

# Counting on credit?

The UAE's commitment to international investors drives changes to debt recovery regime. Eversheds Sutherland elaborates.

**C**ash collection has always been key to the success of any business, no matter what size, sector or country. The UAE is live to these challenges and in its ongoing efforts to attract international investment, we are seeing an increasing number of changes in the legislative framework designed to support creditors, improve the enforcement landscape and to give confidence to businesses that their rights of recovery will be protected if the relationship ever sours.

## A CREDITOR-FOCUSED REGIME

The amendments brought about by the Cabinet Resolution No.57 of 2018 ('Resolution') are a prime example of such creditor-focused changes, introducing (amongst other things) the new 'Payment Order' regime. The Resolution is still relatively new, having been brought into force on February 16, 2019. However, we are already seeing the tool attract a great deal of interest, particularly in lower value claims which may otherwise have failed the standard 'cost benefit' test, understandably undertaken by

most businesses before deciding whether to embark on debt recovery action.

Under the new regime, where debts are admitted in writing, the claimant can issue a request to Court for a Payment Order just five days after sending its written demand. The court is then required to issue its decision within three days, which must be notified to the debtor within three months of the date of the issuance of the decision. The right of appeal remains, but it is limited to a window of just fifteen days, rather than the standard thirty. Significantly, enforcement can start immediately. Court issue fees are still payable, but with the amendments recently brought about by Article 14 of Federal Law No.2 of 2019, the cost benefit analysis criteria should now be easier to satisfy. Prior to the amendments, all claims were subject to a Court issue fee of 6 per cent of the amount claimed, with a cap of AED40,000. Now, different caps apply in line with the amount in dispute. So, for those creditors seeking to recover up to AED500,000, the fee is of 6 per cent of the amount in dispute but is now capped at just AED20,000. The cap increases to AED30,000 for claims of up to AED1,000,000 and the old maximum of AED40,000 is reserved for cases where the amount claimed exceeds AED1,000,000. These fees not

**ROAD TO RECOVERY**

only apply to those claimants seeking to obtain a Payment Order, but also to all civil and commercial cases in the Court of First Instance, including civil cases that follow criminal complaints. It will be interesting to see what impact this has on the levels of debt recovery litigation, as taking legal action become less of a financial burden.

The Resolution helpfully recognises admissions made both in writing and by email. Disputes could potentially arise around service as the debtor might seek to argue that notice of the written demand was never received. We would therefore recommend serving the notice in a way that enables the creditor to prove receipt. Serving the demands through a Notary Public provides an effective option in this regard. Debtors may also seek to challenge whether or not the debt has actually been admitted. The Resolution does not elaborate on precisely what an admission means. However, given the expedited route to recovery that the Resolution offers, we expect the Courts to insist on clear and unequivocal language.

The Payment Order regime itself is not new, as it was previously available for financial instruments or commercial paper claims. However, as this only covered promissory notes, bills of exchange and cheques, it was not widely used. The Resolution therefore offers a pragmatic and efficient tool for debt recovery and should help with the UAE's wider efforts to encourage more investment in the region.

Other relevant changes include the increased number of civil procedural steps that parties can now undertake electronically thereby saving advocates the time and cost otherwise involved in physically attending court. This includes filing claims, notifying parties, filing submissions and receiving judgments. Allowing parties to serve proceedings electronically is a particularly welcome step as defendants can now be notified by SMS, email or fax enabling the parties to move forward to the more substantive stages of the process sooner rather than later. With increased speed comes reduced costs and saved time, crucial factors to the cost benefit analysis test.

For those cases where Payment Orders are not available, the standard UAE civil litigation process still has its role to play, particularly where the defendant fails to defend the claim. In those circumstances,

the claimant can proceed through the Court of First Instance stages relatively quickly with less legal costs than those generally associated with common law systems and arbitration matters. However, when defended, cases can fail to satisfy the cost benefit analysis test as both parties practically bear their own costs and there is no filtering system to the right to appeal which means that some cases can continue for two or three years before being finally concluding. It will be interesting to observe whether any changes are made to the law in the imminent future which help address this particular challenge.

Security cheques continue to be used as an effective debt recovery tool by many as not only do they serve as a standalone civil cause of action if dishonoured, but they can also give rise to criminal liability under Article 401 of the Penal Code, if issued in bad faith. Whether or not such penalties effective is a subject commonly debated as many debtors are known to flee the country, in an attempt to avoid the criminal consequences of their dishonoured cheques rather than attempt any settlement negotiations. This issue was recognised in 2017 when the Emirate of Dubai introduced a new law No. 1/2017 as a result of which debtors with dishonoured cheques for AED200,000 or less were only punished with a fine, rather than imprisonment. The UAE's new insolvency regime in 2016 also sought to address this issue by providing for proceedings in respect of bounced cheques to be stayed once one of the regime's restructuring schemes had been initiated. This was a welcome development particularly by international investors keen to know that they have a reliable cause of action against their debtors in the event that their business relationships turn sour.

#### A BOOST TO INVESTOR CONFIDENCE

The drive to attract more foreign investment was also seen by many to be the reason behind the changes introduced late last year by Abu Dhabi's Judicial Department. However, this time it was change focused more on debtors than creditors. Until then, all local court documents had to be translated into Arabic. The Abu Dhabi Courts recognised that this could be a potentially daunting process for non-Arabic speaking defendants, required to translate lengthy documents to understand the case against them. Consequently, they



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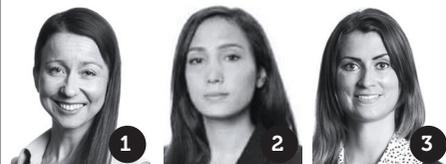
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introduced a new law requiring plaintiffs in civil and commercial cases to translate their claim files into English when the Defendant is non-Arabic speaking

The UAE's commitment to the use of arbitration as a means of dispute resolution has always given foreign investors comfort and it continues to play its role as an effective means of debt recovery, particularly when significant sums are outstanding. The UAE's commitment to arbitration was enhanced even further following the introduction of a standalone arbitration law pursuant to Federal Law no. 6 of 2018 ("Arbitration Law"). Amongst other important changes, the Arbitration Law introduced provisions allowing parties to apply to the courts for the enforcement of interim and conservatory measures ordered by the arbitral tribunal, a potentially important safeguard against parties seeking to complicate or unfairly derail the arbitration and debt recovery process. The Arbitration Law also provided for an expedited route to enforcement as awards can now be taken straight to the Court of Appeal for ratification and enforcement. Orders for enforcement will be granted in just 60 days. Those seeking to set aside arbitration awards must act within 30 days of the notification of the award, otherwise such a challenge will be time barred giving the whole process greater speed and efficiency. To minimise disruptions to the enforcement process, the Arbitration Law provides that an action to set aside will not suspend enforcement unless the court makes an order for a stay on request of one of the parties, such party needing to show good cause for the enforcement to

be stayed.

The years ahead will no doubt see further changes to the UAE's legislative landscape, as it continues to drive through changes and enhancement. Last year's Federal Decree Law No. 19/2018 changed the business environment in an unprecedented way allowing 100 per cent foreign ownership for a list of certain sectors and activities, a list which will no doubt grow in the future. There have also been major changes to the immigration laws making it easier for entrepreneurs and investors to stay longer in the country. The changes to the debt recovery regime are therefore just one part of the UAE's wider plan and overall commitment to make change for the greater business community and attract investors to the region on a long-term basis. ➡



Text by:

**1. REBECCA COPLEY**, partner and head of corporate crime and investigations/financial services disputes and investigations & head of litigation and dispute management – Middle East, Eversheds Sutherland

**2. MAYSOON AFYOUNI**, senior associate, Eversheds Sutherland

**3. GILLIAN FLANNIGHAN**, associate, Eversheds Sutherland