

3

The UAE Legal System

Zeenat Beebeejaun

The United Arab Emirates, also known as the UAE, is commonly referred to as the business hub of the region, with numerous business entities setting up their headquarters or their branches there, to enable a more effective way of trading with the Persian Gulf countries as well as the Far East.

Its federal laws emanate from its Constitution, which is the main political and legal framework enabling the United Arab Emirates to operate as a federation of the seven emirates.

The focus of this chapter is similar to that of Chapter 2 and Chapter 4: the constitutional basis of the legal system, the way the legislature works in the UAE, and the court system are explored. It also discusses the Dubai International Financial Centre, which departs in some ways from the legal systems in the UAE, in adopting laws that focus particularly on the needs of international business.

The UAE constitution

■ History

Prior to 1971, what is now the United Arab Emirates was a British protectorate – the British Residency of the Persian Gulf. In 1971, a temporary constitution was formed which enshrined the legal and political framework of the United Arab Emirates, also referred to as 'The Union'. This union is commemorated as the UAE National Day on 2nd December each year which celebrates its formal independence as a federal state and which encourages the feeling of unity and common beliefs across the seven emirates.

The Union was originally comprised of six emirates namely Abu Dhabi, Dubai, Sharjah, Ajman, Fujairah and Umm Al Quwain. The emirate of Ras

Al Khaimah became the seventh and last emirate to formally join the federation in 1972. The capital of the UAE is Abu Dhabi.

With the development of an increasingly integrated economy marked especially by free trade and free flow of capital, together with providing the world with a booming and modernised port, the UAE was compelled to develop its legal infrastructure thereby enabling traders to have a tangible legal jurisdiction to abide by in the event of any dispute.

Unlike the UK, the UAE has a written constitution. In 1996, the constitution earned its permanent status and that year also marked the creation of a unified military and legal system. However, this was initially strongly opposed by the emirates of Dubai and Ras Al Khaimah, which until today have their own separate judicial systems with their own laws enacted by their respective rulers in areas where federal law is silent or absent.

■ **Preamble, parts and articles of the Constitution**

The preamble illustrates the motives behind the Union of the emirates which essentially revolve around establishing peace, unity and obtaining a stronger international presence in view of the upcoming globalization.

There are 10 parts in the UAE Constitution namely;

- 1 The Union, its fundamental constituents and aims
- 2 The Fundamental social and economic bases of the Union
- 3 Freedom, rights and public duties
- 4 The union authorities
- 5 Union legislation and decrees and the authorities having jurisdiction therein
- 6 The emirates
- 7 The distribution of legislative, executive and international jurisdiction between the union and the emirates
- 8 The financial affairs of the union
- 9 The armed forces and the security forces
- 10 Final and transitional provisions

These parts are further subcategorized into 151 articles with their main purpose being to encapsulate the various unanimous undertakings of the seven rulers from the seven emirates.

Articles 2, 3 and 10 of Part 1 of the constitution are particularly noteworthy since they enshrine the desire for the United Arab Emirates to be a sovereign nation. This meant that each of the six emirates (initially it was the six rulers since Ras Al Khaimah joined in 1972) were prepared to observe a reciprocal recognition of the other territories, populations and customs whilst also being governed by federal legislation enacted by the Federal Supreme Council.

■ The Federal Supreme Council

The Federal Supreme Council which is also known as the Supreme Council of the Union was established by Article 45 of the Constitution which also stipulated, in addition, that the union will consist of –

- The President of the Union and his Deputy
- The Council of Ministers of the Union
- The Union National Council
- The Union Judiciary

Articles 46 and 47 further entitle the Federal Supreme Council to enjoy supreme law-making powers whilst also being viewed as the highest constitutional authority, thereby formulating general policies on all matters related to the union and other matters that would contribute to the achievement of the motives behind the union of the emirates.

The Federal Supreme Council is the body responsible for the sanctioning of decrees on matters that are subject to ratification and which require its approval. Amidst several supreme powers, it is also vested with the power of appointing the Chairman of the Council of Ministers of the Union as well as his resignation and the appointment of the President and the judges of the Supreme Union Court as well as their resignation or dismissal.

Formal sources of law

■ An overview of the various sources of law in the UAE

Despite the fact that the core principles of law in the UAE are derived from Shari'a, most of its legislation is comprised of a mixture of concepts from civil law jurisdictions and in particular it was strongly influenced by Egyptian legal codes, which in turn were influenced by French law.