The Conflict-of-Law Rules in the UAE's New Civil Transactions Act: Yet Another Missed Opportunity!



I. Introduction

On 1 January 2026, the Legislative Decree No. 25/2025 promulgating a new Civil Transactions Act (hereafter 'NCTA') entered into force. The NCTA repeals and replaces the former Federal Civil Transactions Act of 1985 (hereafter 'the 1985 Act'). The adoption of the NCTA forms part of the State's broader and ongoing effort to comprehensively update and modernize its legal system, an effort that has already touched major legislative instruments, including, among many others, the 2022 Civil Procedure Act, the 2024 Personal Status Act, the 2023 Competition Act, and the 2022 Commercial Transactions Act.

Since the 1985 Act contained a codified set of conflict-of-laws rules, its replacement necessarily entails a re-examination of the UAE's private international law framework and, at least in principle, the introduction of new or revised choice-of-law provisions. Against this background, this note offers a preliminary and necessarily tentative assessment of the modifications introduced by the NCTA. It focuses on the main features of the new law in relation to choice-of-law regulation, highlighting both the changes introduced and the limits of the reform.

II. The Choice-of-Law System under the 1985 Act and its Evolution

1. Choice of Law Rules under the 1985 Act

It is worth recalling that the first codification of conflict-of-laws rules in the UAE was introduced in 1985 as part of the 1985 Act. This codification consisted of 29 provisions (Arts. 10–28), incorporated into the Preliminary Part of the Act. In both structure and substance, the UAE codification closely followed the Egyptian model. Remarkably, despite the 37 years separating the two codifications, most of the Egyptian rules were retained almost unchanged. Some divergences nevertheless existed. For instance, while renvoi is entirely excluded under Egyptian law (Art. 27 of the Egyptian Civil Code), it is permitted under the 1985 Act only where it leads to the application of UAE law (Art. 26 of the 1985 Act).

The codification was relatively simple, comprising general choice-of-law rules structured by reference to broad legal categories, dealing in particular with status and capacity (Art. 11); marriage, its effects, and dissolution (Arts. 12–14); maintenance (Art. 15); guardianship and other measures for the protection of persons with limited capacity and absentees (Art. 16); succession and wills (Art. 17); real rights (Art. 18); contractual obligations (Art. 19); non-contractual obligations (Art. 20); and procedure (Art. 21).

The codification also included general provisions governing characterization (Art. 10); the priority of international conventions (Art. 22); general principles of private international law (Art. 23); national law (Art. 24); multi-jurisdictional legal systems (Art. 25); renvoi (Art. 26); public policy (Art. 27); and the application of UAE law in cases where the content of the applicable foreign law cannot be ascertained (Art. 28).

2. The 2020 Reform

It was not until 2020 that the choice-of-law rules were partially reformed through the Legislative Decree No. 30/2020, which amended certain provisions of the 1985 Act. This reform was not comprehensive but instead targeted four key areas.

First, the rule on substantive and formal validity of marriage was amended to

replace the former connecting factor based on the *lex patriae* of each spouse with the *lex loci celebrationis* (Art. 12).

Second, the rule on personal and patrimonial effects of marriage and its dissolution based on the *lex patriae* of the husband was similarly abandoned in favor of the *lex loci celebrationis*.

Third, Article 17, relating to succession and wills, was revised to allow *professio juris* for both the substantive and the formal validity of wills. As regards the former, the will is governed by the law chosen by the testator, failing which the *lex patriae* of the deceased at the time of death applies. As for formal validity, *professio juris* now operates as an additional alternative connecting factor.

Finally, the reform addressed public policy. For reasons that remain unclear, Article 27 expressly limited the operation of the public policy exception by excluding matters traditionally associated with personal status – such as marriage, divorce, filiation, maintenance, guardianship, succession, and wills – from its scope, despite the fact that these matters are generally regarded as having a strong public policy character (Art. 3).

Other provisions, however, were left unchanged, notwithstanding the fact that many of them are outdated and no longer reflect contemporary developments in private international law, in particular the persistence of traditional connecting factors such as the common domicile of the contractors and the *locus contractus* in contractual matters or double actionability rule for non-contractual obligations. More fundamentally, the reform failed to address the interaction between the conflict-of-laws rules contained in the 1985 Act and the provisions delimiting the scope of application of the 2005 Personal Status Act, which was subsequently replaced by the 2024 Personal Status Act. This unresolved issue of articulation continues to generate significant legal uncertainty (for an overview, see my previous posts here).

III. The New Reform under the NCTA

It was therefore with genuine enthusiasm that the reform of the existing legal framework was awaited, particularly in light of the ongoing efforts to modernize the UAE legal system and align it with international standards. However, while

the reform does present some positive aspects (1), it is with considerable regret that the NCTA appears to have devoted only very limited attention to the modernization of the UAE conflict-of-laws regime (2).

This assessment is grounded in two main observations:

First, the existing system has largely been maintained with only some minor changes, including changes in wording.

Second, the very limited modifications that were introduced reflect a legislative approach that, at best, appears insufficiently informed by contemporary developments in private international law.

1. Positive Aspects of the Reform

Three main positive aspects can be identified:

The first concerns the clear affirmation of party autonomy as a guiding principle in contractual matters. Under the 1985 Act, although party autonomy was formally recognized, its formulation tended to present it as an exception rather than as a genuine principle. This shortcoming has now been remedied in the NCTA. The new provision expressly states that *"contractual obligations, as to both form and substance, are governed by the law expressly chosen by the parties."* In addition, the NCTA abolishes the place of conclusion of the contract as an objective connecting factor applicable in the absence of a choice of law by the parties, thereby moving away from a traditional and often criticized criterion.

Second, the questionable rule allowing the application of UAE law when one of the parties has multiple nationalities is now abandoned. According to the new rule, in case a person has multiple nationalities, the law of nationality under which that person entered the UAE would apply.

The third important modification concerns public policy. As noted above, the 2020 reform introduced considerable confusion and ambiguity in the application of the public policy exception by unduly restricting its scope and excluding matters that have traditionally been regarded as falling within public policy. The NCTA addresses this difficulty by removing the limitation introduced in 2020 and by restoring the public policy exception to its more general function within the UAE

conflict-of-laws system.

Another modification of particular significance should also be highlighted, although it must be acknowledged that its practical impact may be more symbolic than substantive. This concerns the abandonment, in the current reform, of any explicit reference to Islamic Sharia in the context of public policy, even though such a reference, which appeared in the original provision in 1985, was expressly maintained in the 2020 reform. This omission marks a notable shift in legislative technique and appears to signal a move toward a more neutral formulation of public policy, at least at the level of statutory language.

The removal of the explicit reference to Islamic Sharia may thus be understood as part of a broader trend toward the modernization and internationalization of the UAE's private international law framework. This interpretation is further supported by the redefinition of the role of Islamic Sharia as a formal source of law under the NCTA. Indeed, whereas former Article 1 of the 1985 Act set out a detailed hierarchy of rules prioritizing specific schools of jurisprudence (most notably the Maliki and Hanbali schools), the new Article 1 of the NCTA adopts a more open-ended formulation, granting judges greater discretion to select "the solution that is most appropriate in light of the interests at stake," without specifying any particular school of reference. A similar approach was adopted in the 2024 reform of the Personal Status Act.

2. Limits of the Reform and Persisting Issues

Notwithstanding the positive aspects identified above, the reform also presents a number of significant shortcomings. These concern both certain newly introduced provisions, whose design or content raises serious difficulties, and important issues that the legislature chose not to address or appears to have overlooked altogether. Taken together, these weaknesses considerably limit the extent to which the reform can be regarded as a genuine modernization of the UAE conflict-of-laws regime.

a) New Solutions Introduced in the NCTA

i) The The Conflict-of-Law rule in Matters of Marriage and its Dissolution: The Further Extension of the Scope of the Nationality Privilege

As noted above, prior to the entry into force of the NCTA, the *lex loci celebrationis* governed the substantive and formal validity of marriage (Art. 12), as well as its personal and patrimonial effects and its dissolution (Art. 13). Marriages concluded between foreigners, or between a foreigner and a UAE citizen, could also be recognized as valid in form if they complied with the formalities of the place of celebration, or if they respected the formal requirements prescribed by the law of each of the spouses (Art. 12). The application of these rules was, however, subject to an important exception: they did not apply if one of the parties was a *UAE citizen at the time of the marriage*, except with respect to capacity (Art. 14).

First, it should be noted that the NCTA failed to resolve the inconsistency between Articles 12 and 14. While Article 12 allows the formal validity of marriages concluded by UAE citizens abroad to be governed by the *lex loci celebrationis*, Article 14 removes this possibility by subjecting all matters relating to the formation of marriage, its effects, and its dissolution exclusively to UAE law when one of the parties is a UAE citizen.

Second, and more importantly, the NCTA extends the scope of the exception in a problematic manner. Under the new rules, the exception now applies not only to persons who were UAE citizens at the time of the marriage, but also to those who *subsequent to their marriage acquired UAE citizenship, and retained that citizenship up to the time the action is brought*.

On its face, this rule raises two main concerns. First, it introduces retrospective effects by applying UAE law to marriages concluded before the acquisition of citizenship. This potentially affects the validity, formalities, and effects of marriages that were lawfully concluded under foreign law. Second, it may create uncertainty in cross-border matrimonial relations, as spouses who acquire UAE nationality after marriage could inadvertently subject themselves to UAE law even if all formal and substantive requirements were originally satisfied abroad. Such an extension of the nationality privilege, while it may be of very limited practical

relevance, represents a questionable departure from traditional conflict-of-law principles based on the ideas of acquired rights, and the respect of the legitimate expectations of the parties.

ii) The Conflict-of-Law rule in Contractual Matters

Despite the positive aspects noted above, the new rule suffers from significant shortcomings. These shortcomings relate, first and foremost, to the scope and the regime of party autonomy. In particular, the provision remains silent on several crucial issues: whether the chosen law must have any connection with the parties or the contract; whether an initial choice of law may be modified at a later stage; and whether techniques such as *dépeçage* or the choice of non-State law are permissible. All these uncertainties undermine the effective operation of party autonomy and weaken legal certainty.

Second, in the absence of a choice of law by the parties, the NCTA not only retains the outdated reference to the parties' common domicile as the primary objective connecting factor, but also introduces a new connecting factor whose application is likely, in practice, to lead systematically to the application of UAE law. Under the new rule, where there is neither a choice of law nor a common domicile, the contract is governed by the law of the State in which the *principal obligation* is to be performed. Unlike the traditional test of the "characteristic obligation", which typically leads to the identification of a single governing law presumed to have the closest connection with the contract, the notion of "principal obligation" is inherently problematic in the field of choice of law. This is because bilateral contracts, which constitute the main instruments of international trade, by their very nature involve more than one principal obligation, such as the delivery of goods and the payment of the price in a contract of sale. As a result, in contracts involving a UAE party, whether as obligor or obligee, the performance of at least one principal obligation will often take place in the UAE, thereby triggering the systematic and largely indiscriminate application of UAE law. Even if the term "principal obligation" is understood as referring to the "characteristic obligation," the new provision departs from the general approach adopted in leading recent codifications by designating the place of performance (*locus solutionis*) of that obligation, rather than the more widely accepted and more predictable connecting factor of the

habitual residence of the party performing the characteristic obligation.

Of course, the parties may seek to avoid this difficulty by choosing the law applicable to their contract. However, given the very weak status of foreign law in the UAE, where it is treated as a mere question of fact, and the considerable hurdles imposed on the parties in establishing its content in judicial practice, the practical relevance of party autonomy is largely illusory. This assessment is once again confirmed by several recent Supreme Court decisions in which the law chosen by the parties was not applied on the grounds that the chosen law was not ascertained as required (see Dubai Supreme Court, Appeal No. 720 of 13 August 2025; Appeal No. 1084 of 22 October 2025; Appeal No. 1615 of 23 December 2025). The same difficulties arise in family law matters, as discussed in a previous post, but they are identical in substance in civil and commercial cases as well.

b) Persisting Issues

Notwithstanding the few positive developments highlighted above, the conflict-of-laws rules incorporated in the NCTA largely preserve the traditional Egyptian model introduced into the region in 1948. As a result, they remain significantly disconnected from contemporary developments and comparative trends in private international law and fail to fully reflect the principles increasingly adopted in other jurisdictions to address the needs of cross-border transactions, family relations, and international commercial practice. The reform also preserved a traditionally rigid approach, leaving little room for flexibility and excluding exception clauses that would allow courts to depart from the designated applicable law in favor of a more closely connected one. In particular, the NCTA does not introduce tailored conflict rules designed to reflect the specific characteristics of certain legal relationships. This omission is especially noticeable with regard to protective regimes for weaker parties, including employees and consumers. Unlike many modern conflict-of-laws systems, the NCTA does not limit the role of party autonomy in these contexts, nor does it provide specific choice-of-law rules for employment or consumer contracts. Similar shortcomings can be observed in the absence of specialized rules governing particular categories of torts or addressing specific aspects of family relationships.

Finally, as was already the case following the 2020 reform, the NCTA fails to resolve the longstanding and fundamental issue concerning the articulation between the rules delimiting the scope of application of the Personal Status Act and the choice-of-law rules set out in the NCTA. This problem has become even more acute with the recent introduction of "civil personal status" legislation at both the federal level and the local level in the Emirate of Abu Dhabi, thereby further complicating the overall normative landscape (for an overview see my previous posts here and here).

IV. Some Concluding Remarks

Taken as a whole, while the adoption of the NCTA could have provided an opportunity to undertake a thorough and forward-looking reform of the UAE's private international law framework by drawing inspiration from the most recent developments in the field and from general trends observed in comparative law. Such a reform would have helped consolidate the UAE's position and ambitions as a leading hub not only for international finance and business transactions, but also as a melting pot of multiple nationalities living harmoniously within its territory. However, the reform ultimately falls short of this ambition. It largely preserves an outdated structure and introduces only limited, and at times problematic, adjustments. Moreover, the reform does nothing to address the strong *homeward trend* observed in judicial practice, which significantly limits the practical relevance of choice-of-law rules. This trend is particularly evident in personal status legislation and in the very weak status accorded to foreign law. In this respect, the NCTA represents a missed opportunity to align the UAE's conflict-of-laws regime with modern comparative standards and to enhance legal certainty, predictability, and coherence in an increasingly international legal environment.