

Litigation & Dispute Resolution

Fifth Edition

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UAE

Hamdan AlShamsi Hamdan AlShamsi Lawyers and Legal Consultants

Litigation procedures differ in the UAE in each of the seven emirates. The seven emirates that form the UAE each have a Court system and every emirate has a rental dispute centre. That means the Courts (and the rental centres) can operate differently from one another. The Courts of Sharjah, Ajman, Umm Al Quwain, Fujairah Courts fall under the federal administration whilst the Courts of Dubai, Ras Al Khaima and Abu Dhabi each have an independent Court administration. The Courts of Dubai have an independent Supreme Court, namely the Court of Cassation, which determines the interpretation and meaning of the legislator, whilst all the other emirates fall under the Supreme Court based in Abu Dhabi.

In addition there are the Dubai International Financial Centre (DIFC) Courts and the newly established Abu Dhabi Global Markets Courts (ADGM). The DIFC Courts are set up within the economic freezone DIFC area in Dubai. The ADGM Courts are based in a similar freezone in Abu Dhabi. Both are independent Courts of the UAE in their own right. They are described as common law islands in a civil law sea, applying a set of laws based largely on the common law of England and Wales.

Efficiency of process

I shall be analysing the process of registering claim, evidence and resources available to a litigant, and the time disputes require. Generally the comments are directed to the UAE Courts, with the DIFC Courts being dealt with specifically. The ADGM Courts follow the course of the DIFC Courts. This study does not extend to the criminal Courts or any penal-related matters.

Cases are registered in the Courts through the Registrar who will accept the statement of claim and set a hearing date after the parties have paid the fees for the case. This is processed at the Courts and can take as little as one day to complete, unless there are issues that arise and need correcting or clarifying. With the advance of technologies some Courts have opted now to use online methods of registration.

The Dubai Courts have introduced an online system and procedure for registering and dealing with cases. The online feature is very helpful and functional and allows parties including lawyers to register any case, injunction or application online.

The Dubai Courts' process of registering a claim online is straightforward and the requirements are set out clearly in the website. After the claim is registered, it is reviewed by the Registrar's Department who provide their comments on whether or not there are any changes that are required to be made. The Registrar may, in certain circumstances, go so far as to require changes in the particular or statement of claim, particularly focusing on

the format of the claim. In those circumstances, the process of registration takes up to one week. In the event there is a requirement to change the statement of claim, it may take up to two weeks to resolve the matter.

Claims in the other courts in the emirates are registered over the counter; the registration takes one day with payment required on the same day. A hearing date will be provided on that same day.

Once a case has been accepted by the Registrar, the online system will request payment and thereafter, after payment is made, a date may be set to hear the dispute.

The DIFC requires the parties to register a claim through its online form. There is a 40% surcharge for claims registered over the counter. An ordinary claim will be started through the filing of a claim form under Part 7 of the DIFC Courts rules. An application (not expected to involve a substantial dispute of fact) would be commenced under Part 8 of the Rules and an interlocutory application under Part 23.

The Civil Courts of the UAE (not the DIFC Courts) are organised by the claim amount in question; the rules for such organisation are found in the civil procedures law and may sometimes be organised further by decisions made by the head of the Courts who oversees and manages the Courts. The case allocation system in the UAE Civil Courts allocates cases in accordance with the amount claimed and its type. Cases under the amount of AED 500,000 in Dubai Courts (AED 200,000 for the other emirates) will be considered minor, and cases above the amount of AED 500,000 (AED 200,000 for the other emirates) for Dubai Cases will be considered major. The minor and major Courts are separate divisions in their own right. In the event a claim value changes, it would be re-assigned to the correct Court. An unquantifiable claim is referred to the major Court.

The First Instance Courts are split in accordance with the type of dispute. Cases also are split into type and these typically are: civil; commercial; and labour and property. Therefore there would be a minor and major Court for each type of claim, i.e. a labour minor and a labour major, and so forth.

Each Court will usually assign Judges that are specialised in the field that the Court's name suggests. The minor Courts will have a Judge and an amanuensis (or court secretary). The major Courts will have three Judges presiding, with one of them being the head of the panel together with an amanuensis. There may be a policeman and a translator who will be present at any of the Courts if required. Anyone may attend the Court hearing, whether he is involved in the dispute in question or not.

The UAE Civil Courts have four stages, namely mediation, first instance courts, appeal courts and cassation courts.

After filing but before a case is referred to the Courts, it is referred to a settlement stage where a Judge or an officer of a Court will attempt to resolve the matter amicably. Currently, in the majority of the emirates, the mediation process is conducted by a Court officer rather than a Judge. There are many claims in the Dubai Courts that will not require mediation. For civil or commercial claims, the mediation stage is unnecessary for claims that, *inter alia*, do not have a part of the claim that is unquantifiable or where the claim value is more than AED 50,000.

In the Dubai Courts there are certain additional processes that are followed before the Courts receive the claim. In respect of real estate cases in the Dubai Courts, they have to be referred to the land department to investigate certain aspects of the real estate, namely whether it is registered, and the details of such registration. For off-plan properties, whether

it is registered, and if it is a dispute in respect of a handover of an off-plan property, the land department will investigate the construction status and other details of the project. This will assist the Judge in handing down his award.

A labour complaint must be made in the Ministry of Labour (or labour office), which takes up to three weeks to complete.

In emirates other than Dubai there are no referrals before a case is heard before a Judge, other than mediation.

The assignment and specialisation of the Courts and Judges assist in ensuring the best experience is provided in determining the award for the parties. The organisation of the Court provides that the dispute is resolved in the fastest manner possible, with a judgment that considers the circumstances in light of the industry or subject of which the parties are part.

Cases that are registered with the UAE civil courts will have a first hearing date set and thereafter there will be a series of adjournments for several reasons. Arguments are not made in a trial once: rather they may continue over several hearings; the hearings are short and there are few oral arguments made. The most common reason for an adjournment is that parties wish to reply to each other's submissions. In most instances, a Court will allow a party to reply to other parties' submissions, and in particular, where a party submits new documents. Adjournments are commonly provided for a party to provide translations and documents from abroad. This method of having a series of adjournments, with each party replying to the other's arguments from one adjournment to another, can allow for the case to be inefficiently handled. The late provision of documents can exhaust the previous arguments and start a new set of arguments that could have been efficiently handled from the outset. The Courts have case management powers including fining parties for such acts, though seldom used.

An adjournment for judgment signals that either an interim or final judgment may be awarded/pronounced by the courts. The parties will not generally be aware whether a final judgment or an interim judgment is to be pronounced. An interim judgment could be to appoint an expert, stay proceedings, refer the claim to another Court, refer a particular part of the claim to be investigated by the Judge (where there is power to hear from witnesses, with additional powers to call and analyse different evidence that may be impractical in a Court room), or to decide that a certain statement shall be made under oath.

The UAE Civil Court's tradition is for written submission to be made rather than trials. Parties will present their arguments and reply to each other's arguments and the Judge thereafter will make a determination. The system does not provide for trials where the arguments of either party will be heard at one sitting. The UAE Civil Court Judges, in some instances, will ask a party for further clarification, at a hearing, if a part of the claim or defence is not clear. In some instances, this can lead to a large number of adjournments. This increase in unnecessary adjournments, and use of written submissions rather than oral pleadings, sometimes encourages lawyers to provide proxies for other lawyers to appear rather than appearing themselves. This adds to the repetitive arguments and increases inefficiency, with the Court having to deal with many more submissions than should be the case. The UAE Civil Court system, as it stands, does not manage the arguments and contentions of the parties. The parties can generally provide the arguments how and when they like. An adjournment for a party to reply to submissions made, does not necessarily mean that such a reply will be confined to the points made. New and repeated arguments are generally entertained. There is generally very little interference by the Courts in this process.

The parties should attempt to cover the arguments in their exchange of memorandums and particulars, claim and defence.

The first hearing generally deals with the issue of service. This will have been attempted by the Court Bailiff, there being no party service in the UAE Courts. The rules provide that adjournments will be made until service is deemed effective, and it requires that investigations are made to find the correct address of the respondents. After the parties have been summoned and have appeared, the Courts shall order an exchange of argument and submissions.

The use of Court-appointed experts is very common in the UAE. In Dubai, the appointment of an expert is first dealt with at the dispute resolution centre, which can take up to five months. Experts need to be registered with the UAE Ministry of Justice and Courts to obtain their licence.

After receiving the expert report, there is a further exchange of arguments for and against the expert report. The Courts may, if they find the arguments against the expert report significant, refer it back to the same expert again, or to another expert, or to a panel of experts. Once the Court is satisfied there is enough evidence, it will adjourn for final judgment.

The process of hearings and adjournment can work out to be very efficient, since a large amount of cases can be handled, but it requires the parties to assist in managing the case. Some parties abuse the process by dragging and confusing the cases and making them much lengthier than what they ought to be.

Evidence laws

In general, the onus is on the claimant to prove his case. The evidence and civil procedure laws of the UAE control the admission of permissible evidence including witness statements, written evidence, expert evidence (appointed independently by the Courts), documentary and electronic evidence, including emails.

Parties may rely on *viva voce* witness evidence to prove their case, but this is not the rule. Presenting witness evidence usually requires the consent of the Courts to set a date for such a hearing. The lawyer acting on behalf of the litigant will request either in writing or orally before the Courts to hear any witnesses the party may have. The witnesses will be heard in one Court session. Witnesses are excluded from the Courtroom until after they have given their evidence, to ensure that they do not hear another witness's statement before giving theirs. The witnesses will be called in one by one by the Court until all of the witnesses are heard. Both the claimant's lawyer and respondent's lawyer may be present in these witness hearings. Direct and cross-examination is controlled by the Judge. The Judge will ask any questions to the witness first. The claimant and the respondent may then ask questions (in the event there are several claimants and respondents, there is no particular order between the parties).

The amount of time a dispute remains in the Civil Courts depends on the type of dispute, the forum and the complexity. As discussed, some disputes require a preliminary step to be taken before proceeding to the First Instance Court. After all preliminary steps are taken, a claim may be made in the First Instance Court. The First Instance Courts typically take up to one year to finish a case. Thereafter if there is any appeal, the appeal Courts would likely take seven months for judgment. Thereafter if an appeal is made to the cassation Court or the Supreme Court, it will typically take anything between four months to a year or more. Thereafter any enforcement of judgment can either take around three months, in

the event the counter-party has liquid assets (bank accounts), or years in the event there are immovable or other assets. A claim in the UAE Civil Courts can take anywhere between a year to three years for judgment and enforcement. In some instances, it could last for more than three years.

In respect of specialised centres such as rental dispute centres, cases at the first instance generally take two months and thereafter appeals take two months, with enforcement taking up to one month.

The amount of time that a case may dwell in the DIFC First Instance Courts varies significantly according to the size and complexity of the case. In theory, if all available procedures are adopted, but time is not extended, a case should reach a defended trial hearing in nine months. There is rigorous case management in place in the DIFC and the parties are expected to comply, or make a timely application for adjournment or extension of time.

Integrity of process

There are rules governing conflicts of interest in the UAE for the participants in the legal system and judiciary. Whilst they lay the foundation, they are sufficient to protect the legal system from matters of integrity and conflict.

Lawyers have a specific law that governs their profession. Lawyers are administered and licensed in the UAE by the Ministry of Justice, the Dubai Ruler's Courts and the DIFC Academy of Law. There are general rules governing the conduct of lawyers in the UAE Courts. These protect the integrity of the legal professional and have certain requirements, requiring any licensed lawyer to have the necessary qualifications and proof of reputation from a recognised jurisdiction. Committees hear any complaints against a lawyer's misconduct and such committees have powers to revoke the licence of the lawyer to practise in the UAE.

The rules found in the DIFC Courts are comprehensive, with both a mandatory code of conduct and an advisory code of conduct.

Lawyers are subject to compulsory education in both Dubai and the DIFC Courts.

The civil procedures code ensures that Judges have no conflicts and provide that any decision made by a Judge in such circumstances shall be void. The regulation in the UAE of licensing and appointing Judges ensures that checks are carried out. There is training to ensure that Judges carry out their duties with integrity. There are departments set up in the UAE to receive any complaints in respect of any Judges or the Courts in general. These specific departments have many powers in their hands, will seek to investigate the complaint independently, and may refer the matter to the Ministry of Justice.

There are available recourses, found in the civil procedures law, for parties to bring action against Judges and prosecutors. The justifications for such actions require some elements of fraud, deceit or gross negligence. The most important result will be for the party to void the act or judgment that was made by such persons.

Experts play an important function in the justice and legal system. The DIFC Courts accept party-appointed experts and consider the merits of any such expert evidence through examination and cross-examination. The other UAE Courts may accept expert reports provided by parties, but if the Courts are intending to rely on that evidence to determine any part of the claim, the Court should appoint an expert from an approved register of experts.

Instances of corruption are rare in the UAE. There are certainly examples where corruption

has occurred and even been prosecuted, but the UAE is fortunate to have very little corruption. Any corruption is usually taken very seriously by the prosecutors and/or government departments, who will ensure that such corruption is discontinued and recourse is taken against people who have participated in such corruption. The articles which address corruption are found in the criminal laws and the prosecution are very motivated in pursuing such cases. Furthermore, the police and investigation departments in the UAE ensure that any corruption that has taken place is brought to justice. Such departments appear to have the necessary tools, knowledge and checks in place to spot any corruption occurring.

There are many rules in the UAE justice system to ensure that a fair trial is given and that each party is afforded protection by the Courts. One example is the ability under the civil procedure rules to re-hear cases for reasons of evidence being unacceptable, such as that a party acted fraudulently by the withholding of documents, as later discovered by the other party. These rules, among others, ensure that the UAE legal system provides the parties with the justice they are seeking and preserves the integrity of the whole legal system of the UAE.

The Cassation and Supreme Courts determine whether or not the law has been applied correctly, in the Courts below. The Cassation and Supreme Courts also oversee the application of justice found within the general rules of the civil code. These rules are there to protect the fundamental values and legal culture of the UAE Court system. In some instances, the Cassation and Supreme Courts will remit the case back to the Appeal Courts and replace the Appeal Judges with a new panel if the appeal judgment was incorrect, unjust or unfair.

Privilege and disclosure

The UAE Courts will seldom compel a party to disclose all the documents in its hands unless there is a compelling reason for doing so. The basic rules of disclosure are that: i) the law obliges the party to disclose such documents; ii) if the document was shared between the parties and necessary for proving any of their rights or obligations; or iii) if the counter-party has relied on such document in any stage of its defence.

There are rules in the evidence laws in the UAE to oblige the counter-party to provide classes of documents in their possession under certain circumstances. Furthermore, the Courts may also oblige a third party to provide the Courts with documents following certain rules within the evidence laws. Electronic documents obtain their standing from the electronic law of the UAE and are governed in a very similar way. The basic rules for electronic disclosure are that a party should mention their source and provide a printed copy of such documents or evidence.

If the claimant or respondent does not earlier submit a document and later wishes to rely upon it, and as a result it has caused an adjournment, the Court may (or if the counter-party requests) fine the party causing such delay.

It is possible to obtain a pre-order (interim relief) to investigate certain evidence, but that requires that a party prove that there is a fear that it may not be able to obtain such evidence later. The Courts will generally appoint an expert to go to the place where such evidence may be obtained and obtain the evidence that is requested. There are no classes of documents that do not require disclosure.

The parties may request the Court to order disclosure from third parties and/or the Court may also oblige a third party to provide documents to the Court. The Courts may, in the interests of justice, order a disclosure in accordance with the rules to ensure that the Judge obtains everything he needs to make a correct judgment.

There are no rules or restrictions as to the use of documents obtained by disclosure by the UAE civil courts. Therefore the parties to a dispute may sometimes avoid disclosure in the event the disclosure of the document would be more harmful to the party than the dispute matter at hand. The DIFC Courts instead may confidentially deal with documents that are considered confidential, and a party may request that from the courts.

Costs and funding

In the UAE Federal Court the rule is (other than trivial registration fees and transaction fees) 4% of the claim amount, up to a maximum of AED 30,000. The Dubai Courts have amended the fee structure to 7% of any claim amount, up to a maximum of AED 40,000. The Abu Dhabi Courts have a 3% Court fee with no maximum amount. Other fees include fees for applications, interim relief, enforcement; appeal, cassation or supreme Courts do not exceed these amounts. The typical amount a party is expected to pay for a claim with appeal stages and an interim relief application such as a freezing order can be in the region AED 125,000 for the UAE Federal Courts and the Dubai Courts.

There is a general trend to set legal fees as a percentage of the claim amount, with some exceptions where law firms charge fixed sums or hourly rates. With small claims, namely less than AED 1 million, the typical legal fees that might be expected are in the region of 4–15% of the claim amount. With larger claims, the legal fees would typically be as low as 2% of the claim amount. For law firms that charge a fixed sum, many parties to litigation can expect anything between AED 20,000 and AED 100,000 or more. The larger part of the legal fees is not awarded in the Federal and UAE Courts, with awards being as low as AED 500, and at the higher end around AED 3,000. Therefore parties do not expect to recover any legal fees.

Most of the Court fees are recoverable, including any experts appointed by the Courts, but not experts used by the parties independently. A party can expect recovery of more than 90% of the Court fees. The Courts seldom split the costs specifically according to the arguments won, but rather decide to either award the full cost of the case to either party or jointly.

The DIFC Courts' fees are published on scale, with a highest fee of up to US\$ 130,000.00 for claims above US\$ 50m. The scale can be found at http://difcCourts.ae/wp-content/uploads/2015/05/COURT-FEES-AUGUST-2015_31.pdf.

Within the UAE, conditional and contingency fee arrangements are not allowed. Given the amount of recovery possible in the UAE Federal Courts (other than the DIFC), parties pay less attention to the recoverability of such arrangements in the Courts. The DIFC allows for conditional fee arrangements and most contingent fee arrangements.

There are no rules pertaining to funding litigation in the UAE with the exception of the DIFC jurisdiction, where one of its sources of law is English law, and the rules on funding litigation agreements are expected to be the same as in England and Wales.

It is possible for lawyers to fund parties in litigation and this is widely practised by some law firms, whilst others ensure they do not fund any costs or fees on behalf of their client. The law firms that engage in funding their clients' litigation tend to recover the costs when any award is collected from the litigation. The money is collected by the law firm, then the remaining award is sent to the client. There is no regulation governing how client monies should be handled, with the exception of rules allowing lawyers to recover the costs they have paid, with their debts having priority over other debts in respect of the award.

Interim relief

There are pre-action or pre-suit remedies available in the UAE both in the UAE Courts and the DIFC Courts. The criteria to obtain such remedies vary according to the remedy a person is seeking. Generally such remedies will require two important elements: a) fear of irrecoverable loss; b) fear of evasion.

Parties in litigation in the UAE can find a range of interim relief and recourses to protect their interests. Interim relief may be awarded very quickly; in a matter of a day or two in the UAE Federal Courts and the Dubai Courts. The Federal and Dubai Courts, in most cases of interim relief, will not require a hearing and a submission will be sufficient. The submission will be submitted to the Registrar, and a Judge will either award or reject the interim relief within two days. The Judge in some instances can request additional documents and queries be answered by the parties in an *ad hoc* manner, without the need for a formal hearing to be convened. Most interim relief will be awarded *ex parte*, and the respondent may appeal the decision, where both parties will defend their position. Interim relief in the UAE will lapse if the party who has sought the interim relief does not present a claim to the Courts within seven days of the award of the interim relief.

Ex parte urgent and interim relief can be obtained in the DIFC Courts. An immediate order might be obtained, in exceptional circumstances, without hearing but only for preservation purposes. Freezing Orders may be obtained without notice. There will always be a requirement for undertakings, and an early return date will be set. Absent those circumstances, obtaining interim orders and relief from the DIFC will generally require a hearing, which shall be set on three clear days' notice .

Enforcement of judgments

In the UAE, awards are generally enforced by filing an enforcement application. Foreign awards may be enforced by obtaining recognition of the judgment and then by enforcement. The UAE is a signatory to the New York Convention on the recognition and enforcement of foreign arbitral awards and has ratified the rules found in the convention. In respect of conventions with other countries the UAE has signed with the following: the GCC, the Riyadh convention, with France, with India, Egypt, China. The treaties have similar requirements and differ slightly if at all.

In respect of the UAE Civil Courts, unless stated otherwise by another treaty or law dealing with a particular foreign country's judgments, a foreign award must satisfy the normal requirements of raising a case in the UAE Courts and, in addition: i) the subject matter of the dispute should not belong to the jurisdiction of the UAE Courts and the foreign Courts must have jurisdiction in accordance with their laws in respect of jurisdiction; ii) the Court that awarded the judgment was the correct forum to entertain the dispute in accordance with their laws; iii) the parties to the dispute have been requested to appear and have correctly been given representation; iv) the judgment is not subject to any appeal in the country it was issued in; and v) the judgment does not conflict with a judgment or order of the UAE Courts previously issued and does not contradict the order public and morality/ethics of the UAE.

The respondent will be notified to appear before the Courts in the UAE in a matter of recognition of a foreign award. The respondent will have the right to challenge the award in the UAE and a respondent may request the Courts to refuse the recognition of the award. In respect of the DIFC Courts, a certified copy of the judgment obtained from the originating

Court will usually be sufficient. If the judgment arises from a Court in respect of which the DIFC Courts have a Memorandum of Guidance or Understanding, the procedures will be set out therein. It is also a requirement that the foreign Court had jurisdiction in respect of the matter. Absent a treaty, those requirements can be restrictive. Article 7(6) of Dubai Law No. 12 of 2004 (as amended) simply states that foreign judgments “*shall be enforced within the Centre in the manner prescribed in the Rules of the Courts*”. The Rules are closely modelled on the Civil Procedure Rules of England and Wales.

After an award is made by the Courts, or a foreign award or arbitration award is eventually recognised by the Courts, the party may file an enforcement file. In terms of procedure, an enforcement file might differ slightly between different Courts in each emirate.

After a decision of a Judge on enforcement, the Judge’s secretary will send the Order to the respective authorities and persons to perform. Among other enforcement recourses available are freezing and transferring any monies with any banks, auctioning any real estate found registered with the land department, auctioning any cars registered, and auctioning any shares in the stock exchanges in the UAE. The Courts will not freeze any amount more than the debt owed.

Mediation and ADR

Different forms of dispute resolution have become widely available to parties in the UAE, with mediation and ADR being widely encouraged. The legal system of the UAE, in respect of dispute resolution, requires parties to attempt settlement or mediation. The civil procedures law requires that cases first go through an informal mediation process. Furthermore the Dubai Courts, in certain types of cases, will require that parties first undergo a formal mediation process, even going so far as appointing an official Court expert to provide the technical support required that will assist the parties in reaching a settlement without allowing the dispute to take more time.

In certain types of cases such as employment, the law obliges the parties to first seek to resolve the matter before an official of the Ministry of Labour advises on the rights and obligations of each of the parties. In other instances of family law, and in particular divorce, the parties are required to seek family counselling with an officer at the Courts before the matter is referred to the Courts.

These types of mediation and ADR required by law assist the parties to understand their position in respect of one another, with the hope that a settlement is achieved without the need to litigate.

The DIFC-LCIA Arbitration centre has mediation rules which can be invoked on request by the parties. The mediator will be appointed by the LCIA Court in London.

Regulatory investigations

The most common form of regulatory investigations is in connection with the Public Joint Stock Companies (PJSC) listed in the stock exchanges in the UAE. The supervision of the Securities and Commodities Authorities (SCA) over public joint stock companies offers protection to the stock exchanges and investors.

The powers of the SCA to regulate the trading and issue of securities on the exchanges include that the board may suspend a company’s stocks from being traded and freeze a number of, or classes of, stocks on the exchange. The SCA will generally send officers to annual general assemblies of companies to ensure that the correct procedures are being

followed, and in particular the PJSC board and chairman. The SCA will levy fines and penalties in the event that there are any irregularities.

In the DIFC, control of the regulatory environment for DIFC Registered companies is in the hands of the DFSA. This is an organisation which closely models itself on the London FCA.

**Hamdan AlShamsi****Tel: +971 4 346 9262 / Email: hamdan@alshamsilegal.com**

Hamdan completed his LL.B at the University of Warwick and has been admitted to the bar in the UAE. He has a decade of experience in litigation in the UAE and has been involved in many different claims that were both civil and common law disputes. He also assists many in their commercial matters, including negotiations and drafting of contracts. He set up his law firm at a young age and has now a team of lawyers and partners that are qualified in many areas of the law. The law firm has been practising in the UAE since 2011.

Hamdan AlShamsi Lawyers and Legal Consultants

1611, Al Manara Tower, Al Abraaj Street, Business Bay, Dubai, UAE
Tel: +971 4 346 9262 / Fax: +971 4 346 9272 / URL: <http://www.alshamsilegal.com>

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