

# inBrief



## Further Changes to Civil Litigation in the UAE

By Chatura Randeniya and Nazim Hashim | 27 May 2020

In the latest in a series of amendments to Federal Law No. 11 of 1992 (the **UAE Civil Procedure Law**) the recently issued Cabinet Resolution No. 33 of 2020 (the **Resolution**) brings about some important changes to how matters will be litigated in the UAE courts. The Resolution amends certain provisions of the regulations to the UAE Civil Procedure Code introduced by Cabinet Resolution No. 57 of 2018 (the **Regulations**), which introduced some of the most recent changes to civil litigation in recent years. This inBrief highlights some of the changes made by the Resolution that will significantly impact litigants.

### 1. The service of summons on parties has changed

The Regulations provided that a litigant or its attorney may personally affect service, including service through ‘modern technology’. However, following the Resolution, the ability of a litigant or its attorney to affect service through ‘modern technology’ is removed. Consequently, parties and their attorneys may no longer use audio or video calls, text messages, emails, etc. to serve summons.

The Regulations as amended by the Resolution also refers to a law (yet to be issued) on the service of summons via private process servers.

The Regulations as amended recognises that service may be (in addition to audio and video calls, text messages, etc., which were previously recognised) affected through smart applications which, among other things may include messaging platforms such as WhatsApp. As noted above however, summoning through such platforms will not be available to parties and their attorneys, but only to courts and authorised private process servers.

The process server is required to ensure that where ‘modern technology’ is used, the correct numbers, addresses, etc. are used. It will be interesting to see how this will be applied in practice.

### The Authors



**Chatura Randeniya**

Partner

crandeniya@afridi-angell.com

Tel: +971 4 330 3900

Chatura’s practice focuses primarily on dispute resolution. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, ICC and ad hoc arbitrations. He also works with local advocates on matters before the UAE Federal courts. Chatura regularly advises clients in high value construction, and maritime and shipping disputes. He is admitted as Attorney-at-Law of the Supreme Court of Sri Lanka. He is a recommended practitioner by Chambers and Partners and Legal 500.



**Nazim Hashim**

Senior Associate

nhashim@afridi-angell.com

Tel: +971 4 330 3900

Nazim practices in the firm’s dispute resolution group. He has substantial experience in all aspects of civil and criminal litigation from case intake through to final disposition at trial. He handles a heavy caseload at a busy litigation practice, which includes conducting research and drafting memoranda used to support court pleadings. Nazim is a member of the Sudanese Bar Association.

The Regulations as amended provides that Service of summons on companies may be affected at a branch or office of the company in the UAE, if the dispute relates to such branch or office, or at the main office of the company to the legal representative of the company. Prior to the Resolution, service at the main office or on the legal representative was possible only if service at the branch or office was unsuccessful. If the main office is closed, or summons is refused, the server may now affix the copy of the summons at the premises without requiring prior permission from the court, which was required previously.

## **2. The Case Management Office (CMO) has added powers**

CMOs were created some time ago in order to make litigation more efficient, with the aim of having the parties fully plead their case before the matter is referred to the judge.

Under the Resolution, supervisory judges are empowered to apply sanctions on parties, and to offer the parties an opportunity to settle their dispute.

If a party wishes to assert an argument that the action has been filed in the courts of the wrong Emirate (*i.e.* a challenge to the local jurisdiction of the court) or that the dispute should not be heard or the matter should be discontinued for a reason other than public policy, it should do so before the CMO.

Pursuant to the Resolution, the decision of a supervising judge of the CMO to refer a case to be heard under summary procedures for payment orders is no longer appealable.

## **3. Summary proceedings and the powers of the minor circuit courts have been expanded**

Article 22 of the Regulations as amended provides that civil, commercial and labour claims of not more than AED 500,000 in value and claims challenging the validity of signatures are to be heard by the minor circuit of the court and disposed of in one hearing. This hearing must be fixed by the CMO within 15 days of the case being registered. A further 15-day extension may be made by the supervisory judge of the CMO, but no further extensions are permitted. If the court appoints an expert, a hearing must be fixed within three days of receiving the expert's report.

Minor circuit courts may now hear disputes up to AED 10 million in value. The jurisdiction of the minor circuit court used to be AED 1 million. In disputes below AED 50,000, the judgment of the minor circuit is final and binding.

## **4. Changes are made to the payment order process**

One of the more significant changes that the Regulations introduced was the broadening the availability of payment orders, which was previously limited to debts arising out of certain commercial instruments, to include debts which are confirmed in writing (as set out in our [inBrief](#) of 11 June 2019). The Resolution introduces further changes:

- Damages may now be sought as relief in payment order applications. Prior to the Resolution, only the outstanding debt and interest thereon could be claimed. This significantly increases the scope of payment orders.
- An application for a payment order may now be filed where the underlying agreement between the parties was concluded or performed (or had to be performed). Previously, the application could only be filed where the debtor was resident.
- Where a payment order is granted, and the debtor files an objection, the decision on the objection is not subject to appeal if the value of the order is less than AED 50,000.
- Where the value of the order is more than AED 50,000, an appeal on an objection may be filed

to the Court of Appeal. The Resolution provides that the Court of Appeal must make a decision on the merits, and cannot return the matter to the Court of First Instance.

#### **5. The requirements for applying for a travel ban have been clarified**

The Resolution amends the Regulations to give further clarity with respect to travel bans issued by the court. In summary:

- The debt owed must be for a specified amount (for example, a claim for damages will not qualify), which is unconditional and not be less than AED 10,000.
- There must be 'serious reasons' to believe that the debtor is a flight risk.
- The claim for payment must be supported by documentary evidence.
- The applicant must submit a guarantee to the court to cover losses or damages the debtor may suffer if the application for a travel ban is later found to be wrongful.

#### **6. Provision has been made for conducting litigation more efficiently**

The grounds for which a postponement may be sought is now limited. Postponement must be for an urgent reason, such as death, loss of capacity of a litigant, intervention of a third party, allegation of forgery, or to submit evidence of a criminal action being filed which is relevant to the merits of the dispute. Each postponement can be no more than two weeks.

#### **7. Execution judges have broader discretion to accept payment plans**

Following the Resolution, execution judges have the discretion to accept instalments plans spanning up to three years to satisfy a judgment debt. Previously, it was limited to one year. This will be seen as a welcome development, particularly in the current economic circumstances.

If a party wishes to object to execution of a judgment, however, a deposit of AED 5,000 is payable. The deposit is forfeit if the objection is unsuccessful.

#### **8. Representing a corporate entity**

A person who appears in Court on behalf of a company must have a power of attorney attested by the Notary Public. Previously, an attested power of attorney was not required. In addition, a person (who is not an Advocate) representing a company must be an Emirati possessing a law degree, and who has been employed by the company for at least one year.

The Resolution came into effect on 1 May 2020. ■

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