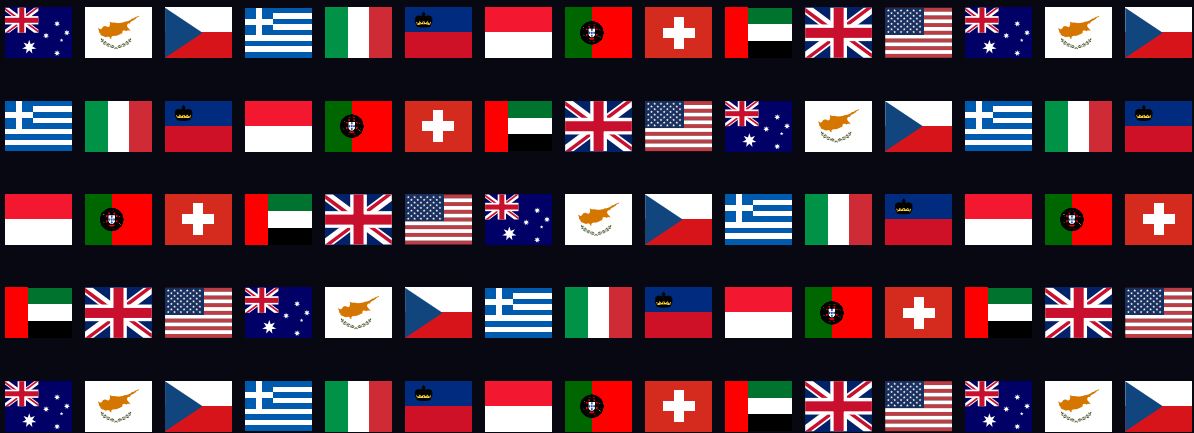


ASSET RECOVERY

United Arab Emirates



Asset Recovery

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Quick reference guide enabling side-by-side comparison of local insights into civil asset recovery (including jurisdictional issues, procedure, and remedies and relief); criminal asset recovery (including legal framework, cross-border considerations, and private prosecutions); and recent trends.

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

Article 28 of Federal Law No. 35 of 1992 (the Penal Procedure Code) (see moj.gov.ae). UAE law database) provides that concurrent proceedings in the United Arab Emirates (UAE) civil courts should be stayed until a final judgment is rendered in criminal proceedings. This is without prejudice to the right to seek provisional or interim remedies.

A party may advance a civil claim in criminal proceedings, which will ordinarily only be determined in criminal proceedings if it is directly related to the alleged crime. The criminal court may decide to transfer the civil claim to the civil courts. A claimant may withdraw his or her civil claim during criminal proceedings without prejudice to his or her right to file an alternative claim before the civil courts.

Law stated - 19 July 2022

Forum

In which court should proceedings be brought?

The judicial system is divided between the federal judiciary and emirate-level judicial departments. Each emirate has the right to maintain its own local judicial department. Abu Dhabi, Dubai and Ras Al Khaimah have their own independent judicial departments with distinct and separate courts. Ajman, Fujairah, Sharjah and Umm Al Quwain are under the federal court system.

Civil proceedings are commenced in the Court of First Instance, which has judicial circuits that include civil and commercial circuits.

The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) are financial free zones established under federal law, which are exempt from the civil and commercial laws of the UAE. Both jurisdictions have their own procedural and substantive laws, and separate courts operating within an English-language common law system. See <https://www.difc.ae/business/laws-regulations/legal-database/> (DIFC laws); <https://www.adgm.com/legal-framework/rules-and-regulations> (ADGM laws).

The courts of the ADGM and the DIFC tend to be referred to as 'offshore' and the Arabic-language civil law courts outside these free zones as 'onshore'.

A claimant must consider in which emirate any proceedings should be brought, whether the onshore courts (being courts of general jurisdiction) or the DIFC or the ADGM courts have jurisdiction (the latter being courts of special statutory jurisdiction) and whether such jurisdiction is exclusive. Relevant factors are likely to include, for example, the identity and domicile of the defendant or its assets, the cause of action and subject matter, the relief sought, and the applicable law.

Law stated - 19 July 2022

Limitation

What are the time limits for starting civil court proceedings?

Under UAE law, there is a general long stop date of 15 years for civil claims. There are, however, many specific time limits that are set out in various laws and apply to different categories of claims as follows:

- commercial contracts: 10 years from the due date for fulfilment of the obligation;
- guarantees: six months from the date on which payment fell due;
- dishonoured cheques: two years after the expiry of the presentation period; and
- an act causing harm (similar to a tortious claim): three years from the date the victim became aware of the occurrence of the harm and of the identity of the person responsible for it, subject to the following requirements:
 - if such claim arises out of a crime and the criminal proceedings are extant after the expiry of the above time limit, the claim shall not be time-barred; and
 - in any event, any claim for an act causing harm must be commenced within 15 years from the date on which the harmful act took place.

Under DIFC law, there is a general limitation period of six years after the date of the events that give rise to the proceedings. Specific time limits include:

- for contracts: six years after the cause of action accrued;
- for negligence: occupiers' liability or misrepresentation, 15 years after the cause of action accrued; and
- for fraud: six years after the aggrieved party becomes aware of the fraud if contract-based, otherwise there is no time limit.

ADGM law generally adopts the limitation periods applied under English law, for example:

- for contracts: within six years of the date of breach;
- for deeds: within 12 years of the date of breach;
- for tort: within six years of the date the damage is suffered; and
- for fraud: within six years from when the claimant discovered the fraud or when the claimant could have discovered it with reasonable diligence.

Law stated - 19 July 2022

Jurisdiction

In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

Onshore

These are the courts of general jurisdiction. Article 20 of Federal Law No. 11 of 1992, as amended (the Civil Procedure Code) (CPC) states that:

The courts also have jurisdiction over actions against a party that has no residence in the UAE in circumstances set out in article 21 of the CPC, which includes disputes involving a contract executed or largely performed in the UAE.

Articles 31 to 40 of the CPC prescribe the courts' local jurisdiction (namely, which court between the courts of the different emirates is the competent court). Those provisions mainly relate to the domicile of the defendant, the formation of the contract and the place of performance. Alternatively, the courts of the emirate in which the claimant is domiciled may have jurisdiction under article 40.

Generally, the courts will not decline jurisdiction based on a jurisdiction clause where the court would otherwise have jurisdiction unless there is a binding arbitration agreement.

A jurisdictional challenge should be raised by a defendant at the first hearing.

Offshore

These are courts of special statutory jurisdiction. They have jurisdiction where the parties have agreed in writing to submit their dispute to such jurisdiction or where there is otherwise a sufficient nexus of the claim to the jurisdiction as prescribed by applicable DIFC or ADGM law (eg, actions involving as a party an establishment in the offshore jurisdiction, contracts formed or performed there, or an incident that occurred there).

A defendant who wishes to dispute the court's jurisdiction to try the claim, or who wishes to argue that the court should not exercise its jurisdiction, may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction that it may have. A defendant who wishes to make such an application must first file and serve an acknowledgement of service, and make an application supported by evidence.

Law stated - 19 July 2022

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

What is the usual time frame for a claim to reach trial?

Onshore courts are Arabic-language civil law courts outside of the financial free zones of the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). In these courts, while it varies from case to case, generally a judgment may be issued in the Court of First Instance (CFI) within six to nine months from service of the claim, while more complex cases can take up to 12 months. Each of the consecutive appeal stages (Court of Appeal and Court of Cassation) will generally take less time and involve fewer pleadings than the stage before. Overall, it can take around 15 to 24 months to reach a final unappealable judgment in the Court of Cassation.

Offshore courts are the English-language courts of the DIFC and the ADGM. Time frames in these courts depend on the complexity of the case and availability of the court, parties' legal counsel and witnesses. A case should, on average, reach trial in the CFI within around nine to 12 months of the service of the claim, though it can take longer for more complex cases or if there are interim applications that impact the timetable to trial.

Law stated - 19 July 2022

Admissibility of evidence

What rules apply to the admissibility of evidence in civil proceedings?

Federal Law No. 10 of 1992 (the Law of Evidence) includes few rules on the admissibility of documentary evidence in onshore courts. There is no concept of privilege as understood in common law jurisdictions. The general position is that a document is admissible as evidence unless its authenticity is challenged by another party or called into question by the court. Regarding the weight of evidence, each document submitted, whenever possible, should be an original document, while copy documents are also admissible evidence. Copy documents are susceptible to a challenge of their authenticity by the opponent party but not solely by reason of being copies. Electronic documents and communications are expressly recognised as admissible evidence and printed copies of emails can stand as good evidence.

All non-Arabic documents submitted must be accompanied by translations into Arabic certified by a translator licensed by the Ministry of Justice.

Factual witness evidence (eg, written witness statements) is discouraged and will only be permitted following an application. In practice, it is rare for factual witness evidence to be adduced.

In offshore courts, there is a general rule of admissibility of documents and written witness evidence. All submitted non-English documents must be accompanied by translations into English.

A party may seek to have an opponent's evidence excluded on the basis that it is irrelevant to the issues in dispute, privileged or improperly obtained, among other things.

Expert evidence is admissible only with the permission of the court.

Law stated - 19 July 2022

Witnesses

What powers are available to compel witnesses to give evidence?

Onshore, the Law of Evidence provides that if a witness:

- fails to attend after being duly summoned by a party or the court, a fine shall be imposed by the court of 1,000 United Arab Emirates (UAE) dirhams to 2,000 UAE dirhams;
- fails to attend after being fined, a fine of 2,000 UAE dirhams to 10,000 UAE dirhams may be imposed and a subpoena may be issued; or
- appears and abstains from taking the oath, or from answering without legal justification, he or she shall be sentenced to a penalty prescribed in Federal Law No. 3 of 1987, as amended (the Penal Code).

Article 253 of the Penal Code provides that a person who gives false testimony, denies the truth or keeps silent faces a minimum custodial sentence of three months.

In offshore courts, witness summons may be used when a witness is unwilling to provide evidence. This compels a witness to provide certain documents or give oral evidence, or both. The witness must be offered or paid travel expenses and compensation for loss of time.

A deponent who wilfully refuses to obey an order of the court following a summons may be subject to sanctions and liable for costs.

Law stated - 19 July 2022

Publicly available information

What sources of information about assets are publicly available?

The availability of public information varies across free zones and emirates. There are currently over 40 free zones in the UAE, most of which maintain their own commercial, regulatory and other industry-specific registries, each with varying disclosure requirements. Some free zones – particularly the DIFC and the ADGM – offer a greater degree of transparency compared to those that allow for offshore company registration, principally the Jebel Ali Free Zone and the Ras Al Khaimah International Corporate Centre.

Basic company registration details – including status, date of incorporation and registered address – are generally available for companies registered onshore and in various free zones, but public shareholding disclosure requirements

are fairly limited. There is a centralised commercial registry with basic information on company registration and licence details; however, in general, more accurate and up-to-date information can be found on the local free zone registries. Corporate filings, including financial statements and annual reports, are not publicly available for private companies.

Despite some of these limitations, a broader picture on assets can be established by piecing together data from multiple sources, including company announcements and disclosures. This information can often be found in Arabic or English (archived) daily newspapers, and can include references to ownership and changes in shareholding. Other public notices, including services of process and litigation filings, are available online, which may reference creditor actions and indicate whether any existing assets are frozen or otherwise encumbered. Miscellaneous industry-specific data, such as information on real estate, works-in-progress and escrow accounts, are also available online.

To obtain a comprehensive picture on assets, this publicly available information should be coupled with local enquires to supplement any information gaps, in addition to broader public record searches such as local-language media, current and archived internet data, social media, and corporate data aggregator platforms. It is also always important to cast a wide net during public record research to capture information on UAE assets that may be contained in corporate filings lodged overseas.

Law stated - 19 July 2022

Cooperation with law enforcement agencies

Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

Law enforcement and regulatory agencies are unlikely to voluntarily provide information and evidence to parties for use in civil proceedings.

Onshore, article 20(2) of the Law of Evidence grants the courts the power to order any administrative body to present any information or documents it has in its possession that are necessary for the hearing of the case.

Offshore, a party may apply to the court for a third-party disclosure order, although this may raise jurisdictional issues and possibly wider public policy issues, depending on the respondent's identity.

Law stated - 19 July 2022

Third-party disclosure

How can information be obtained from third parties not suspected of wrongdoing?

Onshore, article 20(1) of the Law of Evidence provides that the courts may join a party to proceedings specifically for the purpose of ordering that it must produce a document in its possession, although in practice this is an extraordinary measure.

Offshore, a party may apply to the court for an order that requires a third party to disclose information or documents in its possession that are relevant to the claim. For example:

- an order for non-party disclosure, which requires that:
 - the documents for which production is sought are likely to support the applicant's case or adversely affect the case of one of the other parties to the proceedings; and
 - production is necessary to dispose fairly of the claim; and
- an order directing a party to provide information about the location of relevant property or assets.

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF**Interim relief**

What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

Onshore courts are Arabic-language civil law courts outside of the financial free zones of the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). In these courts, claimant may apply to the court pre-action or pre-judgment for a precautionary attachment order to be made over the defendant's United Arab Emirates (UAE) assets, including any assets held by third parties (eg, banks) (article 252 of the Civil Procedure Code (CPC) and article 111 of Cabinet Resolution No. 57 of 2018 (the Executive Regulations)). The applicant will be required to show one or more of the following:

- the debtor has no permanent residence in the UAE;
- there is a risk that the defendant will dissipate his or her assets; and
- there is a risk that the defendant may abscond or conceal his or her property, or both.

Offshore courts are the English-language courts of the DIFC and the ADGM, in which a claimant may apply pre-action or pre-judgment for a freezing order (a form of injunctive relief) and asset disclosure order (generally following the principles of English law). Other available orders include property preservation and inspection orders, search orders, and interim payment orders.

Before seeking interim relief, it can be useful to conduct non-judicial investigations into the asset position of a defendant, both to determine if there are sufficient assets to enforce judgment against the defendant and to identify assets that should be expressly included in the injunction.

Law stated - 19 July 2022

Non-compliance with court orders

How do courts punish failure to comply with court orders?

Onshore courts may impose fines on parties for failing to comply with court orders (articles 42, 70 and 71 of the CPC). In the event that a party fails to produce evidence where there is a legal obligation to do so, (except as otherwise provided for in the law) this amounts to a criminal offence of obstructing judicial proceedings and can be punished with imprisonment of up to six months or a fine of up to 5,000 UAE dirhams (article 268 of Federal Law No. 3 of 1987, as amended (the Penal Code)).

Offshore courts have wide discretion to specify the consequences of non-compliance when making an order or on application for sanctions by the non-defaulting party. This may include cost-related consequences for the defaulting party, or (where contumacious) the strike-out of a statement of case or part thereof. Non-compliance may also be punishable by committal for contempt of court; for example, when a party breaches an injunction or an order for examination of a judgment debtor. A defaulting party may apply for relief from sanctions.

Law stated - 19 July 2022

Obtaining evidence from other jurisdictions

How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

A formal request may be made to the Ministry of Justice (MOJ) to request judicial assistance from another jurisdiction under an applicable treaty or letters rogatory on the basis of reciprocity in both onshore and offshore courts. A list of bilateral judicial cooperation agreements can be found on the MOJ website.

Law stated - 19 July 2022

Assisting courts in other jurisdictions

What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

This will depend on applicable judicial cooperation and mutual recognition agreements or letters rogatory through the principle of reciprocity in both onshore and offshore courts.

Law stated - 19 July 2022

Causes of action

What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

Typically, causes of action arise out of the following in onshore courts:

- contract, including fraudulent inducement and misrepresentation;
- acts causing harm (tort or delict liability), including fraud and deception (Part 3 of Federal Law No. 5 of 1985) (the Civil Code); and
- unjust enrichment or unjustified expropriation (Part 4 of the Civil Code).

Similar to English law, causes of action in offshore courts include but are not limited to:

- breach of contract, including fraudulent acts;
- deceit;
- unlawful means conspiracy;
- misappropriation;
- fraudulent transfer;
- conversion; and
- unjust enrichment.

Law stated - 19 July 2022

Remedies

What remedies are available in a civil recovery action?

Onshore, damages are the primary and usual remedy, assessed by the compensatory principle (namely, on the basis of loss suffered). Damages can include an award of loss of profit and interest. Other remedies include orders for seizure, delivery of property and restitution equivalent. Damages for unjust enrichment are available where a party has unjustly obtained a benefit.

Similar to the English courts, a very wide range of common law remedies are available in the offshore courts, including equitable remedies (eg, restitution, damages, seizure, constructive trust and account of profits).

Law stated - 19 July 2022

Judgment without full trial

Can a victim obtain a judgment without the need for a full trial?

There is no provision for summary judgment in onshore courts. However, courts may issue a default judgment if the defendant has been duly served and fails to appear in the proceedings without good reason.

Offshore, summary and default judgment procedures are available (generally following English court procedures).

Law stated - 19 July 2022

Post-judgment relief

What post-judgment relief is available to successful claimants?

Onshore, the claimant may obtain attachment orders over real estate and movable property. The claimant may also apply for a travel ban against, or the detention of, the defendant if he or she is an individual or the general manager of a corporate judgment debtor, who may then be judicially questioned regarding relevant assets.

Offshore, the claimant may (among other things) obtain freezing orders, charging orders and attachments of future assets or earnings. The claimant may also appoint a receiver, order a debtor to attend court and provide information to enable a judgment creditor to enforce a judgment.

Law stated - 19 July 2022

Enforcement

What methods of enforcement are available?

Onshore, the principal method of enforcement is the attachment of any real estate or movable property and the subsequent execution of judgment through judicial sale of such assets at auction. Garnishment is also available. The proceeds of execution will be distributed to the claimant subject to any other third-party claims. The method of enforcement is the same in offshore courts, by applying for charging orders and orders for sale of property. Third-party debt orders are also available.

Law stated - 19 July 2022

Funding and costs

What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

Onshore, there is no prohibition on conditional fee agreements, but contingency fee agreements are prohibited. There are no prohibitions or restrictions on third-party funding.

Courts retain discretion in relation to costs. However, in practice, the successful party is usually only awarded court fees and a nominal sum for legal fees at the conclusion of the case (generally around 1,000 UAE dirhams to 2,000 UAE dirhams). There are generally no interim costs orders.

Offshore, there is no prohibition on conditional fee agreements. Contingency fee agreements are, however, prohibited in the DIFC. The ADGM permits certain damages-based agreements.

Third-party funding is permitted in the DIFC, subject to regulation under DIFC Practice Direction No. 2 of 2017. Third-party funding in the ADGM is subject to the ADGM Litigation Funding Rules 2019.

Costs are recoverable by parties in the offshore courts following the principles of English law, while the courts have broad powers and discretion in relation to costs on an interim and final basis.

Law stated - 19 July 2022

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

Describe the legal framework in relation to interim measures in your jurisdiction.

Regarding general crime

Article 72 of the Penal Procedures Code provides the Public Prosecution with broad general powers of search and seizure of the dwelling of the accused, including, among other things, the results of a crime. There is power under article 78 of the Penal Procedures Code to order a person in possession of something that should be seized to submit it.

Regarding crimes of money laundering

Under Federal Decree No. 20 of 2018 on Anti-Money Laundering and Combating the Finance of Terrorism and Financing of Illegal Organisations as amended by Federal Law No.26 of 2021 (the AML Law) and its implementing Cabinet Resolution No. 10 of 2019 (the AML Resolution), the Public Prosecution or the competent court may take the necessary action:

- to identify, track seize or freeze assets suspected of being involved in money laundering activities in any way (eg, being the proceeds of crime or instrumentalities of money laundering crimes), which includes assisting foreign authorities in that regard, subject to reciprocity or the existence of a treaty to that effect;
- to prohibit trading or disposing of such funds, proceeds and instrumentalities;
- to prevent the evasion of freezing or seizure orders; and
- to impose a travel ban on any person or persons holding such assets.

The freezing of funds held by a financial institution licensed by the United Arab Emirates (UAE) Central Bank (CBUAE) (eg, banks, finance institutions or money exchanges) may only be requested by the Governor of the CBUAE. This means that these freezing orders must be executed through the CBUAE and financial institutions are not required to abide by such freezing order unless it has been properly issued by the CBUAE. The freezing of such funds cannot exceed seven business days, unless extended by the competent court or Public Prosecution that issued the freezing order, whether upon the request of the Governor of the CBUAE or otherwise.

The AML Law was amended by Federal Law No.26 of 2021 to generally broaden the definition of the funds that fall under money laundering transaction and to strengthen the due diligence required from financial institutions.

Law stated - 19 July 2022

Proceeds of serious crime

Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

Such investigation is usually triggered when the competent authorities uncover the potential existence of such proceeds in the course of an investigation, or if they are notified of such proceeds by other relevant authorities or the public. Regarding crimes of money laundering, the Public Prosecution may seek the assistance of the Financial Intelligence Unit (FIU) of the CBUAE, which receives and investigates the suspicious activities reports submitted by all persons subject to such AML reporting requirements under the AML Law and the AML Resolution.

The FIU may request the assistance of the relevant Federal and local authorities, such as the Police, the financial regulators and the Public Prosecution, which are entrusted under applicable legislation to combat, search, investigate and collect evidence on crimes.

Law stated - 19 July 2022

Confiscation – legal framework

Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

Federal Law No. 3 of 1987, as amended (the Penal Code), gives the court discretion, upon pronouncing judgment, to confiscate the proceeds of a crime. In this respect, the Penal Code provides that the courts may, upon issuing a conviction for a crime or misdemeanour, confiscate the items and funds seized as a result of the crime, or that have been used or are intended to be used in the crime. If it is impossible to confiscate the proceeds of the crime, the courts shall order a fine equivalent to the value proceeds of the crime.

The AML Law and AML Resolution provide that the local judicial authorities shall cooperate in relation to the confiscation of assets with their foreign counterparts on the basis of reciprocity or with jurisdictions that have a treaty with the UAE to that effect.

Law stated - 19 July 2022

Confiscation procedure

Describe how confiscation works in practice.

The confiscation of proceeds of crime is decided at the discretion of the court. Upon issuing the decision to confiscate

the proceeds of a crime, all government bodies such as the CBUAE and the Land Departments must cooperate with the Public Prosecution to identify the assets subject to confiscation and to enforce such confiscation.

Law stated - 19 July 2022

Agencies

What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

The Public Prosecution is the main authority responsible for tracing and confiscating the proceeds of crime. It may be assisted by any other law enforcement agencies (eg, the police) and authorities such as financial regulators (eg, the Dubai Financial Services Authority in the Dubai International Financial Centre) or the Financial Intelligence Unit and the Land Departments.

Law stated - 19 July 2022

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

Is confiscation of secondary proceeds possible?

Yes, the courts and Public Prosecution have wide discretion to decide to confiscate the proceeds of a crime.

In anti-money laundering (AML) matters, the seizing or freezing and potentially the subsequent confiscation of proceeds of AML crime (or their equivalent value) is broad, and extends to funds that were the result of, or linked to, the AML crime or the predicate offences.

Law stated - 19 July 2022

Third-party ownership

Is it possible to confiscate property acquired by a third party or close relatives?

Confiscation shall be imposed irrespective of whether the funds or proceeds of crime are owned by, or in possession of, the perpetrator or a third party without prejudice to the rights of a third party acting in good faith. Any contract entered into or act undertaken with the purpose of impacting negatively the ability of the competent authorities to enforce the seizure, freezing or the execution of a confiscation order will be void.

Law stated - 19 July 2022

Expenses

Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

The recovery of costs relating to tracing and confiscation of assets is left to the discretion of the court.

Law stated - 19 July 2022

Value-based confiscation

Is value-based confiscation allowed? If yes, how is the value assessment made?

Federal Decree No. 20 of 2018 on Anti-Money Laundering and Combating the Finance of Terrorism and Financing of Illegal Organisations (the AML Law) provides that upon confirmation of the offence, the court can make orders to confiscate funds owned by the offender equivalent to the value of the offence and if confiscation is not possible the court may order a fine instead.

Law stated - 19 July 2022

Burden of proof

On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

The public prosecutor has exclusive jurisdiction to lodge and pursue criminal cases, and will therefore have the burden to prove that the funds or property in question are proceeds of a crime.

Law stated - 19 July 2022

Using confiscated property to settle claims

May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

Yes, the proceeds of a crime may be used in satisfaction of civil claims for damages or compensation.

Law stated - 19 July 2022

Confiscation of profits

Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

The confiscation of the proceeds of a crime is, in principle, limited to the value of the proceeds of the crime. Accordingly, it may only be possible to recover the profits that are directly connected to the crime.

Law stated - 19 July 2022

Non-conviction based forfeiture

Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

For the court to order the confiscation of the proceeds of a crime, there must be a crime. Accordingly, a conviction with respect to the crime committed must have been issued.

In AML matters, a conviction of the actual AML crime is required before the relevant assets can be confiscated. However, a conviction of a money laundering crime does not require a conviction in relation to the underlying predicate

offence.

Law stated - 19 July 2022

Management of assets

After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

The Public Prosecution and the competent court, as applicable, shall appoint whomever they find suitable to manage the funds, proceeds and instrumentalities related to money laundering crimes or their predicate offences that are to be seized, frozen, or confiscated. This allows the receiver to sell or dispose of such assets even before the issuance of a court decision, if needed. The proceeds of the sale shall be transferred to the UAE treasury in the case of a final judgment of conviction. These funds shall be earmarked for any rights awarded legally to any party acting in good faith proportionately to their value.

Law stated - 19 July 2022

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

There is no specific regime or process for requesting foreign legal assistance in relation to the recovery of assets.

Under Federal Decree No. 20 of 2018 on Anti-Money Laundering and Combating the Finance of Terrorism and Financing of Illegal Organisations (the AML Law) and its implementing Cabinet Resolution No. 10 of 2019 (the AML Resolution), the Financial Intelligence Unit (FIU) may exchange information with its foreign counterparts regarding suspicious transaction reports or any other information that the FIU has or has the power to obtain, whether directly or indirectly, according to international agreements to which the United Arab Emirates (UAE) is a party or bilateral agreements signed by the FIU with its counterparts, or on the condition of reciprocity.

Under the AML Resolution, the FIU and any other competent authorities may enter into such agreements with foreign counterparts in a timely manner to enable bilateral exchanges of information and assistance. Such requests are required to be prioritised. Any information the FIU or the relevant authorities receive can only be used for the purposes for which it was requested unless otherwise agreed. The FIU or the other relevant authorities may provide feedback to foreign counterparts on the use of the information obtained and the extent to which it was beneficial if requested to do so. The authors note that, under the AML Resolution, a party cannot invoke banking, professional or contractual secrecy to refrain from exchanging information regarding crimes of money laundering with foreign authorities.

If there is no applicable treaty between the UAE and the country from which it is requesting assistance from, then Federal Law No. 39 of 2006 on International Judicial Cooperation in Criminal Matters (the Criminal Cooperation Law) provides that the public prosecutor, or his or her delegate, may request the Ministry of Justice (MOJ) to address the authorities of the foreign state through diplomatic channels.

Law stated - 19 July 2022

Complying with requests for foreign legal assistance

Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

Under the AML Resolution, the FIU and any other competent authorities may be required under an agreement with a foreign counterpart:

- to execute requests for assistance and to exchange information on crimes of money laundering and their predicate offences in a timely manner, including using its powers under the law to obtain the information requested by the foreign counterpart;
- to obtain a declaration or undertaking from the foreign counterpart that the provided information will only be used for its intended purpose unless otherwise agreed; and
- to refuse to provide information if it is not effectively protected by the foreign counterpart requesting international cooperation.

The requests for assistance processed by the competent authorities may also include:

- facilitating the access of foreign competent authorities to basic information held by the registries of companies and legal arrangements;
- exchanging information on legal arrangements and the shareholders in companies; and
- using their powers to obtain all the information on beneficial owners on behalf of a foreign counterpart.

The courts are bound, upon the request of a judicial authority of another country by an enforceable agreement with the UAE or by virtue of the reciprocity principle, to provide judicial assistance in relation to investigations, court trials or procedures relevant to the crime and issue orders as follows:

- to identify, freeze, seize or confiscate any funds, proceeds and instrumentalities that are generated from, used or intended to be used in the crime, or take any other procedures applicable under the enforceable legislations in the UAE. This includes:
 - to provide records retained by financial institutions, or designated by non-financial businesses and professions or non-profit organisations;
 - to inspect persons and buildings;
 - to collect witness statements;
 - to gather evidence; and
 - to use investigative methods including undercover operations, intercepting communications, controlled delivery, and collecting statements and electronic data; and
- to extradite, hand over and hand back persons and items relevant to the crime in a prompt manner in accordance with the legislation applicable in the UAE.

Accordingly, the procedure for foreign legal assistance will be determined by the applicable treaties between the UAE and the relevant country. In the absence of a treaty, the provisions of the Criminal Cooperation Law will apply. The request for judicial assistance shall be submitted by the competent authority of the foreign judicial authority by the MOJ through diplomatic channels. The MOJ, after studying the request and ascertaining the fulfilment of its conditions, will refer the request to the competent judicial authority to issue the necessary decision.

Treaties

To which international conventions with provisions on asset recovery is your state a signatory?

The UAE is a party to a number of international treaties that promote assistance in asset recovery, including:

- the United Nations Convention against Corruption of 2003;
- the Arab League Treaty of 1953;
- the European Convention on Extradition of 1957;
- the United Nations Convention against Transnational Organized Crime of 2000; and
- the Riyadh Convention for Judicial Cooperation of 1986.

In addition, the UAE has entered into bilateral treaties with a number of countries for judicial cooperation that can be relied upon for asset recovery.

Further, government authorities and financial regulators have memoranda of understanding in place with their foreign counterparts, which set the framework for cooperation between them.

Law stated - 19 July 2022

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

Can criminal asset recovery powers be used by private prosecutors?

Federal Decree No. 20 of 2018 on Anti-Money Laundering and Combating the Finance of Terrorism and Financing of Illegal Organisations provides that the public prosecutor, or his or her delegate, shall take measures regarding the proceeds of the crime. However, the intention is for the public prosecutor to delegate to his or her assistants within the Public Prosecution, not to the private sector. The mission of the public prosecutor may not be delegated to the private sector.

Law stated - 19 July 2022

UPDATE AND TRENDS

Emerging trends

Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

There are increasing levels of cooperation of the United Arab Emirates (UAE) with foreign jurisdictions in relation to criminal asset recovery, which parallels the UAE's crackdown on breaches of its anti-money laundering regime.

As part of this trend, in 2020, the UAE arrested and extradited some US Federal Bureau of Investigation's most wanted individuals accused of various financial crimes, including wire fraud. These arrests and those of other internationally wanted criminals were widely publicised.

The UAE has also made strides in enacting legislation regarding the documentation of company beneficial ownership, thus aiding transparency and reducing the potential for corporate vehicles being used for hiding tainted assets.

Coronavirus

On 22 October 2020, in an apparent response to the covid-19 pandemic, Federal Law No. 9 of 2016, as amended (the Bankruptcy Law), was further amended to include the introduction of the concept of a state of emergency financial crisis (EFC) defined as a 'general situation that affects trade or investment in the country, such as a pandemic, natural or environmental disaster, war, etc'.

On 10 January 2021, the UAE Cabinet declared the existence of an EFC for a period of six months, which is still in force as of July 2021. During a period of EFC, creditors may not petition for a debtor's bankruptcy and insolvent debtors are temporarily relieved from otherwise mandatory obligations to petition for bankruptcy, among other things. Such measures are intended to protect against bankruptcies of companies that have been negatively impacted by the pandemic on the basis that, with additional time, they may be able to manage creditor liabilities and recover their financial position as the pandemic abates and the economic situation normalises.

Temporary measures were also introduced in April 2020 to suspend or restrict measures that could be taken by claimants against the assets of a defendant in onshore (that is, Arabic-language civil law courts outside of the financial free zones of the Dubai International Financial Centre and the Abu Dhabi Global Market) proceedings, such as the attachment of assets for execution and real estate repossession actions. These temporary measures have since been removed.

Law stated - 19 July 2022

Jurisdictions

	Australia	Clayton Utz
	Cyprus	AG Erotocritou LLC
	Czech Republic	Wolf Theiss
	Greece	ANAGNOSTOPOULOS
	Italy	Studio Legale Pisano
	Liechtenstein	Gasser Partner
	Monaco	Donald Manasse Law Offices
	Portugal	Carlos Pinto de Abreu e Associados
	Switzerland	LALIVE
	United Arab Emirates	Clyde & Co LLP
	United Kingdom	Stephenson Harwood LLP
	USA	Baker & Hostetler LLP