

BLUE SKY ADR LTD

ADR IN THE UAE

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The UAE (United Arab Emirates)

- **Established in 1971**
- **Comprises of 7 Emirates.**
- **Most well known and commercially important Emirates:**
 - **Abu Dhabi**
 - **Dubai**

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The UAE (United Arab Emirates)

- **Islamic Law (Sharia Law) is enshrined in the Constitution.**
- **Federal Judicial System, comprising of;**
 - **Courts of First Instance**
 - **Courts of Appeal**
 - **Supreme Court (Court of Cassation)**

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Abu Dhabi adopted the Federal Judicial System, but Dubai maintained its own independent legal system with its judicial system comprising of;

- **Courts of First Instance**
- **Courts of Appeal**
- **Supreme Court (Court of Cassation)**

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In the UAE the establishment of the Civil and Criminal Courts resulted in the diminishing of the role of the Sharia Courts. However, in addition to the Civil Courts, each of the seven Emirates maintains a parallel system of Sharia Courts which are organised and supervised locally.

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The UAE operates under Civil Law (i.e. codified civil laws) rather than under Common Law (i.e. based on judicial precedents).

A judge is not bound by the decisions rendered by other judges, nor is he bound by his own previous decisions. Precedents in Islamic Law (Sharia Law) are not considered binding and do not form part of the legislative process.

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There are two interrelated well established principles of Islamic Law (Sharia Law), namely:

- **Discretionary interpretation is not allowed in matters covered by specific legislation, and**
- **In the absence of a specific law, courts applying Islamic Law are obliged to adopt the general principles of Islamic jurisprudence and justice.**

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Commercial Arbitration in UAE

- **Many of the arbitrations in the region relate to the construction sector.**
- **The construction output in the UAE is presently running at about £30 billion per year.**
- **Recent developments in arbitration rules and procedures, the promise of an arbitration law and the courts' welcoming approach to the New York Convention all show signs of an upward trend in the use of arbitration in the UAE.**

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Commercial Arbitration in UAE

- **Dubai in particular is considered a popular seat of Arbitration in the region. This has been assisted by the presence of arbitration institutions such as the Dubai International Arbitration Centre (DIAC) and the Dubai International Financial Centre-London Court of International Arbitration (DIFC-LCIA) Arbitration Centre.**

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Commercial Arbitration in UAE

In addition to the normal advantages of Arbitration, the special advantages in Dubai are;

- **Arbitrations can be conducted in English, whereas court litigation is always in Arabic.**
- **Oral evidence is permitted in arbitration, whereas only written submissions are generally permitted in the courts.**

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Commercial Arbitration in UAE

In addition to the normal disadvantages of Arbitration, the special disadvantages in Dubai are;

- **To be enforceable, arbitration awards must be ratified by the courts. This may cause delays in the enforcement of an award.**
- **Uncertainties may arise from the fact that there is no effective doctrine of binding precedent and therefore the courts may in some instances refuse enforcement on unanticipated grounds.**

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Legislative Framework

For UAE, the Civil Procedure Law of the United Arab Emirates, Federal Law No. (11) of 1992, as amended (Civil Procedure Code (CPC)).

The applicable provisions of the CPC are not based on the UNCITRAL Model Law. It is expected that a new arbitration law based on the UNCITRAL Model Law, which has been in draft form for some time now, will be promulgated in the future.

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Legislative Framework

For Dubai, the DIFC (Dubai International Financial Centre) was established as a separate common law jurisdiction within Dubai and has its own arbitration law (*DIFC Arbitration Law No.1 of 2008*). The provisions of the CPC (Civil Procedure Code) relating to arbitration do not apply where the seat of arbitration is the DIFC since the DIFC Arbitration Law would apply. The DIFC Arbitration Law is based on the UNCITRAL Model Law.

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Arbitration Rules

The Arbitration Rules are usually determined by the choice of arbitral institution. In the DIFC, the institution of the DIFC-LCIA has its rules closely modelled on the rules of the LCIA. The DIFC-LCIA Arbitration Centre is independent of the DIFC courts but recognises that they exercise a supervisory role over disputes submitted to DIFC-LCIA Arbitration.

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Arbitration Rules

In Dubai the DIAC Arbitration Rules of 2007 (DIAC Rules) normally apply. The local courts exercise a supervisory function over disputes submitted to arbitration under the DIAC Rules.

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Arbitration Organisations

The most commonly used organisations to resolve commercial disputes in the UAE are the:

- **Dubai International Arbitration Centre (DIAC)**
(www.diac.ae).
- **Abu Dhabi Commercial Conciliation & Arbitration Centre (ADCCAC)**
(www.abudhabichamber.ae).
- **DIFC-LCIA Arbitration Centre**
(www.difcarbitration.com).

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Court proceedings in breach of an arbitration agreement.

A jurisdictional objection can be made before the local courts on the grounds that there exists an arbitration agreement between the parties. However, any such objection must be made at the first hearing, failing which the court assumes jurisdiction.

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Appointment of Arbitrators.

The parties are free to agree on the appointment of arbitrators, often (but not necessarily) from a list of arbitrators provided by the relevant arbitration institution. If the parties are unable to agree on a procedure for appointing an arbitrator(s) the court (or the arbitration organisation as appropriate) can be asked to determine the question.

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Commencement of arbitral proceedings

- In relation to the start of arbitral proceedings, the arbitrator(s) must, within 30 days after accepting an arbitration, inform the parties of the date and place of the first session fixed for hearing the dispute (*Article 208(1), CPC*).

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Applicable procedural rules

- **The parties can, and often do, decide on the applicable procedural rules in the arbitration agreement.**
- **If the arbitration agreement is silent, the parties decide on the applicable procedural rules in the terms of reference at the onset of the proceedings.**
- **With institutional arbitration proceedings, the procedural rules of the institution apply.**

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Arbitrator's powers

Under the DIAC Rules, the arbitrator(s) can order, at any time during an arbitration:

- **Disclosure of documents and taking of evidence.**
- **Attendance of experts.**
- **Witness testimony and hearings.**

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- **Scope of disclosure**
- **The scope of disclosure is often very limited in the UAE, both in litigation and arbitration. A party is generally not obliged to disclose any document which is detrimental to its case, unless ordered by the court (or an arbitrator) to do so.**
- **Under the DIAC Rules, the tribunal has the power to decide on the rules of evidence to be applied during the proceedings (*Article 27.2, DIAC Rules*).**

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Costs

- **Legal fees are not fixed by law. Hourly rates and fixed fee arrangements are commonly used.**
- **In principle, the unsuccessful party may be liable for the successful party's costs.**
- **Arbitral tribunals can award costs at their discretion.**
- **The application / appointment fee is significant – for a 5 million AED claim the fee is 50,000 AED.**

[£1 = 5.7 AED]

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Adjudication

- **DIAC say that Adjudication is incorporated into many international contracts by agreement between the Parties.**
- **However, there is a shortage of experienced Adjudicators.**
- **I am on the DIAC's panel of Adjudicators – no appointments yet!**

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Mediation

- **Very buoyant.**
- **Popular way of resolving differences.**
- **Cultural issues to consider.**
- **Example - Dubai Metro.**

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ADR IN THE UAE QUESTIONS

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NB These are seminar notes, not legal advice.*