

# Consumer contracts Q&A: United Arab Emirates

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United Arab Emirates-specific information concerning the key legal and commercial considerations when drafting a consumer contract.

This Q&A provides country-specific commentary on *Practice note, Consumer contracts: Cross-border overview*, and forms part of *Cross-border commercial transactions*.

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## General contract law framework

1. What are the requirements under national law for a valid contract to exist?

The UAE is a civil law jurisdiction. The principal legislation governing contract formation is found in the Federal Law No. 5 of 1985 (Civil Code).

Under the Civil Code, the conditions for a contract to be valid are that:

- The parties must mutually agree to the basics of the contractual arrangement.
- The subject matter of the contract must be something which is possible and defined or capable of being defined and permissible to be dealt in.
- The obligations arising out of the contract must be for a lawful purpose.

*(Article 129, Civil Code.)*

There must be an offer and acceptance (*Article 130, Civil Code*). Any acceptance must correspond to the offer. Crucially, if the acceptance exceeds the offer or restricts or otherwise varies it, the “acceptance” is deemed to be a rejection which includes a new offer (*Article 140, Civil Code*).

Technically there is no requirement for the payment of consideration. However, payment of money is regarded as evidence that the contract has become final and irrevocable (*Article 148, Civil Code*).

2. Does national law make a distinction between an offer and an invitation to treat? Are the circulation of price lists, catalogues, advertisements for sale and the display of items in a shop treated as an offer or as an invitation to treat?

Yes, the Civil Code provides that:

- Displays of goods and services showing the consideration are treated as an offer.
- Publications, advertisements, price lists, statements concerning offers and so on, are treated as an “invitation to contract”.

*(Article 134, Civil Code.)*

3. Is it necessary for the price of goods or services to be clearly stated for a contract to exist?

For a contract to be formed, the parties must agree on the essential elements of the obligation and on all other conditions the parties consider essential, which would normally include the price.

However, the parties can reserve some details of the contract to be agreed upon at a later date (provided that the formation of the contract is not conditional on the agreement of such details) *(Article 141(2), Civil Code)*. If there are any disputes, the UAE courts can determine those unspecified provisions based on the nature of the transaction and the law *(Article 141, Civil Code)*.

4. Is it necessary for a contract for the sale of goods or supply of services to be in writing for it to be valid? Are any formalities necessary?

Under the Civil Code, contracts can be made verbally or in writing *(Article 132, Civil Code)*. However, in practice contracts are usually written.

5. Does national law allow for a contract to be declared void in the event of mistake by one or both of the parties? Are any other remedies available?

A contract will be void if there is a mistake as to the nature of the contract, for example, if a person intended to buy a pair of solid golden earrings but received a pair of gold plated earrings instead (*Article 194, Civil Code*).

In addition, a contracting party may void a contract if it contains a mistake at law (*Article 196, Civil Code*) and either:

- The mistake occurs in the text of the contract or is revealed by the surrounding circumstances and conditions (*Article 193, Civil Code*).
- The contracting party commits a mistake in matter of substance, for example, the object of the contract, or the identity/a characteristic of the counterparty (*Article 195, Civil Code*).

The UAE Civil Code and Ministry of Justice Commentary 2010 (Commentary) notes that under Article 196 of the Civil Code, ignorance of the law is a valid excuse (in civil not criminal matters), provided that it meets certain specified circumstances. An example provided by the Commentary is where a person buys half of a chattel and the other party makes a claim of pre-emption against that person and exercises its interest in the chattel, where in fact there is no pre-emption right. In these circumstances, a cancellation of the contract could take place because of a mistake at law.

6. Does national law allow for a contract to be declared void in the event of misrepresentation by one of the parties? Are any other remedies available? Can silence constitute misrepresentation?

The Civil Code lays down general and specific rules for misrepresentation and gross cheating.

**Misrepresentation.** It is important to note that from a UAE standpoint, only fraudulent behaviour constitutes misrepresentation. “Misrepresentation” is when one of the contracting parties deceives the other by means of fraud, by word or deed which leads the innocent party to consent to something that they would not normally have consented to (*Article 185, Civil Code*). It includes “deliberate silence” concerning a fact or circumstances concerning the subject matter of the contract (*Article 186, Civil Code*).

Where a misrepresentation has been made, the contract may be rescinded (*Article 187, Civil Code*).

**Gross cheating.** This involves things done or statements made by one of the contracting parties concerning a transaction which no ordinary person (as the recipient) would contemplate as reasonable (*Article 188, Civil Code*). If one of the contracting parties makes a misrepresentation to the other, and it later transpires that the contact was concluded due to gross cheating, the innocent party may rescind the contract.

7. Is it possible to exclude liability for misrepresentation?

The UAE definition of misrepresentation does not include statements made innocently or negligently (see [Question 6](#)).

The parties can set the amount of compensation payable for breach of contract (that is, liquidated damages) (*Article 390, Civil Code*). However, in the case of a dispute UAE courts can reassess the liquidated damages to reflect the actual loss associated with the breach and can vary the value of liquidated damages downwards or upwards at its discretion.

It is generally agreed that exclusion and limitation clauses are valid under UAE contract law, provided they do not attempt to limit a deliberate breach of contract or inflict loss, and that they do not attempt to limit or exclude liability arising from fraud or wilful misconduct.

8. Does national law impose any general principles of fair commercial practices?

Contracts must be implemented in accordance with the provisions of the Civil Code.

In particular, a contract must be performed in accordance with its own provisions and in a manner consistent with the requirements of good faith, so as not to abuse the other party or cause unjustified damage (*Article 246, Civil Code*).

9. Does national law imply any terms into:

- Contracts for the sale of goods to a person dealing as a consumer?
- Contracts for the supply of services to a person dealing as a consumer?

The UAE recognises the principle of freedom of contract, but does apply certain statutory implied terms. For example, the Civil Code provides that:

- A contract must be performed in good faith (which has a wide interpretation) (*Article 246(1)*).

- A contract must “embrace” the customs of the UAE or UAE law in general (*Article 246(2)*). This provision gives rise to a potential influx of implied terms.

Consequently, while freedom of contract exists, the terms of a contract may be supplemented and reinterpreted by the UAE courts.

## **Consumer protection**

Consideration should be given to Federal Law No (24) of 2006 regarding Consumer Protection, which provides the framework for consumer protection in the UAE and Cabinet Resolution No (12) of 2007 which further expands on the same (Consumer Protection Laws).

The purpose of the Consumer Protection Laws is to protect consumers and provide them with a framework for dealing with issues surrounding product liability. The three main principles of the Consumer Protection Laws are:

- Goods must meet a level of quality and performance that would be reasonable to expect, given their price and specifications.
- Goods must be suitable for the purpose that the seller conveys to the consumer, and match the description given to them.
- Services must be carried out with due care and skill, and materials used in connection with a service should meet customer requirements.

The Consumer Protection Laws impose obligations on the supplier towards consumers with respect to:

- Defective products.
- Labelling.
- Warranties.
- After-sales service.

The Consumer Protection Laws do not explicitly include any terms into a contract.

## **Dubai consumer protection**

In addition to the Consumer Protection Laws, the government of Dubai, Department of Economic Development (DED) has introduced the “Blue Book” which contains policies regulating the relationship between trader and consumer in the Emirate of Dubai.

The Blue Book contains the following general policies for all goods and services:

- The warranty relating to any defects in goods or services must be written clearly in Arabic and any other foreign language.

- Payment of a deposit indicates that the contract has become binding. Deposits must be returned or forfeited (as applicable) by the party that decides to cancel the contract. Policies in relation to the deposit and its return must be clearly stated.
- Customers can recover their deposit if the product does not conform to the agreed specifications, becomes unavailable or if the service provider does not deliver items on the date specified.
- Refunds must be made through the same method of payment used by the customer and sellers must ensure that the duration of the refunds is clarified to the customer.
- Customers are entitled to return or get a repair or replacement for defective products during the warranty period.
- Instructions for use must be clearly set out.

In addition to the general policies, the Blue Book also introduces certain policies relating to business activities, in the following sectors:

- Vehicles sector.
- Textile, ready-made garments and personal items sector.
- Tools, equipment, electrical appliances and electronics sector.

Key requirements include general warranty policy, as well as exchange and/or cash refund policy in respect of these specify sectors. The latest version of the Blue Book is available on the DED's website.

10. What liability exists for breach of an express term of a contract?

UAE law recognises the concept of **direct damages**. A claim for contractual breach in the UAE is intended to compensate for the non-performance of the contract and the loss which the claimant has suffered as a result (that is, direct losses which were foreseen at the date of contracting). Damages are calculated in relation to the seriousness of the loss rather than the breach itself.

Where the amount of compensation is not fixed by either contractual provision (*Article 390, Civil Code - liquidated damages*) or the law, the UAE courts will assess damages based on the harm suffered (*Article 389, Civil Code*).

The UAE courts recognise the concept of **consequential damages** in relation to tortious liability but not contractual breach.

Loss of profit and loss of opportunity have been upheld by the UAE courts. However, damages will only be awarded if the loss is certain and not speculative or hypothetical.

**Moral damages** are damages associated with harm to liberty, dignity, honour, reputation, social standing or financial condition (*Article 293(1), Civil Code*). Although this provision deals with tortious liability, it is our understanding that the UAE courts recognise the payment of moral damages arising out of contractual liability too.

The concepts of punitive or exemplary damages do not exist in the UAE.

11. What liability exists for breach of an implied term of a contract?

See [Question 9](#) and [Question 10](#).

## Control of unfair contract terms

12. How does national law regulate the inclusion of unfair terms in a consumer contract?

There is no specific law in the UAE regulating unfair contract terms. In general, it is not for the UAE courts to interfere with what has been contractually agreed.

However, judges may vary the conditions of contracts of adhesion (that is, a legally binding contract between two parties where one party has all of the power, a “take it or leave it” contract) which are deemed oppressive in accordance with the requirements of justice (*Article 248, Civil Code*). It is worth noting that this does not specifically relate to business to consumer contracts.

13. To what extent does national law permit the use of terms that limit or exclude the liabilities to which a party to a consumer contract would otherwise be subject?

There are no limitations or exclusions which specifically apply to consumer contracts. Clauses excluding or limiting contractual (but not tortious) liability are generally valid under UAE law, provided they do not attempt to restrict liability for acts such as fraud and wilful misconduct.

Any clause attempting to provide an exemption from responsibility for a harmful act is void and it is the view of local advocates in the UAE that this rule also applies to the limitation of tort based liability (*Article 296, Civil Code*). This

is based on the principle of freedom of contract, however, limitations or exclusions are always subject to judicial review or arbitrary exemptions as per (for example) the Civil Code and the UAE Employment Law.

See [Question 7](#) for comments on liquidated damages in the UAE.

## Distance contracts

14. How does national law regulate contracts made at a distance (that do not involve face-to-face contact between the buyer and seller)?

Under the Civil Code, (unless contrary to any law or agreement between the parties) contracts between absent persons are considered to be formed at the place and time when the offeror has knowledge of the acceptance.

In addition, contracts made by telephone or any similar means between parties who are not present are considered formed in the same meeting (*Article 143, Civil Code*).

15. How does national law regulate door-to-door selling?

Door-to-door selling does not typically operate in the UAE.

## Enforcement

16. Who is responsible for enforcing consumer protection legislation? What powers do enforcement authorities have?

Under the Consumer Protection Laws, the UAE Ministry of Economy has established a Consumer Protection Department responsible for enforcing the Consumer Protection Laws.

The Consumer Protection Department has a range of powers, including:



- Legal capacity to represent consumers before the courts or any other authority.
- The power to review, investigate and settle consumer protection disputes (this does not affect a party's rights to resort to the courts or appeal the decision to the Minister of Economy).
- The power to recall defective products, and instigate criminal proceedings in cases of commercial fraud.

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