

Summary Proceedings: Orders for payment law and practice

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The UAE Civil Procedures Code No. 11 of 1992 ("CPC") governs the procedural aspect of initiating and litigating disputes before UAE Courts.

The CPC also provides for the necessary procedural rules that UAE Courts should consider when adjudicating lawsuits. The CPC is technically a set of rules that govern and determine the procedures litigants should follow to assert their rights (claims), the process of obtaining and appealing judgments and the method to enforce judgments in the UAE.

Generally speaking, there are two types of legal proceedings under the CPC; substantive and summary legal proceedings. However, in practice there is a third type that could be available under the CPC where both summary and substantive proceeds are combined. The third type of legal proceedings is known under the CPC with the name of "Order for Payment" under which a claimant requests payment of money (which is a substantive request) through summary proceedings filed before the summary court.

Substantive Proceedings

The CPC provides for a claimant's right to file substantive legal proceedings before the competent court (e.g. Court of First Instance). According to Article 42 of the CPC, the claimant shall file with the competent court a written statement of its claim stating the facts establishing the dispute. Such statement of claim must also enclose a list of dockets evidencing the facts stated by the claimant. On the other side, the defendant will have to prepare its defense statement and list of supporting documents. Substantive proceedings can last for 1- 2 years.

Summary Proceedings

The CPC also provides for a claimant's right to file summary legal proceedings before the summary court. Summary proceedings are meant to adjudicate disputes, which are subject to fear of losts by passage of time, without affecting the original right, rather by only issuing a temporary order for the purpose of protecting or preserving an existing condition or right. Precautionary attachment and travel ban orders are common examples of summary orders issued pursuant to summary proceedings.

Payment Orders

As an exception from the general procedure in Article 40 of the CPC, a creditor may follow a shortcut for obtaining a direct order for payment from the summary court. In other words, the creditor can obtain a court judgment against its debtor within 48 hours from the summary court. This is usually called an "Order for Payment".

According to Article 143 of the CPC, if the debt owing to the creditor is proved in writing and is immediately due for payment, and if the only thing the creditor is claiming is a money debt of specified amount or a moveable of specified type or amount, the creditor is entitled to file an order for payment application in the summary court requesting immediate payment of its debt.

Clearly, the aforementioned conditions apply to payment instruments generally used by traders, banks and financial institutions. In the UAE, banks and financial institutions are familiar with cheques, bills of exchange and promissory notes which are all valid for establishing the main legal requirement for obtaining orders for payment.

In practice, the creditor must notify its debtor to pay the due debt within a stipulated time. This usually occurs by serving a legal notice on the debtor through the [notary public](#) in order to evidence the debtor's nonpayment. Once the grace period given by the creditor lapses, the creditor becomes entitled to file its application for a payment order in the summary court. The summary court shall handle such application on an urgent basis and issue its decision within 48 hours.

Summary Judge Decision

According to Article 145 of the CPC, if the summary judge decides not to grant the order for payment for any reason, the summary judge must refrain from issuing the order for payment, and must fix a hearing to determine the action before the competent court. In other words, the summary judge must transfer the payment order application to the Court of First Instance where the application becomes a substantive claim subject to the usual litigation procedures and formalities.

According to the CPC, the summary judge is prevented from dismissing an application for an order for payment no matter what the grounds of the dismissal are, whether linked to incorrect procedures or lack of jurisdiction, or linked to the debt. In such cases, the summary judge must avoid issuing the order for payment, and shall schedule a hearing for the trial before the competent court.

If the summary judge decided to transfer the order for payment application to the competent court, there will be no extra cost on the applicant since (i) the court fee paid to the summary court for granting the order for payment is equivalent to court fee payable to the competent court; and (ii) the summary judge is not considered to have rejected the order for payment application; rather the summary judge has transferred it to another judge who sits in another court.

Challenging Payment Orders

A payment order is a judgment and hence is subject to challenge by the defendant (losing party). In practice and in line with Article 147 of the CPC, payment orders are subject to two ways of challenge; grievance and appeal. As explained in the Introduction, an order for payment is a combination of summary and substantive legal proceedings; hence it is challengeable by way of grievance (which is applicable to orders issued by the summary court) and appeal (which is applicable to judgments issued by the substantive judge).

According to the CPC, the defendant has the right to file a grievance within 15 days from the date of notifying it with the order for payment. Also, the defendant has 30 days to appeal the order for payment following the end of the grievance time bar (i.e. starting from the end of the 15 days).

Interest

Since orders for payment are meant to oblige a debtor to pay a certain and due amount of money pursuant to a written document, claiming interest is not possible. According to the available UAE case law on orders for payment, if an order for payment application contains the applicant's request for interest, the summary judge has to transfer such application to the competent court as the summary judge is not authorized to award interest.

Precedent

Unfortunately, the available UAE case law related to orders for payment is very limited and

unsupportive. UAE Courts have been reluctant to accept orders for payment applications. In fact, Dubai Summary Court has refused recently to decide on an order for payment application related to money due under a cheque.

In summary

An order for payment is an exception to the general rule for claiming debts in UAE Courts. An order for payment is technically a combination of summary and substantive legal proceedings. In practice, there is limited precedent where orders for payment have been issued by UAE Courts. UAE summary judges tend not to decide on orders for payment applications; they rather transfer such applications to the competent court in line with the provisions of the CPC.