

Take stock of the law

Traders who are registered to do business in the UAE, or transact with companies or people based in the UAE, should be aware of the laws that affect their establishment and how to protect themselves against any potential liability they may encounter in the course of conducting business activities. **Melissa Forbes**, an associate at the law firm Taylor Wessing, shares her knowledge of some of the general laws that govern trade activities in the UAE and how they may affect an organisation.

The Commercial Transactions Law and the Civil Code are two of the key pieces of legislation that govern commercial activities in the UAE.

In addition to the Commercial Transactions Law and the Civil Code which apply generally to commercial activities, there is a wide range of laws that regulate certain specific commercial activities such as construction, real estate sales, banking, e-commerce, shipping and international trade. There is also a wide range of specific laws that govern particular issues that are relevant to traders, such as employment, consumer rights and customs duties.

1. COMMERCIAL TRANSACTIONS LAW

Who does the Commercial Transactions Law apply to?

The Commercial Transactions Law (or UAE Federal Law No. 18 of 1993 as it is more formally known) applies to traders as well as to any person or entity who conducts commercial activities (even though such person may not be a trader).

What kind of regulations are set out in the Commercial Transactions Law?

The scope of the regulations covered under the Commercial Transactions Law

relate to matters such as unfair competition, commercial obligations, commercial sales, commercial agency, commercial representation, brokerage, transportation, banking, commercial papers, bills of exchange, record-keeping, payment by cheque, and bankruptcy.

Who is a trader?

A 'trader' is defined under Article 11 of the Commercial Transactions Law as:

- A) any person who works in his own name and for his own account in commercial activities and is properly qualified to do so; or
- B) any company which undertakes a commercial activity or has adopted one of the legal forms stipulated by the Commercial Companies Law.

What are commercial activities?

'Commercial activities' are defined under Article 4 of the Commercial Transactions Law as being:

- A) activities which are carried out by a trader in relation to his trade affairs, provided

that each activity carried out by a trader is considered to be related to his trade unless proved otherwise;

- B) speculative activities carried out by a person, though not a trader, with the intent of realising profit;
- C) activities which are stated by law as being commercial activities; and
- D) activities which are related to or facilitating a commercial activity.

Article 5 of the Commercial Transactions Law clarifies that the following activities are deemed to be 'commercial activities' for the purposes of this law:

- A) purchasing commodities and other tangible and intangible movables with the intention of selling the same at a profit, whether sold in their present condition or after their transformation or manufacturing;
- B) purchasing or hiring commodities and other tangible and intangible movables with the intent of hiring them out;
- C) selling or hiring out commodities and movables;
- D) banking, exchange and stock markets operations, as well as those of investment companies, trust funds, financial establishments and all kinds of other financial brokerage operations;
- E) all kinds of transactions relative to commercial papers, irrespective of the capacity of the persons concerned therein or of the nature of the transactions for which such operations are carried out;
- F) all kinds of sea and air navigation activities, including;



(i) the construction, sale, purchase, chartering or freighting, repair or maintenance of vessels and aircrafts, as well as sea and air cargos including sea and air carriage;

(ii) the sale and purchase of vessel and aircraft requirements, tools or materials or catering such vessels and aircrafts;

(iii) loading and unloading operations;

(iv) marine and aviation loans; and

(v) employment contracts concerning captains and pilots of commercial vessels and aircrafts;

G) incorporation of companies;

H) operating current accounts;

I) all kinds of insurance other than

cooperative insurance;

J) selling by public auction;

K) operating hotels, restaurants, movie halls, theatres, play grounds and amusement centre activities;

L) water, electricity and gas distribution activities;

M) editing newspapers and magazines whenever the publication thereof is made with the intent of making profit through the publishing of advertisements, news and articles;

N) post, telegraph and telephone operations;

O) broadcasting and television activities as well as those of recording and photography studios; and

P) the activities of public warehouses and mortgages on property deposited therein.

Article 6 of the Commercial Transactions Law further clarifies that the following activities shall be deemed to be 'commercial activities' if practiced as a profession:

A) brokerage;

B) commercial agency;

C) commission agency;

D) commercial representation;

E) supply contracts; and

F) purchase and sale of lands or real estate for the purpose of making profit from selling same in their original status or after transforming or allotting it.

What remedies are available under the Commercial Transactions Law?

Both the trader and the customer have rights under the Commercial Transactions Law. The remedies available under the Commercial Transactions Law vary, depending on the matter to which the claim relates and the



ABOUT

Melissa Forbes is an associate in the corporate department of Taylor Wessing's Dubai office. She has worked as a legal consultant in Dubai since 2008 and, before that, worked for a number of years in London and Australia.

Melissa has advised on a number of cross-border and domestic corporate transactions including mergers and acquisitions, corporate reorganisations, private equity investments, joint ventures and divestitures. She has also advised on a variety of commercial matters relating to issues such as corporate governance, regulatory compliance,

management incentive schemes, shareholder disputes, agency and brokerage agreements, licensing, company formations and de-registrations, as well as various commercial and property related disputes.

Melissa is qualified as a solicitor of both the Supreme Court of England and Wales and the Supreme Court of New South Wales in Australia.

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damage suffered as a result of the relevant incident. Generally speaking, a claimant may be able to seek compensation, a precautionary order (or injunction), although such orders are granted very rarely and only in exceptional cases, and enforcement orders, among others.

2. CIVIL CODE

Who does the Civil Code apply to?

The Civil Code governs the relationship between private parties (including corporate entities and individuals).

What kind of regulations are contained in the Civil Code?

The scope of the laws covered by the Civil Code relate to matters such as contractual rights, undertakings, guarantees and

other forms of security, and rights of ownership.

What remedies are available under the Civil Code?

The remedies available under the Civil Code are similar to the remedies available under the Commercial Transactions Law. Again, the remedy available for a particular claim will vary, depending on the nature of the claim and the damage suffered.

DISCLAIMER

The information set out above is intended to be used as general guidance only. Please seek legal advice from Taylor Wessing in relation to any particular matter before acting (or refraining to act) in accordance with the information set out above.

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