





## UNPAID INVOICES IN THE UAE

# What are your options? 22.07.2020



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#### 1. INTRODUCTION

The UAE has traditionally experienced robust economic growth. This strong economic performance coincided with a minimal number of non-payment issues.

However, current conditions are more challenging. A combination of a gradual decrease in real estate prices, sustained low oil prices, geopolitical problems and most recently, the Covid-19 virus have worsened market conditions. As a result, we have seen a sharp increase in long overdue invoices.

This report will list some options on how to deal with such problems in a country with a very different legal system.

## 2. HOW TO AVOID BEING CONFRONTED WITH UNPAID INVOICES

The UAE does not have the same accounting and reporting guidelines as in European countries. Obtaining verified information on shareholders, financial situation, or even the physical address of a legal entity can often be very difficult.

At the same time, local commercial law makes it relatively easy to change the above-mentioned company aspects.

Therefore the best way to avoid unpaid invoices is the principle: "better be safe than sorry".

Some recommendations:

#### 2.1 ADVANCE PAYMENTS

- Even without challenging market conditions, we recommend asking for full payment in advance.
- The risks of not adhering to this rule are considerable, even after a long-standing commercial relationship with your customer.

#### 2.2 CHEQUE PAYMENTS

- Asking for a cheque for the total invoice amount provides a relatively high level of security.
- Although sentences for issuing non covered cheques are less severe, banks do not take the situation lightly when confronted with a bounced cheque.

Do's	;	Don	its
-	Attend free legal clinics provided by law firms in the UAE.	-	Close to the due date, you could receive a call to ask to extend the cheque's due
-	Check websites of UAE law firms. They usually offer free guidelines.		date. It would be unwise to give in to such requests (see below).
-	Let a UAE lawyer company check your terms and conditions.	terms. It's usually a way to hide financial problems. It gives the client	
-	Be sure to postdate the cheque on the payment due date of the invoice		possibility to leave the country, change
		-	Do not use new deliveries for payments of outstanding invoices. This will lead to compounding outstanding debt.
		-	Do not accept a cheque signed "as security."

### **3.** CONTRACT JURISDICTION

There seems to be a lot of rumours regarding the legal jurisdictions mentioned in contracts.

The following options exist:



- Belgium law: not recommended, but better than the second option.
- UAE law: not recommended, Sharia law will be applied in most cases.
  - Arbitration: recommended, several formulas exist (best to get legal advice).

**Important note**: In straightforward cases (no discussion about outstanding amounts, quality or delivery issues) a local judge will NOT take the mentioned jurisdiction into account.

## 4. OPTION TO DEAL WITH OVERDUE INVOICES

Types	Advantages	Disadvantages	Recommended
Debt Collection Companies	Fast procedure	<ul> <li>No enforcement, only pressure</li> <li>Reputation is questionable</li> <li>Relatively high commissions</li> </ul>	
Arbitration by UAE Chamber of Commerce	<ul> <li>Online application possible</li> <li>The only debtor needs to be registered, not the claiming party</li> <li>Well respected institution</li> </ul>	No enforcement, only pressure	<ul> <li>In cases involving reasonably low amounts of debt</li> <li>As a first official warning</li> <li>In cases where the claiming party believes the chance of recuperating the outstanding amount is relatively large</li> <li>Note: In case this procedure is done via a lawyer, a power of attorney is required</li> </ul>
Use of a Local Law Firm a) negotiations & settlements b) payment order proceedings	<ul> <li>Comparatively less expensive procedures</li> <li>Fast results (2-3 months)</li> <li>Payment Order Proceedings - the application process is fast and effective</li> </ul>	Results depending on the quality of the law firm, which can vary a lot	<ul> <li>In cases involving relatively low amounts</li> <li>In cases where there is no additional underlying dispute</li> <li>Negotiations and settlement approach: <ul> <li>Agreeing on payment schedule and terms</li> <li>Demand further payment security</li> <li>Entering into a settlement</li> </ul> </li> <li>Notes: please refer to point 8 - Law Firms</li> <li>Opting for payment order proceedings – a decision expected within a total of eight working days</li> </ul>

Types	Advantages	Disadvantages	Recommended
Use of an	Procedure and	- High cost	In cases involving relatively high
International	strategy can be	- Only local lawyers	amounts
Law Firm	discussed in detail	can attend court	In cases where there are additional
	High knowledge of	cases	underlying disputes
	European law	In complex cases, the	Usual steps involved:
		court will appoint an	<ul> <li>Sending legal notice outside</li> </ul>
		expert. This is a very	court (via courier)
		costly and time-	<ul> <li>Sending legal advice though</li> </ul>
		consuming process	court bailiff
			- Filing a claim in court

## **5.** TYPES OF LEGAL ACTIONS IN THE UAE

There are, in general, three known ways of filing a legal complaint or action for debt recovery related issues:

- Criminal Case Filing a criminal case against the company or person involved
- Civil Case Filing a civil legal action case against the company or person involved
- Payment Order Proceedings expedited court proceedings for payment orders and execution

#### 6. AMENDMENTS TO THE CIVIL PROCEDURE CODE (CPC)

The UAE Judicial court underwent an amendment to the Civil Procedure Code (CPC) and confirmed the following:

- Resolution No. 57 of 2018 concerning the Executive Regulation Resolution No. 57 of 2018 concerning the Executive Regulation ("Amendment") of the Civil Procedure Law No. 11 1992 broadened the scope of expedited payment orders.
- Payment Orders are a mechanism for immediate ex-parte judgment (i.e. without notice to the debtor).
- The change includes written acknowledgement of debt (Article 62 of the Amendment) whereas previously this was restricted to financial instruments such as promissory notes and bills of exchange.
- The Amendment also provides that a claim for 'interest' can be made under the Payment Order, whereas interest could not be claimed in the past.

## 7. PAYMENT ORDER APPLICATION PROCESS

With the new Amendment of Article 62, in order to process a payment order application, one must meet the below criteria:

- Outstanding debt of a specific quantified amount
- Creditor's right must be confirmed by the debtor (although the Amendment does not provide specifics, generally an unconditional written admission of liability is required)
- The creditor's right must be due and payable

#### 7.1 HOW THE PAYMENT APPLICATION PROCESS WORKS

- A written demand or legal notice for the outstanding debt needs to be issued to the debtor (As per Article 63)
- After five days (from the date of legal notice sent only and no less), an expedited 'Payment Order Claim' can be made for any written admission of debt (Article 63)
- The court's decision on the payment order is issued within three working days of the claim submission
- Once the payment order is issued, the debtor has only fifteen days to appeal
- The rules of 'immediate enforcement' applies to the payment order post fifteen days or in the absence of appeal from the debtor
- Cost of this payment order proceeding is six per cent (6%) of claim charges and capped at AED 40,000

## 8. LAW FIRMS & ARBITRATION INFORMATION

#### 8.1 LOCAL LAW FIRMS

Company Name	Website	Contact Name	Email
Kanaan & Associates	https://www.kanlaw.ae/home	Halim Kanaan	halim.kanaan@kanlaw.ae
OGH Legal	http://www.oghlegal.com/	Mohamed ElGhatit	mohamed.elghatit@oghlegal.com
Galadari – Advocates & Legal Consultants	www.galadarilaw.com	Abdulla Galadari	<u>info@galadari.com</u>

**Important Note**: These firms have been recommended by a Belgian lawyer working in the UAE. They can be contacted mentioning "Geoffroy Hermanns from Herbert Smith Freehills."

#### 8.2 INTERNATIONAL LAW FIRMS

Company Name	Website	Contact Name	Email
Meyer – Reumann Dubai	http://www.meyer- reumann.com/Default. aspx	Mrs Elena Schildgen – Senior Partner Lawyer	dubai@meyer-reumann.com elena@meyer-reumann.com
Al Tamimi & Co	http://www.tamimi.co m/en/office/our- offices/united-arab- emirates.html	DIC: Mr Samer Qudah – Partner – Head of Corporate Structuring AD: Mr Mohamed Al Marzouqi - Partner	Dubai Office: <u>info@tamimi.com</u> Dubai Internet City (DIC): <u>infodic@tamimi.com</u> Abu Dhabi office: <u>infoabudhabi@tamimi.com</u>
James Berry & Associates	http://jamesberrylaw.co m/		enquiries@jasesberrylaw.ae
Salloum & Partners	http://salloum.law/	Mr. Samir A Salloum Mr. Siad Salloum	Dubai: <u>samir@salloum.law</u> Abu Dhabi: ziad@salloum.law

Company Name	Website	Contact Name	Email
Al Rowaad Advocates & Legal Consultants	http://www.alrowaad.ae/ contact-us/		<u>info@alrowaad.ae</u> abudhabi@alrowaad.ae
Herbert Smith Freehills	https://www.herbertsmit hfreehills.com/where- we-work/dubai	Geoffroy Hermanns	Geoffroy.Hermanns@hsf.com

#### 8.3 UAE ARBITRATION

Chamber of Commerce	Website
Dubai Chamber of Commerce	https://www.dubaichamber.com/what-we-
	do/legal-and-policy-support/dubai-
	international-arbitration-centre
Abu Dhabi Chamber of Commerce	http://www.adccac.ae/English/Pages/Default.as
	<u>px</u>
Sharjah Chamber of Commerce	https://iccuae.com/0111.html

#### 9. NEXT STEPS

Companies are advised to perform preliminary checks or perform due diligence before getting into any contractual agreement in the UAE, such as:

- Check with Dubai Economic Department (DED) or FIT Dubai office to see if the company has a valid trade license
- Check with the Dubai Chamber of Commerce for any additional company documents of the respondent. This service incurs a minimal cost
- Check the validity of the respondent's address and have it verified, if possible
- The dispute resolution clause should be checked, and the forum of dispute resolution should be ascertained in the contract
- Conduct a thorough analysis of risk, likelihood of recovery and the assess costs associated with pursuing litigation
- Ensure that the claim is not time-barred

• Verify all the security documents you receive from the respondent such as postdated cheques, promissory notes or any bank guarantees

Companies can rightfully conclude that the legal options available to them are extensive. However, the following problems have to be taken into account:

- Delay tactics are often used
- Knowledge of legal experts is often insufficient
- Appeals are randomly used, but with the new Amendment we are likely to see changes soon
- Criminal or civil case execution orders remain problematic

For more information, please contact: Flanders Investment & Trade Dubai World Trade Center, 14<sup>th</sup> floor Sheikh Zayed Road Dubai - UAE E <u>dubai@fitagency.com</u> T +971 50 573 96 89

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