

UNITED ARAB EMIRATES

# Global litigation guide



# About

Welcome to The Global Litigation Guide (the **“Guide”**) which has been prepared by DLA Piper’s civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper’s guide to [Legal Professional Privilege](#) and (coming soon) DLA Piper’s guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

## About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit [www.dlapiper.com](http://www.dlapiper.com).

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# United Arab Emirates

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## Overview of court system

The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are financial free zones in the United Arab Emirates (UAE) established pursuant to Federal Laws of the UAE, specifically pursuant to the UAE Constitution and UAE Federal Law No. 8 of 2004 (Financial Free Zone Law).

The Financial Free Zone Law allows for the creation of independent jurisdictions within the UAE in that financial free zones established under the law are exempted from all civil and commercial laws of the UAE. However, they remain subject to the criminal laws of the Emirate in which they are established and the federal criminal laws of the UAE.

In this regard, the DIFC and ADGM (in relation to civil and commercial matters) each have their own legal and regulatory frameworks. The ADGM's legal framework is based on English law. The ADGM regulations adopt selected pieces of English legislation, including matters relating to contract, tort and trusts. By contrast, the DIFC has its own body of laws. DIFC law takes precedence, followed by the law of any jurisdiction other than that of the DIFC expressly chosen by the parties followed by a cascade which ultimately ends with English law. That said, in contractual disputes, the DIFC and ADGM courts should apply the chosen law of the parties.

The DIFC and ADGM each also have their own two-tier court system: the Court of First Instance and the Court of Appeal. Furthermore, the DIFC and ADGM courts have their own rules of court procedure. These procedural rules are broadly based on the English Civil Procedure Rules.

The judges of the DIFC courts are a mix of UAE civil trained judges and judges from various common law jurisdictions including England, Australia and Singapore. The judges of the ADGM courts are from common law jurisdictions only.

The DIFC and ADGM, as jurisdictions, are colloquially referred to as being offshore as opposed to the onshore jurisdictions of each of the seven Emirates of the UAE.

It is worth highlighting that the DIFC and ADGM are young jurisdictions that are continuing to develop on a daily basis. Both jurisdictions were created and operate to provide an alternative forum for dispute resolution in the UAE. In doing so, both the DIFC and ADGM courts have needed to put in place a framework for the interaction of their jurisdiction with the onshore jurisdictions in the Emirates of their establishment and the wider UAE. To this effect, the DIFC and ADGM courts have entered into memoranda of understanding with various courts and jurisdictions, both in the UAE and abroad, which seek to establish processes for the mutual enforcement of judgments and orders.

In this regard, the current legal framework between the DIFC courts and the onshore Dubai courts allows a party to directly enforce a final judgment or order of the DIFC courts onshore in Dubai through the Dubai courts. This has led parties to seek to enforce arbitral awards (both local and foreign) and foreign judgments (including those which have no connection with the DIFC) in the Dubai courts by having them recognized and enforced by the DIFC courts first. This has led to arguments as to whether the DIFC can be used as a conduit jurisdiction for the enforcement of judgments onshore in Dubai in this way.

In addition, a Judicial Committee was formed in Dubai, seemingly as a result of this approach to enforcement. The committee is tasked with resolving conflicts of jurisdiction and judgments between the DIFC and Dubai courts. The committee is formed of three DIFC court judges, three onshore Dubai court judges and is chaired by the head of the Dubai Court of Cassation. The chair has the casting vote in cases of deadlock.

## Limitation

The application of limitation periods is usually an issue of substantive law and therefore the law applicable to the particular contract or interaction of the parties. Advice should be sought on a case-by-case basis on the applicable limitation period and its expiry, as it can critically affect a party's ability to bring a claim.

Assuming that DIFC or ADGM law is the applicable law in respect of limitation periods, the general position is set out below.

Under DIFC law, the position is generally as follows:

- an action for breach of contract must be commenced within six years after the cause of action accrued;
- in respect of claims in negligence, occupiers' liability or misrepresentation, a cause of action arises on the earliest date on which the claimant knows or ought reasonably to know about the loss that gives rise to the cause of action, and an action must be commenced within 15 years of the date that the cause of action in fact arose; and
- where a cause of action arises as a result of fraud by the defendant, there is no time limit before which the action must be commenced.

The ADGM Regulations adopt selected pieces of English legislation, including the English legislation relating to limitation and in particular adopts the Limitation Act 1980 and the Foreign Limitation Periods Act 1984. The position is, generally, as follows:

- an action for breach of contract must be brought within six years of the date of the breach of contract;
- an action for breach of deed must be brought within 12 years of the breach of the obligation in the deed;
- an action in tort/negligence generally, must be brought within six years from the date the damage is suffered;
- an action in negligence, and in respect of latent damage, has to be brought within the later of six years from the date the damage occurred or three years from the date on which the claimant had the requisite knowledge and the right to bring such an action; and
- an action in fraud has to be brought within six years from when the claimant discovered the fraud, or when they could, with reasonable diligence, have discovered it.

## Procedural steps and timing

The DIFC and ADGM court rules have generally similar litigation procedures. Subject to the issues in dispute, proceedings will generally go through the following stages:

- Claim: A party files its claim with the court and serves the same on the parties to the proceedings.
- Pleadings: Parties exchange their pleadings which include particularized statements of claim, defense, counterclaims and defense to counterclaims. These pleadings will identify and particularize the issues in dispute.
- Disclosure: This will begin during the pleadings phase and proceed concurrently with the remaining phases.
- Factual witnesses: Parties will exchange any statements of witnesses of fact they wish to rely on and potentially also exchange reply statements.
- Expert witnesses: Parties will exchange any statements of experts they wish to rely on and potentially also exchange reply statements.
- Trial: Parties will finally attend an oral hearing before the court to argue their respective cases. It is also at trial that the witnesses and experts of the parties will be examined and cross-examined on their evidence.

It is difficult to estimate the timeframe of proceedings in the DIFC courts, and the ADGM courts (as at the time of writing) are yet to hear cases that have been through the entirety of the litigation process (including appeals). That said, the relevant factors to be considered include:

- the complexity and number of issues in dispute;
- the availability of the parties, their respective counsel, witnesses and experts; and
- the availability of the judge(s) allocated to the case.

Legal representation in DIFC or ADGM court proceedings is not mandatory. However, in circumstances where a claim falls into a small claims category, legal representation may not be permitted by the relevant court rules.

Each of the DIFC and ADGM court rules have specific rules for when a claim is considered to fall within the jurisdiction of the small claims court or tribunal. These rules are:

- aimed at efficiently dispensing with cases and examples of this include:
  - truncated timetables for service of proceedings and pleadings;
  - no provision for a document production/disclosure process. However, orders for document production could be applied for;
  - expert evidence is not permitted without an order of the court; and
  - the ability of the parties to agree that the dispute be dealt with on the papers.
- are not solely related to value; small claims could include, for example, employment cases where the parties have agreed to refer the matter to a small claims tribunal.

It is also worth noting that each of the DIFC and ADGM rules have unique provisions and processes in respect of small claims. For example, the DIFC rules provide for:

- a conciliatory process identified as a consultation phase where the parties meet before the judge hearing their case with the aim of settling the dispute prior to a hearing on the merits; and
- hearings and consultations to be in private (unless the parties agree otherwise).

## Disclosure and discovery

In the DIFC courts, each party is required to submit to the other parties:

- all documents available to it on which it relies, including public documents and those in the public domain, except for any documents that have already been submitted by another party (but not documents which adversely affect its case or support another party's); and
- the documents which it is required to produce by any DIFC court rule.

The default position under the ADGM court rules is similar in that parties must give to all other parties standard disclosure, which includes all the documents on which a party will rely upon at trial, except for documents that have already been submitted by another party (but not documents which adversely affect its case or support another party's). This default position can vary depending on the type of proceedings, the agreement of the parties or direction from the court.

After the initial stages, the parties are then given the opportunity to provide Requests to Produce Documents to their opponent (in the DIFC) or to make an application for specific disclosure to the court (in the ADGM), in which they are required to precisely identify the documents requested and explain (among other things) why they are relevant and material to the outcome of the case (DIFC), or would assist the fair and efficient trial of the proceedings (ADGM).

In circumstances where production of documents is disputed, in both the DIFC and ADGM, applications can be made to the court to rule on whether such production should take place. The court will usually be guided by whether the document in question is relevant to the issues in dispute (and meets other requirements, such as existence and proportionality of the request). The court will then issue orders for production.

The DIFC court rules allow a DIFC court to, at any time, request a party to produce to the court and to the other parties any documents that the court considers to be relevant and material to the outcome of the case on the court's own initiative. A similar rule does not appear in the ADGM court rules. That said, an ADGM court could make such an order based on its general management powers which allows an ADGM court to make any order, give any direction or take any step it considers appropriate for the purpose of managing the proceedings and furthering the overriding objective of the ADGM court rules.

In addition, both the DIFC and ADGM court rules allow for disclosure to be ordered against non-parties to proceedings where the court is convinced that:

- the disclosure produced as a result of the order is likely to support the applicant's case, or adversely affect the case of one of the other parties to the proceedings; and
- the disclosure is necessary in order to dispose fairly of the claim.

## Default judgment

The DIFC and ADGM court rules allow a claimant to apply to obtain a default judgment where the defendant has missed the time limit to acknowledge the claim against it, or has acknowledged the claim but failed to file a defense.

Once default judgment has been granted, the defendant has no right to appeal the court's decision. However, the defendant may apply to the court to have the judgment set aside or varied. There is no specific guidance provided by the ADGM or DIFC court rules in respect of when an application to set aside or vary a default judgment should be made. However, it is likely that the DIFC and ADGM courts would apply the principles established by the courts of England and Wales. Therefore, any such application should be made promptly. The courts of England and Wales have held promptness (in the context of the applicable provisions of the English CPR) to mean acting with "all reasonable speed in the circumstances."

## Appeals

The DIFC and ADGM each have a two-tier court system: the Court of First Instance and the Court of Appeal. The respective court rules of the DIFC and ADGM have broadly similar procedures for the appeal of judgments of the lower court. In each case, before the judgments of the Court of First Instance can be appealed to the Court of Appeal, permission to appeal is required.

Obtaining permission to appeal differs slightly between the DIFC and ADGM courts:

- under the DIFC court rules, where permission to appeal is initially refused on the papers, a party may seek to renew the application at an oral hearing; and
- under the ADGM court rules, all applications for permission to appeal are considered without a hearing. In DIFC court proceedings, an application for permission to appeal may be made to:
  - the Court of First Instance at the hearing where the judgment was made; or
  - that court or the Court of Appeal in a subsequent appeal notice.

If permission is sought by way of an appeal notice, that appeal notice must be filed either within the period directed by the lower court or, if no such direction was provided, within 21 days after the date of the decision of the lower court that the appellant wishes to appeal. If the lower court refuses permission, a further application for permission can be made to the Court of Appeal within 21 days of the lower court's refusal.

In ADGM court proceedings, and similar to DIFC court proceedings, permission must be obtained from a decision of a judge in the Court of First Instance in order to appeal to the Court of Appeal. In order to obtain such permission, an application may be made to the Court of First Instance within 14 days of the date when the decision to be appealed was made. Should the Court of First Instance refuse an application for permission to appeal, a further application for permission to appeal may be made to the Court of Appeal within 28 days from the date of the refusal. All applications for permission to appeal are considered by a panel of three judges without a hearing. The panel may grant or refuse permission to advance all or any of the grounds of appeal or invite the parties to file written submissions within 14 days in relation to the grant of permission. Permission to appeal may only be granted where the panel considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.

## Interim relief proceedings

Interim relief proceedings are proceedings that relate to a party seeking orders for interim/provisional relief. Such orders are usually granted at an early stage in the proceedings, or before the merits of a dispute are examined. These are distinguished from final remedies which ordinarily form part of the final judgments or orders that dispose of a dispute. There are a wide range of these orders and they usually act to maintain the status quo between the parties. Such orders or remedies can also be stand-alone in their nature; for example, an anti-suit injunction which prevents or restricts a party's ability to commence or continue legal proceedings in a particular forum.

The ability to grant and apply for interim remedies is enshrined in the court laws and procedural rules of each of the DIFC and ADGM. At the date of writing, there have been no reported interim applications or orders in the ADGM courts. The DIFC courts, on the other hand, have either granted or heard applications for various interim remedies, including:

- freezing orders (including worldwide freezing orders) (for further details, please see 'Prejudgment attachments and freezing orders' below);
- disclosure orders;
- anti-suit injunctions; and
- interim payment orders.

Applications for interim relief are made to the DIFC court and/or ADGM Court of First Instance either on an ex parte basis (i.e. where the respondent is not present at the first hearing) or with notice. In circumstances where the application is made on an ex-parte basis, the applicant is under a duty of full and frank disclosure which in turn requires it to disclose all relevant material to the court, including material which may be adverse to its case.

Before entertaining any substantive application for interim relief, the party seeking an interim remedy from either the DIFC or ADGM courts will first need to establish that the relevant court has jurisdiction under its relevant jurisdictional laws. When deciding the substantive application, DIFC court case law illustrates that the approach in deciding the substantive elements of the application generally follows the principles for granting equitable relief in English law. The applicable tests differ depending on the relief sought. However, those elements include:

- whether there is a serious question to be tried;
- whether damages would be an adequate remedy; and
- the balance of convenience between the parties.

Orders for interim relief issued by the DIFC and/or the ADGM court are not appealable, although a party may apply to have the relevant order varied or set aside. The procedure and basis for doing so will depend on the basis on which the particular order was issued.

Given that the DIFC and ADGM are fairly young jurisdictions, it is difficult to accurately estimate the timeframe by which orders for interim relief could be obtained once applied for.

Legal representation for such applications is not mandatory. However, it is strongly recommended that legal advice is sought in respect of any application for interim relief due to the complexity of the legal issues relating to such applications.

## Prejudgment attachments and freezing orders

Freezing orders are a category of interim relief that both the DIFC and ADGM courts have the power to grant. It is also worth noting that, in the case of the DIFC courts, there are cases in which freezing orders granted in other jurisdictions have been enforced. These applications are made to the relevant Court of First Instance.

Orders can be made for the freezing of any assets (moveable and immoveable). However, the enforceability of those orders will depend on whether the jurisdiction in which they will be enforced recognizes such orders (or have the power to grant such relief). For example, the DIFC court could make an order to freeze (or otherwise attach) the shares of a limited liability company in onshore Dubai. Whether that attachment will be effective will be subject to: (i) whether the Dubai courts will recognize the DIFC court's order; and (ii) whether such a form of relief is one that is available under the laws of Dubai and the UAE (and therefore one that the Dubai courts can grant).

The DIFC court generally follows English law principles when considering applications for freezing orders. The considerations for such applications include:

- that there is a serious question to be tried;
- that the balance of convenience is in favor of granting such an order;
- that there is a likelihood of injury/damage for which damages would not be an adequate remedy;
- the applicant having an underlying cause of action, in that the applicant must have a substantive claim that may give rise to a judgment that will be enforced against the respondent's (potentially frozen) assets;
- the applicant having a good arguable case;
- the existence of the respondent's assets and such assets being sufficient to meet the applicant's substantive claim; and
- a real risk of dissipation of the respondent's assets.

Furthermore, in *ex parte* applications (i.e. where the respondent is not present at the first hearing), the applicant is under a duty of full and frank disclosure which in turn requires it to disclose all relevant material to the court, including material which may be adverse to its case.

Additionally, an applicant obtaining a freezing order from the DIFC courts is generally required to provide a cross-undertaking in damages. This would act to satisfy any damages the respondent incurs where it transpires that the application was wrongfully granted.

The ADGM courts are likely to apply a similar approach.

Both the ADGM and DIFC court rules recognize that applications for interim relief (which include freezing orders), may be made before any substantive proceedings are commenced. In that regard, both court rules provide that the court may give directions requiring a claim to be commenced. Therefore, the issuance of any substantive proceedings will be subject to the discretion of the court.

## Costs

The DIFC court rules provide the court with considerable discretion when it comes to making orders as to costs. However, the general rule is that the unsuccessful party will be responsible for settling some part of the successful party's costs, and generally, any court fees that party has incurred. The court must have regard to all the circumstances when making an order as to costs. This includes consideration of the degree of success of the cases of the parties, their conduct during the proceedings and any offers to settle. There is also potential for the DIFC court to make no order as to costs. This is usually where the DIFC court finds that the merits of each party's case are balanced.

The DIFC court will assess the amount of costs due to the successful party on either a standard or indemnity basis. Where costs are assessed on the standard basis, the court will:

- only allow costs which are proportionate to the matters in issue to be recovered; and
- resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favor of the paying party.

On the other hand, where costs are assessed on an indemnity basis, any doubt as to whether costs had been reasonably incurred or are reasonable and proportionate in amount is interpreted in favor of the successful party.

It is also worth noting that the DIFC court is empowered to issue an interim costs order in favor of a party. These costs orders will usually reflect 50% of the costs incurred by the party, or what the court believes is the minimum it will recover.

The ADGM court rules, although somewhat less extensive than the DIFC court rules on costs and their recovery, broadly follow the framework of the DIFC court rules.

Each of the DIFC and ADGM courts have fee schedules relating to court proceedings and applications that are updated on a regular basis. There are a number of fees applicable to a claim including filing fees, application fees and hearing fees.

For substantive claims, and in general, fees are calculated on claim and counterclaim values and expressed as a lump sum plus a percentage.

At the time of writing (December 2023):

- the DIFC court fees for money and/or property claims were:

CLAIM VALUE	FEE
Up to and including USD500,000	5% of the value of the claim and/or the property with a minimum of USD1,500
USD500,000-USD1 million	USD25,000 + 1% over USD500,000
USD1 million-USD5 million	USD30,000 + 0.5% over USD1 million
USD4 million-USD10 million	USD50,000 + 0.4% over USD5 million
USD10 million-USD50 million	USD70,000 + 0.15% over USD10 million
Over USD50 million	USD130,000

- the ADGM court fees for money and/or property claims were:

CLAIM VALUE	FEE
USD100,001-USD500,000	3% of the value of the claim
USD500,000-USD1 million	USD15,000 + 2%
USD1 million-USD 5 million	USD25,000 + 0.6%
USD5,000,001 - USD10 million	USD49,000 + 0.4%
USD10 million	USD69,000 + 0.15% to a maximum of USD99,000
All other claims	USD4,000

## Class actions

The DIFC and ADGM courts do not have any laws or procedures for class action proceedings. However, the DIFC and ADGM courts are empowered to make a Group Litigation Order to manage claims which give rise to common or related issues of fact or law. Such an order can also be sought by application.

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