



The Writ of Debt in the UAE

Definition of the Writ of Debt:

The Writ of Debt is simply an Order issued by the competent Court against a Debtor, ordering that Debtor to pay a certain indebtedness amount to the Creditor.

The competent Court is the Court in which jurisdiction the Debtor's domicile is located.

The Law addressing the Writ of Debt:

The Writ of Debt has been basically addressed in the UAE Civil Procedures Law, which Articles were superseded and amended by the Cabinet Resolution No. 57 of 2018 Concerning the Executive Regulations of the Civil Procedures Law (**the "Regulations"**).

The Writ of Debt is an Exception:

Article 62 of the Regulations states that the Writ of Debt is an exception of the general rules of filing a First Instance Case, meaning that it is only permissible for the Creditors to apply for or obtain a Writ of Debt under certain circumstances as detailed in the below requirements.

Requirements:

The combined requirements to apply for a Writ of Debt as set forth in Article 62 of the Regulations, are as follows:

- a. That the Creditor's right is proven in writing (whether electronically or in a hard copy);
- b. That the Creditor's right is due; and
- c. That the Creditor is claiming a debt of a fixed amount of money or a movable specified in type and quantity.

Claiming Interest and Precautionary Measures:

In accordance with Article 62 of the Regulations, filing a Writ of Debt does not prevent from claiming the interest or initiating the precautionary measures.

Note: The foregoing provisions should be followed if the monetary claim is arising out of the implementation of a commercial contract, or if the Creditor possesses a commercial instrument.

Prerequisite:

Prior to applying for a Writ of Debt, the Creditor shall firstly demand the Debtor (i.e.: via a demand letter / legal notice) to pay the amount due, and grant the Debtor a time-limit of five days at least. This is strictly required under Article 63 of the Regulations.

In this regard, we recommend the following:

- a. For the Debtors, once they receive demand letters / legal notices from their Creditors, they shall seek immediate consultancy from their Advocates / Legal Consultants, especially when they are aware that the three aforementioned combined requirements are fulfilled in the indebtedness instrument, because receiving such a demand letter / legal notice, per se, would mean that a Writ of Debt is about to be applied for against the Debtor, once the grace period granted in the demand letter / legal notice elapses.
- b. For the Creditors, to serve the demand / notice via a method which facilitates a record of when the demand / notice was served on the Debtor. A prudent option would be to serve a notarized demand / notice, as this would close, or at least minimize, the room for a Debtor to argue that the demand / notice was not served on it.

Process and Issuance (Article 63 of the Regulations):

It is noteworthy to point out that the amount of the right demanded to be paid, should not be less than the one required in the petition filed for the obtainment of the Writ of Debt.

The Writ of Debt shall be issued based upon a petition (electronic or a hard copy) submitted by the Creditor, as the Case may be. The Creditor submits the said petition along with the debt instrument, as well as the evidence for serving a demand on the Debtor. The said petition shall include the details of the Statement of Claim. Furthermore, the petition shall be considered as having the same effects of filing a case, from the date of its submission, even if the Court was incompetent.

The Writ of Debt shall be issued maximum within three days, starting from the date of the petition's submission. Also, the Writ of Debt shall determine the amount to be paid, or the movables ordered to be handed over, as the Case may be, as well as determining whether it was issued in a commercial subject.

In this regard, it is worth mentioning that the Case Management Office retains the submitted petition until the Appeal period elapses.

The Court's Decision:

The judge shall decide to accept the request submitted for obtaining a Writ of Debt, or reject it, in full or in part. However, if he decides to reject it, therefore his decision shall be reasoned as per Article 64 of the Regulations.

It is important to note that in the event of rejecting the Writ of Debt, the Creditors would still have the right to file a substantive Case against the Debtors (i.e.: transferred to the Court) for the recovery of the indebtedness amount.

Summoning the Debtor with the Writ of Debt:

The Creditor shall summon the Debtor (in person) with the Writ of Debt issued against it, as required under Article 65 of the Regulations.

Furthermore, if the Writ of Debt issued against the Debtor is not summoned to him/it within three months from the date of its issuance, it shall be considered null and void.

Challenging the Writ of Debt (the Right of Appeal):

As stipulated upon in Article 66 of the Regulations, the Writ of Debt may be appealed within fifteen days, in accordance with the procedures of appealing the judgments. The Court decides on the Appeal in an advice Chamber within one week starting from the date of registering the Appeal. It may also schedule a hearing to have the subject-matter heard if it is so needed.

Immediate Execution:

Once the Writ of Debt is issued, it shall be immediately executable in accordance with Article 67 of the Regulations. This means that the Creditors do not need to wait for further proceedings or until the Appeal period elapses or the Appeal is determined. They can immediately proceed with opening an execution file at the competent Court, which process is similar to the execution / enforcement of judgments.

Due to the executable nature of the Writ of Debt, it is always subject to the discretion of the Court of Appeal as to whether accept staying the execution proceedings of the Writ of Debt, or not, all according to its findings based on the Debtor's submissions / evidence.

Attachment of the Debtor's assets in the possession of third Parties:

As per Article 68 of the Regulations, if the Creditor, in the stipulation of the above detailed Article 62, wants to impose an attachment on what the Debtor has in the possession of others, the usual procedures shall apply on the said attachment.

Trench & Associates DMCC ©