PAYMENT ORDERS – LATEST UPDATES AND BEST PRACTICE FOR CREDITORS PURSUING SIMPLE DEBTS

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Payment Orders were originally introduced in the CPC as a fast track route for creditors holding a financial instrument, such as a letter of credit or cheque, to obtain judgment against their debtor for what is a simple and indisputable debt. Payment Orders were rarely issued by the onshore UAE courts. In 2018, Cabinet Resolution No 57 of 2018 (the "2018 Cabinet Resolution") significantly expanded the scope of application of Payment Orders by extending them to all admitted debts rather than simply those arising out of financial instruments only. The nature of the debt would be evidenced by the creditor filing the relevant loan, contractual agreement, promissory note or cheque and the application made without notice to the debtor (*ex parte*) and determined by the summary court within three days.

Payment Orders are in some ways similar to the fast track process used by the DIFC Courts for immediate judgment or the AGDM Courts for summary judgment where the court considers that: a) the claimant has real prospect of success on the claim or issue; or b) that the defendant has no real prospect of successfully defending the claim or issue and there is no compelling reason why the case or issue should be disposed of at a trial. Although in the case of DIFC immediate and ADGM summary judgements, the debtor is put on notice of the creditor's application.

The introduction of Payment Orders in the UAE and the amendments made by the 2018 Cabinet Resolution were viewed as a very positive step, particularly for financial institutions and other creditors who have defaulting borrowers and an unchallengeable right to payment of debts.

Recent findings by the Court of Cassation (including in Case No. 2 of 2021) have, however, created some tensions between the legal process for Payment Orders and the desirability of quick and easy justice. Indeed, the Court of Cassation has found that: a) it is mandatory for a party that has a claim that meets the requirements of a Payment Order to the file for the order and not file a substantive claim; b) for a Payment Order to be made there must be clear evidence that the debt is either accepted or acknowledged by the debtor.

As such, a creditor had to ensure that it opted for the correct process when pursuing its debt with the knowledge that if an application for a Payment Order is made but dismissed:

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- the debtor may start to dissipate its assets if it receives notice of the application's dismissal (e.g. because the creditor files a grievance or appeal against the court's decision not to grant the order); and
- valuable time and unrecoverable costs will be wasted while the creditor has to then start and pursue a substantive claim.

In September 2021, Article 68 was introduced to Cabinet Resolution No. 57 of 2018 to address this hardship. Now, creditors no longer need to run the risk of opting for the Payment Order route. Rather, a substantive claim can be made and the court will still have the power to issue a Payment Order on a summary basis where the requirements for a Payment Order are evident from the creditor's submissions.

While this seems to be a positive development, the benefit of filing the case without notice (*ex parte*) will be lost with a substantive claim meaning creditors should also consider seeking a precautionary attachment when filing a substantive claim. This way, any assets of the debtor can be frozen while the legal process runs its course and the risk of asset dissipation by the debtor is curtailed. Creditors are also advised to do what they can in advance of commencing legal action to maximise the chances of the court making a Payment Order by evidencing that the debtor has accepted or acknowledged the debt. This may be achieved, for example, by filing with the court any payment proposals that the debtor makes or correspondence in which the debtor has provided assurances that the debt will be paid. More formal options may also be considered such as making it a term of a loan that the debtor signs an acknowledgment of the debt on a regular basis.

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