



CURRENT DEVELOPMENTS IN CLAIM MANAGEMENT & COMMERCIAL DISPUTES IN THE UAE DUE TO COVID-19

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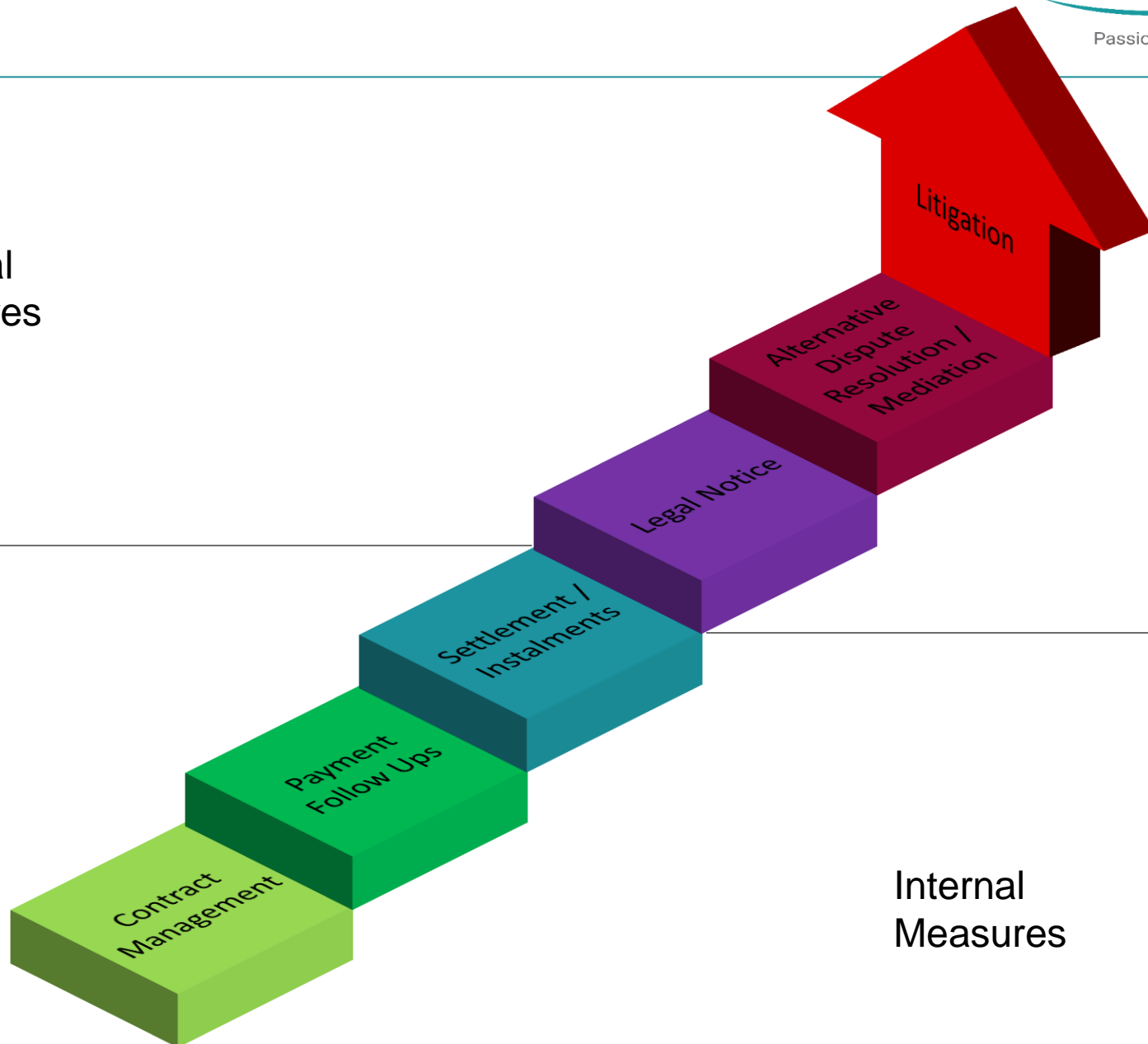
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I. CLAIMS MANAGEMENT

1. OVERVIEW

External
Measures



Internal
Measures

2. CONTRACT MANAGEMENT

CONTRACT MANAGEMENT

- Drafting, maintaining and updating effective and valid contract clauses
- Maintaining and updating contractual deadlines, timeframes and periods
- When a party is in default, certain clauses have to be checked and an escalation plan for claims management has to be implemented

CONTRACT MANAGEMENT - CONTRACT CLAUSES

- Most important contract clauses:
 - Payment terms (conditional or unconditional)
 - Payment delay penalties (and procedures to claim them)
 - Extension clauses (for payment, delivery or project execution)
 - Termination clause (notice periods, compensation)
 - Time bar
 - Force Majeure Clause
 - Jurisdiction Clause

CONTRACT MANAGEMENT – HARDSHIP & FORCE MAJEURE CLAUSES

- Force Majeure clauses allow contractual parties to (partially) terminate or postpone their obligations
- Force Majeure events are unexpected circumstances outside the control of either party and which prevent the parties from carrying out their obligations and results in a hardship for them
- Usually contracts include a FM clause describing the events that should be considered as a FM

CONTRACT MANAGEMENT – HARDSHIP & FORCE MAJEURE CLAUSES

- Without a force majeure clause in place → UAE Civil Transaction Law (Federal Law No. 5 of 1985)
- Article 249 of the UAE Civil Transactions Law, in the event of exceptional, unpredictable circumstances of a public nature which result in making the execution of the contractual obligation oppressive (even if not impossible).
- Article 273 of the same law prescribes that if a force majeure event arises which makes the performance of the contract (partially) impossible, the corresponding obligation shall cease and the contract shall be automatically cancelled.

CONTRACT MANAGEMENT – JURISDICTION CLAUSES

- Which law is applicable?
- What have the parties chosen – litigation or arbitration?
- If litigation – which courts are competent?
- If arbitration – where is the seat of arbitration and under which rules will the arbitration be held?

3. ESCALATION PLAN

ESCALATION – PAYMENT FOLLOW UP

- Implement a system which monitors payment due dates
- Decide on how many payment reminders should be sent before further escalation steps will be taken (e.g. forwarding case to concerned sales representative, forwarding case to management)

ESCALATION – SETTLEMENT / INSTALMENT

- Try to settle with customer before initiating court proceedings, considering legal and court fees and expenses
- Consider the economic and financial situation of your customer (and the market in general) – enforceability of your claim?

ESCALATION – LEGAL NOTICE

- Legal notice can be sent out by you (but with the support of a legal advisor working in the background)
- Legal notice can be sent out by your legal advisor → adds more “weight” to the claim but may also change the tone of discussions
- Legal notice can also prompt new settlement talks

ESCALATION – ALTERNATIVE DISPUTE RESOLUTION

- Some jurisdiction clauses provide for a **mediation** before the actual proceedings
- Dubai Courts have installed the **Center for Amicable Settlement of Disputes** for all civil and commercial claims with a value of up to AED 100,000 (mandatory pre-stage for court claims)

ESCALATION – LITIGATION

- If all escalation stages fail → litigation (or arbitration) as a last resort
- Where the case has to be filed, will depend on the contractual clause reg. jurisdiction
- Arbitration clauses have to be checked carefully for their validity and applicability



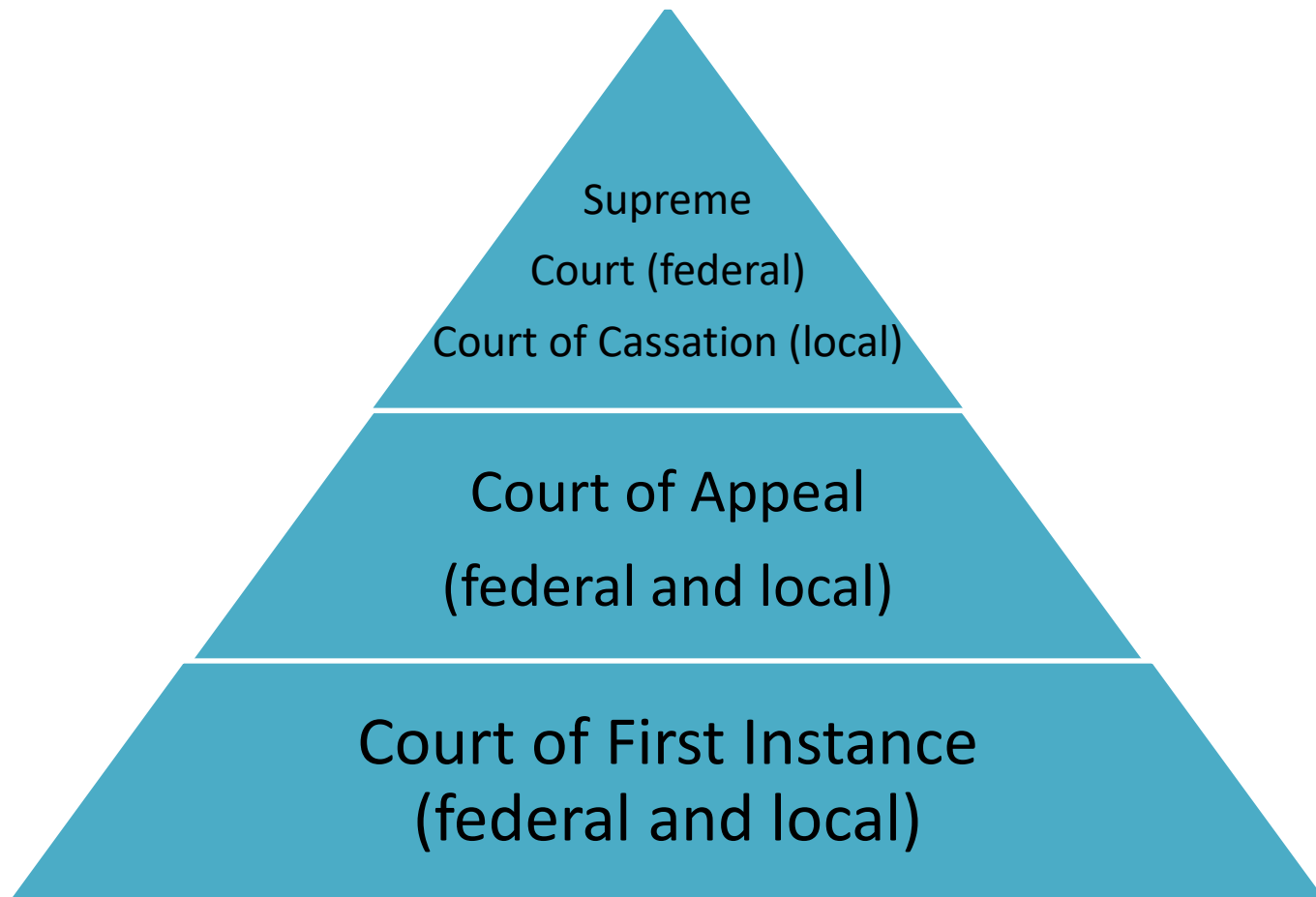
II. LITIGATION

1. GENERAL OVERVIEW

GENERAL OVERVIEW

- The Emirates of Sharjah, Ajman, Fujairah and Umm Al Quwain follow the federal judicial system, governed by the Ministry of Justice
- However, at the local level, Abu Dhabi, Dubai and Ras Al Khaimah maintain their own local judicial departments

GENERAL OVERVIEW



GENERAL OVERVIEW

- Dubai International Financial Centre (DIFC) and Abu Dhabi Global Markets (ADGM) are the only free zones in the UAE to have their own courts
- They have jurisdiction over civil and commercial disputes in or relating to their free zone
- The DIFC/ADGM Courts consist of a Small Claims Tribunal, Court of First Instance and Court of Appeal
- Both, DIFC and ADGM also maintain arbitration centers
- Other arbitration centers in the UAE
 - Dubai International Arbitration Centre (DIAC)
 - Abu Dhabi Commercial Conciliation and Arbitration Center (ADCCAC)

ALTERNATIVE APPLICATIONS

Before filling a court case, creditor may execute one of the following applications:

- **Declaration of indebtedness:** debtor has to sign the declaration in front of notary public; in case of non-payment, declaration can be used as a writ of execution
- **Payment order:** usually issued without a hearing and based on written documentation; if not appealed, can be used as writ of execution

2. CURRENT SITUATIONS IN COURTS

CURRENT SITUATION – DUBAI

- On 17 March 2020, the Dubai Courts announced that court **hearings** from 22 March 2020 onwards will be **postponed** till 16 April 2020 → likely to be extended due to curfew
- Specifically **excluded** are urgent matters, criminal cases and appeals that include detainees and inmates
- Judgements are being issued without the presence of the parties
- Smart services remain unchanged
- **Notary publics** are closed and transactions are being handled through email and BOTIM

CURRENT SITUATION – ABU DHABI

- Abu Dhabi Judicial Department has **suspended** all rental property eviction cases and execution procedures related to civil cases (including the capture, seizure and arrest of people; the blocking of bank accounts and the attachment over assets)
- All **hearings** are **suspended** for at least 30 days (starting from March 23, 2020) → likely to be extended
- Judgements will be rendered in absence of parties
- **Public notaries** are closed and appointments for signature have been substituted with a WebEx meeting

CURRENT SITUATION – OTHER EMIRATES

- **Ajman Court** suspended physical court hearings as of 22 March 2020; Court hearings in Ajman since then are being held remotely via virtual courtroom facilities and e-Trials
- **RAK Courts** have suspended certain execution procedures (enforcing eviction of leased residential units, arrest of debtors, attachment over movables, real estate, stocks and bonds); Ordinary hearings and other judicial services are being conducted via their electronic court system

3. PRACTICAL CONSIDERATIONS

PRACTICAL CONSIDERATIONS

- COVID-19 did not change the legal framework → all previously installed contract and claims management procedures should be followed
- Check contracts for payment clauses and force majeure clauses and build documentation/correspondence accordingly
- Attempt to negotiate an amicable out of court settlement in light of the suspended court hearings and limited liquidity of your contract partner
- Current suspension of litigation hearings does not suspend or prolong the legally prescribed time bar or period of limitation → filing cases is possible (!)

**THANK YOU
FOR YOUR ATTENTION!**

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