



Good faith in the United Arab Emirates

The New UAE Civil Code. Note No. 1.

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Introduction

The Civil Code¹ is the backbone of almost all transactions between companies and individuals. The introduction of the new Code (Federal Decree-Law No. 25 of 2025), which will repeal the Federal Law No. 5 of 1985² upon entry into force,³ is a significant change. Among the reforms it introduces, the structured pre-contractual regime in Articles 121 to 123 has attracted the practitioners' attention, and rightly so. But to assess what those articles change, we must first understand what good faith already meant in this jurisdiction. This question is particularly interesting because no single answer can be given: the United Arab Emirates is not a single legal system in this respect. Onshore UAE law is civil, the Dubai International Financial Centre (DIFC) operates a hybrid system heavily influenced by English common law, and the Abu Dhabi Global Market (ADGM) applies English common law directly. Each treats good faith differently.

The 1985 Code served the United Arab Emirates for forty years and produced a respectable body of onshore case law on good faith in performance, deceit and abuse of rights. Its successor goes further: a structured pre-contractual regime, a non-waivable disclosure duty, and a clear statutory architecture for negotiation conduct that did not previously exist on the face of the legislation. From 1 June 2026, the United Arab Emirates will operate three different good-faith regimes in parallel. Counsel advising on cross-border transactions in the region will need to know which one applies, and why.

In this Article, we will attempt to map the landscape and see how the concept of good faith has been applied and what could be expected with the introduction of the 2025 Code.

1. Civil and common law

Good faith is a civil law concept. It runs from Roman *bona fides* to the French *bonne foi* of Article 1104 of the Code civil, the German *Treu und Glauben* of §242 BGB, and Article 148 of the Egyptian Civil Code of 1948 drafted under the supervision of 'Abd al-Razzāq al-Sanhūrī⁴.

¹ The actual name of the law is different – Civil Transactions Law. But the mutual consent, which we are following, is to name it a Civil Code.

² Federal Law No. 5 of 1985 issuing the Civil Transactions Law of the United Arab Emirates ('the 1985 Code').

³ Federal Decree-Law No. 25 of 2025 issuing the Civil Transactions Law ('the 2025 Code'), promulgated 1 October 2025. The repeal and entry-into-force provisions are set out in the issuing decree.

⁴ G Bechor, *The Sanhuri Code, and the Emergence of Modern Arab Civil Law (1932 to 1949)* (Brill 2007) records that Sanhūrī 'took the same article of good faith from the German civil code and blended it in the Egyptian Code,

Sanhūrī himself framed codification as a regional cultural project: ‘the strongest support of Arab unity is cultural unity, and the most important basis for unifying culture is a unified legal culture’.⁵ The 1985 Code sits within that lineage, drawing also on Islamic jurisprudence. In the civil law tradition, good faith is a structural principle generating concrete duties, including mandatory rules that the parties cannot contract around.

English common law looks at it differently. It refuses, as a matter of principle, to recognise a general duty of good faith. The leading authority remains Lord Ackner's speech in *Walford v Miles*. An agreement to negotiate in good faith is unenforceable for uncertainty, and “*the concept of a duty to carry on negotiations in good faith is inherently repugnant to the adversarial position of the parties when involved in negotiations*”.⁶ A negotiating party is “*entitled to pursue his own interest, so long as he avoids making misrepresentations*”.⁷

Since *Walford*, the position has softened, but has not been abandoned. In *Yam Seng Pte Ltd v International Trade Corporation Ltd*, Leggatt J recognised that English law was “*swimming against the tide*” of comparative authority and implied a duty of good faith into a “*relational*” contract: typically a long-term joint venture, franchise or distribution agreement, characterised by mutual trust and a degree of cooperation not exhaustively captured in the written terms.⁸ Subsequent cases have applied *Yam Seng* in some situations and declined to in others. The doctrine remains narrower than its civilian counterpart. There is still no general duty of good faith in English contract law.

This divide is not academic. It defines what is possible as a remedy when negotiations fail, when one party walks away, or when a counterparty deliberately remains silent on something material. It also explains why the choice between onshore UAE law, DIFC law and ADGM law has substantive consequences that go beyond forum and procedure.

while arguing that it came from the Islamic Shari‘a’: see pp 36–37. The provision itself, Article 148 of the Egyptian Civil Code of 1948, is analysed at pp 188–190, where Bechor describes it as ‘an innovation, since the principle of good faith had not been included in the old Ahlī code’ and notes the legislative debate in the Civil Code Committee over its alleged uncertainty and the discretion it granted to the courts.

⁵ ‘Abd al-Razzāq al-Sanhūrī, ‘al-Qānūn al-madani al-‘Arabī’ (1962) 20(1) al-Qaḍā’ (Baghdad) 7, quoted and translated in S Razai, ‘Law and legal systems in the Arab Middle East: beyond binary terms of traditionalism and modernity’ (IEDJA, October 2019) <<https://iedja.org/en/law-and-legal-systems-in-the-arab-middle-east-beyond-binary-terms-of-traditionalism-and-modernity/>>.

⁶ *Walford v Miles* [1992] 2 AC 128 (HL) 138 (Lord Ackner).

⁷ *Ibid.*

⁸ *Yam Seng Pte Ltd v International Trade Corporation Ltd* [2013] EWHC 111 (QB), [120]–[131] (Leggatt J).

2. Article 246

Article 246 of the 1985 Code introduces the rule of good faith for the UAE contract law. The contract “*shall be implemented, according to its contents, and in a manner consistent with the requirements of good faith*”.⁹ The parties are bound not only to the express terms but to the contract’s essential requirements “*in accordance with the law, custom and the nature of the transaction*”. The provision speaks to *performance*. It does not, by its terms, regulate the negotiation phase.

The public courts of the UAE often resort to Article 246 and have consistently applied it. In DCC 207/2026¹⁰, the court referred to the article and confirmed the *pacta sunt servanda* principle: “*the contract had to be performed in accordance with its contents, and in a manner consistent with the requirements of good faith; neither party could unilaterally revoke, amend, or rescind it except with the consent of the other party or pursuant to a provision of law*”¹¹. The three constitutive elements of contractual liability were reiterated in the recent judgement DCC 354/2026: “*contractual or tortious liability required proof of fault, damage, and a causal link, and that compensation was not awarded unless all three elements were established*”¹².

For the negotiation phase, the 1985 Code offers two routes, neither located within Article 246. The first is the deceit framework set out in Articles 185 to 188. Article 185 captures fraud (deceit) by word or deed. Article 186 extends deceit to deliberate silence on a fact or circumstance where it is established that the victim would not have concluded the contract had they known of it.¹³ These are powerful provisions, but their reach is bounded by their requirement of fraudulent intent. Innocent or negligent non-disclosure does not satisfy them. The party complaining must prove deliberate concealment.

The second route is the Act Causing Harm framework. Article 282 is broad: “every tort prejudicial to others makes the perpetrator, even if not discerning, bound to repair the prejudice”.¹⁴ Used with Article 106 on abuse of rights, which renders unlawful the exercise of a right with intent to harm, where the benefit is disproportionate to the prejudice caused, or

⁹ 1985 Code, art 246.

¹⁰ Dubai Court of Cassation, DCC 207/2026, 26 February 2026.

¹¹ Ibid. Corroborating views consistent with the cited interpretation are provided in DCC 41/2026, 23 March 2026, DCC 180/2026, 11 March 2026, and DCC 266/2026, 24 March 2026.

¹² Dubai Court of Cassation, DCC 354/2026, 8 April 2026.

¹³ 1985 Code, arts 185–186.

¹⁴ 1985 Code, art 282.

where the exercise exceeds what is accepted by custom,¹⁵ Article 282 provides practitioners with a tortious route to compensation for loss caused in the negotiation phase. There is no statutory pre-contractual duty as such, and the claimant must construct fault, harm and causation from first principles.

The standard for good faith itself was clarified in July 2021, when the Commission for the Unification of Conflicting Judicial Principles, established under Federal Law No. 10 of 2019 and granted *stare decisis* effect across the federal and local judicial authorities, issued its first order.¹⁶ The Commission held that good faith is presumed, but the presumption is rebuttable. A party is treated as acting in good faith only where it could not have come to know the actual circumstances contrary to the apparent ones, and where it exercised the care of an ordinary person to investigate apparent contradictions. Failure on either step defeats the presumption. Apparently, the Commission's order is the closest the UAE legal system has come to a doctrinal definition of good faith. As we can see, it places an investigative burden on the party invoking it.

The 1985 Code regime works tolerably well for completed contracts, where sophisticated parties fill the gap by contract: exclusivity clauses, break fees, NDAs, term-sheet language distinguishing binding from non-binding provisions.

¹⁵ 1985 Code, art 106.

¹⁶ Commission for the Unification of Conflicting Judicial Principles, Order No. 1 of 2020 (7 July 2021), established under Federal Law No. 10 of 2019 on the Regulation of Judicial Relationships between Federal and Local Judicial Authorities, art 33. The Order is summarised and analysed in M Abuwasel, 'High Judicial Commission issues first UAE *stare decisis* order: concept of absolute invalidity, doctrine of apparent circumstances, and standard of good faith' (Wasel & Wasel, 3 February 2022) <https://www.lexismiddleeast.com/eJournal/2022-02-04_35/en>.

3. DIFC and ADGM

The DIFC and the ADGM are part of the United Arab Emirates. Neither applies the UAE Civil Code to commercial matters, which are governed by their own laws. Their treatment of good faith follows from their respective constitutional choices.

The DIFC Contract Law (Law No. 6 of 2004) was drafted with significant reliance on the UNIDROIT Principles. Article 57 provides that implied obligations arise from, among other sources, “*good faith and fair dealing*”. Article 58 imposes a duty of cooperation where such cooperation may reasonably be expected.¹⁷ These are not English-law provisions. Textually, they sit closer to the civilian and UNIDROIT tradition.

The DIFC Courts have applied them with restraint. The leading authority is the DIFC Court of Appeal’s decision in *Panther Real Estate Development LLC v Modern Executive Systems Contracting LLC*.¹⁸ The dispute arose from an amended FIDIC Red Book contract for a residential tower at Al Furjan, Dubai. The contractor had failed to give the 28-day notice required by sub-clause 20.1 and resisted enforcement of the time bar by relying on Articles 57 and 58.

The Court rejected the argument. The good-faith obligation, the Court held, “*is concerned with the implication of terms into a contract and the mode of performance by the contracting parties. Nowhere does it suggest that the contracting parties should not be held to their bargain... or that the courts should get involved in re-writing the Contract for the parties so as to achieve some balancing or re-balancing of equities between them or to redress what one party claims to be an unfair consequence of the terms which have been agreed.*”¹⁹ A clearly drafted contractual time bar admitted “*of no scope for the postulated implied term or obligation of good faith*”.²⁰

The position was reaffirmed two years later in *Stephenson Harwood Middle East LLP v Mark A B Capital Investment LLC*.²¹ A debtor resisting a claim for unpaid legal fees invoked Articles 57 and 58, arguing that the firm could not in good faith enforce the 14-day clause for objecting to invoices. The DIFC Court of First Instance rejected the argument and enforced the clause. The earlier authority on the proper scope of Article 57, *Hana Al Herz v DIFCA*,

¹⁷ DIFC Contract Law (Law No. 6 of 2004), arts 57, 58.

¹⁸ *Panther Real Estate Development LLC v Modern Executive Systems Contracting LLC* [2022] DIFC CA 016 (12 May 2023).

¹⁹ *ibid* [61].

²⁰ *ibid*.

²¹ *Stephenson Harwood Middle East LLP v Mark A B Capital Investment LLC* [2025] DIFC 009 (29 April 2026).

made the same point in the employment context: implied terms of good faith and reasonableness cannot be deployed to override a comprehensive legislative scheme or rewrite express terms.²²

The DIFC has textually broad good-faith provisions but reads them narrowly. They govern the mode of performance and the implication of terms. But they do not displace clear express terms, and they do not amount to a doctrine of substantive fairness review.

The ADGM has taken a different approach. Article 1(1) of the Application of English Law Regulations 2015 provides that “*the common law of England (including the principles and rules of equity), as it stands from time to time, shall apply and have legal force in, and form part of the law of, the Abu Dhabi Global Market*”.²³ In *AC Network Holding Ltd v Polymath Ekar SPV1*, the ADGM Court of Appeal confirmed that ADGM judges are bound to apply the rule laid down by Article 1(1), and that *stare decisis* itself forms part of the common law transplanted into the ADGM. The Court expressly contrasted this with the DIFC’s position, which involves codified rules supplemented by other systems and English law as a backstop.²⁴

For good faith, the consequence is straightforward. The ADGM applies *Walford v Miles* and *Yam Seng* as English courts would. No general duty of good faith in negotiation or performance. A duty may be implied in a relational contract on the *Yam Seng* analysis, but not otherwise. A party negotiating an ADGM-law contract may walk away at any time, for any reason, subject only to the law on misrepresentation and any express lock-out, exclusivity, or break-fee provisions the parties have agreed to.

Three jurisdictions, three positions. Onshore UAE law contains a strong but performance-only good-faith principle, supplemented by deceit and tort routes for pre-contractual misconduct, with the Commission’s two-limb test setting the standard. DIFC law contains textually broad implied obligations of good faith and cooperation, which the court read as narrow performance-stage doctrines that cannot override clear contractual terms. ADGM law applies the English position substantially unchanged.

²² *Hana Al Herz v DIFCA* [2013] DIFC CA 004 (27 November 2014).

²³ Application of English Law Regulations 2015 (ADGM), art 1(1).

²⁴ *AC Network Holding Ltd v Polymath Ekar SPV1* [2023] ADGMCA 0001 (17 November 2023).

4. Articles 121 to 123

Articles 121 to 123 of the new Code, placed in Sub-section 3 of Section 4 of Chapter Two of Title One of Book One, “*Negotiations and the Obligation to Disclose*”, introduce a structured pre-contractual regime that has no direct equivalent in the 1985 Code.²⁵ The model is the French reform of 2016, which codified good faith at every stage of the contract through Article 1104 of the Code civil and introduced a specific pre-contractual regime through Article 1112.²⁶ The UAE drafters have followed that lead and gone further.

Article 121 subjects “*the proposal of pre-contractual negotiations, their conduct, and their termination*” to the requirements of good faith.²⁷ Negotiations themselves do not obligate the parties to enter into a contract.²⁸ A party who negotiates or terminates negotiations in bad faith is liable for “*the actual damage sustained by the other party*”. Compensation is limited to the negative interest: “*compensation shall not include expected interests from the contract that was not concluded, or lost opportunities to realize such interests, unless otherwise agreed*”.²⁹ Deliberate failure to disclose a material statement affecting the validity of the contract is itself classified as bad faith.³⁰ This is a *culpa in contrahendo* in statutory form.

Article 122 introduces a non-waivable disclosure duty. A party aware of information of decisive importance to the consent of the other party must inform them, where the other party’s ignorance is presumed or where they have placed trust in the negotiating counterparty. Information is decisive when it has a direct and necessary connection to the contract’s content or the parties’ status.³¹ The duty is mutual, and each party must exercise due diligence to provide relevant information.³² The burden of proof is allocated: the party alleging concealment must establish that information was withheld; the party alleged to have concealed must prove that disclosure was made.³³ Most consequentially:

²⁵ 2025 Code, arts 121–123 (Sub-section 3, ‘Negotiations and the Obligation to Disclose’).

²⁶ Code civil (France), arts 1104 and 1112, as introduced by Ordonnance No 2016-131 of 10 February 2016 reforming contract law, the general regime of obligations and proof of obligations.

²⁷ 2025 Code, art 121(1).

²⁸ 2025 Code, art 121(2).

²⁹ 2025 Code, art 121(3).

³⁰ 2025 Code, art 121(4).

³¹ 2025 Code, art 122(1).

³² 2025 Code, art 122(2).

³³ 2025 Code, art 122(3).

The parties may not agree to limit, waive, or exclude the obligation to disclose material and decisive information. Any clause to the contrary shall be null and void. The aggrieved party may seek the annulment of the contract as a result of the other party's breach of this obligation.³⁴

Article 122(4) is the most operationally significant provision in the entire pre-contractual regime. It cannot be drafted around.

Article 123 imposes civil liability for the unauthorised use or disclosure of confidential information obtained during negotiations or under the contract.³⁵ The provision operates whether or not negotiations led to a signed deal. It runs in parallel to contractual confidentiality undertakings.

Two further provisions complete the picture. Article 221 is the direct successor to Article 246 of the 1985 Code: a contract must be performed in accordance with its contents and the requirements of good faith, and the parties are bound not only to express terms but to the contract's requirements as derived from law, custom and the nature of the obligation.³⁶ The performance-stage rule is preserved without material change.

What is new. Four things.

First, an express statutory cause of action for bad-faith negotiation, with its own threshold (good faith), its own measure of damages (negative interest only) and its own evidentiary architecture. The Act Causing Harm route no longer has to do the work it did under the 1985 Code.

Second, a mandatory and non-waivable duty of pre-contractual disclosure. This is what is genuinely novel. The performance-stage duty under Article 246 was always mandatory. The 1985 Code provided no mechanism to disable it, and practitioners had long understood as much. What is new is the express, codified non-waivability of the *pre-contractual* disclosure duty, backed by the remedy of annulment.

³⁴ 2025 Code, art 122(4).

³⁵ 2025 Code, art 123.

³⁶ 2025 Code, art 221.

Third, a statutory burden-of-proof allocation that treats the negotiation file, data room, and disclosure schedule as evidentially decisive documents.

Fourth, the availability of annulment, distinct from a fraud-based annulment under Articles 185 to 188 of the 1985 Code (which the new Code preserves in revised form). Article 122(4) does not require proof of fraudulent intent.

5. Practice

It is not always possible to predict how the law will “live” and what influence it will have over the parties to a contract. But we think that the three areas of practice will feel the change.

Drafting. Entire-agreement and non-reliance clauses remain useful for allocating reliance and defining the contractual representations. They will not exclude the Article 122 duty in onshore UAE-law contracts. Practitioners advising on SPAs, JVAs, distribution agreements, real estate transactions and financing documents under onshore UAE law might want to review their templates accordingly. Term sheets and heads of terms should make the binding/non-binding architecture explicit and address exclusivity and the allocation of negotiation costs. Non-disclosure agreements should align with Article 123 rather than be treated as a purely contractual layer.

Evidence. Article 122(3) places on each party, once concealment is alleged, the burden of proving disclosure. Indexed data rooms with download logs, dated disclosure schedules, signed Q&A logs, and structured information-request workflows stop being good housekeeping and become evidentially decisive. The party who can show what was disclosed, when, to whom and in what form will hold a clear procedural advantage. The party who cannot, will not.

Forum. Sophisticated counterparties have long chosen between onshore UAE law, DIFC law and English law for reasons of forum, language of pleadings, judicial expertise and enforceability. After 1 June 2026, a further factor joins that list: the substantive scope of the good-faith duty and the non-waivability of the Article 122 disclosure obligation under onshore UAE law. A party that wants to retain the maximum capacity to walk away from negotiations, or to rely on heavily negotiated entire-agreement and non-reliance language, will have a stronger reason than before to select DIFC or English law. A party that values the protection of statutory disclosure duties will have a stronger reason to choose onshore UAE law. The choice was always substantive. Under the new Code, it is more substantively consequential than before.