

# Settlement (civil litigation) Q&A: United Arab Emirates

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United Arab Emirates – specific information on all aspects of settling a dispute by negotiation, mediation and other alternative dispute resolution mechanisms, including the statutory obligations to attempt settlement, form and formalities of settlement, how to ensure confidentiality of the settlement terms, the without prejudice status of negotiations, the law on third party rights, enforcement of the settlement terms and how to set aside a settlement.

This Q&A provides country-specific commentary on *Practice note, Settlement: Cross-border* and forms part of *Cross-border dispute resolution*.

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## RESOURCE INFORMATION

### RESOURCE ID

w-006-5990

### RESOURCE TYPE

Country Q&A

### JURISDICTION

United Arab Emirates

## STATUTORY OBLIGATIONS

### 1. Do courts in your jurisdiction encourage settlement between parties? If so, by what means? Are there any implications for the parties that refuse to participate in settlement negotiations?

There are two distinct legal systems in the UAE, which apply different laws and procedures:

- A civil law system (UAE law), which applies across the UAE and is administered through federal and Emirate-specific local courts (together the Onshore UAE courts).
- The English language common law court system based in two of the federal financial free-zones: the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). The DIFC and ADGM courts have jurisdiction to determine certain civil and commercial disputes and operate independently of the Onshore UAE courts.

As there are currently no proceedings pending before the ADGM courts (which were only launched in May 2016), this note will focus on settlements of civil and commercial disputes in the Onshore UAE courts and the DIFC courts.

## ONSHORE UAE COURTS

Civil litigation in the Onshore UAE courts is subject to Federal Law No. 11 of 1992, as amended (UAE Civil Procedure Code). There is no general requirement in the UAE Civil Procedure Code that parties attempt to settle a dispute before commencing court proceedings, however:

- In Dubai, disputes relating to claims of AED50,000 or less concerning real estate, and claims where a party litigant is a bank, must be referred to the Dubai Centre for Settlement of Amicable Dispute (Centre).
- Within the Federal Courts including the Abu Dhabi courts, parties involved in certain commercial and labour disputes can submit a request to the Reconciliation and Settlement Committee for a settlement hearing before referring the dispute to the judiciary.
- In respect of labour disputes, before either party can file a claim to the Onshore UAE courts, a complaint must be lodged with the Ministry of Labour, which will then require the parties to meet and try to amicably resolve the dispute. If the dispute is not settled, the matter is referred to court. Similar processes are also adopted by some of the free-zone authorities. Even after the matter has been referred to court, judges have discretion to order further conciliation attempts. However, as there is limited scope for the successful party to recover costs from the losing party, the Onshore UAE courts cannot meaningfully penalise a party who refuses to engage in the conciliation process.

## DIFC COURTS

There is no provision in the Rules of the DIFC courts (RDC) requiring the parties to try to resolve their disputes before commencing proceedings. However, the DIFC courts actively encourage parties to settle their disputes, for example through mediation and conciliation.

To facilitate resolution of disputes early on in the proceedings, the parties must indicate on the case management form:

- Whether “some form of alternative dispute resolution procedure [might] assist to resolve or narrow the dispute or particular issues”.
- Whether “an order for alternative dispute resolution” would be appropriate. If the parties agree that it would be helpful, an order will usually be made and the proceedings stayed pending the outcome.

The DIFC courts have discretion to order the unsuccessful party to pay the costs of the successful party. As a result, if the successful party refuses to participate in alternative dispute resolution, the DIFC courts can decide not to award such party any or all of its costs.

## FORM OF SETTLEMENT

### 2. What are the different ways in which parties to a dispute can record a settlement between them (for example, a settlement agreement, deed or court order)? Are settlements agreed verbally or through emails or letters exchanged between the parties required to be recorded in separate agreement or court order to be considered valid?

There are no requirements to use a particular form when settling proceedings pending before the Onshore UAE courts or the DIFC courts.

## ONSHORE UAE COURTS

Settlements are usually recorded in a formal written settlement agreement, rather than by a deed (which is not recognised as a distinct form of legal document under UAE law).

A settlement will be considered valid and binding if all of the conditions to entering into a contract under UAE law have been satisfied. The general rule is that contracts are created by the exchange of mutual intentions, that is, “the coming together of an offer made by one of the contracting parties with the acceptance of the other...” (*Article 125, UAE Civil Code*). An expression of intent can be made orally or in writing, or by acts demonstrating mutual intent (*Article 132, UAE Civil Code*). As such, settlements agreed verbally or through emails or letters exchanged

between the parties may be considered legally binding provided there is evidence of a mutual intention to resolve the dispute.

Once the parties have concluded the settlement and would like the terms recorded, the parties must file the settlement agreement with the court at the next hearing date. The Onshore UAE courts will then issue a judgment which states that the matter has been settled and the judgment will reference the settlement agreement.

## DIFC COURTS

Settlements are usually recorded in a formal written settlement agreement. There are no requirements as to form, provided the settlement is considered valid and binding under DIFC law. Under Article 14 of DIFC Law No. 6 of 2004 (DIFC Contract Law), a contract is concluded by the acceptance of an offer. It does not need to be concluded or evidenced in writing (*Article 9, DIFC Contract Law*). However, if “in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a specific form..., no contract is concluded before agreement is reached on those matters or in that form” (*Article 26, DIFC Contract Law*).

Once the parties have concluded the terms of settlement, the parties can enter into a consent order recording those terms. However, when the consent order is issued, it becomes a matter of public record. Therefore the parties usually enter into a consent order which simply records, for example, that they:

- Have reached an amicable resolution of all disputes between the parties.
- Have entered into a binding settlement agreement reflecting the terms of their settlement.
- Have agreed to withdraw all claims and requests for relief against each other.
- The proceedings shall be finally discontinued.

Once the wording has been agreed by the parties and approved by the court, the DIFC courts will then issue the consent order and the proceedings will be discontinued.

## FORMALITIES

### 3. What formal requirements exist for executing a valid settlement? Is it possible to use counterparts to complete the process of executing a settlement agreement?

There are no formal requirements under either UAE law or DIFC law for executing a valid settlement, provided that the general requirements for entering into a binding agreement have been satisfied (see [Question 2](#)).

However, the parties may choose to execute their settlement agreement before a notary public. As the notary public will confirm the identity of the signatories and witness the signatures, there is less scope for one party to subsequently challenge the validity of the agreement. If the parties elect to execute a formal written settlement agreement, there is no restriction on the use of counterparts under UAE law or DIFC law.

### TERMS OF SETTLEMENT SUBJECT TO COURT RATIFICATION

#### 4. Do the terms of settlement require court approval? Does the settlement agreement need to be filed with the court? If so, are (i) the fact of settlement and (ii) the settlement terms, a matter of public record?

The terms of settlement of a civil or commercial dispute do not need approval by the Onshore UAE courts or the DIFC courts and there is no requirement to file the settlement agreement with either court.

#### ONSHORE UAE COURTS

The parties can elect to file the settlement agreement with the court. As explained above, once the settlement agreement has been filed, the Onshore UAE courts will record the settlement agreement in the final judgment. Alternatively, the parties can keep the terms of the settlement confidential and the claimant can simply advise the court that it wishes to withdraw and discontinue its claim.

#### DIFC COURTS

The parties will not usually disclose their written settlement agreement to the court. Instead, they will try to reach an agreement on the wording of a consent order which does not contain the detailed terms of the agreement (see [Question 2](#)). Once issued, the consent order, but not the detailed terms of the settlement, will become a matter of public record. However, there is nothing preventing the parties from seeking a consent order recording the detailed terms of settlement.

### CONFIDENTIALITY

#### 5. Are settlements in your jurisdiction automatically confidential? If not, what steps can parties take to seek to keep the settlement confidential?

**UAE law.** Settlements are not automatically considered confidential under UAE law. However, communication marked as confidential cannot be

disclosed without consent. Contracting parties are also free to include express provisions regarding the confidentiality of any settlement within the terms of their settlement agreement.

**DIFC law.** Similarly, settlements are not automatically considered confidential under DIFC law. However, DIFC law expressly precludes the disclosure of information given by one party to the other during the course of negotiations expressly designated as confidential, whether or not a contract is subsequently concluded (*Article 29, DIFC Contract Law*). Again, the contracting parties are free to include within the terms of their settlement agreement express provisions regarding the confidentiality of any settlement.

Unless a specific order is made by the issuing court, court orders issued by the UAE courts and DIFC courts are not considered to be confidential.

### POWERS OF THE PARTIES TO COMPROMISE

#### 6. Are there any restrictions on parties' power to compromise their disputes? Are there rules on who may sign a settlement, especially on behalf of a company?

Under both UAE and DIFC law, a person does not have legal capacity if the person is less than 18 years old or is mentally ill. As a result, such individuals cannot lawfully compromise their disputes.

A person who signs a settlement agreement on behalf of a company should be duly authorised by the company to do so, however:

- The DIFC courts recognise the concept of "apparent authority". Therefore, despite the absence of any express authority, a company representative who holds himself out as having the requisite authority to sign a settlement agreement on behalf of the company may be deemed to have apparent authority (*Articles 130 and 131, DIFC Contract Law*).
- The Onshore UAE courts have held that, if a specific company's name is listed in the preamble or introduction of a contract and the contract was signed by another person at the foot of the page, there is a presumption that the signatory has signed the contract in the name of and on behalf of the company (*Dubai Court of Cassation Case No. 547/2014*). Therefore, despite the absence of any express authority, the company may still be bound by the terms of that contract.

Legal advisors or representatives should seek express instructions from their client before settling a dispute on their behalf.

## TIMING OF SETTLEMENT

- 7. Can settlement discussions be conducted at any time during litigation proceedings? Are there any advantages, in terms of costs or otherwise, to entering into settlement negotiations sooner rather than later during litigation proceedings?**

There is no restriction on the timing of settlement discussions during litigation proceedings pending before the Onshore UAE courts or the DIFC courts.

### DIFC COURTS

There may be advantages in terms of costs to entering into settlement discussions earlier in the proceedings. The DIFC courts have discretion to order that the unsuccessful party pay the costs of the successful party. Accordingly, if the successful party refused or delayed entering into settlement discussions until late on in the proceedings, the DIFC courts may decide not to award such party any or all of its costs (see [Question 1](#)).

### ONSHORE UAE COURTS

There are no material advantages to entering into settlement negotiations sooner rather than later during litigation proceedings, as since there is limited scope for the successful party to recover costs from the losing party in proceedings before the Onshore UAE courts, aside from limiting a party's own legal costs.

## WITHOUT PREJUDICE RULE

- 8. Does the 'without prejudice' rule apply to settlement negotiations in your jurisdiction? Are there any exceptions to the applicability of the rule? Can it be waived with the consent of the parties?**

### ONSHORE UAE COURTS

The concept of "without prejudice" communication is not recognised by the Onshore UAE courts. Therefore, the without prejudice rule does not apply to settlement negotiations onshore in the UAE. Accordingly, correspondence between parties during settlement negotiations, irrespective of whether it is marked "without prejudice", can be submitted to the Onshore UAE courts and relied on if a settlement is not achieved.

### DIFC COURTS

In contrast, the DIFC Courts recognise the concept of without prejudice communication. Without prejudice privilege applies to all inter-party communications where there is a genuine attempt to settle the dispute. However, for the avoidance of any doubt, all correspondence (verbal or written) should be expressly stated to be "without prejudice".

The RDC also provide that Part 32 offers (that is, a formal offer to settle made in accordance with Rule 32.4 of the RDC) "will be treated as 'without prejudice except as to costs'" and state the "fact that a Part 32 offer has been made must not be communicated to the trial Judge or to the Judge (if any) allocated in advance to conduct the trial until the case has been decided." Privilege can be waived by consent.

## TERMS OF SETTLEMENT

- 9. Are there any limitations on the scope of release clauses that parties may agree with respect to existing and future claims? Please cite any relevant statutory provisions and case law.**

Both UAE and DIFC law entitle parties to release existing and future claims that may arise out of known or existing circumstances if the contractual language is clear. However, under the common law, the release of future claims can be a complicated issue and there is an extensive body of case law on this topic. A provision in the form set out in [Standard Document, Settlement Agreement \(civil litigation\): Cross-border: clause 5](#) is suitable for use for settlements governed by UAE and DIFC law.

However, the parties should ensure that the contractual language is tightly drafted and makes clear the extent of the intended release (that is, whether it is intended to only cover existing claims, or also future claims). If the parties do not intend to release future claims, for the avoidance of any doubt, the release should be expressly limited to existing claims (whether or not presently known) and future claims should be expressly excluded.

## TAXES ON SETTLEMENTS

- 10. Are taxes (such as income tax, capital gains tax or corporation tax) payable in relation to settlements involving payment of money?**

There is currently no income tax, capital gains tax or corporation tax payable on settlements involving payment of money either in the Onshore UAE courts or in the DIFC courts.

## SEVERABILITY

### 11. Are severability clauses commonly incorporated within settlement agreements to avoid the entire agreement being held void or unenforceable due to the illegality, invalidity or unenforceability of a part of the agreement?

Yes, severability clauses similar to *Standard Document, Settlement Agreement (civil litigation): Cross-border: clause 11* are commonly incorporated within settlement agreements in respect of disputes before the Onshore UAE courts as well as the DIFC courts.

## THIRD PARTY RIGHTS

### 12. Can third parties enforce their rights under the terms of the settlement? If so, can parties exclude the application of third party rights in the agreement?

Settlement agreements may (and should) include a clause respecting third party rights similar to *Standard Document, Settlement Agreement (civil litigation): Cross-border: clause 17*.

Under the UAE Civil Code, a “contract may not impose an obligation upon a third party but it may create a right” (*Article 252*), “unless there is a contrary agreement” (*Article 254*).

Similarly, the DIFC Contract Law provides that a third party “may in his own right enforce a term of the contract if the term purports to confer a benefit” (*Article 104(1)(b)*). Article 104(2) limits this right “if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.”

## DISPOSAL OF LEGAL PROCEEDINGS

### 13. What are the formalities to dispose of court or litigation proceedings once the dispute has been settled?

#### ONSHORE UAE COURTS

If legal proceedings have started, parties may agree to stay the proceedings provided that the stay does not exceed a six month period (*Article 101(1), UAE Civil Procedure Code*). Should the stay exceed six months, the claimant will be deemed to have withdrawn the claim and the case will be dismissed.

Where the parties have reached a settlement agreement and wish to have the proceedings dismissed or stayed, the procedure usually adopted is that the claimant formally withdraws the proceedings. The withdrawal of proceedings by the claimant must be made by written notice to the parties or “orally at the hearing and recorded in the minutes” of the next court hearing (*Article 111, UAE Civil Procedure Code*). The case will not be dismissed unless the defendant accepts the withdrawal.

#### DIFC COURTS

With respect to the DIFC courts, should the settlement arise as a result of an acceptance of an offer to settle under Part 32 of the RDC, the court will stay the proceedings. For other types of settlements, once a settlement has been reached, the claimant may discontinue all or part of a claim through filing and serving a notice of discontinuance (*Part 34, RDC*). On service of the notice, the proceedings will be “brought to an end” save and except in relation to costs.

## BREACH OF SETTLEMENT TERMS

### 14. What are the remedies available for breach of the settlement terms? Is it possible to revive the original claim, or is it necessary to bring a fresh claim for breach of the settlement agreement?

#### ONSHORE UAE COURTS

If the original claim has been withdrawn, it is necessary to bring a fresh claim in respect of the breach of the settlement agreement. Indemnity clauses in relation to legal fees and costs associated with a breach of a settlement agreement are common. However, they are of limited use as Onshore UAE courts only make nominal awards in respect of legal fees normally capped at AED 2,000.

#### DIFC COURTS

Where the terms of a Part 32 offer have been breached, a party may apply to the DIFC courts to enforce the terms of the offer without bringing a new claim. With respect to a discontinued claim, a fresh proceeding is required as well as permission from the DIFC courts (*Rule 34.16, RDC*) unless there is wording in the settlement agreement to the contrary. Since costs are generally recoverable against a losing party, indemnity clauses similar to *Standard Document, Settlement Agreement (civil litigation): clause 9* are common and enforceable in DIFC court proceedings.

### ENFORCEMENT PROCEEDINGS

#### 15. What are the procedures to enforce a settlement contained in a:

- Settlement deed/agreement?
- Court order?

For settlements contained in a settlement deed or agreement, see *Question 14*. A settlement contained in a court order from the Onshore UAE courts as well as the DIFC courts will be treated like any other order or judgment of the court. If breached, the party seeking enforcement can file execution proceedings. In the DIFC courts, a breach of a court order may also entitle the non-defaulting party to file a claim for contempt of court.

### SETTING ASIDE A SETTLEMENT

#### 16. On what grounds can a settlement be varied or set aside? Please outline the procedure to be followed.

A settlement agreement can only be varied or set aside by the agreement of both parties or through a court order should the Onshore UAE courts or DIFC Courts determine that the provisions contained in the agreement are either unlawful or against public policy. The validity of a settlement agreement is treated in the same way as any other civil or commercial agreement.

### LEGAL COSTS

#### 17. Would you expect to see a clause dealing with legal costs in the settlement agreement? Are parties free to agree on arrangements regarding payment of legal costs? What is the position if the parties do not include a separate clause dealing with legal costs?

Yes, clauses dealing with legal costs containing wording similar to *Standard Document, Settlement*

*Agreement and Release: clause 7* are common in disputes before the Onshore UAE courts. The Onshore UAE courts will cap legal fees at a nominal amount (AED 2,000) for the prevailing party (see *Question 14*). Therefore, it is common for the parties to agree that they will be responsible for their own costs.

Although the DIFC Courts can (and most often do) award costs to the successful party, many litigants agree that each should bear their own costs and the DIFC courts honour these agreements.

### SETTLEMENT AGREEMENTS

#### 18. Are there any other clauses that would be usual to see in a settlement agreement and/or that are standard practice in your jurisdiction which do not appear in the *Standard document, Settlement agreement (civil litigation): Cross-border*?

No.

### CONTRIBUTOR DETAILS

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