



Triple the expertise

Hashem AlAidarous Partner at Al Aidarous who is qualified to practice in three jurisdictions, explains the differences between dispute resolution in the UAE, the US and Australia.

YOUR BACKGROUND

I am a UAE national, who has been admitted as an Australian Lawyer by the Supreme Court of Queensland, an Emirati Advocate by the UAE Ministry of Justice, and a New York Attorney by the New York Supreme Court. I am also registered with the Government of Dubai Legal Affairs Department, Abu Dhabi Judicial Department and DIFC Courts. I have a Master's in International Corporate and Commercial Law from King's College London, a Graduate Diploma in Legal Practice from Queensland University of Technology, a Certificate in Legal Practice in the UAE, and a Bachelor of Laws from University of Queensland. I trained with a number of international law firms and have previously worked as an inhouse counsel in one of the top government-owned corporates. The time I spent as a board member at a UAE-based public joint stock company and at a foreign company have given me the necessary management skills for my current role as a Partner at Al Aidarous. As a lawyer qualified in three jurisdictions, I notice the difference between the UAE civil law system and the common law systems of the US and Australia. The UAE courts adopt an inquisitorial approach when resolving disputes in which fact-finding is driven by the courts, who also have control over the evidence, as opposed to the adversarial approach seen in Australia and the US where the discovery process is driven by the litigants. The UAE courts do not follow the traditional common law standards of proof such as the 'balance of probability' test in civil claims. The final decision in a civil case is at the discretion of the trial judges hearing the case by assessing the litigants' evidence, provided that the judgment is based on plausible reasons. Generally, civil matters before the UAE courts are determined based on written submissions supported by documentary evidence. UAE courts do not usually hear oral arguments from the parties and counsel, and if it is allowed, the judge closely supervises the witness' testimony, questions them and controls examination and cross-examination.

YOUR WORK

I specialise in Dispute Resolution, especially international and domestic arbitration and complex litigation before UAE Courts, particularly on



Construction and Engineering, Civil, and Corporate and Commercial matters. I try to find the best dispute resolution solutions for clients not only from a legal perspective, but also from economic and commercial perspectives, taking into account enforceability of resolutions in their desired jurisdictions. I also want to find solutions which will work for our clients down the line. I am involved in cross-border litigation which means addressing conflict of law rules, choice of forum issues and explaining foreign legal concepts that may be unfamiliar in certain forums. I also highlight the stare decisis and ratio decidendi of certain common law cases. When it comes to international arbitration, I consider issues such as the procedure to be followed in a given arbitration, whether to adopt a procedure based on civil law style memorials or common law style pleadings and the importance of such determinations. With arbitration you also have to consider when, how and why, it might become necessary to bifurcate proceedings under the context of different legal systems and the consequences which could arise from doing that.

My advice to clients from Australia and the US who are thinking of taking action in the UAE is to obtain advice from a local counsel in the UAE at the early stages before proceeding with dispute resolution, as differences in approach between the civil law and common law systems are noticeable in the UAE, where both systems co-exist. It is also important to appreciate the culture, language, legal system, and the style which needs to be implemented when resolving commercial disputes here.