

# THE IMPACT OF THE UAE LEGISLATOR'S USE OF TELECOMMUNICATIONS TECHNOLOGY ON JUDICIAL NOTICES

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**Abstract:** After the passing of UAE Federal Law 28 of 2005 concerning personal affairs, the UAE legislator initiated the use of telecommunications technology for judicial notices, thus making notifications via email or fax legal. The use of the same technology was further emphasized after the amendment of Article 8 of Civil Procedure Law 11 of 1992, by which the competent Claims Management Office was permitted, by virtue of a decree from the Minister of Justice, to declare or notify judicial notices via fax, email, or any equivalent modern means of communication specified in this regard. This field witnessed further breakthroughs with the passing of several laws and decrees, including: Federal Law 10 of 2017, which amended certain provisions in the Civil Procedure Law; Ministers Council's Decree 57 of 2018, regarding the executive regulation of the Civil Procedure Law; and, Ministerial Decree 260 of 2019, regarding the 'Procedural Manual for Litigation Regulation' on using modern electronic means and telecommunication in civil procedures. Consequently, there is no doubt that this new use of telecommunications technology for judicial notices will have a number of legal implications, whether related to the method, time and data on the notice itself, the duties of the notice's competent official, the timeframe of the notice's legal effect, or the jurisdiction in which the notice was made. The new means of modern communication tools; as stated in the above mentioned decree; has come to be an authentic means rather just an alternative. Its significant role in trial procedures its futuristic nature and the need for speedy reliable judicial procedures.

**Keywords:** judicial notice; telecommunications; United Arab Emirates; legal implications

## 1. INTRODUCTION

Nowadays, most countries seek to establish legal databases, which can be accessed by the practitioners of legal and judicial professions, as well as relevant scholars and students. In addition, these countries attempt to take all necessary measures to allow freedom of access to public data, of which these legal databases constitute a large portion with extreme ease.<sup>1</sup> For this reason, different courts must keep pace with progress through updating their tools and mechanisms. French judicial system is considered to be in the fore-runner in the use of telecommunications technology for court-related procedures, particularly the electronic exchange of different pleadings documents.<sup>2</sup>

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<sup>1</sup> LEGRAS M. Les Technologies de l'Information et de la Communication, la Justice et le Droit: Contribution à la Réflexion sur l'Incidence de la Technique sur le Droit. *Lex Electronica*. 2002, Vol. 7/2.

<sup>2</sup> KANDEEL, M. E. The Legal System for Exchanging the Litigation Documents Electronically pursuant to the French Pleadings Law. *Law Journal for Legal and Economic Research, Faculty of Law, Alexandria University*. 2017, Vol. 2, p. 921.

TAILHADES E. La Modernisation de la Justice: Rapport au Premier Minister. *La Documentation Française*. 1995. With regard to the use of technology in the court work in European Union countries: CCJE: Questionnaire sur la Dématerialisation du Processus Judiciaire et l'Autilisation des Nouvelles Technologies par les Juges et le Personnel des Tribunaux, Conseil de l'Europe, Strasbourg. [online]. 2011 [2020-10-07]. Available at: <[http://www.coe.int/t/t/dghl/cooperation/ccje/meetings/.../Compil\\_GT\\_2011\\_3.pdf](http://www.coe.int/t/t/dghl/cooperation/ccje/meetings/.../Compil_GT_2011_3.pdf)>.

The UAE legislator followed the same approach regarding litigation procedures. Federal Law no. 28 of 2005 concerning personal affairs entered into force, Article 14(1) of the law states that: “The respondent or the notified party shall be notified personally with a copy of the Judicial Notice in his home, place of residence, workplace, elected domicile or wherever he exists; however, if he still cannot be notified, the court may notify him via fax or email”. This shows the early attempts of the Emirati legislator to modernise litigation procedure via distanced telecommunication tools. Furthermore, this approach advanced in recent amendment of Article 8 of the Civil Procedure Act issued by Federal Law 10 of 2014 states that:

A copy of the Judicial Notice shall be delivered to the notified party wherever he is, whether in his home, place of residence, workplace or elected domicile; however, if he still cannot be notified or if he refrains from receiving the notice, the competent Claims Management Office may notify him or declare his notice through a registered mail with acknowledgement of receipt, fax, email or any other equivalent modern means of communication specified in this regard by virtue of a decree from the Minister of Justice.<sup>3</sup>

Moreover, the UAE’s judicial system has witnessed a breakthrough in the use of telecommunications technology with the passing of Federal Law 10 of 2017, concerning the amendment of certain provisions in the Civil Procedure Act, issued by virtue of Federal Law 11 of 1992 and its amendments.<sup>4</sup> This addressed two main issues. First, the law stated that the Ministers Council should issue a new regulation called the Civil Procedure Regulation and hence the Ministers Council issued Decree 57 of 2018 regarding the executive regulation of the Civil Procedure Law.<sup>5</sup> Second, the law also stated that Part VI should be added to the Third Volume of the Civil Procedure Law, under the title: “The Use of Telecommunication Technology in Civil Procedures”, including Articles 332–343. In this context, one of the most prominent issues addressed by the UAE legislator in the previously mentioned amendments was judicial notification through the use of telecommunications technology, or what is called an Electronic Judicial Notice. This is now considered a mandatory procedure to initiate litigation.<sup>6</sup> With this new development, there is no doubt that changing the delivery of a litigation notice from a hard copy to a soft one via the use of telecommunication technology will have a number of major legal impacts. Are related to the method, time and data on the notice itself, the duties of the notice’s competent official, the period of the notice’s legal effect, or the jurisdiction in which the notice was made. This has and will influence the process of trial as a whole and not only the commencing measures of the litigation process or the registrations of claims. These points will now be addressed in turn.

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<sup>3</sup> Pursuant to Article 3 of UAE Federal Law 10 of 2017, Article 8 was cancelled by the executive regulation of the Civil Procedure Law.

<sup>4</sup> *Federal Official Gazette*, Year 47, Issue 622 (Annex), 18 September 2017, p. 9.

<sup>5</sup> *Federal Official Gazette*, Year 48, Issue 643 (Annex), 16 December 2018, p. 9.

<sup>6</sup> HASHM, M. The Civil Justice Law: Part 2 (Litigation before Civil Justice). *Al-Fekr Al-Arabi Publishing House*. 1980, No. 186.

Dubai Court of Cassation, 10 May 1992, Appeal 27 of 1992 (Rights). *Journal of Judiciary and Legislation*. 1995, Vol. 3, p. 483.

Supreme Commercial Court of Cassation, Hearing of 16 November 2011, Rulings issued by the Civil and Commercial Circuits, Technical Office, from January to December 2011, Second Division, 30, p. 356.

## 2. THE IMPACT OF USING TELECOMMUNICATIONS TECHNOLOGY ON THE METHOD OF MAKING THE JUDICIAL NOTICE

### 2.1 Using telecommunications technology to serve notices

In recent years, the UAE legislator started to use telecommunications technology to send notices, particularly after the Personal Affairs Law was passed, and the amendment of the Civil Procedure Law and the issuance of its executive regulation, which authenticated judicial notices sent electronically,<sup>7</sup> as stated in the previously mentioned decree by the Minister of Justice.

In Article 6(1) of the executive regulation, the UAE legislator states that: “The notified person shall be notified through one of the following methods: recorded voice or video calls, mobile phone text messages, email, fax or any other equivalent modern means of communication specified in this regard by virtue of a decree from the Minister of Justice”. In addition, Article 21(2) states that: “The Statement of Claim shall be sent to the notified person electronically or in a hard copy within the maximum period of ten days as of the date of its delivery to the competent official”; this provision is further emphasized in the same details in Article 7 of the said decree of the Minister of Justice.

In this sense, it is clear that there has been a major change in approach by the UAE legislator, as Article 8 of the Civil Procedure Law only permitted the use of telecommunications technology if the notified party could not be informed or refrained from receiving the notice.<sup>8</sup>

### 2.2 Serving a judicial notice via telecommunications technology as an authentic method of notifying private legal persons and foreign companies with an office or branch in the UAE

Article 7(2) of the said executive regulation states: “As for private legal persons, associations, companies, private and individual firms, and foreign companies with an office or branch in the UAE, when the notice is concerned with the company’s branch, if they cannot be notified pursuant to the provisions of Paragraph (A) of Article 6(1) of this regulation, then the notice shall be delivered to the entity’s headquarters to its legal representative, counterpart or partner – as the case may be”.

In this regard, it is obvious that the approach of the UAE legislator differs from the situation before the issuance of the executive regulation; thus, before its cancellation, Article 9(2) of the Civil Procedure Law did not recognize that private legal persons could be notified through telecommunications technology,<sup>9</sup> unlike the acknowledgement of such a method of notifying natural persons in Article 8 before its cancellation.<sup>10</sup> On this basis,

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<sup>7</sup> UAE Federal Law 28 of 2005 regarding personal affairs precedes the Civil Procedure Law in adopting the use of telecommunications technology with civil procedures, exclusively with judicial notices (Article 14(1)); thus, the Civil Procedure Law did not adopt these modern means until it was amended by Federal Law 10 of 2014, which amended Article 8, making these an alternative method of notification for judicial notices; this was before Article 8 was cancelled by UAE Federal Law 10 of 2017, as the executive regulation has organized the whole issue; with this regulation, telecommunications technology has become an authentic means of sending judicial notices.

<sup>8</sup> KANDEEL, M. E. *A Handbook in Judiciary and Litigation*. University Library. 2018, 4<sup>th</sup> Edition, pp. 318–319.

<sup>9</sup> Article 9 of the Civil Procedure Law was cancelled by Article 3 of UAE Federal Law 10 of 2017.

<sup>10</sup> KANDEEL, M.E. *supra* note 8, p. 318.

there are clearly two differences between notifying private legal persons, pursuant to Article 7 of the executive regulation, and their notification in the cancelled Article 9 of the Civil Procedure Law, as follows:

- (i) There is no differentiation anymore between the method of notifying private legal persons or foreign companies with an office or a branch in the UAE, as the executive regulation denotes one method of notification for all;
- (ii) The legislator did not just permit the use of telecommunications technology or any other methods agreed by all parties, but he also made them authentic methods of notification for private legal persons, associations, companies, private and individual firms, and foreign companies with an office or branch in the UAE, when the notice is concerned with the company's branch; as the notice may not be delivered to the entity's headquarters to its legal representative, his counterpart or one of the – as the case may be, unless the notice could not be delivered through the use of telecommunication technology or any other method agreed by both parties.

### 2.3 Serving a judicial notice via telecommunications technology as an authentic method of notifying persons with a known domicile abroad

Article 7(6) of the executive regulation states the following:

As for the persons with a known domicile abroad, if they could not be notified through the use of technological means, through private companies or offices, or through any other methods agreed by all parties, then, a copy of the Judicial Notice shall be delivered to the Ministry of Justice in order to be referred to the Ministry of Foreign Affairs, so that those persons could be notified through the diplomatic methods, unless there is a special convention in effect for the notification method in such case.

Obviously, this arrangement is different from that stated in Article 9(7) of the Civil Procedure Law, before its cancellation.<sup>11</sup>

Hence, pursuant to the executive regulation, the UAE legislator has acknowledged that serving a judicial notice via a form of telecommunications technology is an authentic method for notifying the persons with a known domicile abroad, as is notification through a private company or office, or any other method agreed by all parties; thus, the competent authority may not resort to notification through the Ministry of Foreign Affairs through diplomatic methods, unless the notice cannot be delivered through the aforementioned methods, provided that no special convention for the notification method is in effect.<sup>12</sup>

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<sup>11</sup> Before its cancellation, Article 9(7) of the Civil Procedure Law stipulated the following: "As for the persons with a known domicile abroad, a copy of the Judicial Notice shall be delivered to the Ministry of Justice in order to be referred to the Ministry of Interior, so that it can be delivered to them through diplomatic methods, unless there is a special convention in effect for the notification method in such case; however, the notice may be made through any other means agreed by both parties".

<sup>12</sup> For example, in 2005, a convention was concluded between the United Arab Emirates and the Islamic Republic of Pakistan for the notification of judicial and non-judicial documents, the hearing of testimonies, and the acknowledgement and execution of court rulings regarding all civil and commercial issues between the two countries. Federal Decree 12 of 2005 regarding the ratification of this convention. In: *Dubai Courts* [online]. 29. 1. 2005 [2020-10-07]. Available at: <<https://www.dc.gov.ae/PublicServices/LegislationDetails.aspx?LawKey=607&SourceType=1&ItemKey=0&CalledFrom=3>>.

### 3. THE IMPACT OF USING TELECOMMUNICATIONS TECHNOLOGY ON THE TIME OF SERVING A JUDICIAL NOTICE

By virtue of Article (4/2) of the executive regulation, if the Judicial Notice is made through the use of telecommunication technology, whether it is made for natural persons or private legal persons, the times set forth at paragraph (1) of the same article may not take effect.<sup>13</sup> Thus, paragraph (1) states that: “A Judicial Notice may not be made, nor any execution procedures may be initiated by the competent official, before 07:00 am or after 09:00 pm, nor on any public holidays, unless it is absolutely necessary and by virtue of an authorization from the supervising judge, the head of the competent jurisdiction or the judge of urgent matters”.

Hence, in case of making a Judicial Notice via recorded voice or video calls, mobile phone text messages, email, fax or any other technological means of communication specified in this regard by virtue of a decree from the Minister of Justice, it is not required to make such notice after 07:00 am or before 09:00 pm, and it is not required to make outside the official public holidays; in addition, making such notice in any other times does not require any case of necessity or any authorization from the competent authority.

### 4. THE IMPACT OF USING THE TELECOMMUNICATIONS TECHNOLOGY ON THE DATA OF A JUDICIAL NOTICE

#### 4.1 The data on the notice – the applicant and the notified party

In Article 5(1) of the executive regulation, the UAE legislator stipulates that the notice shall include both the notified party and the applicant's mobile telephone and fax number, as well as their email (if any). Therefore, it is clear that the legislator demanded the same data for both the applicant and notified party's notices, except that the notified party's data is followed by the phrase “if any”. It might be understood that this data is mandatory for the applicant but not the notified party. Nonetheless, this data is not mandatory at all because its main purpose is to identify both the applicant and the notified party. In addition, this data is complementary, and thus if there is any shortage or error in the data, it does not mean that it is invalid, as long the identity of the notified party is not concealed. That is to say, each piece of information in the data is not required for its own sake.<sup>14</sup> Therefore, it is logical to add the phrase “if any” to paragraph one of Article 5(1) regarding the notified party's data.

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<sup>13</sup> The same stipulation was confirmed by virtue of the decree of the Minister of Justice in Article 7(5) which states that: “The times, set forth in paragraph (1) of Article (4) of the executive regulation, are not applicable on the electronic notice, whether it was made for natural persons or private legal persons”.

<sup>14</sup> SAWI, A. E. Al-Waseit in the Explanation of the Civil and Commercial Pleadings Law, amended by virtue of Law No. 76 of 2017 and Law No. 120 of 2008, regarding the Establishment of the Economic Courts, *N.P.*, 2009, No. 307.  
SAAD, I. N. *Private Judicial Law, Part I*. Al-Maaref Publishing Establishment, Alexandria. 1974, No. 281.

#### 4.2 Not requiring the data of the competent official and the notice's recipient

Article 5(2) of the executive regulation states that it is not required to provide the data stated in sections C and F of paragraph one, when using telecommunications technology with a judicial notice. The data stated are: the competent official's name, position, workplace and signature, as well as the recipient's name, surname, legal capacity and signature, seal, or thumbprint, or verification of the recipient's refrainment from receiving the notice, and the cause for not doing so; the same data are emphasized in Article 7(3) of the decree of the Minister of Justice.

Obviously, the non-requirement of such data is a logical result of using telecommunications technology with a judicial notice, because the use of these modern means does not require the movement of the competent official to the whereabouts of the notified party; hence, there is no need to require any data concerning him. Furthermore, there is no one to physically receive the judicial notice from the competent official, and so there are no data concerning the notice's recipient.

### 5. THE IMPACT OF USING TELECOMMUNICATIONS TECHNOLOGY ON THE DUTIES OF THE NOTICE'S COMPETENT OFFICIAL

Article 6(2) of the executive regulation states the following:

The notice's competent official shall make sure of the identity of the notice's recipient, and thus the recipient's appearance shall indicate that he is over the age of eighteen years old; in addition, the competent official shall make sure that this recipient or his representative has no apparent interest contradicting with the notified party's interest. On the other hand, when using telecommunications technology with the judicial notice as set forth in Paragraph (A) of paragraph (1) of this article, in addition to the above mentioned, the competent official shall also make sure that the used means of communication – whatever it is – does indeed belong to the notified party. Moreover, in case of notifying the notified party through the use of recorded voice or video calls, the competent official shall write down a report verifying the call's content, hour and date, as well as the identity of its recipient; thus, this report shall be used as an authentic proof of verification, and shall be annexed to the documents of the claim.

In this regard, we have two remarks as follows. First, this provision used the phrase “in addition to the above mentioned”. At first glance, it seems that this phrase is misplaced, because when using the telecommunications technology with a judicial notice, there will be no direct contact between the competent official and the notice's recipient; hence, it does not seem right to talk about the competent official's verification of the recipient's identity, in order to make sure that the recipient's appearance indicates that he is over the age of eighteen years old, and to ensure that the recipient or his representative has no apparent interest contradicting the notified party's interest. Moreover, in Article 5(2) of the executive regulation, the legislator does not require certain data when using the telecommunications technology with the judicial notice, including the recipient's name and legal capacity. Nonetheless, the decree issued by the Minister of Justice has clarified how to make such a verification. Article 7(2) of the said decree states that:

In case of making the Judicial Notice through the use of any of the means stated in paragraph (1) of this article, the notice's competent official shall make sure that the used modern means of communication – whatever it is – does indeed belong to the notified party; in addition, the competent official shall make sure that the recipient's appearance indicates that he is over the age of eighteen years old, and shall make sure that the recipient of the electronic notice or his representative has no apparent interest contradicting with the notified party's interest; and that is by asking him directly in case of using the recorded calls, or by sending him a warning in this concern in case of sending the notice via email or mobile phone text messages.

Second, when sending the judicial notice through the use of recorded voice or video calls, the legislator stipulated that the notice's competent official shall write down a report verifying the call's content, hour and date, as well as the identity of its recipient; thus, this report shall be used as an authentic proof of verification, and shall be annexed to the documents of the claim. In this context, one may wonder why the legislator did not stipulate writing such a report with the other means of communication as well. This shortcoming was addressed in the decree of the Minister of Justice, as Article 7(1A) states that: "In case of making a Judicial Notice via fax, email or mobile phone text messages, the notice's competent official shall keep evidence verifying the sending of such a fax, email or text message to the notified party in the claim's file".

## 6. THE IMPACT OF USING TELECOMMUNICATIONS TECHNOLOGY ON DETERMINING THE TIME FRAME OF THE NOTICE'S LEGAL EFFECT

### 6.1 Sending a judicial notice via fax

When sending a judicial notice via fax, the legislator is right to stipulate that the notice shall take legal effect as of the date of arrival (Article 8(3) of the executive regulation and Article 7(4B) of the Minister of Justice's decree).<sup>15</sup> That is to say, upon the fax's arrival to the recipient, the sender shall receive a report of arrival; moreover, the decree of the Minister of Justice has stipulated that the notice's competent official shall keep evidence verifying the sending of the fax to the notified party in the claim file (Article 7(1A)). Furthermore, the stipulation that the notice takes legal effect on the date of arrival is consistent with the stipulation in Article 15 of Law 1 of 2006 concerning e-trading and transactions; thus, pursuant to paragraph two of the first part of the said article,

The time of receiving an electronic message shall be determined as follows: a) If the recipient had selected a specific information system for the purpose of receiving the electronic message, the message's receipt shall be considered as done at the time of the electronic message's access to this selected information system, or at the time of the recipient's access to the electronic message if it was sent to another information system, other than the information system specified for the message's receipt; b) If

<sup>15</sup> The same stipulation was stated by the legislator in Article 10(3) of the Civil Procedure Law, cancelled by Federal Law 10 of 2017.



the recipient did not select an information system, the message's receipt shall be considered as done upon the electronic message's access to an information system affiliated to the recipient.

Consequently, this is what actually happens upon the notice's arrival at the recipient's fax machine, as the sender receives a report of the notice's arrival.

## 6.2 Sending a judicial notice via email and mobile phone text message

Article 8(3) of the executive regulation stipulates that the notice shall take legal effect as of the date of sending the email or text message. In addition, Article 7(1A) of the Minister of Justice's decree has the same stipulation.<sup>16</sup> On the other hand, the executive regulation does not stipulate that the notice's competent official shall prepare evidence verifying the sending of the email or text message, unlike his stipulation regarding the notice via recorded voice or video calls. Nonetheless, this shortcoming was addressed in the decree of the Minister of Justice, which ordered the competent official to keep evidence in the claim file verifying the sending of the email or text message to the notified party (Article 7(1A)). Moreover, the competent official shall ensure that the email address or mobile phone number does indeed belong to the notified party, in addition to ensuring that the recipient is over eighteen years old, and that the recipient of the electronic notice or his representative has no apparent interest contradicting the notified party's interest. This is achieved by sending him a warning in this concern, as stated in Article 7(2).

However, we believe that the legislator was not quite right in stipulating that the notice shall take legal effect as of the date of sending for judicial notices sent via email or text message, for the following reasons:

The legislator did not consider the occurrence of technical error after sending the notice, which might prevent the message's receipt, such as: phone lines being disconnected for some reason related to the notified party; the hacking of the notified party's email; a system malfunction in the local or international communication network; a malfunction in the World Wide Web; or any other technical obstacles that might occur, even after completing the sending process. In addition, there are other obstacles that might occur in the reception process; for example, in spite of receiving the notice, the notified party might not be able to read it due to using software that is different from the one used by the sender to create the electronic document (i.e. the Electronic Judicial Notice), resulting in the notified party not being aware of the notice's content, hence the lack of the adversarial principle between the litigators.

The legislator did not consider any time difference between the location where the notice was sent and the location of the notified party; this difference could be up to twelve hours, resulting in the recipient's disadvantage by not benefiting completely from the stated procedural dates. Some may respond by stating that a convict could appeal against

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<sup>16</sup> This is contrary to what is stated in the cancelled Article 10 of the Civil Procedure Law, as it recognized the date of the email's acknowledgement of receipt; in addition, the Civil Procedure Law does not include provision for the use of mobile phone text messages with the judicial notice.



the issued court ruling based on his lack of awareness of the notice, and hence the lack of the adversarial principle between the litigators. Legally speaking, this is true but such an error will lead to extending the duration of the litigation process, and, consequently, demolishing the main purpose of using telecommunications technology with the judicial notice, as targeted by the legislator, which is to bring swift justice.<sup>17</sup> Nevertheless, we shall emphasize here that this criticism is not meant to undermine the numerous advantages that could be achieved through the use of such technology with judicial notifications, especially emails.<sup>18</sup>

Based on the foregoing, we believe that the UAE legislator should stipulate that when judicial notices are sent via email or mobile phone text message, the notice shall take legal effect as of the date of arrival, as previously stated by the relevant provision concerned with the notice via email in the Civil Procedure Law. In this way, there will be no technical obstacles concerning verification, as the technology generates an electronic receipt upon arrival at the notified party's email. This is the case with in French legislation.<sup>19</sup> Moreover, the UAE legislator could also stipulate that a regular paper-based letter is sent to the notified party informing that a judicial notice has been sent electronically, as also stipulated in French legislation in Article 662(1) of the French Pleadings Law.<sup>20</sup> Furthermore, different modern technologies can not only determine whether a notice has arrived at the notified party's inbox, they can also ascertain if the message has been opened. Upon the arrival of a notice at the notified party's mobile phone, the phone can send a report to the phone of the competent official.

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<sup>17</sup> As for the principle of Swift Justice KANDEEL, M. E. Reconciliation as a Means of Disputes Settlement in Light of Law. *Conference of the Faculty of Law at Tanta University on March 25<sup>th</sup> 2002*. 2000, No. 7, held under the title The Issues Resulting from the Application of the Disputes Settlement Law. pp. 5–6.

KANDEEL, M. E. *The Parties Role in the Settlement of Contractual Disputes: A Study about the Terms of Settling Potential Contractual Disputes*. Alexandria, Egypt: Al-Gamaa Al-Gadida Publishing House. 2005, No. 32, pp. 87 et seq.

<sup>18</sup> MABROUK, A. *Studies in the Civil Procedure Law of the United Arab Emirates*. Second Book, Dubai Police Academy, 2<sup>nd</sup> Edition. 2015, No. 759, p. 110.

ALDHOUBIBI, A. Legal Limits and Guarantees in Applying the Modern Methods. a Conference held at the State of Kuwait, 10.-11. April 2006, under the title The Modern Methods of Judicial Documents Notification between Theory and Application. *Kuwait Institute for Judicial and Legal Studies*. 2008–2009, pp. 56 et seq. [online]. [2020-10-07]. Available at: <<http://www.kijs.gov.kw/Magazine/HIWD267hiwbook-2.pdf>>.

MANDEIL, A. F. Litigation through Telecommunication: A Legal Study. *Kufa Journal for Legal and Political Sciences*. 2014, Vol. 1/21, pp. 100 et seq. [online]. [2020-10-07]. Available at: <<http://www.uokufa.edu.iq/journals/index.php/Kjl/article/view/3531/2911>>.

Entrepreneurship in Court Works. the part concerning the services of remote claims registration, *Dubai Courts Handbook*. [online]. [2020-10-07]. Available at:

<[http://www.dubaicourts.gov.ae/portal/page/portal/public\\_files/MenuIcons2/DCbrochure2011AR.pdf](http://www.dubaicourts.gov.ae/portal/page/portal/public_files/MenuIcons2/DCbrochure2011AR.pdf)>.

<sup>19</sup> Le Centre d'Expertise pour le Huissiers de Justice: La Signification Électronique en Bref – Fiche d'Information; Le Centre d'Expertise pour le Huissiers de Justice: Les Huissiers de Justice Peuvent Dorénavant Signifier par Voie Électronique. [online]. [2020-10-07]. Available at: <<https://www.huissiersdejustice.be/sam-tes/la-signification>>.

<sup>20</sup> The Fourth Paragraph of Article 662(1) of the French Pleadings Law states the following:

“Dans les autres cas, la signification est une signification faite à domicile et l’huissier de justice doit aviser l’intéressé de la signification, le premier jour ouvrable, par lettre simple mentionnant la délivrance de la signification par voie électronique ainsi que la nature de l’acte et le nom du requérant”.

### 6.3 Sending a judicial notice via recorded voice or video call

Article 8(3) of the executive regulation and Article 7(4C) of the Minister of Justice's decree state that a judicial notice takes legal effect on verification date of the recorded voice or video call, i.e. as of the date of making the recorded voice or video call. The verification process requires that the competent official must ensure that the means of communication used belongs to the notified party, and the competent official must write a report verifying the call's content, hour, date and recipient. In this way, the report is authentic proof of verification, and can be annexed to the documents of the claim (Article 6(2) of the executive regulation and Article 7(1B) of the Minister of Justice's decree).

The important features to highlight here are as follows. First, although the executive regulation stipulates that the competent official "shall write down a report verifying ... the recipient's identity", it does not clarify how this should be accomplished. However, in this concern, Article 7(2) of the Minister of Justice's decree stipulates that the competent official shall ensure that the used means of communication belongs to the notified party, that the recipient is over eighteen years old, and that the recipient or their representative has no apparent interest contradicting the notified party's interest. This is achieved by asking them directly during a recorded voice or video call. In this way, the competent official can identify the notice's recipient and verify this identification in his report.

Secondly, when sending a judicial notice via telecommunication technology, Article 5(2) of the executive regulation and Article 7(3) of the Minister of Justice's decree do not stipulate any specific data requirements, such as the recipient's name, surname, legal capacity, and signature, seal or thumbprint. Neither does it specify verifying the recipient's refusal to receive the notice, or the cause for this. Although it is logical not to require these data when using electronic means of communication, the legislation does stipulate that certain data shall be verified via recorded voice or video calls, as the competent official must write a report which includes "the recipient's identity", i.e. the recipient of the recorded voice or video call (Article 6(2) of the executive regulation and Article 7(1B) of the Minister of Justice's decree). In this regard, we believe that in the phrase "the recipient's identity" the legislator meant other than the meaning elicited from the phrase "the recipient's name, surname, legal capacity ...". That is to say, in the first phrase, the legislator was simply referring to a general check of the identity of the recipient who received the notice via recorded voice or video call. For example, the competent official may write in his report that the recipient of the notice is the notified party himself, his wife, his son, his daughter, or his brother-in-law, etc.

Thirdly, at first glance, it may seem that the executive regulation provides some differentiation between sending a judicial notice via recorded voice or video call and via email or mobile phone text message. With the former method, the executive regulation stipulates that the competent official write a report verifying certain data which confirm the making of the call, as previously mentioned; however, the executive regulation does not stipulate this procedure with the latter method. This difference could be overcome by printing the email or text message, and annexing this printout to the claim file; as such, this could be considered a counterpart for the report when using the recorded voice or video call. Furthermore, Article 340 of the Civil Procedure Law is in support of this procedure, as it states that "The competent authority shall order the transcription of all litigation procedures via the telecommunication technology in minutes or paper-based and electronic documents

in order to get approved; and that is without the need for any signing from the concerned party”. Moreover, the same procedure was confirmed by the decree of the Minister of Justice, as it stipulates that the competent official shall keep evidence verifying the sending of the email or text message in the claim file (Article 7(1A)).

## 7. THE IMPACT OF USING TELECOMMUNICATIONS TECHNOLOGY ON THE JURISDICTION MAKING THE JUDICIAL NOTICE

After adopting the use of telecommunications technology with the judicial notice, Article (3/3) of the executive regulation allows a notice to be made at the level of the entire country, without any restriction from rules of spatial jurisdiction. Thus, after specifying the authorities that are entitled to demand the making of a judicial notice, as well as the competent authority concerned with making the notice, this Article states: “In all cases, a Judicial Notice may be made at the level of the State, without any restriction by the rules of spatial jurisdiction”. Naturally, this provision is a logical result of the provision of Article 6(1A) of the executive regulation, concerning the use of telecommunication technology with a judicial notice. In addition, this is further sustained by Article 3(3) which states: “A Judicial Notice may be made through one or more private company or office in accordance with the provisions of this regulation; thus, the notice’s competent official shall be he who was assigned to make the notice in this regard”.

## 8. CONCLUSIONS

UAE Federal Law 10 of 2017 amended certain provisions of the Civil Procedure Law 11 of 1992 and its amendments; in doing so, it introduced a clear format for the use of telecommunications technology with the judicial notice. Following this, Ministers Council’s Decree 57 of 2018 provided more detail on this relatively new uses, and the Minister of Justice’s Decree 260 of 2019 set forth mechanisms concerning the ‘Procedural Manual for Litigation Regulation’ using the modern electronic means and telecommunications in civil procedures. The change from sending judicial notices by conventional methods to telecommunications technology resulted in a number of legal implications, especially how sending a notice through these new means has come to be an authentic means rather just an alternative. In addition, the new development means that the traditional data on the notice’s delivery are no longer required, and there are no longer restrictions with regard to spatial jurisdiction, the stated time of making the notice, and the time frame of the notice’s legal effect. Therefore, the latest amendments introducing technology to litigations have deemed the lengthy notifications redundant and therefore saving much wasted time.

## 9. RECOMMENDATIONS

The study therefore recommends the following to the UAE legislator:

- To add the phrase “if any” at the end of Paragraph B of Article 16(2) of the executive regulation of the Civil Procedure Law, regarding the respondent’s data in the Statement of Claim; as unification of terms used in the legislation between litigating parties creates a sense of equality between them;

- To add the phrase “if any” to Paragraph A of Article 5(1) of the executive regulation of the Civil Procedure Law, regarding the data on the notice’s applicant, after the phrase “his mobile phone number, fax number and email”; as unification of terms used in the legislation between the applicant and the notified creates a sense of equality between them;
- To omit the phrase “in addition to the above mentioned” from Article 6(2) of the executive regulation of the Civil Procedure Law; hence the text in its current form is contradictory with the purposes of the legislation because the use of remote communication in the judicial notifications are not in direct connection between the notice applicant and the notified. Hence, physicality is no more essential for the declaration of the notice;
- To rephrase Article 8(3) of the executive regulation as follows: the Judicial Notice shall take legal effect “3- As of the fax’s date of arrival, the email’s date of arrival, the mobile phone text message’s date of arrival, and the recorded voice or video call’s date of verification; thus, the arrival shall be considered as complete by virtue of the fax’s report, the electronic receipt notification, or the text message’s receipt report, as the case may be”.

Otherwise, the provision could remain as it is currently with the addition of a phrase as follows: the Judicial Notice shall take legal effect “3- As of the fax’s date of arrival, the date of sending the email or the mobile phone text message, or the date of making the recorded voice or video call; in all cases, the notice’s competent official shall send the notified party a regular paper-based letter, informing him of making the electronic Judicial Notice through any of the aforementioned means of communication, in addition to informing the notified party of the nature of the notice’s content and the name of the notice’s applicant; thus, this letter shall be used as an authentic proof of verification, and shall be annexed to the claim’s file”;

- To suggest stipulating the following provision: “in all cases of making the Judicial Notice through the use of telecommunication technology, the notice’s competent official shall write down a report verifying the making of this notice through the electronic method”; and that is by rephrasing the latter part of Article 6(2) of the executive regulation of the Civil Procedure Law to be as follows: “2- In all cases, the notice’s competent official shall write down a report verifying the notice’s content, the technological means used to make the notice, and the date and hour of making the notice; thus, this report shall be used as an authentic proof of verification, and shall be annexed to the claim file”. As a solid evidence of the action preformed according the provision of the law and attest the electronic notice.