

Introducing smart e-Trials into the UAE judicial system

Mohamed Al Marzouqi - Partner, Regional Co-Head of Dispute Resolution - Litigation / Legislative Drafting

m.almarzouqi@tamimi.com - Abu Dhabi

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On 18 September 2017, His Highness Shaikh Khalifa Bin Zayed Al Nahyan, the President of the UAE, issued Federal Decree No. 10 of 2017 amending the Civil Procedures Law, issued by Federal Law Number 11 of 1992 (the “Law”). This measure introduces the use of remote communication technologies, known as “e-Trials”, into civil proceedings in the UAE. The Law will come into force six months after its publication in the official Gazette Law in 28th September 2017.

The aim of the Law is to further promote the rule of law, enhance effective justice, provide for fast-track civil trials and to keep pace with advanced technological changes in the Civil Procedures Code. Starting from next year, the Law will allow videoconferencing in civil court trials and specialised courts to hear labour, financial, contracting and intellectual property disputes, among other cases. This Law is a clear example of how the UAE Courts have embraced the latest information technologies in a manner that will make trial procedures in the UAE easier, efficient, cost-effective and in line with international best practices.

The UAE Ministry of Justice’s strategy is to launch four initiatives, to be implemented over the course of the next four years, to ensure fair and swifter trials whilst ensuring ease of access to justice. By 2021, there will be an online dispute resolution mechanism. The UAE judicial system will see a ‘smart leap’ as it plans to provide electronic trials (i.e., without physical courtrooms), video-conferencing during court hearings, real-time translations in court proceedings via a screen that will connect translators to secretaries of court and judges, and electronic mediation and conciliation services in criminal justice.

A new chapter added

The Law adds a new chapter to the Civil Procedures Law, entitled the “Usage of remote communications in civil proceedings”. This authorises and outlines the use of video conferencing in civil procedures. The new chapter also defines in Article 332 ‘remote communication technologies’ as tools which enable visual and audible communications between two or more parties at a distance, for uses including the exchange of images and documents such as the registration of lawsuit and legal notices procedures, trials and execution of the rendered judgment.

Remote communication technologies include videoconferencing via the Internet in civil court trials and specialised courts used for the hearing of labour, financial, contracting, intellectual property and other lawsuits. This is inspired by the French Tribunaux de Commerce, where the presiding judge reaches the final verdict in a trial with the assistance of two lay experts who are not trained judges but rather can be local or international experts. Verdicts are to be finalised in compliance with the procedures outlined in the Civil Procedures Law and signed by the judge only, while the two experts sign its original draft.

The Law stipulates that the requirements of attendance and publicity will be satisfied when remote

communication occurs. In Article 335, the court chief, competent judge or the person authorised by him has the right to allow trial proceedings of the remote communication technologies, when it is deemed necessary to do so, at every stage of civil proceedings in order to facilitate trial procedures.

The Law allows the parties the right to request from the court that parties attend physical hearings during any stage of the trial when the trial is being conducted remotely. The Court, after notifying the other party, will consider the request.

In order to preserve the confidentiality of trial proceedings, the Law emphasises that all electronic recordings will be treated as confidential information and will not be published or copied, as the case may be, without permission from the competent court. All such remote communications will be subject to the regulations of the information security laws and regulations adopted in the UAE. Moreover, the Law emphasises that trial records generated by using remote communications procedures will be registered and maintained electronically and will be treated as confidential. These records may only be circulated, reviewed, copied or deleted from electronic information systems following the permission of the competent court. Furthermore, the electronic signature and electronic documents shall have the same authoritative effect as the signatures referred to in the provisions of the Law of Evidence in Civil and Commercial Transactions (Federal Law No. 10 of 1992) and Electronic Transactions and E-Commerce Law (Federal Law No. 1 of 2006).

The significance of the new law

We anticipate that video-conferencing will be a major benefit to the UAE judicial system in seeking foreign judicial assistance or using testimonies from overseas experts in foreign countries, in accordance with international agreements and treaties the UAE has signed. The UAE has entered into numerous reciprocal judicial cooperation treaties with other countries, including the Gulf countries, France, China, India and Egypt.

One of the other notable changes to the law is the introduction in Article 343 of a new system for accepting the submission of photocopied documents related to civil lawsuits being heard using remote communication technologies. The innovation here is that the other party cannot object to the submission of these documents merely because they are photocopies and not originals unless they dispute the validity of the documents or claim that they were not issued or related to the party attributed to them. The Law has vested the court with the authority to penalise the party who unjustifiably argued against the photocopied documents submitted to the court, and if the documents were deemed valid, a fine of not less than AED 1,000 and not exceeding AED 10,000 can be imposed by the competent court.

The importance of this newly introduced mechanism is that it enhances the positive role of the civil judge in managing the case positively, and indeed the vesting the competent judge with a major tool to ensure quicker and more effective trial procedures and to deter parties from resorting to unjustified and illegal procedures that result in the prolonging and delaying of issuing verdicts.

In conclusion, these new amendments to the Civil Procedures Law marks a key step forward for the UAE in achieving its strategic plans for being one of the top 25 performers in the World Justice Project (WJP) Rule of Law Index during the next five years. Last year, the UAE was ranked 33 out of 113 countries and jurisdictions worldwide. It is a brave and major step forward for achieving speedy justice where all the guarantees for a fair trial is being fulfilled and accomplished, and to avoid the harm encapsulated in the maxim, "justice delayed is justice denied".

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