
THE DISPUTE RESOLUTION REVIEW

EIGHTH EDITION

EDITOR
JONATHAN COTTON

LAW BUSINESS RESEARCH

THE DISPUTE RESOLUTION REVIEW

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Eighth Edition

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EDITOR'S PREFACE

The Dispute Resolution Review provides an indispensable overview of the civil court systems of 45 jurisdictions. In a world where commercial disputes frequently cross international boundaries, it is inevitable that clients and practitioners across the globe will need to look for guidance beyond their home jurisdictions. *The Dispute Resolution Review* offers the first helping hand in navigating what can sometimes, at first sight, be an unknown and confusing landscape, but which on closer inspection often deals with familiar problems and adopts similar solutions to the courts closer to home.

This eighth edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward looking and the contributors offer their views on the likely future developments in each jurisdiction.

Collectively, the chapters illustrate the continually evolving legal landscape, responsive to both global and local developments. For instance, over the past year the EU has adopted a new regulation on jurisdiction which fortifies the freedom of parties of any nationality to choose to litigate in their preferred forum and grants Member State courts discretion to stay proceedings in favour of proceedings already on foot in non-Member State courts. At the other end of the spectrum, 2015 saw the Supreme Court in the United Kingdom clarify the law on penalty clauses 101 years after the seminal House of Lords' case on this issue (see the review of *ParkingEye Ltd v. Beavis* and *Cavendish Square Holding BV v. El Makdessi* [2015] UKSC 67 at page 181). But even seemingly local decisions such as this have a broad audience and can have far-reaching consequences in global commerce. It is always a pleasure – and instructive for my own practice – to observe the different ways in which jurisdictions across the globe tackle common problems – sometimes through concerted action under an umbrella international organisation and sometimes individually by adopting very different, but often equally effective, local solutions.

Over the lifetime of this review the world has plunged into deep recession and seen green shoots of recovery emerge as some economies begin to prosper again, albeit

uncertainly. One notable development over the course of 2015 has been the sharp and sustained fall in the oil price (along with commodities more generally). This has had, and will continue to have, far-reaching economic and geo-political effects which may take some time to manifest themselves fully. As many practitioners will recognise from previous global shocks, these pressures typically manifest themselves in an increased number of disputes; whether that is joint venture partners choosing to fight over the diminishing pot of profits, customers seeking to exit what have become hugely expensive long-term contracts, struggling states renegotiating or exiting their contracts (or simply expropriating commercial assets) or insolvency-related disputes as once-rich parties struggle to meet their obligations. The current economic climate and short to medium term outlook suggests that dispute resolution lawyers operating in at least the energy and commodities sectors will continue to be busy and tasked with resolving challenging multi-jurisdictional disputes for years to come.

Finally, I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at page 747 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

Jonathan Cotton
Slaughter and May
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Chapter 43

UNITED ARAB EMIRATES

D K Singh and Bushra Ahmed¹

I INTRODUCTION TO THE DISPUTE RESOLUTION FRAMEWORK

The United Arab Emirates (UAE) is a federation of seven emirates consisting of Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain. There is an unusual level of complexity in relation to governance both at federal and emirate level with each of the emirates enjoying a certain degree of economic and judicial autonomy. The complex interplay of laws and judicial processes in the UAE arises out of a Federal Constitution, which came into force in 1971. Each of the emirates within the UAE, upon entering into the Constitution, ceded certain elements of their sovereignty to the federation and retained some elements for themselves. The outcome is that the federation exercises executive and legislative jurisdiction in certain defined matters. Where matters have not been assigned specifically to the exclusive jurisdiction of the federation, they remain vested with each emirate.

Dubai and Ras Al Khaimah maintain their own independent court structure and are not subject to the UAE Federal Judicial Authority; they are nevertheless bound by federal law and apply it in conjunction with any locally enacted laws and decrees. There are three main branches within the court structure of the UAE: civil, criminal and shariah law. The legal system is based on civil law principles and Islamic shariah law; the legislation is primarily sourced from federal codes, local laws, decrees, resolutions and cabinet decisions.

As a result the legal system in the UAE is complex, because each emirate has its own legislature and court structure in place, as well as a federal system of laws and a federal judiciary to hear and determine federal legal issues. A further complicating factor is that the UAE federal courts are also the courts with final appellate jurisdiction for the majority of the emirates. There are tangible differences in procedure and law at regional

¹ D K Singh is a partner and Bushra Ahmed is head of dispute resolution at KBH Kaanuun.

level, which are unfamiliar and frequently challenging to lawyers trained in the common law systems. On the whole only Emiratis are granted rights of audience before the UAE courts; a very limited number of foreign Arabic-speaking lawyers have over the course of many years of practice in the UAE also earned rights of audience. The vast majority of lawyers of other nationalities are registered with the Legal Affairs Department and are permitted to provide legal advice to clients, however they are required to appoint a local advocate to conduct UAE court proceedings.

In addition to the civil law structure most emirates have enacted various laws for the establishment of free zones, which have been given different levels of operational autonomy. There are many commonly used free zones within the UAE, which are designed to satisfy niche business purposes, such as the Jebel Ali Free Zone, the Dubai International Financial Centre (DIFC) or the Dubai Media City. They offer very attractive business opportunities for investors; for instance, 100 per cent foreign ownership, 100 per cent repatriation of profits to the home jurisdiction of the company concerned, relatively low incorporation costs and minimal or non-existent taxation on income.

The DIFC is an internationally recognised free zone in the UAE and has established itself as the premier financial centre in the GCC region. It has its own independent English-speaking court system based on common law principles. It boasts a full set of laws, regulations and court procedures largely based on English law and the relationship between the DIFC courts and the Dubai courts is the subject of a memorandum of understanding between the courts. A protocol with regard to jurisdiction has also been put in place to avoid conflicts between the courts and this has largely been working very efficiently. Issues of reciprocal enforcement of court orders are also regulated and this has further enhanced the reputation and effectiveness of both the Dubai courts and the DIFC courts.

Abu Dhabi has its own court system, however appeals go directly to the Union Supreme Court (USC) if permitted. The courts of Dubai (civil) on the other hand are independent, with the final stage of appeal the Dubai Court of Cassation. It is rare for the USC to accept appeals arising from the Dubai courts and they are usually only permitted in exceptional circumstances.

The DIFC courts sit completely independently from the civil courts and the USC will only ever review a decision of the DIFC courts if there is a conflict with another court of the UAE relating to the extent of their jurisdiction.

II THE YEAR IN REVIEW

For the purposes of this chapter, the focus will be on the DIFC courts. This year has seen the delivery of a number of interesting judgments from the DIFC courts, both at first instance and the Court of Appeal. Particularly noteworthy was the quantum determination in the DIFC courts case *Rafed Abdel Mohsen Bader Al Khorafi & 2 Ors v. Bank Sarasin-Alpen (ME) Ltd & Bank Sarasin & Co Limited*. In brief, the claimants had succeeded in their claim against the defendants who were found to have breached the DIFC Regulatory Law causing the claimants significant losses. The case was filed in 2009 and after a lengthy process, including two separate appeals to the Court of Appeal on interlocutory issues, and a two-week trial in May 2013, judgment was handed down in August 2014 in favour of the claimants. The quantum determination handed

down in October 2015, awarded for the first time ever punitive damages, to take into account the first defendant's conduct. The case represents a landmark judgment of the DIFC courts in relation to the mis-selling of financial services products by a financial institution both within and outside the DIFC, and will have international ramifications. The appeal in respect of the substantive decision has now been heard at a two-week hearing in September 2015. An application for permission to appeal in respect of the quantum determination is awaiting the decision of the Court of Appeal.

Another decision that will have equally important ramifications in the fields of real estate and construction is the judgment in the consolidated cases of *Amit Dattani & Another v. Damac Park Towers Limited* and *Masood Rahman & Another v. Damac Park Towers Company Limited*. The matter has finally reached a conclusion after nearly three years of litigation when the Court of Appeal handed down its judgment in November 2015. The matter will undoubtedly have significant implications for both investors and property developers in the DIFC, not only in terms of establishing the legal position, but also in terms of investor confidence.

The claimants in these consolidated proceedings entered into sale and purchase agreements (SPAs) for the purchase of residential and retail units in the Park Towers development in 2004. Following significant delays by the defendant, the claimants served notices to remedy in the third quarter of 2011. Shortly thereafter the defendant issued handover notices, but upon inspection of the units it was the claimants' case that the units were not ready for possession and occupation, not least because the common areas, including passage to units themselves, were unsafe for use. Accordingly the claimants served notices of termination of the SPAs. The following were the key issues before the court:

- a* whether the claimants were entitled to terminate the SPAs;
- b* whether the completion certificate was final or provisional pending specified works to be done;
- c* whether having access to part of the plot and commencing construction constitutes plot handover and thereby establishes the date from which the anticipated completion date is calculated;
- d* whether the defendant prematurely issued the handover notices; and
- e* if the defendant knowingly issued the handover notices prematurely to avoid the termination notices, whether it would be appropriate for the court to award an increase in damages under Article 40(2) of DIFC Law No. 7 of 2005 (punitive damages).

The judge at first instance found in favour of the claimants in both sets of proceedings; and the Court of Appeal dismissed the appeals by the defendant and ordered them to pay costs. These cases are also interesting as they are the first DIFC court proceedings to be consolidated on the basis that the facts in each case were substantially similar.

On another level, the DIFC courts continue to enhance their processes and procedures. In 2015 the courts issued new Registrar and Practice Directions, offering practitioners guidance for the consolidation of cases, costs, wasted costs orders, the confidentiality of mediation proceedings, the requirement to specify in a claim and the particulars of a claim the laws governing the dispute, the basis upon which the DIFC

courts have jurisdiction and most importantly for clients the implementation of a new court fee structure, which is significantly higher than before making it incumbent for claimants to evaluate their claims with more precision.

III COURT PROCEDURE

i Overview of court procedure

The judicial system outside of the DIFC is essentially inquisitorial in nature and is heard at first instance by a single judge. As in other civil law jurisdictions there is no concept of a jury trial. The court procedure in the federal courts is governed by UAE Federal Law No. 11 of 1992 as amended (the Code). In reaching a decision, the judge will place little or no reliance on precedents but will investigate the facts and apply the law accordingly; often judges will rely heavily on expert witnesses in reaching their judgments.

In the DIFC the court procedure can be found in the Rules of the DIFC Court (RDC), which, on the whole, are very similar to the English Civil Procedure Rules (CPR); pre-Jackson reforms and the recent changes implemented in CPR have been slow to find their way to the RDC. In addition, the RDC has incorporated certain provisions of court procedure from other common law jurisdictions.

ii Procedures and time frames

All proceedings in UAE civil matters are based upon the written pleadings of the parties supported by the documentary evidence. Witnesses and experts are not required to give oral evidence at a trial. There is no standard disclosure and inspection process under the UAE civil procedure. A party is therefore only required to produce the written evidence it seeks to rely on. However, there is scope under the UAE Law of Evidence for a party to apply for disclosure of specific documents in the other party's possession in certain limited circumstances. Expert evidence is also not usually exchanged in UAE court proceedings. Instead either party may request that the court appoint an expert from a list of experts maintained by the court, or the court may do so of its own volition.

The DIFC courts utilise both written and oral advocacy submissions. The DIFC courts proactively manage the conduct of the case and have extensive powers in penalising the defaulting parties for delays. The case management conference is an important procedural step which sets out the time frame for conduct of the case, the relevance of experts, the nature of the disclosure process, among other things. Parties in complex cases are entitled to adduce evidence from experts. If either party feels that expert evidence is required, an application for permission to adduce expert evidence can be made, usually at the case management conference. Experts are usually appointed by the parties, although an expert's overriding duty is to assist the court and not to the appointing party.

The limitation period to bring civil claims in the DIFC is generally six years for contract claims; employment contract claims must be brought within one year.

The time limits to bring civil claims under UAE law vary. Generally the limitation period is 15 years for a contractual claim, three years for a tort claim and one year for employment claims. To commence proceedings a claimant is required to file a claim in the relevant court office and pay the applicable fee. Depending on the type of claim, or

the nature of any application, deadlines for the filing of documents and hearing dates can vary. The procedural timetable is flexible to accommodate the complexity of the issues in a case; it also depends on the number of hearings required to address the pleaded issues in the case.

iii Class actions

There are no specific provisions in the Civil Procedure Law in relation to class actions to be pursued in Dubai courts. The RDC, on the other hand, does make provision for what is known as a group litigation order. The Chief Justice will consider the similarities of fact and law between two or more cases when deciding whether to make such an order. If such an order is made, the court has a wide discretion as to how the matters are to be dealt with. The rules envisage that a register will be maintained by the DIFC courts and that a 'test' case can be run to trial, following which all facts and findings from the case will be equally applicable to those cases that have been accepted on the Group Litigation Register. As stated above, the cases of *Amit Dattani & Another v. Damac Park Towers Limited* and *Masood Rahman & Another v. Damac Park Towers Company Limited* were the first cases to be consolidated and tried together.

iv Representation in proceedings

Parties to litigation proceedings in the UAE may appoint a local advocate who has rights of representation and audience; the courts will require an attested power of attorney to accept submissions from the local advocate on behalf of their clients. Generally only Emiratis may represent a party in the UAE courts. A party may also appear in person, using a translator if necessary.

Lawyers or counsel from other jurisdictions and particularly from common law jurisdictions are able to conduct and appear in proceedings in the DIFC courts. Litigants in person are also permitted to appear, although there are special requirements for a company appearing in person. The DIFC courts have also pioneered a *pro bono* scheme to encourage access to justice. A number of free legal sessions are held throughout the year where participating firms provide free legal advice in short interviews. A party seeking *pro bono* representation in the DIFC courts must file an application with the registry. Those that are accepted are allocated to one of the participating firms in the *pro bono* scheme.

v Service out of the jurisdiction

Service of UAE process must generally be served through diplomatic channels. This can be extremely time-consuming.

The RDC, in acknowledgment of the international nature of the DIFC, provide that no special permission is required to serve DIFC court documents out of the jurisdiction, provided that service is effected in accordance with the law in the place of intended service.

vi Enforcement of foreign judgments

The UAE is a signatory to the New York Convention. It has also signed a number of bilateral treaties with other countries, such as India, and others in the GCC, and

therefore the UAE courts are bound to ratify and enforce certain foreign arbitral awards and judgments, provided these meet the specified criteria in the Convention or the treaties. However, there have been isolated cases where this has not been implemented and foreign judgments have not been ratified; in particular, where the foreign judgment is at odds with the local laws or policy decisions. This area of law is developing fast and the legal position on such matters is expected to be clarified in the near future, with new legislation under discussion.

The DIFC courts have a number of reciprocal enforcement agreements with various leading courts around the world, such as the High Court of London, New South Wales Court and the Commercial Court of Singapore.

vii Assistance to foreign courts

As part of the reciprocal enforcement agreements the DIFC courts have also entered into cooperation agreements with the same courts and there are more such agreements expected as the DIFC courts continue to strengthen their links across the world. There are provisions within the RDC for providing assistance to foreign courts; for example, in taking evidence on oath.

viii Access to court files

Access to DIFC court files is governed by Part 6 of the RDC. With the exception of insolvency proceedings, parties who are not party to proceedings may only obtain from the court record the statements of case (but not attachments) and judgments, which are in any event made available to the public through the DIFC court's website.

Only the parties and their lawyers are entitled to access the court file in the UAE federal courts.

ix Litigation funding

In the wake of *Rafed Abdel Mohsen Bader Al Khorafi & 2 Ors v. Bank Sarasin-Alpen (ME) Ltd & Bank Sarasin & Co Limited*, where the claimants entered into a conditional fee agreement with their lawyers and into a third-party litigation funding agreement, many DIFC firms now operate under conditional fee agreements with their clients, and, rather encouragingly for the legal community in the DIFC, there has been a steady increase in the number of claims being funded by third parties. This difference is primarily due to the nature and amount of potential costs that can be recovered in the common law system.

Litigation funding is not a common practice in either court or arbitration proceedings in the UAE, although the law does not specifically preclude it. Most recently, however, an increasing number of law firms are prepared to fund part of their clients' proceedings in exchange for an increase in their fees or a share of the recovery in the event of a successful outcome. Third-party funding remains unlikely in the federal courts because there is minimal recovery of costs from the losing party and therefore the practice becomes commercially unviable.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Although Dubai lawyers are required to be registered with the Dubai Ruler's Court, there was little supervision of the legal profession beyond that requirement until this year, when the Dubai Legal Affairs Department introduced a mandatory Code of Conduct, which all lawyers practising in the UAE must follow. Lawyers are also required to attend mandatory CPD courses.

The management of conflicts of interest, both ethically and practically, will remain, as in other jurisdictions, largely a matter for individual firms. Lawyers practising in the DIFC are additionally required to be registered with the DIFC courts to be eligible to conduct litigation in the DIFC.

The DIFC courts also have a new mandatory code of conduct, which came into force in September 2014, and which all practitioners in the DIFC must abide by. The new code of conduct deals very broadly, *inter alia*, with conflicts of interest.

ii Money laundering, proceeds of crime and funds related to terrorism

This is an issue that has gained significant importance over the last year, in particular because of the increased scrutiny from the authorities. The UAE statutory provisions prohibiting money laundering are contained in UAE Federal Law No. 4 of 2002, Regarding the Criminalisation of Money Laundering in the UAE, and in Federal Law No. 1 of 2004 on Combating Terrorism. Within the UAE, the Central Bank is the competent body to receive and investigate activity reports concerning suspicious financial activity. Any financial proceeds from the following are criminalised under anti-money laundering (AML) legislation in the UAE:

- a* narcotics and psychotropic substances;
- b* kidnapping, piracy and terrorism;
- c* offences violating the environmental law;
- d* illicit dealing in firearms and ammunition;
- e* bribery, embezzlement and misuse of public funds;
- f* fraud, breach of trust and related offences; and
- g* any other related offences specified in international agreements to which the UAE is a party.

Sanctions for breach of AML legislation include:

- a* imprisonment for up to seven years;
- b* fines up to 300,000 dirhams;
- c* confiscation of the proceeds (or the equivalent thereof); and
- d* criminal liability of financial institutions.

Within the DIFC, authorised firms and ancillary service providers (such as law firms) are governed by the Anti-Money Laundering Module and the DFSA Rulebook, and are subject to strict requirements to undertake due diligence to identify their clients and to report suspicious money transactions. Firms licensed by the DFSA are required to implement adequate policies, procedures, systems and controls to prevent money

laundering and terrorism financing. Law firms in the DIFC are subject to annual audits regarding their compliance with these AML obligations. These requirements are consistent with international standards, including those of the Financial Action Task Force.

While the DIFC has its own AML regulations, as promulgated by the DFSA, UAE AML legislation still applies, with criminal sanctions for breach of the UAE AML laws.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

The rules governing privilege in the DIFC are contained in Part 28 of the RDC. Part 28.16 of the RDC, read with Part 28.42 of the RDC entitles a party to object to producing documents that are subject to legal impediment or privilege under the legal or ethical rules determined by the court to be applicable.

Part 28.50 of the RDC states that where a party inadvertently allows a privileged document to be inspected, the party who has inspected the document may use it or its contents only with the permission of the court.

Because the DIFC courts are common law courts operating according to their own set of procedural rules, which are broadly based on the CPR of the English courts, only in the event that the RDC fails to provide a more appropriate legal basis for privilege may the DIFC court rely upon English legal principles to do so. Therefore, all lawyers, both local and foreign, who practise within the DIFC are bound by these principles regardless of the laws pertaining to privilege in their home jurisdictions.

The English law principles of privilege can be broken down into two parts: those of litigious or dispute resolution-related privilege and those of legal advice privilege.

Litigious privilege relates to the principle that all confidential communications between a lawyer and anyone else that are for the sole or dominant purpose of obtaining or providing legal advice or evidence for use in existing or foreseeable litigation or which are aimed at the settlement of a dispute must be kept private and confidential unless it is absolutely necessary to do otherwise. In practice, although it is not completely necessary, all communications that are a genuine attempt at the settlement of a dispute should be articulated to be ‘without prejudice’ for the legal privilege to apply.

Similarly, the privilege associated with the giving of legal advice ensures that all confidential communications between a lawyer, both in-house and otherwise, and its client, for the specific purpose of obtaining or providing legal advice, must be protected and should only be released outside that lawyer–client relationship to the extent that it is deemed to be in the best interests of society to do so.

ii Production of documents

A party to proceedings in the UAE courts may produce whatever documents it seeks to rely on, and is not obliged to produce any documents that do not support its case.

This is in contrast to the position in the DIFC courts. The RDC defines ‘document’ as anything in which information of any description is recorded, including electronic documents, such as email and other electronic communications, word-processed

documents and databases. In addition to documents that are readily accessible from computer systems and other electronic devices and media, the definition covers those documents that are stored on servers and backup systems and electronic documents that have been ‘deleted’ as well any additional information stored and associated with electronic documents known as metadata.

Unlike some other jurisdictions where a party is required to submit all relevant documentation, in the DIFC courts a party is only 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.

Notwithstanding the above, Part 28 of the RDC entitles a party to submit a request to the other party to produce documents. In the event of a dispute, the court will ultimately rule on an interlocutory basis as to what documents are required to be produced. A failure to adhere to a court order for production of documents can result in an adverse inference being made by the trial judge. The position in the DIFC courts is said to combine elements of both the civil law UAE court practice and the rules of disclosure familiar in the common law system.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

Alternatives to litigation are becoming increasingly viable options within the UAE. Parties to disputes in the Dubai courts, for example, are encouraged to explore settlement procedures in the Centre for Settlement of Disputes through Conciliation prior to commencing litigation. This forum is overseen by experienced judges, and early anecdotal evidence suggests that this is an effective means for parties to resolve issues amicably.

ii Arbitration

Outside the courts, arbitration remains the most popular method of dispute resolution in the UAE, particularly for construction and property-related cases. Dubai has two arbitration centres – the Dubai International Arbitration Centre and the DIFC LCIA Arbitration Centre. Abu Dhabi has its own centre, which is the Abu Dhabi Commercial Conciliation and Arbitration Centre.

Arbitration in the UAE is presently governed by the Civil Procedure Code, and the supervising courts are the relevant local courts in each emirate. The Civil Procedure Code is not comprehensive when it comes to arbitration, containing only a few relevant provisions.

A game-changing development has taken place when the DIFC Court of Appeal handed down its judgment in CA 005/2014 *Meydan Group LLC v. Banyan Tree Corporate Pte Ltd*, the DIFC Court of Appeal determined that the DIFC courts have jurisdiction to recognise and enforce a domestic arbitration award made within the Emirate of Dubai but outside the DIFC.

This effectively allows a party to circumvent the convoluted and highly technical ratification process in the local Dubai courts (which is not governed by a comprehensive

arbitration law) and opt for a ratification in the DIFC, which can be completed relatively swiftly and which is governed by the DIFC Arbitration Law, thus making possible challenges in the ratification process extremely limited.

Despite its popularity, arbitration in the UAE presents significant challenges, which are in large part due to the lack of a specific arbitration law. This frequently causes problems at the ratification and enforcement stages of proceedings, where parties almost invariably challenge and courts frequently disallow ratification of awards on highly technical grounds, although courts are not permitted to go behind the merits of an award. Coupled with an automatic right to appeal, this makes the ratification and enforcement stage of a dispute time-consuming and unpredictable.

A draft arbitration law, which is expected to resolve some of these challenges, has been circulated for comment. As yet, however, there has been no indication of when such a law might come into effect.

The DIFC, however, has promulgated the Arbitration Law, being Law No. 1 of 2008. The supervisory jurisdiction of the DIFC courts will extend to arbitration being conducted within the DIFC, or where the seat of the arbitration is deemed to be in the DIFC. In practice, it is likely that most arbitration procedures, which are governed by the DIFC LCIA Arbitration Rules (the DIFC LCIA Rules), are likely to have DIFC courts exercising a supervisory role. Further, under the DIFC LCIA Rules, and also under Law No. 1 of 2008, the DIFC courts can grant interim relief in and of arbitration being conducted within the DIFC.

The advantages of DIFC LCIA arbitration is that the ratification process is conducted in the DIFC courts, which is much quicker and whose outcome is much more predictable.

iii Mediation

Mediation is a less common in the UAE, and there is no specific law in place to supervise this more informal type of dispute resolution. The DIFC LCIA does have a framework of rules to conduct mediation and can act as an appointing body if parties wish to pursue this option.

The DIFC courts often encourage parties to seek amicable resolution by reconciliation and this has led to *ad hoc* mediation being conducted to enforce a settlement. Litigants have yet to be convinced about the efficiency of such a process and are often reluctant to engage with this alternative method.

iv Other forms of alternative dispute resolution

Within the DIFC, the RDC allow parties to proceedings to agree to participate in what is known as justice by reconciliation. Litigants can seek an order for justice by reconciliation at any stage after a claim has been filed, and are free to appoint their own independent adjudicator and to select their own procedural framework. This allows for greater informality of proceedings, which in some cases can be an advantage over traditional court proceedings. Typically, parties to justice by reconciliation opt for a model similar to mediation.

VII OUTLOOK AND CONCLUSIONS

The UAE legal system is unique to the extent that it allows for two contrasting judicial systems to coexist within the same jurisdiction. After amendments to the laws, it is now possible for parties to 'opt in' to the DIFC courts' jurisdiction for adjudication of their disputes. This represents a significant and positive development for foreign investors who are more familiar with the common law system and who can have their disputes determined in English, which is frequently the language used for contracts and for business generally.

Despite being relatively new, in particular relative to much of the rest of the world, the UAE legal system continues to evolve at a frantic speed to the extent that it has already caught up with international best legal practice, while retaining a distinctive Middle Eastern influence. The large contingent of foreign lawyers has undoubtedly accelerated the speed at which the UAE legal system is evolving.

The overall outlook, both economic and regarding the development of the legal system is very positive. It is expected that as more contracting parties use the 'opt-in' provision to adjudicate their disputes in the DIFC, and the number of cases coming to DIFC courts increases, the development of local jurisprudence will acquire depth and maturity.

Following the severe property downturn in the UAE in 2008 and 2009, the Dubai government took steps through a number of legislative measures to promote stability and growth in the property market and to prevent such devastation in the future. One such measure was the increase of the property registration fee from 2 per cent to 4 per cent and the UAE Central Bank has also introduced a minimum requirement for mortgages to be provided at a maximum loan to value ratio of 75 per cent (therefore a minimum down-payment on properties of 25 per cent). It is hoped that this will curb the 'flipping' of properties, a practice widely considered to have contributed to previous instability and sudden price increases. This will potentially reduce the number of disputes coming to court in the future.

New laws that will strengthen investor protection, with provisions aimed at limiting fast resale of property, setting thresholds for premiums and reducing developers' reliance on off-plan sales to fund construction, are still awaiting implementation, however the continued low oil prices has taken the pressure off the property market, which appeared to be heading for another over-heating in 2015. Investors, legal commentators and policymakers will no doubt continue to monitor developments.

Appendix 1

ABOUT THE AUTHORS

D K SINGH

KBH Kaanuun

D K Singh is a dual-qualified lawyer with over 20 years' experience of and permission to work in three jurisdictions, the United Arab Emirates, India and the United Kingdom. He is the managing partner of KBH Kaanuun and his expertise covers mainstream company, commercial and financial services work. He has brought a wealth of experience to KBH Kaanuun, particularly in the areas of property, financial services, employment and the energy sector.

Mr Singh is also an experienced arbitration lawyer and assists clients in international arbitration proceedings. For three years running he has been listed as a leading individual by *Chambers Asia-Pacific* for his dispute resolution work and is also listed as a leading individual for developing the Indian practice of a UK-based firm. Mr Singh continues to be ranked in leading directories.

BUSHRA AHMED

KBH Kaanuun

Bushra Ahmed was called to the Bar of England and Wales in 2001. Prior to her move to KBH in January 2013, Bushra was practising as a barrister in the field of commercial litigation at Ely Place Chambers, London and regularly appeared in the High Court, County Court and employment tribunals.

Since joining KBH, Bushra not only advises on a wide range of commercial disputes but has appeared extensively in the DIFC Courts as counsel, providing the advocacy in nearly all the matters that KBH has been instructed in. Bushra is also instructed as counsel in DIAC arbitrations and by third parties instructing solicitors as counsel.

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