

The Civil Code of the United Arab Emirates

**The Law of Civil Transactions
of the State of the
United Arab Emirates**

Translated from Arabic into English by

JAMES WHELAN

&

MARJORIE J HALL

Middle East Business Law Series

Graham & Trotman

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FOREWORD

The Law of Civil Transactions of the State of the United Arab Emirates, to give this legislation its official title, or the UAE Civil Code, as it is commonly referred to, was published in the December 1985 issue of the UAE Official Gazette, and came into effect on 29th March 1986. The relevant part of the enacting law, Law No. 5 of 1985, reads as follows:

"The attached Law shall have effect in respect of civil transactions in the State of the United Arab Emirates."

Shudders went through the banking community when they saw Article 714. Did this Article prohibit the charging of interest? After months of uncertainty, amending Law No. 1 of 1987, was passed, of which Article 1 reads:

"The text of Article 1 of Federal Law No. 5 of 1985 ... is hereby replaced by the following text:

The attached law shall apply in respect of civil transactions in the State of the United Arab Emirates, but commercial transactions shall continue to be governed by the laws and regulations in force in that regard until the Federal Commercial Code is enacted."

Although it is likely that the purpose of the amending legislation was to indicate (inter alia) that interest on bank loans was not prohibited, it was no more than an indication, and new uncertainties were born. There is no statutory definition, in the Civil Code or elsewhere, of what is a civil as opposed to a commercial transaction. "Civil" is generally regarded as referring to private,

personal transactions, and "commercial" to transactions conducted in the course of business. A transaction can be both, depending on the standpoint of the contracting party. A property owning company is engaging in a commercial transaction if it grants a residential lease to a private person. That transaction is, presumably, civil from the tenant's point of view. However, since any transaction by its nature needs at least two parties, does the Civil Code govern the relationship?

It is submitted that the better view is that the Civil Code does apply according to its own terms, indeed according to the first sentence of Article 1 in the body of the Code itself, to all matters save those where the provisions of particular laws (e.g. the UAE Maritime Code) are inconsistent with the provisions of the Code.

The code is thus the baseplate of the law of the UAE, and its provisions will apply both where there is no specific legislation to the contrary, and where specific legislation is silent on a point in issue. Thus, a contract may be governed by the Maritime Code or the Law of Agencies, but the Civil Code will govern whether the contract was valid in the first place, the capacity of the parties to contract, remedies for fraud, and so on.

The Code draws heavily on the civil codes of other Arab countries, notably Egypt, which, since modern codification of laws began in some cases to supersede and in other cases to coexist with the Islamic Shari'ah, has been at the forefront of Arab law-making. The draftsmen of the Code would scarcely seek to deny their indebtedness to the laws of the sister Arab states. Quite the contrary: the increasing sense of a pan-Arab as opposed to a purely national cultural and historical identity renders it laudable for any state within the Arab community to demonstrate by

its legislation or any other public act that it swims in the same stream and joins with its sister states in seeking their communal goals.

The resurgence of Islam, the bedrock of the pan-Arab national identity, is probably more than marked in the UAE Civil Code than in the civil codes of any other Arab country. It is marked not only in the content, but in the language used. This has posed particular problems for the translator.

It would be a bold translator who claimed to offer to his readers a perfect and definitive translation of legislation such as the UAE Civil Code, and such a claim would be not merely bold but brazen if made by a translator who, as in this instance, is also a lawyer practising in the United Arab Emirates. The translator has held many difficult but entertaining sessions with Arab lawyers, both of UAE origin and from other Arab countries, practising in the UAE, attempting to extract a definitive meaning from some of the more obscure passages in the Code. In some cases it is a question of *quot homines tot sententiae*, or *Allahu a'alam* - God knows best.

In the ultimate test, argument before a judge, one may expect to see the judge applying, whether consciously or not, his learning in the laws of his own background, whether that of the United Arab Emirates themselves, or of other countries, principally Egypt, Sudan, Lebanon, and Syria.

For this reason a caution must be given to those who rely on this English translation in seeking to ascertain what the law is. Other translations may be different, but equally sustainable. Although the translator hopes that despite the length and intricacy of the task there is nothing which is actually wrong, there are many instances in which no

translation can be confidently assumed to be conclusively right. Perhaps more importantly, it has not always been possible to avoid the temptation to slip into the comfortable vocabulary of English law, and the reader is warned that it is not usually safe to apply to technical legal terms appearing in this translation the meanings with which they are clothed in the common law jurisdictions.

In many cases, Arabic does not distinguish between words which have related but distinct meanings in English law, e.g. hire/lease, company/partnership, pledge/mortgage. Rather than using the word which would have been more appropriate in a given context, this translation does, by and large, use the same word where English law would have differentiated, particularly as many provisions of the Code apply equally to both.

In certain cases an alternative word or phrase has been put in brackets in the body of the text either for clarification, or to show that there is a valid alternative. There are bracketed words in the original, and the only Articles in which they have been reproduced in the translation are nos. 153, 243 and 570. All other brackets represent interpolations by the translator.

It is now my pleasant task to acknowledge the assistance given to me in preparing this work. Fuad Barahim and my colleague at work, Essam Al Tamimi, have placed at my disposal their knowledge and experience in battling with numerous obscurities. Dr. Hassan Alloub, formerly a judge of the Supreme Court of the Sudan, has placed me in his debt by applying his profound learning and meticulous attention to detail to points which had defeated my own unaided efforts. All three are in active practice as advocates in the courts of the UAE. Nagib Ghafoor, a solicitor of the Supreme Court of England and Wales, and also my colleague at

work, has applied the invaluable combination of his English legal training and complete bilingualism to probe and resolve ambiguities and tortuous constructions. This work is the better for their generosity, but any errors are mine alone.

My secretary, Alice D'Souza, has with her characteristic lightning speed and personal pride in her work lightened my burden in producing a flow of accurate working copy at a rate which defies belief. Cheryl Tait, a house guest attempting to have a holiday, entered the fray without a murmur at a critical time when dragged in to perform the tedious task of checking article and paragraph numberings.

This work began before May 1987, when Coward Chance, whom I joined in August 1984, merged with Clifford-Turner to become Clifford Chance, I give my thanks to my colleagues in Coward Chance as was and Clifford Chance as is for their kindness in placing at my disposal the secretarial and office services without which this task could not have been completed within the time available.

Finally I thank my wife Carol, herself a solicitor, for her constant encouragement and, above all, for her uncomplaining toleration of the near destruction of domestic life which this task entailed during the months it continued.

James Whelan
Sharjah, United Arab Emirates
August 1987

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