

inBrief



Significant Changes to Civil Procedure Code

By Chatura Randeniya and Nazim Hashim | 12 February 2019

Introduction

Significant changes to Federal Law No 11 of 1992 (the **Civil Procedure Code**) will soon be coming into effect. These changes are introduced through regulations (the **Regulations**) issued under the Civil Procedure Code and will come into effect on 16 February 2019.

The Regulations were promulgated pursuant to Decree by Law No 10 of 2017. These Regulations will amend the Civil Procedure Code where applicable.

The Regulations (in all, 193 articles) address a wide array of litigation procedures, from service of process, to enforcement of foreign judgments and arbitration awards, to execution procedures. Some of the Regulations codify practices already observed by the UAE Courts. In this inBrief, we set out a high-level overview of some of the Regulations which will impact both litigants and practitioners alike.

Service of Process

Pursuant to Article 3 of the Regulations, a court may permit a party or its attorney to serve process. Pursuant to the Regulations, process may be served between 7 am and 9 pm, unless served electronically, in which case the time limits do not apply. Article 6 of the Regulations provide that process may also be served by voice or video calls, text messages, fax, or any other alternative and technological means as may be determined by the Minister of Justice. Importantly, Article 5 of the Regulations provides that if the official language of the defendant is not Arabic, the plaintiff is required to provide an official translation of the court notice in English. The cost of translating the notice is recoverable by a successful plaintiff.

Article 7 provides that service on parties domiciled abroad may be effected through 'technological means, or private companies and offices, or as otherwise agreed between the parties, and if service cannot be so effected, process will be served through diplomatic

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Pursuant to Article 8, service is deemed to be effected on the date of sending the email or text message and on the date on which a voice or video call was made. Only process served by facsimile is deemed to have been served on the date of receipt.

Registration of Cases

Article 16 of the Regulations requires that a Statement of Claim/Plaint should include the details of the defendant(s) including information regarding the defendant's identification number, which is applicable with respect to individual defendants. The practice of the Dubai Courts with respect to corporate defendants is to require a copy of the defendant's trade license at the time of registering the case. It is therefore of practical significance that parties have copies of their counterparties' ID and/or licensing documents with them, and obtaining such documentation should form part of best practice when entering into transactions.

Certain Regulations are evidently intended to speed up litigation procedures. Article 18, for example, provides that the period allowed for the defendant to appear in the Case Management Office or the court following registration of the case is ten days, which may be reduced to three days. Where summary claims are concerned (such as applications for provisional attachment) this period is 24 hours, which may be reduced to one hour on the condition that notice is served on the defendant personally. While Article 18 goes on to carve out an exception for maritime claims, the scope of the exception is currently unclear.

Proceedings in the UAE Courts are commenced by filing the plaint and supporting evidence (electronically or in person) with the relevant court. Thereafter, the Case Management Office of the court will fix the court fee payable, and complete the registration of the case upon receiving payment and completing any documentary requirements which may be identified by the Case Management Office. Given that there can be a considerable passage of time between filing the plaint and completing the registration in some instances, this led to uncertainty regarding the date on which action was commenced, which is an important consideration in determining whether time bars and other time related deadlines under law have been complied with. Article 19 of the Regulations clarifies that the date of registration is deemed to be the date on which the case was submitted to the court system, and not the date on which the registration of the case is completed.

Assessment of Case Value

Assessment of case value is an important practical consideration, as it has a bearing on jurisdiction, appeal thresholds, and of course the court fees payable by a plaintiff. Article 23 of the Regulations provides that minor circuits (as set out in Article 30(1) of the Civil Procedure Code) will have jurisdiction over civil, commercial and labour claims not exceeding AED 1 million in value (the threshold previously being AED 500,000), and counterclaims asserted in such cases irrespective of the value of the counterclaim. Decisions made by the minor circuit court in labour cases valued at no more than AED 20,000 and in all other cases valued at no more than AED 50,000 may not be subject to appeal. The current threshold is AED 20,000 for all types of cases. Article 23 further provides that the threshold (in terms of value) for appealing a judgment of the Court of Appeal to the Court of Cassation is AED 500,000. The current threshold is AED 200,000. Article 25 of the Regulations contains provisions for assessing case values in various types of disputes. For example, an action for the dissolution of a company and appointment of a liquidator is valued based on the company's capital at the time of filing action.

Conduct of Proceedings

Certain claims may now be disposed of with only one hearing by a minor circuit court (Article 22). These claims include civil and commercial claims not exceeding AED 100,000 and claims for wages and salaries not exceeding AED 200,000. The Case Management Office is required to fix a case which is to be disposed of under Article 22 for its first hearing within 15 days of the date of registration of the case, and this may be

extended only once with an additional 15 days by the judge supervising the matter. Article 22 does not apply to cases in which the State is a party.

Denying documents on the basis that they are copies (based on Article 9(2) of the Federal Law No 10 of 1992) is a position commonly adopted by parties, particularly defendants. Article 20 of the Regulations however provides that denying documents simply on the basis that they are copies will no longer be acceptable, and the party seeking to deny documents will also be required to maintain that such documents are “invalid” or were not in fact authored by the party to whom they are attributed to. A party which has denied documents and the court finds that the party’s denial was without justification may be subject to a fine of between AED 1,000 to AED 10,000. Importantly, Article 20 also provides that the court may inform the authorities regulating the legal profession in the UAE of the fine, and thus impacts the advocates having conduct of litigation. It is to be noted that fines for frivolous denials of documents is not new, however its codification is a welcome development.

The efficient conduct of litigation is a recurring theme in the Regulations. The Regulations require parties to plead their cases as completely as possible at the hearing before the Case Management Office (i.e. before the matter is transferred to a court). Article 32 provides that if the plaintiff or the defendant submits a document in a subsequent session which requires the court to adjourn the matter, and the court is of the view that the document could have been submitted at the first hearing, the court may penalise the party submitting the document with a fine between AED 2,000 to AED 5,000. Article 32 clarifies that a party may however produce documents in response to the defences and/or incidental demands of the other party without threat of sanction. Article 35 provides that a court may allow the parties to submit documents, submissions and new evidence, and to amend the relief sought and assert counterclaims that they were unable to submit to the Case Management Office. However, the court at its discretion may deny such submissions if the court is of the view that they could have been made to the Case Management Office.

Article 37 provides that a hearing may not be adjourned more than once for the same reason attributable to a party in the absence of a valid excuse. Where such a valid excuse exists, the second adjournment shall not exceed two weeks. Article 48 provides that where the pleadings have been concluded, the court may issue its decision or reserve the matter for judgment in a period not exceeding two weeks. The date reserved for judgment may only be adjourned once, and for a period of no more than two weeks. In other words, judgment must be issued within a month of pleadings being concluded.

Article 39 provides that the court is no longer confined to using interpreters appointed or licensed by the Ministry of Justice, and the court may use an interpreter from another source or resort to the use of ‘approved technology’. The Regulations do not provide any guidance as to what constitutes ‘approved technology’, and this may be the subject of further regulations.

Costs and Fines for Malicious Prosecution/Defence

While the law and the Regulations provide that the court may award costs, in practice the UAE Courts do not award legal costs, except in a token sum. Court fees and expert’s fees are however recoverable by a successful plaintiff. Article 56 of the Regulations provides that even a party that is successful on the merits of the case may be required to bear a portion of the expenses if that party has *inter alia* caused any ‘futile expenses’ or did not disclose documents which could have disposed of the matter to its opponents. Article 58 of the Regulations provides that a party which submits a malicious motion, plea or defence may be subject to a fine between AED 1,000 and AED 10,000.

Payment Orders

Articles 62 through 68 of the Regulations set out provisions with respect to ‘Payment Orders’. Payment Orders are not new and the relevant provisions can be found in Articles 143 to 149 of the Civil Procedure Code. Payment Orders may be applied for by a creditor who has a claim for a fixed amount of money or a movable of a known type and quantity, and where the creditor’s right is confirmed. The Regulations enable the

possibility of confirmation by reference to electronic sources, as well as the option of applying for a Payment Order where the subject of the claim is the execution of a commercial contract, or in case the creditor's entitlement arises out of a commercial instrument. Pursuant to Article 63 of the Regulations, the creditor is required to demand payment from the debtor and grant at least five days to make payment. If payment is not received, a Payment Order may be applied for. The application must include the details required of a Statement of Claim/Plaint (as set out in Article 16 of the Regulations), and have the proof of the debt and evidence of the demand for payment attached thereto. Article 63 provides that the order be granted (or denied, presumably) within three days of the application being filed. If the application is denied, the judge is required to provide reasons. Prior to the Regulations, there was no requirement for the judge to provide reasons. A Payment Order may be appealed within 15 days by the debtor, and the court is required to determine the appeal within a week from the date of registration.

An application for a Payment Order does not preclude the party from seeking provisional relief under the relevant provisions of the Civil Procedure Code.

Enforcement of Foreign Judgments and Awards

Article 85 of the Regulations provides that an application to enforce a judgment or order of a foreign court shall be made to an execution judge, and that the judge is required to make his decision within three days. The execution judge is required to verify the following before issuing the decision:

- that the UAE Courts do not have exclusive jurisdiction over the matter;
- that the judgment or order has been issued by an authorised court under the law of the relevant foreign jurisdiction;
- that the parties to the foreign proceedings have been summoned and represented;
- that the foreign judgment/order sought to be enforced is *res judicata* under the laws of the relevant foreign jurisdiction; and
- that the foreign judgment/order sought to be enforced is not contrary to judgment or order of a UAE court, and is not contrary to the morals and public order of the UAE.

Article 86 provides that the provisions of Article 85 (set out above) are also applicable to arbitral awards issued in a foreign jurisdiction. Article 86 adds that the subject matter of the foreign arbitral award must be arbitrable according to the laws of the UAE, and the award must be enforceable in the jurisdiction in which it was issued, in order to seek enforcement in the UAE. The provisions of Articles 85 and 86 are without prejudice to the provisions of any treaties entered into by the UAE with respect to the enforcement of foreign judgments, orders or awards. The New York Convention is an example of such a treaty.

Conclusion

Overall, the Regulations are directed towards quick and efficient litigation, and will be welcomed by parties and practitioners. However, they put considerable time pressure on litigants, particularly on defendants, to ensure that their respective cases are pleaded fully within relatively short time periods.

The Regulations contain many provisions which warrant a detailed look, for example with respect to provisional orders and execution proceedings, which will be discussed in a series of inBriefs to follow. ■

Afridi & Angell

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