

Payment Orders: An Option for Debt Collection but the Devil is in the Details

By: Dr. Jochen Murach, Jonathan P. Noble, and Baika Altyukhamedov

The UAE Government recently passed legislation that substantially simplifies the procedure for obtaining a payment order.

Payment orders may offer an efficient method to obtain *ex parte* judgement against a debtor. They are frequently used when claiming amounts arising from bounced checks or other commercial instruments.

Payment orders were originally promulgated by Federal Law No. 11 of 1992 (the “**Civil Procedure Law**”). Cabinet Decision No. 57 of 2018 (the “**Cabinet Decision**”) amended the procedural process of the Civil Procedure Law. These changes came into effect 16 February 2019.

When unambiguous debts are owed in the UAE, payment orders provide a fast method for judicial relief. However, enforcement of awards remains a key challenge to collecting the debts once the judiciary has intervened.

Key Requirements

For the competent court to approve a payment order application, the following requirements must be met:

1. the creditor’s right must be confirmed by the debtor (although the Cabinet Decision does not offer specifics, generally, an unambiguous admission of liability is required);
2. the creditor’s right must be urgent;
3. the whole claim is a debt of a specified amount or a movable of a specified type and amount; and
4. the subject of the application is the enforcement of a commercial contract or commercial paper.

Considerations

Submitting a legal notice requires a number of considerations:

1. **Legal Notice** // Before applying for a payment order, the creditor must send a demand letter to the debtor demanding settlement within 5 days. The notice must be given in the form specified in the Cabinet Decision. If the outstanding debt is not settled, the creditor may apply for a payment order.
2. **Proper Jurisdiction** // The application must be submitted to the Court of First Instance in the jurisdiction of the debtor’s domicile. This means that even if the transaction occurred in another Emirate, the payment order can only be filed at the court of the debtor’s registered office.

3. **Application Format** // The application must include a statement of claim, the demand notice issued to the debtor, and evidence of the admission of debt. The judge will then grant or deny the order within 3 days. In practice, these timeframes are not strictly followed.
4. **Judicial Decision Making** // The Cabinet Decision has added a burden on the judge to provide reasons for rejecting a payment order application. The creditor is given 3 months to inform the debtor of the court's decision in person, failing which the payment order will be voided.
5. **Appeal** // The debtor is permitted 15 days to file an appeal which should be addressed by the court within a week. Previously, appeals would require 30 days and the parties would be permitted 15 days to file a grievance against the court ruling before filing an appeal.

Positive Changes

The Cabinet Decision improves the process for payment order applications in a variety of ways.

The Cabinet Decision:

1. permits a claim for interest to be made under the payment order procedure;
2. permits the confirmation of creditor's right electronically, including by email;
3. extends the use of payment orders to all admitted debt, rather than simply debt admitted through financial instruments. This means that contractual debt admitted by email correspondence likely qualifies for the payment order procedure; and
4. makes clear that an application for a payment order does not preclude the creditor from seeking provisional relief such as an attachment on debtor assets.

Theory vs. Practice

Recent amendments to the payment order process offer some improvements for creditors seeking swift action against debtors.

However, procuring and enforcing a payment order in an expeditious manner remains challenging for a number of reasons:

1. **Court Costs** // Most courts in the UAE cap filing fees. However, courts in some jurisdictions within the UAE, including Ras Al Khaimah, do not do so. This can lead to court costs of up to 10% of the claim value which may prove prohibitively expensive to claimants.
2. **Service of Process** // Creditors will likely face hurdles when trying to serve the payment order on recalcitrant debtors. This is especially the case if the debtor is close to, or in a state of, insolvency. If the debtor cannot be located, publication of notice via newspaper is the creditor's remaining option. This further delays execution of the payment order.

3. **Appeals** // Recent experience shows that judges are reluctant to rule against appealing debtors without additional review – even if the debtor’s claim facially lacks merit. This usually means that the judge will appoint an accounting expert to review the parties’ claims before issuing a final decision. As a result, the appeals process involves additional expense and takes time far in excess of that prescribed by the law.
4. **Execution** // As a final point, procuring a payment order is the first step in securing the outstanding debt. The creditor must still apply to the relevant execution court to enforce the payment order. This opens additional avenues for challenge and delay by the debtor. Creditors should be prepared to expend additional funds and time to proceed through the execution process. Even with an execution order in hand, and especially if the debtor’s proverbial cupboards are “bare,” the creditor may not recover anywhere close to the judgment amount.

AMERELLER’s Added Value

Before initiating legal action, creditors should always conduct a thorough legal analysis of: risks; the likelihood of recovery; and the costs associated with litigation.

Our firm has advised numerous multinational clients on debt collection in the UAE and broader Middle East.

We have recent experience with the payment order process in multiple Emirates in the UAE, and are well placed to provide strategic guidance on potential avenues for debt collection.

If you would like more information about this topic please contact:

Jochen Murach

Partner

Dubai

murach@amereller.com

Jonathan P. Noble

Senior Associate

Dubai

noble@amereller.com

Baika Altyemukhamedov

Associate

Dubai

ba@amereller.com

DUBAI | One by Omnyat, 14th Floor | P.O. Box 97706 | Business Bay | Dubai | UAE | 6t: +971 4 332 9686

RAS AL KHAIMAH | P.O. Box 16462 | Ras Al Khaimah Free Zone | Ras Al Khaimah | UAE | t: +971 7 204 6255

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