

To Pay or Not to Pay... That is the Question!

Rachel Hill - Associate - Employment and Incentives
- Dubai Maze Tower

February 2016

In recent years, labour disputes have become somewhat similar to televised court room dramas – highly charged and acrimonious given they often arise out of a breakdown in a previously working relationship. Emotions run high and professionalism is often lost in a war of words before the courts.

The UAE Labour Courts follow the same process as other claims filed with the UAE courts, in that there are three stages: Court of First Instance, Court of Appeal and Court of Cassation/Supreme Court. Once a UAE Labour Court of Appeal issues its judgment and in the event that it is awarding an amount to the employee, that judgment may be enforced/ executed immediately notwithstanding that parties may further appeal the judgment before the Court of Cassation.

In order to enforce/execute the judgment an employee must approach the Execution Court and apply for the enforcement of the judgment. The Execution Court will then serve notice on the employer seeking payment within 15 days from the date of the service of the notice. Historically, it was common practice for an employer to file objections and grievances to unnecessarily delay the payment since this would only be due once those applications had been considered by the courts.

As a means to secure the judgment debt the Execution Court has the power to impose certain measures. These include attachment orders on bank accounts, shares, stocks and bonds as well as on any real or tangible assets that the employer may have in the UAE. However, all of the above measures may take many months to finally conclude.

In a bid to address this reluctance to satisfy judgments and ensure a speedy resolution of the issues, the Ministry of Labour (“Ministry”) has introduced added sanctions for any UAE entity failing to discharge a judgment debt within the 15 day deadline.

Ministerial Resolution No 797 of 2014 (“the Resolution”), which has been in effect since 1 October 2014, empowers the Ministry to suspend the business license of an entity for non co-operation or payment of a judgment issued by the Labour Courts. Furthermore, it may also order the issuance of an arrest warrant for the General Manager named on the employer’s license and the imposition of a travel ban. Moreover, the Resolution can also have a wider application by not only sanctioning the employer but also to a wider group of associated entities. Individual owners and partners of the defaulting entity may find that other entities, of which they hold a vested interest, are also subject to the Resolution’s sanction. The Ministry has announced that an employer must be given two advanced warnings of the proposed suspension, although the method or manner of communication is not clear or routinely followed. The newly imposed sanction will remain in effect until the Execution Court has received payment of the judgment in full (inclusive of accrued interest, court fees, etc) and requested the Ministry to raise the suspension.

Increasingly more and more disgruntled employees are taking advantage of the Resolution and are quick to approach the Execution Court to seek enforcement of a judgment closely followed by an urgent application to freeze the employer’s licence. The Execution Court does not hesitate to suspend the business license of a non compliant employer and we are noting that these suspensions are quickly

becoming the norm and may be applied even without the requisite two advanced warnings.

In the event an employer fails to satisfy the judgment irrespective of a restriction having been placed on its business license, the Execution Court will proceed to issue an arrest warrant for the General Manager on the employer's licence. Once arrested, the General Manager remains in custody until such time as the judgment and all associated costs have been satisfied in full and the Execution Court issues a clearance certificate confirming that all amounts due have been fully paid.

The procedure to remove the suspension and the arrest warrant is proving to be fairly arduous, time consuming and costly with varying applications necessary to ensure they are lifted correctly.

Free Zone Entities

Although free zone entities are governed by the relevant free zone authority and do not necessarily fall under the remit of the Ministry, they do not have explicit immunity from other UAE government departments. Therefore, there is a risk that the Resolution will empower the Ministry to extend its application to any related entity of the defaulting party irrespective of whether it is based onshore or within a free zone.

Conclusion

In addition to the threat of an attachment order and a visit from Court Bailiffs, this new Resolution highlights, to all UAE entities and employers, the importance of prompt payment of judgments within the 15 day deadline from date of notification to ensure business operations are not brought to a sudden halt.

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