

Settlement of Civil Disputes in the Dubai International Financial Centre (DIFC): Overview

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A Practice Note providing an overview on the key aspects of settling a civil dispute in the DIFC, including statutory duties to attempt settlement, the form and formalities of settlement, how to ensure confidentiality of the settlement terms, whether negotiations are without prejudice, third-party rights, remedies for breach, enforcement of the settlement terms, and how to set aside a settlement agreement.

Litigation is expensive and can often take a long time. Courts in many jurisdictions actively encourage settlement, and some jurisdictions require the parties to attempt settlement procedures in certain types of civil litigation. Settlements, which can be reached before or during legal proceedings, can be a cost-effective alternative to engaging in protracted and costly court action.

Settlements are usually considered a form of contract to which general contract law principles apply. However, settlements can also become part of a court order, especially when litigation is ongoing. In the context of a civil dispute between two or more parties, a settlement comes about when they reach a mutually acceptable compromise to resolve their dispute. If the settlement covers the parties' entire dispute, the dispute ends, as do any ongoing legal proceedings related to the dispute. Generally, the parties cannot start a new action relating to that dispute, unless they specifically agree that the dispute can be revived in certain circumstances.

This Note covers DIFC-specific information on all aspects of settling a dispute by negotiation, mediation, and other alternative dispute resolution mechanisms, including:

- The legal or statutory duty and obligations, if any, to attempt settlement.
- The form and formalities of settlement, including the different ways the parties can record the settlement terms.
- Whether the terms of settlement require approval from the courts.
- How to ensure confidentiality of the settlement terms.
- The application of the without-prejudice rule, that is, how parties can ensure that anything said in the settlement negotiations cannot be held against them in any subsequent litigation.
- Whether third parties have any rights under the settlement terms.
- Remedies for breach of settlement terms.
- Enforcement of the settlement terms and how to set aside a settlement.

This Note focuses on settlements in the DIFC courts, which have jurisdiction to determine certain civil and commercial disputes and operate independently of the onshore UAE courts. The DIFC has its own legislation,

largely modelled on English law (common law). The laws of England and Wales also apply by default in certain circumstances where an area of law is not covered by DIFC law. For information on settlement in the onshore UAE courts, see [Practice Note, Settlement of Civil Disputes in the United Arab Emirates: Overview](#).

For information on settlement in a cross-border context, see [Practice note, Settlements in cross-border disputes: overview](#).

Statutory Obligations to Attempt Settlement

There is no provision in the Rules of the DIFC Courts 2014 (RDC 2014) 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. Under the RDC 2014, legal representatives in all cases should consider with their clients and the other parties concerned the possibility of attempting to resolve the dispute by alternative dispute resolution, and should ensure that their clients are fully informed as to the most cost-effective means of resolving their dispute.

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

There are no requirements to use a particular form when settling proceedings pending before the 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.
- They have entered into a binding settlement agreement reflecting the terms of their settlement.
- They 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

There are no formal requirements under DIFC law for executing a valid settlement, provided that the general requirements for entering into a binding agreement have been satisfied (see *Form of Settlement*).

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 DIFC law.

Terms of Settlement Subject to Court Ratification

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

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 that does not contain the detailed terms of the agreement (see *Form of Settlement*). 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

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 DIFC courts are not considered to be confidential.

A confidentiality clause similar to *Standard Document, Settlement agreement (civil litigation): Cross-border: clause 13* is suitable for use in settlement agreements governed by DIFC law.

Powers of the Parties to Compromise

Under DIFC law, a person does not have legal capacity if they are less than 18 years old or mentally ill. As a result, these individuals cannot lawfully compromise their disputes.

The DIFC courts have jurisdiction over civil and commercial matters only, and do not have jurisdiction over other matters, such as criminal, family, or matrimonial matters. Parties cannot agree to settle matters outside the jurisdiction of the DIFC courts.

A person who signs a settlement agreement on behalf of a company must 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 themselves 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*).

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

In certain circumstances, approval of the court is required to settle a claim. For example, court approval is required when a party is appointed to act as a representative of another person in a claim (*rule 20.44, RDC*). The court's permission may also be required to accept a Part 32 offer (that is, a formal offer to settle made in accordance with rule 32.4 of the RDC) (*rule 32.26, RDC*).

Timing of Settlement

There is no restriction on the timing of settlement discussions during litigation proceedings pending before the 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 in the proceedings, the DIFC courts may decide not to award such party any or all of its costs (see *Statutory Obligations to Attempt Settlement*).

Without Prejudice Rule

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 provides that Part 32 offers "will be treated as 'without prejudice except as to costs'" (*rule 32.46, RDC*) 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" (*rule 32.47, RDC*). Privilege can be waived by consent.

There is no specific DIFC law governing "without prejudice" privilege, therefore the following issues are likely to be determined under the laws of England and Wales:

- Whether the "without prejudice" privilege is considered a joint waiver and can therefore only be waived jointly.
- The consequences of unintentional or inadvertent use or disclosure of, or reference to, privileged materials on the privileged status of these materials.
- The extension of future without privilege protection to subsequent litigation between the same parties.

Terms of Settlement

DIFC law entitles 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 complex 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 in settlements governed by DIFC law.

However, the parties should ensure that the contractual language is tightly drafted and clearly set out 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

There is currently no income tax, capital gains tax, or corporation tax payable on settlements involving payment of money.

Severability

Severability clauses similar to *Standard document, Settlement agreement (civil litigation): Cross-border: clause 11* are commonly incorporated in settlement agreements in respect of disputes before the DIFC courts.

Third-Party Rights

Settlement agreements can (and should) include a clause on third-party rights similar to *Standard document, Settlement agreement (civil litigation): Cross-border: clause 17*.

Under the DIFC Contract Law, a third party can in their own right enforce a contractual term if the term purports to confer a benefit, except where on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party (*Article 104(1)(b) and (2), DIFC Contract Law*).

Disposal of Legal Proceedings

If the settlement arises following acceptance of an offer to settle made 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 can 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

Where the terms of a Part 32 offer have been breached, a party can 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): Cross-border: clause 9* are common and enforceable in DIFC court proceedings.

A settlement contained in a court order from 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.

A settlement agreement can only be varied or set aside by agreement of both parties or through a court order if the 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. Therefore, the remedies available for breach of the settlement terms are the same as those available in any breach of contract claim.

Legal Costs

Although the DIFC courts can (and most often do) award costs to the successful party, in the event of a settlement, many litigants agree that each should bear their own costs and the DIFC courts respect these agreements.

It is usual to see a clause dealing with legal costs in a settlement agreement governed by DIFC law. Provisions addressing costs similar to *Standard document, Settlement agreement (civil litigation): Cross-border: clause 7* are common and enforceable. In the absence of an agreement, the default position is that each party must bear its own costs arising out of, and in connection with, the settlement agreement.

Settlement Agreements

The clauses in *Standard document, Settlement agreement (civil litigation): Cross-border* are legally enforceable in the DIFC.

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