

UAE Recap: Legal Reforms 2020 – 2021

In an effort to align its laws with international standards, boost its economy and commercial opportunities, and enhance social stability, the UAE and its constituent emirates have introduced major legal reforms in 2020 and 2021. This recap provides a briefly commented list of the most relevant amendments to existing legislation and newly enacted laws.

I. Legislation on Federal-Level

a) Amendments to Existing Laws / New Laws Repealing Laws on Previously Legislated Matters

– **Federal Decree-Law No. (14) of 2020 amending Federal Decree-Law No. (18) of 1993 (“Commercial Transactions Law”)**:

This law makes significant amendments regarding matters relating to cheques by narrowing the scope of prosecution and introducing new penalties. Among the most notable amendments is the repeal of Articles 401, 402, and 403 of the Penal Code which provided for punishments to offences involving cheques, such as drawing cheques without sufficient funds. Further, the new law mandates banks to make partial payment of the value of bank cheques to the cheque beneficiary even if there are insufficient funds on the debtor’s account. The remainder of the balance can be executed directly through the court.

– **Federal Decree-Law No. (15) of 2020 replacing Federal Decree-Law No. (24) of 2006 (“Consumer Protection Law”)**:

The key provisions of the new law include obliging suppliers and businesses to safeguard their consumers’ data, avoid using consumer data and information for marketing and promotion, and protect consumers’ religious values, customs and traditions when providing a commodity or service.

– **Federal Decree-Law No. (21) of 2020 amending Federal Decree-Law No. (9) of 2016 (“Bankruptcy Law”)**:

In response to the ongoing pandemic and its impact on businesses in the UAE, amendments were introduced to the existing Bankruptcy Law. These include the definition of an “Emergency Financial Crisis”, during which certain protections for debtors apply. For instance, debtor’s obligations to file for bankruptcy are eased; further, directors and managers of a corporate debtor may continue to pay unpaid wages and salaries of the company’s employees (however no allowances, pay raise and other contingent payments) during such Emergency Financial Crisis, despite the entity being technically bankrupt.

N.b.: While the ongoing pandemic was considered an Emergency Financial Crisis until 31.7.2021, this is not the case anymore. Thus, the usual bankruptcy procedures and obligations on the management apply, as long as no further Emergency Financial Crisis is declared.

– **Federal Decree-Law No. (27) of 2020 amending Federal Decree-Law No. (10) of 1992 (“Evidence Law”):**

The Decree-Law No. (27) of 2020 amends provisions regarding remote communication technologies in evidence-related procedures and adopts digital signatures and documents. Further, it includes the legitimisation of e-hearing minutes that document witness testimonies, verdicts and signed notary documents.

– **Federal Decree-Law No. (28) of 2020 amending Federal Decree-Law No. (35) of 1992 (“Criminal Procedure Law”):**

The amendment of the Criminal Procedure Law is considered a fundamental step towards aligning UAE’s criminal justice system with international standards. Key amendments (partially already implemented in practice, but not explicitly contained in the previous law) introduced by Federal Decree-Law No. (28) of 2020 include the introduction of a suspect’s right to silence and the obligation to provide the suspect information on the offence, as well as the prohibition on the use of torture and inhuman or degrading treatment.

– **Federal Decree-Law No. (29) of 2020 amending Federal Decree-Law No. (28) of 2005 (“Personal Status Law”):**

Under the amended Personal Status Law, each Emirate is permitted to establish its own register for last wills of its non-Muslim expat population. To date, enforceable last wills of non-Muslims can be registered in Abu Dhabi and the Dubai International Financial Centre (DIFC).

– **Cabinet Resolution No. (33) of 2020 amending Federal Decree-Law No. (11) of 1992 (“Civil Procedure Code”):**

This Resolution amends litigation procedures in the UAE. Among the various changes introduced is the clarification for the use of modern technology for the service of summons, the significant increase of the scope of payment orders¹ (by allowing creditors to include damages along with the outstanding debt and interest), and clarification as to the circumstances where an application for a travel ban may be granted by the court. The Resolution also grants additional competence to the Case Management Office and to the Summary Court to speed up the court procedures.

– **Federal Decree-Law No. (30) of 2021 on combating narcotics and psychotropic substances amending Federal Law No. (14) of 1994 (“Drug Law”):**

The key changes introduced by Federal Decree Law No. (30) of 2021 include the reduction of the minimum sentence from 2 years to 3 months for first-time drug offenders and the introduction of rehabilitation. Further, deportation of expats convicted in drug-related cases is now optional and not mandatory, but tougher penalties on serial offenders are prescribed in the new law.

¹ Payment Order Applications are fast track applications by a creditor whose debt is acknowledged by a debtor. Potential bases for such payment order applications are stamped invoices, acknowledged statements of accounts, settlement agreements, etc.

– **Federal Decree-Law No. (31) of 2021 repealing Federal Law No. (3) of 1987 (“Penal Code”):**

While penalties were lifted for drinking or possession of alcohol, and out of wedlock relationships, and provisions for leniency on honour killings were already cancelled by Federal Decree Law No. (15) of 2020 which amended the Federal Law No. 3 of 1987, with the Federal Decree Law No. (31) of 2021 a new penal code was introduced which further aims to enhance the protection of women and domestic helpers while strengthening social cohesion and public safety. It expands the definition of rape crimes, and decriminalizes several cheque-related acts to reflect the amendments brought by the amended Commercial Transactions Law.

– **Federal Decree-Law No. (32) of 2021 replacing Federal Law No. (2) of 2015 (“Commercial Companies Law”):**

The new Commercial Companies Law includes certain new requirements with respect to general assembly meetings, quorum, auditor rotation for LLCs and JSCs, dispute resolution mechanisms, bankruptcy provisions, etc. However, the most significant change to the rules governing commercial companies in the UAE was already mandated previously by Federal Decree-Law No. (26) of 2020. This law introduced a foreign majority ownership regime in the UAE, allowing foreigners to hold 100% of the shares of LLCs. Each emirate may decide on the list of permitted activities for such foreign majority ownership.

– **Federal Decree-Law No. (33) of 2021 replacing Federal Law No. (8) of 1980 (“Labour Law”):**

From 2 February 2022, the new labour law brings some notable changes by abolishing unlimited contracts, the recognition of non-traditional forms of employment (e.g. project work, part-time work) and introduction of bereavement leave. Further changes relate to probation, overtime, salary deductions, disciplinary sanctions, termination, notice period, end-of-service gratuity (calculation based on working days) and maternity leave.

– **Federal Decree-Law No. (34) of 2021 replacing Federal Decree-Law No. (5) of 2012 (“Cybercrimes Law”):**

The new law introduced several additional categories of cybercrime offenses, among others, collecting donations or promoting demonstrations without a license. It also expands the definition of conduct violating the privacy of others, which now includes taking photographs and publishing them and spreading rumours. Under the new law, deportation following conviction is now not explicitly mandatory, but remains optional. Notably, the use of a Virtual Private Network (VPN) remains legal, as long as it is not used to circumvent existing restrictions under UAE law.

– **Federal Decree-Law No. (36) of 2021 replacing Federal Law No. (37) of 1992 (“Trademarks Law”):**

The Federal Law No. (36) of 2021 brings the previous Trademark Law up to date by addressing certain aspects of trademark registration, “prior use” and measures against registration of trademark in bad faith.

b) Newly-introduced Legislation on Previously Unlegislated Matters

The UAE has also issued several laws on matters regarding which no previous (substantial) laws existed.

– Cabinet Resolution No. (58) of 2020 regulating the Ultimate Beneficial Owner Procedures:

The resolution requires companies in the UAE to identify the beneficial owners of a business and to prepare and file such data in the newly created Ultimate Beneficial Ownership (UBO) registers in the emirate of sear. The resolution applies to all entities licensed within the UAE except entities in financial free zones and those wholly owned by the government. Entities need to carefully assess who constitutes a UBO in the sense of the law in order to avoid extensive sanctions imposed by the Ministry of Economy.

– Federal Decree-Law No. (16) of 2021 on Factoring and Assignment of Receivables:

Federal Decree-Law No. (16) of 2021 provides a new regulatory framework which sets out the basic legal requirements for assignments and transfers of receivables, validity and perfection requirements, as well as the rules for determining priority rights amongst competing claims over assigned receivables. It also clarifies the procedures to enforce assignments and sets out the requirement to serve a notice to the counterparty as part of the enforcement procedure.

– Federal Decree-Law No. (45) of 2021 on the Protection of Personal Data (“Data Protection Law”):

The introduction of this law is a step taken to align the UAE with global data protection principles such as key transparency and accountability concepts, data subject rights, data breach requirements, data protection impact assessments, data transfer requirements and notification and record keeping requirements.

II. Legislation on Emirate-Level

a) Abu Dhabi:

– Abu Dhabi Law No. (14) of 2021 on Personal Status for non-Muslims:

While the Federal Personal Status Law (Federal Law No. (28) of 2005) continues to apply to all UAE nationals and non-nationals (with exceptions provided therein), the Emirate of Abu Dhabi has now introduced Abu Dhabi Law No. (14) of 2021 as a separate personal status law for foreigners. It allows civil marriages of non-Muslims and regulates divorce, joint child custody and inheritance under civil law rules, not Sharia. The first ever UAE civil marriage license of a non-Muslim couple has already been issued in December 2021.

b) Dubai:

– Dubai Law No. 18/2021 Regulating Conciliation in the Emirate of Dubai

Dubai Law No. 18/2021 repealed and replaced Law No. 16/2009. It aims to promote and encourage amicable dispute resolution methods, and extends the competence of the Amicable Settlement of Disputes Centre. Previously, only disputes referred to the Centre by a Competent Judge could be determined. However, the new law allows parties to bring their dispute to the Centre via mutual agreement. Also, the president of the Dubai Court of First Instance is now permitted to outsource the Centre’s functions on conciliation to government agencies or authorised entities, who shall then resolve the disputes amicably.

– **Dubai Decree No. (34) of 2021 on the Dubai International Arbitration Centre (DIAC):**

The new decree consolidated the former arbitration institutions Emirates Maritime Arbitration Centre and DIFC Arbitration Institute into the DIAC as a single unified arbitration forum in Dubai. All arbitration agreements referring to the former forums remain valid, but DIAC will administer potential disputes arising out of these agreements.

* * * * *

If you require any additional information on any of the above laws and regulations or require legal advice on how they might affect you privately or in your business, please contact us at info@daburon-partners.com or +971 2 6948655.

Daburon & Partners Legal Consultants LLP

Email: info@daburon-partners.com

Tel.: +971 2 6948655

Web: www.daburon-partners.com

Address: Office 2404, 24th Floor Al Sila Tower - Abu Dhabi Global Market Square - Abu Dhabi, UAE

Daburon & Partners Legal Consultants LLP is a boutique law firm providing comprehensive legal advice to international companies acting in the UAE. Our lawyers have been advising in Abu Dhabi for more than 10 years. With a team of Western-trained and experienced lawyers, we develop economically sensible and tailor-made solutions for our clients in German, Arabic, English and French. The firm's clients include medium-sized and large local and international (especially German and Austrian) companies.

Our German-speaking lawyers are the officially appointed legal advisors of the Austrian and Swiss embassies in Abu Dhabi.

Practicing for more than a decade in the UAE, we have acquired in-depth experience of the UAE's legal system's often daunting intricacies, and at the same we have gained a thorough understanding of our clients' businesses within the UAE & Gulf market. By combining legal knowledge and commercial expertise we can best advise our clients in their day-to-day legal affairs and strategic legal planning and we can help them to bridge the legal and cultural divide between them and their counterparties inside and outside of court.

One particular strength of the firm is litigation and arbitration where the firm advised in many high value and complex disputes. Our experienced lawyers draft all the memoranda for the court, and we offer a realistic prognosis and make recommendations that serve our clients' best interests. We seek to minimize costs by focusing on speed without compromising quality, and we also strive to make those costs as transparent as possible to help our clients budget litigation and arbitration expenses appropriately.

Disclaimer

The contents of this article have been carefully prepared as per the authors' current knowledge. No liability is assumed for the correctness and completeness of the content or for changes in the meantime.

© 2022 Reprinting, in whole or in part, and any type of reproduction and distribution are only permitted with the express consent of the authors.