



# Mitigating Risks in Commercial Contracts: UAE Law Insights

## MRP Advisory

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### Introduction

The United Arab Emirates (UAE) is currently one of leaders of world trade attracting international corporations because of its favourable geographical position and a high level of business activity. With the economic development agendas of UAE like the Dubai Economic Agenda D33 and Abu Dhabi 2030 Vision and others, the importance of how the commercial contracts are drafted becomes more critical. These contracts are the main contracts that provide the structure for most businesses, but they have high legal risks because of the UAE's dynamic laws and distinctive legal process. It is thus important to understand these risks and ensure that there is proper management of risks in order to protect the companies.

### Evolving Regulatory Landscape

Over the years, the UAE has started taking measures toward effectively developing the legal and institutional frameworks, mostly due to the changing economic dynamics. It provides that legislation on Anti-money laundering (AML), Counterterrorism Financing (CFT), sanctions compliance, and Data protection regulations have all been overhauled to be in compliance with the international standards. Concerns regarding the flow of assets and people especially from countries such as Russia have risen globally particularly in areas of sanctions busting and money laundering.

There is a new level of complexity as the significance of digital assets is rapidly growing. AML compliance and fraud investigation are quite challenging for the UAE authorities which has become the preferred market for digital enterprises comprising of those involved in the trade of cryptocurrencies, due to the anonymity that characterizes these assets. These risks pose major threats to businesses and it is important for organizations to learn and adapt to new regulatory requirements in the UAE to prevent the occurrence of these risks and to install proper internal controls that would be effective in handling such risks.

### Risks Involved

Business relations entail several inherent risks for failure, losses or even legal troubles in the course of performing the commercial contracts. For instance, a major issue is that ***representations in contracts and clauses*** (especially in multicultural environments with different language and cultures) can be subject to ***different interpretations or ambiguated***. Arabic is the official language of UAE Courts and hence disparities between the English and Arabic contracts could arise mostly with preference to the Arabic language in legal matters.

One of these issues results from UAE's legal framework, which ***incorporates elements of civil law as well as Islamic Sharia law***. Some of the general clauses may be unlawful in the eyes of the law of the host nation or may be against the public policy of the nation thus posing a problem to international companies who may be

undertaking business in the country without sufficient knowledge of the local laws. For instance, where there are rules as in limitations of liability and liquidated damages, courts may alter the clauses if thought to be exorbitant, creating uncertainty as to enforcement.

In addition, business cycles or some factors outside a party's control may compel the party not to fulfil contractual obligation, leading to ***non-performance or breach of contract***. This risk is particularly observable in construction and real estate sectors, in which postponement or termination of projects is common and may affect the contracting commitments.

New exposures on contracts in relation ***to digital assets, data protection and cybersecurity*** have become other areas of risk in view of the UAE's journey to digitalization. Cloud service and any business that engages in digital commerce have to factor in ***protection against technology threats*** in their standard contracts of sales.

### Measures To Mitigate Risks

In order to successfully manage the risks, various strategies can be adopted by companies operating in the UAE. First, ***local legal participation during contracting and negotiation processes*** should be a 'must' in order to avoid bypassing legal pitfalls.

Legal contracts must be ***carefully drafted to avoid ambiguity or misconceptions***. All contracts should be written in both Arabic and English, with translations performed by professional legal translators. That is why ***proper drafting of dispute resolution clause*** is another essential means of managing risks.

Also, ***due diligence on contractual partners*** on a regular basis is necessary, especially to reduce the likelihood of non-performance. Businesses should ensure their partners are legally permissible, financially solvent and meet the standards of AML/CFT requirements.

Additionally, incorporating ***force majeure clauses*** tailored to the UAE's business environment is crucial, as they provide protection against unforeseen events that may disrupt contract performance.

It is also important ***to review and update contracts on a regular basis***, especially as there are changes regarding the regulations. The best way to avoid such confrontations is ensuring that contracts are rewritten issues arise within a business organisation. Further, the ***adoption of new technologies***, including smart contracts or block chain, can enhance the level of transparency, actualization of performance benchmarks and minimization of legal contestation.

### Emerging Trends and Future Considerations

As the UAE proceeds with the development of the legal system, it is important for businesses to be aware of several developing trends. The Emirati emphasis on AML/CFT duties is further likely to result in higher rates of enforcement actions and greater pressure on corporates to meet compliance requirements. In the same way, evolution of the digital asset space also poses new risks for companies with concerns over regulatory issues of cryptocurrencies and other related virtual assets.

Privacy and security are becoming more important as evidenced by the Federal Decree-Law and other laws. Organizations have to pay attention to how they operate and towards the contractual terms they abide by in relation to this regulation, especially where personal data is concerned.

As the whistle-blower protections are gradually being introduced in the UAE, the companies are to reflect necessary changes of corporate policies and guidelines corresponding to the new legislation.

### Conclusion

The dynamic legal landscape of the UAE presents both opportunities and challenges for businesses. To navigate the complexities of commercial contracts in this environment, companies must take a proactive approach by combining local legal expertise with global best practices. Engaging in ongoing legal education, conducting due diligence, and staying attuned to regulatory changes will enable businesses to mitigate risks effectively. By embracing these strategies, companies can safeguard their interests while contributing to the continued growth and sophistication of the UAE's commercial ecosystem.

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