THE NEW UAE CIVIL CODE – EXAMINING ITS EFFECTS ON CONSTRUCTION/*MUQAWALA* CONTRACTS

The United Arab Emirates ("**UAE**") Federal Law No. 25 of 2025 (the "**New Civil Code**") entered into force on 1 June 2026 repealing Federal Law No. 5 of 1985 (the "**Old Civil Code**"). BLK Partners previously provided insightful commentary on the overarching changes made in the New Civil Code, but we now look at some of the relevant sections affecting construction/*muqawala* contracts. In this article, we look at the following sections of the New Civil Code:

- Negotiation and disclosure obligations
- Exceptional unforeseen circumstances
- Liquidated damages
- *Muqawala* contracts

Notably for all parties to construction contracts in the UAE, Article 4(1) of the New Civil Code provides that it has no retroactive effect, meaning the Old Civil Code will still govern contracts entered into before the New Civil Code took force.

As always, the principle of *pacta sunt servanda* remains a key tenant of the New Civil Code, meaning that Parties should always turn to the precise wording of any contracts in the first instance (while also ensuring compliance with any mandatory provisions of the New Civil Code).

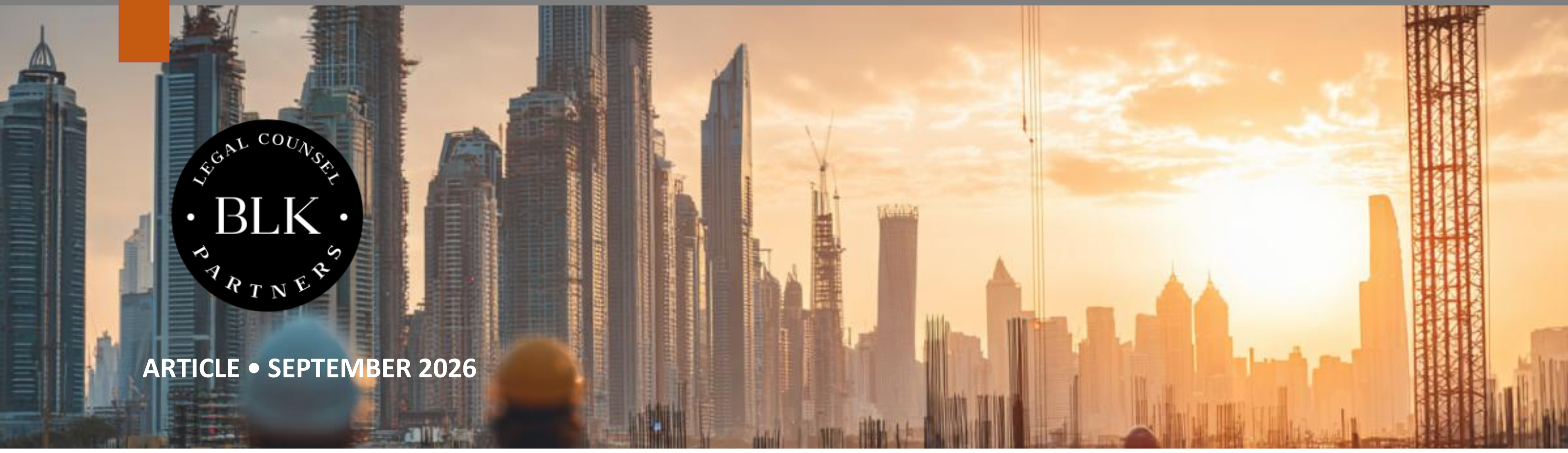
NEGOTIATION AND DISCLOSURE OBLIGATIONS

Articles 121 to 123 of the New Civil Code addresses negotiation and disclosure obligations in a manner not previously seen within the Old Civil Code.

Article 121 requires that parties conduct pre-contractual negotiations in accordance with the requirements of good faith, while also addressing instances of bad faith, and specifying that compensation in the form of actual damage suffered will be due by the party who negotiates or terminates in bad faith.

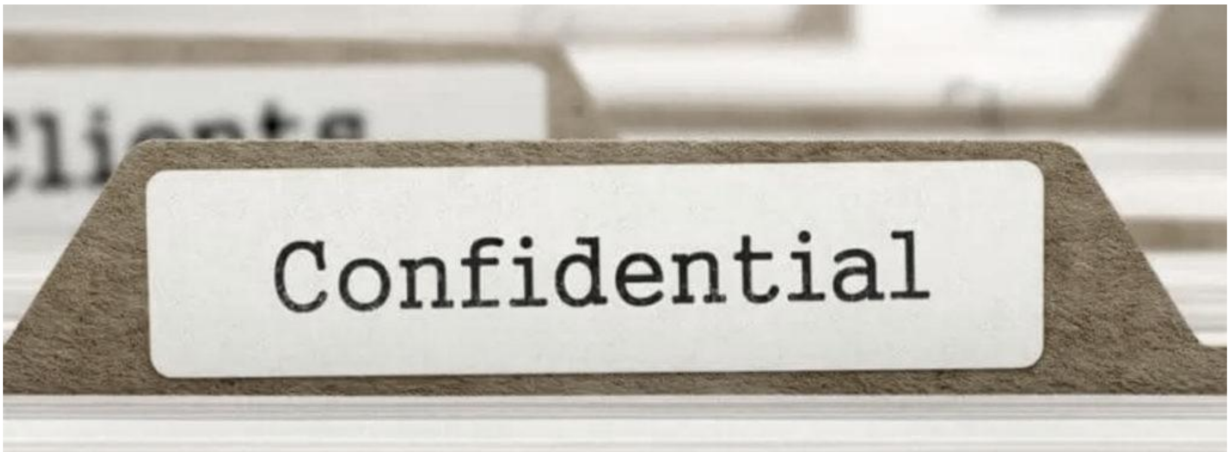
Article 122 identifies when disclosure of information of *"decisive importance"* shall occur, while explaining what information meets such a threshold. Article 122 places this obligation on both parties to the negotiation and identifies a two-pronged burden of proof: a party seeking to claim that information should have been disclosed must prove this was in fact the case, while the other party must establish that the information was disclosed. Article 122(4) then identifies that this provision is of a mandatory nature and cannot be limited by party agreement.

Interestingly, **Article 123** imports a confidentiality obligation on the party receiving confidential information during negotiation, noting any breaches shall result in that party being *"liable in accordance with the general rules."*



The obligations created within Articles 121 and 122 are consistent with the central tenants of UAE law and provide welcome codification of the obligations, which parties must comply with when negotiating all contracts. The standards of conduct required will be familiar to those negotiating construction contracts, though parties should pay particular attention to their disclosure obligations of essential and decisive information. This obligation may give rise to potential claims in construction contracts where a party fails to disclose qualifying information during negotiations, though the *"decisiveness"* will evidently be a critical turning point for any such claim.

The extent of any liability resulting from breaches of Article 123 and disclosure of confidential information will be of great interest to anyone conducting business in the UAE, though we may need to await further commentary or UAE court decisions on this provision to ascertain the true scope and extent of the law.

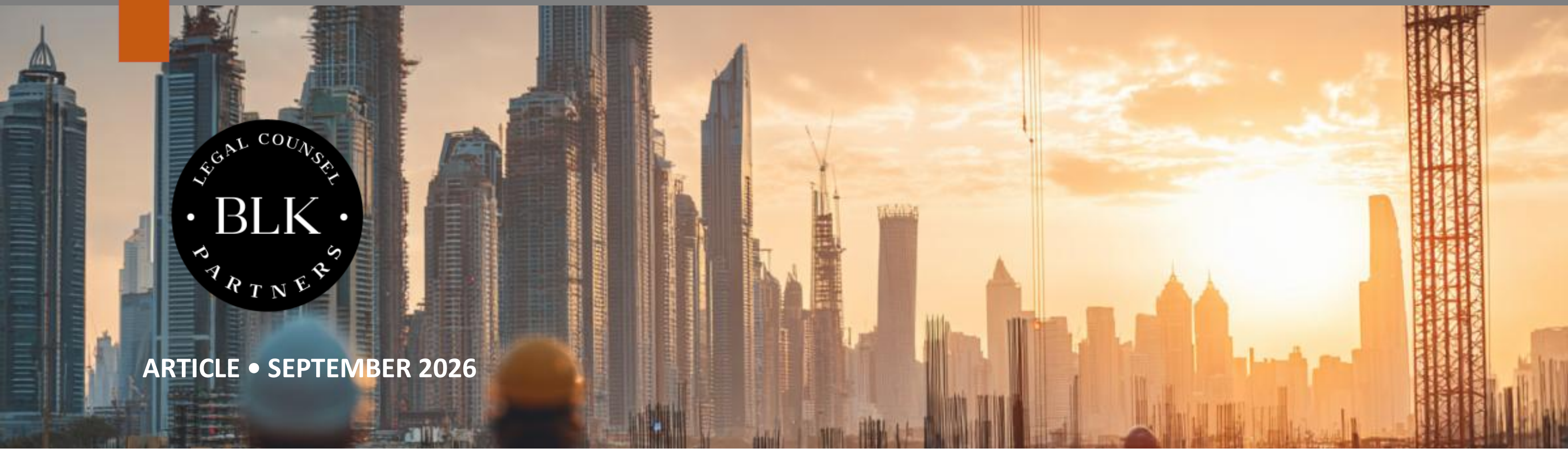


EXCEPTIONAL UNFORESEEN CIRCUMSTANCES

Article 224 of the New Civil Code refines Article 249 of the Old Civil Code – a provision that addresses exceptional unforeseen circumstances. While the general principle remains unchanged, there are subtle tweaks to the wording that are noteworthy, as set out below:

- Article 224 now provides for exceptional circumstances unforeseeable *"at the time of the conclusion of the contract."*
- Article 224 removes the word "impossible", noting that Article 249 of the Old Civil Code used this term as a reference point for determining exceptional circumstances.
- While both the New and Old Civil Codes provided for the reduction of onerous obligations, the New Civil Code now expressly authorises the Court to order the recission of a contract as a potential remedy.

The final sentence of Article 224 remains unchanged and indicates the mandatory nature of Article 224. This provision operates more widely than the *force majeure* provisions in most construction contracts (e.g. the standard wording within the FIDIC Redbook and Yellow Book contract suite), though



the burden remains high (and is arguably higher than that in typical construction contracts). Parties should consult the precise wording of the relevant contract but note that Article 224 may provide a different and alternative avenue for relief.

LIQUIDATED DAMAGES

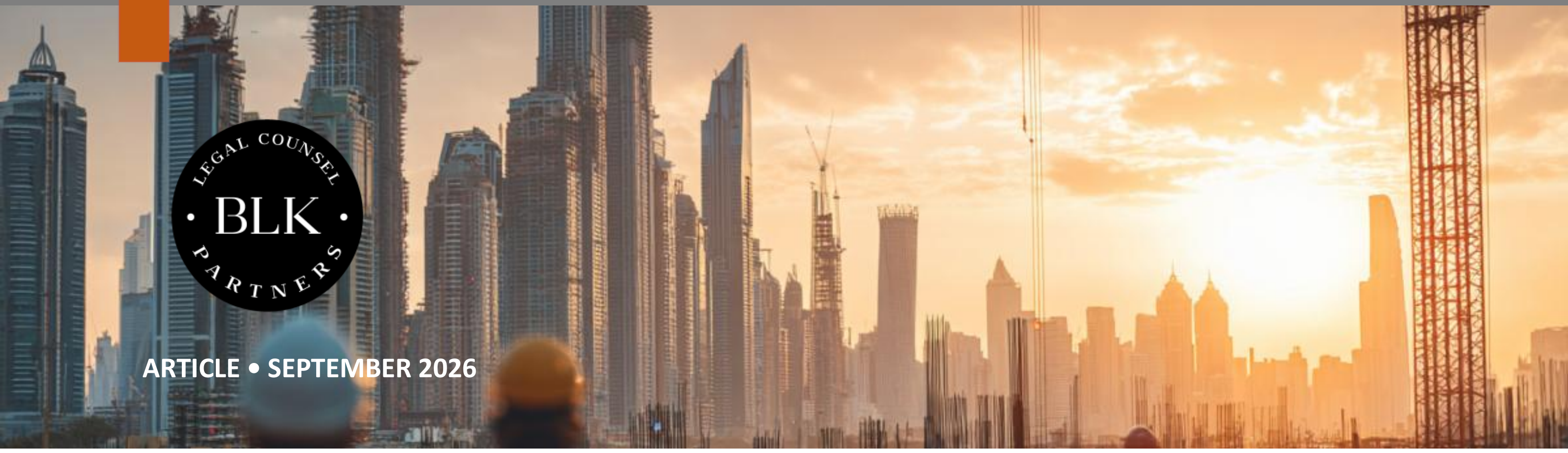
Article 340 of the New Civil Code expands upon the principles previously set out in Article 390 of the Old Civil Code. Liquidated damages are again accepted as a matter of law, though the New Civil Code provides further detail regarding the adjustment of such clauses:

- The amounts may be reduced where the debtor proves the amount was excessive or the “original obligation” has been partially performed.
- The amounts may be reduced where the creditor contributed to or increased the damage suffered.
- The amount may be reduced to nil where the creditor’s fault supersedes the debtor’s fault.
- The amount may be increased where the debtor has committed fraud or gross fault.

This is likely to result in more disputed claims for liquidated damages, though the burden of proof will still rest with the contractor seeking a reduction of the relevant amount, as set out in Article 340(2) to 340(3) of the New Civil Code.

MUQAWALA CONTRACTS

The New Civil Code addresses *muqawala* contracts in Articles 812 to 839, replacing Articles 872 to 896 of the Old Civil Code. These provisions address the obligations of the: (i) contractor; (ii) employer; (iii) subcontractor; and (iv) extinction. The wording deployed in the New Civil Code indicates that such provisions are intended for less sophisticated parties, where contracts are not as comprehensive as those typically deployed on construction projects in the UAE. Parties should carefully review the wording in their contract in the first instance and turn to the *muqawala* provisions of the New Civil Code where gaps may exist.



We provide below comments on the operation of these sections, highlighting key changes between the New and Old Civil Codes.

General

- **Articles 812 to 814** of the New Civil Code identify the nature of muqawala contracts and the basic requirements necessary for such a contract. These provisions are in effect the same as those in Articles 872 to 874 of the Old Civil Code.

Obligations of the contractor

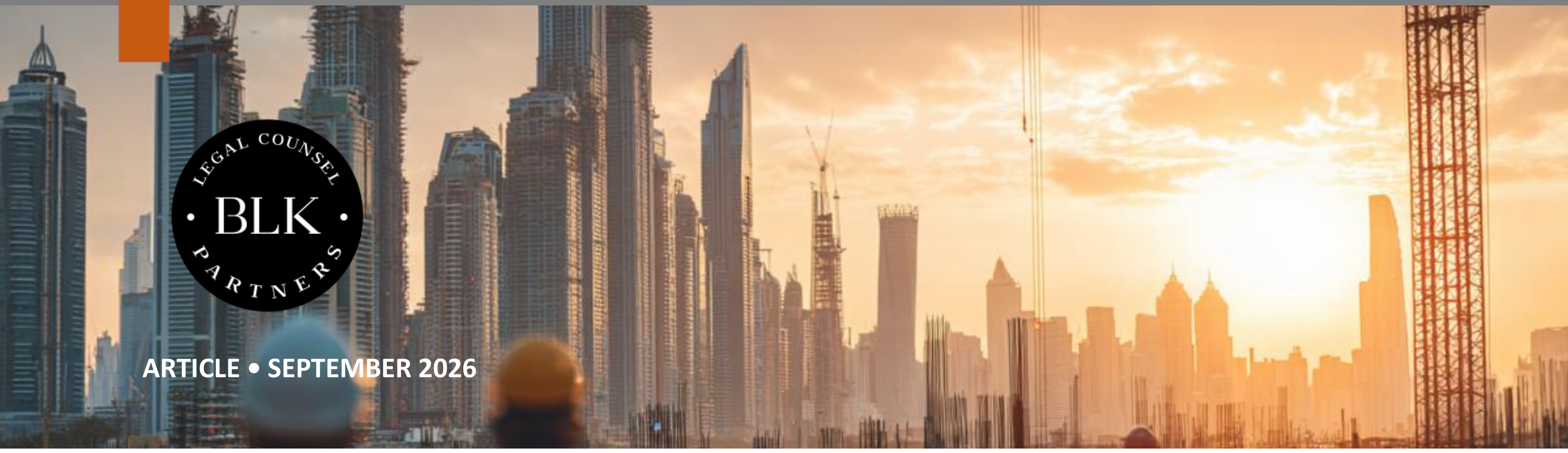
- **Articles 815 to 817** of the New Civil Code concern the materials necessary for execution of the works, by reference to the party supplying the materials. Notably, Article 816(3) places a notice obligation on the contractor to immediately notify the employer where: (i) defects in the materials provided by the employer arise, *"other factors"* arise that would hinder the execution of the work. Where the contractor fails to give notice, the contractor shall be liable for all consequences resulting from such failure.

- **Articles 818 to 820** of the New Civil Code concern the performance of the contractor. Notably:
  - Article 818(2) sets out a mechanism for identifying and rectifying defects. Where a contractor fails to rectify the defects within a reasonable period set by the employer, the employer then has the right to rescind the contract or have another contractor carry out the works at the expense of the original contractor.
  - Article 818(3) provides the employer with a right of immediate recission where:
    - Rectification of the defects is impossible or inconsistent with the terms of the contract;
    - The contractor delays commencement or completion, where it is *"absolutely unlikely"* completion will be achieved in the agreed period;
    - The contractor's conduct indicates their intent not to perform;
    - The contractor's conduct renders performance of the obligation impossible.
  - Article 820 provides the contractor with a right to retain a "*thing*" until the due renumeration is paid.
- **Articles 821 to 824** of the New Civil Code concern design and the involvement of an engineer.

The noted provisions above should be examined by contractors and employers alike, given the serious consequences these articles may have on contractor claims, particularly where the relevant contract does not specify how these issues are to be dealt with. While construction contracts do generally address such issues in detail, parties should pay close attention to the wording in their contracts and assess whether these rights and obligations may come into play.

Obligations of the employer

- **Articles 825 to 830** of the New Civil Code address issues of delivery, and renumeration (particularly in the context of whether the contract is remeasurable or lump sum).



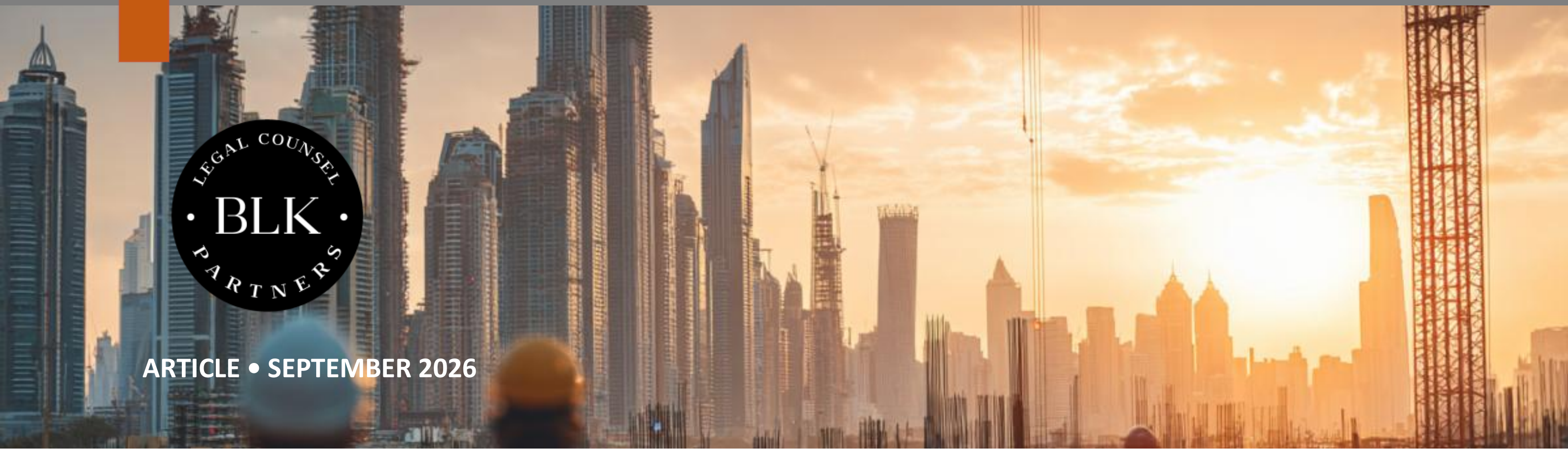
- These provisions largely mirror the corresponding provisions of the Old Civil Code, though the court has been afforded a new discretional power within Article 829(3) that is consistent with the principle of unforeseen exceptional circumstances outlined above. Pursuant to Article 829(3), the court has the power to restore the "*contractual equilibrium*" between the parties due to *"exceptional circumstances"* after balancing the interests of both parties.

The Subcontractor

- Articles 832 and 833 of the New Civil Code remain unchanged from the equivalent provisions in the Old Civil Code.

Extinction of the *Muqawala*

- **Articles 834 and 835** of the New Civil Code remain unchanged from the equivalent provisions in the Old Civil Code.
- **Article 836** of the New Civil Code is perhaps one of the most notable amendments to the New Civil Code, which sets out an employer's right to terminate the contract for convenience at any time, the contractor shall however, be compensated for all expenses incurred and works conducted, and may also be entitled to profit lost (though this is subject to reduction upon application to the court if the circumstances render such reduction equitable).
- **Article 837** of the New Civil Code addresses the effects of force majeure on a "*thing*", being the subject matter of the contract. This provision identifies where compensation will be due to the subject matter of the contract "*perishing*" and the circumstances in which entitlement arises for both the contractor or the employer.
- **Articles 838 and 839** of the New Civil Code remain the same in terms of effect when compared with the equivalent provisions in the Old Civil Code (i.e. Article 896), addressing the termination/extinguishment of the contract in the event of the contractor's death, including a valuation of the work completed.



KEY CONSIDERATIONS

The amendments set out in the New Civil Code provide clarity on the operation of a number of important principles that are a critical reference point for parties carrying out construction projects in the UAE. Parties should be particularly cognisant of the effects of the provisions identified above and consider with appropriate legal advice before agreeing terms in new contracts. The terms freely agreed between parties to construction contracts will retain primacy over the parties' relationship, but the mandatory provisions of the New Civil Code (e.g. the operation of good faith and the potential revision of the amount of liquidated damages by the court) should be considered carefully.

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