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**Al-Ghazzawi Professional Association**

In association with Herbert Smith LLP

Herbert Smith

# Guide to dispute resolution in the Middle East

2010/2011

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# Introduction

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This is the first edition of the Herbert Smith Guide to dispute resolution in the Middle East. The guide is intended to provide a concise, accessible overview of the practical issues involving dispute resolution across the region.

We would like to thank the law firms who have contributed chapters to this guide on their respective jurisdictions.

We hope that the guide will be a useful resource for businesses dealing with disputes in the Middle East.

**Neil J Brimson**  
**Managing partner**  
**Herbert Smith LLP, Middle East**

# Explanatory notes on treaties

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## The Riyadh Convention

The Inter Arab Convention on Judicial Co-operation was signed in Riyadh, Kingdom of Saudi Arabia in 1983 (known as the **Riyadh Convention**). It is one of the most commonly used treaties in the Middle East for the recognition and enforcement of both court judgments and arbitral awards between Arab nations. Importantly, recognition and enforcement without re-examination of the merits is conditional upon leave to enforce being granted by the competent court in the country of origin of the judgment or award. Recognition of a judgment or award may only be refused on certain grounds including:

- the judgment or award is contrary to Shari'ah or the constitution, public policy or good morals of the country in which enforcement is sought;
- if there were certain procedural irregularities in the case, such as the losing party not being properly notified of the hearing so that it could not defend itself;
- if the parties were not properly represented at the hearing in accordance with the laws of the country in which enforcement is sought; or
- if the dispute has already been the subject of a judgment or award between the same parties on the same facts in the country in which enforcement is sought (or another country if that judgment has been recognised), or if proceedings are ongoing.

The signatory States to the Convention are:

- Algeria;
- Bahrain;
- Iraq;
- Jordan;
- Libya;
- Morocco;
- Oman;
- Saudi Arabia;
- Syria;
- Tunisia;
- United Arab Emirates; and
- Yemen.



## The GCC Convention

The nations of the Gulf Co-operation Council entered into an Agreement on the Execution of Rulings, Requests of Legal Assistance and Judicial Notices in Oman in 1995 (known as the **GCC Convention**). Similarly to the Riyadh Convention, it covers the recognition and enforcement of both court judgments and arbitral awards between the GCC nations without re-examination of the merits, subject only to leave to enforce being granted by a competent court in the country of origin of the judgment or award.

The signatories to the GCC Convention are:

- Bahrain;
- Kuwait;
- Oman;
- Qatar;
- Saudi Arabia; and
- United Arab Emirates.

## The New York Convention

The only Middle East countries which are not signatories to the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**) are:

- Iraq (but accession to the New York Convention is currently being considered);
- Libya; and
- Yemen.

The New York Convention applies only to the recognition and enforcement of arbitral awards, not court judgments. Unlike the pan Middle East treaties, there is no condition that a competent court in the country which is the “seat” of the arbitration gives leave to enforce the award. The New York Convention also requires that foreign arbitral awards are recognised by the courts in the signatory States so that they decline jurisdiction. However, there are certain grounds for refusal to recognise and enforce a foreign arbitral award, including that the recognition and enforcement of the award would be contrary to the public policy of the country in which it is sought. In practice, and as stated in the individual country chapters in this guide, this ground for refusal is used by certain Middle East countries to refuse enforcement if the award does not comply with Shari’ah.

# Bahrain

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Hatim S. Zu'bi & Partners

## Litigation

### 1 What is the structure of the legal profession?

Lawyers in Bahrain are regulated by the Ministry of Justice. Under the Legal Practice Law, only Bahraini nationals may be licensed to act as advocates and consequently have rights of audience before the Bahraini courts. A licensed lawyer must also hold a law degree from a recognised university. There is a two year training period for Bahraini lawyers.

### 2 What is the structure of the court system?

The civil courts in Bahrain comprise:

- the High Civil Court (the **HCC**)
- the Higher Court of Appeal; and
- the Court of Cassation.

There is also a small claims court for civil cases where the amount of the claim is less than BD5,000 (approximately US\$13,300).

The HCC deals with all civil matters in Bahrain, including commercial matters and disputes where the amount claimed is greater than BD5,000. The HCC also acts as a first court of appeal for claims heard in the small claims court. Final judgments of the HCC can be appealed to the Higher Court of Appeal.

The Court of Cassation is the highest court in Bahrain and hears appeals on points of law from the Higher Court of Appeal. Its decisions are binding on the lower courts and it therefore also has a role in determining case precedent.

Within the court system, there is also a Court of Urgent Matters which hears matters on a summary basis, and an Execution Court which assists the successful party in enforcing its judgment.

Furthermore, the Bahraini government has legislated to move certain high value commercial claims from the jurisdiction of the Bahraini courts to a new dispute resolution centre, the Bahrain Centre for Dispute Resolution (**BCDR-AAA**), depending on the identities of the parties to the dispute. To fall within the jurisdiction of the BCDR-AAA, the claim value must exceed BD500,000 (approximately US\$1.3 million) and:

- at least one of the parties to the dispute must be non-Bahraini or licensed by the Central Bank of Bahrain;
- a substantial part of the commercial obligations which must be performed are outside of Bahrain; or
- the location most closely connected with the dispute must be outside of Bahrain.

The BCDR-AAA will apply statutory arbitration to these claims. The awards made will be final and binding on the parties and deemed to be a ruling of the Bahraini courts, which follows from the fact that a majority of the judges must be selected by the Supreme Judicial Council (which supervises the judiciary in Bahrain). This is a significant legal development because it imposes arbitration procedures on commercial disputes falling within the court system, irrespective of the intentions of the parties. For further details on the BCDR-AAA see paragraph 18 below.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The Bahraini judicial system is essentially inquisitorial in nature. The role of the judge is to investigate the facts, run the proceedings and give judgment. A minimum of three judges hear cases in the HCC, the Higher Court of Appeal and the Court of Cassation.

There are no juries in Bahraini civil court proceedings.

### 4 What are the time limits for bringing civil claims?

The time limits for bringing a civil claim depend on the nature of the claim. For general commercial contract claims, the limitation period is 10 years, whereas for personal obligations it stands at 15 years. Tortious and insurance claims are statute barred after three years. Claims against professionals have a cut-off period of five years, tax claims have a limitation period of three years and labour disputes must be brought to court within one year from the date the cause of action arose.

### 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are commenced by the claimant filing a statement of claim with the relevant court and paying the court fee, which results in the claim being registered in the court register. The court then serves the statement of claim and a summons on the defendant on the day after the date on which the claim is entered in the court register. At the HCC or the Higher Court of Appeal, the summons requires the parties to appear before the court for an initial hearing within 15 days of service on the defendant. The defendant should file any defence at least three days before this hearing.

### 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

There is no pre-trial exchange of evidence in Bahraini court proceedings. Instead, the parties submit evidence at trial which must be in written form and in Arabic. There is no requirement on the parties to provide evidence which may be helpful to the counterparty's case on its request.

It should be noted that the court will usually order its own investigations into the facts of the case through the appointment of an expert, particularly in cases which are complicated, or involve extensive documentation or complex calculations. An expert opinion may only state the facts as determined by the investigations and may not draw conclusions or impute liability.

### 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Parties are unable to control the procedure and the timetable. The court sets the hearing dates which the parties must meet.

### 8 What interim remedies are available to preserve the parties' interests pending judgment?

Possible interim remedies which may be granted by the Bahraini courts include:

- travel restrictions;
- appointment of a guardian/custodian over assets;
- orders to preserve property;
- orders to prevent assets being removed from the jurisdiction; and
- other prohibitory injunctions.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

Once the defendant has filed its defence, the claimant may apply to the court to have summary judgment given in its favour on the basis that no real defence exists. The judge has a discretion whether to award summary judgment or proceed to trial.

## 10 What substantive remedies are available?

The primary substantive remedies available in Bahrain are damages and specific performance.

## 11 What means of enforcement are available?

A judgment may be enforced by orders for the attachment of assets, including an order for the assets to be sold.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has the power to order costs. If it does so, the court will order the payment of court fees, but only a nominal amount of legal fees. Foreign claimants are not required to provide security for costs.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The parties may appeal from the HCC to the Higher Court of Appeal on the basis of errors of fact and law. Appeals from the Higher Court of Appeal to the Court of Cassation may be made on points of law only.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Other than the King of Bahrain, no entity is immune from civil proceedings, including State and foreign governments. However, State and public property (such as museums and parks) is immune from execution of judgments.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Bahrain is a signatory to the Riyadh Convention and the GCC Convention. Bahrain will not enforce judgments rendered in countries which are not signatories to these conventions. An execution order will only be issued by a Bahraini court if:

- the foreign court has jurisdiction over the case and the Bahraini courts had no jurisdiction;
- the parties to the case were properly notified of the proceedings and were represented;
- the judgment is final in the court in which it was issued;
- the judgment does not conflict with a previous decision or order of a Bahraini court; and
- the judgment does not contain anything which conflicts with public policy or morals in Bahrain.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

No, such arrangements are not permitted in Bahrain.



# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

Bahraini law has two different legislative sources for arbitration: one for international arbitrations and one for domestic arbitrations. The law which governs international arbitration is based on the UNCITRAL Model Law. This law applies where the parties or the subject of the arbitral proceedings are based in more than one country, or where the place of performance or the place most closely linked to the subject matter is in a different country to the place of business of the parties. The domestic arbitration law is contained in the Bahraini Civil Code. The remainder of this section deals with international arbitration only.

## 18 What are the main national arbitration institutions?

The main arbitration institutions are the GCC Arbitration Centre and the Bahrain Chamber of Commerce.

In January 2010, the BCDR-AAA was opened to provide public and private arbitration services in Bahrain, in joint venture with the American Arbitration Association. As well as providing “statutory arbitration” services for certain large commercial claims (see paragraph 2 above), it also operates in an arbitration “freezone” as a new choice of forum for international disputes.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

The parties to a domestic arbitration must be represented by Bahraini lawyers (foreign lawyers or other representatives are not permitted to act). This is also considered to be the position in relation to international arbitration.

## 20 What are the formal requirements for an enforceable arbitration agreement?

The subject matter of the arbitral proceedings must be capable of resolution by arbitration under Bahraini law. There is no requirement that an arbitration agreement be in writing under Bahraini law.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

Generally, the courts will refer the parties to arbitration and will stay litigation, other than where the parties agree to proceed with the litigation proceedings or where the arbitration agreement is not valid.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

Generally, in both international and domestic arbitrations, each party has the right to appoint an arbitrator and then those two arbitrators appoint the third arbitrator. In the event that the parties fail to make an appointment, the Higher Court of Appeal may intervene to make that appointment.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

Under the international arbitration law, the parties may decide on the procedure for selecting and appointing arbitrators. There is a general requirement that the arbitrators must be both impartial and independent.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

Generally, the parties are free to agree on the procedural rules of the arbitral hearing. Under the international arbitration law, the tribunal will apply the rules it considers appropriate in the event of a failure by the parties to agree on the rules and procedures.

## 25 On what grounds can the court intervene during arbitration?

The Higher Court of Appeal in Bahrain may only intervene in arbitral proceedings in limited circumstances. In particular, it may intervene to assist in the appointment of arbitrators where there is a failure by any of the parties or the other arbitrators to do so, to issue interim orders if requested by any of the parties and/or the tribunal and to support the gathering of evidence, such as compelling witnesses to attend the hearing. Note that international arbitration disputes heard before the BCDR-AAA may not be referred to a Bahraini court unless the governing law of the dispute is Bahraini law because the BCDR-AAA is deemed to operate within an "arbitration freezone".

## 26 Do arbitrators have powers to grant interim or conservatory relief?

In relation to international arbitrations only, the arbitrators are empowered to award interim relief orders for protection in relation to the subject matter of the case where requested by either party, although the enforcement of such interim remedies falls to the Bahraini courts.

## 27 When and in what form must the award be delivered?

With respect to international arbitrations, the award must be in writing and signed by all or a majority of the arbitrators. It must also state the reasons on which the award is based and the date and place of the arbitration.

Note that an arbitral award must be lodged with the court and ratified by the Higher Court of Appeal in order to be binding in Bahrain. The requirements for an arbitral award for domestic arbitrations are more extensive and include a requirement to include a summary of the parties' claims and evidence.

## 28 On what grounds can an award be appealed to the court?

An arbitral award may not be appealed under Bahraini law, but the parties may apply to court to have an award nullified on certain grounds (other than in relation to international arbitrations heard before the BCDR-AAA unless the governing law is Bahraini law). These include:

- lack of a valid arbitration agreement;
- procedural irregularities (for example, the parties did not receive notice of the arbitral proceedings, or the tribunal was not constituted as required under the arbitration agreement or Bahraini law);
- the arbitral tribunal exceeded its authority (in which case, only the parts of the award which exceed the tribunal's scope are rendered void); and
- the subject matter of the dispute is not capable of settlement by arbitration, or the award contradicts Bahraini morality or public policy.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Bahrain is a signatory to the New York Convention. Consequently, an award made in another signatory State of the Convention is enforceable in Bahrain without re-examination of the merits provided that the conditions of the New York Convention are met.

The court must receive an original or certified copy of the award and the arbitration agreement, accompanied by Arabic translations where necessary.

## 30 Can a successful party recover its costs?

Yes, provided an award on costs is made by the arbitration panel and to the extent of such award.

# Alternative dispute resolution

31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

No.

## Reforms

32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any significant procedural reforms relating to dispute resolution in Bahrain.

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Hatim S. Zu'bi & Partners (Al Mahmood & El Nayal) provides a full range of legal services in Bahrain, other Gulf Co-operation Council countries, Jordan and internationally, through its connections and associations in other parts of the world.

The firm advises and acts for a wide range of local and foreign clients; corporate, institutional and private. Its offices are divided into groups each specialising in a separate area of law. Each group liaises closely with other groups to provide each individual client and each particular case with the expertise required. The lawyers of the firm combine their expertise in their respective areas of specialisation with awareness for the needs of their clients.

The firm was involved in redrafting the Commercial Companies Law No. 21 of 2001 and conducting a review of the draft Central Bank of Bahrain Financial Services and Markets Law.

The firm has been engaged in general civil and commercial laws relating primarily to foreign investment, banking (including Islamic), insurance, shipping, corporate, commercial agencies, telecommunications, international trade, construction, intellectual property, joint ventures, labour, local and international litigation and arbitration.

# Dubai International Financial Centre (DIFC)

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Herbert Smith LLP

## Litigation

### 1 What is the structure of the legal profession?

The requirements applicable to lawyers wishing to practise law in the UAE differ between the seven individual emirates comprising the United Arab Emirates. They also vary if lawyers wish to practise within a freezone (such as the DIFC) because the freezones do not form part of the UAE mainland. For a firm wishing to operate within the DIFC, a licence from the Dubai Financial Services Authority (DFSA) is required.

Many international law firms are based in the DIFC. There are no local legal qualification requirements for lawyers who are qualified to practise in other jurisdictions and all qualified lawyers are entitled to apply to be placed on a register of practitioners who can appear before the DIFC Courts. Practitioners can be registered even if they do not have higher rights of audience in their home jurisdiction.

### 2 What is the structure of the court system?

The DIFC Courts were established under two laws enacted by His Highness Sheikh Maktoum bin Rashid Al Maktoum, Ruler of Dubai. They comprise:

- the Court of First Instance;
- the Court of Appeal; and
- the Small Claims Tribunal.

The DIFC Courts system is separate from the local Dubai system and the UAE federal system.

The Court of First Instance has exclusive jurisdiction over:

- civil or commercial disputes involving the DIFC, any of the DIFC's bodies or any of the DIFC's establishments;
- civil or commercial disputes arising from or related to a contract that has been fulfilled or a transaction that has been carried out, in whole or in part, in the DIFC or an incident that has occurred in the DIFC;
- objections filed against decisions made by the DIFC's bodies, which are subject to objection in accordance with the DIFC's laws and regulations; and
- any application over which the courts have jurisdiction in accordance with the DIFC's laws and regulations.

The Court of Appeal has exclusive jurisdiction over:

- appeals filed against judgments and awards made by the Court of First Instance; and
- interpretation of any article of the DIFC's laws based upon the request of the DIFC Courts, any of the DIFC's bodies or any of the DIFC's establishments (provided that the establishment obtains leave of the Chief Justice).

There is no appeal from a decision of the Court of Appeal.

The Small Claims Tribunal determines claims within the jurisdiction of the DIFC Courts where the amount or the subject matter of the claim is less than AED100,000 (approximately US\$27,200) or such other amount as may be ordered or directed by the Chief Justice from time to time. The Tribunal aims to resolve such claims within two weeks.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The cases in the Court of First Instance are presided over by a single judge and the Court of Appeal is made up of at least three judges with the Chief Justice or most senior judge presiding. Currently, the DIFC Court has eight judges.

### 4 What are the time limits for bringing civil claims?

Section 38 of the DIFC Court Law states that, subject to any other DIFC Law, a claim cannot be commenced more than six years after the date of the events that give rise to the claim.

### 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

In the DIFC Court, the claimant submits a form to the court. The court then issues the claim form. The claim form must be served on the other parties within four months of the date on which it is issued if served within DIFC or Dubai, or within six months if the form is served outside DIFC and Dubai. There is a fixed fee of AED 3,670 (US\$1,000) for filing a case in the DIFC Courts.

The claim form provides details of the amount that the claimant expects to recover, full details of the parties and brief details of the claim. A claim form must be verified by a statement of truth, which is a statement that the party presenting the document believes that the facts stated in it are true. A fee is payable, based on the value of the claim.

If the defendant wishes to defend the claim, it must serve a defence. In most cases, the defendant has 14 days from service of the claim to serve a defence, but this period can be extended if the defendant files an acknowledgment of service, or the parties agree that the deadline may be extended. Within 14 days of the defence being served, a claimant must apply for a case management conference (**CMC**) to be scheduled. The court will fix a date for the CMC, giving the parties seven days' notice.

Following service of the defence and any reply, the parties' legal representatives shall agree a case memorandum (which sets out a very short and uncontroversial description of the case and material procedural history) and serve a case management information sheet, copies of any orders they wish to obtain at the CMC and a case management bundle.

In advance of the CMC, the court makes directions as to the steps to be taken up to trial, including the exchange of evidence. The court will fix the trial date as soon as is practicable. Cases can come to trial as quickly as six months from issue.

### 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Standard production of documents in the DIFC Court only requires each party to submit to the other party all documents on which it relies: there is no general requirement to share documents that are unhelpful or which assist the other side.

The court will consider at the first CMC what expert evidence is reasonably required and how and when that evidence should be obtained and exchanged. The court will also consider what factual evidence, in the form of written evidence from witnesses, should be exchanged.

The general rule in the DIFC Court is that any fact which needs to be proved by the evidence of witnesses, including factual and expert witnesses, should be proved at trial by that witness through oral evidence given in public.



## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

At the first CMC, the DIFC Court will fix as much of the pre-trial timetable as possible, identifying the necessary steps leading up to trial. The parties may agree certain variations between themselves, but not if they will jeopardise the progress monitoring date (see below) or the date fixed for trial.

The court will set a progress monitoring date (normally after the exchange of witness statements and expert reports). Prior to that date, the parties will submit a progress monitoring information sheet stating whether they have complied with the pre-trial timetable and whether they will be ready for the trial date as fixed. If the court considers that the information provided on the progress monitoring information sheets justifies it, a further CMC will be convened by the court and the court may make such orders and direction as it sees fit.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

The interim remedies available to the DIFC Court include the following:

- interim injunctions;
- interim declarations;
- orders for the detention, custody or preservation of property, including;
  - o “freezing orders” restraining a party from removing from the jurisdiction assets located there, or restraining a party from dealing with any assets whether located within the jurisdiction or not;
  - o “search orders” requiring a party to admit another party to premises for the purpose of preserving evidence;
  - o orders for interim payment for payment by a defendant on account of any damages, debt or other sum (except costs) which the court may hold the defendant liable to pay;
  - o orders appointing a receiver, having such powers as the court may see fit, over property; and
- orders requiring a person to deliver up to the court his passport and such other documents as the court sees fit, or prohibiting that person from leaving the DIFC, Dubai or the UAE without the consent of the court.

The above list is not exhaustive.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

A claimant can obtain default judgment against a defendant without trial if the defendant fails to serve an acknowledgement of service or a defence within the required timeframes, but this is not a judgment on the merits and can be set aside.

Summary, or immediate, judgment is also available against a claimant or defendant on the whole or part of a claim or on a particular issue if the court considers either that the claimant has no real prospect of succeeding on the claim or issue, or that the defendant has no real prospect of successfully defending the claim or issue, and there is no other compelling reason why the case or issue should be disposed of at trial.

## 10 What substantive remedies are available?

Remedies available include damages, charging orders, stop orders and stop notices, and attachment to future assets and earnings orders.

## 11 What means of enforcement are available?

A judgment creditor may enforce its judgment by:

- a charge over property;
- an attachment of assets;
- execution against assets; and
- the appointment of a receiver.

The court may also make a committal for contempt of court against a judgment debtor in certain circumstances.

It is the remit of the executive judge, assisted by court officials, to facilitate the enforcement of court orders.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The DIFC Court can, at its discretion, award costs to the parties. The general rule is that the unsuccessful party shall pay part of the successful party's costs, but the court may make a different order. In exercising its discretion, the court will take into account the circumstances, including the conduct of the parties before and during the proceedings, whether the party has been successful in only part of its case, and whether the party has made a settlement offer. Fixed costs apply for claims of under US\$25,000.

The court can order costs on the standard basis (where any doubt is resolved in favour of the paying party) or, more unusually, on an indemnity basis (where any doubt is resolved in favour of the receiving party).

The court may make an order for security for costs in certain circumstances, including:

- where the claimant is a company or other body corporate (whether incorporated inside or outside the DIFC) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
- where the claimant has changed its address since the claim was commenced with a view to evading the consequences of the litigation;
- where the claimant failed to give an address in the claim form;
- where the claimant is acting as a nominal claimant and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so; and
- where the claimant has taken steps in relation to its assets that would make it difficult to enforce an order for costs against it.

In all cases, the court must be satisfied that it is just in all the circumstances to make a security for costs order.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

A party can appeal from the Courts of First Instance to the Court of Appeal on the grounds that the lower court's decision was wrong or unjust because of a serious procedural or other irregularity in the lower court. In respect of each ground, the party must state whether the ground raises an appeal on a point of law or is an appeal against a finding of fact. There is no appeal from the DIFC Court of Appeal. Unless otherwise ordered, the order or decision which is being appealed is not stayed while the appeal is determined.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

There are no DIFC legislative provisions that allow domestic and/or foreign State entities to claim immunity from civil proceedings.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Judgments, awards and orders of any court outside the DIFC may be enforced within the jurisdiction of the DIFC. The enforcing party must apply to the DIFC Court for ratification of the judgment or award, and execution by the execution judge. This application can be made without notice.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

There are no specific DIFC rules regarding the basis on which legal fees are charged and there is no prohibition on cost sharing arrangements. Until such rules are introduced, this is a matter to be determined by agreement between lawyer and client.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The arbitration law of the DIFC was amended in September 2008. It is closely based on the UNCITRAL Model Law and covers all stages of the arbitration from the conclusion of the arbitration agreement to the recognition and enforcement of awards.

## 18 What are the main national arbitration institutions?

The DIFC-LCIA Arbitration Centre is the only arbitration institution in the DIFC.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

There are no restrictions on who may act for a party in the course of an arbitration conducted under the DIFC Arbitration Law.

## 20 What are the formal requirements for an enforceable arbitration agreement?

The parties may submit to arbitration disputes that have arisen or may arise between them in respect of a defined legal relationship, either contractual or otherwise. An arbitration agreement must be in writing and may be in the form of an arbitration clause or a separate agreement. Oral agreements do not constitute an arbitration agreement.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

If an action is brought before the DIFC Courts which is the subject of an arbitration agreement, the DIFC Courts are required to stay the proceedings upon the request of a party. However, the request must be received no later than the point at which it files its first substantive statement on the case. The DIFC Courts are only entitled to refuse to stay proceedings if the arbitration agreement is null and void, inoperative or incapable of being performed.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

In the absence of an express agreement by the parties, the default position is that there will be one arbitrator. Where the parties are unable to agree on the identity of that arbitrator within 30 days of receipt of a request by a party, the DIFC Court will make the appointment.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

Where an appointment is made by the DIFC Court, the appointment is not subject to appeal. An arbitrator can be challenged if there are justifiable doubts as to his impartiality or independence, or if he or she does not possess the qualifications agreed on by the parties. That said, a party can only challenge an appointment in which it has participated for reasons of which it becomes aware after the appointment has been made.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

Under the DIFC Arbitration Law, the parties are free to determine the rules that will govern the arbitration. Failing agreement between the parties, the arbitral tribunal determines the procedures to be followed.

## 25 On what grounds can the court intervene during an arbitration?

The DIFC Court may intervene where:

- a party challenges the decision made by the arbitral tribunal in respect of an arbitrator;
- a party challenges the jurisdiction of the arbitral tribunal;
- a party requests an order for an interim measure; or
- it has received a request to assist in taking evidence.

With the agreement of the parties, the DIFC Court may also intervene where:

- there is no agreement between the parties as to the appointment of an arbitrator or arbitrators;
- an arbitrator, as a result of a matter of fact or law, becomes unable to perform his or her functions and withdraws from office, or his or her mandate is terminated;
- the parties agree to revoke the mandate of the arbitrator and the arbitrator applies to the court to relieve him of his liability; or
- the court is asked to determine the extent of the fees payable to an arbitrator who is refusing to deliver an award until his or her fees are paid.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

Under the DIFC Arbitration Law, an arbitrator may grant such interim measures as he or she considers necessary and may require a party to provide appropriate security in connection with such a measure. An interim measure can include the preservation of assets out of which a subsequent award may be satisfied, or the preservation of evidence that may be relevant and material to the resolution of the dispute.

## 27 When and in what form must the award be delivered?

There is no maximum period of time for the delivery of an award set out in the DIFC Arbitration Law.

The award must be in writing and signed by the arbitrators. Unless the parties have agreed that no reasons need be given, the award shall state the reasons on which it is based and the date and the seat of arbitration. After the award is made, a copy signed by the arbitrators shall be delivered to the parties.

## 28 On what grounds can an award be appealed to the court?

An award may be appealed if:

- a party to the arbitration agreement was under an incapacity;
- the agreement was invalid under the governing law or under the law of the DIFC;
- a party was not given proper notice of the appointment of an arbitrator or the arbitral proceedings, or a party was unable to present its case;
- the award falls outside the terms of the submission to arbitration;
- the composition of the arbitral tribunal was not in accordance with the agreement of the parties, provided such agreement does not conflict with the governing law or the DIFC Law;
- the DIFC Court finds that the subject matter of the dispute is not capable of resolution by arbitration;
- the dispute is expressly referred to a different body or tribunal for resolution under the DIFC Law; or
- the award is contrary to the public policy of the UAE.

## 29 What procedures exist for enforcement of foreign and domestic awards?

The UAE is a signatory to the New York Convention. Those holding awards made in a contracting State to the New York Convention may apply to the DIFC Court to enforce the award as if it were made within the DIFC.

In summary, the DIFC Court will, following receipt of an enforcement application, issue a ratification decree in English and in Arabic unless one of the grounds of appeal listed in question 28 above applies, or the award has not yet become binding on the parties or has been set aside or suspended by a court in the jurisdiction in which that award was made.

## 30 Can a successful party recover its costs?

Yes - under the DIFC Arbitration Law, a successful party may recover its costs.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Although there is no requirement upon parties to do so, the DIFC Court encourages parties to consider the use of ADR as a means of resolving disputes or particular issues.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

The DIFC Courts and the DIFC-LCIA Arbitration Centre regularly review their rules and regulations and their application.



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Herbert Smith is a leading international law firm with a 1,300-lawyer network across the Middle East, Europe and Asia. Herbert Smith is committed to providing high quality and innovative legal services to corporations, governments, financial institutions and all types of commercial organisations. The firm advises on corporate, real estate, dispute resolution, banking and finance, energy, mining and infrastructure, and offers a full range of specialist services including investment funds, regulatory, construction, insurance, tax and IP/IT. Herbert Smith has 12 partners and over 60 lawyers based in offices in Abu Dhabi and Dubai and on secondment to the offices of Al-Ghazzawi Professional Association in Saudi Arabia.

# Egypt

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Sharkawy & Sarhan

## Litigation

### 1 What is the structure of the legal profession?

Only Egyptian nationals with a law degree from an Egyptian university or a recognised foreign university can practise law in Egypt due to the registration requirements of the Egyptian Bar Association. Overseas lawyers are prohibited from practising law in Egypt (whether Egyptian law or any other) unless reciprocal treatment is offered to Egyptian lawyers in the country in which the overseas lawyer is recognised to practise.

Advocates can practise in Egypt either as sole practitioners or through a partnership with other advocates. A licensed advocate has rights of audience before the courts, although there are specific requirements as to level of experience at each level of the court structure. Advocates also draft and notarise agreements and advise clients.

### 2 What is the structure of the court system?

The main courts in Egypt for hearing civil and criminal cases are divided as follows:

- Courts of First Instance which have the jurisdiction to hear disputes where the disputed amount is more than EGP 40,000 (approximately US\$7,280) (otherwise they are heard in District Courts);
- the Court of Appeal; and
- the Court of Cassation. This is the highest court in Egypt from which there is no appeal.

In addition, Egypt has a Supreme Constitutional Court to govern disputes relating to the constitutionality of laws and regulations.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

A panel of judges (usually three, depending on the level of the court) has an essential role in any civil proceedings. According to the Civil and Commercial Procedures Law, the panel presides over hearings, discusses the pleadings of the parties, studies all evidence, has the discretion to ask for expert opinion and finally issues the judgment in the case.

Egypt has no jury system.

### 4 What are the time limits for bringing civil claims?

The time limits for bringing civil claims are stated in the Civil Code. Such time limits vary based on the subject matter of the dispute from one year to 15 years. The timeframe for bringing a case related to an administrative decision issued by the government is 60 days from the date of the decision.

### 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

The claimant files its claim (which comprises a memorandum of claim) with the relevant court and then the court bailiff delivers notice to the defendant informing him of the claim, the time and date of the hearing and provides him with a copy of the claimant's memorandum of claim. The defendant must submit a memorandum with a defence at least three days prior to the trial date.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In practice, there is no pre-trial exchange of evidence in Egypt. Although the Civil and Commercial Procedures Law allows for the parties to provide their evidence when filing the claim or defence, it is more usual for it to be delayed until the trial.

The parties can present both oral and documentary evidence at trial before the judge during the court session. If the evidence has not been reviewed by the counterparty, that party may request an adjournment (which is usually granted) until it has had the chance to review it. There is no requirement for a party to provide evidence which may assist the counterparty's case on its request.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The procedural timetable is set out in the Civil and Commercial Procedures Law and does not allow much flexibility to the parties. There are various tactics that the parties can use to deliberately slow down litigation proceedings. The court process is usually slow and may take years until a final judgment is achieved, depending on the nature of the dispute.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

The following interim measures may be available:

- a preservation order to prevent the parties' interests being destroyed, damaged or lost;
- protective seizure of a counterparty's assets; and
- appointing a legal guardian over the subject matter of the dispute pending final judgment.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

No.

## 10 What substantive remedies are available?

The available substantive remedies include:

- damages for direct actual loss and lost profits;
- recovery of possession of property (movable or immovable);
- specific performance of the contract.

## 11 What means of enforcement are available?

The enforcement methods provided by the Civil and Procedures Law include seizure of property (movable and immovable) and cash. Separate proceedings must be filed for enforcement of a judgment.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

In practice, costs lie where they fall irrespective of the outcome of the case. Foreign claimants are not required to provide security for costs.

### 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The right to appeal a judgment is a legislative right based on any of the following grounds:

- the court did not have jurisdiction to hear the dispute; or
- the judgment is void; or
- procedural irregularities.

The appeal must be filed within the time limit prescribed by Egyptian law (which is 40 days for appeals against decisions of the Court of First Instance and 60 days for appeals from the Court of Appeal to the Court of Cassation). It is not open for the parties to present new evidence on appeal. In general, enforcement of the decision of the Court of First Instance is suspended until the appeal is decided by the Court of Appeal, although suspension of enforcement is not automatic on appeal from the Court of Appeal to the Court of Cassation.

### 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

There is no explicit legislation in relation to State sovereign immunity. Egyptian State entities do not enjoy sovereign immunity from civil proceedings. Any party has the right to bring legal action against State entities and has the right to enforce any final judicial verdict issued by an Egyptian competent court or arbitration panel against Egyptian State entities.

As a general principle, the assets of the Egyptian government are divided into public assets and private assets. Public assets are any fixtures or movables, owned by the government or public entities, and allotted for public interest, such as water or electricity utilities. Public assets cannot be attached and are immune from seizure. Private assets are assets owned by the government but not allotted for public interest. Private assets of the government, in theory, can be attached. In practice, court officials generally refuse to take enforcement procedures against any government assets.

### 15 What procedures exist for recognition and enforcement of foreign judgments?

Egyptian courts will not recognise a judgment of any foreign court unless there is reciprocal recognition of judgments of Egyptian courts, or a treaty exists between the two countries. Egypt has treaties for reciprocal recognition of awards with Italy and some of the Arab countries (including being a signatory to the Arab League Convention on the Enforcement of Judgments and Arbitral Awards (dating from 1952) which only applies where the Riyadh Convention does not). Egypt is not a signatory to the Riyadh Convention. There are no treaties with the UK, USA or Japan, for example.

### 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

Yes.

## Arbitration

### 17 Is the arbitration law based on the UNCITRAL Model Law?

The Egyptian Arbitration Law No. 27 of 1994 is based on the UNCITRAL Model Law with some modifications. It applies to both domestic and international arbitrations.

### 18 What are the main national arbitration institutions?

The main arbitration institution in Egypt is the Cairo Regional Center for International Commercial Arbitration (**CRCICA**).

## 19 Are there any restrictions on who may represent the parties to an arbitration?

As mentioned in question 1 above, the Egyptian law does not allow overseas qualified lawyers to work in Egypt (whether practising Egyptian law or otherwise) unless there is reciprocal treatment for Egyptian lawyers in the country where the overseas lawyer is registered to practise. In practice, however, foreign lawyers handle a number of international arbitration cases which are heard in Egypt, and in particular in cases before the CRCICA.

## 20 What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be concluded in writing, otherwise it will be void.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

If an action the subject of an arbitration agreement is brought in the Egyptian courts, the courts are required to stay proceedings upon the request of either party.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

According to the Arbitration Law, if the parties do not agree on the number of arbitrators, the arbitral tribunal shall be composed of three arbitrators: one arbitrator selected by each party and the third one selected by the two arbitrators appointed by the parties. If the third arbitrator is not selected within 30 days from the date the two arbitrators were appointed, the appointment of the third arbitrator shall be made, upon request of one of the parties, by:

- the Cairo Court of Appeal, in case of an international arbitration; and
- by the Egyptian court which would have had jurisdiction over the case if there was no arbitration agreement, in the case of domestic arbitration.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

The parties are entitled to challenge the appointment of an arbitrator if there is serious doubt about the arbitrator's impartiality or independence. However, an arbitrator may not be challenged by the party who appointed him except for reasons which became known to that party after the appointment was made.

A challenge to an arbitrator must be made in writing to the arbitral tribunal within 15 days from the date the arbitrator was appointed, or from the date the challenging party became aware of the reasons justifying such challenge. If, within 15 days from submitting the challenge, the arbitrator in question does not step aside, the challenge shall be referred to the Cairo Court of Appeal to decide.

It is worth noting that an arbitrator cannot be challenged by the same party twice in the same arbitration: in other words, if the challenge is rejected, it cannot be brought again in the same arbitration.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to agree on the procedural rules or to apply institutional rules to govern their arbitration. However, the Arbitration Law provides certain mandatory general procedural principles which must be followed in all cases to ensure fair and equal treatment of the parties. These principles are:

- the parties should be on equal footing and have an equal and full opportunity to submit their cases;
- copies of documents submitted to the tribunal by either party must be sent to the other party, and similarly copies of expert reports and any document submitted to the tribunal must be sent to both parties; and
- the parties must be notified of the dates of hearings and meetings sufficiently in advance of the scheduled date.



## 25 On what grounds can the court intervene during arbitration?

The court can intervene during the arbitration process, upon the request of the tribunal, to impose penalties on witnesses who fail to attend or give their testimony. In the event that the arbitral tribunal fails to render an award in an international arbitration within the timeframe agreed upon by the parties, the Cairo Court of Appeal can intervene, upon the request of either party, to issue an extension of the arbitration period, or terminate the arbitration. If the arbitration is brought to an end without an award being made, the parties are entitled to bring proceedings in the court having jurisdiction.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

According to the Arbitration Law, interim and conservatory relief may not be granted by the arbitral tribunal unless that power is expressly stated in the arbitration agreement, or the parties apply institutional rules which allow the arbitral tribunal to grant such relief.

## 27 When and in what form must the award be delivered?

The award must be delivered within the timeframe agreed upon by the parties or designated by the relevant institutional rules. In the absence of such agreement or institutional rules, an award must be made within 18 months of the date of commencement of the arbitral proceedings.

An award must be in writing and signed by the arbitrators and it must include the following:

- the reasons for the award (unless the parties agree otherwise);
- the names and addresses of the parties;
- the names, addresses, nationalities and capacities of the arbitrators;
- a summary of the parties' claims and statements; and
- the date and place where the award was issued.

## 28 On what grounds can an award be appealed to the court?

The Arbitration Law states that arbitral awards made in accordance with its provisions are final and not subject to appeal for any reason. However, Article 53 of the Arbitration Law allows the competent Egyptian court (the Cairo Court of Appeal in the case of international arbitration) to declare the invalidity of arbitral awards in any of the following circumstances:

- the arbitral agreement does not exist or is void;
- lack of capacity of one of the parties to the arbitration agreement;
- failure to notify any of the parties properly of the proceedings, or inability of the defendant to issue a defence for any reason beyond its control;
- the arbitral tribunal fails to apply the law designated by the parties;
- the invalid appointment of the arbitrators;
- the award falls outside the terms of submission to arbitration. However, in this case nullity does not extend to the part of the award which is within the scope of the arbitration agreement; and
- the award violates Egyptian public policy.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Egypt is a signatory to the New York Convention. Therefore, a valid arbitral award is enforceable without retrial of the merits if it fulfils the conditions of the New York Convention and the Arbitration Law. The conditions set out in the Arbitration Law are the following:

- the arbitral award does not contradict a judgment previously made by the Egyptian courts on the subject in dispute;
- it does not contravene Egyptian public policy; and
- it was properly notified to the party against whom it was made.

For enforcement of the arbitral award, an application for execution of the award (exequatur) must be submitted to the Cairo Court of Appeal. The application must be accompanied by the original award or a signed copy thereof (plus an Arabic translation authenticated by the competent authority) and a copy of the arbitration agreement.

## 30 Can a successful party recover its costs?

Yes – this is a possibility because the arbitral tribunal has discretion to award costs to the successful party.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

There is no requirement under Egyptian law for the parties to consider ADR or mediation, although the parties may agree to submit to this by way of contract.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any serious plans for reform in the areas of litigation or arbitration in the near future.

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Sharkawy & Sarhan law firm specialises in corporate-commercial issues including advising on dispute resolution, banking and finance (derivatives, Islamic finance), PPs and public tender law, capital markets and oil and gas.

Sharkawy & Sarhan offers a principled approach to the practice of law, including a commitment to integrity and confidentiality, and a scrupulousness regarding conflicts of interest to be expected of a leading trans-border firm. Sharkawy & Sarhan shares a wealth of experience working with major global companies and international firms on complex transactions.

Sharkawy & Sarhan has three partners and 10 lawyers in its Cairo based office.

# Iran

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Atieh Associates Law Firm

## Litigation

### 1 What is the structure of the legal profession?

The Iranian legal profession distinguishes between legal advisers and attorneys at law.

Generally, legal advisers provide clients with legal advice, but do not have rights of audience before the Iranian courts. Legal advisers to government entities are the only exception to this. Legal advisers must possess a law degree, but do not need to hold any professional qualifications or be licensed by the Iranian Bar Association.

Attorneys are licensed by the Bar Association and are able to appear before all courts in Iran, regardless of their experience. There are exams and training periods to complete before an attorney is licensed by the Bar Association. There is a separate qualification route for attorneys to be licensed by the judiciary, rather than the Bar Association. Judiciary attorneys are limited in the types of dispute on which they may act and the courts before which they can appear.

The practice of law in Iran is restricted to Iranian nationals and foreign law firms are currently prohibited from establishing offices in Iran.

### 2 What is the structure of the court system?

The courts in Iran are divided into:

- Courts of First Instance, which include the public courts with jurisdiction over civil and the majority of criminal cases;
- Appellate Courts; and
- the Supreme Court.

Recently, the judiciary has established Dispute Resolution Councils to examine smaller civil cases.

A provincial Appellate Court reviews appeal cases referred from the Courts of First Instance in that region. The Supreme Court only considers arguments relating to points of law. There is no appeal from the Supreme Court, unless the Head of the Judiciary regards the judgment to be contrary to Shari'ah or the national law and orders a re-trial.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The Iranian court system is generally inquisitorial. Judges rule on matters of fact and law. In relation to the facts, they examine the evidence and order independent investigations, such as expert reports and site inspections. As to matters of law, judges are required to apply the codified laws of Iran to the facts. If the issue has not been provided for under Iranian law, the judge gives judgment based on authentic Islamic sources or authoritative religious injunctions (*fatwas*).

There are no juries in civil proceedings in Iran.

### 4 What are the time limits for bringing civil claims?

There is no time limit for bringing civil claims under Iranian Law.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are commenced by the payment of stamp duty and the filing of a statement of claim by the claimant with the competent Court of First Instance. Copies of the statement of claim and its attachments are then served on the defendant by the court and the court will schedule a first hearing. Usually before the first hearing, both parties provide to the court their written statements and they may also participate in the hearing to give oral evidence.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

At the Court of First Instance, there is no process of exchange of evidence: the claimant is only required to set out evidence as part of its statement of claim and then at the trial. The defendant also provides evidence as part of its defence statement and later at trial. There is no requirement on the parties to provide evidence which would assist the counterparty's case on its request. The judge has powers to order independent evidence to be presented, including expert evidence and site inspections.

In the Appellate Courts and the Supreme Court, pre-trial exchange of evidence does occur as part of the appeal process. The claimant is required to provide the evidence on which it relies to the defendant who has 10 days within which to respond with its defence evidence. If the defendant does not respond within this period, the hearing will proceed regardless. New evidence may be admitted by the Appellate Court at any time during the appeal proceedings, but this may be held back in practice until the hearing.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The procedure and timetable in Iranian civil cases are provided for under the law or determined by the court based on the particular circumstances of the case. In particular, the judiciary has recently issued an *"Instruction on Scheduling Claims"* which sets certain time limits for different types of law suits. There is little flexibility for the parties to influence the timetable, although cases may be delayed by the parties failing to meet deadlines. Note, however, that the party risks losing the case, or the case being dismissed, if it does not comply with the proceedings timetable.

Generally, the legal process is very lengthy. Proceedings may take between a few months and several years. Speed of proceedings depends on the merits of the case and co-operation of the parties, the level of complexity of the case and the court's workload.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

Courts have the power to take certain interim measures. Generally, there are two kinds of interim remedies:

- an interim writ of attachment: the court may grant an interim writ of attachment to the claimant at any point in the process (including before the statement of claim is filed) in certain circumstances, including if the subject matter of the claim may deteriorate or is likely to be destroyed. The court may require the claimant to deposit a cash sum equal to the likely amount of loss to the defendant arising from the grant of the interim writ in a special fund (the Justice Administration Fund). An interim writ of attachment will be issued only if the amount of the claim is known, or if the subject of the claim is definite. In most circumstances, the defendant must be notified before the writ is issued, unless the subject matter is at risk of deterioration or destruction;
- an interim measure of protection: in urgent cases, upon the request of the claimant, the court will take interim measures of protection which can include an attachment order to the defendant's property, or a mandatory or prohibitory injunction. The claimant must deposit appropriate security determined by the court to cover the defendant's likely loss from the grant of the interim measure, without which the court will not make the order. Unlike the interim writ of attachment, the claimant must pay stamp duty on an interim measure of protection.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

There is no summary judgment or any other procedure available to obtain a judgment without trial, even if it is believed that there is no defence to the claim. However, certain notarised deeds, commercial papers and lease agreements are enforceable without legal proceedings.

## 10 What substantive remedies are available?

Substantive remedies include:

- specific performance;
- damages;
- declarations (such as rescission of contract and lack of capacity); and
- an injunction to do or refrain from doing an act (such as eviction, abatement of nuisance and payment of debt).

Indirect damages, damages for loss of profit and late payment penalties are subject to certain restrictions.

## 11 What means of enforcement are available?

Courts have a Judgment Execution Division comprising a judge and officers of the court. The Judgment Execution Division also has the assistance of the police. It will take action upon the application of the successful party, including ordering the public auction of property if a damages award is not honoured, or (if no property is available), ordering the imprisonment of the debtor.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Courts have the power to require the losing party to pay legal costs if this is requested by the other party in its statement of claim at the outset of the proceedings, or by the first hearing. If the court finds that the action is vexatious, the claimant must pay three times the actual court costs to the government.

In all civil cases, a claimant may be required by the court, upon the defendant's reasonable request, to deposit security in cash or in kind for trial and attorney costs, unless the claim is evidenced by a cheque, promissory note, bill of exchange or official deed, or if the defendant is bankrupt. The court stays proceedings until the claimant has deposited the security. If the claimant fails to deposit the security within the relevant time limit, the court will dismiss the case upon the defendant's request.

Foreign claimants are required to provide a guarantee for costs (*cautio judicatum*), if requested by an Iranian defendant, not later than the first scheduled court hearing. However, the requirement to provide a guarantee is waived in certain circumstances, including if Iranian nationals are not required to make a security deposit in the home State of the claimant, or where the claim involves bills of exchange, promissory notes or cheques.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Generally, judgments of the Courts of First Instance are final and cannot be appealed to the Appellate Court, unless:

- the financial claim has a value of more than Iranian Rials 3 million (approximately US\$300);
- it is a non-financial claim; or
- it is a sub-claim of a principal claim which is appealable.



Judgments based on confession, or one or more expert opinions, cannot be appealed, except as to the court's jurisdiction or the qualifications of the judge. The parties may also agree in writing to waive their right to appeal, except as to the court's jurisdiction or the qualifications of the judge.

If a judgment is appealable, appeals can be made from the Courts of First Instance to the Appellate Courts on the basis of errors of fact and law and procedural irregularities. New evidence may be admitted at this level, but it is not permitted to file a new claim.

From the Appellate Court, the parties may either request a re-trial or refer the case to the Supreme Court on a point of law. The Supreme Court has the power to uphold the judgment (in which case, it will be final and binding on the parties), or set it aside based on certain grounds. However, the Supreme Court does not have the right to render a new judgment. Instead, it must refer the case back to the lower competent court to examine the case and give a reconsidered judgment.

An appeal from the Court of First Instance to the Appellate Courts suspends enforcement, but referrals to the Supreme Court do not until it is referred back to the lower courts to give judgment in the case.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Iranian State entities do not enjoy immunity from civil proceedings. However, State property is immune from seizure and confiscation. It should also be noted that the Iranian constitution states that any settlement of a dispute relating to public or State property, or the referral of such a dispute to arbitration, requires the consent of the Council of Ministers and notification to the Iranian parliament before proceedings can be commenced (see also question 29 below). If one of the parties to the dispute is a foreign entity then the consent of the Iranian Parliament is also required. This acts as a significant restraint on the ability of parties to resolve disputes with Iranian governmental entities by arbitration, although consent has been given in the past.

With regard to immunity of foreign State entities, Iran applies a doctrine of restrictive State immunity, whereby acts of a governmental nature are immune from civil proceedings, but those of a commercial nature are not.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Iran is not a signatory to any of the pan Middle East treaties on recognition and enforcement of foreign judgments. Judgments issued by foreign courts can only be enforced by an Iranian court order which will be granted only if:

- there is reciprocity of recognition of Iranian judgments in the country in which the judgment was given;
- the content of the judgment is not contrary to public order or good morals;
- enforcement of the judgment is not contrary to special legislation or international conventions or treaties to which Iran is a member State;
- the judgment is final and enforceable in the issuing country;
- no judgment has been rendered in Iran contrary to the foreign court's judgment;
- the subject matter of the case does not fall within the exclusive jurisdiction of the Iranian courts (for example, Iranian real property or rights attached to them); and
- the judgment is accompanied by an order to enforce it issued by the authorities of the country in which the judgment was issued.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

There are no provisions of Iranian law which prohibit lawyers agreeing conditional fee arrangements with their clients. However, in practice, lawyers agree fixed fees with their clients which must be disclosed to the authorities and on which income tax is paid.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

There are two arbitration laws in Iran: Section 7 of Civil Procedure Code which applies to domestic arbitration, and the Law on International Commercial Arbitration (**LICA**) which governs international commercial arbitration. LICA is based on the UNCITRAL Model Law, with amendments. The remainder of this section focuses on international arbitration.

## 18 What are the main national arbitration institutions?

Two arbitral institutions exist in Iran:

- the Tehran Regional Arbitration Centre (**TRAC**), which was established in 2004 as an independent international organisation, and functions under the Asian-African Legal Consultative Organisation. TRAC aims to promote international commercial arbitration in the region, and to coordinate and assist existing arbitration institutions and ad hoc arbitrations conducted under the UNCITRAL rules; and
- the Arbitration Centre of the Iran Chamber, which was established as an independent organisation in 2001 for the settlement of domestic and international commercial disputes.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

There are no restrictions on who can represent the parties to an arbitration.

## 20 What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement can be contained in a document signed by the parties, or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a written record of agreement. However, it is not necessary for the arbitration agreement to be in writing. For example, it is possible for a party to claim an arbitration agreement exists in a statement of claim or defence which will be accepted by the tribunal, if it is not refuted by the other party.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

In international commercial arbitration, if the court finds that there is a valid and enforceable arbitration agreement, it is obliged to stay the litigation claim and refer the case to arbitration, upon a request by one of the parties made not later than the first court hearing. Institution of an action before a court does not prevent the commencement or continuation of arbitral proceedings, nor the making of an arbitral award.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

In international commercial arbitration, the LICA provides that, if the parties fail to determine the number of arbitrators, the panel of arbitrators will have three members. In these circumstances, each party appoints one arbitrator within a period of 30 days from the date of commencement of arbitration. The elected arbitrators then appoint the third arbitrator. If a party fails to appoint an arbitrator, or the elected arbitrators fail to appoint the third arbitrator, the public court of the provincial capital of the arbitration seat or the public courts of Tehran (if the place of arbitration is not determined) appoints the arbitrator upon the request of the other party.

If there are more than two parties to the arbitration, the joint claimants or defendant (as the case may be) appoint an arbitrator jointly.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to and intended by the parties.

The LICA provides that a party may challenge an arbitrator whom it appointed only for reasons of which it becomes aware after the appointment has been made. It also makes the procedure for challenging an arbitrator subject to agreement between parties. Failing such agreement, a party which intends to challenge an arbitrator must send a written statement of the reasons for the challenge to the arbitrator within 15 days after becoming aware of the arbitration, or after becoming aware of the existence of grounds for challenging the arbitrator. Unless the challenged arbitrator withdraws from his office, or the other party agrees to the challenge, the arbitrator decides upon the validity of the challenge.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

Subject to the mandatory provisions of the LICA, the parties may agree on the procedural rules applying to an arbitration. Failing such agreement, the arbitrators may conduct and administer the arbitration in an appropriate manner in accordance with the provisions of the LICA.

## 25 On what grounds can the court intervene during arbitration?

The courts may intervene during an arbitration in certain circumstances including:

- as appointing authority if the parties fail to appoint one or more arbitrators;
- to order an interim measure of protection or interim writ of attachment;
- to rule on an appeal to the arbitral decision;
- to decide on the removal of an arbitrator if he becomes unable to perform his functions or to act without undue delay; and
- to examine and decide on the arbitrators' ruling on jurisdiction to hear the dispute, upon the request of a party.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

In international commercial arbitration, unless otherwise agreed by the parties, the arbitrators may, at the request of a party, order interim measures of protection in respect of the subject matter of the claim, if an immediate decision is needed (although the arbitrators may accept alternative security proposals offered by the defendant). The arbitrators may require the requesting party to provide appropriate security to cover any potential loss to the other party arising from the granting of the order. If the arbitrators cannot order an interim measure of protection, the parties can request the courts to do so.

## 27 When and in what form must the award be delivered?

Under the LICA, the form and content of the award must:

- be in writing and signed by the sole arbitrator or a majority of them;
- state all reasons upon which it is based, unless the parties have agreed that no reasons are to be specified, or the award is made on terms agreed between the parties; and
- state the date and the place of arbitration.

After the award is made, a copy is delivered to each party.

## 28 On what grounds can an award be appealed to the court?

Arbitral awards are final and binding and the parties cannot appeal to the court. Parties can only request that the courts set aside or nullify the arbitral award. Under the LICA, such request must be submitted to the courts within three months from the date of award.

Grounds to set aside an arbitral award include:

- one of the parties lacked legal capacity;
- the invalidity of the arbitration agreement under the parties' choice of law, or (in case of no express governing law) the agreement conflicts with explicit provisions of Iranian law;
- the arbitrators have made an award beyond the scope of their authority or on a subject which was not in their jurisdiction. (Note that if the matters submitted to arbitration can be separated, only the part of the award which is outside of the arbitrators' authority may be set aside);
- the composition of the arbitral panel or the arbitral procedure was not in accordance with the arbitration agreement or, failing such agreement, was in conflict with the provisions of the LICA; and
- after the award is made, evidence is found proving the case of the losing party to the arbitration, provided it is established that the other party had concealed, or caused to be concealed, such evidence.

Furthermore, arbitral awards are void and unenforceable, if:

- the subject matter of the dispute is not capable of settlement by arbitration under the laws of Iran;
- the award is contrary to public policy or good morals or mandatory provisions of the LICA;
- the award relates to immovable property in Iran and contradicts the mandatory provisions of Iranian law and/or a validly notarised document (unless the arbitrator has an express right of compromise stated in the arbitration agreement over the terms of the relevant notarised document).

## 29 What procedures exist for enforcement of foreign and domestic awards?

In international commercial arbitrations carried out under the LICA in Iran, the enforcement of an arbitral award is requested through the public court of the provincial capital in which the arbitration seat was located.

Enforcement of foreign arbitral awards is based on the New York Convention. It is important to note, however, that if the dispute relates to Iranian public or government property, the approval of the Council of Ministers and notification to the Iranian Parliament is required before the arbitration is commenced, otherwise the award will not be enforceable. If one party to the arbitration is non-Iranian, or the subject matter of the claim is of high importance, approval of the Iranian Parliament is also required.

## 30 Can a successful party recover its costs?

The LICA does not specifically cover the recovery of costs, although it is likely that if the arbitration agreement provides for costs awards, it will be permissible for the arbitrators to make such a ruling.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Disputing parties are able, at their own discretion, to use ADR mechanisms, such as negotiation, conciliation and mediation to resolve their differences, but they are not required to do so in civil cases.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

There is a draft law on Commercial Court Procedure pending approval by the Iranian Parliament. The draft law provides for the establishment of Commercial Courts in the near future to facilitate commercial dispute resolution, and sets a framework for effective co-operation between the Iranian courts and foreign authorities in relation to enforcement of foreign judgments in commercial claims, and for the implementation of privatisation policies.

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## Atieh Associates Law Firm

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Atieh Associates Law Firm is the leading law firm in Iran providing legal services exclusively to foreign companies and investors. Atieh Associates has been hailed as the top law firm in Iran for foreign investors by publications such as *Chambers & Partners*, *Legal 500*, and *IFLR*. The firm focuses on various aspects of foreign investment in multiple areas including oil and gas, privatisation, telecommunications, energy, mining, finance, joint ventures, project finance, acquisitions, agencies and the like.

# Iraq

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Iraq Law Alliance, PLLC

## Litigation

### 1 What is the structure of the legal profession?

There are separate Bar Associations for Federal Iraq and the Kurdistan region. Lawyers practising within each region must hold a licence from the Bar Association in that area. Both Bar Associations are divisions of their respective Ministries of Justice. The process by which lawyers become licensed in Iraq is protective of Iraq nationals and, in practice, it is difficult for foreign lawyers to become licensed to practise in Iraq.

### 2 What is the structure of the court system?

The Iraqi court system is a three tiered system comprising:

- the First Instance Courts;
- the Courts of Appeal; and
- the Court of Cassation which is the highest appeal court in Iraq.

The courts are also divided into different sections: civil courts, personal status courts and criminal courts. Civil courts have jurisdiction over all cases involving civil and commercial matters and the courts of personal status have jurisdiction over matters relating to personal status (including family affairs and inheritance).

There is also a Federal Constitutional Court, which is a recent legal development in Iraq. The scope of the court is to rule on the constitutionality of laws, in particular where a conflict arises between the federal and regional laws.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The Iraqi judicial system is essentially inquisitorial in nature. The role of the judge is both to establish the facts (asking questions of counsel, or the witnesses presented) and to reach a judgment on the case.

### 4 What are the time limits for bringing civil claims?

The time limits for bringing claims depend on the type of claim. Generally, the limitation period for breach of contract claims is six years and for tortious claims is three years from the date the injury is discovered. It is not permissible for the parties to amend the limitation periods set out in the Iraqi Civil Code by way of contract and any attempt to do so is void.

### 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

Generally, there are few procedural rules relating to the service of proceedings under Iraqi law.

Civil proceedings are commenced by the claimant filing a statement of claim, in either Arabic or Kurdish (depending on where the action is commenced), with the Court of First Instance. The notice of the claim is then served on the defendant by the claimant or its lawyer. The claimant must prove service or attempted service on the defendant to the court. The notice served on the defendant will specify the time within which the defendant must respond to the claim, which must be no fewer than 30 business days.

If no response is received in this time frame specified for response, the claimant may schedule a procedural default hearing, at which time the court will determine if the claim was properly served on the defendant. If the defendant appears at court for the procedural default hearing, it is entitled to postpone that hearing on that occasion and on two subsequent occasions in order to allow a sufficient period for the defendant to prepare its defence. If the defendant fails to attend any of the scheduled procedural default hearings, or does not file its defence on time, the court may award judgment against it.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

There is no pre-trial exchange of evidence between the parties and there is no requirement for the parties to disclose evidence which may be helpful to the counterparty's case on its request. However, the court may decide to conduct its own pre-trial investigations which it considers necessary, either by request or on its own initiative.

Generally, evidence is only submitted by the parties during the trial stage and is almost all in the form of written evidence. When a party presents evidence to support its claim during trial, that evidence is presented to the counterparty in order to confirm or deny the signature and/or the authenticity of the document. If the counterparty disputes the authenticity of the document, the court will apply what is known as the "*confrontation process*".

During the confrontation process, the court conducts an investigation into the authenticity of the document, either before the judge or an expert. Witnesses may be heard. The admission of the document in question as evidence to the main hearing is suspended whilst this process is ongoing. In the event that a fraud is suspected by the court during this process, the matter is referred on to criminal investigations.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Generally, the parties are not able to control court procedure or timetable. The decision to challenge evidence and provide testimony adds considerable delay to the time frame for reaching a final verdict.

The court procedure is generally lengthy, particularly as the case is only deemed adjudicated once the Court of Appeal has either ruled on the matter, or decided not to allow an appeal. The average length of a court process to final judgment is three years.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

Very few interim remedies are available under Iraqi law. If a claimant is concerned about significant evidence disappearing during trial, it may request that the court examines the evidence by means of an expert. Any person having an interest in movable or immovable property may, if there is a reasonable threat of immediate danger to that property, make a request to the court to place the property under guardianship.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

It is commonplace for a claimant to seek summary judgment in Iraqi court proceedings. The Iraqi Civil Procedure Code states that a request for summary judgment must be made by a petition and accompanied with substantiating documents. The defendant must be given at least 24 hours' notice before the petition is heard. The court must decide on the petition within a period not exceeding seven days.

## 10 What substantive remedies are available?

The court has wide discretion to order substantive remedies depending on the nature of the case. Damages, specific performance (which may also include issuing an apology or an acknowledgement of wrong-doing) and injunctive relief are all available to the court as remedies.



## 11 What means of enforcement are available?

A wide range of enforcement options is available to the court depending on the type of award and the level of the court, which may include the seizure of assets and the garnishment of funds and wages.

## 12 Does the court have power to order costs?

The court may, on its own initiative, order costs which may include legal fees, experts' fees and witness expenses in such proportion as it decides in the interest of equity between the parties.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Litigants may appeal judgments of the First Instance Courts to the Court of Appeal on the basis of errors of facts or law. The appeal must be submitted by a pleading to the Court of Appeal, or the court which has issued the judgment. Appeals to the Court of Cassation are generally on points of law only.

Generally, an appeal process postpones the enforcement of the judgment. If, as a result of the appeal, the judgment is overturned, then all of the execution procedures that were conducted prior to the appeal are also cancelled.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

State entities may claim sovereign immunity from prosecution and civil claims, unless the State is acting in a commercial capacity or otherwise agrees to waive the immunity.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Generally, the Iraqi courts will only enforce a foreign judgment if there is a bilateral treaty in place between the relevant country and Iraq, or if there is an international convention to which Iraq is a signatory which provides for reciprocity of recognition of judgments. The treaty or convention must also have been brought into force under Iraqi law. Iraq has entered into few bilateral treaties, but it is a signatory to the Riyadh Convention.

Practically, in order to obtain enforcement, an order must be obtained from the local Court of First Instance. The Court of First Instance will briefly review the foreign judgment or arbitral award, which is usually dealt with in a timely manner.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

Lawyers may not charge a contingency fee and may not hold an interest in the property of their clients. Lawyers' fees are either agreed contractually with their client or awarded as costs by the court.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The Iraqi law on arbitration is primarily contained in the Civil Procedures Code, but there are also relevant sections of the Civil Code. These legal provisions are not based on the UNCITRAL Model Law.

## 18 What are the main national arbitration institutions?

Iraq has very few arbitration institutions. We are not aware of any centres which are capable of handling large scale international commercial disputes at present.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

There are no specific provisions under Iraqi law on who may represent parties to an arbitration. However, the enforcement of an arbitration award through the Iraqi courts requires an individual who has a Ministry of Justice approved licence to practise law in the place of enforcement (mainland Iraq or the Kurdistan region).

## 20 What are the formal requirements for an enforceable arbitration agreement?

An arbitration award must be in writing under the Civil Procedures Code. It must also contain all elements required for a valid contract. The subject matter of the dispute must also be capable of compromise (for example, public policy matters and criminal acts may not be arbitrated).

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

The Civil Procedures Code provides that a dispute may not be heard by the court if it is satisfied that an arbitration agreement exists between the parties, or if it approves an arbitration agreement during a judicial hearing. However, if one of the parties commences court proceedings, the claim may be heard and the arbitration clause shall be deemed null and void, unless the other party objects. If the counterparty does object, however, the court will stay proceedings until an arbitral award is issued.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

The Civil Procedures Code states that if there is to be more than one arbitrator, the number of arbitrators shall be odd. Within the terms of this provision, the parties are free to agree the number and method of appointment of the arbitrators. If a party fails to appoint an arbitrator (or if an arbitrator refuses to act or is removed), any of the parties may request the court to make an appointment. The court's decision on the appointment is final and binding. If the court refuses to make an appointment, however, that decision may be appealed.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

The same qualifications for judges apply to arbitrators, including requirements as to independence and impartiality.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

Under the Civil Procedures Code, the parties are free to choose the procedural rules to apply to the arbitration. The procedural rules in the Civil Procedures Code are not mandatory and may be disapplied expressly by the parties. If the arbitration agreement is silent, the Civil Procedures Code stipulates certain provisions, including that the arbitrators must issue the award within six months after the date of their nomination.

## 25 On what grounds can the court intervene during arbitration?

If the arbitrators fail to resolve the dispute within the requisite period, or if they are unable to submit their report due to a *force majeure*, then any party may apply for an extension from the relevant court, or request the court to adjudicate the dispute or appoint alternative arbitrators for that purpose. The request submitted to the competent court to appoint arbitrators does not include ratifying the arbitrators' decision, or issuing its own judgment, unless this is expressly stated in the request.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

Arbitrators may be granted powers to award interim or conservatory relief under the arbitration agreement.

## 27 When and in what form must the award be delivered?

In accordance with the Civil Procedures Code, the award must be in writing and signed by at least a majority of the arbitrators or the sole arbitrator. The award should include a summary, statements and documents of the parties, the text and reasoning of the decision and the place and date of issue.

## 28 On what grounds can an award be appealed to the court?

An arbitral decision may be annulled by a court on certain grounds, but an appeal against the arbitral tribunal's decision is not possible. The court may, however, require an arbitral tribunal to reconvene to amend an award.

The grounds on which a court may set aside an arbitral award include the following:

- invalidity of the arbitration agreement;
- if the award exceeds the scope of authority conferred on the tribunal under the arbitration agreement;
- a material error in the arbitral award or the proceedings which affects the validity of the award;
- the award contradicts morality or public policy in Iraq.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Iraq has not signed the New York Convention (although this is currently under consideration). It is, however, a signatory to the Riyadh Convention.

In addition to the conditions set out above in relation to question 15 for the enforcement of foreign judgments, in relation to foreign arbitral awards the following further conditions apply:

- the dispute must be capable of being resolved by arbitration in Iraq;
- the arbitration agreement must not be void;
- the arbitral award must be final; and
- the arbitrators must be competent to arbitrate the dispute.

As with foreign judgments, the Court of First Instance must review a foreign arbitral award before it may be enforced in Iraq.

## 30 Can a successful party recover its costs?

Fees of arbitrators can be specified through the agreement of the parties in the arbitration agreement, or in a subsequent agreement. Otherwise, such fees are determined by the competent court, either in its judgment or in a separate decision which can be appealed.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

The concept of alternative dispute resolution is not developed under Iraqi law. Parties to a dispute cannot be required to resolve their disputes through alternative dispute resolution methods, although provided that the framework for resolving the dispute does not violate a specific provision of the Iraq Civil Procedures Code, or a general concept of public policy, the provisions in a written settlement agreement will be enforced by the Iraqi courts.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

Many of the Iraqi laws concerning substantive law and civil procedures are being debated at a government level, in concert with aid agencies and international legal development foundations.

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Many of the attorneys associated with the Iraq Law Alliance, PLLC (ILA) have been operating in Iraq since 2003.

The firm provides quality legal services to investors, employers, and companies involved in the reconstruction and development of Iraq. ILA currently maintains offices in Basra, Baghdad, Erbil, and the United States.

ILA recognises the need for specialist expertise in a number of fields in Iraq, including corporate, project finance, construction, employment law, and intellectual property, and leverages the combined experience of its attorneys and consultants in those fields, and more than 46 years of Iraqi practice, to provide a comprehensive service to its clients.

ILA represents national and multinational companies. The firm advises on all legal matters related to corporate, petroleum related and reconstruction activities in Iraq. Our practice spans a broad spectrum and includes general corporate, construction, regulatory, licensing, labour, intellectual property, and tax issues.

Information on our attorneys is available on request.

# Jordan

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Obeidat Freihat

## Litigation

### 1 What is the structure of the legal profession?

The legal profession is governed by the Jordanian Bar Association Law. The Bar Association issues professional licences to qualified lawyers to practise Jordanian law and to appear before the courts. In order to become qualified, a lawyer must complete a two year training period under the supervision of a lawyer with a minimum of five years' experience and pass certain examinations.

A licensed lawyer is entitled to appear before any court in Jordan, other than the High Court of Justice (the administrative court), for which a further qualification at least of five years' experience is required.

Note that licences from the Bar Association are only granted to Jordanian nationals (who must have been citizens of Jordan for at least 10 years) and nationals of other Arab countries if those nations afford reciprocal licensing of Jordanian lawyers.

### 2 What is the structure of the court system?

The civil and criminal courts in Jordan are divided into:

- the Courts of First Instance;
- the Courts of Appeal; and
- the Court of Cassation.

The High Court of Justice is the administrative court of Jordan. Judgments rendered by the High Court of Justice are not appealable to any other court in Jordan.

Outside of civil and criminal matters, there are special courts, including the Customs Court and the Income Tax Court.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The Jordanian court system is generally inquisitorial in nature. The role of the judge under the Jordanian judicial system is that of "positive impartiality". A judge must examine and apply the law to all claims and evidence submitted by the parties and may not give a judgment which is outside the scope of the claims and requests of the parties.

There are two types of judges involved in civil cases: a case management judge and a trial judge. Once a claim has been filed, the case management judge is responsible for the process of exchange of statements of claim and response, assessing the scope of evidence submitted by the parties, determining the points of agreement and disagreement between the parties, and attempting to reach an amicable settlement. If the dispute is not settled during this process, it is then referred to the trial judge. A trial judge examines all the claims and evidence related to the case, including examining documentary evidence and hearing witnesses and experts. The trial judge also issues preliminary and final judgments.

### 4 What are the time limits for bringing civil claims?

The time limit for civil claims varies from six months to 15 years, depending on the subject of the dispute.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are commenced by filing a claim with the relevant court. The court then notifies the defendant of the claim. The defendant must respond to the claim within a period of 30 days. This period may be extended by a further 60 days if the defendant is a government entity, and by 15 days if it resides or is located outside Jordan. The claimant has a 15 day period to respond to the defendant's response.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Evidence must be submitted during the period of exchange of claim and response, overseen by the case management judge. After such exchange, the parties may not present further evidence, except for witness evidence at trial. There is no requirement to provide evidence which may assist the counterparty's case on its request.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The Civil Procedure Law sets out the timetable for the civil case procedure in order to prevent delays. In particular, courts are not permitted to adjourn cases for periods exceeding 15 days or to adjourn a hearing more than once for the same reason. Note, however, that the process may still be subject to delays, particularly hearing witness evidence and other procedures which depend on the co-operation of third parties, such as the police, attorney general or a government entity.

Complex cases may take five to 10 years for a final judgment to be reached, whereas simpler cases may be resolved in just a few months.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

Interim measures may be taken both before filing the claim and during the trial including:

- for any matters that are time-sensitive (for example, the dispute relates to an item which may deteriorate or be destroyed);
- the appointment of a receiver (who administers the assets of a business in the event of a conflict between its owners);
- travel restrictions; and
- hearing witnesses in cases where this may not be possible during the trial.

Note that it is possible that interim measures may be taken against a defendant at a point where it is unaware of the claim by the claimant because it has yet to be filed with the court.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

Judgments may only be obtained without a trial for applications detailed in question 8 above. These procedures may be invoked before filing the lawsuit or during the trial. There is no summary judgment possible in respect of the case as a whole.

## What substantive remedies are available?

The remedies which can be ordered by the court are:

- damages;
- specific performance;
- confirmation of title to personal, real or intellectual property right.

## What means of enforcement are available?

The enforcement of judgments is carried out through the enforcement department at the respective court. Enforcement measures include the attachment of assets, public auctions, and imprisonment for a period not exceeding 90 days during any given year for the same debt.

## Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The courts have the power to order the losing party to pay actual costs, although lawyers' fees are excluded from costs awards because they are capped by the Bar Association (see question 16 below). No security for costs is required from foreign claimants.

## On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

An appeal from the Courts of First Instance to the Courts of Appeal is permitted on the basis of an error of fact, an incorrect decision on the law or a procedural irregularity. Certain small claims may not be appealed. Appeals from the Courts of Appeal to the Court of Cassation may only be made on points of law and the case is not re-opened on its merits.

The process of enforcement may not be initiated until the issuance of a final decision which may not be appealed, or the lapse of the legal period for filing an appeal (which is generally a period of 30 days from the date of the hearing or service of the judgment if the relevant party was not present).

## To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Only the King of Jordan enjoys immunity from civil proceedings. Proceedings against the King are not heard by the courts unless the prior approval of the King is obtained. Proceedings against the King are heard by the courts unless the prior approval of the King is obtained.



- the judgment is not final and binding on the parties;
- the party against whom enforcement is sought establishes that it is not a final judgment; or
- the judgment contradicts public policy or morality in Jordan.

The procedure for enforcing a foreign judgment involves filing a case before the Courts of First Instance to render the judgment enforceable in Jordan without re-examination of the merits of the case. The foreign judgment must be translated into Arabic and served in such form to the defendant. Enforcement procedures are subject to the Jordanian Code of Civil Procedure and the decision enforcing a foreign judgment is executed as if it is issued by a Jordanian court.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

There are no provisions of Jordanian law which prevent lawyers from charging contingency or conditional fees, subject to an overall cap on lawyers' fees which must not exceed 25% of the value of the case (other than in special circumstances with approval of the Bar Association).

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration Law No. 31 of 2001 is based on the UNCITRAL Model Law.

## 18 What are the main national arbitration institutions?

The only institutional arbitration centre in Jordan is ICC-Jordan which is not commonly used for arbitration.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

No.

## 20 What are the formal requirements for an enforceable arbitration agreement?

The following are requirements under Jordanian law for a valid arbitration agreement:

- the parties to an arbitration agreement must have the legal capacity to dispose of their rights;
- the subject of the arbitration agreement must not be one that cannot be subject to compromise (such as family and criminal law issues);
- the agreement must be in writing. (Note, however, that this requirement is interpreted widely and may include an exchange of letters, telegrams, faxes, telexes or any other form of written correspondence that records the parties' agreement, as well as incorporation by reference to a standard contract, international convention or any other document containing an arbitration clause where such reference clearly incorporates the arbitration clause into the agreement).

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

No, the court may not refuse to stay litigation if there is a valid arbitration clause.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

Where the parties do not agree on the number of arbitrators, the arbitral tribunal should comprise three arbitrators. In all cases, the number of arbitrators must be an odd number, otherwise the arbitration is considered to be void in accordance with the Arbitration Law. The Court of Appeal located in the district where the arbitration is conducted acts as the appointing authority if the parties fail to nominate the arbitrators.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

A party to an arbitration agreement may not challenge an arbitrator appointed by it, except for a reason that became known to such party after his appointment. Furthermore, a party may not challenge the same arbitrator more than once in the same arbitration process, so that if the challenge fails then it cannot be made again during the course of the proceedings.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

Under the Arbitration Law, the parties to an arbitration may freely agree on the procedure to be followed, including their right to subject their arbitration to the rules of any arbitral institution or centre in or outside Jordan. However, if the parties have not agreed on certain aspects, the Arbitration Law contains a number of procedural rules, which must be followed if the seat is in Jordan.

## 25 On what grounds can the court intervene during arbitration?

The Arbitration Law states that no court may intervene in any arbitral procedure except in cases that are specifically provided for under the Arbitration Law such as:

- ordering provisional or conservatory measures, such as the appointment of a receiver or conservatory attachment; and
- terminating the mandate of an arbitrator if he becomes incapable of performing his functions, or fails to commence or continue his role.

However, the parties are entitled to request the assistance of the Court of Appeal in conducting arbitral procedures as the arbitrators deem appropriate, such as summoning witnesses or experts, or ordering the production of documents.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

The parties may agree to grant the arbitrators powers to order interim or conservatory measures (whether on their own initiative or upon the request of any other parties) and to require the requesting party to provide sufficient security to cover the costs of such measures. If the party against whom the interim or conservatory measure is ordered fails to comply, the arbitrators may (upon the request of the other party) permit the requesting party to take steps to enforce the order, including the right to request the competent court to issue an enforcement order.

## 27 When and in what form must the award be delivered?

The final arbitral award must be issued within the period that is agreed upon between the parties or, in the absence of agreement, within 12 months from the commencement of the proceedings. The arbitrators may decide to extend this period by no more than six additional months, unless the parties agree to a longer period of extension.

The award must be delivered in writing and signed by the sole arbitrator or a majority of them. The award must set out:

- the names, addresses, nationalities and capacities of the parties and the arbitrator(s);
- a summary of the arbitration agreement, as well as the claims, statements and documents of the parties;
- the text, date and place of issue of the award; and

- the grounds on which the award is based, unless the agreement of the parties or the law that is applicable to the procedures does not require that the award be reasoned.

## 28 On what grounds can an award be appealed to the court?

An arbitral award may only be appealed to the Court of Appeal on the following grounds:

- the arbitration agreement is invalid;
- a party to the arbitration agreement lacked legal capacity in accordance with the applicable law;
- a party was not given proper notice of the appointment of an arbitrator, or of the proceedings, or any other reason that is beyond the control of such party;
- the arbitral award fails to apply the law that the parties had agreed to apply to the subject of the dispute;
- the constitution of the arbitral tribunal, or the appointment of the arbitrators, was contrary to the provisions of the Arbitration Law or the agreement of the parties;
- the award rules on matters that are not included in the arbitration agreement or are beyond the scope of such agreement (note that if the matters submitted to arbitration can be separated, only the part of the award which is outside of the arbitrators' authority may be set aside);
- the court finds that the subject matter of the dispute is not capable of resolution by arbitration, or the award is contrary to public policy in Jordan; or
- procedural irregularities occur in the making of the award by the tribunal which affect its terms.

## 29 What procedures exist for enforcement of foreign and domestic awards?

In relation to domestic awards, the application for enforcement of the award may only be submitted to the Court of Appeal after the period for filing actions for nullity has expired (which is 30 days from the day after the award was served on the parties). It must be accompanied by a copy of the arbitration agreement, the original award (or a signed copy) and an Arabic translation of the award. The court must order the enforcement of the award unless it finds that it violates public order in Jordan, or that it was not duly notified to the party against whom it was made. A decision ordering enforcement of the award is not open to any kind of challenge, while a decision refusing enforcement can be appealed to the Court of Cassation within 30 days of its notification to the parties. If the Court of Cassation confirms the Court of Appeal's decision to refuse enforcement of the award, then such decision will result in the invalidity of the arbitration award.

With regard to foreign awards, Jordan is a signatory to the New York Convention. A party holding an award made in a signatory State to the Convention may apply to the Jordanian Courts of First Instance to enforce the award as if it were made in Jordan. However, under the Jordanian Law on the Enforcement of Foreign Judgments, the award must also be:

- final and conclusive;
- not contrary to public policy in Jordan;
- issued by a tribunal of competent jurisdiction.

## 30 Can a successful party recover its costs?

Yes – although, as for litigation costs, lawyers' fees will not be included in any costs award because they are capped at 25% of the real value of the case under the Bar Association rules.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

While parties to arbitration are not required to submit to any other dispute resolution methods, civil claims are automatically referred to the case management judge, whose role is to encourage the parties to settle their dispute amicably prior to referring it to the trial court.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any reform plans in the areas of litigation or arbitration in the near future.

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## Obeidat Freihat

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Obeidat Freihat is a full service law firm that was originally founded in 1985 by Ahmad Obeidat, a former prime minister of Jordan. The firm now boasts one of the leading law practices in the country with 23 lawyers and a practice that spans most of the major areas of the legal profession.

Since its establishment, Obeidat Freihat has represented a vast number of local and foreign clients in a wide range of matters including acquisitions, arbitration, banking, construction contracts and disputes, foreign investment, privatisation-related advice and corporate structuring, general corporate matters, intellectual property, international business transactions, financing agreements, insurance, joint venture agreements, agency, franchise and distributorship agreements, civil and commercial litigation, oppositions and seizures, patents and trademarks, shipping and taxation. The firm has set up a specialised subsidiary for the protection of intellectual property rights in Jordan and the rest of the Arab world.

Major areas of practice of the firm are: privatisation and public-private partnership experience; information and communication technology; intellectual property; banking and insurance; legislative and policy reform; civil and commercial litigation and arbitration; mergers and acquisitions/IPOs; and real estate development.

# Kuwait

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ASAR – Al Ruwayeh & Partners (in association with Stephenson Harwood)

## Litigation

### 1 What is the structure of the legal profession?

Kuwait's legal profession is divided into advocates, public prosecutors and judges. Advocates must be admitted to the Kuwaiti Bar. Admission is restricted to Kuwaiti nationals. Advocates are entitled to advise on Kuwaiti law and, upon admission to the Bar, have rights of audience before the Kuwaiti courts.

### 2 What is the structure of the court system?

There are three tiers of courts for all cases, namely the Courts of First Instances, the Courts of Appeal and the Court of Cassation. Appeals from the Courts of First Instance to the Courts of Appeal may be made on errors of fact and law, whereas appeals to the Court of Cassation may only be made on points of law.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The judicial system in Kuwait is essentially inquisitorial in nature. The judge questions witnesses and may ask the parties to produce specific evidence. There is no recognition of binding precedent in Kuwait and, therefore, previous decisions are not formally binding on the judge. However, in practice, lower courts generally take into consideration decisions of the Court of Cassation.

There are no jury trials in Kuwaiti courts.

### 4 What are the time limits for bringing civil claims?

Generally, the time limit for bringing a civil claim is 15 years. However, in certain contexts, time limits are less. For example:

- 10 years for commercial claims;
- five years for tax claims;
- three years for tort claims; and
- three years for unjust enrichment claims.

### 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

A civil action is commenced by the claimant filing a statement of claim with the court, setting out the grounds of the claim and the relief requested. The statement of claim is then served on the defendant by the court process server. A hearing is set by the court and the defendant submits its defence and supporting evidence.

### 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

There is no formal pre-trial exchange of evidence in Kuwait. Evidence is usually only presented at the trial or attached to the statements of claim and defence. There is no requirement to provide information which may assist the counterparty's case on its request. Most evidence is in written form, although oral evidence may be presented at trial.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The parties have no control over the conduct of proceedings and timetable. Such control is fully exercised by the court. However, the parties' conduct may affect the progress of the proceedings, by causing delays to the process.

Litigation in Kuwait is a long process. It may take up to four to five years for conclusion of a civil claim.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

Interim remedies include:

- preventative attachment orders to secure monetary judgment;
- provisional orders to preserve assets; and
- prohibitory orders, for example travel restrictions.

In these cases, the applicant must establish that there are risks involved for the claimant and that the situation is urgent.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

A holder of a document evidencing a due debt (such as a promissory note) may apply to the court to obtain a payment order without trial. However, the defendant is entitled to object to the grant of the order, in which case the matter is referred to the court where the usual court procedures will be followed to trial.

## 10 What substantive remedies are available?

Generally, courts have wide powers to award remedies including damages, injunctive relief and declaratory relief. There are no punitive damages.

## 11 What means of enforcement are available?

Means of enforcement include:

- the imposition of fines for non-payment;
- attachment of assets;
- sale of assets by auction;
- travel restrictions; and
- imprisonment.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Courts have the power to order costs. Foreign claimants are not required to provide security for costs.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

An appeal from the Courts of First Instance to the Courts of Appeal may be made on the basis of errors of fact or law. New evidence and/or arguments can be made before the Courts of Appeal. This appeal has the effect of suspending enforcement unless the court orders otherwise.

An appeal from the Courts of Appeal to the Court of Cassation may only be made on the basis of misapplication or misinterpretation of the law. This appeal does not suspend enforcement of the original decision.

In addition, the parties may apply to a court for reconsideration of a judgment made by that court in certain cases, including where:

- there is fraud or dishonesty which affects the judgment;
- the applicant later obtains conclusive evidence that was not previously disclosed by the other party during the proceedings;
- the judgment is beyond the scope of the issues raised by the parties;
- the judgment contradicts itself; and
- one or more of the parties was not correctly represented in the proceedings.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Domestic and foreign State entities are not entitled to claim immunity in respect of civil proceedings. However, State assets cannot be subject to attachment or seizure under Kuwaiti law by way of interim remedies, although any governmental officer who fails to act upon a final judgment may be subjected to criminal prosecution and therefore enforcement of a final judgment against Kuwaiti government entities is possible.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

In order for foreign judgments to be recognised and enforced in Kuwait, a recognition and enforcement order must be obtained from a Kuwaiti court. Foreign judgments will be enforced by the Kuwaiti courts if the following conditions are satisfied:

- the courts of the jurisdiction in which the judgment was issued must recognise Kuwaiti judgments;
- the judgment was issued by a court of competent jurisdiction;
- the parties were properly notified of the hearing and represented at the proceedings;
- the judgment must be final and binding on the parties;
- the judgment must not contradict any prior judgment or order made by the Kuwaiti courts; and
- the judgment must not contradict general morals or public order in Kuwait.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

Contingency fees, conditional fees and fee arrangements based on the result of litigation/arbitration are all permitted under Kuwaiti law.



# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

Articles 173 – 188 of the Civil and Commercial Procedure Law are the provisions relevant to arbitration in Kuwait. These provisions are not based on the UNCITRAL Model Law.

## 18 What are the main national arbitration institutions?

There is an arbitration centre as part of the Kuwait Chamber of Commerce and Industry.

## 19 Are there any restrictions on who may represent the parties to arbitration?

The parties may represent themselves or be represented by any person, whether or not legally qualified.

## 20 What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement must be in writing.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

The Kuwaiti courts will stay litigation if there is a valid arbitration agreement, if requested to do so by the parties at the beginning of the litigation process and, in particular, before the merits of the claim are considered.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

There are no provisions specifying the number of arbitrators, in the absence of agreement between the parties. The appointing authority is the Kuwaiti courts.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

The right to challenge the appointment of an arbitrator may only be made on grounds which became known to the party after his appointment. The challenge must be made within five days from the date of appointment, or the date on which the reason for challenge became known to the applicant.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to agree on the procedures to apply to the arbitration.

## 25 On what grounds can the court intervene during arbitration?

The Kuwaiti courts may, upon the request of one or more parties, intervene during an arbitration to:

- appoint arbitrators in the absence of the parties' agreement; and
- decide upon a challenge to the arbitrators.

Also, the courts may, upon the request of the arbitrators, intervene during an arbitration to:

- compel witnesses to appear before the arbitral tribunal; and
- order third parties to produce documents related to the arbitration.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

There is no express provision giving arbitrators the power to grant interim or conservatory relief.

## 27 When and in what form must the award be delivered?

The award must be delivered within six months of the date of commencement of the arbitration, unless otherwise agreed by the parties. The award shall be in writing and must include the following:

- a summary of the arbitration agreement;
- a summary of parties' arguments and documentation;
- the reasons for, and the final decision of, the award;
- the date and place of the award;
- the arbitrators' signatures (a majority of them or the sole arbitrator).

## 28 On what grounds can an award be appealed to the court?

Arbitral awards cannot be appealed to the Kuwaiti courts unless the parties have agreed to have the right to do so. However, arbitral awards may be set aside or annulled. A domestic arbitral award may be set aside or annulled by the court if:

- there is no valid arbitration agreement;
- the award rules on matters outside the scope of the arbitration agreement;
- there is fraud or dishonesty which affects the award;
- the applicant later obtains conclusive evidence that was not disclosed by the other party during the arbitration;
- the award is beyond the scope of the arbitration agreement;
- the award contradicts itself; or
- one or more of the parties was not correctly represented in the arbitration.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Kuwait is a signatory to the New York Convention.

The enforcement of a foreign arbitral award is carried out by commencing a claim in the Kuwaiti courts. The award must be written in Arabic, or accompanied by an official Arabic translation (by Kuwaiti translators), before submitting the award for recognition and enforcement to the Kuwaiti court. An official translation must be authenticated by the Ministry of Justice and, if the arbitral award is issued outside Kuwait, then such arbitral award must be consularised by the Kuwaiti consulate in the relevant country, and then legalised by the Ministry of Foreign Affairs in Kuwait. Any award filed with the court must be accompanied by a copy of the arbitration agreement.

The enforcement of domestic arbitral awards requires an original copy of the award to be filed with the court. After examining the award and the arbitration agreement, the chairman of the court in question issues an enforcement order.

## 30 Can a successful party recover its costs?

There are no specific provisions under Kuwaiti law dealing with recovery of costs. However, in practice, the successful party can recover the costs of arbitration. Attorneys' fees, however, are not generally awarded in arbitration and are borne by each party.

# Alternative dispute resolution

31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

No.

## Reforms

32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any significant procedural reforms in the near future.

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### **ASAR-AI Ruwayeh & Partners (in association with Stephenson Harwood)**

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ASAR - AI Ruwayeh & Partners (ASAR) is a corporate/commercial law firm. It is the leading international law firm in Kuwait and one of the top tier firms in the Middle East with strong connections in each of the Gulf Cooperation Council countries. The firm has extensive connections throughout the greater Gulf region and beyond and has an in-depth knowledge of all aspects of Kuwaiti local affairs. The firm provides a comprehensive range of legal services and is qualified to assist its clients on the vast majority of legal issues they are likely to encounter in Kuwait and overseas. The firm has also participated in and played a prominent role in significant recent legal developments in Kuwait.

ASAR's clients include Kuwaiti public and private sector organisations and major international companies from all parts of the world. The firm has a large department of internationally trained and experienced lawyers dedicated to advising clients on international commercial and litigation matters. It serves as counsel for many local and international public and private-sector agencies and businesses, as well as for select families and individuals.

Stephenson Harwood, with whom ASAR has had a relationship since 1991, is an international law firm based in London with 100 partners and more than 500 staff worldwide. The goal of the association is to ensure that clients receive only the highest quality of legal services in Kuwait and abroad.

# Lebanon

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Abousleiman & Partners

## Litigation

### 1 What is the structure of the legal profession?

The legal profession in Lebanon is regulated by the Bar Association of which there are two branches in Beirut and Tripoli.

The qualification requirements for a person to be licensed in Lebanon include:

- holding Lebanese citizenship for at least 10 years;
- being between 20 and 65 years of age;
- membership of one of the Bar Associations and three years' training at a law firm.

Foreign nationals are not entitled to practise law in Lebanon.

### 2 What is the structure of the court system?

The main civil and criminal courts are within the court system which is based on the French Napoleonic Code. There are three levels of courts within the court system of general jurisdiction:

- the Courts of First Instance;
- the Courts of Appeal; and
- the Court of Cassation, which is the highest court of appeal in Lebanon.

Specialised tribunals also exist in Lebanon, such as the Constitutional Council (which hears complaints on the constitutionality of laws), the Judicial Council (which prosecutes certain State crimes) and the Arbitral Labour Council (formed to deal with labour law disputes).

There is also the State Council which is an administrative court (the jurisdiction of which is limited to matters involving or arising from administrative decisions issued by the State or any of its agencies, institutions, or from administrative contracts), as well as military courts and religious courts (whose jurisdiction is limited to personal status and family law matters).

### 3 What is the role of the judge (and where applicable, the jury) in civil proceedings?

Generally, the court system in Lebanon is inquisitorial in nature. Under the Code of Civil Procedure (**CCP**), the role of the judge in civil proceedings includes:

- ensuring the proper conduct of the proceedings, including granting extensions of time periods, where necessary;
- ruling on matters of fact and law;
- applying the correct legal analysis to the facts in dispute.

The judge is bound by the principle of '*Contradiction*' under which he must ensure that all evidence and elements of fact and law have been brought to the attention of all parties involved in the dispute before issuing his decision.

At the Courts of First Instance, if the amount claimed is less than 100 million Lebanese Pounds (approximately US\$67,000) the case is heard before a single judge, and by a three judge panel for cases where the amount in dispute is greater. There are exceptions to these rules, however, including in the case of fast track proceedings and lease disputes. A three judge panel hears cases in the Courts of Appeal and the Court of Cassation.

There is no trial by jury in Lebanon in civil proceedings.

## 4 What are the time limits for bringing civil claims?

The time limitation for civil actions is generally 10 years. However, there are certain legal claims for which the time limit is shorter. Limitation is calculated from the date following the accrual of the cause of action.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

Civil proceedings are commenced by the claimant filing a claim with the court. The claim must set out the substance and facts of the claim, together with the relevant evidence. The claim is served on the defendant by the claimant acting through an officer of the court. The defendant is required to file a response within 15 days of the receipt of service.

## 6 What is the extent of pre-trial exchange of evidence and how is evidence presented at trial?

There is no pre-trial exchange of evidence under Lebanese law. The parties should submit all evidence relating to the case, either when filing the claim or during the court procedure. However, the judge may investigate, examine or question any evidence or witness, if those are in doubt, either under his own initiative or upon a request by one of the parties. During the proceedings, the judge may order any party to submit documents which may assist the counterparty's case.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The CCP sets out specific periods for the filing of pleadings. The court can order extensions to these periods. In addition, where urgency is clearly demonstrated, the judge may accelerate the proceedings upon request by one or more of the parties. It is usual for a case to reach trial three to four months after filing the claim.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

The courts have wide powers to grant interim relief to preserve the parties' interests pending judgment. These include:

- attachment of property;
- granting injunctions; and
- appointment of a receiver (to supervise the management of a business in the event of a dispute between its owners).

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

Under Lebanese law, it is possible to apply for an "Order on Request", which allows for judgment to be obtained without proceeding to trial, in the absence of the other party. Orders on Request are available in very few cases, including to enable enforcement of official foreign documents and enforcement of arbitral awards.

## 10 What substantive remedies are available?

Substantive remedies available under Lebanese law include:

- the payment of compensatory damages;
- annulment of contracts;
- injunctions to do or refrain from doing an act;
- transfers of property.

The court may also order the payment of moral and exemplary damages, interest and/or costs awards.

## 11 What means of enforcement are available?

Under the CCP, the attachment of assets is the principal means of enforcement of court judgment. There are different kinds of attachments:

- precautionary attachment (used in emergency cases to seize the debtor's assets to safeguard enforcement);
- third party attachment (used to seize assets of the debtor in the possession of third parties);
- attachment in aid of execution (used where the creditor has an enforceable deed to sell the debtor's goods in a public auction and recover the proceeds); and
- recovery attachment (the right to immediately seize and sell recoverable assets in the debtor's or a third party's possession).

## 12 Does the court have the power to order costs? Are foreign claimants required to provide security for costs?

The court is entitled to make a costs order. Costs are usually awarded to the successful party. There is no provision for security for costs for foreign claimants in civil law.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

An appeal may be made on any ground which justifies the reversal of the judgment or final order. In particular, appeals from the Courts of First Instance to the Courts of Appeal may be made on the basis of errors of fact or law. At this stage, the Courts of Appeal are entitled to review the entire case and admit new evidence. It is only possible to appeal on points of law from the Courts of Appeal to the Court of Cassation.

The CCP prescribes specific periods, requirements and procedures for appeal, depending on the level of the appeal within the court system, and on the errors or irregularities alleged. Failure to comply with these requirements generally results in dismissal of the appeal.

In principle, judgments or final orders may not be executed during the appeals process before the Courts of Appeal.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Domestic State entities cannot claim immunity from civil proceedings but foreign States may claim immunity for acts of a governmental nature. Immunity does not extend to acts of a commercial nature which could equally be performed by a private company or individual. However, the assets of foreign and domestic State entities may not be seized in enforcement of the judgment.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Any judgment obtained in a foreign court may be recognised and enforced by the Lebanese judicial system without a retrial of its merits, provided that the country in which the judgment was rendered offers reciprocal recognition and enforcement of Lebanese judgments. Lebanon is not a signatory to the Riyadh Convention and consequently, a bilateral treaty must exist for enforcement of judgments of other countries in the League of Arab States.

In addition, the judgment must satisfy the following conditions:

- the judgment must have been issued by a competent court in the relevant jurisdiction, with the basis for jurisdiction not being based solely on the nationality of the plaintiff;
- the judgment must be final and capable of being enforced in the relevant jurisdiction;
- the judgment must not be based on documents subsequently deemed or found to be untrue and must not contain contradictory terms;
- the defendant must have been properly served notice of the proceeding and due process must have been observed;
- the judgment must not be contrary to Lebanese public policy; and
- no final judgment must have been given in the same case between the same parties by a Lebanese court, and no such action must be pending (filed prior to the relevant foreign action).

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

There are no specific provisions of Lebanese law which prohibit agreeing contingency or conditional fees or other fee arrangements based on the result of litigation or arbitration. However, in the event that attorneys' fees exceed 20% of the disputed amount, the courts may decrease the sum due.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The Lebanese legislation regulating arbitration is primarily based on French law. The Lebanese arbitration law does not follow the UNCITRAL Model Law.

## 18 What are the main national arbitration institutions?

The Lebanese Arbitration Center is the sole institution which provides administration and monitoring services for arbitration proceedings in Lebanon.

## 19 Are there any restrictions on who may represent the parties to arbitration?

There are no restrictions on who may represent the parties to arbitration. Parties may be represented by the person of their choice who does not need to be a lawyer.

## 20 What are the formal requirements for enforceable arbitration agreement?

In order to be enforceable, the arbitration clause must be in writing. The terms of the arbitration agreement must include the name or qualifications of the arbitrators, or the method for the appointment of the arbitrators. If there is a separate arbitration contract, it must also include the object of the dispute.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

In the event of a valid arbitration clause, the court must refer the parties to arbitration, unless the parties mutually waive their right to arbitrate and agree to the jurisdiction of the court.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

Lebanese law does not prescribe the number of the arbitrators, although it should always be an odd number. At the request of the parties, the President of the Court of First Instance may appoint the arbitrators if the agreement does not provide for the method of appointment.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

An arbitrator may be challenged on the same grounds as are used to challenge judges in judicial proceedings, namely reasons which may affect impartiality and independence. The arbitrator has a duty to disclose any facts which could potentially give rise to a challenge. If any such facts exist, the arbitrator may be appointed, provided the parties accept his appointment in full knowledge of such facts.

The Court of First Instance is the competent authority to decide on petitions challenging the appointment of arbitrators.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The CCP sets out specific rules for arbitral proceedings for domestic arbitrations, which are also applicable to international arbitrations if the parties have not chosen specific rules or law to apply to their arbitration.

## 25 On what grounds can the court intervene during arbitration?

The courts can intervene during arbitration in two circumstances:

- if there is urgency and a risk of significant damage to the interests of a party, the judge may intervene to order conservatory measures; and
- if the parties agree to submit to the jurisdiction of the courts in place of arbitration.

## 26 Do arbitrators have power to grant interim or conservatory relief?

The Rules of Conciliation and Arbitration of the Lebanese Chamber of Commerce and Industry (which are not compulsory) give the arbitrator the power to grant interim or conservatory relief, including measures intended to preserve evidence (such as taking witness statements) or to prevent irreparable harm (for example, the sale of perishable goods).

## 27 When and in what form must the award be delivered?

In domestic arbitrations, the award must be made within six months of the terms of reference of the arbitral tribunal being agreed and signed by the arbitrators, unless otherwise agreed by the parties. In international arbitration, there is no term specifying a time period within which the award must be issued.

The terms of the award must contain the names of the arbitrators, the date of and the location in which the award was granted, the names and addresses of the parties and their representatives, a recital of the facts of the case, the evidence of the parties, the grounds for the award (in domestic arbitration) and the verdict. The award must be signed by all or a majority of the arbitrators and, in the circumstance where a minority dissents, the award may state the dissenting opinion.

## 28 On what grounds can an award be appealed to the court?

Arbitral awards may generally be challenged before the Court of Appeal in two ways: either by way of an ordinary appeal, or by way of a “*recourse in annulment*”.

An ordinary appeal is only available in domestic arbitrations, in which circumstances both the facts and the law will be examined by the Court of Appeal.



A “*recourse in annulment*” is available in both domestic and international arbitration and is a request to the court to render the arbitral decision void. This is the only route available to challenge an award made in an international arbitration where the seat was in Lebanon.

Under the CCP, an annulment may only be granted on the following grounds:

- there was no valid arbitration agreement;
- the arbitrator was not appointed in accordance with law;
- the arbitrators exceeded the scope of their appointment as determined by the parties;
- the award has been made without following due process;
- the award violates a rule of public policy (being international public policy if it is an international arbitration).

Such an annulment application should be filed with the Court of Appeal at the place in which the award was made within 30 days of the date of notification of the award.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Lebanon is a signatory to the New York Convention.

Arbitration awards are not enforceable unless they receive an “*exequatur*” from the President of the Court of First Instance of the seat of arbitration (which, if the seat is in a foreign country, is the Court of First Instance in Beirut). In international arbitration, awards are granted the “*exequatur*” only if the existence of the award is proved by the parties wishing to rely upon it (in practice, the relevant party submits an original or certified copy of the award), and it does not violate a rule of international public policy. The enforcing party must deposit a certified copy of both the award and the arbitration agreement with the Court of First Instance.

## 30 Can a successful party recover its costs?

The arbitral award should state the costs of the arbitration and which of the parties is responsible for those costs, or the proportionate share of them.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

There is no requirement to submit to any alternative dispute resolution before or during proceedings. The parties to arbitration, according to Article 1 of the Rules of Conciliation and Arbitration of the Chamber of Commerce and Industry (which are not mandatory), are given the option to submit to conciliation before arbitral proceedings. In addition, all civil or business disputes of an internal or international character may be submitted to conciliation by a sole conciliator appointed by the Beirut Chamber of Commerce and Industry.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any proposed significant procedural reforms in the near future.

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## Abousleiman & Partners

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Abousleiman & Partners has consistently been ranked as one of the leading law firms in Lebanon. The firm provides innovative advice and legal assistance in mergers and acquisitions, capital markets, general corporate, litigation, dispute resolution and tax matters.

The firm also advises on domestic and international commercial transactions, securitisation, corporate restructuring, establishment of mutual funds, joint ventures, as well as corporate and project finance transactions. In addition, the firm has expertise in the privatisation of telecom and electricity companies.

Abousleiman & Partners has won the International Financial Law at Review Law Firm of the Year Award for Lebanon in 2008. The firm has won this award for two of three years since its inception in 2006.

The firm works closely with, and acts as local counsel, to many international law firms and clients and handles legal matters in English, French and Arabic.

# Oman

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Said Al Shahry Law Office (SASLO)

## Litigation

### 1 What is the structure of the legal profession?

The Ministry of Legal Affairs regulates the activities of domestic and foreign lawyers in Oman under the Legal Profession Law. There is no Bar Association or Law Society in Oman.

Foreign lawyers who speak Arabic and were registered with the Ministry of Legal Affairs before 1 January 2009 have rights of audience before Omani courts. However, due to a change in the law, foreign lawyers registered after that date are not entitled to attend or plead before the courts. All foreign lawyers are, however, entitled to advise on Omani law. Non-Arabic speaking foreign lawyers in Oman usually serve as legal consultants or in-house lawyers in Omani law firms. There are also a few foreign law firms established in association with Omani lawyers.

### 2 What is the structure of the court system?

The Omani courts are structured into a three-tiered hierarchy:

- the Courts of First Instance (also known as Primary Courts);
- the Courts of Appeal; and
- the Supreme Court.

The Courts of First Instance are responsible for ruling on civil and commercial cases, requests for arbitration, personal status cases and general, labour, tax, rent and other cases within their jurisdiction.

The Courts of Appeal (which are based in Muscat, Sohar, Nizwa, Salalah, Ibra and Ibri) consider appeals against rulings delivered by the Courts of First Instance.

The Supreme Court is based in Muscat. It is the highest court in Oman and consists of a President, a number of Deputy Presidents and judges. It rules on disputes over the extent to which laws and regulations comply with the Basic Law of the State (the Omani constitution) and its provisions, and on appeals filed before it.

There are also administrative courts in Oman which rule on administrative disputes. They hear cases filed against government departments, as well as other cases which fall within their jurisdiction.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The judicial system in Oman is essentially inquisitorial in nature. The judge's role in civil proceedings is to:

- hear the case;
- sum up the facts and claims of the parties;
- give a brief abstract of the pleadings, defences and opinion of the public prosecutor (if any);
- pronounce judgment and its grounds, including the text of any Royal Decree referred to.

Where the value of the civil proceedings is less than RO70,000 (approximately US\$182,000), it is dealt with by one judge in the Courts of First Instance. Where the value of the civil proceedings is more than RO70,000 or involves bankruptcy, composition of creditors, insurance cases, disputes over market securities, or intellectual property and patents, they are dealt with by a three judge panel. Court of Appeal rulings are given by a three judge panel, whereas Supreme Court rulings are given by a five judge panel.

There are no jury trials in civil proceedings in Oman.

## 4 What are the time limits for bringing civil claims?

Generally, the Law of Commerce provides for a limitation period of 10 years for commercial claims (which arise from the conduct of business) from the date on which the discharge of commercial obligations is due. In civil claims (including personal obligations), generally speaking, there are no limitation periods but the Omani courts will not usually hear a case after a lapse of 15 years from the date of default, unless there is a lawful reason why it should be heard. There are also various limitation periods prescribed by various Royal Decrees governing different aspects of civil claims.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

Commercial proceedings are commenced by the claimant filing a claim and paying the prescribed fee. All necessary and supporting pleadings, documents and evidence must be provided and attached when filing the claim with the Court of First Instance. The claim is served on the defendant by the court through appointed process servers. The defendant has 15 days (30 days if overseas) from the date of service to file its defence.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

There is no procedure for pre-trial exchange of evidence in the Omani courts. A plaintiff must attach and present all the documentary evidence on which his case is based. The defendant must also attach and present in his memorandum of defence all the supporting documents and evidence which it wants to rely on in court. There is no requirement for the parties to provide evidence which may assist the counterparty's case on its request.

The parties may apply to have witnesses heard in court, including expert witnesses. The Omani court, on application by any party during trial or pre-trial, may inspect an object which is the subject of dispute if the object is in danger of changing or disappearing.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

In civil and commercial claims, the procedure and timetable of the proceedings are regulated by the Civil and Commercial Procedures Law. The parties are able to control the procedure and the timetable to the extent provided by the law but excessive tactical delay is usually not possible.

Generally, the court process may take between two and four months, although it may take longer depending on the circumstances and, in particular, in the event of defects in the parties' documentation or service of notice.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

Interim remedies available include:

- attachment of property;
- travel restrictions;
- inspection of property or objects in dispute; and
- freezing of bank accounts.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

There are no summary proceedings available in the Omani courts. There is a procedure known as "*Offer and Deposit*", whereby a debtor wishing to discharge his financial obligations may present to his creditors an offer of money, documents or movable property, representing his financial obligation.

## 10 What substantive remedies are available?

The substantive remedies available include:

- financial awards, including damages and interest;
- injunctions; and
- writs of performance.

## 11 What means of enforcement are available?

A judgment may be enforced by the following means:

- attachment of movable and immovable properties;
- attachment of the debtor's assets held by a third party;
- freezing of the debtor's accounts; and
- imprisonment of the debtor or a company manager who refuses or delays the enforcement of a judgment.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Yes - the court has the power to order costs which usually fall to the losing party to pay. Foreign claimants are not required to provide security for costs.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Parties can appeal from the Courts of First Instance to the Courts of Appeal on the basis of errors in the judgment (both of fact and law) and procedural irregularities. It is also possible to lodge an appeal on the basis that the judgment contradicts public order or morality in Oman.

There is a further right of appeal to the Supreme Court from the Courts of Appeal on the basis that the judgment contains errors as to the law, its application or interpretation.

If a case is appealable, enforcement of the original judgment will be suspended until the final decision. However, there are procedures for expedited enforcement of judgments in certain matters prescribed by law.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Neither domestic nor foreign State entities can claim immunity from civil proceedings.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Judgments issued by foreign courts will only be recognised and enforced in Oman if there is reciprocity of recognition of Omani judgments in the country in which judgment was given. Oman is a signatory to the Riyadh Convention and the GCC Convention.

The enforcement procedure is the same as that for instituting a lawsuit in a three judge panel Court of First Instance.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

No.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration Law applies where the seat of arbitration is in Oman. The Arbitration Law is mainly derived from the Egyptian Arbitration Law of 1994, whose provisions were derived from the UNCITRAL Model Law. The Civil and Commercial Procedures Law also contains a provision which applies the law relating to enforcement of foreign judgments to foreign arbitral awards.

## 18 What are the main national arbitration institutions?

There are no arbitration institutions in Oman. The Oman Chamber of Commerce may be involved in arbitration hearings, by appointing an arbitration panel where requested by the parties to a dispute.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

There is no law in Oman which restricts, controls or limits who can represent a party at an arbitration hearing. However, a power of attorney is required to be held by the person appearing for a party, from the first moment of his appearance in the arbitration.

## 20 What are the formal requirements for enforceable arbitration agreement?

Under the Arbitration Law, the formal requirements for an enforceable arbitration agreement are that the agreement must be in writing and entered into between natural or juristic persons.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

No - under the Arbitration Law, the court must not accept jurisdiction if a defendant pleads the existence of a valid arbitration agreement.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

If the parties to an arbitration agreement fail to agree on the number of arbitrators or the procedure for appointing arbitrators, the Arbitration Law states that the number of arbitrators shall be three and that the President of the Court of Appeal will make the necessary appointments.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

Under the Arbitration Law, no party may remove an arbitrator whom it has appointed or taken part in his appointment, except for a reason of which it became aware after such appointment was made. Furthermore, the reasons for removal must create serious doubts on the neutrality or independence of the arbitrator.

The Omani courts also recognise, for example, that a party's lawyer cannot be named as its arbitrator.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Law sets out a range of procedural matters or principles, some of which can be modified by contract, which apply to domestic and international arbitrations. For example, the requirement for the parties to an arbitration to be treated equally and be given an equal and full opportunity to present their claim may not be amended in an arbitration agreement. The Arbitration Law envisages that the parties may agree a date on which the arbitration begins and, in the event of failure to agree, the Law states that it begins on the date on which the defendant receives the claimant's petition for arbitration.

## 25 On what grounds can the court intervene during arbitration?

The Omani courts rarely intervene in an arbitration once it has commenced. The Civil Procedure Law, which governs court process, does not have any special provisions that are related to arbitration. Note that the Arbitration Law permits the court to issue an order for temporary or preventative measures to be taken before or during an arbitration, at the request of one of the parties. Any application to the court for relief or orders would be brought before the Muscat Court of Appeal in international arbitration.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

Yes – it is possible for the parties to agree that the arbitral tribunal will have the power to order temporary or preventative measures, and to demand security for costs, upon request of either party to the dispute. If the party the subject of the order does not comply with the order, the arbitral tribunal may permit the other party to take action, including requesting enforcement proceedings in the Court of Appeal.

## 27 When and in what form must the award be delivered?

The Arbitration Law provides that the arbitration tribunal must issue the award on or before the date agreed upon by the parties and, in the absence of an agreement, the award must be issued within 12 months of the date on which the arbitration process begins. However, the arbitral tribunal may extend the period, provided that the extension period does not exceed six months (unless the parties agree on a longer period).

The arbitration award must be in writing and signed by the sole arbitrator, or the majority of them.

## 28 On what grounds can an award be appealed to the court?

The limited grounds for challenging an award are those set out in the Arbitration Law and will result in the award being annulled, including:

- if there is no valid arbitration agreement;
- if one of the parties to the arbitration lacked capacity;
- if it was impossible for one of the parties to the arbitration to present his defence because it was not properly notified of the appointment of an arbitrator or the arbitration process, or for any other reason beyond his control;
- if the arbitration award disregarded the law agreed upon by the parties to be applied to the arbitration;
- if the arbitral tribunal was formed or the arbitrators were appointed in a manner contrary to the law or the agreement of the parties; and
- if the arbitration award exceeds the scope of the arbitration agreement. However, if it is possible to separate the parts of the award concerning the issues subject to the arbitration from the parts which are outside its scope, the invalidity shall apply only to the latter parts.

The award will remain enforceable whilst an appeal or challenge is pending before the court.

## 29 What procedures exist for enforcement of foreign and domestic awards?

In order for a foreign arbitration award to be enforced in Oman, there must be reciprocity in the enforcement of Omani arbitral awards in the country in which the award was issued. The enforcement of foreign awards is made through the Omani courts under the Civil and Commercial Procedures Law, the Arbitration Law and the Foreign Awards Law.

Oman is a signatory to the New York Convention. Before the Omani courts will issue an enforcement order for a foreign arbitral award, they must be satisfied that:

- the foreign tribunal had jurisdiction to issue the award in accordance with international law in that country;
- the award is final;
- the award was not issued pursuant to fraud by any of the parties;

- the defendant was served with notice of the arbitral hearing and was represented;
- the award is not inconsistent with Omani law, or a judgment previously issued by an Omani court, or public order or the rules of conduct in Oman.

### 30 Can a successful party recover its costs?

The arbitration agreement may provide for costs awards.

## Alternative dispute resolution

### 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

No - although under the Civil and Commercial Procedures Law, at the first hearing of a civil or commercial claim in the Court of First Instance, the court will propose an amicable settlement to the parties. If a settlement is not achieved, then the hearing will proceed.

## Reforms

### 32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any significant procedural reforms in the near future.

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SASLO is the only wholly Omani owned full service law firm with a blend of highly experienced Omani and foreign lawyers, providing legal expertise with the depth and breadth to meet the most complex and critical legal needs, with offices in Muscat, Salalah, Sohar and Doha (Qatar). SASLO has developed close associations with a network of leading law firms in the Gulf region and Yemen. It also has close working relationships with many corporate in-house counsel, providing support and assistance on all aspects of Omani laws and regulations.

SASLO has successful associations with leading international law firms on projects such as petrochemicals, power, water, pipeline and infrastructure projects, banking and project financing, real estate development and shipping matters. It has also significant expertise in privatisation projects in areas such as oil and gas, power, port services, desalinated water, wastewater, telecommunications.



# Pakistan

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Orr, Dignam & Co

## Litigation

### 1 What is the structure of the legal profession?

Pakistan has a fused legal profession, with no distinction between lawyers practising in the courts and those who act only as legal advisers. Lawyers are called Advocates and can advise and appear in courts provided they are licensed to practise by a Bar Council. They must be properly qualified and meet the requirements of the Legal Practitioners and Bar Councils Act 1973 and the enrolment rules of the relevant Provincial Bar Council.

The subordinate judiciary is appointed from Advocates and the judicial service of Pakistan. High Court Judges are appointed from the Bar (where an Advocate must have a minimum of 10 years standing and be at least 45 years of age) and from senior members of the subordinate judiciary. The judges of the superior courts (ie, of the High Court and the Supreme Court) are constitutional appointees and have a constitutional safeguard of tenure. They can only be removed by the Supreme Judicial Council comprising the two senior Chief Justices of the Provincial High Courts, the two next most senior judges of the Supreme Court and the Chief Justice of Pakistan.

### 2 What is the structure of the court system?

The Supreme Court of Pakistan is the highest court, with jurisdiction to hear appeals from the High Court of each of the four Provinces. The Supreme Court also has, to the exclusion of every other court, the original jurisdiction in any dispute between any two or more governments, ie, the federal government and the provincial governments. It can also hear matters, in its original jurisdiction, inviting questions of public importance relating to enforcement of any of the fundamental rights conferred by the constitution. The High Courts exercise appellate jurisdiction over their subordinate courts barring certain specific original jurisdictions (such as company and banking law). The position is different in the City of Karachi in the Province of Sindh, where the original civil jurisdiction of the High Court encompasses virtually all civil claims in excess of a prescribed limit, which is currently 3 million Rupees (approximately US\$66,000). For civil matters the subordinate courts consist of two tiers: Civil Courts, the trial courts of first instance, and District Courts which hear appeals from the Civil Courts and in certain instances also exercise original jurisdiction.

The Supreme Court has the power, subject to its own rules and any Act of Parliament, to review its own decisions. A decision of the Supreme Court is binding on all other courts of Pakistan. A decision of the High Court is binding on the courts subordinate to it.

The Federal Shariat Court deals with Islamic law issues and has the power to strike down any law that is repugnant to the tenets of Islam. Appeals go to the Shariat Appellate Bench of the Supreme Court.

Specialist tribunals deal with matters involving banking recovery laws, service matters, customs, sales tax, central excise and industrial relations.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

There is no jury system in Pakistan. All matters are heard by judges or judicial magistrates.

### 4 What are the time limits for bringing civil claims?

Under the Limitation Act 1908, civil claims involving recovery of money must generally be brought within three years of the date when the cause of action arose. The limitation for enforcement proceedings (ie, for the first execution application of a decree) is three years. A suit on a foreign judgment has to be filed within a period of six years from the date of judgment.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

Under the Code of Civil Procedure 1908 (**CPC**), a civil suit is generally commenced by filing a plaint, which is a concise statement of facts and relevant law. Supporting documents are attached as exhibits. The court then issues the summons to the defendant(s) to appear and defend the claim.

If the defendant does not enter appearance to contest the suit after being given an adequate opportunity to do so, the matter will proceed *ex parte*. The plaintiff will nevertheless be required to satisfy the court on its claim before a judgment is announced followed by a decree.

If a defendant appears to defend the claim, it is ordinarily required to file a written statement within 30 days, but this period is invariably extended. Thereafter, the court frames the issues (points of controversy) upon which evidence will be tendered. After the framing of issues, the parties are required to file in court the documents relied upon along with a list of witnesses.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

The primary documentary evidence is disclosed by the parties with their pleadings. There is no specific obligation to disclose other documents unless an application by the other party is allowed by the court. Such applications include discovery by interrogatories, discovery of documents, or actual production of documents. The courts do not allow a party to use these procedural routes to go on a “fishing expedition” of the other side’s evidence.

Witness evidence is normally presented by examination-in-chief, cross-examination and, if necessary, re-examination. It has become the general practice of some High Courts to allow parties to file affidavit evidence for each witness instead of the examination-in-chief, with the affidavit exhibiting documents relied upon. The other side then has a right to cross-examine witnesses on the contents of their affidavits. Expert witnesses are allowed where necessary.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

Subject to court orders, the parties can extend most time limits by agreement. Substantial changes to procedure are rare, although in practice both the CPC and the practice of the courts are flexible. Cases proceed fairly expeditiously up to the stage of framing of issues, but in the High Court they usually then go into “hibernation” while they await their turn for recording of evidence. This can take several years. Where urgency is clearly demonstrated, there are means available under the CPC to expedite the trial process by the joint efforts of the parties, primarily through recording witness evidence before a court-appointed commissioner instead of the court.

## 8 What interim remedies are available to preserve the parties’ interests pending judgment?

The courts have wide powers to grant interim relief to preserve the parties’ interests pending judgment. These include attachment of property, granting of injunctions, arrest, and interim prohibitory orders to preserve the status quo. Various conditions must be met before this relief will be granted. When seeking injunctive relief a *prima facie* case has to be proved, including a threat of irreparable injury. An injunction order will not be confirmed until after a full hearing of the injunction application.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

Yes - summary judgment procedures are provided under the CPC. A plaintiff may at any stage apply to a court for summary judgment where unqualified admissions of fact have been made by the defendant in pleadings or otherwise. Further, summary proceedings can be filed for the enforcement of negotiable instruments, such as promissory notes or bills of exchange.

In such proceedings, the defendant is not entitled to appear before the court and defend the suit, unless it applies for and is granted leave to defend the suit within the prescribed period. Where a defendant fails to appear before the court, or delays in filing the leave application, the allegations in the plaint are deemed to be admitted. Further, where a leave application is filed, but it does not reveal any substantial question of law or fact, nor raises any real issue or a plausible defence necessitating a trial, or the defence is illusory, leave will be refused.

Similar procedures are prescribed under special banking legislation for the recovery of monies from loan defaulters.

## 10 What substantive remedies are available?

The courts have wide powers to award different relief including injunctive relief, declarations, giving directions and awarding damages, including recovery of moneys and mesne profits. Actual loss must be proved in order to recover damages, and the courts are generally conservative in this respect: substantial compensation or damages awards are unusual, and punitive or exemplary damages are rarely awarded.

## 11 What means of enforcement are available?

Judgments and decrees are enforced through further court proceedings, which can be cumbersome and protracted, particularly where clear assets are unavailable or where judgment debtors seek to delay the matter. Where necessary, court officials are appointed as receivers to sell, take possession, attach, survey, and enforce court orders. Violation of court orders can result in contempt notices being issued by the court. The Banking Recovery Law, (where summary jurisdiction is exercised), includes a procedure for direct enforcement without court intervention enabling banks to foreclose in order to recover loans provided certain conditions and procedures are complied with.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The courts have a discretionary power in relation to costs, and do not award costs to a successful party as a matter of course. Even where costs are awarded, these are nominal and do not reflect the actual legal expenses incurred.

The court has power to order foreign claimants to provide security for costs, usually by depositing cash or furnishing a guarantee in court. However, this power is discretionary and is rarely used.

## 13 On what ground can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Appeals to the High Court generally lie against final orders and judgments only, though certain interlocutory orders can also be appealed. In revenue matters involving government funds, appeals to the High Court must involve questions of law. Most other first appeals can be on questions of fact and law. Appeals to the Supreme Court require leave of that court before being admitted under Article 185(3) of the constitution, unless the appeal is filed as of right under Article 185(2) from a judgment, decree, or final order of a High Court where the High Court has varied or set aside a judgment, decree or final order of the court immediately below where the monetary value of the subject matter is not less than a prescribed limit (currently 50,000 Rupees).

An appeal does not operate as an automatic stay of execution. A separate stay application has to be made to the Appellate court. A stay may be granted (in some cases subject to security being furnished) if the appellant can show that the appeal has a real prospect of success which would be rendered nugatory if the stay was refused.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Foreign States enjoy a restrictive State immunity under the laws of Pakistan but such immunity does not extend to acts of a commercial nature. Any sovereign act of a government is immune. State entities are fully subject to the jurisdiction of the Pakistan courts.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

A creditor under a foreign judgment has three options:

- to seek direct execution under the relevant provisions of the CPC, if the country rendering the judgment is designated by the government of Pakistan as a reciprocating territory;
- to file a suit in Pakistan on the basis of a foreign judgment, treating it as a cause of action; or
- to file a suit on the original cause of action.

Enforcement proceedings can only be challenged on specific grounds set out in the CPC where:

- the judgment has not been pronounced by a court of competent jurisdiction;
- it has not been given on the merits of the case;
- it appears on the face of the proceedings to be founded on an incorrect view of international law or refusal to recognise the law of Pakistan in cases where such law is applicable;
- the proceedings in which the judgment was obtained are opposed to natural justice;
- it has been obtained by fraud; and
- it sustains a claim founded on a breach of any law in force in Pakistan.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of the litigation/arbitration?

Under the Pakistan Legal Practitioners and Bar Councils Rules, 1976 (the Rules) (promulgated under the Legal Practitioners & Bar Councils Act, 1973), contingency fees are not expressly prohibited, but the Rules do prohibit lawyers from having any personal interest in their client's case. The Rules also impose upon all advocates, as officers of the court, an independent obligation to assist the court in the imparting of justice, and this may be compromised if they had an interest in the outcome of a case. It therefore follows that it is not permissible to charge contingency/conditional fees or enter into any other arrangement that results in a lawyer acquiring an interest in the case.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

Pakistan's Arbitration Act, 1940 (1940 Act) is based on earlier English arbitration enactments. The 1940 Act deals with domestic arbitrations and provides a complete code for arbitration. On 14 July 2005, a new law was promulgated called the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2005 (VIII of 2005) (the 2005 Ordinance), which gave legislative effect to the New York Convention. The 2005 Ordinance, which extended to the whole of Pakistan, applied to arbitration agreements made before, on or after 14 July 2005, but not to foreign arbitral awards made before 14 July 2005.

The 2005 Ordinance was not made an Act of Parliament, but is being kept in force by a series of "re-promulgations" by the President of Pakistan, with the latest being The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance 2010. As a result of a recent change in the country's constitution, the shelf life of an Ordinance can only be extended once. The government will therefore need to pass an act of Parliament if it wishes to give the New York Convention continued legislative effect in the future.

Presently, the government is contemplating the promulgation of a new Arbitration Act (see answer to Question 32 (Reforms)).

## 18 What are the main national arbitration institutions?

There are no formal national arbitration institutions in Pakistan. As mentioned above, the 1940 Act provides a complete code for the conduct of domestic arbitrations.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

Parties may represent themselves or be represented by an advocate of their choice. The rules do not allow foreign lawyers to represent clients in Pakistan, and this prohibition extends to arbitration proceedings.

## 20 What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement should be in writing but need not be contained in a formal document. The naming of arbitrators is not essential, nor is the signing of the agreement, as long as its terms and conditions are readily ascertainable and freely agreed by the parties. Arbitration may be agreed to by correspondence between the parties. It may also be agreed by a statement made by the parties' counsel that is recorded by a court.

Under the Ordinance, recognition and enforcement of a foreign arbitral award requires a duly authenticated original award (or a duly certified copy), together with the original agreement (or a certified copy), which must include an arbitral clause in a contract signed by the parties, or contained in an exchange of letters.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

The 1940 Act provides that where a party to an arbitration agreement commences legal proceedings against the other party in respect of any matter agreed to be referred to arbitration, the other party may apply for a stay of the legal proceedings. The court must be satisfied that "there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement". The court has the discretion to refuse to stay litigation if there are "compelling reasons".

Under the Ordinance, the court does not have any discretion to refuse to stay the legal proceedings filed in violation of an arbitration agreement. It is required to refer the parties to arbitration, unless it determines the arbitration agreement to be null and void, inoperative or incapable of being performed. This was confirmed in a case in 2006 in which Orr Dignam & Co. acted. [Travel Automation (Pvt.) Ltd. vs. Abacus International (Pvt.) Ltd. (2006 Corporate Law Decisions 497)].

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

The 1940 Act provides that the reference must be to a sole arbitrator unless otherwise expressly provided. The sole arbitrator is appointed by consent of the parties. If the parties cannot agree on an appointment, then an application can be made to the court to appoint an arbitrator. Typically, the arbitration clause provides for two arbitrators, one to be appointed by each of the contracting parties. The arbitrators, before entering upon the reference, appoint an umpire. If the arbitrators cannot agree on an award, the matter will be decided by the umpire's award.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

The court may, on the application of a party, remove an arbitrator (or umpire) who:

- fails to use all reasonable dispatch in entering on and proceeding with the arbitration and making the award, or
- misconducts himself or the proceedings.

The court can also be asked to revoke the authority of an arbitrator on grounds including partiality or bias.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The provisions of the 1940 Act are supplemented by the CPC and Pakistan's rules of evidence but these do not have to be strictly adhered to in arbitral proceedings.

## 25 On what ground can the court intervene during an arbitration?

The courts retain a supervisory jurisdiction over the conduct of arbitrations. This includes the power to intervene in relation to the appointment and removal of arbitrators or umpires, the power to determine the existence or otherwise of an arbitration agreement (which would also decide whether the arbitrators have jurisdiction or not), and power to order the detention, preservation, inspection, interim custody or sale of any goods which are the subject matter of the arbitration and the securing of the amount in dispute.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

Under the 1940 Act, unless the arbitration agreement provides otherwise, an arbitrator may have the power to make an interim award. For all other interim relief, it is necessary to apply to the courts.

## 27 When and in what form must the award be delivered?

Where the agreement is silent on the time limit, the arbitrator must make an award within four months of entering on the reference. If an umpire must decide, he must make the award within two months after entering on the reference, or within such time as the court allows. The court may increase the time for making the award, regardless of whether the time limit has expired or not. The arbitrators can also, with the consent of the parties, extend the time for making the award. The award must be in writing and signed by the arbitrators or umpire, and must give sufficient detail of the basis for the decision to enable a court to consider any question of law that may arise.

## 28 On what ground can an award be appealed to the court?

An appeal to the court to set aside an award can be made on one or more of the following grounds:

- where the arbitrator or umpire misconduct themselves or the proceedings;
- where the award is made after the issue of an order by the court superseding the arbitration or after the arbitration proceedings have become invalid; or
- where the award is improperly procured or is otherwise invalid.

## 29 What procedures exist for enforcement of foreign and domestic awards?

In relation to domestic arbitrations under the 1940 Act, the arbitrators or umpire shall, if requested of any party or directed by the court, file the award in court together with any depositions and documents. The court must give notice of the filing to the parties. It will then either:

- pronounce judgment according to the award, where the court sees no cause to remit the award to the arbitrator for reconsideration; or
- set the award aside.

Once the judgment is pronounced, a decree will follow and (subject to appellate review) the decree may be executed as a judgment of the court.

Under the 2010 Ordinance, foreign arbitral awards are recognised and enforced in the same manner as a judgment or an order of the court in Pakistan, except where Article V of the New York Convention applies. Article V provides that the recognition and enforcement of a foreign arbitral award may be refused at the request of a party against whom it is invoked, only if they furnish proof to the effect that:

- the parties to the agreement were, under the law applicable to them, under some incapacity; or
- the agreement is not valid under the law to which the parties have subjected it, or under the law of the country where the award was made; or
- the party against whom it is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present their case; or

- the award deals with a matter not contemplated within the terms of the submission to arbitration, or contains decisions beyond the scope of the submission to arbitration; or
- the composition of the arbitral authority/tribunal or the arbitral procedure followed was not in accordance with the agreement of the parties, or not in accordance with the law of the country where the arbitration took place; or
- the award has not yet become binding on the parties or has been set aside or suspended by the competent authority of the country in which, or under the law in which the award was made.

Generally, the recognition and enforcement of foreign arbitral awards may also be refused if the authority in the country where recognition and enforcement is sought finds the subject matter of the dispute is incapable of settlement by arbitration under the law of that country, or the recognition or enforcement of the award will be contrary to the public policy of the country. This principle applies to Pakistan.

In November 2006, the President of Pakistan promulgated the Arbitration (International Investment Disputes) Ordinance, 2006 (**ICSID Ordinance**) which gives effect to the International Convention on the Settlement of Investment Disputes between States and Nationals of Other States (**ICSID Convention**). The ICSID Ordinance has been kept in force by its repromulgation, with the latest promulgation being the Arbitration (International Investment Disputes) Ordinance 2010, which came into force in April 2010. It is possible for award holders to avail the procedures stipulated under the ICSID Ordinance to have their award recognised and enforced against the federal government of Pakistan. Once an award has been registered in a High Court, then (subject to the provisions of the ICSID Ordinance), it shall, as regards the pecuniary obligations which it imposes, be of the same force and effect for the purposes of execution, as if it had been a judgment of the High Court.

### Can a successful party recover its costs?

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There is no provision for recovery of costs in the 1940 Act, but the arbitrators may at their discretion award costs. Such an award may not cover the actual costs involved.

## Alternative dispute resolution

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### Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution during or before the proceedings?

There is no law at present that mandatorily requires the parties to consider or submit any form of alternative dispute resolution before or during proceedings. However, most commercial contracts require the parties to try to resolve disputes by following certain agreed procedures, before resorting to arbitration or litigation. The court may, where it considers it necessary having regard to the facts and circumstances of a case, and for securing expeditious disposal of a case, adopt with the consent of the parties alternate dispute resolution (**ADR**) methods, including mediation, conciliation or any such other means, so long as it is not inconsistent with the provisions of the CPC.

In addition, there have been significant developments in Pakistan relating to ADR. A mediation centre at Karachi has been established, called the "Karachi Centre for Dispute Resolution" (**KCDR**) in collaboration with the International Finance Corporation of the World Bank (**IFC**) to provide an alternate dispute resolving mechanism for resolution of commercial disputes. The IFC's objective is to promote alternative dispute resolution / mediation for settlement of commercial disputes, especially for small and medium enterprises by developing a professional cadre of mediators, improving court systems for better case management, and establishing a commercial mediation centre, in this instance being the KCDR. The High Court of Sindh and selected civil courts will refer cases to the KCDR.



# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

The government is contemplating promulgation of a new Arbitration Act for settlement of disputes of foreign investors and to institutionalise services relating to arbitration, conciliation and alternative dispute resolution for local as well as foreign businessmen. This proposal is to repeal the Arbitration Act, 1940, the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance 2010 and the Arbitration (International Investment Disputes) Ordinance 2010 and to consolidate the law into one statute comprising arbitration, conciliation, recognition and enforcement of foreign arbitral awards as well as the Convention on the Settlement of Investment Disputes between States and nationals of other States. This proposal has been circulated for public comments in the form of the Arbitration Bill, 2009.

The government is also considering the establishment of the Pakistan National Arbitration and Conciliation Centre (the **Centre**) for institutionalising arbitration, conciliation and alternative dispute resolution services. The Centre will be empowered to make rules and provide suitable penalties such as imposition of fines. The draft law is based on the UNCITRAL Model Law.

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Orr, Dignam & Co. is the largest institutional firm of lawyers in Pakistan, with fully operational offices at Karachi and Islamabad. The firm specialises in civil law, with particular emphasis on corporate and company law. The firm handles arbitrations (both domestic and international), having considerable experience of arbitration under the Pakistan Arbitration Act 1940 and international modes of arbitration, including the Rules of Arbitration and Conciliation of the International Chamber of Commerce and the London Court of International Arbitration. The firm also has an extensive civil litigation portfolio covering cases in the High Courts and the Supreme Court of Pakistan. The other areas of practice cover privatisation, infrastructure projects, construction laws, banking, insurance and financial law, energy law (petroleum, gas and electrical power), commercial contracts, foreign investment laws, information technology and computer law, mergers and acquisitions, maritime and aviation law and charities and NGO laws.

The principal office of the firm is based at Karachi, which is the commercial centre of Pakistan. The firm also has a well established office in Islamabad, the capital of Pakistan. This enables it to effectively represent its clients in negotiation with the government of Pakistan and with regulatory agencies and to serve a large client base in the Province of Punjab and the North West Frontier Province.

The firm was established in 1952 and acts for multinational corporations operating within and outside Pakistan, foreign and local banks, multilateral agencies, financial institutions and consultants, leading Pakistani industrial and business houses and public sector corporation involved in a wide range of activities.



# Qatar<sup>1</sup>

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Hassan Al Khater Law Office

## Litigation

### 1 What is the structure of the legal profession?

The legal profession is regulated by a committee headed by the Qatari Minister of Justice. Qatari nationals who possess a recognised law degree and have completed their legal training may be enrolled on the list of practitioners and therefore granted rights of audience before the Qatari courts.

Foreign lawyers generally cannot obtain rights of audience before the Qatari courts, but are otherwise entitled to advise clients. Some international law firms have established offices in Qatar.

### 2 What is the structure of the court system?

The Qatari court system is divided into three levels:

- the Courts of First Instance;
- the Court of Appeal; and
- the Court of Cassation, which is the highest court of appeal in Qatar.

The Courts of First Instance are divided into lower and higher courts: the lower courts hear minor civil and commercial disputes not exceeding QAR100,000 (approximately US\$23,000) in value, whereas claims with a greater value are heard by the higher bench.

Courts in Qatar do not rely on a formal system of precedent and there is no formal reporting of court decisions.

It should be noted that all documentation brought before the Qatari courts in respect of any matters to be heard by them must be in Arabic. In the case of documentation which is originally in a language other than Arabic, the Arabic translation submitted to such courts is deemed to be the definitive and binding version for the purposes of all proceedings before such courts.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The judicial system in Qatar is generally inquisitorial in nature. The judge has wide powers to investigate and establish the facts and then applies the law to those facts. Cases before the lower bench of the Courts of First Instance are determined before a single judge, whereas the higher bench comprises six circuits of three judges.

There is no concept of a jury trial in Qatar.

### 4 What are the time limits for bringing civil claims?

The limitation for civil cases is ordinarily 15 years, except in the cases where the Civil Code specifically provides for a shorter period.

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<sup>1</sup> This Chapter deals with the laws of Qatar, not the Qatar Financial Centre Which has its own civil and commercial courts and regulatory tribunal.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

The claimant prepares an initial written statement of his claim which is submitted to the court. The statement of claim must include an exhaustive catalogue of the alleged acts or omissions, although in practice the petition need only establish a prima facie claim at this stage and it is permitted for it to be expanded or amended over the period of the proceedings. The claim then proceeds by way of a number of separate hearings. The first hearing starts the trial process. If the defendant does not attend this hearing, the court will adjourn the hearing for at least one month and the defendant will be served a further notice.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

In Qatari civil cases, there is no pre-trial exchange of evidence. The claimant should enclose with the original statement of claim all evidence supporting his claim, although it is permissible to produce new evidence throughout the proceedings which can be submitted directly to the judge with a covering letter. There is no requirement on the parties to provide evidence which may assist the counterparty's case on its request.

The court has powers to appoint between one and three experts to produce evidence. Expert opinions do not bind the court, although if the court rules contrary to an expert opinion, it must state the reasons for disregarding it.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The parties do not have much flexibility in setting the court timetable for hearings. It is the court which sets the dates for the first and subsequent hearings.

A case in the Courts of First Instance may take a year or more to reach a decision, whereas an appeal case may last for between six months and two years. Cases before the Court of Cassation may take between three and six months.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

The Qatari Civil and Commercial Procedures Code permits claimants to request interim measures in certain emergency situations. For example, a claimant may request immediate travel restrictions be imposed upon the defendant.

The courts may also stay proceedings where the civil proceedings may be affected by other matters, such as the outcome of a criminal trial on a related matter.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

It is possible to request summary judgment in relation to a financial debt, where the amount owed and the terms of the debt are evidenced in writing either by a debenture or an enforceable paper. In such circumstances, the creditor may only obtain judgment if it has first served notice on the debtor or any guarantor at least five days prior to the proposed hearing by registered letter.

## 10 What substantive remedies are available?

The available substantive remedies include:

- damages;
- injunctive relief and declarations;
- transfer of property; and
- deregistration of a commercial agency from the Commercial Agencies Register with compensation.

## What means of enforcement are available?

A judgment may be enforced by seizing and selling the assets (both fixed and non-fixed) of the judgment debtor. Such assets may also include cash assets. Separate proceedings for the enforcement of a final judgment are filed upon the judgment being issued.

If the judgment debtor does not comply with the final judgment issued against it, despite being capable of so doing, the court may issue a writ of commitment against the judgment debtor requiring imprisonment of up to three months.

## Does the court have power to order costs? Are foreign claimants required to provide security for costs?

Yes. Upon issuing a final judgment, the court has the discretion to decide which parties should bear the expenses of the action. The court may decide that the judgment debtor bears such expenses, which include attorneys' fees. However, in practice, Qatari courts generally refrain from ordering costs.

Foreign claimants are not required to provide security for costs.

## On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

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## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

The Advocacy Law of 2006 specifically prohibits agreements relating the payment of fees to the winning of a case or the value of a case. Additionally, the lawyer is not entitled to calculate his fees on a contingency basis. Usually lawyers charge a non-refundable fixed fee payable in advance in relation to court disputes in Qatar.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The Civil and Commercial Procedure Law of 1990 sets out the legal regulations relating to arbitration in Qatar. It is not based on the UNCITRAL Model Law. It applies to both domestic and international arbitration proceedings.

## 18 What are the main national arbitration institutions?

The Qatar International Centre for Commercial Arbitration, established in 2006, is the main national arbitration institution.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

Under the Advocacy Law, only lawyers licensed by the Qatari Ministry of Justice (and therefore generally Qatari nationals) can represent the parties if the arbitration is held in Qatar.

## 20 What are the formal requirements for enforceable arbitration agreement?

To be valid, an agreement to resolve disputes by arbitration in Qatar must be in writing and specify the subject matter of the dispute. In addition, the subject matter and the dispute must not be contrary to public policy or morality.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

If a party to a dispute involving a contract with a valid arbitration clause seeks redress before the Qatari courts, the other party has the right to insist upon arbitration. In practice, the court will refuse to look into any case in which a valid arbitration agreement is available.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

The number of arbitrators must at all times be an odd number, otherwise the arbitration will be void. If there is no appointing authority stated in the arbitration agreement, the court will appoint one or more arbitrators, if requested so to do by a party to the dispute.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

An arbitrator may not be dismissed except with the consent of all the parties or by judgment of a court. An arbitrator may not be a minor, be placed under an interdict, or deprived of his rights by reason of penal punishment or bankruptcy, unless he has been rehabilitated.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are entitled to agree in advance that the arbitration be subject to international arbitration rules. Otherwise, in the absence of agreement on the rules (and if the arbitration has a Qatar seat), the procedure is set out in the Civil and Commercial Procedure Code.

## 25 On what grounds can the court intervene during arbitration?

The parties or the arbitrator may apply to the court to:

- challenge the appointment of an arbitrator;
- seek a court appointment of arbitrators;
- request an extension of time; and
- compel a witness to attend or a third party to produce evidence.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

Interim or conservatory relief can only be granted by application to the courts. Arbitrators do not have any such powers under Qatari law.

## 27 When and in what form must the award be delivered?

The arbitral award must be in writing and include:

- a copy of the arbitration agreement;
- a summary of the parties' statements of claim or defence;
- the text and reasoning of the award;
- the place and date of the award;
- the signatures of the sole arbitrator, or a majority of them.

The original award and arbitration agreement must be filed with the relevant court within 15 days of its grant.

## 28 On what grounds can an award be appealed to the court?

Unless the arbitration agreement states that the award is final, binding and not appealable, it is possible to appeal an arbitration award before the Qatari courts. The grounds for an appeal include:

- the invalidity of the arbitration agreement;
- the award exceeding the scope of the arbitration as set out in the arbitration agreement;
- lack of capacity of the parties;
- lack of jurisdiction of the arbitral tribunal; and
- the award being contrary to public order or morality in Qatar.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Qatar is a signatory to the New York Convention. Qatar applies the New York Convention only to the recognition and enforcement of awards made in the territory of another contracting State.

## 30 Can a successful party recover its costs?

A successful party can recover its costs if this is permitted under the terms of the arbitration agreement. There are no specific provisions of Qatari law which allow costs awards in any other circumstances.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

No - there is no requirement for the parties to consider ADR before commencement of court proceedings.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any reform plans in the area of litigation or arbitration in the near future.

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The firm was established in 1992 by Hassan A. Al Khater, a registered Qatari advocate holding a Master of Laws degree from the University of Wales and the first Qatari lawyer to obtain a Master of Laws degree from a British university. He is also the only Qatari lawyer who has worked in two international law firms, having previously worked with the law firms of Trowers and Hamlins in Oman and then Clyde and Co in Dubai. Prior to joining Trowers and Hamlins, he was the senior legal adviser and company secretary of Gulf Air at its headquarters in Bahrain.

The firm concentrates on representing corporate clients, both inward investing and locally established companies, which are carrying on business in Qatar. It advises on all aspects of Qatar's commercial and civil laws. The firm provides a full range of corporate and commercial legal services to our clients, both contentious and non-contentious, in connection with the acquisition, structuring, formation, financing and operation of investment vehicles, as well as arbitrations (both in Qatar and abroad) and proceedings before the Civil Court.

The firm currently has Arabic, European and Australian lawyers. There are strong English and Arabic language capabilities within the office.

# Litigation

## What is the structure of the legal profession?

In order to be licensed to practise law in the Kingdom of Saudi Arabia (**KSA**) as a Saudi lawyer, it is a requirement to be a male Saudi national and a graduate of a recognised law or Shari'ah college. Furthermore, three years of workplace training is required for those with a bachelor degree, one year of training for those with a masters degree, and no workplace experience is required for those who hold a doctorate in law. Saudi lawyers are entitled to appear before the Saudi courts.

Foreign nationals can work as legal consultants in companies and Saudi law firms.

## What is the structure of the court system?

In the past two years, the KSA judicial system has been undergoing significant reforms. There are two branches of the judicial system, comprising the Shari'ah courts system and the Board of Grievances (*Diwan al-Mazalem*). Once the reform is complete, the judicial system will comprise the following:

- Shari'ah courts system:
  - o the First-Degree Courts (which are made up of General Courts, Criminal Courts, Personal Status Courts, Commercial Courts and Labour Courts);
  - o the Courts of Appeals; and
  - o the High Court
- Board of Grievances:
  - o the Administrative Courts;
  - o the Administrative Courts of Appeals; and
  - o the High Administrative Court.

These courts are intended to exist in each of the 13 provinces of KSA, where necessary. It is expected that, in particular, all areas will have Commercial Courts.

Civil cases between private parties are heard within the General Courts within the Shari'ah courts system. The Board of Grievances adjudicates (i) between Saudi government agencies and private parties and (ii) in certain circumstances commercial disputes between private parties, and is also the forum in which proceedings for enforcement of foreign judgments and arbitral awards are heard.

KSA also has a Supreme Judicial Council which is comprised of a President and ten members, including the Deputy Minister of Justice, the Chief of the Bureau of the Investigation and prosecution judges holding the qualification of appellate judges. Its function is to supervise the Shari'ah judiciary, as well as administering the promotion, transfer and training of judges.

## What is the role of judge (and, where applicable, jury) in civil proceedings?

The judicial system in KSA is essentially inquisitorial in nature. The role of the judge in KSA is to examine the evidence (which is typically written, but may also be oral) and conclude on the facts, and apply the law to those facts. The judge

## 4 What are the time limits for bring civil claims?

There is no limitation period under Saudi law, unless expressly agreed by the parties in the contract or specifically stated in legislation. For example, an employee has one year to issue proceedings against an employer at the Commission for the Settlement of Labour Disputes.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

A civil action commences when the claimant files a claim with the court by means of an initial pleading. The court then serves the claim on the defendant. The defence memorandum must be submitted three days prior to that hearing at the General Courts.

There are no trials as such in KSA. Cases are heard over a course of hearings, which may be scheduled two to three months apart, usually taking up to two years.

## 6 What is the extent of pre-trial exchange of evidence and how is evidence presented at trial?

Important evidence should be submitted before the trial commences to enable the judge and the counterparty to examine it. However, there are no strict guidelines on when evidence should be submitted and, in theory, a judge may admit new evidence at any time. There is no requirement for the parties to provide evidence which would assist the counterparty's case on its request.

## 7 To what extent are the parties able to control the procedure and timetable? How quick is the process?

The judge has full discretion to control the procedure and timetable of a case. The parties have little flexibility over the process. The court process is generally speaking very lengthy.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

It is within the judge's discretion to grant injunctions in order to preserve the parties' interests pending judgment. Such measures may include orders to preserve evidence or to prevent the dissipation of assets.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

No.

## 10 What substantive remedies are available?

The courts may award damages, but not consequential damages or interest. It is also within the discretion of the judge to grant specific performance or make a declaration on the rights of the parties.

## 11 What means of enforcement are available?

According to Article 217 of the Law of Procedures, moveable and immovable property can be "attached" to satisfy the debtor's obligations created by a judgment and, if necessary, a public auction can be held to sell that property as determined by the judge. If the debtor refuses to pay or tries to dissipate his assets, the judge can order his imprisonment.

## 12 Does the court have power to order costs?

Although the courts do have powers to order costs, this rarely happens in court cases in KSA.



### 13 On what ground can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending appeal?

The parties have 30 days to appeal a judgment either from the date of judgment or from the date on which they receive the judgment if they are not present in court. If they fail to do so, they lose their right of appeal. Appeals to the Courts of Appeal from the First Degree Courts may only be made on points of law or procedural irregularities, not errors as to fact. The Courts of Appeal will not re-hear evidence and will only examine the judgment itself. If the parties are not satisfied with the Court of Appeal judgment, they can appeal to the High Court which will hear points of law or procedure (or other reasons such as a violation of Shari'ah principles, or lack of jurisdiction or competency by the original court).

Typically, the enforcement of a judgment is suspended pending appeal.

### 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

Saudi State entities cannot claim immunity from civil proceedings. However, foreign State entities can claim immunity from civil proceedings.

### 15 What procedures exist for recognition and enforcement of foreign judgments?

KSA is a signatory to the Riyadh Convention and the GCC Convention. However, enforcement in KSA is not simply a "rubber-stamping exercise": awards are analysed for compliance with Shari'ah and, in practice, this means that the merits of the claim are re-examined. Foreign judgments which do not contravene Shari'ah law are enforced.

The Board of Grievances is responsible for the recognition and enforcement of foreign judgments.

### 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of the litigation/arbitration?

Yes.

## Arbitration

### 17 Is the arbitration law based on the UNCITRAL Model Law?

The main arbitration legislation in KSA is the Saudi Arbitration Act which applies to all arbitration proceedings which have their seat in KSA, irrespective of whether they are international or domestic in nature. The Arbitration Act is not based on the UNCITRAL Model Law. The Act contains provisions which are unique to KSA. For example, one of its key characteristics is the heavy presence of a supervising State judge throughout the arbitration process.

### 18 What are the main national arbitration institutions?

There are no arbitration institutions in the KSA. The only arbitration process available in KSA is the procedure regulated by the Arbitration Act. It is more usual for parties to use other arbitration centres in the Middle East, such as the LCIA-DIFC arbitration centre in the Dubai International Financial Centre or DIAC in the UAE, and then enforce the award in KSA.

### 19 Are there any restrictions on who may represent the parties to an arbitration?

Generally, only Saudi qualified lawyers can represent the parties to an arbitration under the Arbitration Act. As noted above, a Saudi lawyer must be a male Saudi national and the arbitrators should also be male Muslims, although the arbitrators may be non-Saudis. An arbitration procedure under the Saudi Arbitration Act must be conducted in Arabic, therefore the arbitrators (even if non-Saudis) must also be Arabic speakers.

## 20 What are the formal requirements for an enforceable arbitration agreement?

Arbitration agreements must be in writing, although there are no other specific formal requirements. Arbitration agreements are permitted in the areas of law where compromise is possible. It is not possible to submit a dispute to arbitration which is related to Saudi public policy. Saudi government entities cannot enter into arbitration agreements without the express permission of the Council of Ministers.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

No - according to Article 7 of the Arbitration Act, the courts must stay litigation if there is a valid arbitration clause.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

If the arbitration agreement does not specify the number of arbitrators, each party is entitled to appoint one arbitrator and the two arbitrators will appoint the chairman. The number of arbitrators must always be an odd number. If the arbitration agreement fails to nominate an appointing authority, the supervising State judge will nominate the arbitrator or arbitrators, if the parties fail to do so. Once the arbitrators are appointed, the supervising State judge asks the parties to prepare the terms of reference of the arbitral tribunal which are approved by the Court.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

The nomination of an arbitrator is challenged in the same way as challenging a State judge, including where the arbitrator is not considered to be impartial or independent. The challenging party should file its reasons for the challenge within five days of the nomination of the arbitrator or of the day it has discovered the grounds for the challenge. The challenge should be filed before the judge who would have jurisdiction if no arbitration agreement existed.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

Under the Arbitration Act, the parties are free to agree on procedure, including the timeframe for the arbitration to be concluded and the award issued. The Arbitration Act also contains basic principles to conduct an arbitration. For example, the parties may choose to apply substantial parts of the rules of an international arbitration centre provided they do not conflict with the terms of the Arbitration Act.

## 25 On what ground can the court intervene during an arbitration?

The State courts are involved in all stages of the arbitration process. For example, as mentioned above, the judge confirms the nomination of the arbitrators and the terms of reference. The award must be registered at the supervising State court and the clerk of that court acts as a secretary to the arbitral tribunal. In some circumstances, secretarial services can be provided by the Chamber of Commerce on instructions of the supervising State judge.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

Arbitrators may grant interim and conservatory relief. These, however, are referred to the supervising State judge for enforcement.

## 27 When and in what form must the award be delivered?

The duration of the arbitration is usually determined in the arbitration agreement by the parties. If not, the arbitrators should grant their award within 90 days of signature of the terms of reference. The arbitrators can extend this period by giving a reasoned decision for doing so.

## 28 On what ground can an award be appealed to the court?

Arbitration awards can be appealed. The appeal should be filed by one of the parties within 15 days of the grant of the arbitral award before the supervising State judge. The supervising State judge will confirm the award, send the award back to the tribunal with his comments, or make a new ruling.

## 29 What procedures exist for the enforcement of foreign and domestic awards?

KSA is signatory to the New York Convention. However, Saudi courts will inspect all aspects of the award and will review the merits of the award to confirm that it does not contradict Shari'ah principles. This procedure may take up to two years. Note that Saudi courts interpret the provision of the New York Convention which allows a national court to refuse to enforce a foreign arbitral award on public policy grounds widely. Consequently, it is advisable to take this into account if an award is likely to be enforced in KSA.

The enforcement of domestic awards is more straightforward as a Saudi judge is heavily involved throughout the arbitration process.

## 30 Can a successful party recover its costs?

A successful party can recover its legal costs. Typically, arbitrators in KSA are more likely to award costs for the winning party than a court judge. It is usually advisable for parties to put this in the terms of reference because the appeal is made before a judge, who would not typically award legal costs.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

No alternative dispute resolution is required unless provided in the arbitration agreement.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any proposed amendment to the Arbitration Act. We have noted above the reforms which are currently being implemented to the court system.

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## Al-Ghazzawi Professional Association

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Al-Ghazzawi Professional Association (**GPA**) is a leading Saudi full-service law firm with regional offices in Dammam, Riyadh and Jeddah. GPA enjoys an enviable reputation for commitment to providing quality legal advice to clients and delivering international standard service. GPA is highly experienced, having acted on some of the largest transactions and projects in the region. GPA's lawyers respect and understand the cultural nuances of doing business in the region and provide clients with valuable assistance in navigating the local regulatory, legal and business processes. GPA represents and advises many of the largest domestic and multinational corporates operating in the region including a large number of Fortune 500 companies. With the fast-growing demand across the Middle East for international energy and projects expertise allied with GPA's full-service law capability in corporate, finance and dispute resolution work, GPA is the first port of call for advice on all aspects of international law and Shari'ah compliance in the region.

# Syria

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Ryad Ghali, Law Firm

## Litigation

### 1 What is the structure of the legal profession?

The legal profession in Syria is divided into two types of professionals: magistrates and lawyers. Magistrates are members of the judiciary and comprise both judges and prosecutors. Lawyers act for clients and are regulated by the Syrian Bar Association.

Only members of the Syrian Bar Association have rights of audience before the Syrian courts. Membership access is generally restricted to Syrian citizens holding a law degree and who satisfy certain age and other requirements. Citizens of other Arab countries may be granted rights of audience before Syrian courts in certain circumstances. Foreign nationals are, however, permitted to provide legal services in Syria but they have no entitlement to appear before the Syrian courts.

A Syrian lawyer may not represent any foreign entity without the prior approval of the Ministry of Interior through the Syrian Bar Association.

### 2 What is the structure of the court system?

Syria is a civil law country with its legal and court system based on the French system. The main civil, commercial and criminal courts in Syria are divided into three levels:

- the Courts of First Instance;
- the Courts of Appeal; and
- the Court of Cassation, which is the highest appeal court in Syria.

The Courts of First Instance have jurisdiction over private law matters not assigned by law to specialised court. Decisions of the Courts of First Instance are subject in practice to review by the Court of Appeal.

There is a separate court system for administrative cases in which the State or State entities are parties to a dispute.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The Syrian judicial system is generally inquisitorial in nature. Under Syrian law, the judge controls court procedure in a dispute, reviews the facts on the basis of the evidence and applies the law to those facts.

There are no jury trials in Syria, except in some specific labour and agricultural disputes.

### 4 What are the time limits for bringing civil claims?

Generally, in practice, the time limit for bringing a civil case on a contractual dispute is 10 years in commercial matters, 15 years in civil matters and three years in tort, although the law provides for shorter time limits in certain circumstances.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

A civil action is commenced by the claimant filing a written statement of claim with the court. The claim must state the identities of the parties, the subject matter of the claim, the legal grounds and the relief requested from the court. The claim and its supporting documents are served on the defendant by the court. The defendant has eight days to file a defence, although the court may agree to fix a different deadline. The claimant must also pay registration fees based on the value of the dispute.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Syria does not have a formal system of exchange of evidence. The parties must file the evidence to support their own case, but there is no requirement for them to provide evidence which assists the counterparty's case on its request.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The court timetable is determined by the judge, although the parties may modify the timetable with the consent of the judge. Judges are flexible in rescheduling hearings.

Other than in certain circumstances, Syrian law does not stipulate any time period within which a decision must be reached. It may take between 12 and 24 months for the Courts of First Instance or Courts of Appeal to reach a decision. The Court of Cassation may reach a decision within six to 12 months.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

The following interim remedies are available in the Syrian courts pending judgment:

- orders for the preservation of evidence;
- orders for the preservation of assets;
- stays of execution of a court order;
- injunctions to restrain construction works;
- orders for the sale of perishable goods; and
- appointment of a custodian.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

No - although the court may be requested to give judgment at short notice, a trial is always necessary.

## 10 What substantive remedies are available?

The substantive remedies available under Syrian law include:

- damages;
- transfer of property; and
- annulment of certain acts.

The court may also issue declaratory judgments on the rights of the parties in relation to the dispute.

## 11 What means of enforcement are available?

Enforcement is conducted by the Executive Office of the court, upon request of the creditor. The Executive Office arranges for seizure of assets which are the subject of an attachment order, and arranges for the sale of those assets by public auction. There are specific rules for the seizure and sale by auction of real estate properties. The Executive Office conducts the enforcement procedure under the supervision of the court by way of an execution judge.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has the power to order costs, if it is requested to do so by the parties. Costs are generally limited to judicial taxes and are borne by the losing party, unless the court rules otherwise or the law provides a specific exemption. Legal fees are not recoverable by the successful party. Instead, the court orders a symbolic amount against advocacy costs.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Appeals from the Courts of First Instance to the Courts of Appeal are available on the basis of errors of fact, law and procedural irregularities, unless otherwise provided by law. The parties may raise new legal grounds and offer new evidence at appeal, but may not submit a new claim. The parties may also appeal to the Court of Cassation for a ruling on a point of law only.

A claim is not enforced whilst an appeal is ongoing, other than where the law or the original judgment provides that enforcement may continue.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

No domestic or foreign State entity may claim immunity from civil proceedings, except as provided by law or international convention.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Syria is a signatory to the Riyadh Convention. Application for the enforcement of foreign judgments is made to the Courts of First Instance.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

Yes.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration Law is influenced by, but not entirely based on, the UNCITRAL Model Law.

## 18 What are the main national arbitration institutions?

There are no formal national arbitration institutions in Syria. However, the Council of State (the highest administrative court in Syria) may be used as an arbitration institution for the settlement of disputes arising from public procurement contracts.

## 19 Are there any restrictions on who may represent the parties to arbitration?

There is no specific provision in the Arbitration Law on the qualification for rights of audience in an arbitration. In practice, there is no limitation on parties representing themselves, or being represented by any Syrian qualified lawyer or legal adviser of their choice.

## 20 What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be made in writing. The agreement will be considered in writing if it is in a wide range of written forms including in a contract, or in any written correspondence (including by letter, e-mail, fax or telex).

An agreement on arbitration cannot be made on issues where compromise is not possible under the law (such as family law matters), or those contrary to public order in Syria, or related to nationality or to civil status (except where the issues relate to financial consequences arising from nationality or civil status).

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

The Syrian courts should stay litigation on any matter which is the subject of a valid arbitration agreement, if requested to do so by any of the parties. The commencement of litigation proceedings does not prevent arbitration proceedings being commenced or continued, or the grant of an arbitration award.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

The composition of the arbitral panel is usually determined by agreement between the parties. If an agreement does not exist, the arbitration panel will comprise three arbitrators, or in any event, an odd number.

If the parties do not agree on the process for the appointment of arbitrators, the following procedure will apply:

- if the arbitration panel comprises one arbitrator, the court (the Court of Appeal in whose seat the arbitration is conducted) will choose the identity of that arbitrator at the request of either party;
- if the arbitration panel comprises three arbitrators, each of the parties will nominate his arbitrator, and both arbitrators will then agree to choose the third arbitrator who will be president of the arbitral panel;
- in the event that neither party nor the arbitrators select three arbitrators in total, the Court of Appeal, following any terms contained in the arbitration agreement and the law, will at the request of either party choose the arbitrators through a decision taken in camera.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

An arbitrator can be removed for the same reasons as a judge may be removed, which include lack of impartiality and independence. A party may not request the removal of their nominated arbitrator unless the reasons for the removal arise after his appointment.

One of the parties may request that the Court of Appeal removes the arbitrator, in the event that the arbitrator fails to step down, or if all parties to the dispute do not agree to remove the arbitrator. An alternative arbitrator must be appointed, whose appointment must follow the procedures used for the appointment of the original arbitrator. The Court of Appeal may appoint the alternative arbitrator at the request of one of the parties.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The Syrian Arbitration Law allows the parties to agree on the rules governing the arbitration, including the choice of the rules of an international arbitration body. If there is no agreement between the parties, the arbitrators may decide on the rules governing the procedure for that particular dispute. Such procedural rules must treat the parties equally. There are no mandatory provisions which apply to an arbitration, the seat of which is in Syria, even where the parties do not agree on the procedure.

## 25 On what grounds can the court intervene during arbitration?

The court can intervene in an arbitration:

- if the arbitration panel fails to issue an award within the prescribed timeframe for reaching a decision;
- to require a third party to provide evidence relevant to the arbitration hearing; and
- to require witnesses to attend if they fail to do so.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

The arbitrators may grant interim and provisional relief by way of a partial award. A preservation order may be granted only by the court upon petition of the relevant party

## 27 When and in what form must the award be delivered?

The award must be delivered during the period agreed upon by the parties in the arbitration agreement. If there is no such agreement, the award must be made within 180 days of the date on which the first arbitral hearing is held.

The award must be made in writing stating the names of the arbitrators, the names of the parties, their addresses, capacities and nationalities, as well as the text of the arbitration agreement, a summary of the parties' requests, statements and documents, and the place and date of issuance of the award.

## 28 On what grounds can an award be appealed to the court?

It is not possible to appeal an arbitration award under the Arbitration Act. However, it is possible to request that an arbitration award is declared void including on the following grounds:

- there was no valid arbitration agreement;
- one of the parties lacked capacity;
- procedural irregularities in the arbitration proceedings leading to failure by the defendant to file a defence;
- the arbitration award does not apply the law agreed upon by the parties;
- the arbitration panel was constituted, or the arbitrators were appointed, contrary to the arbitration agreement or the Arbitration Law;
- the arbitration award exceeds the scope of the arbitration agreement; or
- the award is contrary to public order in Syria.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Syria is a signatory to the New York Convention. The parties to the arbitration may simply act on the award directly in Syria without the need to seek court enforcement. However, if the award is not honoured by the parties, the party wishing to enforce the award may file a request with the Court of Appeal for enforcement.

The enforcement request should be accompanied by:

- the original of the arbitration award or a certified copy;
- the arbitration agreement, or a copy of it; and
- a certified translation into Arabic of the award, if issued in a foreign language.



## 30 Can a successful party recover its costs?

The arbitration award must state the arbitration costs and the party responsible for their payment under the Arbitration Law.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

No - there is no alternative dispute resolution process required by Syrian law.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

During 2009, the Syrian Minister of Justice established a committee to review the Code of Procedure with a view to introducing reform. Certain reforms were brought into effect in 2009 following recommendations by the committee, and the Ministry of Justice has announced that further legislative changes will take place to make the civil justice system faster and more efficient.

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Ryad Ghali, Law Firm represents in Syria many of the world's leading companies in complex litigation before the administrative and civil courts and other strategic transactions

It is known for its experience of international transactions and public procurement, labour and corporate law practice

We counsel international Swiss and French banks and the largest energy companies; it is reputed for its strict observance of the professional rules.

# United Arab Emirates (outside of the Freezones)

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Herbert Smith LLP

## Litigation

### 1 What is the structure of the legal profession?

The requirements applicable to lawyers wishing to practise law in the UAE differ between the seven individual emirates comprising the United Arab Emirates. They also vary if lawyers wish to practise within a freezone because the freezones do not form part of the UAE mainland and are separate jurisdictions within the UAE. In Dubai, the consent of the Ruler's Court must be obtained, together with a licence from the Dubai Department of Economic Development.

There are no local qualification requirements to practise UAE law, but only persons licensed by the Ministry of Justice may appear on behalf of clients before the UAE federal courts. There are additional licensing requirements for rights of audience in the individual emirate courts. Generally speaking, licences are only granted to UAE nationals. Foreign lawyers may, however, practise law by advising clients. Many international law firms have offices in Dubai and Abu Dhabi.

### 2 What is the structure of the court system?

The civil court system is complex: the UAE operates a federal court system, but certain emirates have opted out of that structure and applied instead their own emirate level judicial system. At a UAE federal level, there is a Court of First Instance, Court of Appeal and Court of Cassation. For example, Dubai has its own Court of Cassation and Ras Al Khaimah has no Court of Cassation.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The judicial system in the UAE is essentially inquisitorial in nature. The judge investigates the facts and applies the law to the facts in reaching his judgment. Cases are heard at first instance by a single judge. The judge at first instance has wide powers of case management. There is no concept of a jury trial.

### 4 What are the time limits for bringing civil claims?

Time limits for bringing civil claims vary under UAE law. The general rule is that a contractual claim is time-barred after 15 years, tort claims are time-barred after three years and employment claims are time-barred after one year.

### 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

Proceedings in the UAE courts are commenced when the claimant files a claim in the relevant court office and pays the applicable fee. Depending upon the type of proceedings commenced, or the nature of the application made, deadlines for the filing of documents and for hearing dates can vary. The procedural timetable is often flexible, depending largely upon the complexity of the issues and the number of hearings required to address all of the pleaded points.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

All proceedings in UAE civil matters are based upon the written pleadings of the parties supported by documentary evidence. Witnesses and experts are not required to give oral evidence at trial.

There is no standard disclosure and inspection process under UAE civil procedure. A party is therefore only required to produce the documentary evidence upon which it seeks to rely. However, there is scope under the UAE Law of Evidence for a party to apply for specific disclosure of documents in the other party's possession in certain limited circumstances. Expert evidence is also not exchanged in UAE court proceedings. Instead, the court appoints an expert from a list of experts maintained by the court, and the expert files his report directly with the court. The parties are given an opportunity to comment on the report through further written submissions.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The parties have little input over the time it takes for the case to proceed since the timetable is largely driven and determined by the court.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

Interim injunctive relief (whether prohibitory or mandatory) is not generally recognised or available in the UAE courts. However, precautionary attachment orders may be obtained, which serve to ring-fence assets against which a judgment would be enforced, where the applicant can show that there is a prima facie substantive case to be tried and a real risk that such assets will be dissipated before enforcement is sought.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

A summary judgment procedure is available in the case of debt claims where the debt is recorded in writing. Such an order for payment is not, however, made on the basis that there is no defence to the claim. The judgment debtor is given 15 days within which to challenge the order from the date of notice of the order.

## 10 What substantive remedies are available?

Damages are the main remedy in the UAE courts, although the courts do have the power to make orders confirming a right (for example, the return of property). Injunctive relief is not generally available, nor is specific performance to require the sale of land.

## 11 What means of enforcement are available?

A judgment creditor may enforce its judgment by:

- a charge over property;
- attachment of assets;
- execution against assets; and
- the appointment of a receiver.

The court may also make a committal for contempt of court against a judgment debtor in certain circumstances.

It is the remit of the executive judge, assisted by court officials, to facilitate the enforcement of court orders.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

It is possible for a successful party in proceedings in the UAE courts to recover its costs from the losing party, but in general, judges in UAE courts tend only to award nominal or minimal costs.

## 13 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

The UAE courts have a well established appellate process. It is possible to appeal on a finding of fact or on a point of law from the Court of First Instance to the Court of Appeal within 30 days of the judgment of the lower court. New evidence may be submitted at this stage. It is also possible to appeal from the Court of Appeal to the Court of Cassation on a point of law only, within 60 days of the Court of Appeal judgment. In both circumstances, the timeframes may be extended.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

The individual emirates, such as Dubai, have rules and directives providing that the Ruler's permission must be sought and obtained before civil proceedings are brought against the government of that emirate or government related entities. Although this does not amount to immunity for domestic State entities, it may operate to reduce the number of civil proceedings against domestic State entities if the Ruler does not give permission.

There is no statutory provision under UAE federal law allowing foreign State entities to claim immunity from civil proceedings.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments are enforceable in the UAE courts in two circumstances:

- if there is a relevant treaty providing for judicial co-operation and recognition of judgments and arbitral awards (such as the Riyadh Convention or the GCC Convention to which the UAE is a signatory); or
- if the requirements for enforcing a foreign ruling under UAE federal law are satisfied. These requirements include that the parties have attended the foreign hearing and were represented, that the judgment does not contradict a ruling made in a UAE court and that the judgment does not contravene propriety or public order in the UAE.

Where enforcement is sought under the auspices of a bilateral treaty, the jurisdiction of the court that issued the judgment will not be open to review since the foreign judgment is directly enforceable. However, where the provisions of UAE federal law are invoked, the UAE court enforcing the foreign judgment must be satisfied that the UAE courts did not have jurisdiction over the substantive dispute as a matter of UAE law.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

Local counsel in the UAE often require payment of their fees upfront, in order to cover the costs of litigation and other disbursements. The amount of the payment is often determined as a percentage (ranging anywhere between 1% and 3%) of the value of the claim. Alternative arrangements include payment by way of an hourly rate with a success fee element to be paid at the final stages of litigation.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The arbitration law of the UAE is currently contained in a chapter of the UAE Civil Procedure Law, and is not based upon the UNCITRAL Model Law. Although it is expected that a new federal arbitration law based on the UNCITRAL Model Law will be enacted in the future, the date of enactment is unconfirmed.

## 18 What are the main national arbitration institutions?

The Dubai International Arbitration Centre (**DIAC**) is the main arbitration centre in Dubai outside the DIFC, and is commonly used by most parties whose contracts provide for dispute resolution by way of arbitration where the governing law is UAE law.

The Abu Dhabi Commercial Conciliation and Arbitration Centre (**ADCCAC**) is commonly used in disputes concerning contracts with Abu Dhabi government entities.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

There are no restrictions on who may act for a party in the course of an arbitration conducted under UAE federal law. If court intervention is required, however, the same restrictions on counsel having rights of audience in the local courts will apply as set out above.

## 20 What are the formal requirements for an enforceable arbitration agreement?

Under the Civil Procedure Law, an arbitration agreement is only enforceable if it is in writing and the arbitration agreement clearly identifies the subject matter of the dispute.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

Under the Civil Procedure Law, if a dispute is the subject of a valid arbitration agreement, it is not permitted for a litigation claim to be made in respect of the same matter. However, if one party does file a claim in the courts, the other party has until the first hearing to request a stay and, if it fails to do so, the litigation claim may proceed and the arbitration agreement is rendered invalid.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

UAE federal law provides that where the parties are unable to agree on the number or identity of the arbitrators, the court with supervisory jurisdiction over the arbitration appoints the required number of arbitrators, if requested to do so by one of the parties.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

Under the Civil Procedure Law, an arbitrator can only be removed by the joint agreement of the parties, although the UAE courts may remove an arbitrator at the request of one of the parties (i) because he is not conducting the arbitration in accordance with the arbitration agreement and this has been previously notified to him in writing or (ii) on the same grounds on which a judge may be rejected (such as lack of independence or impartiality), which grounds become apparent after his appointment. The appointment of an arbitrator by the UAE courts is not subject to appeal.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The Civil Procedure Law provides that the parties may agree upon the procedure to be followed in the arbitration. In the absence of agreement, the Civil Procedure Law contains certain terms which will apply.

## 25 On what grounds can the court intervene during arbitration?

The Civil Procedure Law allows the court with supervisory jurisdiction over the arbitration to intervene in certain circumstances. The court can appoint the arbitral tribunal in the absence of agreement between the parties, and it can also hear applications to remove arbitrators (as mentioned in paragraph 23 above). The court may also:

- impose the penalty prescribed by law on any witness who has been summoned to attend an arbitral hearing and who refuses to do so (or a witness who attends a hearing but who refuses to answer any questions);
- make an order requiring a third party to disclose certain documents; or
- respond to an application by the arbitral tribunal for assistance.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

Arbitrators do not have any such powers under the Civil Procedures Law.

## 27 When and in what form must the award be delivered?

The Civil Procedure Law provides that, where the parties have not stipulated a time limit within the arbitration agreement for the arbitral tribunal to render its award, the tribunal shall render its award within six months of the date of the first hearing. The UAE court may extend this time limit upon the request of the tribunal or application of one of the parties.

The arbitral award must be in writing and attach a copy of the arbitration agreement, and contain a summary of each party's case and the documents they have relied upon, the reasons on which the award is based, the date and place of the award and the signatures of the arbitrators. The award will be valid so long as it is signed by a majority of the arbitrators comprising the tribunal.

## 28 On what grounds can an award be appealed to the court?

Although an arbitral award is not subject to an appeal on any grounds under the Civil Procedure Law, the parties may apply to invalidate the award on the following grounds (at the stage when it has been submitted to the UAE court for certification prior to enforcement):

- there is no valid arbitration agreement between the parties;
- the time limit for the tribunal to render the award has been exceeded;
- there was a flaw in the appointment of the arbitral tribunal; or
- there is a procedural irregularity in the award.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Domestic arbitral awards are enforced through the executive judge of the local court having jurisdiction over the assets against which enforcement is sought, in the same way in which domestic judgments are enforced. The prerequisite to enforcement by the executive judge is ratification of the award by the court at which the arbitration was filed.

Foreign arbitral awards can be enforced under the UAE Civil Procedure Law in the same way as foreign judgments. The same requirements set out in the answer to question 15 must be satisfied. The United Arab Emirates is also a signatory to the New York Convention. Those holding awards made in a contracting State to the New York Convention may apply to the executive judge of the UAE court for enforcement on assets in the UAE.

## 30 Can a successful party recover its costs?

The UAE Civil Procedure Law does not contain any provision specifically permitting a successful party to an arbitration to recover its costs.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

The UAE courts may facilitate ADR between parties, upon the request of the parties or if the courts consider it appropriate. For example, many disputes coming before the federal courts are often referred to a committee, such as the Rent Committee, which deals with landlord and tenant disputes.

In September 2009, the Dubai government passed a law establishing a new Centre for the Amicable Settlement of Disputes which is affiliated to the Dubai courts. The law makes it compulsory for the parties to refer disputes to the centre which would otherwise be heard before the Dubai courts. The centre is expected to use a process of conciliation in order to bring about settlements. Cases may only proceed to the Dubai courts once the parties have been unable to reach settlement at the centre within one month of referral.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

A new UAE Federal Law on Arbitration and the Enforcement of Arbitration Awards incorporating the UNCITRAL Model Law was released in draft form by the Ministry of Economy in February 2008. It has not yet come into force. If enacted in this form, the UAE Federal Arbitration Law would be instrumental in providing for, and further facilitating, the enforcement of arbitral awards in accordance with the New York Convention, to which the UAE acceded in 2006. It will also replace the existing provisions in the Civil Procedure Law as the arbitration law of the UAE. As such, it will apply to all arbitrations in the UAE with the exception of arbitrations within the DIFC, which will continue to apply its own arbitration law. The UAE Ministry of Economy has not yet confirmed when the draft law will be ratified.

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# Yemen

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Law Offices of Sheikh Tariq Abdullah

## Litigation

### 1 What is the structure of the legal profession?

The Yemeni Advocacy Law regulates the conduct of the legal profession in Yemen. In order to qualify as a lawyer, a trainee must complete two years training with a lawyer who is entitled to appear before the First Courts of Appeal.

A licence to practise law in Yemen which grants rights of audience is only awarded to Yemeni nationals. Rights of audience before the Preliminary Courts are granted to lawyers who have completed two further years of training and before the First Courts of Appeal to lawyers who have three years of training, in each case with a senior lawyer. Only senior lawyers may be granted rights of audience before the Supreme Court, after seven years' experience.

Foreign lawyers may act as experts with Yemeni legal firms.

### 2 What is the structure of the court system?

The structure of the court system according to Yemeni Law is as follows:

- Preliminary Courts: these courts exist in each district of each region in Yemen and all cases must be submitted to the Preliminary Courts in the first instance;
- First Court of Appeal: these courts exist in each region in Yemen and hear all appeals against judgments issued by the Preliminary Courts; and
- Supreme Court: this court is the highest court in Yemen which also acts as an administrative court and a constitutional court.

### 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

The Yemeni judicial system is essentially inquisitorial. The role of the judge in civil proceedings is to investigate the facts, conduct the case in keeping with the court rules of procedure and to apply the laws to the facts.

There is no jury system in Yemen.

### 4 What are the time limits for bringing civil claims?

The Law of Evidence sets out various time limits for bringing claims. Generally, the claimant has a right to file a claim within five years of becoming aware of it. However, this period may be extended by agreement between the claimant and the defendant. In certain circumstances, the court may also agree to hear the case beyond the five year time limit.

There are certain circumstances in which the time limits are shorter. These include one year for salary claims, claims relating to professional fees and delivery of goods and three years for rent claims.

### 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

The civil proceedings are commenced by the claimant filing his claim with the court, enclosing the documentary evidence in support of his claim. The court serves the defendant with copies of the claim and the supporting documents, together with a date by which it must file its defence. The court then fixes a date to hear the claim. If the parties wish to submit further submissions, additional time is granted by the court, after which a date for judgment will be scheduled.



## 6 What is the extent of pre-trial exchange of evidence, and how is the evidence presented at trial?

The documents on which the parties rely should generally be submitted with the statement of claim or defence, although (as noted in question 5 above) the court may allow extra time for further submissions which may be permitted even after the hearing of the claim, at a very late stage. New evidence may also be admitted on appeal to the First Court of Appeal.

There is no requirement under Yemeni law for the parties to provide evidence which may assist the counterparty's case on its request. Each party declares its witnesses to the court before the date of the hearing and the court summons the witnesses to appear on given dates.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The process is slow. The parties' ability to control the procedure and timetable is limited because the court determines the hearing dates based on the court diary.

## 8 What interim remedies are available to preserve the parties' interests pending judgment?

The parties may obtain a temporary injunction in an interlocutory application to protect the parties' interests prior to judgment.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceeding should such procedures be invoked?

The claimant may submit an urgent application to the court attaching all the documents evidencing that the claim is true and proving that the defendant has no defence to the claim. The court hears the claimant and may pass an *ex parte* judgment. The judgment debtor is then served with a copy of the proceedings and the judgment.

## 10 What substantive remedies are available?

A Yemeni court may award remedies such as damages, specific performance and injunctions and may make declaratory judgments. Any remedy must be specifically sought by the claimant in his statement of claim.

## 11 What means of enforcement are available?

Judgments may be enforced directly against the defendant (for example, by attachment orders being made against its assets) and indirectly (for example, by calling on a bank guarantee or surety). It is also possible for a judgment creditor to be imprisoned or its assets sold by way of public auction.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for cost?

The court has the right to order costs. Foreign claimants are required to submit a bank guarantee or a guarantor for the payment of costs in the event costs are awarded against the foreign claimant.

## 13 On what grounds can the parties appeal and what restrictions apply? Is there a right of future appeal? To what extent is enforcement suspended pending an appeal?

An appeal to the First Court of Appeal of a judgment of a Preliminary Court may be made on the basis of errors of fact or law. Appeals to the Supreme Court may only be made on points of law. Note that it is possible to appeal against a decision of the Supreme Court where the decision is considered to be contrary to the relevant law, in the form of a review petition. A review petition is filed with the same panel of judges of the Supreme Court.

In most cases, enforcement is automatically suspended until final judgment of the Supreme Court. However, in commercial cases, if the party making the appeal fails to give a bank guarantee or produce a financial guarantor or surety, the judgment may be enforced before the appeal process is exhausted.

## 14 To what extent can domestic and/or foreign State entities claim immunity from civil proceedings?

There is no domestic State immunity in Yemen. Immunity is given to foreign embassies, consulates, diplomats and personnel of the United Nations Organisations.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

Under the Yemeni Civil Procedure Law, only judgments made in the courts of countries which have entered into a bilateral or multilateral treaty with Yemen for the execution of judgments are enforceable in Yemen. For example, Yemen is a signatory to the Riyadh Convention. Judgments from other Riyadh Convention States should be enforced in Yemen if they satisfy the Riyadh Convention tests, including that the judgment is not contrary to Shari'ah law.

The process of enforcement of a foreign judgment requires the judgment creditor or a decree holder to submit a certified copy of the foreign judgment, together with a certified Arabic translation of the judgment, to the Yemeni courts. Both documents must be legalised and bear the stamp of the Yemeni embassy in the country where the judgment was made.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of litigation/arbitration?

It is permissible for lawyers to charge contingency or conditional fees. In the event that there is no agreement between the lawyer and his client on the level of fees, the lawyer is entitled to charge up to 10% of the amount of the claim.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

The Yemeni Arbitration Law is based on Shari'ah law and partly adapted from Egyptian Arbitration Law. It is not based on the UNCITRAL Model Law.

## 18 What are the main national arbitration institutions?

The Yemeni Centre for Conciliation and Arbitration is the main national arbitration institution.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

A representative of the parties to an arbitration does not need to have legal qualifications.

## 20 What are the formal requirements for an enforceable arbitration agreement?

The mandatory requirements of an arbitration agreement are that the parties must have consented to enter into an arbitration agreement and the agreement must be in writing.

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

Generally, the Yemeni courts will not claim jurisdiction over matters where a valid arbitration agreement exists, unless the matter falls within certain categories of cases for which arbitration is not permissible, which include:

- criminal cases;
- disputes concerning procedures for compulsory enforcement; and
- matters concerning public policy.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

The Arbitration Law states that the number of arbitrators shall be three where the arbitration agreement and/or rules applicable to the arbitration are silent.

If the arbitration tribunal is to be formed of a single arbitrator, the court may appoint the arbitrator at the request of either party, after considering any legitimate objection. If the arbitration tribunal is formed of two arbitrators, then each of the parties shall appoint an arbitrator. If the arbitration tribunal is formed of three arbitrators, each party will choose an arbitrator and those two arbitrators will then choose the third arbitrator. If the two arbitrators cannot agree on the third arbitrator within 30 days, the court will choose the arbitrator. In a multi-party dispute, each party shall appoint an arbitrator on its behalf, and if they fail to do so, the court shall choose the arbitrators.

Where a court chooses an arbitrator, it may refer to the Yemeni Centre for Conciliation and Arbitration, or the National Chamber of Commerce in Yemen if the parties are Yemeni. If one of the parties is a foreign national, the court will refer the matter to an international arbitral institute.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

An arbitrator may be challenged on the following grounds:

- if it becomes apparent that the arbitrator is not impartial or independent;
- if he becomes unfit to arbitrate; or
- if he acts clearly in contravention of the law.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

The parties are free to agree on the procedures that they require the arbitral tribunal to follow. In the event of no agreement, the tribunal shall follow the procedures it deems appropriate, conforming to the provisions of the Arbitration Law and the Civil Procedure Law.

## 25 On what grounds can the court intervene during arbitration?

A court can intervene if it can be shown that the Arbitration Law, Civil Procedure Law or the laws of Shari'ah have been breached. Generally speaking, however, the courts do not intervene in arbitrations.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

Arbitrators have powers to grant interim or conservatory relief. However, these are limited to granting relief which is within the power of the parties to implement and are therefore not as extensive as court interim remedies (for example, an arbitrator cannot issue an order to seize property or freeze a bank account).

## 27 When and in what form must the award be delivered?

An arbitral award must:

- provide the names, addresses, capacities and nationalities of the parties to the arbitration;
- contain a summary of the claims and defences of the parties, as well as a summary of their statements and exhibits; and
- contain the reasons for the award, and the date and place of its issue.

## 28 On what grounds can an award be appealed to the court?

It is not possible to appeal an arbitration award to the Yemeni courts. Instead the parties may apply to the court for an annulment in the following circumstances:

- no valid arbitration agreement;
- if one of the parties to the arbitration lacked capacity;
- if the procedures were invalid or the arbitral tribunal exceeded its powers;
- if the arbitral tribunal was constituted in a manner contravening the arbitration agreement;
- if there are no reasons stated for the arbitral award; or
- if the provisions of the award contravene the provisions of Shari'ah or Yemeni public policy.

## 29 What procedures exist for enforcement of foreign and domestic awards?

Any domestic award must be ratified by a local court. A request to implement an award must be made to the court with the following documents:

- the original award, or a certified copy signed by each member of the tribunal;
- a copy of the arbitration agreement; and
- a copy of the evidence that the award has been properly filed with any relevant foreign court or other body, where necessary.

Yemen is not a party to the New York Convention. Foreign arbitral awards are only enforced in Yemen where reciprocal arrangements to enforce Yemeni arbitral awards exist in the country in which the tribunal has its seat (being either the Riyadh Convention or a relevant bilateral treaty). The award must be consistent with Shari'ah and public policy.

In order to enforce a foreign arbitral award in Yemen, the party in whose favour the award was rendered has to submit to the Yemeni court the original award and the original arbitration agreement, together with certified Arabic translations of these documents.

## 30 Can a successful party recover its costs?

A successful party may recover its costs, provided the procedure that governed the arbitration does not prevent such recovery.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

No - unless they agreed to such provisions in the arbitration agreement.

# Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

We are not aware of any proposed significant procedural reforms at present.

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The Law Offices of Sheikh Tariq Abdullah are the oldest and most respected law offices in the Arabian Sub-Peninsular. The origins date back to 1927 when Sheikh Mohammed Abdullah founded a legal practice in Aden. As Aden grew and changed its status to a Crown Colony in 1935, and thereafter achieved independence in 1967 along with the Aden Protectorates and became the Republic of South Yemen, through to the unity of South Yemen and the Yemen Arab Republic in 1990 to form the Republic of Yemen, the office has grown in strength and experience.

Litigation is not recommended in Yemen, but if a settlement cannot be agreed, the Law Offices of Sheikh Tariq Abdullah are equipped to provide this service. The firm's arbitration practice is focused on guiding foreign clients when in dispute with Yemeni nationals or the Government of the Republic of Yemen and the office also supports foreign law firms in arbitration proceedings abroad.

The office offers an international service and specialises in serving clients in co-ordination with their foreign lawyers, if so desired. The lawyers in the office combine local expertise with international knowledge.

# Profiles

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Dr Belal Talal Al Ghazzawi has been practicing law since 1984. He specialises in international trade, corporate law, admiralty and maritime law, international business transactions, commercial disputes, foreign investments, real estate, joint ventures, litigation, arbitration and Shari'ah law.

Dr Belal advises on a wide range of legal issues and appears on behalf of clients before Shari'ah and Commercial Courts and Arbitration Tribunals. Additionally, he undertakes depositions and negotiations, mediations and conciliations, as well as drafting contracts and agreements, both in Arabic and English.

Dr Belal also has extensive experience of advising on innovative transactions and complex cross border financings and representing major banks and large industrial and commercial entities in Saudi Arabia and overseas.



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Christopher is a Herbert Smith partner currently on secondment to the Al-Ghazzawi Professional Association (GPA) in Saudi Arabia, which has a formal association with Herbert Smith. He is the principal and senior resident partner of the GPA Riyadh office.

Christopher has over 30 years' experience as a corporate commercial lawyer focused mainly in the technology sector. He has advised many of the world's leading businesses and UK government agencies on their most challenging and strategically important transactions, projects and disputes. He has experience of all types of corporate work ranging through IPOs, M&A and joint ventures. He has successfully managed cases through the High Court and before the Pensions Regulator, and in ICC and LCIA arbitrations. He has acted as an expert witness.



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Meriel is a Herbert Smith dispute resolution associate currently on secondment to GPA. She trained at Herbert Smith and qualified in Herbert Smith's London office and, after working in London as a solicitor, joined the Middle East team in 2007. Her experience includes working on construction, energy, product liability and finance disputes.

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Stuart has a wide range of commercial litigation and arbitration experience, covering a range of industry sectors. Most of his work has a cross-border element.

Stuart has a particular focus on financial services and investment disputes and has spent time on secondment to a leading investment bank.

Stuart is a specialist in corporate fraud and asset recovery, both in relation to legal proceedings (often in multiple jurisdictions) and the conduct of internal investigations. He is a member of the Commercial Fraud Lawyers Association.

Stuart regularly advises on mediation and other forms of alternative dispute resolution (ADR). He is a qualified solicitor advocate with rights of audience in all courts in England & Wales and in the courts of the Dubai International Financial Centre (DIFC).



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Craig advises on all forms of dispute resolution and represents clients as counsel in domestic and international arbitrations arising out of international commercial transactions. Previously based in our Hong Kong office between 1995 and 2006, he has gained extensive experience on infrastructure and energy projects around Asia and the Middle East.

Craig has rights of audience at the courts of the Dubai International Financial Centre, advising generally on disputes in the finance sector, construction, telecoms and corporate acquisitions.

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Mark heads Herbert Smith's Asian dispute resolution practice. Based in Asia since 1987, he has conducted a wide range of civil, regulatory matters and white-collar crime matters. He is particularly experienced in respect of contentious issues involving publicly listed companies and securities.

On the civil side, Mark regularly represents clients in relation to directors' disputes and in respect of cases where the client has been the target of fraudulent activity by employees or others. These cases often have a multi-jurisdictional element to them.

On the regulatory side, Mark advises clients in the securities market whom are involved in investigations, particularly in the areas of insider trading and market manipulation.





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