

Settlement of Civil Disputes in the United Arab Emirates: Overview

by *Nazanin Aleyaseen* and *Jennifer Paterson*, K&L Gates LLP

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A Practice Note providing an overview on the key aspects of settling a civil dispute in the UAE, 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 UAE-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 court approval.
- 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 onshore UAE courts, which follow a civil law system, and under onshore UAE law, which applies across the UAE, and is administered through federal and Emirate-specific local courts. For

information on settlement in the Dubai International Financial Centre (DIFC) courts, see *Practice Note, Settlement of civil disputes in the DIFC: Overview*.

For information on settlement in a cross-border context, see *Practice Note, Settlements in cross-border disputes: overview*.

Statutory Obligations to Attempt Settlement

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

- In Dubai, certain disputes, such as those concerning the division of common property or relating to claims where the principal debt in dispute does not exceed AED100,000, must be referred to the Dubai Centre for Settlement of Amicable Dispute (Centre) before parties can file proceedings before the Dubai courts.
- 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 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.

Form of Settlement

There are no requirements to use a particular form when settling proceedings pending before the 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 for 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, Federal Law No. (5) of 1985 on the Civil Transactions Law of the United Arab Emirates (Civil Code)*). An expression of intent can be made orally or in writing, or by acts demonstrating mutual intent (*Article 132, Civil Code*). As such, settlements agreed verbally or through e-mails 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.

Formalities

There are no formal requirements under UAE 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 UAE law.

Terms of Settlement Subject to Court Ratification

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

The parties can elect to file the settlement agreement with the court. As explained above, once the settlement agreement has been filed, the 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.

Confidentiality

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.

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

A provision in the form set out in [Standard Document, Settlement agreement \(civil litigation\): Cross-border: clause 13](#) is suitable for use in agreements governed by UAE law.

Powers of the Parties to Compromise

Under UAE law, a person does not have legal capacity if the person is under 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 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 (*Case No. 547/2014 (Dubai Court of Cassation) The Palm - Jebel Ali Company LLC v Alan Stinnett*). Therefore, despite the absence of any express authority, the company may still be bound by the terms of that contract.

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

Timing of Settlement

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

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

Without Prejudice Rule

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

However, communication marked "confidential" cannot be disclosed without consent (see [Confidentiality](#)). Contracting parties are also free to include express provisions regarding the confidentiality of any settlement within the terms of their settlement agreement or a separate non-disclosure agreement.

Terms of Settlement

UAE law entitles parties to release existing and future claims that may arise out of known or existing circumstances if the contractual language is clear. 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 UAE 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

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

Severability

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 UAE courts.

Third-Party Rights

Settlement agreements should include a clause respecting third party rights similar to [Standard Document, Settlement agreement \(civil litigation\): Cross-border: clause 17](#).

A contract cannot impose an obligation on a third party, but it can create a right ([Article 252, Civil Code](#)), unless there is a contrary agreement ([Article 254, Civil Code](#)).

Disposal of Legal Proceedings

If legal proceedings have started, parties can agree to stay the proceedings provided that the stay does not exceed a six-month period (*Article 101(1), 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, Civil Procedure Code*). The case will not be dismissed unless the defendant accepts the withdrawal.

Breach of Settlement Terms

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 UAE courts only make nominal awards in respect of legal fees, normally capped at AED2,000.

Enforcement Proceedings

A settlement contained in a court order from the UAE courts will be treated like any other order or judgment of the court. If breached, the party seeking enforcement can file execution proceedings.

A settlement agreement can only be varied or set aside by the agreement of both parties or through a court order should the UAE 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

Clauses dealing with legal costs containing wording similar to *Standard Document, Settlement agreement (civil litigation): Cross-border: clause 7* are common in disputes before the UAE courts. The UAE courts will cap legal fees at a nominal amount (AED2,000) for the prevailing party (see *Breach of Settlement Terms*). Therefore, it is common for the parties to agree that they will be responsible for their own costs.

In the absence of an agreement to the contrary, the default position is that each party shall bear its own costs arising out of and in connection with the settlement agreement.

Settlement Agreements

An agreement similar to *Standard Document, Settlement agreement (civil litigation): Cross-border* would apply in the UAE with no major differences.

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