

## inBrief



### Another step in the right direction – the Dubai Court introduces the concept of a pre-trial conference

By Chatura Randeniya | 28 April 2021

The past couple of years have seen significant changes in litigation in the UAE Courts. On 31 March 2021, in what appears to be yet another move to modernize litigation in Dubai, the President of the Dubai Court of First Instance issued Circular No. 2 of 2021 (the **Circular**). The Circular introduces the concept of a 'pre-trial conference' into litigation in the Dubai Courts. The Circular provides that:

- a pre-trial conference will be held between the parties under the supervision of a judge;
- the pre-trial meeting may be held in person or by remote communication technology; and
- the parties are to discuss matters which will assist in the case being disposed of without delay. The Circular lists the following by way of example:
  - The possibility of settlement and expediting the trial process.
  - The complexity of the case and the expected duration of the trial.
  - Narrowing down the scope of disputed issues and issues pertaining to evidence.
  - Scheduling a procedural timetable for the submission of written pleadings, documents, expert reports and other documents, and lists of witnesses (if any).

Common law practitioners, and clients who have experienced litigation in common law jurisdictions, will be familiar with the concept of a pre-trial conference, but what will pre-trial conferences look like in onshore Dubai – a jurisdiction in which a trial (as understood in a common law jurisdiction) does not exist?

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No doubt time will tell. In the meantime, we set out below a couple of markers which may assist in tracking how this concept will be implemented in the UAE.

1. This is a step towards greater certainty – at least in matters of procedure. At present, there is no telling how many rounds of written submissions a Dubai court will require before fixing a matter for judgement. Litigants who file submissions at almost every hearing - regardless of whether the hearing is fixed for submissions to be filed by that party or not – are a frequent source of frustration and delay. Fixing a timetable in advance ought to remedy this.
2. Parties will be required to give more thought to the issues in dispute at the outset of the case, which ought to result in more focused pleadings being filed in court.
3. This could have a bearing on the use of court-appointed experts – but it most likely will not. Under current practice, the appointment of an expert by the court is the norm, rather than the exception. However, the decision to appoint an expert is driven primarily by the judges, as opposed to the parties. Consequently, the submissions by the parties at a pre-trial conference is unlikely to have a conclusive effect on whether or not an expert is appointed by the court. However, the pre-trial conference (particularly the requirements to discuss matters relating to presenting evidence) may have an effect on parties who attempt to file proceedings without evidence, or with light evidential support, and bank on the appointment of an expert to assist in the gathering of evidence.
4. It could be an avenue to require disclosure by litigants. The Circular requires the parties to narrow down the scope of disputed issues and, issues pertaining to evidence. In order to do so, ostensibly there needs to be a discussion regarding disputed facts and issues which in turn may lead to opportunities to question a counterparty regarding relevant facts and evidence.
5. Under the Civil Procedure Code Regulations issued in 2019, penalties were introduced to discourage parties from denying copied documents without a legal basis, and for failing to produce evidence in a timely manner. The Circular requires the parties to discuss the possibility of a settlement. It will be interesting to see whether penalties will be introduced for parties who declined a reasonable settlement at the pre-trial stage, and eventually have judgment rendered against them.
6. Finally, and perhaps most importantly, how the Circular will be implemented shall eventually be measured by the consequences of failing to comply with the orders issued at the pre-trial conference. What happens to a party who tries to bring up new or different issues not identified at the pre-trial conference? What are the consequences of deviating from the agreed procedural timetable? While the Circular is silent, we should expect guidance to follow.

The Circular is, without a doubt, a step in the right direction. However, how far of an actual travel in that direction, will depend on how the Circular will be implemented. Watch this space. ■

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