

Recovery of trade debts Q&A: Dubai International Financial Centre (DIFC)

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Country Q&A | Law stated as at 30-Nov-2020 | Dubai International Financial Centre

DIFC-specific information on the legal options available to parties looking to recover a trade debt including ordinary legal proceedings, special fast-track procedures (if any), insolvency proceedings and amicable settlement opportunities.

This Q&A provides country-specific commentary on *Practice note, Recovery of trade debts: a cross-border overview*.

Recovery of trade debts

1. What are the main options for recovering a trade debt in your jurisdiction? Can a creditor avoid taking any formal legal steps to recover monies from a debtor?

Main options

A creditor has a number of options available to them when recovering debt, such as:

- Issuing a letter before action.
- Initiating discussions for a settlement on a without prejudice basis.
- Initiating court proceedings.
- Obtaining injunctions or freezing orders if there is sufficient urgency or if there is a risk of dissipation of assets.
- Initiating insolvency proceedings.

Alternative to legal options

There is no requirement to issue a letter of demand for proceedings before the Dubai International Financial Centre (DIFC). However, in practice, it is usually advisable that the claimant send a letter to demonstrate that it tried to

obtain payment amicably. The letter may also be relevant when determining costs of proceedings in a court case. It may also be prudent to initiate without prejudice or informal discussions with the debtor to attempt a settlement.

2. Does the amount due in any way determine the legal option(s) that are open to a creditor for its recovery?

A claim for debts under AED500,000 falls within the jurisdiction of the DIFC Small Claims Tribunal. A claim for a value higher than AED500,000 falls within the jurisdiction of the DIFC Court of First Instance.

The procedure applicable in the Small Claims Tribunal and the Court of First Instance vary greatly. The Small Claims Tribunal procedures are much faster from initiating the claim to obtaining judgment. The costs of proceedings before the Small Claims Tribunal and the Court of First Instance also vary greatly. This is primarily because lawyers are not generally allowed to represent parties directly in the Small Claims Tribunal. Legal costs of proceedings are not recoverable in the Small Claims Tribunal.

Pre-action conduct

3. Are there any procedural requirements to consider before formal legal proceedings can be commenced? Can penalties be imposed on parties that do not comply with these requirements?

Letter before claim

There are no formal requirements to send a letter before claim or similar before initiating a claim before the court. However, in practice, it is advisable as a letter before claim may resolve a dispute without the need to initiate litigation. The court also may look into the conduct of the parties before initiating litigation when determining the costs of proceedings.

Penalties for non-compliance

There are no direct penalties for failure to comply with a letter before claim. However, the court may look into the conduct of the parties before initiating litigation when determining costs of proceedings in certain cases.

4. Before commencing legal proceedings, are there any steps that a creditor can take to verify the debtor's financial strength or their solvency status?

Debtor's financial strength

All companies registered in the DIFC are listed in a public register that details (among other things) the value of share capital. Companies registered in the DIFC must carry out audits, although this information is not publicly available. The DIFC courts may also have jurisdiction over entities that are not registered in the DIFC if the parties opted into the DIFC courts' jurisdiction. It would be difficult to find information on the financial strength of companies not listed on the DIFC public register as there is no central public register of companies for non-DIFC entities in the UAE other than in the Abu Dhabi Global Market (a similar financial free zone).

A creditor may issue an application in the DIFC courts to obtain information or documents in support of possible further proceedings before an action in the DIFC courts by pre-action disclosure. The claimant may, theoretically, make this application to determine the financial strength of a company. However, the party seeking the relief bears the burden to show that there is strong, prima facie evidence to justify the grant of an order for disclosure.

A creditor should not use orders for disclosure as fishing expeditions for information and documents without good reason, for example, where there are positive indications that a debtor is in desperate financial difficulty or intends to disperse its assets imminently. In the latter case, it is advisable for a creditor to apply for a freezing order as well as an order for disclosure.

Limitation periods

5. What is the limitation period in your jurisdiction for filing a claim for recovery of a trade debt in the local courts? Can this period be extended? If so, on what grounds can extensions be granted?

Under Article 22 of the DIFC Law of Damages and Article 123(1) of the DIFC Law of Contract, the limitation period for a claim arising out of a contract is six years. The parties can reduce the period of limitation to not less than one year but cannot extend it.

Extension

It is not possible to extend the limitation period by agreement under Article 22 of the DIFC Law of Damages and Article 123(1) of the DIFC Law of Contract. However, a party may issue a claim form in the DIFC courts to prevent a claim from being time barred before the expiry of the limitation period under law.

A claim form, once issued, must be served:

- Within four months after the date of issue where the claim form is to be served within the DIFC or Dubai.
- Within six months after the date of issue where the claim form is to be served out of the DIFC or Dubai.

(Rule 7.20, DIFC Court Rules (RDC).)

Competent court

6. Which court(s) have the jurisdiction to determine trade debt recovery disputes in the first instance?
Are there any special courts for trade debt recovery?

The DIFC courts generally have jurisdiction to hear a claim where:

- Either of the parties is a DIFC establishment.
- The parties agree to the jurisdiction of the DIFC courts in a contract.
- The claim relates to a contract to be performed (fully or partly) in the DIFC or has a sufficient connection to the DIFC.

Special courts

Claims for debts under AED500,000 fall within the jurisdiction of the DIFC Small Claims Tribunal although parties may agree to extend this value up to AED1 million.

Claims for over AED500,000 (where there is no further agreement), would fall within the jurisdiction of the DIFC Court of First Instance.

There is a specialised court within the DIFC known as the Technology and Construction Division for complex claims.

Court proceedings

7. What are the main stages of trade debt recovery proceedings?

Starting court proceedings

The claimant starts proceedings for trade debt recovery by issuing a claim form, which may be accompanied by a Particulars of Claim.

Court fee

DIFC Courts Practice Direction (PD) 2 of 2019 sets out court fees for the DIFC Court of First Instance for general debt recovery claims. Under Article I(a) of PD 2 of 2019, court fees are set in US dollars (USD).

Claim Value	Fee
USD 0 up to and including USD500,000	5% of the value of the claim and/or the property with a minimum of USD1,500
USD500,001 up to and including USD1million	USD25,000 + 1% over USD500,000
USD1,000,001 up to and including USD5 million	USD30,000 + 0.5% over USD1 million
USD5,000,001 up to and including USD10 million	USD50,000 + 0.4% over USD5 million
USD10,000,001 up to and including USD50million	USD70,000 + 0.15% over USD10 million
Over USD50million	USD130,000

The filing fee may be paid in parts in the following stages:

- 35% to be paid within seven days from the date of filing the claim.
- 35% to be paid within ten days from the date of listing the CMC (case management conference) (the CMC portion).
- Final 30% to be paid within ten days from the date of listing the Pre-Trial Review (the pre-trial portion).

Service

A claim form may be served in a number of ways. In general, the following methods of service are available:

- Personal service.
- Courier (or an alternative service that provides for delivery on the same or next working day).
- Leaving the document at the defendant's place of business.
- By means of electronic communication.

Any judgment obtained in default may be set aside if it is found that service on the defendant was not properly effected.

Once issued, a claim form must be served:

- Within four months after the date of issue where the claim form is to be served within the DIFC or Dubai.
- Within six months after the date of issue where the claim form is to be served out of the DIFC or Dubai.

Statement of defence

A defendant must, within 14 days from the date of deemed service of the claim form, file an acknowledgement of service indicating either:

- The intention to defend the claim or challenge the court's jurisdiction.
- Their acceptance of the claim.

(Rule 11.6, RDC.)

This is a general rule and may vary if the claim form is served out of the jurisdiction or where the court orders otherwise. The general rule is that the period for filing a defence is:

- 14 days after service of the particulars of claim.
- If the defendant files an acknowledgment of service, 28 days after service of the particulars of claim.

(Rule 16.9, RDC.)

In *Ali Mohammed Salem Abu Adas (2) Mohammed Jawdat Ayessh Mustafa Al Bargouthi v Bankmed (SAL) trading in the DIFC under the Trade Name Bankmed (Dubai) DIFC [2019] CA 001*, the court clarified that the 28 days provision under Rule 16.9(2) of the RDC only applies where the claim form includes the particulars of claim and the defendant has filed an acknowledgment of service. Where the claim form does not include the particulars of claim, the defence must be filed within 14 days from filing the particulars of service, which details the manner in which service was effected on the defendant.

The parties can agree to extend the time for filing the defence by up to 28 days (Rule 16.11, RDC).

- If the debtor admits the claim, it should indicate that it accepts all or part of the claim when filing its acknowledgement of service.
- If the debtor disputes the debt, it should indicate this in the acknowledgement of service within 14 days of service of the claim form or in its defence within 28 days of service of the claim form. The debtor must assert any counterclaim when filing the defence.

The claimant may apply for default judgement against the debtor if the defendant fails to file an acknowledgement of service or a defence within the set timelines.

Subsequent stages

The claimant may file a reply to the defence if necessary. Thereafter, the case is generally set for a CMC.

8. Are there any fast-track or summary proceedings in place to determine trade debt recovery cases? How long do such proceedings take?

Summary/ fast-track proceedings

If the creditor has no real prospect of succeeding or the debtor has no prospect of defending the claim, and there is no other compelling reason why the case or issue should be disposed of at trial, the creditor or debtor (as the case may be) may apply for a summary determination of the claim by applying for an immediate judgment (*Part 24, RDC*).

The claimant typically makes a separate application for an immediate judgment after the debtor files its defence, which is to be determined at a hearing. The application must be supported by witness evidence about why the court should grant an immediate judgment. The debtor may have up to 28 days to file responsive evidence. A creditor may file further evidence in reply and the matter is then set for a hearing before the DIFC courts. The parties must file skeleton arguments summarising their legal position three to five days before the hearing. Following the hearing, the court will grant or dismiss the immediate judgment application within one to three months.

Duration of proceedings

The duration of proceedings from filing of the claim form to obtaining summary judgment could typically range from three to six months.

9. What provisional measures can be taken to preserve the evidence or creditor's interests pending a final judgment? On what grounds can these measures be granted?

Provisional measures

A creditor may apply for a freezing order or order for the preservation of evidence with or without notice to the debtor.

Grounds

For an order for preservation of evidence, the creditor must, at a minimum, demonstrate that there are sufficient reasons to believe that the debtor will destroy evidence if the order is not granted.

To obtain a freezing order, a creditor must demonstrate, at a minimum, that there is strong evidence of:

- Dissipation of assets by a debtor.
- Possibility of irreparable loss and damage if the freezing order is not granted.

10. Once the trial has concluded, what remedies are typically ordered by the courts if the creditor succeeds in obtaining judgment against the debtor?

Final remedies

Typically, the court issues a judgment requiring the debtor to:

- Pay the debt owed to the creditor.
- Pay interest on the debt from the date it is due to the date of payment in full.
- Pay costs awarded to the creditor.

11. Are there any statutory rules relating to late payment interest? If so, are there any rules on when and how much interest can be charged on late payment? Can it be freely charged subject to the agreed contract terms?

Late payment interest

The general interest rate for debts (unless specified in contract) is the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment (*Article 118(2), DIFC Law of Contract*).

Under Article 118(3) of the DIFC Law of Contract, a creditor is entitled to additional damages if the non-payment of the debt caused further harm to the creditor.

12. What legal costs are considered recoverable from the other party in your jurisdiction? Can the successful party recover legal costs from the unsuccessful party in litigation? Do courts have any discretion to rule over costs if the parties have already made an agreement on costs?

Legal costs

Legal costs typically include legal fees (such as attorney's fees), court fees and other expenses related to the claim.

Unsuccessful party pays costs

The general rule is that the unsuccessful party pays the legal costs of the successful party.

Court's discretion on costs

The court has the discretion to:

- Deny an award of costs based on the successful party's conduct (although this would be in very rare cases).
- Award costs on an indemnity basis if the unsuccessful party's conduct was egregious to justify such a penal award on costs.
- Award costs on a standard basis (to be assessed by the court) if not agreed by the parties. A party may recover between 60% and 75% of legal costs as determined by the DIFC court after a detailed evaluation.
- Award costs to the unsuccessful party where that party has made a clear without prejudice offer for settlement (Part 32 offer) and:
 - a claimant fails to obtain a judgment more advantageous than a defendant's Part 32 offer; or
 - the judgment against the defendant is at least as advantageous to the claimant as the proposals contained in a claimant's Part 32 offer.

Only costs following the date of the Part 32 offer would be payable.

13. How are costs calculated:

- (a) If a dispute has been settled before legal proceedings are initiated (and there is no prior agreement on costs)? Will the creditor be entitled to recovery of its legal costs?
- (b) If the parties have agreed on who will pay the costs, but are unable to decide how much costs should be recovered, is there a procedural mechanism by which the court may decide the issue?
- (c) If the dispute settles after legal proceedings have been commenced, and the parties cannot agree on costs? Can the court exercise its discretion to determine the issue of costs?
- (d) If the dispute is settled at trial (but there is no agreement on costs)? How does the court decide whether legal costs are recoverable in such cases?

Recovery of legal costs before legal proceedings have been initiated

It is unlikely that a party could recover legal costs where a dispute is settled before proceedings are initiated, unless it is incorporated into the settlement agreement.

Cost-only proceedings

Either party to the agreement can start proceedings in the DIFC Courts if the parties reached an agreement out of court on all issues (including which party is to pay the costs) that is made or confirmed in writing, but have failed to agree on the amount of those costs. (*Rule 38.43, RDC.*)

Recovery of legal costs after legal proceedings have been initiated

The parties may request the court to conduct a detailed evaluation of costs if a dispute settles after legal proceedings start and the parties cannot agree on costs.

Recovery of legal costs where dispute is settled at trial

The court may order a detailed evaluation of costs if the dispute is settled at trial but there is no agreement on costs.

During detailed evaluation, the court invites submissions from both parties to justify the amount of costs payable (as set out in the cost seeking party's bill of costs). The court may require an oral hearing on the issue of costs.

14. When are judgments considered due and enforceable in your jurisdiction? If the debtor fails to satisfy the judgment, what is the procedure to enforce it in the local courts?

Enforcement

A judgement debtor must typically comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless:

- The judgment or order specifies a different date for compliance (including specifying payment by instalments).
- The court stayed the proceedings or judgement.

(*Rule 36.34, RDC.*)

Payment in instalments

The debtor would typically be in default on the day an instalment falls payable under the judgement and is not paid.

Procedure for enforcement

A judgment creditor that has obtained or is entitled to enforce a judgment or order for the payment of money may use any of the following enforcement measures:

- A charge over property.
- Attachment of assets (future or present).
- Execution against assets.
- The appointment of a receiver.

All enforcement procedures have differing applications.

Where a judgment or order is to be enforced outside the DIFC (in onshore UAE), the judgment creditor must:

- File an application requesting the court to affix the executory formula on the judgment or order.
- Request the court to issue an execution letter addressed to the Chief justice of the Court of First Instance of the Dubai Courts stating the procedure to be carried out.

Time limit

Under Rule 48.28 of the RDC, the DIFC court will not make an order to enforce a judgment or order after six years have elapsed from the date when the judgment or order was made.

15. What are the rules in relation to filing an appeal against judgments rendered in the first and second instance?

Appeal

An appeal from the DIFC Small Claims Tribunal (acting as court of first instance) may be made to the DIFC Court of First Instance (as court of appeal) where it is determined by a single judge. An appeal from the DIFC Court of First Instance (acting as court of first instance) may be made to the DIFC Court of Appeal where it is determined by three judges. In both cases, the appellant must seek permission to appeal from the judge who delivered the court of first instance judgment or order.

Grounds for appeal

An appeal may be granted where the decision of the lower court was wrong or unjust due to a serious procedural or other irregularity in the proceedings in the lower court.

The court would also consider whether the appeal relates to an important question of law and whether the grounds for appeal justify the costs for an appeal.

Time limit

Under Rule 44.10 of the RDC, an appellant must file an appellant's notice indicating the intention to appeal a decision of the lower court within the time period as directed by that court. Where the lower court makes no direction, the appellant must file its intention to appeal within 21 days after the date of the court's decision.

16. How long do local courts normally take to determine and enforce debt recovery claims?

Normally the DIFC courts take the following length of time to determine and enforce debt recovery claims:

- Two to four months from filing a claim in the DIFC Small Claims Tribunal.
- 12 to 18 months from filing a claim in the DIFC Court of First Instance.
- Three to six months from filing an appellant's notice before the appellate court.

These timelines apply where the judgment or order is executed within the DIFC and there are liquid assets to enforce against. If the court is enforcing a judgment or order outside the DIFC, the timelines could vary substantially depending on the nature of the judgment debtor's assets.

Insolvency proceedings

17. To what extent are insolvency proceedings in court (or the threat of their commencement) considered an effective tool for debt recovery? Are there any disadvantages in issuing insolvency proceedings against the debtor?

Insolvency proceedings: an effective tool

Insolvency in the DIFC is governed by the DIFC Insolvency Law 1 of 2019. The threat of insolvency proceedings can trigger a settlement agreement as the debtor stands to lose control of its business affairs or even total closure of its business.

Disadvantages in issuing insolvency proceedings against debtors

Insolvency can be a long process. Unsecured creditors may not be able to recover the full amount of their dues as courts give priority to secured creditors.

18. Can a creditor commence insolvency proceedings against the debtor if the debt is genuinely disputed or if the debtor has a genuine cross-claim right or right of set-off?

While it is possible to start insolvency where the debtor disputes the debt, has a genuine cross-claim or right of set-off, the debtor would have an opportunity to present these facts to court, and the court would make an order taking all facts and circumstances into account.

Insolvency proceedings and disputed debts

19. When is a debtor deemed insolvent in your jurisdiction?

Insolvent debtors

A DIFC company is deemed insolvent when it is unable to pay its debts. A company is unable to pay its debts if:

- A creditor, to whom the company is indebted a sum exceeding USD2,000 that is due and payable, has served a written demand on the company by leaving it at the company's registered office, requiring the company to pay the sum due within three weeks, neglected to pay the sum or agree terms relating to its payment to the reasonable satisfaction of the creditor.
- An execution or other process issued on a judgement, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part.
- It is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.

(Article 82, DIFC Insolvency Law.)

Law on insolvency

Insolvency in the DIFC (including cross-border insolvency) is governed by the DIFC Insolvency Law 1 of 2019.

20. Can a debtor, incorporated or governed by the laws of another jurisdiction and doing business in your jurisdiction, be subject to insolvency proceedings in your jurisdiction?

Winding up of foreign companies

A debtor or debtor company would generally need to be a DIFC entity to carry out business in the DIFC. Therefore, it is unlikely that a debtor incorporated or governed by the laws of a foreign jurisdiction will be subject to insolvency proceedings in the DIFC.

Debt collection agencies

21. Can debt collection be outsourced to third parties such as debt recovery agencies in your jurisdiction?

There is no express prohibition against outsourcing debt collection to an agency. However, the UAE has strict penal laws on harassment and invasion of privacy, which would limit the effect of debt collection agencies.

22. Are there any steps that a creditor can take to ensure that any legal costs incurred in trying to recover the debt will not outweigh the amount of the debt?

Steps to reduce recovery costs

As a first step, a creditor may initiate direct discussions with the debtor and indicate the possible options it may pursue if the debt is not paid to reach an amicable settlement without the involvement of lawyers.

A creditor can also invoke the jurisdiction of the DIFC Small Claims Tribunal to recover lower value debts without incurring lawyer fees as the process in the Small Claims Tribunal is simple enough for an unrepresented litigant to grasp.

Alternative dispute recovery methods

23. Are alternative dispute resolution (ADR) methods commonly used in your jurisdiction to recover trade debts?

ADR methods such as mediation are used in moderation to recover trade debts. The DIFC London Court of International Arbitration (LCIA) offers mediation services, as do some lawyers in the UAE.

24. Are the parties required to consider ADR before and/or during court or insolvency proceedings?

While parties are not expressly required to consider ADR before or during court or insolvency proceedings, under Part 27 of the RDC:

- The DIFC Court encourages parties to consider the use of ADR (such as, but not confined to, mediation and conciliation) as an alternative means of resolving disputes or particular issues.
- At the CMC, if the judge finds that the case or any of the issues arising are appropriate to attempt ADR, but the parties have not previously attempted settlement this way, the judge may invite the parties to engage in ADR.
- The judge may, if deemed appropriate, adjourn the case for a specified period of time to encourage and enable the parties to seek ADR. The judge may extend the time for compliance by the parties with any requirement under the court rules or any court order and make ADR orders.

25. Is ADR considered as a serious and viable alternative to formal legal proceedings in your jurisdiction?

Based on our experience, ADR could lead to mixed results based on the nature of the dispute. For instance, disputes involving fraud are unlikely to be settled by ADR since it is likely that the parties have lost trust or confidence among each other and are unwilling to negotiate, which are general requirements for settling disputes by ADR. Conversely, disputes where both parties have claims against each other may benefit from ADR since it would be a matter of independently quantifying each party's claims and arriving at a mutually acceptable settlement. Given that ADR is not a mandatory pre-litigation step, it is yet to catch up as a serious alternative to litigation.

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