

THE UAE INTRODUCES THE CONCEPT OF A NEW SINGLE-TIER COURT

Date: 5 October 2021

UAE Litigation and Disputes Alert

By: Jennifer Paterson, Mohammad Rwasheh

Pursuant to Article (30) bis (2) of Federal Decree Law No. 15 of 2021 Amending Certain Provisions of the Civil Procedure Code (CPC) and Article 3 of Cabinet Resolution No. 75 of 2021 Amending Certain Provisions of Cabinet Resolution No. 57 of 2018, the UAE has introduced the concept of a new single-tier court (Single-Tier Court) for the resolution of certain cases.

Article (30) bis (2) of the CPC, introduced by Federal Decree Law No. 15 of 2021, provides that the Minister of Justice or the President/Chairman of the local judicial authority may issue a decision to establish a Single-Tier Court. Such individuals also have the power to issue any decisions (logistical, administrative or procedural) that are necessary for the operation of this court, provided that such decisions do not conflict with the provisions of the CPC.

This Single-Tier Court will be formed of three judges headed by a judge from the Federal Supreme Court or local Court of Cassation, sitting alongside an appellate judge and a first instance judge, each of which shall be seconded or appointed in accordance with the legislation regulating each authority.

Once established, the Single-Tier Court shall have mandatory jurisdiction over certain types of dispute; however, parties may also opt in to the jurisdiction of this court.

It appears that the Single-Tier Court is intended to facilitate the quick and efficient resolution of disputes, by expediting the preparatory stages of the case and by the court rendering a final, non-appealable and immediately enforceable judgment.

JURISDICTION OF THE SINGLE-TIER COURT

This Single-Tier Court will have jurisdiction to resolve certain civil, real estate, commercial and inheritance cases. There is no indication of what type of civil, real estate, commercial cases, only that such cases shall be determined by a decision from the Minister of Justice or the President/Chairman of the local judicial authority.

Parties may also opt in to the jurisdiction of the Single-Tier Court either before or after the dispute has arisen. However, there are restrictions as to the types of cases that can be referred to the Single-Tier Court. The Single-Tier Court will not have jurisdiction over, for example: criminal, administrative and labour cases; personal status cases (i.e. family matters such as marriage, divorce and custody disputes) with the exception of inheritance; temporary or summary orders and requests that can be submitted independently as a main proceeding rather than purely as ancillary relief (such as an order on petition pursuant to Article 62 of the CPC); and cases that have already been filed before the legally competent courts prior to the establishment of the Single-Tier Court.

In all cases, the request for relief must be for a specific value and the case value must not be less than the prescribed threshold for appealing a case from the Court of Appeal to the Court of Cassation, which, at present, is AED 500,000.

If a case is brought before a federal or local court in respect of which there is an agreement between the parties to refer the case to the Single-Tier Court, the federal or local court shall decline to hear the case if the defendant raises a jurisdictional objection before making any submissions or arguments on the merits of the case. There are only two listed exceptions: (i) if it appears that the subject matter of the dispute does not fall within the jurisdiction of the Single-Tier Court; or (ii) if the dispute cannot be referred to the Single-Tier Court as it has not yet been established.

PROCEDURES BEFORE THE SINGLE-TIER COURT

A case before the Single-Tier Court will be filed in the ordinary manner. However, unlike the regular courts, the recording, preparation and management of cases before the Single-Tier Court shall be carried out by a judge called the “preparation judge”, who shall have all the powers and responsibilities vested in the case manager and supervising judge.

After the claim has been filed, the opposing party will be notified in the usual manner. The notice procedures are the same as those in the regular courts, with the exception of notification by publication, which may not be permitted.

The preparation judge shall invite the parties to try to settle the matter. If a settlement is reached, the judge shall document and approve the same, and the settlement minutes shall have the force of a writ of execution.

After completion of the preparation of the case, the preparation judge shall schedule a hearing for pleading before the Single-Tier Court. In doing so, the preparation judge must submit to the court, along with the case file, a memorandum of opinion that includes the subject matter of the case, the two parties' arguments and points of disagreement, the principles of the Supreme Court on the subject matter of the dispute and the preparation judge's legal opinion. This process of preparing the case shall not take longer than 30 working days from the date on which the case was filed.

Thereafter, the proceedings shall be conducted in the same way as the regular courts.

APPEAL AND ENFORCEMENT

Once the Single-Tier Court has issued its judgment, it shall be capable of immediate enforcement by the Execution Judge, without the need for notice, in the normal course.

The judgment of the Single-Tier Court shall be final, enforceable and not subject to appeal, except by means of a petition for reconsideration (i.e. reconsideration by the same court) in accordance with Articles 169 to 172 of the CPC or in the event that notice was invalidly served.

A judgment of the Single-Tier Court may also be retracted in accordance with the new Article (187) bis of the CPC. This provides that the court may retract a decision on its own initiative or at the request of a party against whom the decision or judgment was issued in certain instances: if the decision or judgment was tainted by a procedural error that has affected the conclusion reached; the decision was based on a repealed law and the

application of the correct law would change the opinion reached in the case; or if the decision or judgment was issued in contradiction of established legal principles.

An application for retraction by a party against whom the decision or judgment has been issued shall be issued to the President of the Federal Supreme Court or the President of the local Court of Cassation, signed by a lawyer who has rights of audience before such court, and accompanied by a security deposit of AED 20,000.

If the retraction is on the court's own initiative, the application shall be referred by its president and accompanied by a report from the court technical office.

The application for retraction shall be considered by a panel formed of five of the most senior judges of the Federal Supreme Court or the President of the local Court of Cassation (provided that none of the judges issued the judgment or decision that is being challenged). This panel shall issue a reasoned decision on the application for retraction by a majority of four judges.

In all cases, an application for retraction may only be submitted once, and cannot be made if more than one year has lapsed since the date of issuance of the final judgment or decision issued in chambers.

COMMENT

This novel concept of a Single-Tier Court to facilitate quick and cost-effective resolution of claims may be appealing to litigants in the UAE. This is particularly so given that parties to disputes before the federal or local UAE courts are often required to wait years for a final determination, after all avenues of appeal have been exhausted. However, the law currently only provides a framework for this Single-Tier Court and there remain many questions as to how it will work in practice, such as the precise scope of its jurisdiction, whether it is able to determine claims in an expedited manner, and the perceived quality of the judgments rendered. Litigants may also be reluctant to opt-in to the jurisdiction of the Single-Tier Court, as doing so would require them to surrender the automatic right to appeal that exists in the regular courts and accept that any judgment rendered by the Single-Tier Court is immediately enforceable. However, it may be an attractive option in cases where it is important that the dispute is resolved quickly, or where the amounts in dispute do not justify the time or expense of appeal proceedings.

KEY CONTACTS



JENNIFER PATERSON
PARTNER

DUBAI
+971.4.427.2728
JENNIFER.PATERSON@KLGATES.COM



MOHAMMAD RWASHDEH
SPECIAL COUNSEL

DUBAI
+971.4.427.2742
MOHAMMAD.RWASHDEH@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.