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P.O. Box 9353
Dubai, U.A.E.
Tel: 00971-4-331 7110
Fax: 00971-4-331 3832
dubai@meyer-reumann.com
www.meyer-reumann.com

With offices in
Dubai + Alexandria + Erbil +
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United Arab Emirates

**The Introduction of VAT in
the UAE Requires
Professional Assistance!
M&P Announces the
Cooperation with the Tax
Law Expert Mr. Markus
Bohnen**

Currently "VAT" is "the" most discussed and yet at the same time the most precarious topic for any company doing business in the UAE.

For the time being the only certainty appears to be that Value Added Tax (VAT) of 5 % will be introduced in the UAE to most products and services from 01.01.2018. It seems also clear though that, based on European standards, quarterly VAT declarations will have to be submitted to the competent authority - the Federal Tax Authority (FAT) from 2018 onwards. Uncertainty remains because relevant processes still need clarification as the "Implementing Regulations" have not been released yet. However, one point is definite: All companies should take the preparation for the introduction of the VAT very serious: If anything but, the list of (hefty) fines for violations is already prepared.

Companies in the UAE are thus well advised to gear up their operation to be fully compliant with VAT requirements from now and seek professional assistance. In order to provide the full spectrum of both legal services and tax

related assistance for this implementation M&P has decided to cooperate with Mr. Markus Bohnen of "Steuerbuero Bohnen" (www.steuerbuero-bohnen.de).

Mr. Markus Bohnen, the founder and owner of the firm, is a graduated financial economist and tax consultant and previously worked for the Federal German Financial Administration. After the unification of Germany, he was instrumental to implement the tax administration in the former East Germany. Already since 2007, Mr. Bohnen advises clients i.e. operating businesses, branch offices, and individual companies, as well as German citizens, operating and living in the UAE on German related tax issues.

According to Mr. Bohnen, businesses in the UAE should consider the following crucial aspects:

"Along with the introduction of VAT book keeping and annual reports will become mandatory for companies in the UAE. As crucial details of the regulations and provisions are still missing and everyone still only has a partial overview of the legal requirement, currently only speculation on the individual requirements can be made.

However, it is recommended that companies already now consider the following preparation for the implementation of VAT:

(1) A valid trade license/ establishment card must be provided for every company in the

UAE in order to obtain a VAT number. Formats where individual companies have different trading licenses under one company are problematic.

(2) VAT liability and obligation to register starts from annual sales of 375,000 AED for each business unit.

(3) VAT registration applies to any commercial entity for each business unit. For each of these units, the record-keeping and reporting requirements must be observed.

(4) The standard tax rate is 5%. The software in use in the company for invoicing should be adapted so it can show the tax separately.

(5) VAT requires records that allow an easy and simple verification of compliance with the law. Proper accounts will be a necessity for each company.”

M&P and Mr. Bohnen intend to hold a joint seminar on all relevant requirements and the implementation of these requirements in your company. Participation in the event will be free of charge.

Subject to the publication of the Implementing Regulations scheduled for the fourth quarter of 2017, the invitations will be sent as soon as the Implementing Regulations were released. If you are interested to receive an invitation kindly send us an email to

dubai@meyer-reumann.com.

We are certain that the cooperation of M&P and Mr. Bohnen will offer our Clients the necessary competent support for the implementation of and compliance with all VAT tax requirements.

*Elena Schildgen,
Meyer-Reumann & Partners,
Dubai Office*

United Arab Emirates

Payment Orders in the UAE

The Chance for a Quick Way to Obtain Enforceable Titles?

Guiding Principle

In recent times, UAE Lawyers and Legal Consultants have seen more and more clients trying to collect outstanding debts from business partners. A number of other jurisdictions have special "fast-track" procedures that offer a speedy way to an executable title under different circumstances. The following article would like to take a closer look at comparable instruments under the UAE Civil Procedures Law and discuss their value i.e. advantages and disadvantages.

A. Introduction

A number of foreign jurisdictions have recognized the frequent need for titles to be issued in some kind of “fast-track” procedure. Austrian Law for example,

offers summary proceedings for a Payment Order, and so does German Law offering proceedings on claims arising from a deed, in which solely documentary evidence is submitted, and proceedings on claims arising from a bill of exchange.

All of these proceedings mostly require in one way or another that the underlying claim would have to meet specific conditions with regard to either kind or proof. This usually leads to a fast-track title being issued. However, defendant's rights are being safeguarded either by a possibility to oppose or protest after the title was issued. Also in Germany, for such proceedings on claims arising from a deed where solely documentary evidence is submitted, a second round of court proceedings will be initiated admitting all kinds of evidence.

It would thus be interesting to what extent UAE Law also provides an instrument of the same kind, and to what degree it would be an advisable option for clients seeking to collect outstanding debt.

B. The UAE Orders of Payment

The UAE Federal Law No. (11) of 1992 Concerning Issuance of the Civil Procedures Code (CPC) contains in Art. 143- 149 CPC a Title regarding Orders of Payment. This can be seen as the corresponding measure to the aforementioned European Institutions and Procedures.

In fact, the procedures outlined and established under Art. 143- 149 CPC could be seen as the "one size fits all" approach of the UAE Law to establish a "fast-track" approach to an enforceable

title.

I. Kinds of Underlying Claims

The underlying claim for a Payment Order has to fulfil a number of conditions as set out in accordance with Art. 143 para 1 CPC.

This provision states that

1. the creditor's right has to be confirmed in writing and subrogated in the settlement, and
2. that what he has been claiming was a debt of a fixed amount of money or a movable specified with a type and an amount, and
3. that such rules should be followed if the claimant of the right was a creditor with a commercial paper and he has referred merely to the drawer, the clerk, receiver or a reserve guarantor of one of them.

A specific problem in the formulation of this passage of the law is if Payment Orders are limited to claims embodied in commercial papers (i.e. bills of exchange, promissory notes and cheques) or if these are only examples of the written confirmation of the underlying claim. Referring this question to Dubai courts has initially produced the answer that only claims embodied in commercial papers would be accepted, but after consulting further experts in court, it was stated that any written claim might be acceptable, as long as it can be proven in written completely. Even an email might be considered as written proof. However, these references were not yet put to a practical test and thus still need a confirmation in practice.

With regard to these requirements concerning the underlying claim itself some differences e.g. to the German system of "fast-track" ways to obtain

titles become apparent. The German system in case of a Payment Order does not ask for any specific proof of the underlying claim. This is only applicable in cases of proceedings on claims arising from a deed, in which solely documentary evidence is submitted, and proceedings on claims arising from a bill of exchange. On the other hand, though the German Payment Order is strictly limited to claims for amounts of money. After an amendment of the CPC however, the UAE Payment Orders are also applicable with regard to some movables.

This last amendment of the law can also be seen as a supporting argument to the position, that the underlying claim need not be originated in a commercial paper only, as these can only contain monetary claims and the amendment would have been in vain.

In other jurisdictions, Payment Orders can be applicable to claims of limited amounts only. This is not the case of a UAE Payment Order, where the amount claimable has no expressed limit. The only practical limit will be in connection with the amount invoiced in the preliminary procedures as explained under the following heading.

II. Preliminary Procedures

Art. 144 para. 1 CPC stipulates that the creditor shall first require the debtor to pay the amount due within a time-limit of five days at least. Again, referral of this issue to Dubai courts has clarified, that the Notary Public should attest the payment request.

Furthermore Art. 144 para 1. CPC states that the payment be required by virtue of registered letter with acknowledgement of receipt, or by any method agreed upon

by the parties. Furthermore, it is worth to note that the amount of the right required to be paid may not be less than the one required in the following petition for obtaining the Payment Order.

III. Formal Requirements for the Application

The court will issue the Payment Order on a copy of the application. This is different to other jurisdiction e.g. Germany, where a separate document will be issued – in many cases today automatically – by the courts. Thus, the underlying procedures here do resemble more the forms of injunction orders.

Due to this, the formal requirements of the application itself do exceed the ones established e.g. by the German Civil Procedure. In accordance with Art. 144 para. 3 CPC the application shall include the information to be included in the statement of claim as stipulated in Article 42 CPC. This means the application has to meet all formal and content requirements for an initial memo of ordinary court proceedings. This means it has to contain:

- a) The claimant's name, title, ID number (if any), profession or job, domicile, workplace, phone number, as well as his representative's name, title, profession or job, domicile, residence, postal address, fax number or email address. If the claimant has no domicile in the UAE he shall elect one.
- b) The debtor's name, title, ID number (if any), profession or job, domicile or elected domicile, residence, workplace, phone number, as well as his representative's name, title, profession or job, domicile and workplace if he works for others.

However, in case neither the debtor nor his representative have a known domicile or workplace, the last domicile, residence or workplace and postal address, fax number or email thereof shall be mentioned.

- c) The subject matter of the application, requests and grounds thereof.
- d) The date of submission of the lawsuit to the application management office.
- e) The court before which the application is filed.
- f) Signature of the plaintiff or his representative.

Again, the character of the Payment Order as an injunctive procedure becomes apparent. It is more of a different way of initiating an ordinary procedure than as a procedure in its own right, as would be the case for a German Payment Order.

The aforementioned underlines two core issues that an applicant must take into account at this stage. The application has to be as elaborate in form, detail, the same as an initial memo to ordinary court proceedings would have to be, and it must be in Arabic. This limits the possibility of factually initiating these orders. On the other hand, it does not undergo the requirement to have a local barrister issuing it, as only the appearance in front of a local judge requires a local barrister. Submission of documents is exempt here from, as far as local court officials have confirmed to us.

Art. 144 para. 2 CPC provides that the debenture and evidence of requirement of payment shall be attached to the petition and Art. 144 para. 3 CPC

stipulates that the petition shall be made in two identical copies.

IV. Procedures

Once the application has been submitted to the claims office of the court, it will be presented to a judge. The judge now has three days' time to approve the order (Art. 144 para. 4 CPC).

In case he does approve the order, he will issue the Payment Order. In case the judge decides not to accept all the claimant's requests or not to issue the order for any other reason, he should abstain from issuing the order and appoint a session for examining the action before the authorized court. It will then also be the courts task to inform the defendant about the application of the order (c.f. Art. 145 para. 1 CPC).

This all suggests that the judge has a considerable discretionary authority to assess the case from the submitted memo. Other than in the German system of Payment Orders, here a control of the application takes place, thus there is no automatized proceedings.

Furthermore, it seems to be obvious, that the application can be further defendable in the court proceedings, if rejected by the judge. Thus, applicants would at this stage need to consider the appointment of a local attorney.

V. Legal Consequences

As already outlined by the previous remarks, there are mainly two legal consequences the application once submitted can have: either the title is issued or ordinary proceedings will start.

This stands in opposition to twofold systems like the German one, where firstly the Payment Order is issued with the possibility of the defendant to oppose

against it and in case this does not take place. Then only subsequently, the claimant has to apply for a writ of execution to obtain an enforceable title. This second stage, which depends on a renewed application from the claimant's side, is not foreseen by the Emirati system. This can have the advantage that a title is obtained faster (either by proceedings in the court or directly). On the downside, the Emirati system leaves less space for an amicable settlement since less steps to escalate are legislated.

VI. Remedies of the Defendant

As already mentioned, "fast-track" procedures usually infringe some of the defendant's rights at first glance, yet, and as a very basic expression, in a state of law these right cannot be cut off entirely. Thus, the Emirati law in Art. 147 para. 1 CPC provides that the debtor may complain against the order within fifteen days from the date of being notified. The complaint shall take place before the authorized court and through the usual procedures of raising a law suit in the court. The complaint is to be based on good reasons, and the complainant shall practically be considered a plaintiff. Then the rules and procedures applied before the court shall be taken into consideration when examining the complaint.

As can be seen from the above mentioned, the debtor may take measures against the Payment Order. Yet the requirements therefore are more elaborate than in other jurisdictions. In particular, the requirement to be based on good reasons can only be read in its Arabic original as to the good reasons have to be submitted to the court. Thus e.g. in comparison to the German

system, it is the debtor, who is will be pushed into the role of the plaintiff if he takes remedies against the Payment Order.

VII. Enforcement

In general, the rules related to the immediate execution shall be applied on the Payment Order and the decision delivered in the complaint there against (Art. 148 CPC).

C. Assessment for Clients Trying to Collect Debts.

In theory, the UAE Payment Order offers an accelerated way to obtain an enforceable title immediately. It can be a useful way, when the debtor is one of the kind that would not appear in court proceedings and tries to evade them by simply disappearing, as only an active participation and presence from his side avoids an enforceable title being issued against him.

On the other hand, several issues would have to be taken into account, when trying to collect outstanding debt through a Payment Order.

The first and most obvious would be that the Payment Order procedures are likely to result in an ordinary court trial. Either due to objection by the other party or due to decision of the judge. This might lead to exactly this lengthy kind of process that was initially tried to be avoided by the Payment Order procedures.

With regard to the usual local practice of UAE judges to carefully examine their cases and allow enough time to consider their judgements, it might be highly likely that judges will try the case and decide to initiate ordinary proceedings instead of issuing a Payment Order

within three days. This might even be more likely, if the underlying claim is not filed on base of a commercial paper, as these seem to be the standard cases, where a Payment Order is issued.

Moreover, also the general legal culture in the UAE might lead to many debtors attempting to object to a Payment Order. It has been our general observation during trials in local courts that many litigants will use whatever formal way of challenging a decision exists, even though in content it might be totally without any hope. Hence, it might be very likely that Payment Order proceedings, if not already converted by the judge into ordinary proceedings will be lead there by the opponent's objection.

Thus it might be very likely, that one ends right in that ordinary lengthy court litigation procedure one tried to avoid, including all costs for local lawyers, that are usually not refunded by more than AED 1000/-n per instance.

The second main issue to consider would be that all proceedings and documents would have to be submitted in Arabic to be considered by the court. Even in the preliminary procedures – at least when involving the Notary Public – required documents would have to be in Arabic. Thus, the choice of the lawyer is key, as the respective consultant or attorney requires speaking Arabic.

Thirdly as with all other documents issued by the courts, many formalities have to be observed. Many procedures in local courts do not touch the issue of contents of the claims to be litigated (neither from a factual nor from a legal side). They rather focus on formalities like correct notices and their serving or

the trustworthiness of certain witnesses or experts. Thus, any little mistake in particularly the first one would endanger the claim as a whole. Since this is a regular approach to delay at least many court proceedings, it does not seem to be out of the ordinary, if this would be taken as an argument to challenge the validity of the Payment Order or even its execution afterwards.

Fourthly, the claim from a material side needs to be completely documented from its sources (i.e. contract or legal obligation) to its amount and maturity.

D. Summary and Conclusion

To sum it up, a Payment Order can thus be most recommended in a case of a very clearly documented claim where not much active resistance from the opponent's side can be expected. Then it offers a possible though not 100% sure way to a fast obtained and immediately enforceable title.

*Heinrich Köllisch,
Meyer-Reumann & Partners,
Dubai Office*

Saudi Arabia**Fully Foreign-Owned
Businesses in Saudi Arabia****Guiding Principle**

Contrary to what is commonly known to many, there are various activities that non-Saudi investors may practise in Saudi Arabia with no requirement to have a local partner. This permission is not limited to the boundaries of a certain region(s). Non-Saudi investors may have their own entity to practice one or more of the permitted activities all over the Kingdom. The permitted activities include the industrial sector, trading and services activities. Although the conditions set by the Saudi government for practicing certain activities are usually higher for 100% foreign shareholder than for a joint-venture with local participation it still is worth to consider this option.

**A. Misconceptions of the Saudi
Investment Environment**

When it comes to the official conditions of practising any kind of business in Saudi Arabia for the foreign investors, there are many misconceptions. Non-Saudi investors usually expect that doing business in the Kingdom be either subject to similar rules as those prevailing in their home countries or those of other Gulf countries.

While the Saudi government does spend a lot of efforts in keeping its legal platform of doing business in line with those of the Western countries, there still a lot of rules that differs due to the cultural specificity of the country. Not

observing these conditions might result in causing a lot of damage usually to the non-Saudi party.

B. Fully Foreign Owned Activities

On the other hand, there are a lot of incentives and opportunities that still unknown to many of the investors located abroad. This includes several activities at different sectors that the Saudi government has allowed non-Saudi investors to practice in the Kingdom with no requirements to have a local partner. Non-Saudi investors may practice services, industrial, commercial and real estate activities without getting into partnership with a local partner.

The following summarizes the requirements for practising the most significant activities that the Saudi government allowed non-Saudi investors to engage in without the requirement to have a local partner.

**I. 100% Foreign Wholesaler and
Retailer**

With a volume, reaching up to SAR 400 billion¹ the wholesale and retail market in Saudi Arabia is the largest in the MENA region. On the accession of Saudi Arabia to the WTO², the country pledged to open its wholesale and retail distribution activities to non-Saudi investors. The pledge, however, did not include commercial agencies activities that are restricted for Saudi citizens only.

However, forming a 100% non-Saudi owned trading company is subject to several conditions. The Saudi Minister

¹ About US\$ 106 billion. US\$ 1 = SAR 3.74.

² Website: <https://www.wto.org/>

of Commerce and Investment advised that the foreign investor desiring to form 100% foreign trading company in the Kingdom should observe the following:

1. The investor's legal structure is a company operating internationally in at least three different markets;
2. The capital of the formed company, Saudi subsidiary, should be no less than SAR 30 million³;
3. The investor shall invest an amount no less than SAR 200 million⁴ over the first five years from obtaining the license;
4. The investor shall abide by the concerned regulations concerning the minimum limit of appointing Saudis at the local subsidiary;
5. The investor shall train 30% of its current Saudi employees annually;
6. The investor shall achieve one of the following requirements:
 - a) .30% of the products of the investor distributed locally shall be manufactured in the Kingdom;
 - b) 5% of the sales value shall be used to establish a research and development programs in the Kingdom;
 - c) Setting up a unified centre to provide these services and after-sales services.

II. 100% Foreign Industrial Activities

Non-Saudi investors may form a light products industries, which include "factories for light and simple products such as metal formation; manufacturing kitchens, windows, doors or furniture from aluminium, wood or iron; wooden

works; packing and packaging food materials; etc."

Conditions for Light Products Factories are

1. The entity to be formed should be either structured as Limited Liability Company or Joint-Stock Company; and
2. Project location should be within one of the industrial (<http://www.modon.gov.sa/en/>) or economic (<http://www.cadre-ec.com/>) cities; and
3. Project site to be designed by an approved and licensed local engineer; and
4. The purpose of the end product should be to achieve self-sufficiency for the local market or development of exports; and
5. Employment of non-Saudis should not exceed 25% of total manpower, if necessary, and this percentage should include managers, executives and specialists with practical experience of at least three (3) years in the country of the licensed entity in the area of the enterprise's business; and
6. Provision of modern and sophisticated systems for the management and control of material consumption, recycling and disposal of waste, operations and production lines, energy consumption, warehouses, internal safety and security; and
7. An approved safety plan for the factory; and
8. Provision of an annual report on the factory's production, raw material consumption, imports and exports. Level of production must be

³ About US\$ 7,999,000.

⁴ About US\$ 53,329,000.

proportionate to the size of factory and number of employees; and

9. Provision of all data, information and financial statements audited by such auditor as may be designated by the Saudi Arabian General Investment Authority (SAGIA); and
10. The investor(s) shall deposit the capital at a local bank in Saudi Arabia after obtaining the investment license;

Conditions for Industrial Projects are

1. The site of the project, i.e. the factory, should be within a factory master plan with an area of at least 2,000 m²; and
2. The minimum limit for the capital of the entity to be formed is Saudi Riyal one million (SR 1,000,000)⁵.

III. 100% Foreign Engineering Activities

Engineering is the most recent activity that the Saudi government allowed to be practised by 100% non-Saudi entities

Non-Saudi engineering enterprises now may form a fully owned subsidiary in Saudi Arabia for providing engineering consulting services under the following conditions:

1. The shareholder should be existing from a period no less than 10 years;
2. The shareholder and/or any of its subsidiaries should exist at four countries at least.

*Hany Kenawi,
Meyer-Reumann & Partners,
Saudi Office*

⁵ = € 219,288.70; € 1 = S.R. 4.5

Saudi Arabia

New Expat Fees in Saudi Arabia

Guiding Principle

Saudi Arabia decided to introduce an “expat levy” from July 1, 2017, with charges of up to SR800 per worker by 2020.

In line with the Cabinet decision approving the program of fiscal offset 2020 the General Directorate of Passports, in collaboration with the Ministry of Finance and the National Information Center, gradually started implementing, the enforcement of fees on all dependents and companions of expatriates working in the private sector. The fees shall be paid annually and as of July 1, 2017, can be settled through SADAD payment banking system, by all means of banking.

From next year, the levy on expat workers again will be gradually revised upwards, providing an additional impetus for employers to hire more Saudis.

Even for companies where the number of expatriates does not exceed the number of Saudi or GCC employees, the fee will no longer be waived, but will be charged at a discounted rate.

The General Directorate of Passports confirmed that in case of collecting of financial fees and implementing the services required for expatriates who are subject to the above-mentioned decision, the following points should be observed:

1. Targeted categories:

The dependents and companions of

expatriates working in the private sector.

- Dependents are: wife, male sons under 18, and daughters
 - Companions are: male sons above 18 years old, wife and/or wives (from two to four), father, mother, father-in-law, mother-in-law, home workers and any expatriate whose name is registered in the system as sponsored by the expatriate worker, according to the Cabinet's decision.
2. Those previously exempted from fees in the Iqama (residence permit) system, are to be exempted from the currently-imposed fees.
 3. Payments should take place in advance through SADAD bank system and are nonrefundable. The Cabinet's decision includes any dependent or companion of a worker in the private sector, applicable on all nationalities. The decision is applicable on newly born children but with fees also to be levied retroactive from the date of registering a earlier born child who will not be exempted from fees for the period during which his/her name was not yet registered. However, this is effective from the date of imposing the decision on July 1, 2017. The fees will be levied annually in advance against any dependent or companion of an expatriate worker in the private sector at issuing or renewing an Iqama identity or when issuing an exit and re-entry visa or when issuing a final exit visa as per the following regulation:
 - In 2017: Dependents of expats

- will each incur a monthly fee of SR100, from July onwards;
- In 2018: Dependents of expats will each incur a monthly fee of SR200, from July onwards. For companies where the number of foreign employees is equal to or lower than the number of Saudis, a monthly fee of SR300 will apply from January 2018 onwards. For companies where the number of foreign employees exceeds the number of Saudis, a monthly fee of SR400 will apply also from January 2018 onwards.
 - In 2019: Dependents of expats will each incur a monthly fee of SR300, from July onwards. For companies where the number of foreign employees is equal to or lower than the number of Saudis, a monthly fee of SR500 will apply from January onwards. For companies where the number of foreign employees exceeds the number of Saudis, a monthly fee of SR600 will apply from January onwards.
 - In 2020: Dependents of expats will each incur a monthly fee of SR400, from July onwards. For companies where the number of foreign employees is equal to or lower than the number of Saudis, a monthly fee of SR700 will apply from January 2018 onwards. For companies where the number of foreign employees exceeds the number of Saudis, a monthly fee of

SR800 will apply from January onwards.

The General Directorate of Passports explained the steps to receive fees on passport services provided for residents affected by the decision, as follows:

I. Issuing or Renewing of Resident Identity

Starting from July 1, 2017 the issuance or renewal of a resident ID for an expatriate working in the private sector, affected by the decision, for a dependent and/or companion, requires the following:

- Payment of fees as prescribed by the regulation through SADAD payment system for government payment system provided by all means of banking;
- Payment of fees for each companion or dependent of an expatriate worker at SR 100, per month, starting from the first of July 2017, SR 200, per month, on the first day of July 2018, in accordance with the validity of Resident ID, taking into consideration the overlap of it with dates occurred in the Cabinet decision on collecting fees.

II. Issuance of Exit and Re-entry Visa

When applying for the issuance of an exit and re-entry visa for an expatriate worker included in the decision or a dependent and/or companion, after the date of application of the decision (the following is required:

- Payment of the prescribed visa

fees for the service (according to the required visa period) through SADAD payment systems for government payments provided through all banking means;

- Payment of fees for each dependent and/or companion of an expatriate worker at (SR 100) per month, starting from the first day of July 2017.SR 200 per month, starting from the first day of July 2018, in accordance with the validity period of the resident ID. Always taking into consideration the overlap of the dates stated in the decision of the Cabinet upon receipt of the fees.

III. Issuing a Final Exit Visa

The issuance of a final exit visa service for an expatriate worker affected by the decision, a dependent and/or a companion of him/her, after the date of application of the decision, requires payment of the fees owed to the expatriate worker. This as of the first day of the month of July 2017 until the date of application for implementation of issuance of the final exit visa, taking into account the overlap of the validity period with the dates stated in the decision of the Cabinet upon receipt of the fees.

In case the validity of the final exit visa exceeds the validity period of the Resident ID, the validity of the visa shall be added to the periods due for payment of the fees.

Tarek Jairwdeh,
Meyer-Reumann & Partners,
Dubai Office

United Arab Emirates

**Am I Married - Am I Single?
Recognition of Foreign
Marriages by Foreign Courts
and
Impacts of Diverging
Jurisdictions Regarding
Divorces**

Guiding Principle

As in former times it was almost guaranteed, that a marriage will be divorced when the husband filed the motion for divorce, new trends can be noticed now. Just recently, the competent Dubai Court decided to dismiss a case of divorce as in its opinion the marriage was not concluded in compliance with the rules of the Sharia. Furthermore, in the courts opinion the reasons the husband explained for the dissension of the spouses were not comprehensible enough and not properly proven.

A. Facts

In the aforementioned case, the couple, a German woman and an Indian Muslim man, got married in NYC, USA. They were both residents of Dubai, UAE, as the husband filed the motion for divorce. As the couple spend most of their time together in Germany and the husband had a residency visa there for several years the wife could not understand how it was possible to commence the court proceedings in Dubai

B. Applicable Law

The UAE based Law of Personal Status No. 28/2005 covers marriage, divorce and succession. Article 1 of this law defines the factual and personal scope of application. Legal effect of this regulation is that it opens the possibility for expatriates residing in the UAE to get divorced by a UAE court.

The majority of the expatriate couples living in the UAE were married abroad, most commonly in their home countries or in the home country of one of the spouses. For the acceptance of a marriage concluded outside the UAE, an officially legalized engrossment of the original marriage certificate is sufficient, as something like a public marriage register does not exist. This double strand of a foreign nationality and a UAE residency opens the possibility for a spouse that wishes to be divorced to choose whether this should happen in the UAE or in his/her home country or possibly, in the country where the couple was married, if it may differ from the home country.

C. Competent Court

The wife argued in front of the court, that her husband only filed the motion of divorce in Dubai, as he was aware that the divorce consequences are much milder in monetary terms than in Germany. If they were divorced there, an equal distribution of surplus would be executed between the assets of the spouses after a period of at least one-year separation. As there is no law in the UAE regarding the allocation of assets, the judges uphold the principle that each party retains the assets that were held by each spouse before the marriage.

Departing from other legal systems it is not mandatory for a divorce in the UAE that the spouses already live in separation for a distinguished period. When the file for separation is opened at court a special hearing is scheduled (Article 98 Law of Personal Status) where it will be discussed if it might be possible for the spouses to continue their marriage. This hearing is on one hand the possibility for the spouses to reconsider the decision of a divorce; on the other hand, in case both of the parties agree to the divorce, an amicable settlement can be reached between the spouses without any legal proceedings. Overall, the whole process of a divorce is far less time consuming than in common European legal systems.

Nevertheless, the woman pleaded that this case should not be decided by the competent Court of Dubai as both parties spent most of the time in Germany, but without success. As the parties both fall into the factual and personal scope of application of the Law of Personal Status, the Dubai Court was competent to decide in this case. Once a file is opened at the Dubai Court, it is more than likely that the court will make a decision, whether in favour for or against the claiming party. Even if another jurisdiction might exist, the Dubai Courts tend to decide the case and not dismiss it, even when one of the parties pleads missing competence or jurisdiction in this case. Legal consequence of the acceptance by the court and opening of the divorce case is “pendency” for the divorce case what makes it impossible to file a motion of getting divorced anywhere else although another jurisdiction might exist.

D. Decision of the UAE Court

In his decision, the judge stated that the case had to be dismissed, as the matrimony did not fulfil the requirements of the Sharia. The court explained that it is empowered to review the circumstances of a marriage if it might have doubts about its correctness regarding the Sharia. The husband stated that he is a Muslim what led to the examination of the marriage and how it was concluded in New York. In the judge’s opinion, the couple was married without the required offer and acceptance of the marriage through a custodian of the wife, the required amount of witnesses was missing, and no dowry was negotiated between the spouses. The case was dismissed and as a legal consequence, the couple is still considered married everywhere except in the UAE.

As usually marriages from abroad are valid in the UAE and divorceable, the judge did not accept the way the couple was married in New York. Although all the usually sufficient documents etc. were present (an original certificate of marriage legalized before the Ministry of Foreign Affairs, translated into Arabic and then again attested by the Ministry of Justice) the case was dismissed. None of the parties ever had any doubts about the validity of their marriage nor did anyone of them plead the invalidity in front of the court. However, as marriages are part of the Personal Status Law in the UAE and so part of the *ordre public* judges are entitled within the scope of their responsibilities to explore the circumstances of the case, similar to a principle of *ex proprio motu* investigation. *Ex proprio motu* means

acts of the court that are performed by its own initiative or own accord without any application of the parties. In this scope, it was possible for the judge to review the circumstances of the marriage although the parties had never disputed them.

Further the judge also explained that the reason for the discord of the spouses were not proven enough and that the simple claim the wife would not behave adequate wasn't enough for a divorce.

E. Conclusion

The case's dismissal now opens the possibility for both of the spouses to file a new motion of divorce but this time not in Dubai. Possible locations for a new trial would be on the one hand Germany, as the wife holds a German passport and the German citizenship and on the other hand, India, as the husband is of Indian nationality.

A possibility of getting divorced in Dubai also exists, but only within the constellation of an amicable agreement between the spouses. As already mentioned above when a file for separation is opened at court a special hearing is scheduled (Article 98 Law of Personal Status) where is discussed if it might be possible for the spouses to continue their marriage. If the spouses would open a new file at the court regarding their marriage and agree in this early hearing that both do not want to continue the marriage the judge can divorce the couple without any further judicial proceedings. In this case, it would also be possible to draft an agreement regarding the separation of assets and goods between the parties. It should be especially noted, that the

agreement does not mandatory have to correspond with the regulations of the Sharia, that means that it is completely up to the parties how this agreement should be formulated and what obligations or duties for each party should arise.

***Mariam Al-Ssayrafi
& Elena Schildgen,
Meyer-Reumann & Partners,
Dubai Office***