not subject to arbitration because of specific provisions of special laws.

### 13.3 Circumstances to Challenge an Arbitral Award

Article 53(1) of the UAE Arbitration Law enumerates grounds for challenging an arbitral award including when:

- there is no arbitration agreement;
- it is void or time-barred;
- due to the lack of capacity of a party;
- if a party was unable to present their case;
- the award excludes application of law on which the parties agreed to apply;
- the composition of the tribunal or the arbitral procedure is not in accordance with the parties' agreement or the UAE Arbitration Law;
- the arbitral procedures are void;
- the award decided questions not covered by arbitration agreement;
- the subject matter of dispute is one of the questions where no arbitration can be conducted; or
- the award violates public order and public morals of the UAE.

### 13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Article 55 of the UAE Arbitration Law provides that whoever wishes to enforce an arbitration award shall apply to the chief justice to approve the arbitration award and to order its enforcement. The chief justice, or any delegated judge, may order the approval and enforcement of the arbitration award within 60 days from the date of approval and enforcement application is filed, unless the judge finds that there are one or more reasons the arbitration award cannot be given, based on Article 53(1). Another procedure that provides for a more expeditious enforcement is under Chapter III Section 4 of Cabinet Resolution No 57 of 2018. Articles 85-88 provide for expedited enforcement by submission of a petition to the execution judge. The judge shall issue their decision within no more than three days from the date of submission of the petition. This decision may be appealed in accordance with the rules and procedures established for the appeal of court decisions.

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