THE UNITED ARAB EMIRATES CLARIFIES PREVIOUS UNCERTAINTY REGARDING PAYMENT ORDERS

Date: 1 October 2021

UAE Litigation and Dispute Resolution Alert

By: Jennifer Paterson, Mohammad Rwashdeh

The Payment Order process is intended to provide an expedited way of obtaining a judgment for payment in straightforward debt cases and helps creditors seek relief in a timely and cost effective manner. Recent changes to Cabinet Resolution No. 57 of 2018 on the Regulations of Federal Law No. 11 of 1992 (Cabinet Resolution No. 57 of 2018), which came into effect on 3 September 2021, have clarified previous uncertainties relating to Payment Orders and confirmed the Court of First Instance's jurisdiction to determine claims that would otherwise meet the requirements for a Payment Order.

WHAT IS A PAYMENT ORDER?

Pursuant to Articles 62 to 68, Chapter 2 (Payment Orders) of Cabinet Resolution No. 57 of 2018 (subsequently amended by Cabinet Resolution No. 33 of 2020), the United Arab Emirates (UAE) introduced an expedited procedure for seeking judgment on an ex parte basis for payment of an amount due to a creditor whose entitlement to payment had been confirmed electronically or in writing. Articles 62, 64 and 66 have recently been amended by Cabinet Resolution No. 75 of 2021.

Article 62(1) of Cabinet Resolution No. 75 of 2021 Amending Certain Provisions of Cabinet Resolution No. 57 of 2018 (Cabinet Resolution No. 75 of 2021) provides that, as an exception to the general rules for filing cases before the Court of First Instance, Chapter 2 (Payment Orders) shall be applied if the creditor's right is evidenced, electronically or in writing, is immediately due, and the entire claim consists of a debt of a specified amount, or a movable asset of a specific type and quantity. Pursuant to Article 62(2), Article 62(1) applies if the right holder is a creditor with a commercial paper (such as a promissory note or cheque) or the financial claim relates to the enforcement of a commercial contract.

Originally, a Payment Order was only available where the creditor sought payment of a fixed debt, plus interest. However, Article 62(3) confirms that the Payment Order process shall not preclude a creditor from claiming compensation or interest, or seeking any precautionary measure.

THE PROCEDURE FOR OBTAINING A PAYMENT ORDER

Article 63 of Cabinet Decision No. 57 of 2018 (which has not been amended) sets forth the procedure for creditors seeking to apply for a Payment Order. First, the creditor must serve upon the debtor a demand to pay the amount due within a prescribed time limit of at least five days (Payment Demand). The Payment Demand may be served

©2005-2026 K&L Gates LLP. All Rights Reserved.

by any means specified within Cabinet Resolution No. 57 of 2018. However, the most prudent option is to issue the Payment Demand through the Court or Notary Public, as it is then difficult for a debtor to deny service.

Once the time limit has passed without payment being made, an application for a Payment Order may be filed before the Payment Order Judge. The application must include the details of the claim in the ordinary course, but must also attach the debt instrument and evidence of the Payment Demand.

The filing fee for a Payment Order is the same as the normal court fee, which in Dubai is currently 6 percent of the claim value up to a maximum of AED 40,000.

Article 63(4) of Cabinet Decision No. 57 of 2018 provides that the Payment Order shall be granted within three days of the application being filed and must indicate the amount to be paid by the debtor. Pursuant to Article 64, as amended by Cabinet Resolution No. 75 of 2021, if the application is denied, the Court is required to issue a reasoned decision. If the decision is relating to the enforcement of a commercial contract, a reasoned decision must be issued in all cases (even if the Payment Order request is granted).

If the Payment Order is granted, pursuant to Article 65 of Cabinet Decision No. 57 of 2018, the debtor must be notified of the fact within three months of the date of issuance, failing which, the Payment Order is considered void *ab initio*.

IS THE PAYMENT ORDER A MANDATORY PROCEDURE?

Article 17(8) of Cabinet Decision No. 57 of 2018 stated: "*If the Case Management Office receives a claim that satisfies the conditions of the issuance of the payment order set forth in Article (62) hereof, the Case Management Office shall refer the same to the Supervising Judge immediately for referral to the competent judge having jurisdiction over the payment order, in order to adjudicate the claim within the time limit specified in Article (63.4) hereof*."[1]

The General Assembly of the Dubai Court of Cassation also determined, in Decision No. 2 of 2019, that the process for a Payment Order is a mandatory procedure and creditors are not permitted to proceed with a substantive claim in the usual way if the criteria for a Payment Order are satisfied, unless there is a serious dispute regarding the evidence or the value of the debt, in which case, the matter is admissible before the Court of First Instance.

Consistent with the General Assembly's determination, the Court of First Instance has issued a number of judgments dismissing substantive claims where the criteria for a Payment Order are satisfied. Those creditors either had to bear the costs of appealing that decision to the Court of Appeal, with the risk that the judgment would be upheld, or accept the judgment (meaning that it would become final) and thereafter file an application for a Payment Order, without any certainty that it would be accepted.

Article 68 (bis) of Cabinet Decision No. 75 of 2021 appears to have resolved this issue by expressly confirming that the Court of First Instance shall have jurisdiction over claims commenced before it notwithstanding that the conditions for obtaining a Payment Order have been satisfied. Article 68 (bis) states: "*As an exception to the provisions of this Chapter, if the case brought before the court meets the conditions for obtaining a payment order, it shall be resolved in accordance with the rules and procedures stipulated for resolution of [regular] cases*."

©2005-2026 K&L Gates LLP. All Rights Reserved.

This is a welcome development, as it should reduce the risks and procedural uncertainty previously faced by creditors, particularly in cases where it was not necessarily clear whether the claim satisfied the criteria for a Payment Order. Those creditors can now commence a claim in the Court of First Instance without the risk of the claim being dismissed because the Court determines that it meets the conditions for a Payment Order but the procedure for obtaining a Payment Order has not been followed.

THE PARTIES' RIGHTS TO APPEAL OR CHALLENGE A PAYMENT ORDER

Article 66 of Cabinet Resolution No. 75 of 2021 provides two mechanisms for challenging a Payment Order. First, pursuant to Article 66(1), if the value of the Payment Order is less than the threshold for appealing decisions from the Court of First Instance to the Court of Appeal (currently AED 50,000), the parties may file a grievance to the Payment Order Judge against the Payment Order within 15 days from the date of notification of the debtor of the order, or, in the case of the creditor, within 15 days from the date of issuance of the decision. The decision on the grievance is final and not subject to appeal by any means. Second, if the value of the Payment Order is equal to or exceeds the minimum threshold, pursuant to Article 66(2), the parties may appeal the Payment Order within 30 days.

The procedure for appealing a Payment Order is slightly different from a regular appeal. Pursuant to Article 66(3) of Cabinet Resolution No. 75 of 2021, the grounds for appeal must be submitted at the time that the appeal is lodged; otherwise, the appeal shall be dismissed. This is in contrast to a regular appeal, where an appellant is entitled to submit its full grounds for appeal up until the date of the first hearing set for exchanging memoranda and response memoranda before the Case Management Officer (Article 162(3) of Federal Law No. 11 of 1992 on the Civil Procedure Law).

The Court of Appeal shall consider the appeal in chamber within a week from the date of notification of the appeal. The Court of Appeal must assess the merits of the claim and make a final determination and may not remand the case to the Court of First Instance. If the Payment Order is dismissed due to non-compliance with procedural requirements, the creditor's only further recourse is to commence a new claim.

However, as an exception to this rule, Article 66(4) of Cabinet Resolution No. 75 of 2021 expressly provides that, if the claim was submitted to the Court of First Instance in the usual manner (rather than as an application for a Payment Order) but it was transferred to the Payment Order Judge, in the event that the Court of Appeal determines that the conditions for a Payment Order have not in fact been met or dismisses the Payment Order for substantive reasons, it shall remand the case to the Court of First Instance for determination in the ordinary manner.

Judgments of the Court of Appeal in respect of Payment Orders are appealable to the Court of Cassation.

Notwithstanding a debtor's right to file a grievance or appeal, Payment Orders are subject to the rules of expedited execution, meaning that the creditor can commence execution immediately.

FOOTNOTES

[1] When a new matter is commenced before the UAE Courts, the Case Management Office initially manages the case (which includes accepting the parties' memoranda and reply memoranda and preparing the case file) before

©2005-2026 K&L Gates LLP. All Rights Reserved.

allocating it to an appropriate judge.

KEY CONTACTS



JENNIFER PATERSON
PARTNER

DUBAI
+971.4.427.2728
JENNIFER.PATERSON@KLGATES.COM



MOHAMMAD RWASHDEH
SPECIAL COUNSEL

DUBAI
+971.4.427.2742
MOHAMMAD.RWASHDEH@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.