

inBrief



A closer look at Payment Orders under the UAE Civil Procedure Law

By Chatura Randeniya and Mevan Bandara | 11 June 2019

Several significant changes to the UAE Civil Procedure Law (Federal Law No. 11 of 1992 as amended) came into effect in February this year. An overview of these changes, brought about by Regulations promulgated pursuant to Decree by Law No 10 of 2017 and Cabinet Resolution No. 57 of 2018 (the **Regulations**) can be found in our [inBrief of 12 February 2019](#).

The changes made to Payment Orders under the Regulations have gathered a lot of interest, as it may offer an efficient means of recovering certain debts through the onshore UAE courts. In this inBrief, we take a closer look Payment Orders and the changes made by the Regulations.

What are Payment Orders?

Payment Orders are a mechanism for immediate *ex parte* judgment (*i.e.* without notice to the debtor). It existed under the UAE Civil Procedure Law before the Regulations were issued, but its use was restricted to claims involving financial instruments such as promissory notes and bills of exchange. Pursuant to the provisions the Civil Procedure Law, Payment Orders may be applied for by a creditor holding a financial instrument and who has a confirmed claim for a fixed amount of money or a movable of a known type and quantity. It is important to note that where multiple claims are being asserted, and not all of them meet the legal requirements for an application for a Payment Order, the ordinary civil procedure for claims should be followed.

A key change brought about by the Regulations was to extend Payment Orders to disputes where the creditor's right is "confirmed" either electronically or in writing, which need not be a financial instrument. What constitutes a "confirmed" debt has not been defined in the Regulations and the ordinary meaning may mean a written admission of debt. Recently, the Dubai Court granted a Payment Order based on a payment certificate certified by the engineer in a construction matter notwithstanding the

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existence of an arbitration clause in the underlying contract. The court therefore considered the certification of the engineer to be confirmation that the debt is due. This decision was not tested in appeal. Additionally, the Regulations provide that a claim for interest can be made under a Payment Order, whereas previously interest could not form part of such a claim.

This inBrief will consider the position where a Payment Order is sought consequent to a written admission of debt.

What constitutes a written admission of debt?

While the Civil Procedure Law and the Regulations provide no guidance on this issue, given the consequences of a successful application for a Payment Order (*e.g.* order issued within three days, a reduced appeal window of 15 days), it is likely that the courts will require a clear and unequivocal admission of debt. Although there is no system of binding precedent in the UAE, guidance may be given by reference to previous judgments:

It is established in the judgments of this court that an acknowledgment of a debt is the acknowledgment of a person that he owes a certain right to someone else, with a view to consider that right as being proved, and exempt the creditor from adducing any further evidence. For such an acknowledgment to be valid, it must be certain and assertive. If such an acknowledgment is surrounded by doubt, then it cannot be considered as correct or valid. The value of acknowledgment and significance of the paper issued by the debtor, where he acknowledges a debt and the consequences thereof on termination of limitation are matter of facts at the court discretion, as long as its inference is correct and reasonable. (Petition No. 1/2010(Labor))

The Regulations provide that confirmation of the debt, including written admissions of debt, may be established by reference to electronic sources.

What is the process?

Article 63 of the Regulations requires a creditor wishing to make an application for a Payment Order to first demand payment from the debtor. The creditor is required to grant the debtor at least five days from the date of receiving the demand to make payment. While the Regulations do not specifically address how a demand may be issued, Article 144 of the Civil Procedure Law provides that the demand be issued by registered post with acknowledgment of receipt, or by any other method that is agreed upon by the parties. Such alternative method should necessarily be one which facilitates a record of when the demand was served on the debtor. A prudent option would be to issue the demand through the Notary Public, as this would minimize the room for a debtor to successfully claim that the demand was not served on it.

Once five days have lapsed without payment being received from the debtor, an application may be filed before a summary judge. The competent court is identified with reference to the debtor's domicile. The application must include the details required of an ordinary Statement of Claim/Plaint. Additionally, the written admission of debt must be produced as evidence with the Statement of Claim/Plaint, together with evidence of the demand for payment being made.

An application for a Payment Order attracts the normal court fee (in Dubai, 6% of the claim value subject to a cap of AED 40,020).

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. If the application for a Payment Order is denied, the case will be transferred to be heard under the ordinary procedures. If the Payment Order is granted, the Payment Order is required to be served on the debtor through court within three months, failing which the Payment Order is rendered void.

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. Payment Orders qualify for expedited execution, *i.e.* execution may immediately commence notwithstanding that time for an appeal still exists. It is also important to note that an application for a Payment Order does not preclude the party from seeking provisional relief under the relevant provisions of the Civil Procedure Code.

What next?

There are already reports of Payment Orders being applied for and obtained pursuant to written admissions of debt, including reports of a recent case in which a Payment Order for approximately USD 8 million was obtained. While this is promising, not every debt may be suitable for an application for a Payment Order. Payment Orders have been consistently recognised by the UAE courts as being an exceptional remedy, and as being subject to the rules of public order which suggests that the courts will approach applications strictly.

A note of caution

This development also serves to highlight the fact that the concept of ‘without prejudice’ correspondence is not recognised by the onshore courts. Parties often make written settlement offers in good faith which are subsequently seized upon in onshore court litigation as admissions of indebtedness. With Payment Orders now being extended to written admissions of debt, it is ever more important to be cautious in conducting settlement attempts. ■

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