



# DISPUTE RESOLUTION IN THE MIDDLE EAST

*Trial*



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## TRIAL

### GENERAL OVERVIEW

This volume sets out some of the key features and steps during trial. After months, or even years, of dedicating time and resources to the dispute resolution process, the end is in sight. Careful management and preparation leading up to and during trial will ensure that parties are adequately prepared for trial and are focused on the hearing and other important matters. Preparation for trial is considered in further detail in Volume 12 "Preparing for Trial".

### ONSHORE LITIGATION

The onshore courts of the UAE do not conduct civil trials, per se. All submissions are written by means of memoranda and submitted to the court. Proceedings take place by means of a series of "hearings", although no oral advocacy takes place. The hearings are attended by the parties' lawyers, who submit memoranda and supporting evidence depending on the stage that the case has reached at each hearing. The court can schedule as many hearings for submissions as it pleases until it is comfortable in making a decision on the case. The lawyers of any party can also request adjournments in order to review memoranda, or to seek instructions from their clients. It is in the court's sole discretion whether to agree to adjourn the matter, in which case a hearing will be "rescheduled" for a later date.

#### Set-up

There are three degrees of litigations in the onshore UAE Courts (1) First Instance Court; (2) Appeal Court; and (3) Cassation Court. The Court of First Instance has general jurisdiction over all judicial matters. The Court of Appeal is the second degree court and considers contested verdicts and judgments of the Court of First Instance. The circuit of this court is formed of three judges and presided by one of them. The Court of Cassation is the third and final degree court. This court looks at challenges on criminal, personal and civil rights verdicts and suits. The Circuit of Cassation Court is formed of a minimum of one superior and four other judges.

#### Oaths

Religious oaths take place for oral testimony. The Dubai Court of Cassation states that as a rule the witness should "swear by almighty God to tell the truth and nothing but the truth". However, it is not necessary in some jurisdictions (such as Dubai) that the witness put their hand on a Holy Book.

#### Evidence

Oral submissions are rare in the onshore courts, although they are permitted in certain instances. Instead, the majority of evidence that is submitted is written, and must be in Arabic (see "[Translations](#)" section below). In the vast majority of onshore civil cases, the court appoints an expert to undertake the evidential, and even legal, investigation of the case. These experts are specifically mandated from a roll of court-approved experts who are professionals in various industries and fields, for example, accountancy, construction, technology etc. Once the court appoints an expert, and issues their mandate and scope of work, the expert will summon the parties, usually to their offices, in order to receive the case papers and any memoranda to be submitted. Whilst the expert meetings are principally set for the expert to raise any queries or questions they may have in

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relation to the dispute, it is also effectively the best opportunity for local counsel and legal representatives of each party to advocate and argue their grounds orally, and on an ongoing basis. As they are meetings, rather than hearings, the expert tends to simply moderate whatever comments or arguments either side has to provide, informally. The expert will issue a first draft of their report typically after around three to four meetings with the parties, after which the parties will have a formal opportunity to give written comments to seek any amendments that they consider are required. The expert will issue their report to the court, at which point the parties will, again, have the opportunity to submit any comments they may have on the findings presented in the report. In the majority of cases, unless compelling reasons are provided by either party for the contrary, the expert's findings will be upheld *in toto* by the court. These findings are both evidential and legal in their nature. Should the court accept any compelling arguments as to why the report is in error, which is a rare occurrence, it may return the mandate back to the expert, or appoint another expert to undertake the task.

## Translations

Documents and evidence must be in Arabic. Should any evidence require a translation into Arabic, the document must be translated, and stamped, by a translator who has been certified by the Ministry of Justice as a sworn legal translator. It should be noted that there is no law protecting the confidentiality of documents in the onshore UAE Courts. Therefore, even if a document is marked "privileged" or "confidential", it will still be taken into consideration if submitted.

## OFFSHORE LITIGATION

The general rule is that Dubai International Financial Centre (DIFC) Court hearings are public, unless a judge determines otherwise. A similar rule applies in respect of hearings before the Abu Dhabi Global Market (ADGM) Courts.

### Set-up

**DIFC Court** - Court hearings are usually conducted in the DIFC Court within a court hearing room. The trial will be attended by a single judge in the Court of First Instance and by at least three judges (none of whom may have heard the matter in the Court of First Instance) in the Court of Appeal, with the Chief Justice or the next most senior judge presiding.

**ADGM Court** - Court hearings are usually conducted in the ADGM Court within a court hearing room. The trial will be attended by a single judge in the Court of First Instance and by at least three judges in the Court of Appeal.

### Court etiquette

When court is in session, all parties must bow towards the judge when entering and leaving the court room. Parties must refrain from using their phone during session (especially if the matter is confidential) and refrain from eating. All parties must ensure that they are prompt on arrival to the court room at the start of each day and after any breaks.

### Attendance sheet

During each session, an "attendance sheet" records attendance for the court record.

### Procedure

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At the beginning of the hearing, Counsel for both parties will usually provide an introduction to the matter, summarizing the key claims and defences. This will lead into witness evidence, followed by expert evidence. At the end of a hearing, Counsel will usually summarize their main arguments again. This will potentially be the last opportunity each party has to make their arguments.

## Oaths

Oaths and affirmations in the DIFC Courts may be sworn before: a judge or the Registrar; a qualified lawyer; any person authorized to administer oaths in the UAE; or any other person authorized to administer an oath in the jurisdiction in which the affidavit is sworn.

## Transcription

Hearings in the DIFC and ADGM courts are recorded and the parties may request that transcripts be prepared (at a cost). In many instances, hearings are also video recorded and subsequently uploaded to the DIFC Courts' dedicated YouTube channel.

## Witnesses

In the DIFC Courts, a witness can be examined before a hearing takes place and this process is referred to as a "deposition". This "deposition" may then be used in a hearing. However, usually, witnesses give their evidence by way of a written witness statement (as considered in greater detail in Volume II "Evidence"). A witness may be cross-examined on his or her witness statement and subsequently re-examined by Counsel for the party for whom the witness appears in relation to the content of his cross-examination. The judge may also have questions for each witness. The same applies in the ADGM Courts.

## Experts

In proceedings in both the DIFC and ADGM Courts, the parties may each appoint an expert (or multiple experts) to prepare independent expert reports for the purpose of proceedings (as considered in greater detail in Volume II "Evidence"). It is the duty of the experts to assist the court on matters within their expertise. Appointed experts usually give their evidence in advance by way of a written report submitted to the court. During the hearing, experts may then be cross-examined by the opposing party and subsequently re-examined by Counsel for their own appointing party. Again, the judge may have questions.

## Foreign language

The DIFC and ADGM courts permit the attendance of translators where it is necessary to assist the witness (or expert) in providing evidence. Hearings are conducted in English.

## ARBITRATION

Hearings are usually held in private. Only the arbitral tribunal, parties and their representatives are allowed to attend, unless the parties and arbitral tribunal agree otherwise.

## Set-up

The arbitral tribunal is usually comprised of either (a) a sole arbitrator and secretary; or (b) three arbitrators. A tribunal secretary may also be present.

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## Timing

A pre-hearing timetable is agreed with strict timings. Parties and their Counsel should always be punctual.

## Attendance sheet

At the beginning of each hearing day, an attendance sheet may be circulated by the tribunal secretary to record the names of all attendees.

## Oaths

It is often preferable for witnesses giving evidence in offshore seated arbitrations to swear an oath (or affirmation), particularly if the award is likely to be enforced in onshore Middle East jurisdictions. In onshore seated arbitrations in the Middle East, witnesses must swear an oath (not an affirmation) and, if they do not, there is a risk that an award may be set aside.

## Transcription

At the discretion of the parties, arbitration hearings may be recorded with the use of transcription services. A transcript will be made available at the end of each day which records, verbatim, everything that is said during the course of the hearing. It is also possible to procure live transcription, audio and video services in order that the hearing can be followed remotely.

## Procedure

At the beginning of the hearing, Counsel will usually provide an introduction to the matter, summarizing the key claims. This will lead into witness evidence followed by expert evidence. At the end of a hearing, Counsel will usually summarize their main arguments. This may be the last opportunity each party has to support their arguments, although the arbitral tribunal may provide for written closing submissions to be filed subsequently.

## Witnesses

In international arbitrations, witnesses will be called to be cross-examined based on the content of their witness statement(s). Witnesses will be required to provide responses by way of oral testimony. The claimant will usually call its witnesses first to be questioned. When the witness has been questioned by the opposing party, he or she may then be re-examined. This provides an opportunity to clarify any evidence given during cross-examination. Please note that some arbitrators (or parties) prefer that witnesses are only present to give their own evidence and not to attend other parts of the hearing.

## Experts

In international arbitrations, experts will be called to be cross-examined on the content of their expert reports. Experts will be required to provide responses by way of oral testimony in the same manner as factual witnesses (see above).

## Foreign language

An arbitral tribunal will, if required, usually permit the attendance of translators where it is necessary to assist

the witness (or expert) in providing evidence.

## Document management systems/electronic hearing bundles

External third-party providers of electronic document management software are increasingly being utilized by the parties leading up to trials. For example, Opus 2 Magnum is a cloud-based, electronic document management and paperless hearing tool which can be used prior, during and after the trial. In a typical application, the platform would be primarily used to store the hearing bundle and transcripts in a searchable, electronic format. It also offers a useful search feature, hyperlinking of documents (both hidden and open) and the ability to highlight and share comments within client, legal and expert teams.

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