

# Banking and Finance: Case Update

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## Electronic communications

### ***Background***

In a recent case involving three banks, a corporate entity as well as an individual in the UAE, the Dubai Cassation Court issued a judgment on October 2019 referring the case file back to the Appeal Court and to re-appoint the same expert.

The Court of Cassation stated in the judgment that the appointed expert at the Appeal Court did not review the email communications, telephone calls and text messages between the litigants (noting that such tasks were not expressly mentioned in the expert's mandate as issued by the Appeal Court).

The concerned litigants requested the expert to review such materials during their meetings however, the expert ignored the litigants' request, on the basis that it was not a financial matter related to the case in hand and it was not mentioned by the Court in his mandate.

### ***Conclusion***

The UAE Courts recognise digital communications (email, telephone calls, text messages, etc.) between litigants when establishing the facts of the case and the Court appointed expert is obliged to review all types of communications between the litigants even if the Court has not explicitly mandated this role in the expert appointment letter issued by the Court.

# Mortgage of Movable Assets to Secure a Debt

There are very limited Court precedents relating to the Movables Law however, we are aware of one successful case which was filed before the Dubai Courts by a bank with a view to attaching and selling a mortgaged movable asset based on the Movables Law. The movable asset was in the form of a registered assignment of receivables.

Although the case related to specific facts and, arguably, has limited value in terms of precedent, it is a positive sign that the Courts recognise the priority of security registered on the Emirates movable collateral register.

## Sale of Mortgaged Property in Dubai

### *Change of Dubai Courts approach*

Previously, a mortgagee had the discretion to file two different types of legal proceedings against the mortgagor (i.e. substantive claim (including a precautionary attachment) as well as foreclosure proceedings). Such claims could be made simultaneously in parallel proceedings. These are the most practical proceedings a creditor would follow, using a substantive claim when the mortgaged property's value is less than the current debt.

At present, when a mortgagee applies to the Court to attach and sell a mortgaged property through public auction (based on a mortgagor defaulting), the Dubai Courts will request the mortgagee to submit an official document extracted from the Dubai Court system which confirms that there is no substantive claim registered/ongoing before the Dubai Courts in relation to the particular mortgaged property on which the mortgagee is foreclosing.

### **Conclusion**

Creditors can no longer file a substantive claim and a foreclosure case at the same time. Creditors now must choose the proceedings that are most likely to result in recovery. Filing a substantive claim and a foreclosure case may lead to the suspension or the dismissal of the foreclosure case.

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