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*Advocates & Legal Consultants*

للمحاماة والاستشارات القانونية

## LITIGATION IN THE UAE: DEBT RECOVERY

*Presented by*

**LYNETTE BROWN**

Partner

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# OVERVIEW OF UAE LAWS

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- **UAE Constitution and legal system**

- Federal Constitution
- Civil law System
- No Doctrine of Precedent

- **UAE Civil Code**

- Governs Civil Transactions (Personal Rights & Obligations)
- Civil Code Covers: Principles of Contract, Ownership Rights, General Prohibitions, Agency, Security and Guarantee, Security Interests, Inheritance, Assignments



# OVERVIEW OF UAE LAWS

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- **UAE Commercial Transactions Law**
  - Governs Commercial Transactions
  - Deals Trade and Commerce, Merchant Banking, Trade Finance, Commercial Mortgages, Bankruptcy
- **UAE Commercial Companies Law**
- **Free Zone Company Regulations**



# OVERVIEW OF UAE LAWS

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## Issues relating to Governing law

- Two principal questions
  - Where is company incorporated/person resident?
  - Where are their assets?

## Reciprocal Enforcement of Foreign Judgements

## Recognition of Choice of Law

### Will accept jurisdiction and apply UAE law:

- If case brought against UAE citizens and expatriates residents in UAE or
- If action relates to obligation concluded or executed in the UAE or relates to assets in UAE



## UAE COURTS / JUDICIARY

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- **Federal Courts**
  - Civil Courts
  - Located in Abu Dhabi
  - Appellate Jurisdiction over Sharjah, Fujairah, Ajman and Umm Al Quwain
- **Dubai and RAK Courts**
  - Courts of First Instance
  - Courts of Appeal
  - Dubai Courts of Cassation



## APPROACH OF UAE COURTS

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- Civil Law Jurisdiction
- Written rather than oral submissions
- Use of experts appointed by court
  - Appointed by the Court
  - No formal discovery process
- Smaller range of remedies available
  - Generally injunctions or orders for specific performance not available
- More protective of weaker parties
- Only nominal orders for reimbursement of legal fees



# COMMENCING A DEBT CLAIM

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## Court of First Instance

- Fees 7% of amount claimed up to AED30,000 (approx SGD10,000)
- Usually an expert will be appointed at the first hearing
- Expert will investigate by reviewing documents and interviewing witnesses
- Process will take approximately 6-9 months if no expert is appointed or 9-18 months if an expert is appointed
- Once an order of the court is made and if no appeal within 30 days then order can be sent for execution



# COMMENCING A DEBT CLAIM

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## Court of Appeal

- Appeal on facts and law
- Fees – 1.5% of amount claimed up to AED6000

## Court of Cassation

- Final appeal – on law only
- Fees – AED1700





# DUBAI INTERNATIONAL FINANCIAL CENTRE (DIFC)

## What is the DIFC?

- A financial free zone located in a prescribed geographical location in the Emirate of Dubai
- Foreign financial institutions may set up in the DIFC and obtain licenses from the Dubai Financial Services Authority to provide financial services in and from the DIFC.

## DIFC Law

- Has own civil and commercial laws as well as its own courts – First Instance, Court of Appeal, Small Claims Tribunal and Special Tribunal for Dubai World
- Based on English common law principles – although essentially codified



# DIFC COURTS

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## Jurisdiction of DIFC Courts

- Civil or commercial disputes involving DIFC or any of its bodies or establishments
- Civil or commercial disputes relating to a contract that has been executed or concluded in the DIFC
- Objections to decisions of the DIFC or any of its bodies
- Any application over which the DIFC Courts have jurisdiction under its laws and regulations

## Administration of Courts

- Chief Justice – Michael Wang from Singapore
- Procedure – similar to other common law jurisdictions



# ENFORCEMENT OF DIFC COURT JUDGMENTS

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## Relationship to UAE Courts

- Protocol between DIFC and Dubai Courts
- Memoranda of Understanding
  - UAE Ministry of Justice
  - Ras Al Khaimah Courts
  - Ministry of Justice – Hashemite Kingdom of Jordan

## Enforcement of DIFC Court Judgment in UAE

- Register judgment in Dubai Court
- Enforce in UAE as UAE Court judgment



# ARBITRATION

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- Dubai International Arbitration Centre
- Abu Dhabi Commercial Conciliation and Arbitration Centre
- DIFC – LCIA
- Enforcement of Foreign Arbitral Awards
  - New York Convention



# ENFORCING A UAE COURT ORDER OR ARBITRAL AWARD

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## Once a final order given or award registered:

- Sent to execution department of the Court
- If amount of judgment or award not paid Court will seek to attach assets of party ordered to pay damages
- Assets which are attached will be sold in public auction and proceeds (less costs of execution and auction) used to satisfy the judgment



## ENFORCEMENT OF SECURITY

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- Generally no self help remedies
- Need to obtain a court order (as before)
- Exception – mortgage over real property in Dubai
  - Special property court to deal with execution
  - 30 days notice through court notary to pay
  - Expedited timeframe – approximately 30 days in the court
  - Then transfer to Lands Department to conduct public auction



# ENFORCEMENT

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## • Post Dated Cheques

- Dishonor of a cheque is a criminal offence under Article 412 of the UAE Penal Code (Law No. 3 of 1987).
- The drawer of the cheque is liable under the Penal Code, i.e., the person that signs the cheque.
- If a blank cheque is given to a payee without mentioning the amount or date, it is presumed that the payee has the authority to fill in the necessary details.
- The offence relates to cheques given for payment and not as security, however, a complaint filed for a dishonoured security cheque will be immediately accepted by the police and transferred to the public prosecution department.



# ENFORCEMENT

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- **Travel Restrictions**

Under the Civil Procedure Code, the court may order travel restrictions be imposed if there are reasons to believe that the debtor may flee. The applicant is required to provide the following:

- The claim must be ascertainable, due for payment, and unconditional
- The amount being claimed must be for not less than AED10,000
- The claim must be based on written evidence
- The creditor must provide an undertaking acceptable to the court to the effect that he guarantees any loss or damage incurred by the debtor if a wrongful claim is made





# ENFORCEMENT

- **Attachment Orders**

Under the Civil Procedure Code, a provisional attachment order can be granted by the court

- If the debtor has no settled abode in the UAE
- If the creditor is concerned that his debtor may flee or conceal his property
- If the security for the debts are likely to incur losses

The applicant should provide adequate evidence (a) of the debt; and (b) to show that one or more of the conditions above are satisfied.

A case for recovery is required to be filed within 8 days of the attachment order.



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**THANK YOU**

**Questions?**

