The courts of the UAE represent the traditional forum for the resolution of disputes that arise between parties to a contract, but there exist several spheres where alternative avenues are either available or even mandatory, according to law. This article will examine selected aspects of dispute resolution in the courts and in other fora before which the claims of contracting parties in the UAE may be heard, and also the extent to which the parties may attempt to choose not only the forum, but also the law by which they will be judged.

We shall initially consider briefly the sources of law in the United Arab Emirates, the validity of a choice of foreign law to govern any transaction, the validity of a choice of foreign jurisdiction, and the effect of incorporating an arbitration clause in a contract. Thereafter we shall proceed to discuss certain circumstances in which disputes between parties are either required to be or may be resolved in fora other than the established courts in the UAE. Unfortunately, it is beyond the scope of this article to deal with the many problem areas that may be encountered in drafting a dispute resolution clause in an international contract, including such fundamental questions as the capacity of the contracting parties, the doctrine of ultra vires, sovereign immunity, and Acts of State.

Sources of Federal law

Article 7 of the Provisional Constitution provides that the Islamic Shariah shall be the main source of legislation within the Federation. To say that the Shariah should govern judicial decisions is to refer to a process rather than to specify a result. Shariah law itself includes different schools of thought on a number of legal issues, but is founded on familiar concepts of justice and equity, and the practical result in commercial matters is often, though not always, the same as would be reached under Western jurisprudence. It is now a commonplace, for example, to note that the Shariah law, like Anglo-American law, strives to give effect to the intention of the parties in matters of contracts. It may be, however, that the intention of the parties will be differently construed by jurists in the two systems. For example, one recent scholarly commentator on Commercial law in the Arabian Gulf States has argued persuasively that traditional Shariah law would release the parties to a contract from performance for reasons of changed circumstances or frustration of purpose in many

*Mr Feulner and Mr Khan acknowledge the assistance in the preparation of this article of their colleagues at Chadbourne, Parke & Afridi, Abu Dhabi, Dubai and Sharjah, and of the firm's affiliated Arab counsel in the UAE, A R Hilal & Associates.
situations where English law would instead bind the parties to their contract. (Noel J Coulson, *Commercial Law in the Gulf States*, Graham & Trotman, 1984.)

The laws and statutes of other Arab and Muslim States are also cited by and before the UAE courts, and the precise principles applied in reaching a decision in any given case may depend to a considerable extent upon the nationality and legal training of the judge or judges involved. Many judges at all levels of both the Federal and local court systems are nationals of other Arabic speaking Islamic countries having well-developed legal systems of their own, which have been strongly influenced by either civil law or common law models. Some additional uncertainty results from the fact that UAE courts, in keeping with the Islamic Shariah, do not apply a doctrine of binding precedent. Rather, each case is expressly decided on its own merits.

Generally it may be said that Federal law authorises the enforcement of local laws to the extent that they are not in conflict with Federal law itself or the Islamic Shariah. Nevertheless, certain transactions which are considered by some to be void under Islamic Shariah, such as interest-bearing transactions, have nevertheless received recognition by virtue of local legislation. In so doing, deference has been paid to the intention of the parties in the context of modern commercial and banking needs and practice.

There is as yet no Federal Code of Civil Procedure, although it is understood that a comprehensive draft Federal Code is currently under study. The only Emirate that has a Code of Civil Procedure is the Emirate of Abu Dhabi.

Neither is the law of contract codified at the Federal level, but both the Emirates of Dubai and Sharjah have adopted a codification known as the Law of Contracts of 1971. This law deals with the capacity of parties to contract, the validity of a contract, its enforcement, its discharge, remedies for breach of contract and other related matters. It outlines the circumstances in which it is mandatory to order specific performance of a contract; it also outlines the circumstances in which specific performance may be ordered as against the award of damages. Broadly, the doctrine of commercial frustration based on variation of price is not recognised, though supervening illegality, destruction of the subject matter, and *force majeure* circumstances are recognised as grounds for discharging a contract.

Declaratory orders and judgments are generally not available in the UAE, nor are remedies in the nature of prerogative writs. Indeed, it is considered that there is little practical scope for challenging the bureaucratic action of State organs or officials on the ground that the act complained of is *ultra vires* and therefore of no force or effect in law (although there is equally little practical experience in this area). In international contracts involving the State, appropriate waiver of sovereign immunity and provisions safeguarding a party from acts of State should be incorporated, to the extent that such terms are negotiable.

**Choice of foreign law or jurisdiction**

Any provision in a contract which attempts to exclude the jurisdiction of a court in the UAE, or attempts to confer exclusive jurisdiction in a foreign court would not receive recognition in the UAE. However, the civil courts in the UAE will ordinarily not