

inBrief



Litigation 2.0 – Significant changes in onshore litigation from January 2023

By Chatura Randeniya and Nazim Hashim | 12 January 2023

On 2 January 2023, three pieces of federal legislation came into effect which, if implemented as envisaged, will arguably make the most significant changes to litigation in the on-shore Dubai Courts since the UAE was established.

The three laws are:

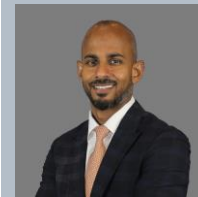
- Federal Decree Law 42/2022 on Civil Procedures (the **CPC**);
- Federal Decree Law 35/2022 on Evidence in Civil and Commercial Transactions (the **Evidence Law**); and
- Federal Decree Law 34/2022 on Regulating the Advocacy and Legal Consultancy Professions (the **Advocacy and Legal Consultancy Law**).

While there is plenty in the laws to interest practitioners, what follows is an overview of some of the more significant changes introduced by each of the laws from the perspective of litigants.

Federal Decree Law 42/2022 on Civil Procedures (the CPC)

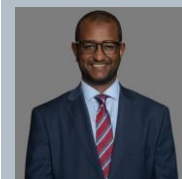
Perhaps the most significant change introduced by the CPC, and certainly the one that has captured the public attention, is the provision for the creation of courts that will function in the English language. Strictly speaking, these courts have not yet been created, and Article 5(2) of the CPC provides that the President of the Federal Judicial Council or the head of the local judicial authority to establish courts which will hear disputes regarding (as yet unspecified) specialised matters. The importance of this development is difficult to understate, as parties not conversant in Arabic have long been apprehensive of proceedings which they are unable to comprehend without the assistance of translation. It will also help bring down the cost of litigation by eliminating the need to translate all documentary evidence into Arabic. It is worth noting that Abu Dhabi has had dual language (English-Arabic) courts in operation for a few years now.

The Authors



Chatura Randeniya
Partner
crandeniya@afridi-angell.com
Tel: +971 4 330 3900

Chatura's practice focuses primarily on dispute resolution. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, ICC and ad hoc arbitrations. He also works with local advocates on matters before the UAE Federal courts. Chatura regularly advises clients in high value construction, and maritime and shipping disputes. He is admitted as Attorney-at-Law of the Supreme Court of Sri Lanka. He is a recommended practitioner by Chambers and Partners and Legal 500.



Nazim Hashim
Senior Associate
nhashim@afridi-angell.com
Tel: +971 4 330 3900

Nazim practices in the firm's dispute resolution group. He has substantial experience in all aspects of civil and criminal litigation from case intake through to final disposition at trial. He handles a heavy caseload at a busy litigation practice, which includes conducting research and drafting memoranda used to support court pleadings. Nazim is a member of the Sudanese Bar Association.

Article 29 of the CPC does away with the distinction between plenary and small claims cases before the courts of first instance (an administrative decision based on the value of the claim), and all matters in the first instance will now be heard by a single judge, whose decision will be final if the claim value is under AED 50,000. Previously, courts of first instance were comprised of three judges for plenary claims. In a jurisdiction where dissenting opinions are rare, the constitution of single judge courts to hear cases of first instance should hopefully free up judicial resources to create more circuits to hear disputes more efficiently.

Article 32 makes provision for the creation of a new circuit to hear inheritance cases and civil, commercial or real estate disputes arising out of inheritance matters. Decisions of the court will not be subject to appeal, but may be the subject of petitions for reconsideration. This amendment likely reflects the recent growth of the UAE population, and the UAE's increasing popularity as a jurisdiction to reside in for the longer term.

Continuing the trend of the amendments made to the old civil procedures law (notably including the 2019 regulations), the CPC contains provisions aimed at making litigation a faster process. Some examples include:

- (a) Where parties overseas are required to be summoned through diplomatic channels, Article 11(2) provides that the parties are deemed to be summoned once 21 working days have passed from the UAE Ministry of Foreign Affairs making the request for service to the diplomatic mission of the foreign country in the UAE. The previous practice was to wait for confirmation of summons being served in the foreign jurisdiction, which caused significant delays. It should be noted that service through diplomatic channels is now a last resort, where summons through other means (e.g. electronic communication) have failed.
- (b) The powers of the supervising judge of the case management offices have been enhanced to include issuing orders to appoint experts, hear witnesses, refer disputes to conciliation, or rule that claims have been waived or abandoned. Previously, these orders could only be issued by the court, which led to delays.

Major changes have been made to the appeals process. Appeals to the Court of Appeal formerly entailed a complete re-hearing of the dispute as a matter of course, but this will no longer necessarily be the case.

Article 167 provides that the Court of Appeal shall, within 20 working days of the appeal being referred to it by the case management office, make a decision on whether to dismiss the appeal or call for further submissions. It is possible, therefore, that an appeal could be determined with only a single round of submissions made to the Court of Appeal. Consequently, as a practical matter, parties will be required to present comprehensive arguments, together with supporting evidence, with its first submission. For more details, please see our [inBrief](#) of 9 January 2023.

Article 178 requires appeals to the Court of Cassation to be made within 30 days, as opposed to 60 days as previously provided for. If a Cassation appellant makes an application for a stay of execution, Article 177(3) requires that it must be decided on within 15 days by the Court of Cassation, whereas previously there was no time limit.

Time limits applicable to execution proceedings have also been truncated. A judgment debtor now only has seven days within which to satisfy a judgment debt or object to its execution before the court makes orders for attachment of assets etc. This period used to be 15 days.

Federal Decree Law 35/2022 on Evidence in Civil and Commercial Transactions (the **Evidence Law**)

The changes made by the Evidence Law are equally important, perhaps more so, as they more likely to have a direct bearing on the outcome of cases.

Perhaps the most significant change is the one made through Article 35 which provides that, in commercial disputes, a party may seek production of documents from its opponent, provided that the document must be identified clearly (or as a clear category of documents), the document must relate to the underlying commercial transaction, and the production should not infringe trade secrets or related rights. The court may draw an adverse inference in the event a party refuses to produce documents. The limitations regarding document disclosure and production were often cited as a weakness in the onshore court system, and the position now under Article 35 (which will be quite familiar to common lawyers) ought to go some distance in redressing this weakness.

Article 5 of the Evidence Law requires the courts to give evidence to any rules of evidence that the parties may have agreed to in writing, unless it is contrary to public order.

There appears to be an emphasis on oral evidence in the new Evidence Law. Article 78 in particular contains detailed provisions on the examination and cross-examination of witnesses. It is also encouraging to see specific provisions in Article 9 of the Evidence Law on how persons with speech impediments may give testimony.

Subject to the UAE's treaty obligations and considerations of public order, Article 12 provides that a court may accept 'evidentiary procedures' implemented overseas, which could include, for example, affidavits or witness statements executed overseas. These provisions would be of particular interest to parties who wish to tender evidence from overseas (e.g. from parent companies headquartered overseas, or where the dispute relates to an international transaction, both which are quite common in the UAE).

Federal Decree Law 34/2022 on Regulating the Advocacy and Legal Consultancy Professions (the **Advocacy and Legal Consultancy Law)**

Given the introduction of a framework for English language courts, it is not particularly surprising that the Advocacy and Legal Consultancy Law makes provision for foreign lawyers to appear in the onshore courts. Article 10 provides that foreign lawyers who, among others, have a minimum of 15 years' experience, have a valid registration in the country in which s/he is qualified as an advocate, and is a partner in a firm which has branches in at least three different countries with at least 25 partners in total and two partners in the UAE, may appear in the onshore courts. However, these rights of audience are limited to 'specialised circuits' (almost certainly the English language circuits provided for in the CPC) and do not extend to criminal or family matters. Previously, rights of audience in the onshore courts were limited to UAE nationals and certain Arab nationals.

The implementation of these legislative changes will be scrutinised with interest and, in addition to making the process of litigation more efficient, it is hoped that that the changes will also lead to better outcomes. The new Evidence Law is likely to be quite important in this respect, and it will be particularly interesting to see how the provisions on witness examination and document production will be treated by civil law judges. Going forward, the creation of specialist commercial and technical courts will be an important, if not essential, reform to facilitate better outcomes, and it is encouraging to see the concept of specialist courts being recognised under the CPC with the creation of courts that will have jurisdiction over inheritance-related disputes. ■

Afridi & Angell

Founded in 1975, Afridi & Angell is a full-service UAE law firm in its fifth decade at the forefront of the legal community. From the beginning, our hallmarks have been a commitment to quality, unsurpassed knowledge of the law and the legal environment, and crafting of innovative business solutions. Licensed in the three largest Emirates of Abu Dhabi, Dubai and Sharjah as well as the Dubai International Financial Centre, our practice areas include banking and finance; corporate and commercial law; arbitration and litigation; construction; real estate; infrastructure projects; energy; project finance; maritime (wet and dry); and employment. We advise local, regional and global clients ranging in size and sophistication from start-ups, sole proprietorships, family-owned businesses, entrepreneurs and investors to some of the world's largest public and private companies, governments and quasi-government institutions. We attract and retain clients with our dedication to practical guidance focused on their business needs supported by decades of experience here in our home jurisdiction, the UAE.

Afridi & Angell is the exclusive member firm in the UAE of top legal networks and associations, most notably Lex Mundi, the world's leading network of independent law firms, and World Services Group.

www.afridi-angell.com