



FEDERAL LAW NO 6 HERALDS NEW DAWN FOR MEDIATION IN THE UAE

In April 2021 the UAE Government passed Federal Law No. 6 of 2021 On Mediation for the Settlement of Civil and Commercial Disputes (the Law). The Law brings into force a robust framework in which mediation can occur in the UAE and sets out the obligations of mediators.

To date the use of mediation in the UAE has been limited in comparison to other jurisdictions. Prior to the enactment of the Law, the UAE lacked a legal foundation governing the mediation process and one of the principle concerns was the issue of privilege. Mediation is beneficial for parties as it provides an alternative to the more commonly used forums of litigation and arbitration which are both costly, and lengthy. With the new Law, parties have a secure and confidential framework in which to achieve settlement on mutually acceptable and enforceable terms.

Mediation Agreement

As a start, the Law sets out the obligations for the drafting of a mediation agreement. As with other contractual agreements, mediation agreements must be signed by a company representative or by person(s) capable of committing to a mediation. If the mediation agreement falls foul of this requirement it will be ineffective.

The mediation agreement must contain the following provisions:

- The subject matter of the dispute;
- Appoint a mediator or mention the method of the mediator's appointment; and
- The language of the mediation.

Unlike the DIFC and ADGM, the primary language of the onshore judicial system in the UAE is Arabic. If the mediation is to be held in an alternative language, parties must ensure that all documents are translated to Arabic.

Judicial Mediation

The Law is divided into two mediation regimes, namely 'judicial' and 'non-judicial' mediation, setting out different procedures in which parties may apply to mediate. With regards to judicial mediation, the Law allows for the UAE Courts to refer a dispute to mediation at any stage in the proceedings, whether by virtue of a proposal by parties or for the purpose of implementing a mediation agreement, and are to take place at a mediation Centre (the **Centre**).

Without prejudice communications

An issue previously facing mediations as a whole was the lack of protection for 'without prejudice communications'. The Law has rectified this issue, and mediations are to be held confidentially. All information submitted, as well as agreements or concessions made by the parties throughout the mediation process are not to be used before any Court. Only with the approval of the parties involved may information be disclosed. The rules on confidentiality shall not apply to the provisions of the Settlement Agreement, which, in any event, must be capable of being enforced through a Court process.

Mediators

Mediators may either be appointed by parties in the Mediation Agreement, i.e. contractually (known as a Special Mediator), or by the appointment of a Judge from a List of Mediators (mediators registered and preapproved with the Centre). In case a party objects to the Court appointed mediator, the Court will appoint an alternate.

Mediators are subject to strict impartiality rules, and in order to ensure fair and due process for parties, are barred from the following:

- Acting as arbitrator or expert, or accepting a power of attorney in a litigation against any party involved in the mediation, even after termination of the mediation;
- Giving testimony against a party to the mediation concerning the subject matter of the dispute, except when the testimony is related to a crime; and
- Acting as a mediator where any party is a spouse or relative up to the fourth degree.

Administrative sanctions and penalties will apply should a mediator breach their obligations under the Law.

Termination of mediation

Mediator appointments may be terminated in any of the following instances, amongst others:

- In case of a Settlement Agreement;
- In case the parties and mediator agree on the termination before reaching a resolution;
- In case any party decides to not continue the mediation;
- In case of the termination of the mediation deadline.

If a settlement is not made within the stipulated duration of time in the Court's referral decision, the mediator shall submit a report indicating the reason for the failure to settle and the case shall return to the Court.

When a settlement is made, the mediator shall submit a report to the Court along with the Settlement Agreement signed by the parties for the purpose of ratification. The Court

will then issue a report concerning the total or partial termination of the dispute and the Settlement Agreement shall be deemed as a writ of execution. The Settlement Agreement is binding on the parties, irrevocable and deemed as equally authentic as judicial judgments.

Once the case has been terminated by the Court the decision cannot be appealed except through reversal. Parties are also prohibited from bringing a case to the Court based on the same subject matter and grounds as that in the dispute mediated. Objections to the validity of the Settlement Agreement are limited.

Non-Judicial Mediation

Another important point to arise out of the Law is the stipulation that parties are no longer required to be involved in proceedings, nor need file a case with the Court in order to mediate. Ad-hoc mediations can occur, and parties to a mediation agreement may directly resort to the respective Centre for the settlement of a dispute.

In order to file for mediation, applications must be submitted to the Centre alongside the mediation agreement as well as any other documents related to the subject matter of the dispute. The application must include the following:

- The approval of any and/or all parties to recourse to mediation;
- The undertaking of the party requesting mediation to attend the sessions;
- The subject matter of the dispute;
- All necessary information and documents related to the dispute;
- The appointment of the mediator; and
- The agreed duration of the mediation.

The one apparent lacunae of parties conducting 'ad-hoc' mediations is that in order to benefit from the provisions of the Law, parties must follow the stipulated procedure and refer the mediation to the Centre. If parties do not, they will, on the basis of the Law, not receive the protections awarded, e.g. 'without

prejudice communications' and finality of the settlement. That said, discussions in good faith are unlikely to be upended and the final mediated settlement agreement can be enforced as a contract in the UAE Courts.

Mediation centres

The Law permits the establishment of independent mediation Centres in the UAE, as well as the licensing of foreign mediation Centres. Further details as to the licensing conditions and functioning systems of the Centres are to be released in the future by way of a Cabinet Decision. A Code of Business Conduct for Mediators will also be released by the relevant Minister.

Fees

With regards to fees for both judicial and non-judicial mediation, parties are to pay the initial fees of the mediation directly to the Centre before commencement. Once the mediator has fulfilled his duty and reaches a settlement of the dispute, parties shall recover the paid judicial fees. Please note that individual Centres have their own costs and may differ amongst one another.

Special mediators are able to determine their own fees with the parties to the dispute, however they may not exceed 5% of the value of the dispute and parties are within their rights to negotiate fees with the Special Mediator.

Looking forward

Over recent years we have witnessed a growing appetite for mediation in certain sectors, namely property and construction. Following the enactment of the Law, we envisage mediation becoming commonplace in the UAE. By nature, the concept of 'reconciliation' is deeply embedded in Arabic culture as it is imposed by Sharia law, as such, the Law is a welcome step for parties and lawyers alike to develop ADR in the UAE.

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