

Settlement Procedure and Agreement

Type	Gulf Legal Advisor
Document type	Practice Note
Date	15 Jun 2021
Jurisdiction	United Arab Emirates
Copyright	LexisNexis

Document link: https://www.lexismiddleeast.com/pn/UnitedArabEmirates/Settlement_Procedure_and_Agreement

Table of contents

Overview	3
Definitions	3
Practical Guidance	3
Statutory obligations	3
Forms of settlement and formalities	4
Confidentiality	5
Powers of the parties to settle	5
Timing of settlement	5
“Without prejudice” rule	5
Terms of settlement and future claims	5
Severability	5
Third party rights	5
Disposal of legal proceedings	5
Setting aside a settlement	5
Legal costs	6
Related Content	6
Authors	7

Overview

- This Practice Note will provide practical guidance on settlement procedures and agreements in the UAE Local Courts.
- It is important to note that there are two distinct legal systems in the UAE:
 - a federal Civil Law system administered in Arabic at a federal level, and in Emirate courts (together, the Local Courts), and
 - a Common Law system administered in English by the courts of two unique freezones: the DIFC (see Settlement Procedure and Agreement (DIFC)) and the ADGM.
- This Practice Note focuses on the Local Courts.

Definitions

- *UAE Civil Procedures Code*: Federal Law No. 11/1992 on the Civil Procedures Law.
- *UAE Civil Code*: Federal Law No. 5/1985 Promulgating the Civil Transactions Law of the United Arab Emirates State.
- *UAE Conciliation Law*: Federal Law No. 26/1999 (as amended) on the Establishment of Conciliation and Reconciliation Committees at the Federal Courts
- *UAE Labour Law*: Federal Law No. 8 of 1980 on the Regulation of Labour Relations
- *ADR*: Alternative Dispute Resolution.

Practical Guidance

Though settlement agreements are common and valid under UAE law, parties to such agreements need to be mindful of some important differences between the treatment of settlement agreements under UAE law, and their treatment under common law systems, such as DIFC law, or English law. For example, the concept of "without prejudice" does not exist under UAE law, and settlement agreements are not confidential unless expressly labelled as such. Additionally, settlement agreements are not executed as a deed; the local equivalent is to notarise the agreement. These points and additional considerations are explained in detail below.

Statutory obligations

The UAE Civil Code does not contain any general requirement that the parties must attempt to settle their dispute before triggering litigation proceedings. However, local laws in some Emirates require parties to attempt to resolve certain specific types of cases via alternative methods before they can be referred to the court, for example:

Conciliation and Reconciliation Committees of the Federal Courts

Federal Law No. 26/1999 on the Establishment of Conciliation and Reconciliation Committees at the Federal Courts (UAE Conciliation Law) established conciliation committees in all of the Federal Courts within the UAE (Ajman, Fujairah, Sharjah, Umm Al Quwain).

The Abu Dhabi Courts, which are responsible for the facilitation of the settlement of civil, commercial and labour disputes, also apply this law despite having opted out of the federal court system of the UAE in 2007. All cases before the Federal Courts must first be submitted to conciliation committees in order for an attempt at resolution. The successful resolution of a dispute before the committee will result in a binding court judgment which can be referred directly to the court's execution department without first needing to obtain a judgment on the merits of the case. The relevant reconciliation committee will only refer the complaints to the competent court after the resolution efforts have failed.

If the parties reach an agreement, the terms will be set out in a settlement agreement signed by the parties, the Committee President, and the members. This settlement agreement would then be accredited by the head of the competent court and be treated as a writ of execution, thereby having the force of being legally binding and directly enforceable in the competent court (article 7 of Federal Law No. 26/1999).

If an amicable settlement is not possible, the litigating party can apply for a 'No Objection' letter from the relevant mediation committee and submit a statement of claim to the relevant court. Then, the case is filed to be seen by the judge in the respective Court of First Instance.

Abu Dhabi Commercial Conciliation & Arbitration Centre (ADCCAC)

In Abu Dhabi, the Abu Dhabi Commercial Conciliation & Arbitration Centre within the Abu Dhabi Chamber can act as a supervising institution for conciliations (similar to mediation) by providing logistical and administrative services to assist with conciliations.

Dubai Centre for Amicable Settlement of Disputes (DCASD)

The DCASD was established in 2012 by His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice-President and Prime Minister of the UAE and Ruler of Dubai, pursuant to Dubai Law No. 16/2009 on the Establishment of the Centre for Amicable Settlement of Disputes, and forms part of the Dubai Courts.

The DCASD allows parties to involve mediators in a dispute to facilitate an amicable settlement. This is generally within the first month of the case (before the case is formally referred to the court in the usual way), but this can be extended by the Dubai Courts if deemed necessary. In the event that a settlement is achieved, this is documented in a settlement agreement which is signed by the parties and attested by the judge, making it legally binding and enforceable.

Under article 1 of Dubai Administration Decision No. 1/2017 on the Jurisdiction of the Centre for Amicable Settlement of Disputes, a party to a dispute may decide to refer a dispute to the DCASD under the following circumstances:

1. if one or more party request that the dispute be referred to the DCASD;
2. if all parties request that the dispute be referred to the DCASD before the Dubai Court of First Instance, Commercial Court, Civil, or Real Estate Court, regardless of the value of the claim following the approval of the chief judge of the circuit; and
3. if a party requests the appointment of an expert.

Under article 1 of Dubai Administration Decision No. 1/2017, the following disputes must be referred to the DCASD:

1. commonly-owned property;
2. small debts of a maximum value of AED 100,000; and
3. disputes agreed to be settled by the DCASD by virtue of an agreement entered into between the parties.

The disputes mentioned above must be reviewed by the DCASD before a local court claim will be issued before the Dubai courts. In any case, the DCASD would need to issue a resolution to refer the case to the Dubai court. There are certain disputes that the DCASD does not have jurisdiction over. These include:

1. labour disputes;
2. personal-status related disputes;
3. summary and interim orders;
4. actions to which the UAE Government is a party to;
5. if one of the parties is a bank; and
6. actions registered at the Dubai Courts before the coming into force of the provisions of the Law on the Establishment of the Centre for Amicable Settlement of Disputes in Dubai (see article 4 of Dubai Law No. 16/2009).

All limitation periods and prescription periods for the claim will be put on hold until the DCASD determines whether to transfer the claim to the competent Dubai court. This may encourage parties to explore mediation more seriously without the constraint of any impending time bars.

UAE labour disputes (excluding freezones)

Under the UAE Labour Law, all employment contracts outside a freezone must be registered with the Ministry of Human Resources and Emiratisation. In order to initiate a claim under an employment contract, the applicant must first file a complaint with the Ministry of Human Resources and Emiratisation. Under article 6 of Federal Law No. 8/1980, the Ministry will then summon both parties and take whatever measures it deems necessary to settle the dispute amicably. The parties are then required to go through a conciliation process, which can comprise up to three meetings between them with a Ministry's representative, as opposed to a legal representative. In practice, if the matter is not resolved, the Ministry will refer the complaint to the Labour Court after the first hearing.

If no amicable settlement is reached within two weeks from the date of the application, the Ministry will refer the dispute to the Labour Court under a memorandum containing a summary of the dispute. The memorandum will include the arguments of both parties together with any comments the Ministry may have. The Labour Court will then set a hearing date and notify the parties to the dispute within three days of receiving the application. The Labour Court may also summon a representative from the Ministry to explain the contents of the above memorandum.

Forms of settlement and formalities

Local Courts do not prescribe a certain form for a settlement agreement. However, it is best practice to record a settlement in a formal, written agreement, and it is considered valid and binding if it meets the requirements of a valid contract under UAE law. Generally, contracts are concluded by the exchange of mutual intentions, i.e., "the coming together of an offer made by one of the contracting parties with the acceptance of the other" (article 125 of Federal Law No. 5/1985). Intention can be expressed orally or in writing, or by actions (article 132 of Federal Law No. 5/1985), and so settlements agreed verbally or via emails/letters can be legally binding if it can be evidenced that there was a mutual intention to resolve the dispute.

Part 5 of the UAE Civil Code addresses "accords" (i.e., settlement of disputes), which are referred to as "a contract whereby a dispute is removed and litigation between the two composing parties ceases by mutual consent" (article 722 of Federal Law No. 5/1985).

Settlement agreements may be executed in counterpart under UAE law. It is also worth noting that under UAE law, deeds do not hold any more significance than a standard agreement. As such, it is advisable to execute settlement agreements before a notary public, who will confirm the identities of the signatories and witness the signatures. The benefit of doing so is that it will be more difficult for any party to later challenge the validity of the agreement.

There is no requirement to file the settlement agreement or seek the court's approval, except if the parties settle after commencing proceedings and wish for the terms of the agreement to be recorded. Pursuant to the settlement agreement being filed, the court will issue a judgment stating that the dispute has been settled on the agreed terms.

Confidentiality

Settlement agreements and the surrounding correspondence are not automatically confidential; parties must mark the agreement as confidential or include express confidentiality provisions in the agreement to bestow confidentiality on the agreement.

Powers of the parties to settle

Under UAE law, an individual must have legal capacity to lawfully settle their dispute i.e., they must be over 18 Hijri years old, and of sound mental health. If a company is settling a dispute, the signatory to the settlement agreement must hold specific, express authority from the company to do so. However, local Courts have held that if a company's name is listed in the preamble of a contract and the contract was signed at the bottom of the page, there is a presumption that the signatory has signed the contract on behalf of the company (21/10/2015 - DCC 547/2014).

In addition, article 723 of Federal Law No. 5/1985 provides that a party to a settlement agreement "must be competent to make dispositions for consideration in respect of the rights covered" by the settlement agreement, and that if the settlement involves a waiver of rights, the capacity "must include the capacity to make gifts" (e.g., such as waiving a given without receiving consideration).

Timing of settlement

As recovery of costs is a limited feature of the Local Courts. Judges are unable to effectively penalise a successful party who delayed or refused to engage in settlement discussions by reducing any costs awarded to it, and so there is no costs advantage to settling earlier in the proceedings other than a party reducing its own costs by bringing proceedings to a close earlier.

"Without prejudice" rule

The concept of "without prejudice" is not recognised under UAE law. Any correspondence regarding settlement negotiations can therefore be submitted as evidence in the Local Courts, even if it is marked "without prejudice".

Terms of settlement and future claims

Once a dispute is settled, a party loses the right to claim any of the settled matters that are covered by the settlement agreement (article 730 of Federal Law No. 5/1985).

UAE law does not prohibit parties from releasing existing and future claims that may arise out of existing obligations /liabilities. However, UAE Law prohibits parties from waiving claims relating to future obligations (article 470 of Federal Law No. 5/1985).

It is best practice to specifically:

- include known existing or future claims, and
- exclude future claims that are not intended to be covered by the agreement.

Severability

As is the case with any legal document, it is best practice to include a severability clause in settlement agreements concluded under UAE law.

Third party rights

Third party rights are protected and can be enforced in the Local Courts. However, a contract can only create a right for a third party; it cannot create an obligation (article 252 of Federal Law No. 5/1985).

Disposal of legal proceedings

If legal proceedings have already commenced, the parties can agree to a stay of proceedings of up to six months to discuss settlement; any longer and the claimant will be deemed to have withdrawn its claim, and the case will be dismissed (article 101 of Federal Law No. 11/1992).

If a settlement is reached (within that six-month period) and the parties wish to have the proceedings dismissed, the claimant must formally withdraw the proceedings by:

- providing written notice to the parties, or
- orally at the hearing and recorded in the minutes (article 111 of Federal Law No. 11/1992).

The case will not be dismissed unless the defendant accepts the withdrawal.

Setting aside a settlement

Settlement agreements are treated in the same way as any other civil or commercial agreement. As such, they can only be varied or set aside by the parties in agreement, or by a court order (from the Local Courts) if the court determines that the agreement's contents are unlawful, or contrary to public policy..

Legal costs

Due to Local Courts generally capping awards for legal fees at AED 2,000, parties commonly agree to be responsible for their own costs.

Related Content

Legislation

- Federal Law No. 5/1985 Promulgating the Civil Transactions Law of the United Arab Emirates State
- Federal Law No. 11/1992 on the Civil Procedures Law
- Federal Law No. 8/1980 on the Regulation of Labour Relations
- Federal Law No. 26/1999 on the Establishment of Conciliation and Reconciliation Committees at the Federal Courts in the UAE
- Dubai Administration Decision No. 1/2017 on the Jurisdiction of the Centre for Amicable Settlement of Disputes

Cases decision

- DCC 547/2014 on 21/10/2015

Authors



Damian Crosse

Partner, Pinsent Masons LLP (Dubai, UAE)

damian.crosse@pinsentmasons.com

Areas of expertise

Litigation; International Arbitration; Advisory; Risk Management

Education

BA (Hons), Kent at Canterbury, UK

Memberships

- Admitted as a Solicitor in England & Wales
- DIFC Courts
- Legal Affairs Department, Dubai, UAE

Biography

- Damian is a senior litigation partner with 25 years' experience of dispute resolution involving a number of local and international courts as well as various arbitral institutions including the LCIA, ICC, DIFC-LCIA, DIAC and UNCITRAL.
- He advises on a broad range of commercial disputes including M&A, finance and investment disputes; investigations, fraud and asset tracing; shareholder and joint venture disputes; distribution and agency disputes; insurance disputes including claims and coverage disputes and IT and Telecoms disputes. He is a registered lawyer before the DIFC courts and is experienced in all forms of ADR including mediation. He is an accredited mediator.



Amelia Cave

Solicitor - Commercial Disputes, Pinsent Masons LLP (Dubai, UAE)

amelia.cave@pinsentmasons.com

Areas of expertise

Commercial Disputes, IP & Technology, Retail

Education

- LPC, BPP University, London, UK
- The University of Manchester, Bachelor of Laws (English Law with French Law), Manchester, UK
- Diplôme d'Études Universitaires Françaises - Droit, Université Jean Moulin (Lyon III), Lyon, France

Memberships

Admitted as a Solicitor in England & Wales