

New UAE Civil Code – What's changed and why it matters



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Introduction

Federal Decree-Law No. 25/2025 (the UAE's new Civil Transactions Law (the **New Civil Code**)) came into effect on 1 June 2026, repealing and replacing Federal Law No. 5/1985 in its entirety (the **Old Code**).

For businesses operating in the UAE, the importance of the New Civil Code lies not only in the legislative changes, but in the practical implications that will follow. Whether negotiating contracts, delivering major projects, managing commercial relationships, financing investments or resolving disputes, organisations will need to understand how the new provisions may influence established practices and future decision-making. In this publication, our lawyers discuss the impact of the reforms across the sectors in which we advise, drawing on the collective experience of a team that has lived and worked in the UAE for many years. The insights that follow are informed not only by legal analysis, but by decades of experience supporting businesses, institutions and government entities operating in the UAE. We hope these perspectives will assist businesses in understanding the opportunities and challenges presented by this landmark reform and in preparing confidently for the future.

The introduction of the New Civil Code represents one of the most significant developments in the UAE's legal framework since 1985. More than forty years have passed since the enactment of the legislation that has governed civil and commercial relationships across the UAE. During that time, the UAE has transformed into one of the world's most dynamic and forward-looking economies, attracting investment, talent and innovation from around the globe. The New Civil Code reflects that evolution. It arrives at a time when businesses are navigating rapid technological advancement, changing commercial models and an increasingly interconnected world, providing a legal framework designed to support the UAE's ambitions for the decades ahead.

As a firm, we have had the privilege of witnessing this transformation first-hand. Since establishing our presence in Dubai in 1991 and Abu Dhabi in 1993, we have advised clients through successive phases of the UAE's growth and development. We have seen the country's legal and regulatory landscape evolve alongside its economy, supporting government entities, investors, developers, financial institutions and businesses as they have helped shape the modern UAE. This long-standing presence gives us a grounded and practical perspective on the significance of the New Civil Code. While legal reform is a constant feature of any mature and ambitious jurisdiction, changes of this scale are rare, and their impact will be felt across industries and sectors for years to come.

Should you wish to discuss in greater detail how these reforms may affect your organisation, sector or industry, we would be pleased to continue the conversation and share our insights directly relevant to your business.



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Corporate and Commercial



Overview

For commercial entities operating in or through the UAE, The New Civil Code is not a technical restatement: it is a substantive recalibration of the legal framework governing how contracts are formed, interpreted, and enforced; how rights are secured; and how cross-border disputes are resolved. The New Civil Code modernises contractual mechanics, strengthens good faith obligations, improves legal clarity, and reinforces the UAE's position as a mature and investor-friendly legal environment. Every existing contract, standard-form template, and enforcement strategy should be stress-tested against the new regime before the effective date.

Summary of key changes

Hierarchy and gap filling: Article 4 establishes that specific provisions prevail over general ones in any conflict, reinforcing the primacy of specialist statutes (banking, commercial, real estate) over the New Civil Code's general provisions. Where the New Civil Code is silent, courts are directed first to apply the principles of Sharia law (selecting the solution that best serves the public interest), then recognise customary practices, and finally principles of natural law and justice. This replaces the previous fixed hierarchy of jurisprudential schools, introducing greater judicial flexibility alongside a transparency requirement, compelling courts to articulate clearly the basis on which each source is engaged.

Contract formation, pre-contract risk and digital contracts: Contracts remain binding as "the law of the contracting parties," but the New Civil Code introduces sharper rules around how and when a deal is struck. The New Civil Code modernises contract formation to recognise a broader range of consent mechanisms, including electronic communications, conduct, implied acceptance and silence where supported by prior dealings or commercial custom. Offers made through the display of goods or services

at a stated price are generally treated as binding offers. These provisions codify practices previously inferred through judicial interpretation and reduce uncertainty in digital contracting environments. Where parties agree on essential terms but leave details outstanding, the court can fill those gaps, meaning a binding contract may exist earlier than the parties intended. Framework agreements are now expressly recognised, with agreed essential terms automatically incorporated into subsequent call-off contracts unless otherwise stipulated.

Pre-contract conduct carries heightened risk. Negotiations must be conducted in good faith; bad-faith termination of negotiations can trigger liability for actual loss (though expected profits are excluded in the absence of agreement to the contrary). Critically, a mandatory, non-waivable duty to disclose material information that may inform a party's agreement applies in negotiations and, at the point of execution, any clause seeking to limit or exclude this duty is void, and breach can form the basis of an annulment claim.

Abuse of rights and proportionality (Article 106): Article 106 introduces an enhanced, structured framework for assessing when the exercise of a legal or contractual right becomes unlawful. A right may be abused not only where there is intent to cause harm, but also where the benefit sought is disproportionate to the harm caused, where its exercise conflicts with law, public order or morals, or where it exceeds customary practice. This objective proportionality test applies to both contractual and proprietary rights and has direct consequences for how parties invoke termination, enforcement and other contractual entitlements.

Standard terms and adhesion contracts: In template-based contracts, terms added to the standard form prevail over the original template text, even where the original wording is not struck out. Courts now have an express power to modify or exempt a party from arbitrary or unfair clauses in standard form contracts, and any agreement to the contrary is void. Standard-form suites used with counterparties in a stronger bargaining position carry material judicial rewriting risk under the new framework.

Hardship, exceptional circumstances and defective consent: Where unforeseeable general events make contractual performance onerous and threaten heavy loss, the court may reduce the obligation or order rescission. This rule is mandatory; parties cannot contract out of it. The New Civil Code also expands the regime for defective consent, introducing a more detailed framework for exploitation (including economic imbalance arising from vulnerability, inexperience or dependence) and allowing courts to annul or rebalance obligations where a contract involves manifest unfairness. Clearer and shorter limitation periods apply to challenges to defective contracts.

Security and collateral: perfection and invalidity traps: Security mortgages over immovable property must be created by registration to confer a real right of priority. Any clause in a mortgage providing for appropriation or self-help sale upon default is void, which is a critical risk for financing structures that import common law-style enforcement mechanics. Possessory pledges of movable property are only effective against third parties where evidenced in a fixed-date instrument specifying the debt and the pledged property, combined with transfer of possession. For pledges of receivables, effectiveness against the debtor requires notice or acceptance, and priority ranks from the proven date of notice or acceptance.

Cross border transactions: choice of law and public order: Article 19 expressly prioritises party autonomy: contractual obligations, in both form and substance, are governed by the law agreed between the parties. This clarification reduces the scope for jurisdictional disputes and strengthens predictability for international transactions involving UAE elements. In the absence of an agreed governing law, the

fallback connects to common domicile, then place of performance of the principal obligation, with *lex situs* applying to real estate contracts. However, foreign law will be disapplied if contrary to UAE public order or public morals, and UAE law will apply where foreign law cannot be proven. Public order expressly encompasses definitive Sharia rulings and mandatory rules (*jus cogens*) that cannot be contracted around.

Limitation periods: The general limitation period is 15 years, subject to shorter periods for specific claim types: five years for recurring or periodic rights; three years for professional fees; and two years for certain merchant, manufacturer, and employment-related claims. Transitional rules apply to limitation periods already running; where the new law shortens a period, the new period runs from 1 June 2026, subject to a remaining-portion rule.

How we can help

- **Contract repapering reviews:** mapping legacy positions under the 1985 framework to the new Code, with priority triage for high-value, long-term, and template-driven arrangements.
- **Abuse of rights and proportionality reviews:** assessing existing enforcement strategies and the process for invoking contractual rights against the new objective proportionality framework under Article 106.
- **Disclosure and negotiation protocols:** designing evidentially robust pre-contract processes that withstand mandatory disclosure and good-faith scrutiny.
- **Cross-border template recalibration:** stress-testing governing law choices against UAE mandatory rules and public policy in cross-border contracts and confirming the legal authority of overseas counterparties to contract.



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Banking and Finance



Overview

While the reform is wide-ranging, its impact on banks is immediate, practical and, in some areas, potentially disruptive. The New Civil Code is not just a legal update - it is a change in how banks will need to structure transactions, manage risk and approach enforcement.

The New Civil Code represents a clear policy shift from a system primarily based on contractual certainty to one that balances certainty with fairness and judicial oversight. For banks, success under this new regime will depend less on legal formality and more on process discipline, timely decision-making and defensible commercial behaviour. Those that adjust early will not only mitigate risk but also be better positioned to navigate increasingly complex borrower relationships in the market.

Summary of key changes

A shift from "rights-based" to "fairness-based" enforcement

A unifying theme across the New Civil Code is the move away from rigid contractual enforcement toward a framework grounded in good faith, proportionality and judicial oversight. In practice, this means that having a contractual right is no longer the end of the analysis. The key question increasingly becomes: *Is the way the bank is exercising that right proportionate and defensible?* This shift is crystallised in provisions such as Abuse of rights (Article 106), Pre-contractual good faith and disclosure (Articles 121–122) and an expanded hardship doctrine (Article 224). Together, these create a "fairness overlay" across the entire lifecycle of a transaction - from negotiation to enforcement.

Guarantees: from passive protection to active risk management

The most immediate and material impact for banks is in relation to guarantees.

Article 1006 introduces a rule that can have severe consequences: If the creditor does not commence judicial proceedings against both the debtor and the guarantor within six months of the debt falling due, the guarantor may be discharged.

Key practical implications:

- The six-month period may start when any part of the debt becomes due, including missed instalments;
- Each missed payment may create its own separate deadline; and
- Commercial actions such as negotiations and demand letters do not stop the clock.

The result is a scenario banks are highly familiar with: a borrower misses a payment, the bank enters into "good faith" restructuring discussions, no formal proceedings are issued and then six months pass... At that point, the bank risks having lost its guarantee protection often without realising it.

Under the New Civil Code, joint and several liability in guarantees is no longer presumed and must be expressly agreed. The default position is now protective of guarantors: unless the guarantee is clearly structured as a joint and several (or "joint liability") undertaking, the bank may be required to first pursue the principal debtor and exhaust the debtor's assets and asset security provided before enforcing against the guarantor. This represents a material shift for lenders, as many standard forms of guarantee may not achieve the intended commercial outcome without explicit drafting.

Restructuring behaviour: a new tension

The interaction between the six-month rule and broader fairness principles creates a new tension for banks:

- On one hand, **Article 106** discourages aggressive or disproportionate enforcement
- On the other hand, **Article 1006** requires timely action or risk losing rights.

This creates difficult practical questions: Can the bank afford to delay enforcement while negotiating? When should a "protective filing" be made? How should borrower relationships be balanced against legal risk? In effect, the new regime pushes banks toward earlier escalation, tighter monitoring and more structured restructuring strategies.

Risk now begins before the contract is signed

Another important development is the codification of pre-contractual liability. Under Articles 121–122 parties must negotiate in good faith, Banks may be required to disclose material information and liability can arise even if no contract is ultimately entered into. This has practical implications for term sheets, mandate letters, credit approvals and deal communications. In particular, late-stage withdrawal or significant changes to terms may now carry legal exposure, especially where counterparties can demonstrate reliance.

Hardship and the rebalancing of contracts

The expanded hardship doctrine (Article 224) gives courts broader powers to intervene where unforeseen events occur and performance becomes excessively onerous. Courts may reduce obligations, adjust terms or even terminate contracts. For banks, this introduces uncertainty in long-term lending, increased restructuring leverage for borrowers and potential challenges to pricing and repayment assumptions.

How we can help:

- **Contract repapering reviews** – revising guarantee templates to ensure guarantee structures, joint liability provisions, waiver and enforcement clauses align with the New Civil Code requirements.
- **Pre-contract framework design** – revising term sheets, mandate letters and related communications to include appropriate caveats, disclaimers and flexibility to reduce pre-contractual liability risk.
- **Guarantee protection and enforcement strategy** – advising on structuring timely and effective enforcement approaches (including protective filings) to preserve rights under the 6 month rule of the New Civil Code.
- **Workshops** – supporting legal and deal teams with practical guidance on documentation, compliant communications, disclosures and negotiation conduct under the New Civil Code.



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Real Estate



Overview

For real estate clients, whether investors, developers, landlords, lenders or occupiers, the changes are immediate and our international real estate team can advise clients across the full range of issues the New Civil Code raises.

Summary of key changes

Legal capacity

The New Civil Code lowers the age of full legal capacity from 21 to 18, meaning individuals may now independently enter into property purchase agreements, leases and mortgages without guardian approval. Developers, landlords and lenders should update their verification and KYC processes accordingly.

Pre-contractual duties: good faith and disclosure and hardship protection

Pre-contractual good faith and disclosure obligations are now expressly codified. Parties must negotiate in good faith and withdrawal without justification gives rise to liability for actual loss caused. Each party is under a positive duty to disclose information of importance and any clause purporting to waive that obligation is void. The New Civil Code introduces a mandatory hardship protection that cannot be contracted out of. Where unforeseeable exceptional circumstances arise that make performance difficult or unfair, courts may adjust the contract even where it contains no express mechanism for this, particularly relevant to long-term real estate and development agreements. Force majeure and hardship clauses in existing agreements should be assessed against the New Civil Code.

Sale and transfer of title

Ownership does not transfer or become effective against third parties until registration. A seller must deliver property free from third-party rights, in the same condition as at the time of sale, with all accessories included. Title retention until full payment is permissible where agreed. Where there is a shortfall, the buyer may seek a price reduction or rescission within one year of handover. The New Civil Code establishes registration as the constitutive act of title at civil law level, whilst actual registration procedures remain governed by the relevant land authorities. For off-plan sales in Dubai, RERA's framework continues to apply, with the New Civil Code providing an additional civil law layer of protection for buyers.

Statutory warranty against dispossession and latent defects: extended buyer protection

Buyers benefit from a statutory warranty against dispossession, guaranteeing that no third party holds a pre-existing claim that could defeat the buyer's ownership. Any clause purporting to waive or limit this warranty is void. Where dispossession occurs, the buyer is entitled to recover the full price paid, the cost of improvements and all legal expenses incurred. Pre-completion title searches are therefore essential, and title insurance, whilst not yet widely used in the UAE, is an increasingly relevant product clients should consider.

A buyer may return a defective property and recover the price or retain it with a proportionate price reduction. The limitation period has been extended from six months to one year from delivery; fraudulent concealment of a defect removes any time-limit protection for the seller entirely. Sellers are shielded only where a defect is minor and tolerated in the local market. Developers and sellers should review their standard documentation and handover procedures.

Musataha, leasing and mortgage security

- **Musataha rights:** Musataha rights are widely used in the UAE. Under the New Civil Code, registration is now a condition of validity and any unregistered Musataha is void. Previously, non-registration affected third-party enforceability but not validity itself. Assignment or mortgage of a Musataha right requires both parties' consent and registration, and on expiry buildings revert to the landowner unless otherwise agreed. All Musataha arrangements, whether entered into before 1 June 2026 or in the future, should be registered urgently.
- **Leasing:** Landlords must hand over and maintain a property in a condition fit for the agreed purpose throughout the term. Tenants must use the property for its agreed purpose and may not sublet or assign without the landlord's consent. On sale, a lease binds the buyer if it predates the sale or the buyer had prior knowledge of it, meaning investors will typically inherit existing tenancies and buyers should understand their lease obligations fully before completion.
- **Mortgage and lending security:** A mortgage is only legally effective and enforceable against third parties upon registration, with priority determined strictly by the registration order. Where multiple mortgages are registered over the same property, priority is determined strictly by registration order, meaning any delay risks a later-registered creditor taking precedence. Lenders and borrowers should ensure documentation is updated to reflect the New Law and that registration is in place on completion.

In Dubai and Abu Dhabi, rules around registration, landlord and tenant obligations and mortgage priority are already embedded in emirate-level legislation, and the New Civil Code will largely operate as a backstop, filling gaps rather than displacing existing law. The DIFC and ADGM operate distinct frameworks where its direct application may be limited. Whether it ultimately prompts broader harmonisation or simply coexists alongside existing local laws remains an open question for those operating across multiple Emirates.

How can we help

Our International Real Estate team is well placed to advise on the changes set out in this article and their implications for your real estate transactions. The priority actions are:

- **Musataha rights and registration:** all Musataha arrangements should be formalised and registered without delay, any unregistered rights are now void. The same applies to title and mortgage registration
- **Transaction documentation:** letters of intent, exclusivity arrangements and non-reliance provisions should all be reviewed against the New Civil Code
- **Mortgage and security documentation:** existing documents should be updated and registration ensured on completion
- **Lease obligations:** buyers should have a clear picture of inherited lease obligations before completing any tenanted asset acquisition
- **Capacity, KYC and guarantees:** onboarding processes and guarantee documents should be updated to reflect the new contracting age of 18 and the new guarantor protection rules



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Projects and Construction



Overview

Among the key changes introduced through the New Civil Code are certain updated and new provisions that impact construction projects and stakeholder decisions for their projects regarding the choice of procurement route, contract structuring, decennial liability, contract management, risk allocation and termination.

Summary of key changes

Mandatory disclosure obligations will reshape tender processes (Articles 121-123)

The New Civil Code introduces new mandatory pre-contractual obligations, namely:

- all parties must conduct negotiations in good faith; and
- each party must disclose information of decisive importance to the other party's consent.

These obligations cannot be excluded by agreement, and breach may entitle the other party to seek annulment of the contract. This has potentially far-reaching implications for the procurement of projects:

- Employers and their advisers will need to exercise greater care in the preparation of tender documents. Withholding material information about site conditions, geotechnical data, existing services, design constraints, planning conditions, known risks, or budget limitations may now constitute actionable non-disclosure. Employers who have historically provided limited information and placed ground risk entirely on contractors should reconsider that approach.

- Contractors and subcontractors similarly must disclose material information about their financial position, technical capacity, supply chain constraints, or any known impediment to performance during the tender and negotiation process.
- Pre-qualification and tender clarification processes will need to be more structured and documented - both parties will need robust records of what was communicated and when to reduce the risk of claims relating to the new disclosure obligations. Employers should issue formal information packages with clear document control, and contractors should raise and record clarification requests formally.
- Non-Disclosure Agreements (NDAs) during tender and negotiation phases take on added importance given that information obtained from mandatory disclosures during the tender process will need to remain confidential. NDAs should now be entered into at the outset of any significant negotiation.
- The withdrawal of a tender offer must also be managed carefully in light of the obligations of good faith extending to the negotiation phase: if an offer is withdrawn before the expiry of any time limit for acceptance, the other party may claim compensation for the actual loss suffered.

Duty of good faith now applies to interpretation and performance (Articles 119, 120 and 221)

Good faith is now expressly a factor in the interpretation of contracts, in addition to the performance of contractual obligations. This has significant drafting implications:

- Contracts should be drafted with greater attention to clarity and consistency, since ambiguous provisions will now be interpreted through the lens of good faith.
- Parties should be cautious about including contractual terms that could be characterised as commercially oppressive or exploitative — such terms may now be more vulnerable to challenge on good faith grounds during interpretation.
- The use of entire agreement clauses and non-reliance clauses should be reviewed. Given the mandatory nature of the pre-contractual disclosure obligations discussed above, standard boilerplate "no representation" clauses will not be effective to exclude liability for failing to disclose material information.

Framework agreements now expressly recognised (Article 138)

The New Civil Code expressly introduces framework agreements as contracts which include the basic terms of future agreements, and such framework agreements are deemed to form part of those future contracts unless otherwise agreed. This is particularly relevant for the increasing number of repeat employer procurement programmes (e.g. government infrastructure bodies and developers with rolling pipelines) which are increasingly adopting master services agreements with call-off contracts to promote greater efficiency in their procurement and contracting processes. Parties should ensure that framework agreements are drafted with precision, as they will be legally binding as context for all downstream contracts. Inconsistencies between framework terms and individual contract terms will need to be clearly resolved in the drafting.

Supply of materials (Articles 814 to 816)

Under Article 814 (Article 873, Old Code), a contractor's duties may extend to supplying some or all materials needed for the works. Article 815 (Article 875(1), Old Code) makes the contractor responsible for the quality of materials supplied, with a guarantee owed to the employer. Under Article 816 (Article 875(2), Old Code), where materials are provided by the employer the contractor: (i) must look after them with the care of a reasonable person; (ii) must pay the employer their value and any applicable compensation if materials become unfit for use due to the contractor's negligence; (iii) must promptly notify the employer of any defects or other factors affecting execution of the works, failing which the contractor will be liable.

Completion and termination (Article 818)

Article 818 (Article 877, Old Code) strengthens the employer's remedies for contractor under-performance. The employer may, after giving a reasonable opportunity to remedy, terminate and engage a replacement contractor at the defaulting contractor's cost. In more serious cases, the employer may seek immediate termination without notice where the contractor's: (i) failures make proper completion impossible; (ii) delays indicate it cannot finish on time; (iii) conduct signals an unwillingness to perform; or (iv) actions render the performance impossible.

Decennial liability and engineer's responsibility (Articles 821 and 822)

Article 821 (Article 880, Old Code) confirms that decennial liability does not apply to any right of recourse the contractor may have against subcontractors, which remain governed by their own contract. Article 822 (Article 881, Old Code) distinguishes between design and supervision roles. A design-only engineer is liable for design defects but not for execution. An engineer supervising works is jointly and severally liable with the contractor for defective works.

Payment (Articles 827, 828, 829)

Article 827 entitles a contractor to receive payment proportionate to the work completed, where the works are divided into distinct parts or priced on a unit-rate basis, unless otherwise agreed. Under Article 828 (Article 886, Old Code), the employer's right to withdraw from a unit-rate contract where costs exceed the original estimate now applies only if the excess would be burdensome to it. Article 829 (Articles 887 and 249, Old Code) governs lump sum contracts: (i) a contractor is not entitled to additional payment for costs increases; (ii) additional payment for design changes is only available where changes are the employer's fault or where the employer agrees to the changes and additional sum; (iii) the court or tribunal may, where unforeseen exceptional public circumstances fundamentally undermine the contract's financial basis, adjust the timeframe, vary the price, or dissolve the contract.

Employer's termination for convenience (Article 836)

This new provision recognises the employer's right to terminate a contract at any time before completion. The employer must compensate the contractor for costs incurred, work completed, and what the contractor would have earned had the work been completed. Compensation may be reduced by a court or tribunal for any savings or the contractor's gains from redeploying resources.

Risk of destruction (Article 837)

This new provision allocates risk where works are destroyed. If destruction occurs by *force majeure* before handover, the contractor has no entitlement to payment. Where destruction occurs after the contractor took delivery of the works or due to the contractor's fault, the employer may claim compensation. Where destruction follows the contractor's notice to the employer to take delivery, or results from the employer's fault, the contractor is entitled to payment and damages.

How we can help:

The New Civil Code changes will require most employers and contractors to revisit how they structure and document their procurement processes. In practical terms, this means reviewing tender information packages, pre-qualification and clarification procedures, NDA arrangements, and contract templates — in particular entire agreement and non-reliance clauses that may no longer operate as intended.

We are especially well-placed to advise clients at the outset of a project during the tender and negotiation stage on procurement strategy and contract structuring in light of the New Civil Code, helping them to make informed decisions

about the choice of procurement route, contract management of statutory duties and limitations, appropriate allocation of risk between parties, and the contractual protections needed to manage risks and obligations effectively under the new legal framework.

As for existing contracts, we assist our clients' project teams in navigating the practical and legal implications of these changes through advising on any conflicts or potential conflicts that may arise between the parties during the construction and operation stages on their projects in a manner compliant with the New Civil Code.



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Dispute Resolution



Overview

The reforms introduced by the New Civil Code are not incremental. They create new obligations that will change not only how contracts are negotiated and performed but also disputed. We set out the key changes below and what they mean for your commercial relationships in practice.

Summary of key changes

Good faith in negotiations is now legally enforceable and you cannot avoid it

For the first time, Articles 121 and 122 of the New Civil Code introduce mandatory good faith obligations during pre-contractual negotiations. Parties must act in good faith when initiating, conducting and terminating negotiations. Parties may now face liability for losses arising from bad faith negotiations or the deliberate withholding of material information. Critically, these disclosure obligations cannot be excluded by agreement: any clause purporting to do so will be ineffective.

This creates a new category of claim that was previously difficult to ground in UAE law. Counterparties now have a statutory basis to sue for losses arising from pre-contractual conduct, for example, where a party withdraws from a deal at a late stage, or fails to disclose a material issue. If you are currently in advanced negotiations, or have recently walked away from a transaction, this is worth reviewing. Equally, if you are on the receiving end of bad faith conduct during negotiations, Article 122 of the New Civil Code may give you a remedy that was previously unavailable.

Choice of governing law for your contracts

Under the old Civil Code, the governing law of a contract was, by default, the law of the state where both parties were resident. Alternatively, it was the law of the place where the contract was concluded, unless the parties had agreed otherwise, or it was apparent from the circumstances that another law was intended to apply. The New Civil Code inverts this hierarchy and shifts the focus onto party autonomy.

Article 19 of the New Civil Code expressly recognises the right of contracting parties to choose the governing law of their obligations. Contracts will now primarily be governed by the law expressly agreed between the parties (including foreign law, which was previously rarely applied in practice by the onshore courts), thereby reducing uncertainty in cross-border transactions. In the absence of agreement, the New Civil Code defers to the law of common domicile, or alternatively, the law of the place of performance of the contract.

That said, the exercise of party autonomy in this respect is not absolute: Articles 22 and 29 of the New Civil Code preserve the power of UAE courts to apply overriding provisions of UAE special laws, and to disapply foreign law that conflicts with UAE public policy and morals.

New proportionality-based framework for abuse of rights

Article 106 of the New Civil Code significantly expands the doctrine of abuse of rights by introducing a proportionality-based test. A right may now be exercised unlawfully not only where there is an intention to cause harm, but also where the interests being pursued are disproportionate to the harm caused, or where the conduct conflicts with public order, morals or customary practice. UAE Courts have broader and more structured discretion to scrutinise how parties exercise contractual rights than they did under the previous Civil Code.

This reform is a double-edged sword. On the one hand, if you are considering terminating a contract, raising a default, or enforcing security, the proportionality of that action is now open to judicial challenge. A counterparty has a stronger basis than before to resist your exercise of a right on the grounds that it is disproportionate, even where you are technically entitled to exercise it. On the other hand, if you are on the receiving end of a contract being aggressively enforced, Article 106 may give you a substantive defence or a cross-claim that was not previously available.

Doctrine of Hardship: UAE Courts can rewrite your contracts

Article 224 of the New Civil Code modernises the UAE's approach to hardship by providing courts with a structured, explicit basis to intervene where performance becomes excessively onerous or impossible due to exceptional and unforeseeable circumstances. UAE Courts may now reduce a party's obligations, modify contractual terms, or rescind the contract entirely. This represents a more interventionist framework than the previous Civil Code and gives counterparties a clearer statutory route to seek contractual relief.

In our view, this reform is likely to be very controversial in future commercial disputes, especially given the current macroeconomic environment in the region. Parties in sectors affected by supply chain disruption, construction cost inflation, energy price volatility, or regulatory change should expect counterparties to invoke Article 224 as a basis for seeking contract modification or termination. Note that UAE Courts may intervene even where a contract has its own force majeure clause, Article 224 is a mandatory provision and parties cannot contract out of it.

How we can help

Our Dispute Resolution team is well placed to discuss how these changes affect your business or any pending disputes. In particular, we can provide the following services to help you adapt to the material changes to the UAE legal landscape that the New Civil Code has brought about:

- We can support you during active or advanced negotiations by advising on your legal exposure before you proceed and ensuring that any representations to counterparties are appropriately reviewed and approved. We can also advise on how to document decisions and help you create clear and contemporaneous records of your commercial rationale to mitigate the risk of bad faith claims. In addition, we can conduct audits of your contract templates and standard NDA terms and advise on the use of bespoke pre-contractual disclosure schedules to manage and reduce risk during the negotiation process.
- We can review and refine your contractual framework to ensure governing law provisions are clearly drafted and applied consistently across all transaction documents, while advising on the impact of mandatory UAE legal provisions which apply even where a foreign governing law is selected. We also support clients in structuring contracts to clearly distinguish between governing law and dispute resolution forums, and in verifying the alignment and consistency of governing law clauses, arbitration provisions (including UAE-seated arbitration), and any tiered dispute resolution mechanisms across related transaction documents.
- We can advise you prior to terminating a contract, raising a default, or enforcing security, to ensure you understand the legal position before taking action and help you document your commercial rationale appropriately so that costly mistakes in any subsequent dispute can be avoided. We can also review and enhance your enforcement procedures, particularly in distressed scenarios such as loan acceleration, security enforcement, or contract termination, where timing is critical. This could involve embedding proportionality reviews into your standard governance processes.
- Finally, we can help you respond to commercial volatility by guiding the development of contemporaneous evidential records in cases of disruption, cost escalation or regulatory change. We can also draft bespoke hardship mechanisms for new long-term contracts, to provide a structured renegotiation framework that courts are likely to take into account, giving parties greater control and certainty over outcomes compared to open-ended judicial discretion.

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