

How the UAE's Common Law Courts can Help Creative Industries Resolve their Disputes

Peter Smith - Senior Associate - International Litigation Group / Litigation
- Dubai International Financial Centre

Elsewhere in this magazine, we have suggested ways in which businesses can manage disputes before they reach a forum for resolution. Here, we consider specifically how the Courts of the Dubai International Financial Centre ('DIFC') and the Abu Dhabi Global Market ('ADGM') can assist creative industries with dispute resolution in cases where early settlement does not occur.

The hallmark of a creative industry is one that uses creativity and intellectual capital as key inputs in the creation of goods and services. In the UAE, creative industries such as those in digital media, technology and programming, fashion and design, include self-employed freelancers, small-to medium-sized enterprises, and regional and well-established companies.

The choice of a dispute resolution process is an important one for creative industries, whose business cycle from pitch to completion is invariably short and whose suppliers and creditors come from across the region and beyond. In response to the specific needs of flexibility and nimbleness, the DIFC and ADGM have fast-track small claims processes which allow parties to quickly resolve their disputes in a cost-effective manner, producing judgments and orders that should be portable and easily enforced.

How to Access the DIFC and ADGM Courts

As international financial free zones, the DIFC and ADGM allow for the establishment of several different forms of corporation. Absent any express opt-out from the jurisdiction in a particular agreement, the default position is that the Courts have exclusive jurisdiction to hear disputes relating to those DIFC/ADGM registered entities, whether they are claimant or defendant. Amongst other rules, Article 5 of the DIFC's Judicial Authority Law (Dubai Law no.12 of 2004 as amended) also grants the DIFC Courts jurisdiction over commercial and civil disputes relating to DIFC-registered companies and disputes relating to or arising out of contracts or promised contracts, whether partly or wholly concluded, finalised or performed within the DIFC, or contracts that will be performed or are supposed to be performed within the DIFC pursuant to express or implied terms stipulated in the agreement. Section 16 of the ADGM Courts Regulations read with Article 13 of the ADGM Founding Law (Abu Dhabi Law no.4 of 2013) contains a similar provision in respect of the ADGM Courts' jurisdiction.

What of businesses established elsewhere in the UAE, outside of these two free zones? Some freelancers, for instance, choose to incept their business in free zones such as the Ras Al Khaimah Economic Zone ('RAKEZ'), which offers visa sponsorship and access to shared working space as well as company formation. As a general rule, no matter where a creative business is established, it can opt into the jurisdiction of the DIFC or ADGM Courts for resolution of its disputes in a broad range of civil and commercial matters.

Disputes relating to an invoice or a set of standard terms and conditions may contain an exclusive jurisdiction clause in favour of either (but not both) Courts, providing protection in case the counterparty seeks to challenge the Courts' jurisdiction once the litigation has begun.

Employers and employees should note that it is not possible to opt into the jurisdiction of the ADGM or DIFC Courts for the resolution of disputes relating to employment contracts where, but for the jurisdiction

term opting in, the performance of the contract and other aspects of the relationship and the agreement do not bring the contract within the Courts' jurisdiction.

Parties also have freedom to choose the law which will govern their contracts, and which will therefore be the substantive law governing the adjudication of any dispute between those parties. Both the DIFC and ADGM Courts have judges experienced in handling foreign laws (i.e. laws other than DIFC law or English law as applied in the ADGM), although it is very unusual to find small claims litigation in agreements governed other than by DIFC, English or UAE law.

What the DIFC and ADGM Courts can Offer

Both the DIFC and ADGM have a specialist process for claims which are smaller in value, on the presumption that they are simpler to deal with and are more likely to be resolved early. The ADGM's Small Claims Division ('SCD') has a cap of US\$100,000 and the DIFC's Small Claims Tribunal ('SCT') a cap of AED 500,000 (unless the parties elect to proceed in the SCT, in which case the cap is AED 1,000,000). The SCT also covers employment claims in the DIFC, whereas the ADGM has a separate division for employment disputes.

Both the SCD and SCT have truncated procedures for the exchange of evidence and the listing of an expedited hearing date. The SCT diverges much more from the DIFC Courts' standard timetable than the SCD does from the ADGM Courts' Court of First Instance ('CFI').

By way of example, a SCT claim form will be served on the defendant by the SCT Registry once filed. The defendant will have only seven days in which to file a response to the claim (failing which the claimant can re-serve the claim and, if no acknowledgment of service is filed by the defendant, seek a default order). If the defendant responds, the parties appear before the SCT for a consultation hearing where the SCT judge hears both sides' arguments and attempts to settle the dispute. If the dispute does not settle, a further hearing is listed at which the judge conducts a mini-trial. If the claim is successful, a judgment is issued by the tribunal. Appeals lie to the respective CFI in both cases. The whole small claims dispute resolution process should only take a few months, considerably less than a full dispute in the CFI.

Why Creative Industries should Consider Opting into the SCD or SCT Jurisdictions

The first reason is cost. Both mechanisms are cheaper than normal litigation: the court fees are generally less, and because of the expedited processes, the costs of litigating ought to be significantly lower. For money claims, the fees for the SCD are set at 1.5 percent of the value of a money claim, with a minimum of US\$250 and a maximum of US\$1,500. In the SCT, it is five percent of the value of the claim with a minimum fee of US\$100 and no maximum. In the SCT, the default position is that parties cannot be represented by external lawyers unless the tribunal gives permission (companies are usually represented by directors or employees) and that the costs of litigating are not recoverable from the losing party unless it is 'appropriate' for the loser to pay part or all of the SCT's fees, and further costs may be awarded if a party has 'behaved unreasonably'. In the SCD, the costs of legal representatives are capped according to a sliding scale depending on the value of a claim and when it is disposed of. The maximum recoverable costs are, for small claims between US\$50,000 and US\$100,000, US\$5,325 for the winner at trial (whether claimant or defendant), with smaller further sums awardable if the claim has been served by an alternative method, outside the Emirate of Abu Dhabi, or outside the UAE. In both cases, sliding scales provide for rebates of court fees if disputes settle early.

Secondly, both the SCD and SCT produce orders and judgments which are readily enforceable by those courts or by other courts, for instance by compelling banks to transfer funds or ordering bailiffs to seize property for sale. In cases where the losing party under a SCT or SCD order has assets in the appropriate free zone, the courts will take the judgment or order to the relevant authority and request enforcement. If the parties have opted into the SCT's jurisdiction or assets are held outside the DIFC, the DIFC Courts will assist the winning party to enforce in the jurisdiction(s) where those assets are held, including in other

Emirates. A judgment creditor may seek the enforcement of a SCD judgment by the Abu Dhabi Judicial Department where the subject of enforcement is situated outside the ADGM. In all cases, enforcement outside the free zone can be done under UAE Federal law either directly or indirectly via the 'deputisation' process, as appropriate. It is unlikely that small claims' judgments would be of sufficient value to make international enforcement a viable alternative, but if parties anticipate that this step may be necessary, they should seek legal advice in advance.

Thirdly, because of their expedited timetables and simpler evidence processes, the SCT and SCD are more user-friendly. Hearings and documents are all in English. The emphasis is on substance over form, with considerably fewer technical issues such as arguments about timetabling, expert evidence or disclosure. The hearings of the SCT are certainly more informal than proceedings before the CFI. They are also speedier: the SCT procedure anticipates that the consecutive steps of: (a) the defendant responding to the claim form following service; (b) the listing of the consultation hearing following the defendant's acknowledgment; and (c) the listing of the mini-trial hearing following the consultation hearing, should each take place within a period of seven days. Both sets of courts are also very flexible in the ways in which parties engage with the dispute resolution process. Hearing rooms have state-of-the-art digital technology, allowing parties to appear remotely by video telephone; documents are filed and served online; and paperless hearing bundles are being implemented. The processes also have varying degrees of confidentiality which are not normally applied in the CFIs. In the SCT, judgments and orders are usually publicly available but published with identifying details removed and the parties' names replaced with pseudonyms. SCD judgments are not published.

Conclusion

For many creative industries, the small claims processes will be the most suitable form of dispute resolution for the reasons set out above. However, litigation is not the only route available. Both the ADGM and the DIFC offer alternative dispute resolution ('ADR'). In the DIFC's case, ADR is built into the SCT process at the mandatory consultation hearing prior to the mini-trial, and a provision for court-ordered ADR including mediation and conciliation exists for proceedings in the DIFC CFI. In 2019, the ADGM Courts plan to introduce a court-annexed mediation service to promote mediation in Abu Dhabi and beyond. Furthermore, parties may wish to have a flexible and confidential dispute resolution process whose final decision is widely enforceable but anticipate that the value of any dispute would be higher than the caps on the small claims' processes. In those cases, they should consider opting for arbitration. The DIFC Courts are the default seat for arbitrations governed by the DIFC-LCIA and DIAC institutional rules, and the ADGM is the default seat for many ICC arbitrations.

In all, the ADGM and DIFC's common law courts have plenty to offer creative industries based across the UAE in planning and preparing in case they fall into dispute.

Al Tamimi & Company's [DIFC Litigation team](#) regularly advises on commercial & civil disputes and has given free training to businesses at Dubai Design District (d3) and at In5 Media, Dubai Production City. For further information please contact [Rita Jaballah \(r.jaballah@tamimi.com\)](mailto:r.jaballah@tamimi.com) or [Peter Smith \(p.smith@tamimi.com\)](mailto:p.smith@tamimi.com)