

inBrief

**The New UAE Civil Code: Contract Formation, Consent, and Good Faith**

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4 May 2026

The UAE's new Civil Transactions Law (the **New Code**), coming into force on 1 June 2026, fundamentally changes the legal landscape for anyone doing business in the UAE — and the consequences of getting it wrong could be significant. For the first time, the law imposes express statutory obligations on parties engaged in pre-contractual negotiations: negotiate in bad faith, withhold information that is material to the other side's decision, or misuse confidential information obtained during the process, and you may be liable even where no contract is signed. In short, contractual risk in the UAE now begins well before the contract is concluded, and businesses that continue to treat the negotiation phase as consequence-free do so at their peril.

1. What has changed

The New Code introduces, for the first time, an express statutory framework regulating party conduct at the pre-contractual stage. The New Code:

- requires that the proposal, conduct, and termination of negotiations be carried out in good faith (Article 121(1));
- imposes liability for negotiating, or terminating negotiations in bad faith (Articles 121(3) and 121(4));
- obliges the disclosure of information that is of “decisive importance to the other party’s consent” (**Decisive Information**) (Articles 122(1) and 122(2));
- allocates the burden of proof such that the party alleging concealment must prove it, while the other party must prove disclosure (Article 122(3));
- provides that clauses seeking to limit, waive, or exclude the obligation to disclose Decisive Information are null and void, and grants the aggrieved party the right to seek annulment of the contract (Article 122(4)); and
- imposes liability for the unauthorised use or disclosure of confidential information obtained during negotiations or through the contract (Article 123).

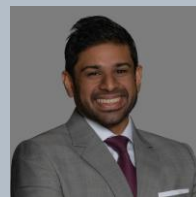
Significantly, the New Code also regulates circumstances where a contract is not formed. The New Code provides that:

- negotiations do not, in themselves, oblige the parties to conclude a contract (Article 121(2));
- a party acting in bad faith may be liable for the actual damage caused to the other party, but does not extend to lost opportunities or lost profits (Article 121(3)); and

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- clauses seeking to limit, waive, or exclude the obligation to disclose Decisive Information are null and void (Article 122(4)).

2. What was the position before

The current (and soon to be replaced) Civil Code does not contain an equivalent express statutory regime dealing with pre-contractual negotiations. The issue therefore fell to be addressed through general principles and case precedent rather than by a dedicated legislative framework.

Previously, Dubai Court of Cassation case no. 267/2016 (Civil) treated negotiations as a factual act which did not, by itself, create legal obligations. A party was generally free to withdraw from negotiations. Liability could nevertheless arise where the withdrawal was accompanied by fault, in which case the liability was treated as tortious (i.e. an Act Causing Harm as defined in the Civil Code) rather than contractual.

Similarly, while concepts such as misrepresentation, deceit, and bad faith were not foreign to UAE law, the current Civil Code does not contain a statutory duty to disclose material information during negotiation. Nor does it expressly address the unauthorised use or disclosure of confidential information obtained during negotiations as part of a dedicated pre-contractual framework.

The prior position was therefore less structured. Pre-contractual conduct sat in a grey area governed by broad principles, with less certainty as to the source, content, and limits of liability.

3. Why the change matters

Litigation risk

Parties may no longer assume that, absent a signed contract, the negotiation phase is inconsequential. If a party negotiates without genuine intention, withdraws in bad faith, withholds information of decisive importance, or misuses confidential information obtained during negotiations, there is now a clearer statutory route by which liability may be advanced. This may be particularly relevant in failed transactions where one party has incurred material costs in reliance on negotiations that later collapse.

Article 122(3) is also likely to be important in practice. Once concealment is alleged, the other party will need to prove disclosure. This is likely to increase the significance of contemporaneous records of what was disclosed, when, and to whom.

Therefore, these provisions are likely to generate disputes regarding:

- what amounts to “bad faith” in the negotiation context;
- what information is sufficiently “decisive” to require disclosure;
- when ignorance or reliance may be presumed;
- how actual loss is to be proved and distinguished from non-recoverable expectation loss; and
- whether certain types of differently worded contractual clauses can be considered as limiting, waiving or excluding obligations to disclose material and decisive information; and
- the extent to which entire agreement clauses, non-reliance wording, or clauses providing that the contract supersedes prior negotiations may affect claims based on pre-contractual conduct, without excluding mandatory statutory duties under the New Code.



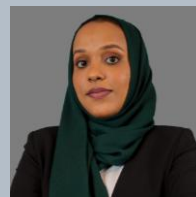
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In high-value transactions, this is likely to become a live area of litigation. The negotiation process itself may now become part of the pleaded case, and part of the evidentiary battleground.

Contract drafting impact

As clause limiting, waiving, or excluding the duty to disclose material and decisive information are null and void under the New Code, parties will need to review how they use entire agreement clauses, non-reliance wording, disclaimers, and other standard boilerplate protections. Such clauses may still serve a legitimate function, but they cannot override mandatory obligations imposed by the New Code.

The same applies to confidentiality. Many commercial parties rely on stand-alone NDAs, confidentiality undertakings, or restricted circulation protocols. Article 123 appears to add a statutory layer to that position. That increases the importance of ensuring that confidential information is properly identified, access is controlled, and negotiation documents are prepared on the assumption that misuse of information may later attract legal consequences.

Judicial discretion

Concepts such as good faith, decisive information, presumed ignorance, justified reliance, and unauthorised use of confidential information are inherently fact-sensitive. Their practical content will depend on judicial interpretation. The courts will likely be required to decide where legitimate commercial behaviour ends and actionable bad faith begins.

This is especially so in cases involving partial disclosure, strategic silence, exploratory negotiations pursued for informational advantage, or withdrawals engineered at a late stage after one party has incurred material time and cost.

The availability of annulment as a remedy for breach of the disclosure obligation is also likely to add weight to these disputes, particularly where the allegedly undisclosed information materially affected the other party's decision to enter into the contract.

The New Code therefore gives the courts a more explicit mandate to scrutinise the contracting process itself, not merely the final written agreement.

4. Practical takeaways

Do's

- approach negotiations on the basis that the pre-contractual phase may now carry direct legal consequences, and that entire agreement clauses, non-reliance wording, disclaimers, and other standard boilerplate protections may not have the same effect that they previously did;
- consider carefully whether information in your possession is of material and decisive importance to the counterparty's consent and document analysis made in this regard;
- document negotiation stages, assumptions, reservations, and qualifications clearly;
- use confidentiality agreements and internal access controls when sharing sensitive information; and
- consider using structured disclosure processes, including disclosure schedules, tracked Q&A processes, and maintain records of disclosed materials.

Don'ts

- assume that the absence of a signed contract eliminates legal risk;
- rely on broad disclaimers or non-reliance wording to exclude pre-contractual exposure;
- use negotiations to obtain confidential information without a genuine transaction purpose; or
- terminate negotiations in a manner that could later be characterised as abusive, misleading, or opportunistic.

For businesses and their advisers, the practical message is clear. Contractual risk may now arise well before signature. Parties should therefore negotiate, disclose, and document accordingly. ■

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