



Litigation Dispute Resolution Comparative Guide

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1. Legal framework

1. 1. What system of jurisprudence applies in your jurisdiction? What implications does this have for litigation?

United Arab Emirates

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The United Arab Emirates has a civil law system; therefore, in respect of litigation, the procedural rules in the federal and emirate (state) courts are all primarily found mainly in the Civil Procedures Law.

The Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) financial freezones have their own independent courts, which are based on the common law system.

The DIFC courts have a similar structure to the courts of England and Wales, as follows:

- a Small Claims Tribunal, where claims with a value of less than AED 500,000 are heard;
- a Court of First Instance (CFI), where claims with a value of AED 500,000 are heard; and
- a Court of Appeal (COA), where cases may be subject to a single appeal if the grounds for such appeal are granted (<https://www.difccourts.ae/difc-courts/services/small-claims-tribunal>).

The ADGM courts have a similar structure to the DIFC courts and the courts of England and Wales, as follows:

- a Small Claims Division, where claims with a value of less than \$100,000 are heard;
- an Employment Division; and
- a Civil Division.

As in the DIFC court, the ADGM also has a CFI and a COA (DIFC Practice Direction, 3 Small Claims, Article 3.1).

1. 2. What rules govern litigation in your jurisdiction?

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The general rules on the procedures that apply in the UAE civil courts are set out in the Civil Procedures Law. The DIFC and ADGM have their own rules, which are based on the common law system.

The DIFC courts follow the Rules of the DIFC Courts (RDC). The laws that have been established in the DIFC are modelled on the laws of England and Wales.

Similarly, the ADGM courts follow the ADGM Court Procedure Rules 2016. However, the ADGM applies the laws of England and Wales in accordance with its own laws. For example, the English Law Regulations 2015 ensure that English precedents will apply and have legal force in equal effect to those of the ADGM.

1. 3. Do any special regimes apply to specific claims?

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In the United Arab Emirates, there are certain specialist courts and tribunals that deal with claims. For example, all rental disputes (involving lease periods of up to 10 years) are referred to the rental courts in each emirate.

The DIFC CFI has its own divisions, which cover civil, commercial, construction, technology and arbitration. Each division is headed by an independent judge who specialises in that area, to ensure that cases progress in a professional and efficient manner (<https://www.difccourts.ae/about/court-structure>).

The ADGM CFI has no specific divisions, but it does have separate civil and employment divisions (<https://www.adgm.com/adgm-courts>).

1. 4. Which bilateral and multilateral instruments have relevance to litigation in your jurisdiction?

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Many multilateral instruments have relevance in the United Arab Emirates, one of which is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The United Arab Emirates is a signatory to the New York Convention and the UAE courts apply the convention when enforcing arbitration awards.

The DIFC, as a freezone in Dubai, cannot enter into international treaties.

However, Article 24(2) of DIFC Law 10/2004 states that the CFI must comply with any international treaties entered into by the United Arab Emirates, including the New York Convention.

In addition, the DIFC courts have entered into memoranda of guidance with several foreign courts, including:

- the federal courts of Australia;
- the Supreme Court of Singapore; and
- the Commercial Court and the Queen's Bench Division in England and Wales (https://www.difccourts.ae/about/protocols-memoranda?ccm_paging_p=4&ccm_order_by=ak_date&ccm_order_by_direction=desc).

Similarly, the ADGM, as a freezone in Abu Dhabi, cannot enter into international treaties.

However, Articles 170 to 173 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointment Regulations 2015 provide that the enforcement of judgments is permitted if the United Arab Emirates has entered into a treaty with the relevant country and/or jurisdiction.

Furthermore, ADGM has entered into memoranda of guidance with the same jurisdictions that have entered into memoranda with the DIFC courts (<https://www.adgm.com/adgm-courts/memoranda-of-understanding>).

2. Judicial structure

2. 1. What courts exist in your jurisdiction and how are they structured?

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The UAE courts consist of different panels of judges – for example, a single judge or a three-judge panel. There are several panels of judges that sit in the various courts, which are predominantly divided into:

- civil;
- commercial;
- property;
- bankruptcy;
- criminal felony; and
- criminal misdemeanour.

There is a three-stage court system:

- the Court of First Instance;
- the Court of Appeal; and
- the Supreme Court or Court of Cassation.

In the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), there is:

- a Small Claims Tribunal (SCT) in the DIFC and a Small Claims Division (SCD) (in the ADGM); and
- a Court of First Instance (CFI) and a Court of Appeal (COA) in both freezones.

In the DIFC, the CFI is comprised of one judge, who has exclusive jurisdiction over matters pertaining to civil and/or commercial disputes arising from or in relation to:

- the DIFC and/or any parties established in the DIFC;
- any contract that has been signed and executed in the DIFC; and
- potentially, any incidents that have occurred in the vicinity of the DIFC (www.difccourts.ae/difc-courts/services/court-of-first-instance#:~:text=The%20Court%20of%20First%20Instance, and%20has%20exclusive%20jurisdiction%20over&text=The%20Dubai%20International%20Financial%20Centre,any%20of%20the%20DIFC's%20establishments).

The COA comprises three judges, including a chief justice or the most senior judge. The COA has exclusive jurisdiction over appeals against judgments and awards of the CFI. Once the COA has issued its final decision, no further appeal can be brought (www.difccourts.ae/difc-courts/services/court-of-appeal).

The number of judges in the ADGM CFI differs from that in the DIFC: the CFI in the ADGM has two judges, including a chief justice and a judge who is directed to sit in that court by the chief justice (ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointment Regulations 2015, Article 28(1)).

The judges in the ADGM CFI have exclusive jurisdiction over matters pertaining to disputes arising from or in relation to:

- the ADGM and/or any parties established in the ADGM;
- any contract that has been signed and executed in the ADGM; and

- potentially, any incidents that have occurred in the vicinity of the ADGM (www.adgm.com/documents/publications/en/adgm_courts_brochure_interactive_sp.pdf).

The COA is comprised of two judges, including a chief justice and a judge who is directed to sit in that court by the chief justice (ADGM Courts Civil Evidence, Judgments, Enforcements and Judicial Appointments Regulations 2015, Article 26(1)).

The COA has exclusive jurisdiction over appeals against judgments and awards presented by the CFI and is the final recourse for appeal. Once an appeal decision has been issued by the COA, no further appeal is possible (www.adgm.com/documents/publications/en/adgm_courts_brochure_interactive_sp.pdf).

2. 2. What specialist courts or tribunals exist in your jurisdiction?

United Arab Emirates

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There are several specialist courts and tribunals in the United Arab Emirates, including the rental dispute courts in each emirate which deal with real estate disputes.

There are also specialised financial freezone courts, including the DIFC and ADGM courts. There is a Small Claims Tribunal (SCT) in the DIFC and a Small Claims Division in the ADGM which hear disputes relating to certain companies, individuals or government entities where:

- in the DIFC, the claim value is below AED 500,000; and
- in the ADGM, the claim value is below \$100,000.

In the DIFC courts, the SCT deals with:

- claims with a value of less than AED 500,000; and
- employment disputes with a value of more than AED 500,00 if the parties have agreed that the case should be conducted in the SCT (www.difccourts.ae/difc-courts/services/small-claims-tribunal).

In the ADGM courts, the SCD deals with claims with a value of less than \$100,000. However, unlike in the DIFC, employment claims will not be considered in the SCD (Practice Direction 3 Small Claims, Article 3.1) This is because the ADGM has its own Employment Division (www.adgm.com/documents/publications/en/adgm_courts_brochure_interactive_sp.pdf).

3. Pre-litigation

3. 1. What formalities apply before litigation can be commenced in your jurisdiction?

United Arab Emirates

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No formalities need be fulfilled before approaching the courts to register a case. However, there are rules in respect of what should be registered and how. Before the parties can plead their case, the rule of practice is to notify the other party, which is an important step in the civil courts that must be fulfilled before the case is heard by the judge. In some cases, certain formalities must also be fulfilled – for example, in labour claims in the UAE civil courts, the claimant must file a complaint with the Ministry of Human Resources and Emiratisation before registering a claim with the courts.

In the Dubai International Financial Centre (DIFC), while there is no mandatory obligation, standard practice dictates that a party bringing a claim should send a pre-action letter (also known as a legal notice) to inform the recipient of the purported breach and give it sufficient time in which to rectify the breach.

If the breach is not rectified within the stipulated timeframe, the party will initiate proceedings. The benefits of sending a pre-action letter relate to cost recovery, as under Rule 38.8 of the Rule of the DIFC Courts (RDC), the courts will also consider the conduct of the parties when making their judgment.

Furthermore, Rule 38.9 of the RDC provides that the conduct of the parties includes conduct before the proceedings (DIFC Court Rules, Part 38.9). Therefore, attempting to resolve the dispute by issuing a pre-action letter may be beneficial.

A similar practice is followed in the Abu Dhabi Global Market (ADGM) courts, where one party serves a pre-action letter on the other as part of the standard practice.

3. 2. Do any pre-action protocols or similar rules apply prior to the commencement of litigation? What are the consequences of non-compliance?

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Yes. Certain rules apply to specific types of cases and if the parties fail to follow them, the courts can set aside or reject the claim.

In the DIFC, there are no specific pre-action protocols imposing obligations on the parties prior to the commencement of litigation; however, there are standard practices which are followed in the DIFC courts (see question 3.1).

The ADGM court rules differ from those in the DIFC because they do not explicitly mention any standard pre-action protocols; however, the parties are directed to attempt to mediate disputes prior to filing a claim in the ADGM courts.

For example, Article 13.8 of the ADGM Courts Practice Directions 13 states that the parties may voluntarily refer to court-annexed mediation. However, there is no explicit mention of the repercussions if this is not followed.

3. 3. What other factors should a party consider before commencing litigation in your jurisdiction?

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To represent a client and register a case, legal representatives must obtain identification documents. Further, a notarised and legalised power of attorney is required from the client in circumstances where an urgent order is needed; the absence of such a document will inevitably delay the proceedings.

In the DIFC and ADGM, in addition to the points raised in questions 3.1 to 3.3 in relation to pre-action conduct, if the pre-action process is unsuccessful, the parties may wish to carry out a cost-benefit analysis to determine whether the costs of bringing the claim would outweigh the potential benefits of the outcome.

4. Commencing litigation

4. 1. What rules on limitations periods apply in your jurisdiction?

United Arab Emirates

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The rules on limitation periods differ depending on whether the case involves a breach of contract or tort. For example, there is a limitation period of 15 years for civil rights and specific limitation periods for different types of breaches, as well as exceptions to these.

There are limitation periods for different causes of action in the Dubai International Financial Centre (DIFC). For example:

- a breach of contract claim has a limitation period of six years (DIFC Contract Law 2004, Article 123);
- a joint liability claim has a limitation period of three years (DIFC Obligations Law 2005, Article 9);
- a negligence, occupiers' liability or misrepresentation claim has a limitation period of 15 years (DIFC Obligations Law 2005, Article 9);
- a fraud claim has no set limitation period or, where it has been committed under a contract, will be subject to a limitation period of six years (DIFC Obligations Law 2005, Article 9 and DIFC Contract Law 2004, Article 123); and
- an employment dispute claim has a limitation period of six months (DIFC Employment Law, Article 10).

In the Abu Dhabi Global Market (ADGM), similarly to the DIFC, different limitation periods apply to different areas of law. However, the ADGM laws provide that civil claims brought in the ADGM courts will be subject to the limitation periods set forth under English law. Therefore:

- where a breach of contract claim is brought, the limitation period is six years; and
- where a personal injury claim is brought, the limitation period is three years.

4. 2. What rules on jurisdiction and how this is determined apply in your jurisdiction?

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The general rule is that jurisdiction is determined on the basis of the respondent's domicile, residence or place of work. There are specific rules that allow the courts to have jurisdiction – for example, in the case of commercial contracts, the courts can have jurisdiction if part of the contract was performed in the United Arab Emirates. There are also specific exclusions to jurisdiction – for example, if a real estate dispute relates to property that is outside of the United Arab Emirates, then regardless of whether the parties are domiciled in the United Arab Emirates, the UAE courts will not hear the case.

In the DIFC, Article 5 of Law 12/2004 relating to the Judicial Authority of the Dubai International Financial Centre (as amended) sets out the conditions under which the DIFC courts have jurisdiction over civil or commercial claims involving:

- a DIFC entity and/or any established, licensed party of the DIFC;
- a contract or promised contract which has been executed in the DIFC; and
- any incidents or transactions that have occurred in the DIFC.

In the ADGM, the Divisions and Jurisdiction (Court of First Instance) Rules 2015 set out the conditions under which the courts have jurisdiction over civil or commercial claims involving:

- an ADGM entity and/or any established, licensed party of the ADGM;
- a contract or promised contract which has been executed in the ADGM; or
- any incidents or transactions that have occurred in the ADGM.

4. 3. Are class actions permitted in your jurisdiction?

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Class actions are permitted in relation to certain claims; however, the Civil Procedures Law does not stipulate any mechanism for class actions. In the DIFC and ADGM courts, class actions are accepted, although they are not used frequently.

Both the DIFC and ADGM courts have nonetheless observed an increase in these types of cases. For example, the DIFC case of *Al Khorafi v Bank Sarasin-Alpen (ME) Ltd* [2018], which could be considered a potential class action, involved several claimants with different claims. In the ADGM, in a similar case involving the NMC Healthcare Group, the UAE subsidiaries went into administration and several shareholders brought claims against the group.

4. 4. What are the formal requirements for commencing litigation?

United Arab Emirates

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In the UAE civil courts, the claimant must:

- submit a claim in the prescribed form detailing the names of the parties; and
- pay the court fees.

In the DIFC and ADGM courts:

- a claim form must be lodged along with the statement of claim; and
- court fees must be paid.

In the DIFC and the ADGM, the particulars of claim should be drafted so as to identify:

- the parties to the dispute;
- the background facts;
- the breach(es) committed;
- the applicable law;
- the damages caused; and
- the relief sought, which will be used when filing the claim.

4. 5. What are the procedural and substantive requirements for commencing litigation?

United Arab Emirates

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There are many procedural requirements for commencing a claim, which will depend on the claim itself – specific claims have prerequisites. However, in terms of substance, the claim requirements are that there must be:

- a claimant and a respondent; and
- a request from the court as to the remedy or award that the claimant is seeking.

In the DIFC courts a Part 7 claim must be filed along with the particulars of claim through the e-registry portal. Once a claim has been filed, the system will initiate the case; the payment for filing should be made thereafter. Upon completion, a claim form will be generated and can be served on the other party.

In the ADGM courts, a Form CF1 must be filed along with the particulars of claim through the e-registry portal; where the claim form is served outside the ADGM, a CF32 form must be filed along with the CF1 form. Once a claim has been filed, the ADGM court system will initiate the case; the payment for filing should be made thereafter. Upon completion, the claim form will be generated by the ADGM court system and can then be served upon the other party.

4. 6. Are interim remedies available in your jurisdiction? If so, how are they obtained?

United Arab Emirates

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The UAE courts may issue interim remedies, including injunctions, attachments and travel bans. These are obtained by making an application *ex parte* to the judge, who may then award or refuse the order.

Interim remedies are available under:

- Part 25 of the Rules of the DIFC Courts (RDC); and
- Part 10 of the Court Procedure Rules of the ADGM Courts.

An application must be made before the judge, who may either grant or deny the interim remedies based on the factual matrix of the case and in line with the relevant rules and regulations.

4. 7. Under what circumstances must security for costs be provided?

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The UAE civil courts do not typically order security for costs; however, interim attachments and injunctions can be made to secure assets or property for the debt owed.

In the DIFC and the ADGM, security for costs can be ordered by the courts for a claimant or defendant. In the DIFC, the circumstances in which the courts may make an order for security of costs are as follows:

- The claimant is resident outside the United Arab Emirates;
- The claimant is a company or other body and has reason to believe that it will be unable to make payment of the defendant's costs if required to do so;
- The claimant has changed its address for the purpose of avoiding the consequences of litigation;
- The claimant has failed to give the correct address or has given an incorrect address;
- The claimant is a nominal claimant (ie, a person suing for someone else's gain) and would be unable to pay the defendant's costs if ordered to do so; or
- The claimant has taken steps in relation to its assets which makes it difficult to enforce a cost order against it (Rule 25.102 of the RDC).

The ADGM courts may make an order for security of costs under the same conditions as the DIFC courts, as outlined above (ADGM Court Procedures, Practice Direction 7 Application, Article 7.30).

5. Disclosure

5. 1. What rules apply to disclosure in your jurisdiction? Do any exceptions apply to certain types of documents?

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The law of evidence under the UAE civil law allows the courts to order a respondent to submit a document in its possession. However, certain conditions apply in this regard – the most important being that the document must be necessary for the resolution of the dispute. Respondents can refuse to submit documents if certain confidential information which is unrelated to the case would be revealed. Typically, a UAE court will not order a party to disclose correspondence or documents; instead, it will appoint an expert on its behalf to go through documents and report back to the court. The court will also frequently request the disclosure of information or documents from government authorities and banks where such information is required to resolve the dispute at hand.

In the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM) courts, the standard practice is that the parties should submit and/or share with the opposing party the documents on which they intend to rely during the proceedings. The DIFC courts may direct the parties to produce any additional documents which will be provided to the courts and/or the opposing party which the courts may feel relevant to the outcome of the case (Rules of the DIFC Courts (RDC), Part 28).

5. 2. What rules on third-party disclosure apply in your jurisdiction?

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The courts must join a third party as a party to the case in order for that third party to submit something that is in its possession. Either the courts or a party may request this. In addition, the courts can request that government departments or banks disclose information for a case without joining them to the case as a party.

The DIFC courts can request a party to submit any documents both to the court and to the other parties that it deems relevant and important to the outcome of the case, either on a party's request or on its own initiative. For example, where an expert is engaged and documents are relevant to the case, the DIFC courts may request the expert to produce certain documents as required.

5. 3. What rules on privilege apply in your jurisdiction? Does attorney-client privilege extend to in-house counsel?

United Arab Emirates

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There are rules on attorney-client privilege which apply in the United Arab Emirates; and in certain circumstances (eg, medical privilege), a client has a right to refuse disclosure.

In the DIFC, a lawyer/attorney is under a strict obligation to maintain confidentiality until and unless he or she is:

- permitted to do otherwise by the client; and/or
- ordered to do otherwise by the DIFC courts or required to do so by law (DIFC Court Order 4/2019, Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts, Article C 19).

Similarly, Article 7(6) of the ADGM Courts Rules of Conduct 2016 provides that a lawyer/attorney is under a strict obligation to maintain confidentiality until and unless he or she is:

- permitted to do otherwise by the client; and/or
- ordered to do otherwise by the ADGM courts or required to do so by law.

However, this privilege does not extend to privilege between in-house legal counsel and the company that they are representing, because they are not independent from the company.

5. 4. How have technological advances affected the disclosure process in your jurisdiction?

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Due to technological advances, disclosure is usually carried out in soft copy format. With regard to disclosure in relation to software cases and IT-related matters, experts in software should report to the court and provide reports on the information being sought.

In the DIFC and the ADGM, technological advances have led to the increased use of emails for the delivery of documents, including for disclosure. Moreover, the use of online portals has also increased for the purpose of submitting documents, including for the purposes of disclosure. The use of online portals ensures that both parties have equal access to the documents to be used in the proceedings.

5. 5. What specific considerations should be borne in mind during the disclosure process, for both plaintiff and defendant?

United Arab Emirates

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Under the UAE civil law system, the disclosure process involves either handing over documents to an expert or disclosing documents. There are no requirements relating to handing over documents or undertaking or warranty requirements.

In the DIFC, if an order is made, the disclosure process involves:

- conducting reasonable searches for documents in the party's possession in relation to which no objection has been made;
- producing the requested documents which have been identified to the other party; and
- providing the other party with the document retention policy, including the relevant searches conducted.

It is important for the party to confirm, to the best of its knowledge, that all of the required documents have been produced (RDC, Rules 28.20(1) to (4)).

In the ADGM, upon an order being made, the disclosure process involves:

- conducting a reasonable search for documents in the party's possession; and
- disclosing documents within the party's control – a duty which applies until the proceedings have been completed.

In circumstances where documents are given to a party, the opposing party must be notified immediately (ADGM Court Procedure Rules 2016, Part 13 – disclosure and inspection of documents, Article 87).

6.Evidence

6. 1. What types of evidence are permissible in your jurisdiction?

United Arab Emirates

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Evidence in the UAE civil courts can take the form of:

- documentary evidence;
- expert evidence;
- declarations by person(s); or
- evidence obtained through cross-examination in court.

In the Dubai International Financial Centre (DIFC) courts, as in the UAE civil courts, evidence can take the form of:

- witness statements;
- expert reports;
- plans;
- photographs; and/or
- models.

The same types of evidence can be presented in the Abu Dhabi Global Market (ADGM) courts.

6. 2. What rules apply to expert evidence in your jurisdiction? What specific considerations should be borne in mind when preparing and presenting expert evidence?

United Arab Emirates

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The parties may provide independent expert evidence; however, generally the UAE civil courts prefer to appoint an independent expert themselves. Reports will be prepared by the expert, who will follow a certain format in providing his or her evidence to the court.

In the DIFC and ADGM courts, experts are expected to provide expert evidence through a written report, unless stated otherwise. The expert evidence should be restricted to what is reasonably required to resolve the proceedings. No party may call an expert or include evidence in an expert report without the court's permission. The order granting permission should specify the particular issues which the expert evidence should address; and the court may appoint an expert on the application of a party or on its own motion (Part 31 of the Experts and Assessors Rules of the DIFC Courts, Rules 31.11 to 31.18; ADGM Court Procedure Rules, Part 17, Article 14).

6. 3. What other factors should be borne in mind when preparing and presenting evidence in your jurisdiction?

United Arab Emirates

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Evidence submitted to the UAE civil courts must be translated into Arabic. In addition, with the exception of emails, any documents – whether official or non-official – issued outside the country must be legalised before submission to the courts; otherwise, they may be rejected.

In the DIFC and ADGM courts, documents must be presented in English. If the documents are in another language, they must be translated into English.

7. Court proceedings

7. 1. What case management powers do the courts have in your jurisdiction?

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The courts will manage the whole case under the direction of the judge or an assistant of the judge.

Rules 4.1 to 4.7 of the Rules of the DIFC Courts (RDC) set out the case management powers of the DIFC courts. The key case management powers are set out in Rule 4.2 of the RDC, which provides that the DIFC courts may:

(a) extend or shorten the time for compliance with any Rule, Practice Direction or Court order (even if an application for extension is made after the time for compliance has expired); (b) adjourn or bring forward a hearing; (c) require a party or a party's legal representative to attend the Court; (d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication; (e) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings; (f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event; (g) consolidate proceedings; (h) try two or more claims on the same occasion; (i) direct a separate trial of any issue; (j) decide the order in which issues are to be tried; (k) exclude an issue from consideration; (l) dismiss or give judgment on a claim after a decision on a preliminary issue; (m) order any party to file and serve an estimate of costs; or take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.

In the Abu Dhabi Global Market (ADGM) courts, the case management powers are set out in Part 12 of the ADGM Court Procedure Rules 2016 and are similar to the RDC provisions above.

7. 2. Are court proceedings in your jurisdiction public or private? If the former, are any options available to the parties to keep the proceedings or related information confidential?

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Court proceedings are generally public and are conducted online. Certain cases, such as family matters, are held in private. There is no option to request the courts to make hearings private. However, in certain cases where a court or government decision refers the case to a committee or tribunal for judgment, the hearings become private.

Article 13(2) of DIFC Law 10/2004 states that: “All proceedings before the Courts shall be ... open to the public unless otherwise conducted by the presiding Judge in the interest of justice.” Therefore, DIFC court proceedings are open to the public; however, most proceedings are now conducted online.

Further, in the DIFC courts, submissions and documents pertaining to the court proceedings are uploaded through a secure and confidential electronic platform on the e-registry platform. These documents are only visible to the parties to the court proceedings and their legal representatives, and not to any third parties, in order to maintain their confidentiality.

Pursuant to Article 98(1) of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015, all ADGM court proceedings are held in public; however, this is subject to certain factors that are set out in Articles 98(2) and (3) of the regulations.

Pursuant to Article 98(2), the ADGM courts have the power to make special arrangements to accommodate the public where they consider it appropriate to do so.

Further, Article 98(3) provides that the ADGM courts may direct that court proceedings be held in private where:

(a) publicity would defeat the object of the hearing; (b) it involves matters relating to national security; (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality; (d) a private hearing is necessary to protect the interests of a party or witness; (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing; (f) it involves uncontentious matters arising in the administration of trusts; or (g) the Court considers this to be necessary, in the interests of justice.

Additionally, the identity of any party or witness to the court proceedings may not be disclosed by an order of the ADGM court in circumstances where the ADGM court considers that non-disclosure is necessary:

- to protect the interests of that relevant party or witness; or
- in the interests of justice.

Like the DIFC courts, the ADGM courts have their own e-registry portal through which documents relating to court proceedings can be uploaded and maintained in a confidential manner. These are visible only to the parties to the court proceedings and their legal representatives, and not to any third party.

7. 3. How is the applicable law determined? What happens in the event of a conflict of laws?

The applicable law is determined in accordance with UAE civil law. Generally, it is the law agreed upon by the parties; otherwise, it will be the law of the place where the breach occurred. However, certain rules apply in specific circumstances.

In case of a conflict of laws, if a judgment has been issued by another court while the UAE civil courts have accepted jurisdiction, the UAE civil courts will set aside the foreign judgment as long as the jurisdiction of the UAE courts is the correct jurisdiction for the dispute.

In the DIFC courts, pursuant to Article 6 of Dubai Law 12/2004 on the Judicial Authority at Dubai International Financial Centre (as amended by Dubai Law 16/2011), the DIFC courts have the power to apply the laws of the DIFC, unless:

- the parties to the proceedings have explicitly agreed that a different law will govern the dispute; and
- that different applicable law does not conflict with public order and public morals.

Therefore, the applicable law is determined based on the governing law that the parties have expressly chosen in their contract. If no governing law has been expressly chosen in the contract, the implied choice of law in the contract will be applied. Hence, there can be no conflict of laws, as the DIFC courts will apply the laws that have been expressly agreed between the parties to the court proceedings, provided that these do not conflict with public order and public morals.

The ADGM courts deal with matters relating to commercial and civil disputes, including those involving domestic and international financial transactions and employment disputes. Section 16 of the ADGM Courts Regulations allows the courts to hear:

- cases involving the ADGM or its entities; and
- disputes arising from transactions in the ADGM.

However, the ADGM courts can still have jurisdiction over cases if the parties expressly mention the ADGM laws as their choice of governing law in the contract/agreement.

Additionally, the ADGM courts can enforce a foreign judgment if the United Arab Emirates has entered into a treaty with the relevant country for the mutual recognition and enforcement of judgments.

7. 4. What rules apply to the joinder of third parties?

United Arab Emirates
Hamdan AlShamsi Lawyers & Legal Consultants

The general rule in making an application to bring another party into the case is whether there is any relationship with the third party to warrant its participation in the case. There are specific rules on a claimant adding a defendant to a case.

In the DIFC and ADGM courts, there are no provisions under which a third party may specifically be added. However, in the DIFC courts, a Part 20 application must be filed when an additional party to the claim is to be considered.

Under Rule 20.18 of the RDC, the process involves:

- the filing of an application notice;
- a proposed amended claim form with the particulars of claim and;
- the signed, written consent of the claimant to be added and/or substituted.

However, the addition or substitution of a defendant follows a slightly different procedure under Rule 20.21 of the RDC, as a defendant may only be added in circumstances where the court has made the order or has directed the claimant to serve the amended claim form on the defendant.

Article 56 of the ADGM Court Procedure Rules provides that the consent of the claimant should be given in writing and must be filed with the court. Thereafter, the claim form must be substituted and served on the other defendant by the claimant in order for the defendant to either add or substitute another defendant.

7. 5. How do the court proceedings unfold in your jurisdiction? What specific considerations should be borne in mind at each stage of the process, for both plaintiff and defendant?

United Arab Emirates
Hamdan AlShamsi Lawyers & Legal Consultants

Court proceedings are dealt with on a hearing-to-hearing basis in the UAE civil courts. The judge or courts may:

- request the pleadings to be submitted and replied to; and
- set hearings in between the pleadings for the parties to receive and respond to arguments.

In the DIFC courts, the proceedings commence with the filing of a statement of claim, outlining the claimant's allegations and the basis on which it is seeking relief. The defendant is then served with a copy of the claim form and the particulars of claim, and is given the opportunity to respond. If a response is not received within a specified timeframe, the claimant may be granted a default judgment by the DIFC courts upon application to do so. If the DIFC court receives a response from the defendant, a date will be set for the court hearing, which can be conducted before a judge or panel of judges or in the form of a virtual hearing. Additionally, the claimant and defendant must consider the procedural rules of the DIFC courts, as well as any evidence to be provided by the parties.

The ADGM courts broadly follow the framework of the DIFC court rules. The proceedings begin when a claim form is issued at the request of the claimant. The claim form and the particulars of claim must set out the basis of the case and the remedies sought by the claimant; they will then be served on the defendant. The defendant must respond with an acknowledgement of service or a defence. The court may then order a case management conference to discuss the issues and set a timeline for the exchange of documents and filing of witness statements, and other deadlines to trial.

7. 6. What is the typical timeframe for the court proceedings?

United Arab Emirates
Hamdan AlShamsi Lawyers & Legal Consultants

The typical timeframe for court proceedings is six months to two years, depending on the nature and circumstances of the case. This does not, however, take into account:

- urgent actions and immediate orders; or
- *ex parte* orders or summary judgments.

8. Judgment and remedies

8. 1. What types of judgments, orders and other remedies are available in your jurisdiction?

United Arab Emirates

Hamdan AlShamsi Lawyers & Legal Consultants

The UAE civil courts can issue two important orders, which are frequently used in practice:

- a performance order, whereby a party can apply to the court to oblige the respondent to pay a certain amount *ex parte*, which can be enforced immediately once the order becomes final; and
- an application to enforce a cheque directly, whereby the parties can immediately open an enforcement file and start enforcing the claim where a cheque has not been honoured.

The Dubai International Financial Centre (DIFC) courts can order immediate judgments against a claimant or defendant in relation to all or part of a claim, or a particular issue. An immediate judgment is a judgment that is issued without a full trial where the court determines that:

- there is no genuine dispute over the material facts of the case; and
- one party is entitled to judgment as a matter of law.

The DIFC courts can also issue interim orders before a final judgment is made. These can include:

- injunctions to prevent a party from taking certain actions;
- orders for the disclosure of information; and
- orders to preserve assets.

In the Abu Dhabi Global Market courts, interim orders can be issued in a variety of situations. These can include provisional measures which are issued to preserve the status quo or prevent irreparable harm to the parties involved in a case. For example, an interim order can be issued to freeze assets or prevent the disposal of property during the course of litigation. Similarly, injunctions can be granted to prevent a party from engaging in certain actions that could cause harm to another party.

9. Appeals

9. 1. On what grounds may a judgment be appealed in your jurisdiction?

United Arab Emirates

Hamdan AlShamsi Lawyers & Legal Consultants

A judgment may be appealed within the timeframe allowed for the appeal. The appellant must specify why the court has erred in its award.

Pursuant to Part 44 of the Rules of the DIFC Courts (RDC), the DIFC courts may consider the appellant's request for permission to appeal a judgment on the following grounds:

- The judgment was incorrect;
- The judgment was unjust due to a serious procedural and/or other irregularity in the proceedings in the lower court; or
- The judgment was incorrect in relation to any other matter provided for under law.

Under Article 208(4) of the ADGM Court Procedure Rules 2016 (CPR), the courts have a threshold test for granting the appeal. The test that the ADGM courts will consider is whether the appeal has real prospects of success or should be heard for any other reason.

9. 2. What is the appeals process? Is the judgment stayed while the appeal is pending?

United Arab Emirates
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The appeal must be submitted to the courts and registered. The judgment will be stayed until the appeal is over. When appealing to the Supreme Court or the cassation courts in the UAE civil courts, the court must agree to stay enforcement of the judgment in order to stop the enforcement.

Pursuant to Article 5(b) of the DIFC Judicial Authority Law, the DIFC Court of Appeal has jurisdiction to hear appeals against:

- judgments and decisions issued by the DIFC Court of First Instance; and
- the interpretation of DIFC laws and regulations in accordance with a request of the chief justice which is presented to the DIFC courts by any of the authorities, institutions or licensed institutions of the DIFC. The interpretation of the chief justice will then have binding effect.

Further, the judgments of the DIFC Court of Appeal are final and cannot be contested in any way.

Part 44 of the RDC sets out the process for appeals in the DIFC courts. The appellant or respondent must seek permission to appeal from the DIFC courts by filing an application with either:

- the DIFC Court of First Instance at the hearing at which the decision to appeal is made; or
- the DIFC Court of First Instance or the DIFC Court of Appeal in an appellant's notice.

Pursuant to Rule 44.10 of the RDC, this application may be filed either:

- within the timeframe directed by the lower court; or
- where such a direction is not provided, within 21 days of the date on which the decision to be appealed is issued.

If the lower court refuses permission to appeal, the appellant can file a further application for permission to appeal to the DIFC Court of Appeal, pursuant to Rule 44.9 of the RDC. This must be filed within 21 days of receipt of notification of the refusal of permission to appeal, pursuant to Rule 44.11 of the RDC.

Separately, pursuant to Rule 44.4 of the RDC, unless the DIFC Court of Appeal or the lower court orders otherwise, an appeal will not stay the decision of the lower court.

In the ADGM, the appeal process is set out in Part 25 of the CPR. The appellant must obtain permission to appeal an order or judgment of the ADGM Court of First Instance to the ADGM Court of Appeal, pursuant to Rule 206(1) of the CPR.

Rule 206(2) of the CPR sets out the timeline for submitting an application for permission to appeal.

Further, Rule 208(4) of the CPR provides that the ADGM courts will grant permission to appeal only where the ADGM courts consider that:

- the appeal would have a real prospect of success; or
- there is some other compelling reason as to why the appeal should be heard.

As in the DIFC, Rule 212(1) of the CPR provides that unless the ADGM courts order otherwise, an appeal to the ADGM Court of Appeal will not stay the decision that is being appealed.

9. 3. What specific considerations should be borne in mind during the appeals process, for both plaintiff and defendant?

United Arab Emirates
Hamdan AlShamsi Lawyers & Legal Consultants

First, all reasons for the appeal must be provided at the outset.

Second, if either party intends to seek permission to appeal a decision, the prospects of an appeal succeeding must be strong; otherwise, it is highly likely that the DIFC or the ADGM courts will reject the application.

Even if permission to appeal is granted, it is very difficult to successfully appeal a judgment or decision, and the process can prove costly and time consuming for the parties.

If the appeal is unsuccessful, the appellant will be required to pay the costs of the appeal proceedings in the DIFC or ADGM courts, which will add to the costs of the dispute.

From a commercial perspective, if permission to appeal is obtained, this also extends the timeframe within which the appellant must pay the judgment debt.

10. Enforcement

10. 1. How are domestic judgments enforced in your jurisdiction?

United Arab Emirates
Hamdan AlShamsi Lawyers & Legal Consultants

Judgments are enforced through the UAE civil courts by opening enforcement proceedings. Once open, the courts may request that the authorities seize and attach property of the respondent, including bank accounts. Movable property may also be seized by a court officer physically seizing the property. Any property may be auctioned through public auction to realise the proceeds and pay the judgment debt.

Dubai: In Dubai, the enforcement of judgments domestically between the Dubai International Financial Centre (DIFC) courts and the Dubai courts (and vice versa) is possible due to the element of reciprocity of the enforcement of judgments between these two courts, in accordance with the DIFC Judicial Authority Law.

Pursuant to Article 7(2) of the DIFC Judicial Authority Law, judgments, decisions and orders issued by the DIFC courts, the Dubai courts or other UAE courts can be enforced in the DIFC courts, the Dubai courts or other UAE courts (and vice versa), subject to the following conditions:

- The judgment, decision or order must be final and executable;
- The judgment, decision or order must be translated legally into the language adopted by the body carrying out the execution (ie, Arabic or English); and
- The form of execution of the judgment, decision or order ratified by the courts must have been set by the courts.

The procedure for the enforcement of a judgment, decision or order of the DIFC courts through the Dubai courts is set out in Article 7(3) of the DIFC Judicial Authority Law.

Abu Dhabi: In the emirate of Abu Dhabi, the procedure for the enforcement of judgments domestically between the Abu Dhabi Global Market (ADGM) courts and the Abu Dhabi courts is:

- set out in the ADGM Court Procedure Rules; and
- carried out in accordance with the Memorandum of Understanding between the ADGM Courts and the Abu Dhabi Judicial Department Allowing for the Mutual and Reciprocal Recognition and Enforcement of Judgments between the ADGM Courts and the Abu Dhabi Courts.

Similarly, the ADGM courts and the Ministry of Justice are parties to a memorandum of understanding which allows for the mutual and reciprocal recognition and enforcement of judgments between the ADGM courts and the Abu Dhabi courts. This applies between the ADGM courts and the courts of the emirates of Sharjah, Ajman, Umm Al Quwain and Fujairah.

10. 2. How are foreign judgments enforced in your jurisdiction?

United Arab Emirates
Hamdan AlShamsi Lawyers & Legal Consultants

Foreign judgments can be enforced in the UAE civil courts by obtaining an order to enforce the foreign award. The application for enforcement is made to the judge, who will issue an order to enforce the foreign award in the United Arab Emirates.

In the DIFC, Article 24 of the DIFC Court Law provides that – subject to the requirements of Article 7(4) of the DIFC Judicial Authority Law – the DIFC Court of First Instance has jurisdiction to ratify any judgment of any recognised foreign court.

The same provision states that where the United Arab Emirates is a party to an applicable treaty for the mutual enforcement of judgments, the DIFC Court of First Instance must comply with the terms of that treaty in relation to the enforcement of foreign judgments.

The DIFC courts are also a party to various bilateral memoranda of understanding with various other foreign courts, most of which are with courts that follow a common law system.

Article 7(6) of the DIFC Judicial Authority Law provides that judgments that are ratified outside the DIFC courts can be executed in the DIFC courts by way of the procedure stipulated in the Rules of the DIFC Courts (RDC).

To this end, an application must be submitted to the Enforcement Division for the purposes of ratification and enforcement of the foreign judgment by the DIFC courts. However, this will vary depending on whether the judgment creditor wishes the DIFC courts to enforce the foreign judgment or order for the payment of money through the following methods:

- a charge over property (a charging order);
- the attachment of assets (whether present or future);
- execution against assets; or
- the appointment of a receiver.

In the ADGM courts, foreign judgments can be ratified and enforced in accordance with Chapter 10 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointment Regulations 2015. The process for enforcement is similar to that in the DIFC courts.

10. 3. What specific considerations should be borne in mind during the enforcement process, for both plaintiff and defendant?

United Arab Emirates
Hamdan AlShamsi Lawyers & Legal Consultants

The enforcement of assets is effected through the courts; therefore, constant follow-ups are required to attach, seize and sell assets and recover funds from the respondent.

In the DIFC courts, the judgment creditor can file a Part 50 application under Part 50 of the RDC requiring the judgment debtor to provide information on the assets it has for the purpose of enforcing the judgment. This is an effective tool which can be implemented by a judgment creditor which has obtained a successful DIFC court judgment. The representative of the judgment debtor will be required to attend the DIFC court on its behalf at the time and place specified by the DIFC court to provide information about the means or any other information necessary for the purpose of allowing the judgment creditor to enforce the judgment.

Further, the person ordered to attend the DIFC court on behalf of the judgment debtor will be questioned on oath.

Separately, the DIFC court registrar will make a written record of the evidence, unless the proceedings are tape recorded; and a transcript can be requested following the Part 50 examination hearing.

The DIFC court registrar will refer the matter to a judge, who can make a committal order, if the judgment debtor:

- fails to attend the DIFC court at the time and date specified;
- refuses to take an oath at the hearing;
- refuses to answer any question; or
- fails to comply with the order.

If the judgment debtor does not comply with the DIFC court's requirements, it may be fined or imprisoned for contempt of court.

This can be used to exert pressure on the judgment debtor to attend the hearing and provide the requisite information to allow the judgment creditor to enforce its judgment.

Similarly, in the ADGM courts, this is covered under Part 30 of the ADGM Court Procedure Rules 2016, which provides that a judgment creditor can apply for an order to obtain information from the judgment debtor.

11. Costs, fees and funding

11. 1. What costs and fees are incurred when litigating in your jurisdiction?

United Arab Emirates

Hamdan AlShamsi Lawyers & Legal Consultants

Lawyers' fees, expert fees and court costs are the main expenses incurred in litigating a claim. Other smaller sums may also be incurred for translation, notification and applications.

In the Dubai International Financial Centre (DIFC) courts and the Abu Dhabi Global Market (ADGM) courts, the main costs that are generally incurred by the parties comprise:

- the relevant court fees; and
- the fees of the parties' legal representatives.

However, there are other significant costs that can also be incurred by the parties on a case-by-case basis – for example:

- expert fees;
- expert report fees; and
- the fees for executing a judgment in a domestic or a foreign judicial forum.

Other applicable costs might include, for example:

- courier fees;
- document printing and preparation fees; and
- travel expenses.

The DIFC courts and the ADGM courts have their own relevant procedural rules on the recovery of costs by a party that has obtained a successful judgment, ruling or order.

In the DIFC courts, the general rules on recovery of costs are set out in the Rules of the DIFC Courts. The general rule is that the party that obtains a successful judgment will be awarded costs by the DIFC courts, which must be settled by the unsuccessful party.

The ADGM Court Procedure Rules follow the same framework regarding the recovery of costs by a successful party from the unsuccessful party.

11. 2. Are contingency fees and similar arrangements permitted in your jurisdiction?

United Arab Emirates

[Hamdan AlShamsi Lawyers & Legal Consultants](#)

Contingency fees were recently permitted in the United Arab Emirates, allowing lawyers to agree with their clients contingency fees of up to 25%.

In the DIFC courts, contingency fee arrangements are prohibited; however, conditional fee agreements are permitted subject to compliance with specific requirements, as per the DIFC courts' Code of Best Legal Professional Practice. These are agreements between lawyers and their clients under which, if a successful outcome is obtained in court proceedings, the successful party's lawyers will receive a percentage uplift in their professional fees. However, lawyers cannot receive a share of proceeds of the damages awarded to their clients.

In the ADGM courts, contingency fee arrangements and conditional fee agreements are permitted under Part 9 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointment Regulations 2015.

11. 3. Is third-party funding permitted in your jurisdiction?

United Arab Emirates

[Hamdan AlShamsi Lawyers & Legal Consultants](#)

There are no rules prohibiting third-party funding arrangements before the UAE civil courts.

In the DIFC courts, third-party funding is permitted in accordance with the DIFC's Practice Direction (2) on Third Party Funding in the DIFC Courts, which was issued on 14 March 2017.

In the ADGM courts, third-party funding is permitted in accordance with Article 225 of Part 9 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointment Regulations 2015 and the ADGM Litigation Funding Rules 2019.

11. 4. What other strategies should parties consider to mitigate the costs of litigation?

United Arab Emirates

Court fees are calculated as a percentage of the claim amount, with a cap. Therefore, unless litigants are claiming above the cap, they should avoid claiming amounts that are unlikely to be awarded. Furthermore, appealing awards in the United Arab Emirates costs half the initial claim costs; thus, avoiding a weak appeal will save a lot of money and allow the successful party to enforce earlier (unless the other party also appeals).

Another cost-effective option is for the parties to engage in negotiation or mediation discussions in a bid to resolve the dispute amicably and thus avoid the costs and risks involved in court proceedings.

It is also particularly important for the parties to:

- include clearly defined terms in their contracts, to avoid any ambiguity that might lead to disputes in future; and
- have realistic agreements on deadlines and deliverables.

The parties should also coordinate closely with their internal, legal and commercial teams and their legal representatives in terms of deliverables.

12. Trends and predictions

12. 1. How would you describe the current litigation landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

United Arab Emirates

Hamdan AlShamsi Lawyers & Legal Consultants

There have been interesting new developments, as the first robot/artificial intelligence lawyer has defended an accused in the United Arab Emirates. If this proves successful, this model may be considered for minor offences and immediate judgments. Generally, the government has been exploring how best to expedite the resolution of minor offences – for example, prosecutors can now fine without judgment for such offences.

13. Tips and traps

13. 1. What would be your recommendations to parties facing litigation in your jurisdiction and what potential pitfalls would you highlight?

United Arab Emirates

Hamdan AlShamsi Lawyers & Legal Consultants

Minor mistakes in civil court systems can prove very costly in terms of both money and time in litigation; while lawyers' fees are not substantially recoverable (awards of lawyers' fees are very small). It is thus extremely important to retain lawyers and avoid:

- minor mistakes that could result in you losing your rights to claim again (*res judicata*); or
- other mistakes which mean that the claim must be brought again, wasting both time and money.

If a party to court proceedings successfully obtains a judgment against the other party, and this judgment is not appealed by the unsuccessful party, the next step is for the successful party to enforce the judgment to recover the relief awarded, if the unsuccessful party does not pay the judgment debt.

However, before deciding on the forum in which to initiate enforcement proceedings against the unsuccessful party, it is important to determine where the assets of the unsuccessful party are located. To this end, it is necessary to carry out due diligence on the target assets of the unsuccessful party within the confines of the law, to ensure that it is able to pay the judgment debt. This in itself can be a costly and time-consuming process.

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