THE UAE INTRODUCES NEW GROUNDS FOR THE FEDERAL SUPREME COURT AND LOCAL COURT OF CASSATION TO RETRACT THEIR DECISIONS OR JUDGMENTS

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UAE Litigation and Dispute Resolution Alert

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Recent changes to the UAE Civil Procedure Code, Federal Law No. 11 of 1992 (CPC), which came into effect on 3 September 2021, have introduced new grounds for seeking retraction of Federal Supreme Court and local Court of Cassation decisions or judgments which would previously have been final and not subject to appeal, retraction or reconsideration in any way.

SUMMARY OF THE PREVIOUS POSITION

Prior to these recent amendments, pursuant to Article 187 of the CPC, a final decision from the Federal Supreme Court or local Court of Cassation was not appealable except by way of a petition for review (i.e. re-consideration by the same court) in certain limited circumstances. Those circumstances are set forth in Articles 169(1), 169(2) and 169(3) of the CPC, as follows: (i) in the event of fraud by a party that influenced the decision; (ii) if the decision was based on documents that have since been found to be falsified or based on the testimony of a witness that has since been found to have committed perjury; or (iii) if, following issuance of the decision, a party obtained documents which are conclusive of the case, the presentation of which had been prevented by the opposing party.

Article 174 of the CPC also provides one further opportunity to challenge an otherwise non-appealable judgment. Article 174 provides that the attorney general may appeal a final judgment from any court (civil and criminal) on his own motion, or on the application of either the Ministry of Justice, Islamic Affairs and Waqfs or the president/chairman of the local judicial authority,[1] if the judgment was founded on a contravention of the law, or an error in the application or interpretation thereof, in circumstances where either: (i) the law does not permit the parties to appeal that judgment; or (ii) the parties have missed the time for appealing, they have waived their appeal or they have brought an appeal to the Federal Supreme Court or local Court of Cassation that has been rejected without considering the merit of the same. Significantly, Article 174 permits the attorney general to challenge a final decision by the Federal Supreme Court or local Court of Cassation to reject an appeal, notwithstanding that the appeal has been considered and found to be inadmissible.

Although Article 174 provides that such an application must be raised by the attorney general on his own motion or following the application of the Ministry of Justice, Islamic Affairs and Waqfs or the president/chairman of the

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local judicial authority, in practice, parties petition the attorney general to exercise his rights under Article 174 on their behalf.

The time limit for bringing an appeal under Article 174 is one year from the date of the rendering of the judgment. The Federal Supreme Court or local Court of Cassation shall examine the appeal in chambers without summoning the parties. If the judgment is in favour of any of the parties, they are entitled to enforce and benefit from it.

RECENT CHANGES TO THE CPC

The recent changes to the CPC include the introduction of a new Article 187 bis, which introduces new grounds for retracting an otherwise final decision or judgment and in particular provides:

> "… as an exception to the provision of Article (187) of [the CPC], the court may retract a decision issued by it in chambers or its final judgment on its own initiative or at the request of the person against whom the decision or judgment was issued, in any of the following cases: (a) If the decision or judgment is tainted by a procedural error made by the court or its auxiliary bodies, which has affected the conclusion reached in its decision or judgment; (b) If the decision or judgment is based on a repealed law, and application of the correct law would change the opinion reached in the case; or (c) If the decision or judgment was issued in contradiction of any of the judicial principles decided by the panel[2] or all circuits of the court, as the case may be, without those principles being presented to it, or if it was issued in contradiction of the principles established by the court or by the Commission on Unification of Principles between the Federal and Local Judicial Authorities."

PROCEDURAL STEPS

An application for retraction by a party against whom the decision or judgment has been issued shall be issued to the President of the Federal Supreme Court or the President of the local Court of Cassation, signed by a lawyer who has rights of audience before such court, and accompanied by a security deposit of AED 20,000.

If the retraction is on the court's own initiative, the application shall be referred by its president and accompanied by a report from the court technical office.

The application for retraction shall be considered by a panel formed of five of the most senior judges of the court (provided that none of the judges issued the judgment or decision that is being challenged). This panel shall issue a reasoned decision on the application for retraction by a majority of four judges.

If the application is rejected, the security deposit is not refunded. In the event that the application is accepted, the matter shall be referred to another circuit to reconsider the appeal and decide thereon, and the security deposit shall be refunded to the applicant.

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In all cases, an application (or referral by the court) for retraction may only be submitted once, and cannot be made if more than one year has lapsed since the date of issuance of the final judgment or decision issued in chambers.

COMMENT

It is worth bearing in mind these new grounds for applying for retraction of a decision or judgment, as they may offer an important and valuable avenue to challenge future Federal Supreme Court and local Court of Cassation decisions or judgments that would otherwise have been a final and binding. However, there is no retrospective effect, so these changes may not apply to judgments and decisions issued before 3 September 2021.

FOOTNOTES

[1] Article 174 has been amended to allow the president/chairman of the local judicial authority to apply to the attorney general to appeal a final judgment; previously, such an application could only be made by the Ministry of Justice, Islamic Affairs and Waqfs.

[2] The Federal Supreme Court and local Court of Cassation each form panels of judges which have jurisdiction over certain matters, such as: determining novel questions of law that are of a complex nature or of critical importance; resolving issues arising out of conflicting judgments or contradictory legal principles; and determining cases where the court seeks to depart from established legal principles.

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