

2022 UAE Civil Procedures Law

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The latest amendment to the UAE Civil Procedures Law was sought by legal practitioners as well as judges in the UAE, following years of having two separate pieces of legislation, since 2018, when the Civil Procedures Law was parted into a Federal Law supplemented by a Cabinet Decision where specific provisions were included as Executive Regulations, to interpret and clarify certain provisions of the law.

Analysis

When Federal Decree-Law No. 42/2022 Promulgating the Civil Procedures Law entered into force on 2 January 2023, it effectively consolidated the previous Federal Law No. 11/1992 on the Civil Procedures Law and Cabinet Decision No. 57/2018 on the Regulation of Federal Law No. 11/1992 on the Civil Procedure Law and repealed and replaced them following requests of the practitioners upon the legislator to consider the challenges faced while reviewing the previous law.

Federal Decree-Law No. 42/2022 is one of the latest in progressive steps taken by the legislator in the UAE, among many legislative reforms, and it is also the most recent, in a series of laws and cabinet decisions issued since the introduction of Federal Decree Law No. 11/1992, amended by Federal Law No. 30/2005, Federal Law No. 10/2014, Federal Decree-Law No. 10/2017, Federal Decree-Law No. 18/2018, along with Cabinet Decision No. 57/2018, Cabinet Decision No. 33/2020, Federal Decree-Law No. 15/2021, and Cabinet Decision No. 75/2021.

The changes to this current draft of the law are not as numerous or extensive as they were in 2021, when the major reforms to the civil procedures law were introduced. The most notable changes then were embracing technology in the court system, setting up ad-hoc courts where experts act in the capacity of judges, introducing one level courts identical to arbitration tribunals, and having a process of overturning supreme court judgments, which were rendered a novelty in court civil procedures. It is also noted, to the credit of the legislator, that the said reform were not only retained, but extended and expanded to include English as another language of the Courts in addition to Arabic, and elaborating on the process of service of summons out of the UAE and its jurisdiction. The status of cheques as "enforceable papers" was also changed, and the appeals procedure was modified, including how the Court of Appeal would handle cases that come before it and setting a new deadline for Court of Cassation appeals. The objective of the legislator in pursuing the changes and amendments to the old law is to obtain a just, fair, equitable and impartial adjudication on the rights of litigants under established principles of substantive law. Federal Decree-Law No. 42/2022 aims to provide the UAE courts users with certainty, and access to user-friendly courts in the UAE.

Official language of court proceedings

Conventionally, the traditional language of the UAE Courts was Arabic. This was in accordance with the now revoked Article 4 of Federal Law No. 11/1992. Though Article 5(1) of Federal Decree-Law No. 42/2022 has kept the main language of the courts as Arabic, a novel exception has been granted in Article 5(2) of Federal Decree-Law No. 42/2022, the Vice-President of the Federal Judicial Council or the supervising judge of the local judicial authority must issue a decision (in certain cases) to direct specific judicial circuits to hold the case proceedings in the English language, including the written submissions. All court proceedings, decisions, parties and witness statements, lawyers' defence, statement of claims, court memoranda, supporting evidence/documents, and verdicts must be in the English language. In case the Court decides to hear parties' or witnesses' statements whose language is not the English language, it must be under oath and through a certified interpreter according to the rules of the decision issued by the Vice-President or the supervising judge.

This amendment has added further flexibility to the UAE's legal system as allowing the English language, being the global lingua franca, will allow litigants with no knowledge of Arabic better understand their legal proceedings and have confidence in the legal system. Use of English in specialized circuits of the courts will also reduce any risks of possible errors made by translators.

The service of summons

Article 4 of Cabinet Decision No. 57/2018 stipulated that a notice may not be served, nor may an execution procedure be initiated by the process server or the executor, before 7:00 am or after 9:00 pm, or during official holidays, except in case of necessity and under a written permission issued by the Supervising Judge, the competent judge, or the magistrate of summary justice. Notice was also excluded from such requirements where it was served by any means of modern technology, whether upon a physical or a juristic person. Article 7 of Federal Decree-Law No. 42/2022 corresponds to Article 4 of Cabinet Decision No. 57/2018, except that Article 7(2) of Federal Decree-Law No. 42/2022 has specified that notice through registered calls must not be made before 7:00 am or after 9:00 pm, or during the official holidays. This can be excluded as per Article 7(1) of Federal Decree-Law No. 42/2022 in case of necessity and under written permission issued by a judge.

Article 7(3) of Federal Decree-Law No. 42/2022 stipulates that notice through technical means may be excluded as notice outside of the official working hours, replacing Article 4(3) of Cabinet Decision No. 57/2018, wherein it provides that the date of the notice or the commencement of implementation in respect of its activity must be during official working hours.

Service of the person at their place of work regarding personal status cases

Article 9 of Federal Decree-Law No. 42/2022 introduced an exception to the service of summons with regards to personal status cases. Article 9(e) of Federal Decree-Law No. 42/2022 provides that notices related to personal status cases may be excluded from service to a workplace, where a manager or work reception desk employee may accept the service on behalf of the addressee and must be communicated solely to the person to be served at their place of work.

This amendment was made to protect the privacy of the individual being served and to prevent any adverse repercussions to his or her family.

The date of service

As per Article 7(6) of Cabinet Decision No. 57/2018, persons to be served with a known domicile abroad who cannot be notified by means of technology or through private companies or offices or as agreed by the parties, must be served by a notice delivered to the Ministry of Justice, referred to the Ministry of Foreign Affairs, which the latter must communicate thereupon by diplomatic means, unless the notice serving methods in such instances are regulated under special treaties. It was also provided in Article 8(2) of Cabinet Decision No. 57/2018, that the date on which the letter is sent by the Ministry of Foreign Affairs is deemed the date of service, where it demonstrates whether the addressee has either received a copy of the notice or abstained from receiving the same.

In the absence of a treaty between the UAE and the other country, the service of summons beyond the UAE's jurisdiction previously posed difficulties. Therefore, according to Article 11(2) of Federal Decree-Law No. 42/2022, a service of notice outside of the jurisdiction will be considered effected 21 working days after the date of the notification from the Ministry of Foreign Affairs and a communication of the international cooperation containing the Declaration to the diplomatic mission abroad. This change has created more clarity for serving parties of legal proceedings, however it does require caution by parties being served as failure to receive or rejection of a notice will no longer be rendered a valid defence to dismiss a case for insufficient service of summons.

Article 11(4) of Federal Decree-Law No. 42/2022 has further provided that a notice will be rendered served from the date of listing on the website of the court on the dedicated page, and that the listing will last 15 days and from the date of completion of the publication.

Specific jurisdiction of the courts

Article 29 of Federal Decree-Law No. 42/2022 introduced a significant amendment regarding the jurisdiction of the courts, where the Courts of First Instance composed of a single judge were made competent to hear First Instance cases regardless of their value. Furthermore, the judgments issued by these courts are made final if the value of the case does not exceed AED 50,000.

Local jurisdiction of the courts

Regarding the court's competence in cases related to inheritance, Article 36 of Federal Decree-Law No. 42/2022 states that "Claims relating to inheritance that are raised before the distribution by the estate creditor or by some heirs to each other shall fall under the jurisdiction of the court where the estate is located or the court in which the majority of the estate is located in."

Hearings procedures and order

New grace period for courts to pass a judgment

Federal Decree-Law No. 42/2022 has introduced a new grace period of which the courts shall not exceed to issue a judgment to end litigation. Article 78(3) of Federal Decree-Law No. 42/2022 has specified that in all cases, the court shall issue the judgment ending the litigation within a period not exceeding 80 days from the date of the first hearing of the case before it.

This change has reduced the grace period from the previous 100 days in Article 1 of Cabinet Decision No. 33/2020.

The conduct of hearings

Under Article 79 of Federal Decree-Law No. 42/2022, all hearings were to be made public, however personal status and inheritance claims were expressly excluded from public hearings. The proceedings shall be public, unless the laws in force in the State provide otherwise or the court decides on its own motion or at the request of one of the litigants, to conduct it in privacy in order to preserve public order or to respect morals or the sanctity of the family.

This exclusion of both personal status and inheritance matters from the public was intended to protect the privacy of individuals and their families.

Defences, input, intervention and interlocutory requests

Article 91(4) of Federal Decree-Law No. 42/2022 introduced, for the first time, legislation to allow for a plaintiff to only pay 10% of the court case fees and have 90% reimbursed to such plaintiff where the court determines it has no jurisdiction for a claim.

The introduction of this new clause aims to limit the costs the plaintiff sustains when no jurisdiction was seized, the court did not extend time and effort in reviewing the matter and the plaintiff failed in seeking the court response to his lawsuit.

Enforceable instruments

A writ of execution, enforceable instrument or deed is the defining prerequisite for the enactment of an instrument by onshore courts. Article 212 of Federal Decree-Law No. 42/2022 explicitly provides a schedule of enforceable instruments which have not been amended.

As stipulated in Article 212(2) of Federal Decree-Law No. 42/2022, these enforceable instruments are:

- provisions and orders, including penal provisions, including restitution, compensation, fines, and other civil rights;
- edits documented in accordance with the law governing documentation and certification;
- the minutes of reconciliation ratified by the courts; and
- other documents given by law as such.

Article 212(2)(d) of Federal Decree-Law No. 42/2022 is an all-inclusive provision with regards to enforceable instruments as it provides for all other documents granted enforceability by law. Additionally, the decriminalisation for bounced cheques appears to have been enforced by Article 143(2)(a) of Federal Decree-Law No. 42/2022, which addresses payment orders, in keeping with the stance taken by Federal Decree-Law No. 14/2020 Amending some provisions of the Commercial Transactions Law promulgated by Federal Law No. 18/1993. Though parties could petition for the enforcement of bounced cheques without legal proceedings previously, Federal Decree-Law No. 42/2022 affirmed the stance that cheques are, in fact, enforceable instruments, which is a position that Federal Decree-Law No. 14/2020 did not take into account.

Assisting experts

The common process of appointing an expert by the court during the case proceedings has now changed. Article 29(3) of Federal Decree-Law No. 42/2022 provided that during the case management stage, the supervising judge may request the assistance of one of the local or international experts to prepare or review the reports submitted to the court as part of the case. The court will discuss the outcome of such reports with the appointed expert and have the right to instruct them to amend or add further points to their reports.

Court of Appeal deliberation chambers

Civil litigation in the UAE is recognised for an appeal process that is fast and efficient. Although appeals were granted as a matter of course, the Court of Appeal has been given new authority for sorting through appeals. Article 167(2) of Federal Decree-Law No. 42/2022 provides that the court may decide directly on the appeals in the deliberation chambers by the Case Management Office, without the need for the counsel's attendance or submission of any oral/written pleadings.

Article 167(3) of Federal Decree-Law No. 42/2022 further provides that the Court of Appeal has 20 working days from the time an appeal is sent, to decide whether to schedule a hearing for the appeal's main arguments or to pass a reasoned judgment for the dismissal of the appeal.

In some cases, the court considers it unnecessary to set a hearing to consider the subject matter of the appeal before it because the appeal may be unjust, inadmissible, or restricted after the deadline, or there are no reasons for the appealed judgment or decision to be considered.

This is another amendment towards a more rapid and effective mechanism to conclude the litigation process with a final executable judgment holding a res-judicata power.

New deadline for appeal in Court of Cassation

Contrary to Article 84-bis of Federal Law No. 11/1992, as amended, which stated that a Court of Cassation decision may be appealed in a period of 60 days, Article 178 of Federal Decree-Law No. 42/2022 provided that the appeal period is now 30 days.

Execution grace period

According to Article 233(3) of Federal Decree-Law No. 42/2022, the party that is being executed in an execution case has a grace period of seven days (instead of 15 days as provided in Article 97(2) of Cabinet Decision No. 57/2018) from the date of a successful notification to amicably clear the debt to avoid any provisional attachment orders. The other notable amendment in Article 177(3) of Federal Decree-Law No. 42/2022 is the grace period which stated that the court shall decide on the suspension of execution within a period not exceeding 15 business days from the date of submission to the Court of Cassation. Article 177(4) of Federal Decree-Law No. 42/2022 provides that the court may, when ordering a stay of execution, require the submission of a guarantee, or order what it renders sufficient to preserve the rights of the respondent. Article 177(3) of Federal Decree-Law No. 42/2022 requires the session to be set within 15 working days to consider the request for a stay of execution, in the interest of justice and to avoid serious and irreparable harm upon the execution of the appealed judgment against the appellant.

Provisional attachment orders

Federal Decree-Law No. 42/2022 maintained the usual procedure of granting those who have first instance judgments in their favour the right to proceed with preventive procedures such as provisional attachment.

Nevertheless, Federal Decree-Law No. 42/2022 provided a new time restriction to the provisional attachment imposed by one of the parties prior to the conclusion of the appeal stage. The party who has a provisional attachment in their favour is now obliged to commence executing the appeal judgment within a time span of 30 days of its issuance. Otherwise, the imposed provisional attachment shall be void by law.

Revocation of Cassation judgments

Article 190 of Federal Decree-Law No. 42/2022 stated that the Court of Cassation may rescind its own judgments in one of the following situations:

- if the court or its associated entities made a procedural error that affected the final result of the judgment;
- if the judgment was issued based on a revoked law and applying the applicable law will change the final result of the decision/judgment; or
- if the judgment contradicts any of the judicial principles set out by the Court of Cassation Chambers or is contrary to the principles established by the Court of Cassation.

The rescindment request must be submitted to the relevant court (Federal Supreme Court or Court of Cassation) with a deposit of AED 20,000, which will be reviewed by a committee that consists of five judges.

Remote communication technology in civil procedures

Section 6 of Federal Decree-Law No. 42/2022 has regulated remote litigation procedures and granted them legitimacy. Below are some of the most notable.

Article 330 of Federal Decree-Law No. 42/2022 has allowed for all the provisions concerning the collection of fees, registry, declaration, submission of documents, appearance, publicity, pleading, hearing of witnesses questioning, deliberation, issuance of judgments, submission of appeals and execution through the procedures thereof to be deemed valid if carried out totally or partially through remote communication technology.

Furthermore, Article 331 of Federal Decree-Law No. 42/2022 provides that the President of the Court, President of the Circuit, competent judge, or their representatives may take the procedures remotely whenever they deem it appropriate in any of the stages of the civil proceedings in order to facilitate the litigation procedures.

Article 334 of Federal Decree-Law No. 42/2022 provided for the following:

1. Remote litigation records must be registered and kept electronically and will be confidential. They may not be circulated or reviewed or copied or deleted from the electronic information system without the authorization of the competent court as the case may be.
2. The court may dispense with the registration if the remote litigation procedures are recorded directly during the hearing in the electronic case file and approved by its President.

Abu Dhabi's Court of First Instance new jurisdiction

Article 24(2) of Federal Decree-Law No. 42/2022 has granted Abu Dhabi's Courts exclusive jurisdiction over all Cases where a ministry or any federal entity is a party to the case. In other words, in the event any private company or individual wants to sue any governmental entity, the Abu Dhabi Court would have exclusive jurisdiction to rule in this case.

Conclusion

Federal Decree-Law No. 42/2022 managed to compile the relevant provisions of past laws and cabinet resolutions, while also revoking a number of previous laws. Federal Decree-Law No. 42/2022 aims to modify the litigation process to become more robust, rapid, and efficient. The Executive Regulations, expected to be issued in the first quarter of 2023, will also provide a more comprehensive explanation of the implementation of many of the new amendments.

Some of the criticism to Federal Decree-Law No. 42/2022 addresses a number of provisions, especially where details on aspects of including English as the language of the court are missing, and who will bear the cost of the experts in the newly introduced experts assisting judges in the case management provision, which will hopefully be explained soon by the executive regulations. However, the main criticism to the law is on Article 190 of Federal Decree-Law No. 42/2022, which states that the Court of Cassation may rescind its own judgments which were issued in the deliberation chambers, or final verdicts, through their own motion or upon a request submitted by any of the parties.

This is one of the amendments which was introduced in Federal Decree-Law No. 15/2021 and further amended in Federal Decree-Law No. 42/2022. While this is a novelty, if it is not managed and monitored strictly, it may cause uncertainty as far as final judgment res-judicata are concerned and render enforcement of judgments a high-risk exercise.

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Biography

Diana Hamade is the founder of Diana Hamade Attorneys at Law in Dubai, her boutique law firm, and a UAE -licensed lawyer with right of audience before all UAE Courts. She is licensed by the Ministry of Justice, the Dubai Legal Affairs Department, the Abu Dhabi Judicial Department, and is a registered practitioner of DIFC Courts. She is also a registered Wills draftsman with the DIFC Wills Service Center.

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Diana is a contributor to several publications, including the UAE chapter on The Family Law book, Jurisdictional Comparisons, published by Thomson Reuters; the Middle East & North Africa Overview chapter of The International Comparative Legal Guide to International Arbitration, Litigation & Dispute Resolution; among others. Diana was the Legal Affairs columnist in The National from 2009 to 2012, she wrote a column for The Brief (Thomson Reuter) in 2008 and has a regular article published in Villa88 magazine titled the Legally Stylish Column since 2016. Diana is also a contributor to Lexi Nexis Gulf Legal Guide and the MENA Business Law Review and is regularly sought after for speaking opportunities in legal conferences, workshops, and events worldwide.

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