

## inBrief



### Modernising the Backbone of UAE Private Law: The New UAE Civil Code

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The Civil Transactions Act, commonly referred to as the Civil Code, is arguably the single most important piece of civil legislation in the UAE.

While there are extensive laws regulating specific subject matter such as labour relations, real estate and leasing, companies, banking, and other commercial activities, the fundamental principles which form part of those laws are rooted in the Civil Code. This includes concepts such as good faith, abuse of rights, party autonomy, fault, harm, causation, unjust enrichment, and nullity.

The importance of the New UAE Civil Transactions Act of 2025 ("the **New Code**"), which comes into effect on 1 June 2026, is therefore impossible to overstate. The New Code replaces the Civil Transactions Act of 1985 (the "**Old Code**"), and constitutes both an overhaul of the law, and a legislative response to four decades of economic, social, and technological developments which has seen the UAE become a global centre for investment, digital innovation, and complex transactions. The New Code addresses these developments by modernising language, refining legal concepts, and introducing solutions aligned with contemporary realities, while preserving fundamental values such as justice and legal certainty.

In this inBrief, the first of a series examining the nature and consequences of the changes introduced by the New Code, we offer, as an important introduction, a conceptual analysis of select key features of the New Code, including its role in bridging legislative gaps, clarifying terminology, introducing new regulatory areas, and expanding judicial discretion.

#### From Silence to Structure: How the New Code Addresses Longstanding Omissions

One of the most prominent legislative objectives of the New Code is to fill substantive gaps that existed in the Old Code. One such example is the law regulating assignments. The Old Code confined itself to the issues around the assignment of debts, while being silent on the assignment of rights. In the absence of legislative provision, the courts developed clear principles on the assignment of rights. However, as UAE's legal system does not recognise the concept of binding precedent, these principles were considered guiding practice. The New Code at Articles 405 to 424 codifies these principles into law, thus providing welcome certainty.

The New Code now contains provisions on pre-contractual negotiations, which was not an area that was previously covered by legislation, and has already understandably garnered wide interest.

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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 ranked practitioner by Chambers and Partners and Legal 500. Chatura is a Fellow of the Chartered Institute of Arbitrators (CIArb).



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Articles 121, 122, and 123 of the New Code now govern negotiations and the conduct of parties leading up to the formation of a contract. The New Code imposes specific obligations on the parties where pre-contractual negotiations are concerned, which, most notably, include duties to negotiate in good faith and disclose relevant information. Furthermore, the New Code stipulates that abusive termination of negotiations may give rise to liability, granting the aggrieved party the right to claim compensation even in the absence of an executed contract. Such compensation is a statutory or tortious liability rather than a contractual liability, which are considered distinct sources of obligation under Article 121 of the New Code.

Notwithstanding these advances, it is noteworthy that the new provisions do not expressly address the legal status of admissions made by parties during the negotiation process. In particular, uncertainty remains as to whether such admissions may be relied upon in subsequent legal proceedings if negotiations fail and no contract is formed. Previously, at least one judgment of the Dubai Court of Cassation held that such admissions are not admissible as evidence. Article 123 of the New Code provides that anyone who uses or discloses, without authorisation, confidential information obtained during negotiations or the contract, shall be held liable in accordance with the general rules. Whether this provision encompasses inadmissibility of admissions made during negotiations, or only extends to safeguarding confidential information exchanged during negotiations, remains to be clarified through judicial interpretation.

On the flip side of the coin, the New Code omits altogether matters from the Old Code which have since been addressed in specific legislation. Examples include the burden of proof, previously set out in Article 112 to Article 123 of the Old Code, which is now set out in the Federal Decree-Law No. 35 of 2022 Promulgating the Law of Evidence in Civil and Commercial Transactions. Similarly, rules governing bankruptcy and insolvency which were previously contained in Articles 401 to 413 of the Old Code, have been omitted in light of the enactment of Federal Decree-Law No. 51 of 2023 on Financial Reorganization and Bankruptcy Law and Federal Decree-Law No. 19 of 2019 on Insolvency. This streamlining of legislation is a welcome development.

## The Expansion of Judicial Reasoning and the Reconfiguration of Legal Sources

Article 1 of the New Code significantly broadens the discretionary power that may be exercised by the UAE Courts in the absence of applicable statutory provisions. Under the Old Code, the judges were directed to refer to the Islamic Sharia in such circumstances. However, their discretion was restricted by a hierarchical methodology that required judges to consult the Maliki and Hanbali schools of Islamic jurisprudence first, and if no guidance was found, to then look to the Shafi and Hanafi schools. This formulation imposed not only a restrictive waterfall methodology of reference, but also an implicit confining of judicial reasoning to those specific schools of Islamic jurisprudence.



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The New Code removed this fetter from the courts and empowers judges with discretion to refer to, interpret and apply Islamic Sharia more broadly as the circumstances warrant. This development reflects a conscious legislative choice to replace methodological rigidity with principled flexibility. At the same time, it raises a practical question as to the contours of “Sharia” as a source of law, given its breadth and conceptual diversity. This places a heightened responsibility on higher courts, particularly the Court of Cassation, to articulate guiding principles that can ensure coherence and consistency over time.

The New Code also introduces natural law and rules of justice as additional subsidiary sources to which the court may resort if no solution is found in statutory provisions, Sharia, or customary principles. This underscores the legislator’s expectation that judges will exercise active intellectual effort in seeking fair solutions in the absence of legislative provision. However, the absence of a codified definition or criteria for what constitutes natural law and rules of justice may pose interpretative challenges and uncertainty, particularly in complex commercial disputes.

### Precision of Terminology and Structure in the New Code

Beyond substantive reform, the New Code reflects a deliberate drafting philosophy centered on precision, structure, and accessibility. This plays a central role in ensuring consistent interpretation, predictable application, and effective compliance.

For example, under the Old Code (Article 890), a subcontractor (i.e. a person or entity engaged by a main (or prime) contractor to perform part of the contractor’s obligations to a third party) was described as *Second Contractor*. The New Code, at Article (832) replaces *Second Contractor* with *Subcontractor* which is linguistically and conceptually precise, immediately conveying the legal nature of the relationship as one derived from and dependent upon a primary contract.

Through such refinements, the New Code demonstrates a commitment to simplifying language, improving organisation, and aligning statutory terminology with established legal usage, thereby enhancing both the intelligibility and practical effectiveness of the law.

### Conclusion

The promulgation of the New Code marks a decisive moment in the evolution of private law in the UAE, and showcases the UAE’s legal system as one that is attentive to its historical foundations while being responsive to the demands of a rapidly transforming society.

As is the case with all legislation, the true impact of the New Code will ultimately depend on the courts’ interpretation and application of its provisions, particularly the level of guidance flowing from the superior courts in the initial years. In this sense, the New Code should be viewed, not as the final word but, as the beginning of a renewed dialogue between the legislators and the judiciary. ■

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