



Pro Bono Practices and Opportunities in the United Arab Emirates

INTRODUCTION

The provision of pro bono legal services and state funded legal aid are currently not institutionalized practices in the United Arab Emirates (the “**UAE**”) in the same manner that they are in many western jurisdictions. As such, the provision of these legal services is not common. This chapter sets out the current state of pro bono and legal aid practices in the UAE by describing the regulatory framework of the legal profession and the judicial system and providing details on the provision of pro bono and free legal service opportunities.

OVERVIEW OF THE LEGAL SYSTEM

The Constitution and Governing Laws

The UAE is a constitutional federation¹ of seven emirates (Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Umm Al Quwain, Ajman and Fujairah, each an “**Emirate**” and together the “**Emirates**”) established in 1971 (the “**Federation**”).² In establishing the Federation, the UAE adopted a provisional constitution which later became permanent (the “**Constitution**”).³ The Constitution mandates a codified civil system of law rather than a precedential system based on common law principles. Alongside this civil system, the Constitution also provides for the existence of Islamic Shari’a law as a main and dual source of legislation.⁴

The Constitution allocates governing and executive powers between the federal government and the local governments of each Emirate and establishes the Supreme Council of the Rulers of all the Emirates (the “**Supreme Council**”) as the foremost legislative and executive authority in the Federation. The principle functions of the Supreme Council are to prepare, propose and ratify federal legislation as well as to oversee general adherence to the provisions of the Constitution by federal and local government authorities. The laws promulgated by the Supreme Council are carried out and enforced by a Council of Ministers and various federal ministries.⁵ At a lower level, local governments remain authorized to regulate local matters, including establishing and creating rules governing civil and criminal courts.⁶

The Courts

At inception, the Constitution allowed each Emirate the right to either join the federal judicial system or maintain its own independent court system. Only the Emirates of Dubai and Ras Al Khaimah operate independent judicial systems. However, Dubai recently chose to adopt the federal civil procedure rules in relation to civil cases brought in Dubai Courts.

¹ See The Seven Emirates, GOVERNMENT.AE, available at <http://www.government.ae/en/web/guest/seven-emirates>, (last visited on September 4, 2015).

² See Background on the United Arab Emirates (UAE) Legal System, GULF-LAW.COM, available at http://www.gulf-law.com/uaecolaw_legalsystem.html, (last visited on September 4, 2015).

³ Ibid.

⁴ Essam Tamimi, *Litigation in the United Arab Emirates*, 20, *International Legal Practice* 134, 135 (1995).

⁵ Andrew Tarbuck & Christopher Lester (2011), *Dubai’s Legal System: Creating a legal and regulatory framework for a modern society*, LW.COM, available at www.lw.com/thoughtLeadership/dubai-legal-and-regulatory-system, (last visited on September 4, 2015).

⁶ Id. at 1.



The Federal Supreme Court heads the federal judiciary (also known as the Court of Cassation).⁷ The Courts of First Instance are the first tier of federal trial courts. Decisions of the Courts of First Instance can be appealed to the Courts of Appeal. Decisions of the Courts of Appeal can then be appealed to the Federal Supreme Court to the extent that the dispute refers to a matter of law only. The judgment of the Courts of Appeal will remain binding unless the Federal Supreme Court “grants an interlocutory order to stay execution of the judgment.”⁸ While the United Arab Emirate’s civil law system does not rely on judicial precedent, decisions of the Federal Supreme Court, while not binding, remain persuasive on all lower courts and governmental institutions.⁹

In the absence of specific, codified legislation, UAE courts are obliged to adopt the general principles of Islamic jurisprudence and justice and in applying these principles are generally not bound by previous Shari’a court decisions.¹⁰ Shari’a courts are organized and supervised locally in each Emirate¹¹ and hear mostly civil matters and matters relating to personal status such as inheritance and divorce.¹²

Judges for the Federal Supreme Court are appointed by the President of the UAE following approval by the Supreme Council.¹³ Other Federal Judges are appointed by the UAE President after nomination from the Minister of Justice.¹⁴ Judges to the courts of Dubai¹⁵ and Ras Al Khaima¹⁶ are appointed independently by their individual rulers. Generally, judges in Shari’a courts are appointed by the ruler’s court in the particular Emirate in which the court is located (the “**Ruler’s Court**”). The Ruler’s Courts provide various legal services to the local Emirate, including the supervision of all legal matters involving the local government.¹⁷

Judges who are UAE citizens are nominated for life and as such their appointment may only be terminated for reasons of ill-health, death, resignation, the reaching of retirement age, disciplinary discharge or upon appoint to another governmental position.¹⁸ Judges who are non-United Arab Emirate nationals have contracts which are subject to renewal and which may either be left to expire or terminated in accordance with their terms.¹⁹

⁷ See Judicial System in Abu Dhabi, ABUDHABI.AE, available at https://www.abudhabi.ae/portal/public/en/gen_info_detail?docName=ADEGP_DF_301102_EN&adf.ctrl-state=eb115e3cp_4&afrLoop=3360053854753024, (last visited on September 4, 2015).

⁸ See Litigation and Arbitration, AHMEDLAWFIRM.COM, available at http://www.ahmedlawfirm.com/practice_areas/litigation-arbitration/, (last visited on September 4, 2015).

⁹ Ibid.

¹⁰ Id. at 1.

¹¹ Ibid.

¹² Id. at 4.

¹³ United Arab Emirates Constitution (1971) Article 96.

¹⁴ Nathan J. Brown, A Study Presented to The United Nations Development Programme on Governance in the Arab Region (2001) at 50.

¹⁵ Dubai Law No. 3 of 1992 forming the Courts in the Emirate of Dubai, Article 6.

¹⁶ See The UAE Court system, USCONSULATE.GOV, available at http://dubai.usconsulate.gov/emergency_uae_court.html, (last visited on September 4, 2015).

¹⁷ See The Government of Dubai Legal Affairs Department, DUBAI.AE, available at <http://dubai.ae/en/Lists/GovernmentDepartments/DispForm.aspx?ID=49&category=Government>, (last visited on September 4, 2015).

¹⁸ United Arab Emirates Constitution (1971) Article 97.

¹⁹ Federal Law No. 10 of 1973 regarding the Federal Supreme Court, Article 4.



The Practice of Law

The legal profession in the UAE is governed by Federal Law No. 23 of 1991. All firms (whether local or foreign) providing legal services must be licensed in the Emirate in which they choose to operate.²⁰ License requirements for individual attorneys of such firms are dependent on the nationality of the attorney, the type of law to be practiced and the geographical location of their office.

In order to appear before the Federal courts (including Shari'a courts), attorneys must be licensed by the Ministry of Justice and in order to appear before courts in Dubai and Ras Al Khaimah, attorneys must be licensed as advocates by each local Ruler's Court. In addition, attorneys must be graduates of a recognized law college or Shari'a college, which in practice generally limits the practice of law before the Federal and Shari'a Courts to UAE citizens.²¹ However, in Dubai, certain expatriate attorneys may represent their clients in courts at all levels.²²

Foreign law firms are permitted to operate in the UAE as legal consultancies, but generally cannot make court appearances on behalf of clients, due to the fact that only Arab attorneys (that is, UAE national attorneys and attorneys from certain other Arab countries who must satisfy specified criteria before a licence is issued) have rights of audience in the UAE.²³

'Free Zones' are an exception to this general rule. Free zones are pockets of land designated as being free of Federal laws and regulations. Free zones operate their own internal legal system in order to promote the establishment of international business in the region. The most influential of these free zones with regards to the provision of legal services by foreign attorneys is the Dubai International Finance Centre (the "DIFC"). The DIFC is a separate legal jurisdiction with its own body of law, including corporate law and employment law, as well as its own court system.²⁴ The DIFC operates a sophisticated regulatory regime overseen by the Dubai Financial Services Authority (the "DFSA").²⁵ Any law firm that operates in or from the DIFC must be licensed by both the Ruler's Court in Dubai and by the DFSA.²⁶ In contrast to non-free zone jurisdictions, foreign attorneys are permitted to advise clients before the DIFC Courts, provided that they are appropriately registered with the DIFC Courts.²⁷

According to the most recently available Ministry of Justice statistics, there were 725 registered attorneys in the UAE in 2011.²⁸ This number includes 555 UAE nationals,²⁹ but this figure does not take into account attorneys working for foreign law firms.

²⁰ Id. at 4.

²¹ See United Arab Emirates, Chapter 3: The Judicial System, GULF-LAW.COM, available at http://gulf-law.com/uae_judicial.html, (last visited on September 4, 2015).

²² See Ruling allows expatriate lawyers in all Dubai courts, THENATIONAL.AE, available at <http://www.thenational.ae/news/uae-news/courts/ruling-allows-expatriate-lawyers-in-all-dubai-courts>, (last visited on September 4, 2015).

²³ See Dubai lawyers to require licenses from next month, THENATIONAL.AE, available at <http://www.thenational.ae/business/economy/dubai-lawyers-to-require-licences-from-next-month> (last visited on September 4, 2015).

²⁴ See About the courts, DIFC.AE, available at <http://difccourts.ae/about-the-courts/>, (last visited on September 4, 2015).

²⁵ See A guide for firms seeking registration as an Ancillary Service Provider, DFSA.AE, available at <http://www.dfsa.ae/Documents/Applying%20for%20Registration.pdf>, (last visited on September 4, 2015).

²⁶ Ibid.

²⁷ See Legal Framework, DFSA.AE, available at <http://www.dfsa.ae/Pages/LegalFramework/LegalFramework.aspx>, (last visited on September 4, 2015).

²⁸ See Emirati lawyers seek total emiratization of profession, GULF-NEWS.COM, available at <http://gulfnews.com/news/uae/general/emirati-lawyers-seek-total-emiratization-of-profession-1.990503>, (last visited on September 4, 2015).



Malpractice

Clients dissatisfied with the quality of legal services they have received in the UAE currently have little recourse other than to file a complaint with the relevant Ruler's Court in the Emirate in which the law firm or attorney practices. Unlike in other jurisdictions, there is no equivalent in the UAE to an ombudsman complaints service. With regard to the services provided by foreign law firms or individual foreign attorneys, clients are always able to file a complaint with the relevant bar association, if any, in the attorney's home jurisdiction.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

The UAE government provides free legal representation to defendants in certain criminal cases in the UAE. Under the Criminal Procedures Code (Federal Law No. 35 of 1992), a defendant has the right to be represented by a government-provided attorney in any case that involves a possible punishment of death or life imprisonment, regardless of financial need, immigration status or case merit.³⁰ The government also has discretion to provide attorneys for indigent defendants in certain other felony cases.³¹ Government-appointed attorneys operate in private practices and are compensated by the government for their service generally at below market level rates.³² The acceptance of any governmental appointment is optional. It is not clear how the courts select attorneys for appointment or if there is a database of firms willing to accept legal aid appointment.

The economic downturn in 2008 and the resultant increase in civil litigation has led a number of legal practitioners in the UAE to suggest that authorities should offer state-subsidized legal aid to non-indigent persons involved in civil cases, in a manner similar to the criminal regime.³³

The Abu Dhabi Justice Department founded a legal aid office in May 2011, which aims to provide free legal services to indigent people involved in civil matters, whether as a plaintiff or defendant.³⁴ The service, initially limited to cases in which applicants were unemployed or facing financial difficulty, is now open to all Emirati nationals and aims to provide advocacy services as well as assistance with the payment of expert fees.³⁵ A similar service is offered by the Government of Dubai to both indigent and non-indigent applicants; however, the service offered is limited to an initial consultation with an attorney.³⁶ In 2009, Dubai established the Real Estate Regulatory Agency ("**RERA**") which provides free legal assistance to individuals engaged in disputes regarding real property.³⁷ In addition, the Dubai Community

²⁹ Ibid.

³⁰ Penal Procedure Law, Federal Law No. 35 of 1992, Article 4.; see also 2009 Human Rights Report: United Arab Emirates, STATE.GOV, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136082.htm>, (last visited on September 4, 2015).

³¹ Ibid.

³² Federal Law No. 23 of 1991, Article 24.

³³ See Call to extend free legal aid to civil cases, UAEINTERACT.COM, available at http://www.uaeinteract.com/docs/Call_to_extend_free_legal_aid_to_civil_cases/37151.htm, (last visited on September 4, 2015).

³⁴ Administrative decree No. 106/2011.

³⁵ See Legal Aid in ADJD, ADJD.GOV.AE, available at <http://www.adjd.gov.ae/portal/site/adjd/LegalAid/?language=en>, (last visited on September 4, 2015).

³⁶ See Volunteer Lawyers Program for Legal Consultants, DUBAICOURTS.GOV.AE, available at http://www.dubaicourts.gov.ae/portal/page?_pageid=292,699887&_dad=portal&_schema=PORTAL, (last visited on September 4, 2015).

³⁷ Ibid.



Development Authority announced it would establish a public defenders' office at the Dubai courts by 2012.³⁸ However, to date, this initiative has not been implemented.

As the UAE has a large number of migrant workers, the government also provides certain forms of legal assistance to foreign employees with labor grievances. The Ministry of Labor distributes information to foreign workers in several languages, explaining their rights under the labor law and how they can individually or collectively pursue labor disputes.³⁹ Workers can file labor-related complaints with the Ministry of Labor, which also provides mediation services.⁴⁰ The parties to any labor disputes are not required, and generally are not allowed, to be represented by attorneys in such mediations, and the parties pay no fees to the relevant ministry for such mediation services. Either party to the mediation can have the dispute referred from mediation to the labor court system.⁴¹ Domestic employees are not covered by the labor law, but may file employment-related complaints with the Ministry of Interior as an alternative to resorting to litigation.⁴²

On the whole, the demand for legal services, whether in the form of state-sponsored legal aid or pro bono assistance, is greatest among low income, foreign workers involved in both civil and misdemeanor/felony cases, and it is these classes of persons who are least supported at a governmental level.⁴³

PRO BONO ASSISTANCE

Barriers to Pro Bono

Private attorneys and law firms in the UAE generally do not engage in pro bono work on a regular basis. There are no legal or licensing specifications which require that attorneys practicing in the UAE undertake a certain number of pro bono hours each year. While some non-governmental organisations (“NGOs”) work to address human rights disputes generally in the UAE, there are very few NGOs that provide free legal services to individuals or that focus on providing legal aid to disadvantaged groups. The Abu Dhabi Judicial Department sought to change this in 2011 when the “legal aid section” was formed to provide easier access to justice.⁴⁴

Several factors make it difficult for foreign attorneys to provide pro bono legal services in the UAE. The ability of foreign attorneys to represent disadvantaged individuals is limited by the fact that, in general, only UAE nationals who are qualified attorneys may represent litigants before most courts in the UAE. In addition, many foreign attorneys do not speak Arabic, which is often a necessity when dealing with local courts and institutions. As a result, foreign attorneys in the UAE have focused the bulk of their charitable

³⁸ See Dubai courts to provide free lawyers to poor defendants, THENATIONAL.AE available at <http://www.thenational.ae/news/uae-news/courts/dubai-courts-to-provide-free-lawyers-to-poor-defendants>, (last visited on September 4, 2015).

³⁹ See United Arab Emirates 2013 Human Rights Report, STATE.GOV, available at <http://www.state.gov/documents/organization/220592.pdf>, (last visited on September 4, 2015).

⁴⁰ Ibid.; see also Report of the Working Group on the Universal Periodic Review: United Arab Emirates, LIB.OHCHR.ORG, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/A_HRC_10_75_United_Arab_Emirates_E.pdf, (last visited on September 4, 2015).

⁴¹ Penal Procedure Law, Federal Law No. 35 of 1992, Article 4.; see also 2009 Human Rights Report: United Arab Emirates, LIB.OHCHR.ORG, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136082.htm>, (last visited on September 4, 2015).

⁴² Ibid.

⁴³ Human Rights Watch, I already bought you, available at http://www.hrw.org/sites/default/files/reports/uae1014_forUpload.pdf, (last visited on September 4, 2015).

⁴⁴ See Legal Aid in ADJD, ADJD.GOV.AE, available at <http://www.adjd.gov.ae/portal/site/adjd/LegalAid?language=en>, (last visited on September 4, 2015).



efforts on non-legal charitable work, such as fundraising for local charities, rather than in engaging in “legal” pro bono services and opportunities.

Public awareness is a further limiting factor on the creation of a robust pro bono culture. While information and resources are available on the internet, many people do not have access to this information due to lack of financial means. The Emirates of Dubai and Abu Dhabi are making efforts to ensure information as to rights and services is disseminated to the wider population, but the other Emirates appear to be making less of an effort in this regard.⁴⁵

Pro Bono Opportunities

Notwithstanding these limiting factors, some foreign attorneys do provide pro bono services to local charities in the UAE. Generally, these opportunities have consisted of advising charities and NGOs on issues involving foreign laws or local law (such as licensing requirements, general corporate and finance matters, cross-border collaborations, employment law issues, etc.) and/or drafting legal documents on behalf of these entities.⁴⁶ Attorneys serving in-house or with law firms can also serve on the board of directors of non-profit organizations and can organize fundraising events.⁴⁷

In 2009, the DIFC Courts established a pro bono program, which is the first of its kind in the Middle East.⁴⁸ The pro bono program allows individuals who cannot afford an attorney the ability to seek free advice from attorneys registered with the DIFC Courts. The services offered as part of the pro bono program range from basic advice to full case management and representation in litigation proceedings for areas of law within the DIFC Court’s jurisdiction.⁴⁹ The DIFC Courts also host bi-weekly clinics in which individuals can discuss their case, along with alternative dispute resolution strategies, with volunteer attorneys. The services are accessible to individuals who cannot afford legal representation, with the provisions of services being determined on a case by case basis by the DIFC Court’s Registry office.⁵⁰ In deciding on eligibility, the DIFC Court’s Registry office will also take into consideration the merit of the case should it proceed to trial. To date, more than 39 leading law firms have registered to provide voluntary services under this program, including Al Tamimi & Co., Clyde & Co LLP, Clifford Chance LLP, Norton Rose LLP, Latham & Watkins LLP and DLA Piper.⁵¹

In 2014, the United Arab Emirates University (“**UAEU**”) launched a legal clinic to offer legal advice and consultancy services to both students and the local community on a pro bono basis. There is limited information available on the program’s success or whether other universities in the UAE will begin to offer similar clinics.⁵² Given this development at UAEU is particularly recent, it remains to be seen whether other universities in the Emirates will follow suit.

⁴⁵ See UAE’s population – by nationality, BQDOHA.COM, available at <http://www.bqdoha.com/2015/04/uae-population-by-nationality>, (last visited on September 4, 2015).

⁴⁶ Id. at 44.

⁴⁷ See Corporate Social Responsibility, TAMIMI.COM, available at <http://www.tamimi.com/en/section/corporate-social-responsibility>, (last visited on September 4, 2015); see also Working with the Community, TROWER.COM, available at <http://www.towers.com/about/working-with-the-community> (last visited on September 4, 2015).

⁴⁸ See Pro Bono Program, DIFCCOURTS.AE, available at <http://draacademy.ae/pro-bono-programme/programme-overview/> (last visited on September 4, 2015).

⁴⁹ See Frequently Asked Questions, DIFCCOURTS.AE, available at <http://draacademy.ae/pro-bono-programme/faqs/> (last visited on September 4, 2015).

⁵⁰ Ibid.

⁵¹ See DIFC Courts establish pro bono fund to support disadvantaged, DIFCCOURTS.AE, available at <http://difccourts.ae/12-September-2011-difc-courts-establishes-pro-bono-fund-to-support-disadvantaged/>, (last visited on September 4, 2015).

⁵² See UAEU Launches the First Free Legal Advice Clinic in the UAE, UAEU.AC.AE, available at http://www.uaeu.ac.ae/en/news/2014/09/legal_advice_clinic.shtml, (last visited on September 4, 2015).



CONCLUSION

The practice of providing pro bono legal services is not well established in the UAE, politically, socially or within the legal community. However, the development of western practices within the legal profession, the strong presence of internationally qualified attorneys and the increased interest in, and awareness of, human rights in recent years in the region should help in shaping a stronger pro bono and legal aid culture in the future.

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