

Onshore ‘without prejudice’ breakthroughs

Salah Al Blooshi, co-founder & managing partner of SAT & CO. takes a closer look at Dubai Cassation’s 2024 ruling and its ripple effect on litigation.

For decades, lawyers before the onshore UAE courts have warned clients to be careful what they put in a settlement letter, because a Dubai judge may read it back to them in court. The common law shield of “without prejudice” the principle that genuine attempts to settle cannot later be used as evidence of liability had no settled home in the civil law tradition governing the onshore courts. That assumption has now been disturbed: the Dubai Court of Cassation has, for the first time, applied a “without prejudice” principle in an onshore commercial dispute.

THE PRINCIPLE, AND WHY IT NEVER FIT ONSHORE

In common law systems, “without prejudice” privilege protects offers, concessions and admissions exchanged in a genuine effort to settle. If negotiations fail, those communications are generally inadmissible as evidence of liability. The DIFC and ADGM courts have always recognised this. The onshore courts did not. An admission made during negotiations could be weighed like any other evidence. The practical consequence was a culture of caution: counsel kept settlement talks oral or drafted offers so guardedly they said nothing useful, and the “without prejudice” label was used more in hope than confidence.

THE CASE AND THE DECISION

The dispute, fittingly, concerned cryptocurrency. A Dubai businessman had entrusted a counterparty with purchasing the stablecoin Tether (USDT) on his behalf. He said he had paid but not received the agreed amount, and sued for compensation plus interest. The Court of First Instance awarded only a modest portion. On appeal, the claimant sought to rely on WhatsApp

messages exchanged during settlement discussions, in which he argued the defendant had effectively acknowledged owing the disputed amount.

The Dubai Court of Appeal, in Case No. 31/2024 (Commercial Appeal), handed down its judgment on April 3, 2024, and rejected that argument. It found the exchanges had taken place during amicable settlement negotiations, and held that statements made in that context were made “without prejudice to rights” and were protected from use as evidence of liability. Because no settlement had been concluded, nothing said could be treated as an admission. The Dubai Court of Cassation, in Case No. 486/2024 (Commercial Cassation), on October 22, 2024, dismissed the further appeal and upheld that reasoning in full. Crucially, it confirmed the protection survives the failure of the negotiation: the fact that no settlement was reached does not strip the earlier communications of their protected status.

THE LEGAL ARCHITECTURE BEHIND THE RESULT

It is worth being clear about what this ruling is and is not. The UAE remains a civil law jurisdiction with no binding precedent, so a Cassation judgment is persuasive rather than binding on lower courts. Its weight comes from its source the apex of the Dubai court structure on a question that previously lacked clear onshore guidance. The reasoning sits within the framework of Federal Decree-Law No. 35 of 2022 on Evidence in Civil and Commercial Transactions, best understood as distinguishing a binding contractual admission from a conditional concession offered only to settle. The protection is generally understood to attach once a dispute is in genuine contemplation and the communication forms part of an effort

to resolve it; routine operational correspondence remains open and admissible. In substance, it aligns the onshore position with the DIFC, ADGM and common law.

THE RIPPLE EFFECT ON LITIGATION

The consequences for disputing parties are significant and largely welcome.

Negotiations can become more candid. Parties now have apex-level authority to cite when they wish to negotiate openly; a defendant exploring a commercial resolution need not assume that flexibility shown in correspondence will resurface as a confession at trial.

The “without prejudice” label gains real currency. It now carries a credible legal argument, though the protection appears to turn on the substance of the communications; that they were genuinely part of a settlement effort rather than on the label alone. Clear settlement intent is what matters.

Evidence strategy must be revisited. Litigators must rethink case theories built on concessions extracted during negotiation, since such material may now be excluded. Claimants should anchor their case in pre-dispute contractual documents, not in the give-and-take of later talks.

Digital channels are squarely in scope. It is no accident the protected material was a WhatsApp thread; negotiations now happen on messaging platforms. Even so, keep settlement dialogue distinct from operational or contractual confirmations.

LIMITS, EXCEPTIONS AND OPEN QUESTIONS

The breakthrough should not be oversold. The protection does not cover statements tainted by fraud, threats or unlawful conduct, and it attaches only to failed negotiations. Once a settlement is concluded, the agreement binds in the ordinary way. Equally, stamping “without prejudice” on a letter that is not truly part of a settlement effort will not cloak it; substance prevails over labelling in both directions. And with no binding precedent, another court is not compelled to follow this decision, so the protection is strong but not guaranteed. Full certainty would require a statutory provision or a determination

by the Authority for the Unification of Conflicting Judicial Principles.

PRACTICAL TAKEAWAYS

- » Where you intend to settle, make that intention unmistakable and mark genuine settlement correspondence “without prejudice”.
- » Keep settlement dialogue in a discrete channel, separate from operational confirmations or admissions of fact you may need to rely on.
- » Before relying on a counterparty’s statement as an admission, check whether it was made in a negotiation context that could now render it inadmissible.

CONCLUSION

The judgment in Case No. 486/2024 is a quiet landmark. It does not bind future courts, but it gives onshore litigants something long lacking: credible authority that candid settlement talks can proceed without becoming evidence of liability. It nudges the onshore courts closer to international practice and supports the UAE’s wider push for amicable dispute resolution, a welcome development to be used with care. 🏛️



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