

An aerial photograph of the Dubai skyline, featuring the Burj Khalifa on the left and a complex highway interchange in the foreground. The sky is blue with light clouds.

DISPUTE RESOLUTION IN THE MIDDLE EAST

Commencing a claim



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COMMENCING A CLAIM

GENERAL OVERVIEW

It is essential that all required procedural steps are followed when commencing a claim to avoid delay and/or adverse consequences which may arise as a result of non-compliance. If a party fails to properly comply with the applicable requirements, it risks falling at the first hurdle and incurring unnecessary delay (and costs), which may ultimately jeopardize the successful prosecution of its claim. The relevant procedural requirements are often provided in the applicable laws or rules set by the government and/or the relevant authority.

ONSHORE LITIGATION

Proceedings in the onshore United Arab Emirates (UAE) courts commence when the claimant files a statement of claim and pays the court fee. It is important when commencing a claim before the onshore courts to do so in the correct court, by reference to both the subject matter of the dispute and the Emirate in which the defendant is domiciled and/or the damage occurred. Articles 20 to 41 of the Civil Procedures Law (Federal Law No. 11 of 1992) set out the relevant considerations and requirements.

Statement of claim

There are no strict requirements as to the contents of the statement of claim. However, it must be in Arabic and include the following:

- details of the claimant;
- details of the defendant;
- the cause(s) of action relied upon;
- the relief(s) (ie remedy) sought; and
- documents relied on as supporting evidence. Gulf Cooperation Council countries, being civil law jurisdictions, rely heavily on documentary evidence, so it is important that all relevant documents are appended to the statement of claim and translated into Arabic by a court-certified translator.

Once the statement of claim is filed with the court office, the summons is issued and the matter is listed for a hearing.

Summons

A court officer serves the summons, the statement of claim and the documents attached to it on the defendant personally, and the defendant is asked to sign an acknowledgement. If the court officer is unable to serve the summons on the defendant before the hearing date, the court adjourns the hearing to another date.

If the defendant cannot be served for whatever reason, service may be effected through notification, which usually involves the court officer seeking to effect notice at the defendant's last known address. If this fails, the court will serve on the defendant by publication. A notice is published in two widely circulated newspapers, one in English and the other in Arabic. Notice is deemed to be served upon the defendant after this publication, and the case may proceed.

Court Fees

- Abu Dhabi: Abu Dhabi Law No. 6 of 2013 (Civil Transactions and Procedures), together with the decision of the Chairman of the Judicial Department No. 2 dated 2 February 2016, provide the court fees applicable in the Abu Dhabi onshore courts. The filing fee for a claim is generally 3 percent of the value of the claim.
- Dubai: Dubai Law No. 21 of 2015 on Judicial fees applicable in the Dubai Courts provides the court fees applicable in Dubai onshore courts. The filing fee for a claim is generally 6 percent of the value of the claim, subject to a minimum of AED500 and a maximum of AED40,000.

OFFSHORE LITIGATION

The procedure for commencing a claim in the Dubai International Financial Centre (DIFC) Courts is governed by the Rules of the DIFC Courts passed by the DIFC Authority (RDC) and in the Abu Dhabi Global Market (ADGM) Courts under Part 5 of the ADGM Court Procedure Rules 2016 (the ACPR) and Practice Direction No. 2 issued on 30 May 2016. To commence a claim, the claimant has to file a claim form.

DIFC Courts

In the DIFC Courts, there are three types of claim forms:

- (a) The Small Claims Tribunal (SCT) Claim Form (Form P53/01) is used for claims:
 - where the value of the claim does not exceed AED500,000;
 - where the claim relates to the employment/former employment of a party and all parties agree for the matter to be heard by the SCT (there is no value limit for the SCT's elective jurisdiction in the context of employment claims); and
 - that do not fall in the first two categories but for which the value of the claim does not exceed AED1 million and the parties elect in writing for it to be heard by the SCT (RDC 53.2).

The parties have to request the SCT Registrar for a claim form. In the claim form, the claimant must set out reasons for the remedy sought. The court fee applicable is governed by the Amended Practice Direction 4/2015. The filing fee for employment disputes is 2 percent of the value of the claim with a minimum of US\$100, and for other disputes, 5 percent of the value of the claim with a minimum of US\$100.

- (b) The Part 7 Claim Form (Form P7/01) is used for claims that do not fall under the jurisdiction of the SCT and do not require the use of a Part 8 Claim Form. This is the most commonly used claim form.
- (c) The Part 8 Claim Form (Form P8/01) is used where the claimant seeks a decision on a question that is unlikely to involve a substantial dispute of fact or where there is a rule or practice direction which permits or requires the use of a Part 8 Claim Form. The claim form should state that Part 8 applies and identify the question that the claimant wants the court to decide or the remedy that the claimant is seeking and the legal basis for the remedy.
- (d) The Part 43 Arbitration Claim Form (Form P43/01) is used for any arbitration-related matters or when seeking relief in support of pending arbitration proceedings in the DIFC.

For Part 7 and 8 claims, the claim form and every statement of case must include the title of the proceedings,

DISPUTE RESOLUTION IN THE MIDDLE EAST

which states the number of the proceedings, the circuit or division of the court or tribunal (if any) in which they are issued, the full name of each party and whether they are a claimant or defendant. For arbitration claims, the claim form must include a concise statement of the remedy claimed and any question on which the tribunal seeks a decision from the court.

The filing fees for Part 7 and Part 8 claims are 5 percent of the value of the claim and/or property with a minimum of US\$1,500 and a maximum of US\$130,000. Where the claim is for both money and other relief, only the higher applicable fee is payable. The fee for a non-monetary Part 8 claim is US\$5,000.

ADGM Courts

The claim form must be in accordance with Form CFI 1 unless it is a small claim (ie (i) a claim for US\$100,000 or less; or (ii) an employment dispute where both parties agree it is a small claim) in which case Form CFI 2 must be used. If the claimant wishes to use a simplified (alternative) procedure under Rule 30 (in cases which do not involve substantial disputes of fact), then form CFI 3 is used.

The court fee depends on the value of the claim. It is US\$2,500 for claims including unquantified damages claims, arbitration claims and judicial review proceedings. For a claim between US\$100,000 and US\$500,000, it is 2.5 percent of the value of the claim. For a claim between US\$500,000 and US\$1 million, it is US\$12,500 plus 2 percent over US\$500,000. For a claim between US\$1 million and US\$5 million, it is US\$22,500 plus 0.5 percent over US\$1 million and finally, for claims over US\$10 million, the fee is US\$55,000 plus 0.15 percent over US\$10 million (subject to a cap of US\$65,000). For a small claim dispute, the court fee is 1.5 percent of the claim, subject to a minimum of US\$250 and a maximum of US\$1,500.

Claim commencement date

In DIFC and ADGM Courts, proceedings start when the claim form is issued by the court at the request of the claimant. This is the date on the claim form.

Statements of truth

In DIFC and ADGM Courts, the claim form must be verified by a statement of truth, which confirms that the claimant believes that the facts stated in the claim form are true.

Particulars of claim

In DIFC and ADGM Courts, the particulars of claim must state:

- what final orders are sought;
- particulars of the claimant's case in summary form, and the propositions of law which the claimant relies on. If the particulars of claim are not contained in the claim form or served with it, then they must be served within 28 days of the defendant's acknowledgement of the claim form; and
- details of the claimant's lawyers (if so represented).

E-filing

In the DIFC and ADGM Courts, an electronic filing facility is available on the respective court websites. The e-filing system must be used for submitting documents to the court registry (including the submission of the

claim form for issue by the court).

ARBITRATION

The procedure for commencing a claim in arbitration proceedings depends on both the law applicable to the arbitration and any applicable institutional (or other) rules. The key arbitral institutions in the UAE are the DIFC - LCIA Arbitration Centre (DIFC-LCIA) and the Dubai International Arbitration Centre (DIAC).

Commencing a claim with the DIFC-LCIA or DIAC involves sending a request for arbitration to:

- the DIFC-LCIA Registrar and the respondent(s) to the arbitration (under the DIFC-LCIA Arbitration Rules of 2008 or 2016 (as applicable)). The request must comply with Article 1 of the rules; and
- the DIAC (under the DIAC Arbitration Rules of 2007). The request must comply with articles 3 and 4 of the rules.

The date of receipt of the request for arbitration by the DIFC-LCIA Registrar or the DIAC is the date of commencement of arbitration proceedings.

For ad hoc onshore arbitrations in the UAE, the UAE Arbitration Law (Federal Law No. 6 of 2018) is the key legislation on arbitration. However, it is generally accepted practice among parties to adopt institutional rules as they are more comprehensive and sophisticated. If the arbitration agreement is silent on procedural rules and the parties cannot agree on the procedural rules to apply, the arbitrator(s) must decide on the applicable rules.

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