

inBrief

**Further recognition of judge-made law, and new courts: more changes to the UAE's Civil Procedure Code**

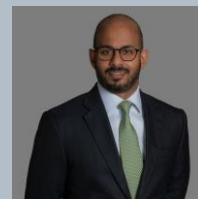
By Chatura Randeniya and Nazim Hashim | 20 September 2021

The UAE's Civil Procedure Code was enacted in 1992 as Federal Law No. 11, and the first amendments to the Code were made more than a decade later in 2005. Since 2014, almost each successive year has seen amendments being made, the most extensive of which were the regulations issued under Civil Procedure Code (the **Regulations**) which came into effect on 16 February 2019. The Regulations themselves were amended in 2020 by Cabinet Decision No. 33/2020.

Federal Decree No. 15 of 2020 (the **Decree**) and Cabinet Resolution No. 75 of 2021 (the **Resolution**) comprise the latest set of amendments to the Civil Procedure Code and the Regulations, and cover a range of issues from service of defendants, to the conduct of proceedings, and the execution of judgments. This article examines some of the more notable changes introduced by the Decree and the Resolution.

The creation of Single-Level Courts

The Decree makes provisions for the UAE Minister of Justice or the head of the Judicial Authority of an Emirate to create a Single-Level Court, which shall comprise of three judges, one each drawn from the Court of First Instance of the Emirate, the Court of Appeal of the Emirate, and the Court of Cassation of the Emirate or the Federal Supreme Court (to allow for the fact that save for the Emirates of Abu Dhabi, Dubai and Ras al Khaimah, the final level of appeal for the other Emirates is the Federal Supreme Court). The Single-Level Court was first proposed several years ago and, when established, will have jurisdiction where parties have agreed to submit themselves to the jurisdiction of that court, or where the subject matter falling within its jurisdiction is identified by regulations issued under the Civil Procedure Code (which is yet to happen). The court will only have jurisdiction over disputes which have a 'definite value' (i.e. would exclude claims for unassessed

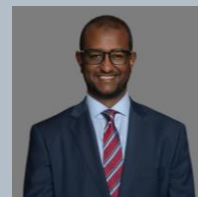
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Chatura's practice focuses primarily on dispute resolution. He advises and represents clients in arbitration, and has represented clients in DIAC, ADCCAC, ICC and ad hoc arbitrations. He also works with local advocates on matters before the UAE Federal 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.

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damages) which is over AED 500,000. The judgments of the Single-Level Court will not be subject to appeal, except where the judgment is subjected to review under the provisions of Article 169 of the Civil Procedure Code, reversal pursuant to Article 187(bis) (discussed below) or where the judgment is defective as the parties were not properly summoned.

Review of Court of Cassation judgments – a step towards further recognising judge-made law

The UAE, being a civil law jurisdiction, does not have a system of binding judicial precedent as understood in common law systems. That said, while a single judgment of the UAE Courts does not bind, a line of authority established by the superior courts is influential, for example the principle that arbitration is an exceptional form of dispute resolution. Federal Law No. 10 of 2019 created a judicial tribunal comprising judges from the Federal Supreme Court and the Courts of Cassation to unify the federal and local judicial principles and precedents issued by these courts and to eliminate potential conflicts.

The role of judicial principles within the framework of UAE law is further recognised by the Decree, which identifies conflict with judicial principles as one of the grounds for appealing a judgment of a Court of Cassation. Prior to the Decree, Article 187 of the Civil Procedure Code provided that a judgment of a Court of Cassation was not subject to appeal, but was subject to review in certain limited circumstances set out in sub-articles 1, 2 and 3 of Article 169 of the Civil Procedure Code (being fraud, forgery or false testimony, and suppression of conclusive evidence respectively). The Decree adds Article 187(bis) which provides that the Court of Cassation may at its own initiative or at the application of the party against who the judgment is issued, reverse a decision, among others, in the following cases:

- where a procedural error (either by the court directly or by one of its departments) affecting the conclusion of the decision/judgment has occurred;
- where the decision/judgment is based on a repealed law, and a different outcome would result if the current law is applied; and
- the decision/judgment violates judicial principles established by the panel, or other entire court circuits, or if it violates the principles established by the court, or the principles established by the judicial tribunal created by Federal Law 10 of 2019.

Where a party wishes to seek this remedy, an application for reversal should be made to the President of the Federal Supreme Court/Court of Cassation, with a deposit of AED 20,000. Applications may only be made within one year of the initial judgment. If the application for reversal is accepted, the matter will be remanded back to the court which issued the decision for reconsideration.

The amendments do leave some matters unresolved. There is no clear guidance as to what constitutes a judicial principle. The Decree is also silent regarding judgments of any courts other than the Federal Supreme Court and Courts of Cassation which may have become final, e.g. by reason of not being appealed, although the language suggests that this mechanism is limited to judgments of the Federal Supreme Court and Courts of Cassation.

Amendments regarding Payment Order applications

One of the key changes introduced through the Regulations was the expansion of the summary procedure known as Payment Orders, previously confined to disputes involving commercial instruments, to disputes which involve a written confirmation of debt. The Cabinet Resolution makes further changes to the law governing this procedure, notably the following:

- Amending Article 64 of the Regulations to require the judge to provide justification for the court's decision when granting or denying a Payment Order application in relation to implementation of a commercial contract. Previously, justification was required only where the judge rejected an application.
- An appeal against a Payment Order (appeals are available where the value of the claim is more than AED 50,000) now may be made within 30 days of the decision. Previously, it was 15 days. The amendment also requires a detailed memorandum of appeal to be filed at the time of filing the appeal. Previously, a simple notice of appeal sufficed. Where the value of the claim is less than AED 50,000, a challenge must be made by way of an objection (or a 'grievance' as commonly referred to) within 15 days - the law with respect to such challenges has not changed.
- The Cabinet Resolution provides that in an appeal originating from a case has been filed as ordinary proceedings but the supervisory judge has instead issued a Payment Order, and the Court of Appeal takes the view that the requirements for issuing a Payment Order has not been met, the Court of Appeal may remand the matter to the Court of First Instance to be heard as an ordinary claim. Prior to the amendment, if the Court of Appeal takes the view that the requirements for issuing a Payment Order have not been met, the application would be dismissed.

Summoning of parties

A constant theme in the amendments to the Civil Procedure Code since 2017 is the attempt to streamline the process of serving court process on defendants. The Cabinet Resolution take further steps in this direction by providing that:

- summons may be served by recorded audio or video calls, short message services, smart applications, email, fax, or any other means agreed between the parties from the method of service recognised in the Regulations;
- summons may be served at the defendant's domicile, residence, or on their attorney, spouses, relatives or servants and that refusal to accept summons will be deemed to result in personal service; and
- summons may be served at a place of work on the defendant, his/her manager or the management of the workplace.

If service cannot be affected as above, summons shall be served among others by publication on the court's website or in newspapers, including a foreign language newspaper where the party sought to be summoned is not a UAE national. In practice service of summons can still be a time-consuming exercise in the UAE courts (less so in the Dubai Courts), and it is hoped that the changes made by the Cabinet Resolution will make this a more efficient process.

Added scope for ad-hoc courts

Article 30(bis) of the Civil Procedure Code provides that the Minister of Justice or the head of the Judicial Authority of an Emirate may create an ad-hoc court presided by one judge and assisted by two local or international experts to hear and determine certain matters that would otherwise fall within the jurisdiction of the major circuit of courts. The Cabinet Resolution clarifies that the ad-hoc courts will have the jurisdiction to hear civil, real estate, commercial and inheritance cases, and such disputes that the parties agree will be subject to the jurisdiction of the ad-hoc courts. Where there is such an agreement, other courts

should decline jurisdiction, provided that the defendant in the matter asserts a jurisdictional objection before addressing the court on the merits of the dispute (i.e. similar to the position when asserting a jurisdictional objection based on the existence of an arbitration agreement). Each ad-hoc court will have a 'preparation judge' who shall exercise the powers of supervising judge and case manager. The 'preparation judge' is required to encourage settlement of disputes, and if a settlement is reached, the minutes of settlement shall acquire the status of a writ of execution. If settlement is not possible, the 'preparation judge' must, within 30 days, prepare a memorandum of opinion considering the parties' position and the applicable law, and the matter will be referred to the competent court for adjudication in the ordinary manner.■

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