

Rules of Evidence (Civil Proceedings) in the United Arab Emirates: Overview

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Practice note: overview | [Law stated as at 01-Mar-2022](#) | United Arab Emirates

A Practice Note providing an overview of the rules governing disclosure and the admissibility of evidence in civil proceedings. In particular, it looks at the rules on the disclosure obligations of the parties, admissibility of evidence, witness evidence, the burden and standard of proof, as well as issues that arise in gathering cross-border evidence.

Evidence is fundamental to the outcome of any civil litigation case. Usually, the facts in issue in a case must be proved by evidence, and the court will decide the case on the evidence adduced by the parties.

One of the most challenging aspects for any cross-border practitioner is to adapt to the differences in the rules of evidence taking in various jurisdictions. These differences are evident in the manner in which evidence is produced, the issues surrounding relevance and admissibility, the probative value attached by the courts to the various types of evidence and the principles of burden and standard of proof across jurisdictions. Further, such disputes often give rise to situations where one of the parties to the litigation is required to produce evidence located in a jurisdiction foreign to the forum of proceedings. These are important legal issues that a practitioner should be aware of since they largely determine the way litigation is conducted in all the major civil law and common law systems around the world and ultimately influence its result.

This Note provides an overview of the rules of disclosure and evidence in civil proceedings in the UAE. In particular, it looks at:

- The rules regarding the disclosure obligations of the parties.
- Admissibility of evidence.
- Witness evidence.
- Expert evidence and the role of experts (court hired independent experts and party hired experts) in civil proceedings.
- The rules regarding the burden of proof and standard of proof in civil proceedings.
- The rules regarding cross-examination.
- Issues that arise in gathering cross-border evidence, including:
 - the applicable international treaties, agreements, and regulations governing cross-border evidence;
 - how to obtain foreign evidence for use in UAE civil proceedings; and
 - how to obtain evidence located in the UAE for use in foreign civil proceedings.

Rules of Evidence and Evidence in Domestic Proceedings

The main legislative instruments which govern the rules of evidence in the UAE are:

- The Evidence Law (*UAE Law No. 10 of 1992, as amended*).
- The Civil Procedure Code (*UAE Law No. 11 of 1992, as amended*).
- The Civil Code (*UAE Law No. 5 of 1985, as amended*).
- Certain provisions of the Electronic Transactions Law (*UAE Law No. 1 of 2006, as amended*).

Obtaining Evidence

Disclosure or Discovery Obligations

In the UAE, there are no disclosure or discovery requirements or obligations as understood in western jurisdictions.

Attorneys for the parties can use the court to request information from each other (*Article 18, Evidence Law*), but are under no independent obligation, for example, to provide any adverse information to the other side which may be in their possession.

Role of the Courts in the Evidence-Taking Process

The courts manage the evidence-taking process in the UAE.

Attorneys may request documents from a corresponding party, through the courts (*Article 18, Evidence Law*).

The courts can:

- Weigh the probative value of the documents (*Articles 22-23, Evidence Law*).
- Verify the authenticity of documents, and impose a fine of AED1,000 to AED10,000 on a contesting party where the authenticity of the whole document is questioned (*Article 2, Federal Decree Law No.27/2020*).
- Accept the submission of witness statements as evidence to assert the truth of a matter (*Article 2(2), Federal Decree Law No.27/2020*).
- Further depose or examine the witnesses via interrogation by the supervising judge (*Article 54, Evidence Law*).

Other Mechanisms to Obtain Disclosure from an Adverse Party and Third Parties

In addition to its general powers, the court can compel the joinder of:

- A third party to a current case, to provide signed evidentiary statements or declarations.
- An administrative body to provide any such statements, declarations, or information in its possession which may be necessary for the case to continue.

(Article 20, Evidence Law.)

Standard of Proof and Burden of Proof in Civil Proceedings

A plaintiff (claimant) must prove its right, and the defendant must disprove the same *(Article 1(1), Evidence Law)*.

The facts to be proved must be related to the case, and must be acceptable *(Article 1(2), Evidence Law)*.

While this may not directly correlate to common law jurisdictions, it would suggest that the standard in civil proceedings is one of preponderance of evidence.

Failure to Give Evidence at Trial: Consequences

A court can draw adverse inferences in favour of a requesting party if the receiving party (to whom the request for a document is made) does not deny the existence of the document and fails to submit this to the court's attention *(Articles 18 to 19, Evidence Law)*.

If the requester submits to the court a copy of the requested document, and the receiving party (to whom the request for the document is made) fails to provide the original version of the requested document, the court can, at its discretion, treat the copy provided by the requester to be true and conform to the original.

Admissibility of Evidence

Articles 22 to 34 of the Evidence Law set out grounds on which the admissibility of evidence can be challenged, including the inauthenticity or forgery of a document.

Articles 5, 7, and 9 to 10 of the Electronic Transactions Law govern the rules of evidence for electronic records. If such records do not meet the necessary conditions, their validity can be challenged.

When to Apply

The Evidence Law is silent as to the procedure for challenging the admissibility of evidence. In practice, a party is likely to submit such a challenge during the next hearing after receipt of the evidence in question.

Exclusionary Rules of Evidence

The Code of Ethics bars a lawyer from disclosing confidential information or facts they acquire due to the professional representation of a client, unless the disclosure of such information may prevent a crime.

Since the UAE does not have a full system of discovery, a party to litigation is under no obligation to disclose evidence to the court, particularly if submitting such evidence is adverse to its position in the litigation.

Under Articles 18 and 19 of the Evidence Law, a party can apply to the court to compel the opposing party to produce original documents or other written evidence. However, in these circumstances, if the opposing party fails or refuses to produce the documents, and the court is convinced of the existence of the documents or their relevant contents, the court may admit a copy of the documents from the moving party, or otherwise confirm their content by admitting oral testimony.

Discretion of Court to Exclude Evidence

The default evidentiary position is that a document is admissible unless its authenticity is challenged by the opponent or is called into question by the court (*Article 22, Evidence Law*).

The Evidence Law is silent on the court's discretion to exclude evidence that is otherwise admissible.

An informal document has no probative force as to its date as against third parties until its date has been established (*Article 2, Federal Decree Law No. 27/2020*). The processes to establish the date of a document include:

- Determining the date it was recorded in a prepared register.
- Determining the date it was endorsed by an authorised public official.
- As of the date of death of the person with the recognisable signature, or as a result of incapacity it has become impossible to write it.
- Any event confirming the prior existence of the document.
- The day on which the content is mentioned in another established document.
- On the date it is established as per the relevant electronic laws.

However, the judge has discretion to waive this requirement for discharges, commercial paper, and loan documents signed in favour of a merchant, with or without a mortgage, irrespective of the borrower's capacity (*Article 2, Federal Decree Law No. 27/2020*).

Further, Article 10 of the Evidence Law sets out the enforceability of a copy of an electronic document (where the original is unavailable) and the conditions the copy must meet.

Witness Evidence: Oral and Written

Written witness evidence and affidavits are generally discouraged under UAE law.

Evidence about the existence or negation of a fact cannot be made by witness testimony where the value involved exceeds AED5,000, or where the value is indeterminate (*Article 2, Federal Decree Law No.27/2020*).

Evidence by witness testimony is not admitted even if the value does not exceed AED5,000, in the following instances:

- It is required to disprove or to go beyond the contents of a written document.
- The object of the claim consists of the balance or part of a right which can only be established in writing.

- The claim of a party to the litigation exceeds AED5,000 in value, but the party subsequently renounces the excess.

(Article 36, Evidence Law.)

References to witness testimony in Articles 35 and 36 of the Evidence Law are primarily to written evidence. However, the same rules are most likely to also apply to oral testimony.

Requirements for the Content of Written Evidence (Witness Statement or Affidavit)

There are no rules on what can be included in written witness evidence for a trial.

Oral Evidence in Support of Written Evidence

In general, oral evidence is restricted in civil proceedings. However, the court can orally examine a witness about the form and substance of a document which was requested from them but they failed to submit (*Article 2, Federal Decree Law No.27/2020*).

Oral witness testimony can be admitted in the following circumstances:

- There is a commencement of proof (that is, a written document emanating from the party against whom the claim is made tending to make the existence of the alleged act probable).
- Documentary evidence cannot be presented due to a material or moral bar.
- A creditor has lost their written deed through no fault of their own.
- The court deems it justified to do so.
- The documentary evidence is challenged on the basis that it is prohibited by law or contrary to public policy or morals.

(Article 37, Evidence Law.)

Timing for Filing Written Witness Evidence

The Evidence Law is silent as to stages or deadlines for the filing of written evidence. These are left to the discretion of the court.

Evidentiary Value of Witness Evidence

Witness evidence is only permitted in certain restricted circumstances (see [Witness Evidence: Oral and Written](#)), particularly where documentary evidence is not available.

The Evidence Law clearly favours contemporary documentary evidence over witness testimony.

Cross-Examination and Re-Examination

In general terms, examinations are rare in UAE civil proceedings. All witness examinations are conducted and directed by the court itself (*Article 44, Evidence Law*).

While a party may request questions on a cross-examination or re-examination, the court is in control of this process.

The court, delegated judge, or supervising judge can permit a witness to use written notes provided the nature of the case allows it, and can follow up with the witness if they forgot or did not answer questions posed to them.

Witness Unwilling or Unable to Provide Evidence or Attend Court

The court reserves the right to impose a fine of AED1,000 to AED2,000 if a witness is duly summoned to appear and provide testimony, and fails to attend (*Article 2, Federal Decree Law No.27/2020*).

In urgent situations, the court can issue a subpoena requiring the witness to attend. Otherwise, the court can reissue the summons to appear. If the witness still fails to comply, they can be liable to a fine of between AED2,000 and AED10,000, and the court can issue a subpoena against the witness.

If the witness appears in court but refuses to take an oath, or refuses to answer questions without legal cause, they will be liable for a penalty as set out in the Penal Code (*UAE Law No.3 of 1987, as amended*) (*Article 2, Federal Decree Law No.27/2020*).

A person who gives false testimony before a judicial authority, lies, or keeps silent about all or part of the relevant facts of the case known to them faces a minimum of three months in prison (*Article 253, Penal Code*).

Witness Immunity

The concept of witness immunity in civil proceedings does not exist under UAE law.

Expenses

The Evidence Law is silent with respect to paying witnesses for their testimony. However, Part 30.19 of the Dubai World Tribunal Rules entitles witnesses to travelling expenses and compensation for loss of time. At the time of service of a witness summons, the witness must be offered or paid:

- A sum reasonably sufficient to cover their expenses in travelling to and from the tribunal.
- Such sum by way of compensation for loss of time as may be specified in the relevant practice direction.

Expert Witnesses

Court-Appointed Experts

Articles 69 and 71 of the Evidence Law, replaced by virtue of Article 2 of Federal Decree-Law No.27/2020, give the court power to appoint an expert or experts in a case.

The court or supervising judge can appoint an expert(s) from among public officials or the schedule of experts. The court then decides which party will cover the expert's expenses, in a specified time-period.

The appointing terms of the court or supervising judge include a statement of the experts' duties, with the summary measures they are authorised to take, a prescribed time limit for the expert's submission, and the date of the session to which the case is adjourned for pleadings.

Party-Hired Experts

Articles 70, 72, and 73 of the Evidence Law, replaced by operation of Article 2 of Federal Decree Law No. 27/2020, state that parties can jointly hire one or more experts, and the supervising judge will approve their agreement.

A deposit for the expert's fees (see [Fees of Expert Witnesses](#)) must be paid by the appointing party, or any other party if they fail to do so, otherwise the expert is not bound to perform their duties. If paid, the expert is notified within two working days of the deposit, to begin assessment of the case documents.

Fees of Expert Witnesses

A deposit for a hired expert's fees is assessed by the court. The court also determines which party (or parties) is to pay the deposit into the court treasury, and the amounts that the expert can withdraw for expenses (*Article 2, Federal Decree Law No. 27/2020*).

The overall fees and expenses of a court-appointed expert are assessed by an order of the court, upon the expert submitting their request (*Article 2, Federal Decree Law No. 27/2020*).

The party or parties can file a grievance petition about the assessment (*Article 2, Federal Decree Law No. 27/2020*).

Role of Party-Appointed and Court-Appointed Experts

An expert's role is to provide an opinion as to matters which are required for deciding the case (*Article 2, Federal Decree Law No. 27/2020*).

Presentation of Expert Evidence

An expert must prepare a written report, to include a statement of work they have performed, as well as any meetings with the parties and any statements taken during this (*Article 83, Evidence Law*).

If more than one expert has been appointed, they can submit individual reports, unless they agree to submit a single report (*Article 2, Federal Decree Law No. 27/2020*).

The court, of its own volition or at the parties' request, can schedule a hearing with the expert to discuss their report (*Article 88, Evidence Law*).

Alternatively, the court can request the expert to appear at a hearing and provide their findings through oral testimony, without submitting a written report (*Article 89, Evidence Law*).

Documentary Evidence: Certification of Documents

The default evidentiary position is that a document is admissible unless its authenticity is challenged by the opponent or is called into question by the court (*Article 22, Evidence Law*).

Documents can be challenged based on their signatures, seals, or originality. The court has broad powers to compare documents or signatures for verification, seek the assistance of specific experts or government officials, and to call upon witness testimony to clarify matters or assert the authenticity of documents (*Articles 22 to 34, Evidence Law*).

The authenticity of an electronic record can be challenged if it does not satisfy the requirements set out in the Electronic Transactions Law.

Legal Framework Governing Cross-Border Evidence

The UAE is a signatory to the Riyadh Arab Agreement for Judicial Cooperation, endorsed by the Arab Council of Ministers on 6 April 1983 (Riyadh Convention).

This governs cross-border evidentiary, service, and extradition matters between member states of the Arab League.

Obtaining Evidence from Another Jurisdiction

General Requirements

Neither the Civil Procedure Code nor the Evidence Law directly address the procuring of witness or documentary evidence from abroad.

However, domestic provisions relating to service of process may apply in these circumstances.

Form or Application Along with the Documents

Under Article 7(6) of Cabinet Resolution 57 of 2018, which amends the Civil Procedure Code, and if a treaty on service is not in place, a copy of a summons can be transmitted by:

- "Means of modern technology".
- A private company.
- Agreement between the parties.
- Transmission to the UAE Ministry of Justice for referral to the Ministry of Foreign Affairs, which will then effect service through diplomatic channels.

Notice Requirements

No specific notice requirements are set out in the Civil Procedure Code or the Evidence Law.

Official documents can be challenged for forgery if the subject matter can be proven. Informal documents can be contested for signatures or fingerprints, and if there is denial that such documents were issued by a person the opponent must prove that the challenger or their predecessor issued it (*Article 23(1), Evidence Law*).

A document must be challenged for forgery by a person if they admit the signature and seal are authentic but deny the authenticity of their fingerprint on the document (*Article 23(2), Evidence Law*).

Grounds

No specific grounds are set out in the Civil Procedure Code or the Evidence Law.

Costs and Expenses

In case of signature verification, the holder of an informal document can file for a person to admit it is their handwriting, signature, seal, or fingerprint on the document. However, where the defendant admits to the same, the claimant must cover all expenses (*Article 33, Evidence Law*).

All expenses are covered by a party who requests that a witness testify on a matter not yet raised in the proceedings, but likely to be heard by the court (*Article 47, replaced by virtue of Article 2, Federal Decree-Law No.27/2020*).

Application and Procedure Irrespective of the Applicable International Instruments (If Any)

There is no indication that the above application and procedures do not apply where an international convention may apply.

Admissibility of Overseas Evidence

There are no special criteria for the examination or evaluation of overseas evidence. This indicates that all the provisions of the Evidence Law will apply.

Willing Witness (Unable to Travel)

In relation to obtaining evidence from a witness in another jurisdiction who is willing to give evidence in support of legal proceedings in the UAE, but is unable or not required to attend trial, Federal Decree No. 10 of 2017 amended the Civil Procedure Code to include a chapter on the use of remote technologies in civil proceedings.

These include allowing the judge to hear the case remotely when they deem it appropriate, and the use of audio-visual communication to hear witnesses.

Video-Link, Teleconference, or Depositions

UAE law does not expressly address the giving of evidence by video-link or teleconference by expert witnesses or parties to proceedings. However, Federal Law No. 5 of 2017 on the Use of Telecommunication in Criminal Proceedings allows for victims, witnesses, and accused subject(s) to communicate with the authority in question via remote communication.

There are no restrictions on where such kind of evidence can be collected.

Obtaining Evidence in Support of Foreign Litigation

National Rules

There are no national rules on the collection of evidence in support of foreign litigation.

Direct Application

There are no national laws or procedures available to directly obtain evidence from a witness in the UAE.

Procedure to Enforce a Request for Witness Evidence

There are no such procedures under UAE law.

Grounds

Not applicable.

Time Frame

Not applicable.

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