

# An Overview of UAE court procedure

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Many potential litigants can find the UAE legal system daunting, particularly expats who are not familiar with a civil law system.

Below is an overview of UAE Court Procedure which answers some of the most common queries lawyers practicing in the UAE receive from clients.

## **How do I start a claim before the Court of First Instance?**

In order to commence a claim in the UAE, a claim will have to be filed at the relevant court (i.e. the court which has jurisdiction to hear the dispute). The claim needs to set out the basis of the dispute and the remedies sought. A court fee will also need to be paid. This is 7.5% of the value of the claim which is capped at a maximum of AED 30,000 (USD 8,000).

All of the documents filed at court and the claim itself will need to be in Arabic or translated into Arabic by an official translator.

The court bailiff's office will then serve the claim on the defendant and the first hearing date will be set. This is usually 2-3 weeks after the claim has been filed.

In the event that the defendant cannot be physically located then the Court will usually order that the claimant assist the Court with finding the address (service by way of guidance). If this is unsuccessful then the Court will usually order that investigations are carried out with various authorities to locate the defendant (such as DEWA (the Dubai Electricity and Water Authority)). If these searches also prove to be unsuccessful then the Court will usually order that service take place by way of publishing the details of the case in a local newspaper.

If a defendant ignores a claim or cannot be located it is possible to obtain a judgment in the defendant's absence.

## **What happens in the hearings?**

At the first hearing the parties' legal representatives will need to produce their powers of attorney in order to confirm that they are authorized to act on behalf of their clients. If powers of attorney cannot be provided at this hearing the court will usually adjourn the hearing to allow the parties to obtain the necessary powers of attorney.

After powers of attorney have been provided by the parties, the court will set another hearing date (again, usually 2-3 weeks later) to allow the defendant to respond to the claimant's claim. The pleadings which are filed by each party are known as memoranda.

The defendant submits its memorandum in response to the claimant's memorandum at the hearing set by the judge.

Before the UAE local courts hearings are very short and administrative in nature and are usually merely a way of allowing parties to submit written memoranda which are then addressed by the other party at the next hearing.

Each hearing is set usually 2-3 weeks apart and there can be as many hearings as a judge believes are necessary for each party to have adequately stated its position. This is unlike the position in common-law jurisdictions such as in England and Wales (and also in the DIFC Courts) which have usually one hearing after several months of preparation during which all the points are raised following detailed procedure rules which set out the court's case management powers and the means by which the court is provided with information such as by disclosure and witness statements.

### **Will an expert be appointed?**

It is very common for experts to be appointed by the UAE local courts. If the court believes there are any sufficiently technical areas in the case (e.g. if an account is required or a valuation needed) it will appoint a court expert to review the documents, meet with the parties to discuss the case and to provide a report to the court. The expert will generally be appointed from a list of court-appointed experts which is held by the Court.

As witness testimony is rarely used before the UAE Courts, expert reports are heavily relied on by judges when issuing judgments.

### **What documents will I need to disclose?**

There is no formal requirement for disclosure before the UAE courts. Parties are not obliged to submit to the court all documents which either support their case or are detrimental to their case. However since a court-appointed expert can ask to see such documents, the appointment of an expert is also a means of investigating the documents which each party to the dispute has in its possession.

### **How long will it take?**

Once the judge believes that he has sufficient information regarding the dispute he will set a date to hand down judgment. Judgment is handed down in written form (in Arabic). Some Dubai Court of Cassation Judgments are also displayed on the court website with the parties' names redacted. Lawyers and people with subscriptions to this website are able to access these judgments. Because parties' names are redacted it can be difficult to search for judgments. Judgments are categorized in relation to subject matter such as particular articles of the UAE Civil Code which they relate to. Also, the website is not always updated on a regular basis.

With regards to the Federal Courts, there is a monthly publication of Supreme Court judgments which is available to the public as well as lawyers.

There is a procedure in place for appealing judgments. Appeals against a Court of First Instance decision are to be made to the Court of Appeal within 30 days of the date of the judgment. Appeals against a Court of First Instance Judgment can be in relation to issues of fact or issues of law. Appeals against a Court of Appeal decision are to be made to the Court of Cassation within 30 days of the date of the judgment. Appeals against a Court of Appeal Judgment can only be in respect of matters of law. Permission to appeal is not required and is an automatic right (provided that the sum in dispute is over AED 20,000 in relation to the Court of Appeal and over AED 200,000 in relation to the Court of Cassation save for in cases where the sum claimed has not yet been evaluated such as a case to appoint an expert to assess the level of compensation). It is therefore very common for parties to appeal decisions as a tactical measure in order to draw out the proceedings and lengthen the time before a judgment is enforced.

Cases in which an expert is not appointed can last between 9 and 18 months before the Court of First Instance. If an expert is appointed a case can last for two years before judgment is handed down in the Court of First Instance.

## **Can I get my costs back?**

As regards costs, the Court will usually make an order for costs in favour of the winning party. However, the amounts awarded are generally fairly nominal covering only court fees paid, experts' fees and a nominal fee for advocacy. This differs from common-law jurisdictions such as in England and Wales where a successful claimant is generally awarded a substantial amount of its legal professional fees.

## **Are Without Prejudice Communications honoured?**

The principle of without prejudice communications is not recognized by the UAE courts and any documentation can be produced before the court, even if it purports to be without prejudice. Parties should bear this in mind if they are trying to settle a dispute. Having said this, many of the large international law firms and the local firms which they instruct to present cases before the courts on their behalf will honour the concept of without prejudice communications as a matter of good practice.

## **How are Money Judgments enforced?**

Money Judgments can be enforced by way of attachment applications. An attachment application is an application made to the court that the defendant's assets (such as a bank account or property) be frozen pending resolution of the dispute. Attachment applications can also be applied for before proceedings are commenced (i.e. before the claim is filed at court).

## **What forms of Interim Relief are available before the UAE Courts?**

There is no concept of interim or injunctive relief available from the UAE Courts save for an attachment of assets.

In order to obtain a precautionary attachment of assets, a claimant needs to demonstrate that on the documentary evidence available there is a valid claim and also that there is a risk that the defendant will not make payment of the sums owing or that there is a risk of dissipation of assets. The claimant also needs to be able to identify the assets which it seeks to attach or at least give the court a general indication (i.e. supply the court with a list of up to five banks if the claimant believes that the defendant has funds in a bank account but does not know which bank).

The claimant needs to provide an undertaking to the Court in respect of the attachment application to the effect that if the attachment application is found to have been incorrectly granted then the claimant will reimburse the defendant for any damages suffered. In our experience, such undertakings are never called upon, even in circumstances where grievance applications requesting that attachment orders are set aside are successful.

Precautionary attachments are heard by the court on an ex parte basis (i.e. without the defendant being made aware) and a judgment is usually handed down within 24-48 hours of an application being made.

If the application is successful and an attachment order is granted, a substantive claim will need to be filed within eight days of the order being enforced, failing which the attachment falls away.

Once an attachment order is made and enforced, the defendant may file a grievance application to seek to get the attachment order set aside.

## **Some Final Advice**

Filing the claim is the first step in what can be a long and difficult process. Those seeking to bring a

claim need to have a good understanding of the process they are embarking on, and should take good legal advice on the strength of the claim before it is filed.

Once the decision to file a claim has been made, it is vital that parties ensure that they have a power of attorney in place and that the relevant documents have been translated into Arabic by an official translator.