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May / June 2024

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Unforeseen emergencies

A ROUND-UP OF LEGAL, FINANCE AND TAX DEVELOPMENTS ACROSS THE MIDDLE EAST

TACKLING THE WINDS OF CHANGE



DIFC Digital Assets Law

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WHAT'S THE DIFFERENCE

Sometimes when new technology comes along there is an initial panic in the press after journalists raise concerns that we might now have entered some sort of 'legal wild west' where none of our previous laws and regulations apply. Normally, what happens next is that over time the courts, legal commentators and law makers start to think about the new technology and after a while it becomes apparent that although technology might have changed, there are existing legal concepts which will also apply in these new situations.

However, even where that is the case, there can also be situations where after a while legislators begin to realise that this technology has also created the potential for brand new scenarios which will require brand new legislation. That has been the case with Digital Assets which we cover in this issue - an area which the DIFC has been the first jurisdiction to tackle, and which is already having a significant impact on those involved in banking, financial services, and international trade, as well as those who simply use blockchain technology. They have decided to issue a brand new law which even includes a new type of tort - the tort of impairment. What is interesting here is not only did these technological changes require this brand-new DIFC law to be issued, but it also has helped to create the need to repeal and replace the DIFC Security Law which is also included in this issue. In addition, these changes brought in by the Digital Assets Law have had an impact on a host of other laws and have led to changes in areas including obligations, personal property, contract law, insolvency, trusts and foundations. What this makes clear is how important it is for lawyers and law makers to keep up with technological change, find out how it operates and asks about its impacts, as it is only when they do, that they will be able to understand the differences and similarities between the current legal position and the new reality.

Claire Melvin - Editor

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Unforeseen emergencies

TACKLING THE WINDS OF CHANGE

Dixon Melitt James of Elint AI explains groundbreaking legislation on Digital Assets issued in the DIFC.

“The digital frontier has become much clearer, as a result of groundbreaking legislation which came into force on 8 March 2024 in the DIFC,” states Dixon Melitt James.

“DIFC Law No. 2/2024, the DIFC Digital Assets law offers an innovative framework which aims to provide much-needed legal clarity and a robust structure for digital asset investors and consumers in the DIFC. It importantly recognises and defines a digital asset not just as a financial product but also as an asset that can be used in a non-financial services context.”

WHY WAS THIS LAW NEEDED?

“Digital assets are a trillion-dollar asset class which hold immense potential for market growth and future innovation,” James explains. “From a regulated financial services perspective, up until now many



Dixon Melitt James
Vice President
Elint AI

jurisdictions have primarily focused on regulating and enforcing penalties on certain practical implementations of this asset class.”

“However, with the fundamental benefits of blockchain, the digital assets it can generate and its various applications set to broaden this area has become much more significant.”

“Up until now, there has been an extensive ongoing debate on several crucial legal issues, including the exact legal characteristics and implications of digital assets,” James continues.

“International legal developments have provided some insight into this issue, but a comprehensive legal framework which fully outlined the legal characteristics of digital assets and potential interactions between users and investors within this asset class was still needed.”

DEFINITION OF A DIGITAL ASSET

“One of the key features of DIFC Law No. 2/2024 has been that it now clearly defines what are ‘digital assets’ within the DIFC jurisdiction,” James explains.



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“Specifically, a ‘thing is a digital asset’ if it meets the following criteria - it exists as a notional quantity unit that is manifested by the combination of network-instantiated data and active software operation by a network of participants; it exists independently of any specific person or legal system; and it is not duplicable and its use or consumption by one person or particular group of people does not necessarily prejudice its use or consumption by one or more other people.”

“The primary characteristic of a digital asset under DIFC Law No. 2/2024 is that it is ‘intangible property and is neither a thing in possession nor a thing in action.’”

OWNERSHIP OF DIGITAL ASSETS

“When it comes to ownership of Digital Assets the terms ‘control’ and ‘title’ over digital assets are precisely defined and governed by DIFC No. 2/2024,” James adds.

“A person is considered to be in control of a digital asset if they are the only ones with the ability to prevent others from deriving significant benefits from it, if

RELEVANT LEGISLATION

Article 9 of DIFC Law No. 2/2024

A Digital Asset is intangible property and is neither a thing in possession nor a thing in action.

(Source: Lexis Middle East Law)

they can derive a substantial amount of benefit from it themselves, and if they are the only ones with the ability to transfer these abilities to another person, in a process known as a ‘change of control’.

“Control also involves the person’s capacity to acknowledge they possess these abilities,” James explains. “DIFC Law No. 2/2024 also recognises circumstances in which control may not be exclusive due to the inherent limitations of the digital asset or mutual agreements with other parties.”

“In acquiring title, a person (or a group of people collaborating together) obtain original legal title to a digital asset when they gain control with the intention of using that control.”

“Ownership is presumed to belong to the controller unless there is evidence to the contrary.”

“This presumption also applies to agency arrangements, where the principal obtains a legal title from an agent managing a digital asset on their behalf. A digital asset’s title will also endure until it is either transferred or destroyed.”

“Transfers require a change in control and the intention to transfer the title. Until proven otherwise, the presumption supports title transfer in the context of gifts.”

“It should also be noted legal title or control of digital asset transfers follows applicable laws in cases of death, incapacity, or insolvency, enabling a new titleholder to exercise all related rights and carry out transfers subject to certain restrictions,” James adds.

“Amendments have been made to other DIFC Laws, including on resolving conflicts between this law and the DIFC Trust Law (DIFC Law No. 4/2018) and Foundations Law (DIFC Law No. 3/2018) as a result of the issuing of this law which, highlight the DIFC’s complex approach to regulating digital asset ownership and governance.”

OBLIGATIONS

“Part 4 of DIFC No. 2/2024 outlines obligations which come with Digital Asset ownership, impairment and recovery of control over digital assets,” James explains. “Of particular note is the new tort of impairment found in Article 14 of DIFC No. 2/2024.”

“This Article explains that a person has an interest in a Digital asset if that person has legal title to it,” James explains. “It then goes on to explain if a person B has an interest in the Digital Asset and a person A impairs their use of that Digital Asset, and their impairment of that Digital Asset is intentional or reckless, and also causes loss to person B, they will be liable to person B.”

“Impairment is reckless if they were aware a risk of impairment existed or may exist and unreasonably went on to take that risk,” James continues.

“In order to be intentional person A needs to know that B has an interest in the Digital Asset and that the interest they have is superior to A’s.”

“However, there are a number of defences to the tort of impairment.”

“These include that person B has consented to the impairment or that a reasonable person in B’s position would be likely to have consented to it, for example, if the impairment had taken place in order to prevent greater damage from hacking or a bug.”

“It is important to note in the event of impairments, co-owners may sue one another and seek compensation based on their respective interests,” James states.

RETAINING CONTROL

“Under Article 15 of DIFC Law No. 2/2024 if person A controls a digital asset without having valid title or they

have inferior title to person B, person B would be able to regain control of the asset,” James states.

“This means that the legal framework safeguards the rights of legitimate owners and co-owners of digital assets and provides a means of redress.”

OBLIGATIONS

“The new DIFC Digital Asset framework has not only led to the need to issue a single law (DIFC Law No. 2/2024),” James states. “It has also led to a need to make changes to a whole host of other DIFC laws, and a full list of these is found in Schedule 2 of DIFC Law No. 2/2024.”

“The changes to the Law of Obligations (DIFC Law No. 5/2005) in particular is a game changer,” James adds.

“This allows transferable records such as promissory notes and bills of lading to exist in electronic form and will help to accelerate deals and enable automation through smart contracts, as well making global trade more efficient.”

“Existing laws and regulations have been updated to take into account the new definition of Digital Assets and several provisions in laws including the Contract Law (DIFC Law No. 6/2004), Implied Terms in Contracts and Unfair Terms Law (DIFC Law No. 6/2005), the Law of Damages and Remedies (DIFC Law No. 7/2005) and Personal Property Law (DIFC Law No. 9/2005) have changed,” states James.

“For example, the Insolvency Law (DIFC Law No. 1/2019), now includes digital assets under the term ‘property’ and 2019 Insolvency Regulations now define ‘money’ as something that functions as a medium of exchange, store of value, and unit of account.”

“This definition has been expanded to cover a Digital Asset that meets these criteria and a money claim (including a balance credited to an account or arising in connection with a close-out netting arrangement) in any currency.”

“The Security Law (DIFC Law No. 8/2005) and Financial Collateral Regulations have also been repealed and replaced by a new Security Law (DIFC Law No. 4/2024) (see Featured Law for details) in part to take account of changes in the Digital Assets law.”

“Digital assets have in the past had a reputation for being risky and unregulated,” James states.

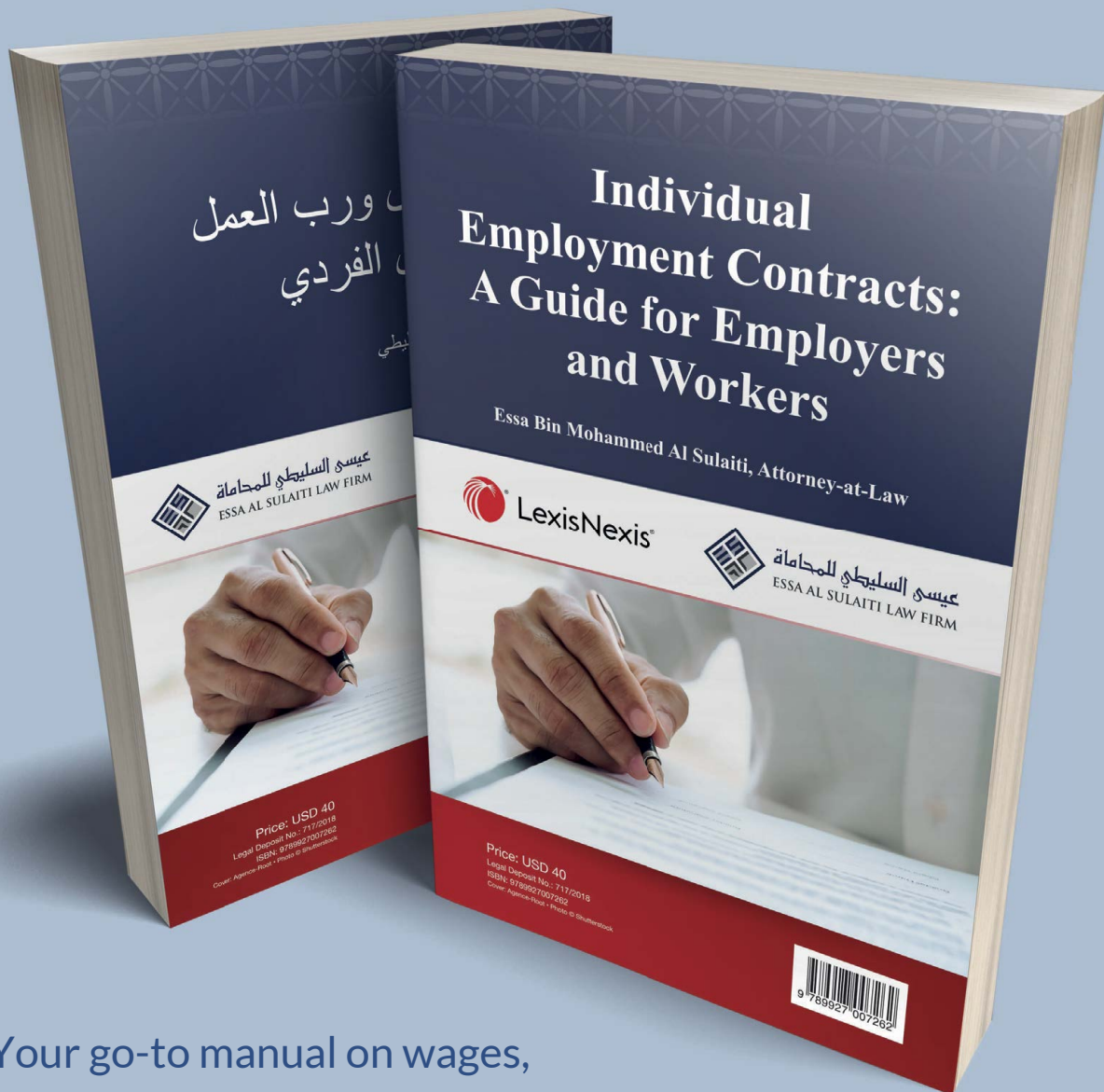
“However, DIFC Law No. 2/2024 has made it possible to enter into digital asset transactions using the DIFC’s legislative framework, underpinned by a recognised and reputable DIFC common law Courts,” James continues.

“Therefore, we expect to see more parties electing to use the DIFC as a forum for contracts involving digital assets,” James adds.

“In addition, as the digital asset market continues to evolve the DIFC’s proactive approach to establishing a comprehensive legal framework could position the DIFC financial centre as a hub for further innovation and help attract further investment in this burgeoning sector.”

INDIVIDUAL EMPLOYMENT CONTRACTS: A GUIDE FOR EMPLOYERS AND WORKERS

BY ESSA BIN MOHAMMED AL SULAITI



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- A must-have reference for Employment Law lawyers and in-house counsel in Qatar

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LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE

UAE


GREEN VISAS

 The UAE Digital Government has announced a green residency visa will be offered to investors who are engaged in local commercial activities there. The green residency will be available to investors or partners in commercial activities. The new visa type replaces the previous two-year investor's residency. It has simpler requirements and more benefits.

It will last five years and will also be possible to renew. A guarantor will not be needed to obtain this type of visa. The requirements for a green residency visa for investors include having obtained investment approval and having proof of the investment or partnership value. Applicants must also meet the prescribed percentage of total capital invested, have approval from the local authorities, and have a license to practice the activity.

DUBAI

JURISDICTIONAL CONFLICT

 Dubai Decree No. 29/2024 on the 'Judicial Authority for Resolving Jurisdictional Conflicts between the DIFC Courts and Judicial Authorities' in Dubai has been issued and applies to judicial bodies in Dubai, including the Dubai Court of Cassation, Dubai Court of Appeal and Dubai Court of First Instance, and any other court that will be established in the future as part of the Judicial Authority in Dubai, as well as the DIFC Courts.

This Decree will repeal and replace Dubai Decree No. 19/2016 on the Judicial Tribunal for the Dubai Courts and DIFC Courts and any other legislation that contradicts it. As result, the Judicial Tribunal for Dubai Courts and DIFC Courts' name will be changed to the Judicial Authority for Resolving Jurisdictional Conflicts between DIFC Courts and Judicial Authorities in Dubai. The new Authority will be chaired by the President of the Dubai Court of Cassation, and the Deputy Chief Justice of DIFC Courts will be the Authority's

Deputy Chairman. Other members will include the Secretary General of the Dubai Judicial Council, the Presidents of the Dubai Court of Appeal, and Dubai Court of First Instance, as well as two DIFC Courts judges selected by the DIFC Courts' Chief Justice. The Authority will determine the competent court for disputes, specify enforceable judgments in case of conflicts, and implement tasks assigned by the Prime Minister or Dubai Judicial Council Chairman.

Decisions issued by the Authority will be final and not subject to any form of appeal. Legal rules set by the Judicial Authority in decisions under the Decree will be treated as judicial principles binding on all Dubai courts, including those in the DIFC. Any subsequent ruling conflicting with these rules will be subject to appeal through legally defined channels. Decisions issued as part of Dubai Decree No. 19/2016 will remain in place to the extent, they do not contradict this Decree, until new ones replace them.

DIFC


IMMIGRATION RULE CHANGE

 The DIFC has implemented new services which are designed to simplify and improve immigration application procedures there.

However, the maximum validity period for a employment permit in the DIFC has been reduced from three to two years. As a result of the changes employees on a standard employment residence permit who have been outside the UAE for more than six months for valid reasons, such as medical or educational purposes, can get their employer to submit an online application for a re-entry certificate for them, if their residence permit has not expired. Foreign nationals can also now use an express option to obtain a DIFC access card in order to enter offices in the DIFC. As a result the processing time is reduced from three business days to one business day from the application date. However, this option costs AED 1,370, rather than AED 1,140.

SAUDI ARABIA


COMPANY RECORDS

 Saudi Arabia's Commerce Ministry has announced all holders of commercial records there will now be able to make enquiries about their records via the Tawakkalna application. Record holders will be able to both access and print company and institution records which are associated with them.

BRANCH INFORMATION

 The Saudi Human Resources and Social Development Ministry has urged all private sector businesses to update their branch location information using the Establishment Location Management' service on the Qiwa platform. The Establishment Location Management service enables businesses to electronically link individual employees to their actual work locations. Businesses with 20 or less workers must do this for all workers by 30 May 2024. The deadline for those with between 21 and 49 workers is 30 June 2024, and it is 30 July 2024 for those with 50 or more workers.


WHISTLEBLOWER PROTECTION

 Saudi Arabia's Attorney General and the Council of Public Prosecutions' Chairman have approved the establishment of a Centre for the Protection of Whistleblowers, Witnesses, Experts and Victims in line with Article 4 of Saudi Arabia Cabinet Decision No. 629/1445. The aim of the Centre will be to provide legal protection to individuals who are at risk of harm because they are providing information on crimes. These individuals will be given security protection, and their personal data and everything that indicates their identity will be concealed. They can also be transferred from their place of work temporarily or permanently. They may also be given help in finding alternative work, and legal, psychological and social guidance. In addition, they may be given

security protection, a residence and financial support.


QATAR

ELECTRICITY SURPLUSES

 The Qatar General Electricity and Water Corporation (Kahramaa) has announced the launch of a Qatar National Renewable Energy Strategy. Kahramaa has stated it will implement a net billing mechanism which will allow consumers to sell their electricity surplus to Kahramaa at a fixed price. A two-way metre will be used to measure the amount of electricity consumed and the surplus supplied to the public electricity network.


OMAN

PROPERTY LAW REFORM

 The Omani Ministry of Housing and Urban Planning has stated it will implement eight initiatives and prepare new laws and regulations which will cover real estate and related activities in Oman. The most significant of these initiatives involves changes to the regulation of the real estate valuation sector. There will also be changes to the regulation and control of real estate brokers and real estate broker companies. The Ministry is also working on the final draft of regulations on the Real Estate Registry Law which will set controls and conditions for regulating real estate registry in Oman in line with the Land Registry Law there. In addition, the Ministry is currently finalising regulations on the expropriation law for public benefit and reviewing the executive regulations. These regulations are expected to be issued in 2024. There are also plans to introduce an integrated Urban Planning Law, and executive regulations, and prepare a Housing Law and executive regulations.

BAHRAIN

WEATHER DAMAGE

 The Rain Damage Evaluation Committee at the Bahraini Works Ministry has released a form which can be used for compensation requests for rainwater and sewage damage. These claims can be made if the damage relates

to issues involving the Works Ministry or contractors handling road and sewage projects.

Information required in these applications includes the applicant's name, address of the damaged house, phone number, date and details of the damage, and the estimated cost to fix it. Applicants must also provide pictures, or video clips verifying the damage, as well as repair invoices, property ownership documents, and the owner's card.

In cases where the damage has been to a car, ownership and insurance documents are also required.

KUWAIT

RECRUITMENT PROCEDURES

 The committee overseeing labour market regulation is understood to have almost completed work on new procedures for recruiting foreign workers. It is believed the committee has been focusing on creating new recruitment mechanisms for key professions including those working in medical, educational, engineering, legal, accounting, and financial roles.

The new approaches would be applied uniformly to recruiters of all nationalities and implementation may start soon.

The committee overseeing the change includes the Public Authority for Manpower (PAM), relevant governmental and private entities such as the Ministry of Interior, the Ministry of Higher Education, the Kuwait University, and specialist professional associations.

The changes are believed to include proposals to withhold the issue of new work permits until after the endorsement, validation, and equivalence of academic credentials by official bodies and the Kuwaiti embassies overseas has been completed.

The committee is also considering additional accredited professional experience certificates for each profession, which would cover a period of between three and five years depending on the role. Applicants may also have to present a professional practice certificate approved by relevant authorities and pass a professional practice test.

REGULATORY ROUND-UP

UAE: The Climate Change and Environment Ministry plans to issue regulations on food and facilities in the UAE in early 2025...

Abu Dhabi: New rules have been issued on small scale farms which include guidelines on plant production...

Saudi Arabia: The Committee for Adjudication of Violations of Competition Law has fined several companies in the water bottling and distribution sector for price fixing...

GCC: Sharjah Commerce and Tourism Authority (SCTDA) has stated the system for launching the unified GCC tourist visa will be in place by the end of 2024...

Bahrain: The Council of Representatives have approved a draft timeshare law...

Saudi Arabia: A port entry permit service has been launched on the Zawil Portal...

Turkey: Turkey has stopped all imports and exports to and from Israel as of 2 May 2024 because of their stance on humanitarian aid in Gaza...

Kuwait: Regulations on hiring nationals for government contracts under Kuwait Cabinet Decision No. 1179/2023 come into force in May 2024...

Saudi Arabia: Sources have stated that petrol stations in Saudi, especially those on highways will be required to provide places and devices for charging electric cars...

Egypt: Egyptian authorities have launched an enforcement drive to ensure bakeries comply with price controls on bread...

Kuwait: The Kuwait Petroleum Corporation will manage bids for major projects through its own portal rather than the Central Agency for Public Tenders (CAPT)'s system...

UAE: The UAE Civil Aviation's General Authority has issued operational approval for the first plane runway (vertiport) equipped with clean energy there...

Sharjah: Manufacture of single-use plastic bags has been stopped by the Sharjah Government...

UAE: The Human Resources and Emiratisation Ministry (MOHRE) has stated private sector companies applying for work permits for juveniles working in vacations do not need insurance or a bank guarantee for them...

Bahrain: Bahrain plans to sign the Convention on the Facilitation of International Maritime Traffic...

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

BAHRAIN - AI



The Bahrain Shura Council has been considering a report from the Legislative and Legal Affairs Committee on a proposed law which would regulate Artificial Intelligence in Bahrain. This law aims to ensure AI is used for peaceful purposes, which align with public order, morals, and the country's interests. The legislator will be looking to safeguard security, rights, freedoms, and ethics. They also want to tackle the potential dangers of AI such as the manipulation of data, visual and audio content. There will be penalties including fines and imprisonment for breaching the law on this area.

SAUDI ARABIA - ZAKAT



Saudi Arabia Ministerial Decision No.1007/1445 the Implementing Regulations for Zakat Collection have been issued. The Regulations cover areas including the mechanisms for collecting Zakat and how Zakat based calculations work for taxpayers who maintain accounts. There are also chapters on additions to and deductions from the Zakat base.

UAE - STANDARDS



Cabinet Decision No. 28/2024 has been issued on the adoption of a range of technical regulations which impact various industries and sectors, including the food and agriculture sector and oil and gas section. The technical regulations impacting food include UAE.S GSO 707:2023 which covers flavourings whose use is permitted in foodstuffs and UAE.S GSO 814:2023 which covers ground red meat and poultry meat. Those impacting the oil and gas sector include which covers lubricating oils for internal combustion engines-part 2: ACEA European Oil sequences for gasoline engines and diesel engines.

GAZETTE WATCH

UAE Official Gazettes No. 771-774 – These gazettes include Federal Administrative Decision No. 1/2024 on the professional standards for tax agents

Saudi Arabia Gazettes No. 5023-5030 – These gazettes include Saudi Arabia Administrative Decision No. 99-428/1445 on implementing phase 11 for linking e-invoicing systems

Oman Official Gazettes No. 1538 – 1544 – These gazettes include regulations on cemeteries

Qatar Official Gazettes No. 6 of 2024 – These gazettes include Qatar Cabinet Decision No. 3/2024 on granting residence permits without a recruiter to some categories

Kuwait Official Gazettes No. 1680 – 1685 – These gazettes include Kuwait Ministerial Decision No. 4/2024 on the approval of 455 Gulf Standard Specifications as (optional) Kuwaiti Standard Specifications

(Source: Lexis Middle East Law)

QATAR - RENT



The Qatari Council of Ministers has approved a draft Cabinet Decision which will amend certain provisions in Qatar Cabinet Decision No. 8/2020 which is a law on the reorganisation of the Central Rent Committee. The Central Rent Committee is responsible for inspecting, and estimating the rental value of land, buildings, and housing rented by Ministries, other government agencies, public bodies, and institutions.

KUWAIT - PROCUREMENT



The Kuwaiti Ministry of Justice has circulated a draft Public Procurement law to government agencies for review. The Ministry wants to get their opinions, observations, and recommendations before drafting the new law in its final form, referring it to the Council of Ministers and then presenting it to the National Assembly. The new law will have seven Articles and will provide for the repeal of Kuwait Law No. 49/2016 on Public Tenders. Employees at the Central Agency for Tenders will be redeployed to other public entities on the same grades, and with the same salary and benefits as a result. Bodies including Defence Affairs, the National Guard, the Interior Ministry, Central Bank, the Kuwait Petroleum Corporation and its companies, and the Public Authority for Housing Welfare would be exempt from the new legislation.



OMAN - PROPERTY



The Omani Ministry of Housing and Urban Planning plans to implement eight initiatives and prepare laws and regulations which will regulate real estate and related activities in Oman. As part of this project there is a plan to include regulations on real estate development, brokerage, evaluation, owners' associations, and escrow accounts in a single legal system which would be known as the Real Estate Regulatory Law.

FEATURED DEVELOPMENT

Ajai Ramakrishnan, Senior Associate, Hadeef & Partners provides an overview of the new DIFC Security Law, DIFC Law No. 4/2024.

There have been significant changes to the DIFC law on security, as a result of the repeal and replacement of the previous DIFC Security Law (DIFC Law No. 8/2005) and the DIFC's 2019 Financial Collateral Regulations by a new law on security (DIFC Law No. 4/2024), which came into effect 8 March 2024.

The DIFC stated that the revision was required as a result of 'rapid developments in international trade and financial markets arising from technological developments' and in order to bring the DIFC's security law regime in line with international best practice.

The issuance of the DIFC Law No. 4/2024 coincided with the issue of a new DIFC Digital Assets Law (DIFC Law No. 2/2024) and includes provisions on the creation of security interests over digital assets. The DIFC Law No. 4/2024 has been largely modelled on the 2016 UNCITRAL Model Law on Secured Transactions, but with changes to make DIFC Law No. 4/2024 work more efficiently within the DIFC's legal framework. DIFC Law No. 4/2024 continues to regulate security creation and perfection in relation to movable assets and fixtures, addresses the key aspects applicable to security interests (such as the rules of creation, effectiveness against third parties, priorities and third party rights and obligations) and retains the previous security register and filing processes.

Certain key features of, and/or initiatives under, DIFC Law No. 4/2024 are as follows: (a) potential recognition of rent as a receivable, thereby permitting creation of security exclusively over such receivable; (b) introduction of a concept of an 'acquisition security right' and related rules (including the stipulation

of a 'super priority' ranking in certain cases) which are designed to enhance the position of, mainly: (i) creditors taking benefit of security interests in the context of acquisition financings; (ii) lessors of tangible assets where the lease term exceeds one year; and (iii) persons providing financing for commercial consignments; (c) introduction of provisions relating to creating and perfecting security interests over digital assets and electronic trade documents (defined in the DIFC Law of Obligations (DIFC Law No. 5/2005) as documents in electronic form that are commonly used for trade in or transport of goods or the financing thereof); and (d) limitation of the application of anti-assignment provisions in certain types of contracts which would have prevented the assignment between security grantors and security creditors.

As the 2019 DIFC Financial Collateral Regulations have now been repealed matters which were previously covered by these regulations are now found in Part 8 of the DIFC Law No. 4/2024 along with provisions applicable to commodity futures contracts and interests in these, as well as money claims arising out of close out netting arrangements. Part 8 also includes rules governing, among other things, effectiveness against third parties and the priority of competing interests.

However, the 2019 DIFC Securities Regulations have not been repealed and continue to be in force with minor consequential amendments. No changes have been made to the security registry, filing processes and fees in order to retain a sense of continuity with respect to such matters from the previous DIFC Law No. 8/2005.

TAX AND FINANCE ROUND-UP


COVERING RECENT KEY TAX AND FINANCE DEVELOPMENTS – REGION-WIDE

UAE

NEW FINTECH RULES


 The UAE Central Bank has issued new fintech regulations. The Open Finance Regulation introduces an Open Finance Framework in which the Central Bank takes on a central role. This framework will be mandatory for 'Licensees' which initially will include UAE licensed banks, foreign bank branches licensed in the UAE and Insurance Companies. They must provide Open Finance Providers (data recipients and service initiators) with access to customer data and the ability to Initiate transactions on customer Accounts and Products. These regulations also introduce a new license category and a compliance framework for Open Finance Providers to undertake Data Sharing and/or Service Initiation. Some types of Central Bank licensed entities may be deemed to be already licensed as a prior approval requirement applied to them. In addition, the Sandbox Condition Regulation has also been issued which enables there to be licensing exemptions under certain conditions to order to support innovation.

BUSINESS RESTRUCTURING RELIEF

 The UAE Federal Tax Authority (FTA) has released a Corporate Income Tax (CIT) Guide on Business Restructuring Relief (under Federal Decree-Law No. 47/2022) CTGBRR1. The FTA has the authority to issue guides such as these to provide guidance to taxpayers, but it should be noted they do not have the same status a legislative instrument. It explains the six conditions which must be met in order for a transaction to qualify for Business Restructuring Relief. There is also a chapter on clawback of the relief which emphasises the relief can potentially be nullified if within two years of transfer, shares are sold outside the Qualifying Group or there is another transfer of the business. There is also information on required record keeping and how this relief interacts with provisions such as those on Qualifying Group Relief; Realisation Basis;


and Transitional Relief.

TAX AGENT STANDARDS

 The UAE Federal Tax Authority (FTA) Decision No. 1/2024, which redefines the professional standards that apply to tax agents in the UAE is to come into force on 1 July 2024. The decision introduces a comprehensive new set of professional standards which will apply to tax agents as well as a punitive black points system which will sanction agents who violate these requirements. Severe breaches could result in deregistration of agents from the FTA's registry. A Professional Standards Guide covered in the Decision also details the approach to compliance, ethical standards and professional standards tax agents should take.

DIFC

FMT PROCEDURE CHANGE


 The Financial Markets Tribunal (FMT) has issued revised Rules of Procedure for the Tribunal which came into force on 2 May 2024.

The new rules cover a range of areas including the form and content of pleadings, document disclosure by the DFSA, procedures for preventing decision publication and how to request private hearings.

There are also rules on suspending referred decisions pending proceedings, conducting hearings in the absence of a party in certain circumstances, and striking out proceedings for non-compliance with FMT Rules. FMT Form 1 (Reference Notice) has also been revised to reflect the relevant changes.

QATAR

PRESUMPTIVE TAX ASSESSMENTS

 PwC have reported that they have noticed an increase in the numbers of presumptive tax assessments

being issued to taxpayers in Qatar. The Qatar General Tax Authority (GTA) has the right to issue tax assessments on a presumptive basis in cases where taxpayers fail to file tax returns or submit supporting documents within the prescribed time limits under Qatar Law No. 24/2018.

Qatar Law No. 24/2018 states that presumptive tax assessments shall be issued based on evidence and objective assumptions available to the GTA.

This could include data available in the taxpayer's accounts, the nature and characteristics of their activities and data in similar cases. PwC has noticed these assessments being issued in cases including where taxpayers failed to reply to GTA inquiries, where tax returns have not been filed within the deadline and in situations where the auditor's opinion in the financial statements submitted with the tax return was not an unqualified one, e.g. it was a qualified opinion, adverse opinion, or a disclaimer.

KUWAIT

AUDITING RULES FOR EXCHANGE COMPANIES

 Kuwait's Central Bank has implemented new auditing rules in order to tackle money laundering. As a result, the exchange companies the Central Bank supervises will be required to hire an impartial global auditing firm to assess their compliance with the Kuwait Money Laundering Law (Kuwait Law No. 106/2013).

The audit will focus on transactions and activities that appear strange or lack a clear, legitimate economic purpose. These audits will need to be carried out twice a year on 30 June and 31 December. Checks will be made to ensure transactions are not being conducted with individuals or entities listed on international or national blacklists.

Records of customers and their transactions will need to be retained for at least five years. The appointed auditors cannot be an internal auditor or affiliated with the company's internal control team.

SAUDI ARABIA

SHARE PRICE MANIPULATION

 The Saudi Securities Disputes Appeals Committee has found three investors guilty of breaching the Financial Market Law and its executive regulations. They had placed purchase orders in order to manipulating share prices, some were associated with sell orders, while trading in shares of several listed companies. They were found guilty of a breach of Article 49 of Saudi Arabia Cabinet Decision No. 91/1424 and Article 2 of the Market Conduct Regulation and have been ordered, along with other investors, to pay 42.9 million Riyals. The committee has imposed fines totalling 17 million Riyals on 13 individuals.

TEMPORARY ENTRY

 Saudi Arabia has announced it will implement the ATA Carnet temporary entry system for goods, starting from June 2024. The ATA Carnet, also known as a 'Merchandise Passport' or "Passport for Goods", is an international customs document which enables goods to temporarily enter a country on a duty-free and tax-free basis. It applies whether the goods are shipped or hand carried. This customs document allows for temporary import of a wide range of goods for up to one year without the need to pay any duties, taxes, or follow customs procedures, provided the goods are re-exported or exported within the specified period. The Federation of Saudi Chambers (FSC) will be the sole national authority responsible for implementing this system in Saudi.

ACCOUNTING STANDARDS

 Saudi Arabia's Finance Ministry has launched a consultation on draft Public Sector Accounting Standard 49 which covers Retirement Benefits Programmes. The aim of the standard is specifying accounting and reporting requirements for public sector retirement benefit programmes, which offer retirement benefits to public sector employees and other eligible participants. It will apply to retirement benefit programmes that prepare financial statements using an accrual basis of


TAX TREATY UPDATE

- Bahrain:** The Iraqi Council of Ministers has authorised negotiations for a tax treaty with Bahrain.
- Qatar:** Bangladesh and Qatar have signed a double taxation treaty and an investment protection agreement.
- UAE:** The Cambodian tax authorities have announced they are in ongoing negotiations on a double taxation treaty with several countries, including the UAE

accounting.


OMAN

BONDS AND SUKUK

 Oman's Financial Services Authority has announced new Bonds and Sukuk Regulations, which have introduced both green and sustainable options, as well as Waqf Sukuk. The Sukuk regulations No. 3/2016 have been replaced by the Bonds and Sukuk Regulation No. 21/2024

BAHRAIN

TAX EVASION

 Two men have been sentenced at the Bahrain High Criminal Court to two years in prison and ordered to jointly pay the 58,727 Dinars in evaded tax as well as each being fined the same amount. A company they owned was also fined 352,362 Dinars and seized goods were confiscated. Both men will also be deported when they have served their sentences. Customs officials found cigarettes and a banned substance called Paan which the men were not authorised to import into Bahrain. The Tax Crimes unit then received a request from the National Bureau for revenue to start criminal proceedings against them for VAT and Customs Duties on the smuggled goods.


DEBTOR RESTRICTIONS

 : Bahrain's Council of Representatives have approved a draft law which will prevent foreign workers with outstanding debts from leaving the country. The proposed law states departing foreign workers would have to present a certificate confirming they did not have many outstanding debts before

they were allowed to leave Bahrain. Concerns have been raised that this would prioritise debt settlement over deportations of foreigners who have committed serious offences. As a result, an MP has proposed that a judicial panel, similar to the system in the UAE is also established to ensure an appropriate balance between public and private interests.

TURKEY

ONE TIME TAX

 The Turkish Constitutional Court in TCOC 169E/2023, 82K/2024 has ruled on the constitutionality of Article 10/27 of Turkey Law No. 7440/2023 on the Restructuring of Certain Receivables and Amendment of Certain Laws. The court rejected an annulment request for the related article. Under the provision a one-time additional tax applied to corporate income taxpayers before of the Turkish earthquake, as declared in the corporate income tax return for 2022: Many corporate income taxpayers had filed their 2022 corporate income tax returns with reservations and filed lawsuits demanding the refund of the additional tax paid with interest. One first degree tax court felt the claim for unconstitutionality was serious under Articles 13, 35, and 73 of the Turkish Constitution and referred the matter to the Constitutional Court.

The Constitutional Court ruled as the corporate tax accounting period had closed as of the date of the entry into force of the regulation on the additional tax and the additional tax provided for the discounted amounts of the closed accounting period, the regulation was considered retroactive. It was possible to apply laws retroactively with legal regulations enacted due to events that deeply impact society, such as natural disasters.

RULES AND REGULATION

There is a new financial services regulator in Oman. Phoebe Lim, Debopam Dutta, Salman Ahmed and Benjamin O'Brien-McQueenie of Trowers & Hamblins explain the impact.



“A new financial services regulatory body, the Financial Services Authority (FSA) has been established in Oman, following the issue of Oman Sultani Decree No. 20/2024 (On the Establishment of the Financial Services Authority), and which came into force on 25 March 2024,” states Benjamin O’Brien-McQueenie.

“The FSA is headquartered in Muscat and is a legal entity with financial and administrative independence, which reports directly to the Council of Ministers.”

“The FSA, which is now officially operational will completely replace the Oman Capital Market Authority

(CMA),” states Salman Ahmed.

WHY WAS IT ESTABLISHED?

“The CMA was established in 1998 by the Capital Market Law, as promulgated by Oman Sultani Decree No. 80/1998 which has been repealed and replaced by Oman Sultani Decree No. 20/2024.”

“However, it should be noted that Article 46-58 of Oman Sultani Decree No. 80/1998 which was originally found in the Capital Market Law and covers securities remains in force and is now found in the Securities Law Oman Sultani Decree No. 46/2022.”



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“The CMA’s responsibilities included the supervision and development of the capital market and insurance sectors, and the licensing and regulation of certain types of companies.”

“The establishment of this new regulator is intended to streamline existing regulatory processes and improve financial practice standards in Oman as a whole,” Debopam Dutta continues.

“The FSA has been tasked with having regulatory oversight, supervision and organisation of the financial sector and of entities operating in that sector,” adds Phoebe Lim.

“This includes all components of the capital markets, insurance companies, the commodities and energy markets, derivatives, and credit rating agencies, as well as persons,



Debopam Dutta
Senior Associate,
Trowers & Hamlins

entities, companies and related services and products in this sector.”

“The aim is to ensure these entities are sound and limit the impact of potential risks on them or on the stability of the financial system in Oman.”

“The FSA’s competencies have also been extended so they also include the regulation of the accounting and auditing profession, which was previously under of the Ministry of Commerce, Industry and Investment Promotion,” Phoebe Lim adds.



Phoebe Lim
Associate,
Trowers & Hamlins

HOW DIFFERENT WILL THE NEW REGULATOR BE?

“The FSA is expected to act in a similar way to the CMA,” states Benjamin O’Brien-McQueenie.

“For example, it is expected to continue to take steps to foster the sustainable development of the domestic financial market in Oman while also maintaining the stability of Oman’s financial system, primarily through having in place transparent and predictable regulation, licensing and supervision of market participants.”

OTHER RESPONSIBILITIES

“In addition to these regulatory responsibilities the FSA will also have a number of other responsibilities,” Salman Ahmed explains. “For example, it will help these regulated entities develop their products and services and will adjust the regulatory environment to facilitate innovation.”

RELATED LAW

Article 9 of Oman Sultani Decree No. 20/2024

The Board may, in case there is a risk that threatens the stability of the capital market and licensed markets, or insurance market, or any financial sectors or activities or services that are subject to the regulation, control and supervision of the Authority, or the interests of investors and shareholders at companies controlled by the Authority, or dealers, or entities that are licensed or accredited thereby, take the necessary measures and procedures, and impose penalties as stipulated in the regulations issued in this regard.

(Source: Lexis Middle East Law)

“It will also prepare draft laws, Sultani Decrees, regulations, decisions and instructions which relate to its functions.”

“In addition, the FSA will also be responsible for ensuring laws, regulations, decisions and instructions are followed by regulated entities,” Benjamin O’Brien-McQueenie adds.

“As a result, the authority will conduct administrative investigations and will also be able to summon and request the attendance of violators of the laws, regulations, decision and instructions related to FSA’s functions.”

“The FSA will also have an educational and research role,” states Debopam Dutta.

“This will include collecting data, information and statistics on regulated entities and publishing reports on these subjects.”

“In addition, it will conduct studies and present proposal to various official entities on current laws in these areas, and potential amendments to them,” states Debopam Dutta.

“In this context the FSA is also able to temporarily implement services, activities or licenses until new legislation has been implemented. FSA will also work with other bodies both inside and outside Oman, including international associations and organisation, in order to exchange knowledge and expertise.”

“In addition, its educational role will include organising seminars, forums and local and international conferences in order to raise awareness about the risks and requirements of the sectors, services and activities it regulates,” Phoebe Lim adds. “It will also supervise training courses for employees of regulated entities’ employees and establish a professional educational or training institution to support regulated entities.”

TRANSITIONAL ARRANGEMENTS

“Oman Sultani Decree No. 20/2024 came into force on 25 March 2024,” states Salman Ahmed.

“The FSA’s Chairman and Board of Directors will be responsible for issuing the necessary regulations and decisions to implement this new decree. However, the existing laws, regulations and decisions on these areas will continue to apply as long as they do not conflict with the new legislation.”

“Article 7 of Oman Sultani Decree No. 20/2024 also states that all references to the ‘Capital Market Authority’ in previous legislation are to be replaced with the term ‘Financial Services Authority’. ‘References to the ‘Chairman of the Board of Directors of the Capital Market Authority’ and ‘Executive President of the Capital Market Authority’ will also be replaced with the phrase ‘Chairman of the Board of Directors of the Financial Services Authority’ and ‘Executive President of the Financial Services Authority’ wherever they occur in laws and Decrees.”

RELEVANT NEWS

Financial Services Authority Now Operational

Oman’s new Financial Services Authority (FSA) is now officially operational. The FSA replaced the CMA as a result of Oman Sultani Decree No. 20/2024. It is responsible for regulating the financial services sector including the capital, commodity and insurance markets. In addition, it is also responsible for the non-banking financial sectors, insurance sector, credit rating agencies, commodity and energy markets and derivatives. Accounting and auditing offices will also come under its remit.

(Source:Lexis Middle East Law)

NEXT STEPS

“The implementing regulations to Oman Sultani Decree No. 20/2024 and other specific details are expected to be published in the near future,” states Debopam Dutta. “These should bring in more clarity on the roles, responsibilities and processes which will be implemented by the FSA.

“This has certainly been a ground-breaking change for the Omani financial market and as a result of the changes brought in by this new law, it will be important to keep an eye out for further legislation and regulations which are now expected in this area of law in Oman,” Salman Ahmed states.

“There will be significant changes for any stakeholders who are either engaged with the CMA or have dealings in which the CMA is involved”.

“It will be important that they understand and keep up with these changes.”

“There have also been significant regulatory changes for the accounting and auditing profession who need to keep up with what this means in practice,” states Benjamin O’Brien-McQueenie. “However, once these regulations are published those who are potentially affected must review them to better understand how these changes will play out and if from their perspective the FSA has now been given a wider supervisory remit over them

than was the case with either the CMA or the Ministry of Commerce, Industry and Investment Promotion. This new body aims to improve the regulatory framework, ensuring greater stability and efficiency within the financial sector. Stakeholders will need to stay informed about forthcoming regulations to adapt effectively to the changes. The FSA’s expanded scope and responsibilities are expected to foster innovation while maintaining oversight. This development represents a strategic move towards a more robust and dynamic financial system in Oman.”



Benjamin O’Brien-McQueenie

Partner, Trowers & Hamlins



Salman Ahmed

Partner
Trowers & Hamlins

CASE FOCUS

Case No DCA Case No. 27/2024 issued on 21 February 2024
Jurisdiction Dubai
Court Dubai Court of Appeal
Recommended by Wasel & Wasel

WHAT IS IT ABOUT?

A defendant was accused of diverting 200,000 AED from a plaintiff. These funds were originally intended for cryptocurrency transactions, but the defendant misappropriated them. This act led to initial criminal proceedings in which the defendant was found guilty, fined 20,000 AED, and ordered to return the embezzled 200,000 AED. The plaintiff felt the criminal penalties were insufficient to cover all financial losses, including potential profits and accrued damages caused by the delay in recovering the funds so they filed civil proceedings for additional compensation. The Civil Court of First Instance sided with them ruling the defendant had to not only pay the embezzled 200,000 AED but also an additional 5% annual interest calculated from the date the compensation was initially demanded, plus legal fees and attorney costs. The defendant appealed this decision, and the Dubai Appeals Court re-examined the interplay between criminal judgments and subsequent civil claims within the context of financial regulations and cryptocurrency dealings.

WHAT WAS DECIDED?

The Dubai Appeals Court focused in particular on the principles of double jeopardy, jurisdictional authority, and the adequacy of the evidence presented in the civil case. The appellant argued that the prior criminal judgment, which included restitution, should preclude further civil liabilities under the doctrine of *ne bis in idem*, or 'not twice in the same matter'. They also challenged the civil court's jurisdiction over the case and disputed the sufficiency of the plaintiff's evidence in justifying the claimed damages. However, the court dismissed these arguments, and upheld the Civil Court of First Instance decision. It clearly delineated the distinct roles of criminal and civil outcomes: the criminal sanctions served as punitive measures for the embezzlement, while the civil judgment aimed to

provide comprehensive restitution for the plaintiff and address the full scope of the financial impact including potential profits lost and additional costs incurred.

WHY IS IT IMPORTANT?

This decision highlights the independence of civil claims from criminal penalties, reinforcing the premise that financial restitution can extend beyond the bounds of criminal proceedings to fully address all consequential damages experienced by a victim. This has implications for financial crimes, particularly in the field of cryptocurrencies. By clearly distinguishing between criminal penalties and civil compensation, the Dubai Court has stressed there is a dual pathway for financial misconduct victims to seek redress. Criminal proceedings, which often focus on penalising the wrongdoing, do not necessarily consider the full extent of financial losses so do not prevent civil actions for further compensation. It also suggests the Dubai courts are prepared to navigate the complexities of cases involving emerging digital financial technologies.

Case No DFL v DFM [2024] SGHC 71 issued on 15 March 2024
Jurisdiction Singapore
Court Court General Division of the High Court of Singapore
Recommended by Blanke Arbitration

WHAT IS IT ABOUT?

The General Division of the High Court of Singapore dealt with an application by DFM, to set aside an enforcement order issued by the High Court involving a Provisional Award on Interim relief rendered in a London-seated arbitration under the 2022 DIAC Arbitration Rules in line with the International Arbitration Act, s31(2)(e). Under s31(2)(e), the Singapore High Court could refuse enforcement of a foreign award if the arbitral procedure was not in line with the party's agreement or, failing such agreement, was not in line with the law of the country where the arbitration took place. It was argued the Enforcement Order should be set aside because the arbitration should have been conducted under the DIFC-LCIA Rules of Arbitration, which was a sister organisation of

the London Court of International Arbitration (LCIA) in the DIFC, and not the DIAC Rules. The arbitration stemmed from an arbitration clause in a settlement agreement which was governed by English law and provided for arbitration under the DIFC-LCIA Rules. On 2 April 2022, there were outstanding payments under the settlement agreement, so DFL began arbitration under the DIAC Rules.

However, the DIFC-LCIA (and DIFC-LCIA Rules) had become defunct after Dubai Decree No. 34/2021 on the establishment of the DIAC was issued. This Decree had also abolished the DIFC Arbitration Institute (DAI), which operated DIFC-LCIA, and provided for the transfer of all DIFC-LCIA assets to DIAC. A joint press release by DIAC and the LCIA on 29 March 2022 stated all arbitrations under the DIFC-LCIA, commenced with effect from 21 March 2022, would be registered by DIAC and administered directly by its administrative body in accordance with DIAC's rules of procedure. The main issue for the Court was whether the respondent had submitted to arbitration commenced and conducted under the DIAC Rules with respect to the application before the DIAC tribunal for the issue of the Provisional Award, by which that tribunal granted a proprietary injunction and a freezing order against the respondent.

The respondent had expressly reserved its rights with respect to the Decree and its impact on the arbitral proceedings in its answer to the request for arbitration and raised jurisdictional objections in its statement of defense. They had also contested the merits of the Application while reserving their rights to raise jurisdictional objections to the Application but had not ultimately done this.

WHAT WAS DECIDED?

The court stressed the applicant had accepted that agreement for arbitration under the DIFC-LCIA Rules had been frustrated by the Decree and they had been correct in making this claim. In the US Court of the Eastern District of Louisiana ruling in *Baker Hughes Saudi Arabia Co Ltd v Dynamic Industries Inc and others* (Civil Action No. 2:23-cv-1396 (E.D. La. Nov. 6, 2023)), the Court had found the 'Parties' submission to arbitration was purely contractual.

They could not be compelled to arbitration under a set of rules that they had not agreed to. The Decree could not force an arbitration under the DIAC Rules on the respondent without their agreement.

On that basis, the court also rejected the potential application of a contractual severance clause in the Settlement Agreement, which if provisions were or were to become illegal, invalid or unenforceable allowed them to be severed and replaced with a lawful substitute provision which gave effect to the contracting parties' intentions.

The Court felt the arbitration procedure under the DIAC Rules was not in accordance with the parties' agreement for arbitration under the DIFC-LCIA Rules.









Express agreements on institutional rules concerned the arbitration's basic architecture and typically had a substantial impact on the arbitral proceedings. It was a stretch to say the parties intended, at the time they signed the Agreement, to accept arbitration administered by any institute in Dubai (whether it existed then or not) regardless of the rules under which the arbitration would be conducted. There were significant differences between the DIFC-LCIA Rules and the DIAC Rules that meant an arbitration under the DIAC Rules was fundamentally at odds with the parties' intention. However, in the end, the court found the respondent had submitted to the tribunal's jurisdiction with respect to the Application as they had not sufficiently qualified their conduct when contesting the Application's merits that it could be concluded their conduct did not amount to an unequivocal submission to the Tribunal's jurisdiction. They had reserved their position and raised jurisdictional objections in their statement of defense but not raised any jurisdictional objections specifically with respect to the Application, submitted their answer to the Application and skeleton argument on the Application 'without prejudice' to its jurisdictional objections. The Court found the respondent had shown 'an unequivocal, clear and consistent intention to submit to the tribunal's jurisdiction with respect to the Application'. This was confirmed by the respondent accepting the test applicable to the award of interim relief under Article 1.3, Appendix II to the DIAC Rules. The fact the respondent chose to contest the Application on its merits without raising jurisdictional objections could only mean as far as the Application was concerned, they were not relying on or were waiving the jurisdictional objections in the statement of defence, on the basis of clearly inconsistent conduct. The Court dismissed the respondent's application for setting aside.

WHY WAS IT IMPORTANT?

This ruling shows that defaulting DIFC-LCIA arbitration clauses to a DIAC forum under Dubai Decree No. 34/2021 seriously undermines party autonomy in arbitration and would raise concerns with an experienced, international arbitration judiciary. If clauses are left this way, there can be concerns about the proper enforceability of a DIAC forum against parties that never contracted into DIAC arbitration. Unless there is corrective legislative action, contracting parties with existing DIFC-LCIA arbitration clauses should revise their arbitration obligations to reflect an existing forum of their choice, e.g. the LCIA (presently the closest substitute to DIFC-LCIA arbitration). Any jurisdictional objections of forum non conveniens on the basis a DIAC forum is unable to substitute for the former DIFC-LCIA should be advanced consistently both in defense to substantive claims and to any interim applications in order to pre-empt a risk of a waiver of right to object to the DIAC forum (and be taken to have submitted to a DIAC's jurisdiction).

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IN-HOUSE PROFILE

SENIOR LEGAL COUNSEL – PHARMACEUTICALS



All Change

Suzi Duncan Senior Legal Counsel for the GCC region, Novartis explains what it is like to work in a rapidly developing sector in fast moving jurisdictions.

YOUR BACKGROUND

I studied law at Warwick University and trained as a solicitor with Allen & Overy in London, before joining their Restructuring and Insolvency team in London. I worked for two other international law firms in London and Linklaters in Hong Kong. In 2022, Linklaters moved me to Dubai. Restructuring lawyers can be described as a ‘Jack of all trades and master of all of them’ as a typical corporate restructuring transaction includes many different areas of law. Although other experts may provide specific advice, restructuring lawyers must understand, assimilate and clearly communicate these points to clients. They must also identify and consider other potential areas of concern or need. In my current role, I cover an extremely wide range of areas and have to effectively manage significant conflicting needs and requirements. Thanks to my restructuring background, switching from one practice area to another and assimilating and communicating technical concepts to non-lawyers is second nature to me.

YOUR CURRENT ROLE

I am now GCC Senior Legal Counsel at Novartis and provide legal support to all business functions across the six GCC jurisdictions. Having worked in multiple countries in my career I am used to managing the conflicting and complex demands that come with advising six separate jurisdictions. The key to managing this wide remit is reminding myself that I am not expected to be an expert in everything, rather I seek to ensure I always think critically, apply common sense and existing knowledge sensibly, and defer to external experts where appropriate. Novartis is a global pharmaceutical company which is listed on the NYSE and the Swiss Exchange SIX. Although, we are headquartered in Basel, Switzerland, we have a presence in 140 countries including the six GCC countries, Egypt, the Levant, Turkey and Iran. In the GCC, importation and sale of medicines are heavily regulated, and we follow a core policy called ‘Doing Business Ethically’ which, amongst other things, means adhering to all applicable aspects of both local and extra-territorial laws and regulations and aiming for full compliance at all times.

So, regulation and compliance play a huge part in my work. We are an innovative medicines company



which aims to reimagine medicine and improve and extend people’s lives. Access to medicine is a key focus; we want to improve access to healthcare by helping patients worldwide get the medicines they need. As a senior lawyer, I work directly with the head of legal and our leadership team to design, implement and manage projects and processes from start to finish, but also provide day to day legal advice. Our team deals with all legal queries involving commercial and corporate law, governance, finance, intellectual property, antitrust, employment law and litigation, though we have some specialist functions available in Basel to assist with specialist issues. At Novartis, the legal team is not just a support function or cost centre but a trusted business partner. We are encouraged to provide input on all aspects of a matter.

The line between legal and commercial issues can be blurred and we play a key role, as a function, in the decision-making process. With laws and regulations changing so rapidly, acting as a business partner and pushing for inclusion of the legal function at an early stage in all discussions and project planning is vital to staying on top of the evolving needs of our business and, more importantly our patients.

TRENDS AND LAW CHANGES

With populations aging and expanding, and lifestyle diseases becoming more prevalent, healthcare is a priority sector throughout the Middle East.

National Transformation Plans including Saudi Vision 2030 and UAE Vision 2021, and the growing medical tourism market, are having a huge impact on healthcare demand and capacity in our region and will

PRACTITIONER'S PERSPECTIVE



Gloria Estolano
Strategic Partner
M&Co Legal

Gloria Estolano of M&Co Legal looks at current UAE AI initiatives and recent publications.

AI is computer-generated systems capable of performing complex tasks that historically only a human could do, such as reasoning, making decisions, or solving problems. AI consists of applications (apps) that perform complex tasks that once required human input. GenAI is the

latest version of AI technology which can produce several types of content, including text, imagery, audio, and synthetic data. These latest technological advancements are known as Content and/or Image Generators.

These apps enable users to quickly generate new content based on a variety of inputs. Unlike traditional AI systems, which operate based on pre-existing data and rules, GenAI can generate new data and ideas from digital art to novel text compositions. In the health sector AI is being used for a range of applications including medical imaging analysis, drug discovery, identifying risks of diseases and speeding diagnostic processes with deep learning. Where AI performs labour-intensive work such as data gathering, organisation of information, and content production, employee time can be freed up to perform other more skilled work. As with all technology, there are positive aspects as well as limitations. A key concern is the inability of users to identify the source of the resulting information which can make it difficult to assess the bias of underlying sources. This in turn affects the quality of results and content which may contain inaccurate or misleading information.

The UAE has a goal to become one of the leading AI nations by 2031. In 2017, the UAE Strategy for Artificial Intelligence was launched.

Its aims include boosting government performance at all levels, using integrated smart digital systems which can overcome challenges and providing quick, efficient solutions. The UAE's AI strategy aims to make the UAE first in the field of AI investments in a number of different sectors and create a new vital market in this area which has a high economic value. It is hoped this strategy will help facilitate the creation of new educational, economic, and social opportunities for UAE citizens, government, and businesses through the implementation of AI

technologies in a range of different sectors. The AI Strategy is to be implemented in cooperation of multiple-stakeholders, and various local and federal entities. As a result the UAE believes it has a robust foundation for achieving this which is built on its diversified, multinational community, which includes global talent skilled in exploring and testing AI solutions, as well as the country's record in adapting to new and advanced technologies at a faster pace. The UAE Government has established a Minister of State for the Artificial Intelligence, Digital Economy and Remote Working Office. It has also set up the Artificial Intelligence Programme which is open to those in both the public and private sector and aims to help them become AI experts in their field and have thorough knowledge and understanding of the different trends and uses of AI, the application of large language models, methods of adoption, the wider implications and approaches for tackling security and ethical risk. At present, the UAE government is also working towards accelerating the pace of AI adoption through strategic partnerships with both public and private sector entities, and as a result several documents have been issued which cover AI and its development.

These include the National Programme for AI Guide which showcases the UAE government's commitment to becoming an AI technology hub.

Meanwhile in Dubai, the Smart Dubai Government initiative has issued the Smart Dubai AI Ethics Principles & Guidelines which lay out a set of AI ethical principles and associated guidelines.

A self-assessment tool has also been introduced along with the guidelines, to enable "AI developer organisations or AI operator organisations to evaluate the ethics level of an AI system" against the guidelines.

A Generative AI Guide which provides details of 100 Practical Applications and Use cases for generative AI was also issued by the UAE Government last year. This explains AI and generative AI technologies and key challenges associated with them. Meanwhile on the regulatory side, the DIFC issued a second version of its Data Protection Regulations in 2023. These updated regulations introduced detailed and specific requirements from the data protection side, for those who develop, deploy, and operate AI systems.

continue to do so for some time. Digital transformation is another key trend. AI is becoming more prevalent in research and development areas, and we are increasingly working with governments, regulators and healthcare providers to increase access to medicine through digital initiatives.

Internally, we have also recently launched a number of digital legal tools to help our associates draft and manage low-risk contracts without legal team involvement, including a chatbot and contract automation system. The GCC is also at the forefront

of change in IP laws and regulations and our team is frequently seeking to engage with government on key issues. Further, in Saudi Arabia the new civil transactions law (Saudi Arabia Cabinet Decision No. 820/1444) and economic participation policy are continuing to change our operating landscape, while in the UAE, stricter regulations on healthcare professionals were introduced in 2023 and there have been updates to existing regulations on the supply/distribution of pharmaceuticals, all of which represent exciting new progress and areas of focus.

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

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STEAMING AHEAD

The latest rounds of promotions at HFW have included five individuals in the firm's Dubai office. There is now one new partner, a new Legal Director and three new Senior Associates there. Three of those promoted - Rami Al Tal, Andrzej Czernis and Luke Fittis are members of the firm's Dubai shipping team. Al Tal who specialises in areas including debt recovery, banking disputes, shareholder disputes, labour disputes, and shipping disputes is now a Partner. While Czernis who specialises in transactional shipping, but focuses on the LNG sector in particular, is now a Senior Associate. He advises on shipbuilding contracts, charterparties, and related financing arrangements, finance transactions and sale and purchase transactions.

Meanwhile, Fittis who specialises in commercial dispute resolution, with a strong emphasis on international trade is also now a Senior Associate.



The other promotions include Luke Garrett who works in the Insurance and Reinsurance team and has become a Legal Director. Garrett acts as counsel on various insurance-related issues, such as insurance claims, subrogated recoveries, and coverage matters within marine, trade credit, liability, cyber, and property insurance sectors. He is also actively involved in international arbitrations and complex litigations in the English High Courts, DIFC, and ADGM Courts, as well as supervising local UAE court litigation.

Finally, a third new Senior Associate at HFW in Dubai is Tanisha Saxena who works in the Commodities team. She specialises in international fraud and insolvency dispute resolution. In addition, she handles complex, cross-border, and high-value disputes, often under the jurisdiction of the DIFC Courts, the ADGM Courts, and local onshore Courts.



PRACTICE MEANS PROJECTS

Prakruthi Gowda has joined Norton Rose Fulbright as a Partner in their projects practice in Dubai. Gowda worked previously for Clifford Chance and has extensive experience of working on energy and infrastructure projects across the globe, which have included a number of first-of-a-kind projects in energy transition.

She regularly advises lenders and sponsors on both commercial contracts and financing aspects of energy and infrastructure projects.

She also frequently advises financial investors on their investments and exits in the energy and infrastructure sector.



OVER IN EGYPT

Mohamed Essam has been promoted to Partner at the Egyptian law firm Matouk Bassiouny. Essam will also act as the firm's Head of Fintech Emerging Companies and Venture Capital (ECVC).

Essam has over a decade of experience of working in venture capital and corporate M&As and has assisted startups and venture capital companies. He works with local, regional, and international clients, and has completed over 100 successful transactions and representations.

The full-service firm has also promoted Samih M Talaat to Partner in their Corporate and M&A practice group.

Egyptian specialist Talaat has extensive experience of handling mergers and acquisition transactions, corporate matters, and of legal compliance.

In the past he has represented major private equity firms, multinational corporations, and Egyptian companies in a range of M&A transactions.

He also advises clients on complex mergers, acquisitions, and capital market projects.

In addition, he has a focus on due diligence, restructuring, and negotiating critical agreements including Share Purchase Agreements and Shareholders' Agreements.

ALL TOGETHER

On 1 May 2024, a number of new appointments were made as part of the merger of Allen & Overy and Shearman & Sterling.

The new firm will be known as A&O Shearman. Khalid Garousha, who was A&O's interim global managing partner

FINTECH AND FINANCIAL SERVICES

Anna Zeitlin has joined Addleshaw Goddard in Dubai where she will be the Head of the Fintech and Financial Services Regulatory practice.

In the past Zeitlin has worked in senior positions at a number of prominent international law firms and financial institutions including PWC.

She has a deep knowledge of the regulatory framework in the GCC region and is an expert in both fintech and financial services law.

OTHER CHANGES

Linklaters: Sergey Shiposha and Leila Amos, who are based in Dubai, and specialise in Capital Markets and Energy & Infrastructure, along with Faysal Lassas and Claire Neil from the Mainstream Corporate practice in Abu Dhabi are now Counsel.

Cyril Amarchand Mangaldas: Indian law firm Cyril Amarchand Mangaldas (CAM) has announced it is to establish an office in the ADGM, where it will provide investment fund, banking and finance, taxation, trusts, arbitration, financial regulatory compliance, insolvency, antitrust, insurance, technology, media, telecommunications, ESG and intellectual property services.

Arbor Law: Arbor Law has announced the opening of a new office in the UAE.

I MOVERS AND SHAKERS I

and Middle East and Turkey regional managing partner, takes the helm of A&O Shearman as its first senior partner.

Hervé Ekué, Shearman's current Paris managing partner, has assumed the role of managing partner for the combined firm.

There had also been other recent changes at Allen & Overy (A&O) who opened a new Riyadh office which will be led by Hosam Ibn Ghaith and Haris Meyer Hanif.

These two partners have extensive experience and a deep understanding of Saudi corporate law, capital markets, and Islamic finance.

Ghaith previously worked as General Counsel at Hassana Investment Company and has almost two decades of experience in advising on complex transactions across various sectors.

Meanwhile Haris Meyer Hanif, is known for his expertise in finance and restructuring, and in the past has worked for a number of leading law firms in the region, including Freshfields Bruckhaus Deringer, where he was Head of Finance in the MENA region.

Others joining the team in Riyadh include Dr Sultan Almasoud and Mohsin Suleman who previously worked at Shearman & Sterling.

THE NEXT MOVE

Funds Partner James Burdett has moved from Baker McKenzie's London office to their Abu Dhabi offices as part of the firm's plans to enhance their transactional practice group across the MENA region, particularly when it comes to intricate investment fund and private equity transactions. Burdett has led the London office Investment Funds Group for 19 years. His expertise spans various institutional funds and investment structures, and includes sectors such as private equity, real estate, infrastructure, environmental markets, and energy transition. He also has extensive experience of advising sovereign wealth funds and other financial institutions on multifaceted investment and asset-holding arrangements.

YOU ARE WELCOME

Global law firm Greenberg Traurig has strengthened its real estate and hospitality team in the Middle East with two new appointments in their Dubai office.

Senior Associate Samantha Shaw and Associate Dani French have joined their Middle East Regional Real Estate and Hospitality Practice. They will provide comprehensive assistance to clients on real estate, development, and hospitality matters both across the Middle East and globally. Samantha Shaw, previously worked for White & Case in Dubai, and has extensive expertise in handling acquisitions, dispositions, musataha agreements, and ground-lease developments for large-scale commercial and industrial properties across the UAE. She has spent almost a decade in Dubai, and has advised master developers, government entities, sovereign wealth funds, and hospitality projects in Saudi Arabia. Dani French was previously with Ashurst in Sydney, and specialises in the commercial real estate, energy, and hospitality sectors. Her experience includes conveyancing, due diligence for property acquisitions, large-scale commercial leases, and energy projects involving solar farm developments and BESS facilities in Australia and New Zealand. She has also worked in-house with a regional electricity provider in New Zealand.

HEADING UPWARDS

Eileen Duncan who has spent the last two decades with Trowers & Hamlin has relocated to the UAE. Duncan will take on the role as the new Head of Real Estate, Middle East. Previously she was based in London. In her expanded role, Duncan will drive the firm's Middle East real estate initiatives, ensuring seamless integration with other departments so comprehensive client services can be provided. She will also maintain close collaboration with UK colleagues, facilitating real estate investments between the Middle East and the UK.

NEXT STEP SAUDI

Uppercase Legal Advisory DMCC which launched its UAE operations in December 2023 has announced plans to begin operations in Saudi Arabia in the

second quarter of 2024. To support this expansion and the ongoing strengthening of their operations in the UAE the firm has made three key promotions. Ratmir Proskurnov has become the deputy managing partner, while Alexandra Khokhlova is now the head of corporate practice, and Tamrin Darbakov has become the director of external affairs.

NOT DISPUTING IT

Claims advisory and dispute resolution experts HKA has appointed Darren Mullins as a Partner in their Forensic Accounting and Commercial Damages (FACD) team. Mullins who has over 18 years of experience and is an expert in forensic and cyber investigations will be based in Dubai. He specialises in financial crime, digital evidence recovery, electronic discovery, and data analytics, and has worked across a large range of industries. He has previously worked for firms including Accuracy, KPMG, Deloitte and EY, and has led teams in delivering forensic investigations services tackling fraud, financial crime, cyber breaches and intellectual property theft. He also acts as an expert witness.

FULL OF ENERGY

Tallat Hussain is to join Reed Smith as a partner in their Energy and Natural Resources Group, based in the London office. With decades of specialist environmental, social and related governance (ESG) experience, she has advised on large-scale project development, M&A transactions, private equity, and corporate compliance. Her global practice spans the Middle East, the Americas, UK, Europe, Africa, and Asia. In her new role, she will assist clients in developing innovative approaches to resource management including monetising carbon reductions and trading, ESG-linked financing structures, sustainable Islamic finance solutions and implementation of local, national and regional climate change policies. She also advises on corporate compliance, human rights, and biodiversity.

SEND US YOUR NEWS

If you have news of an appointment or promotion within the legal or financial professions you would like to see reported in Lexis Middle East Law, please send details to: bonolo.malevu@lexisnexis.co.za





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Unifying Court Views on the Executive Nature of Returned Cheques

Waleed Hamad, Head of Litigation and Myriam Simon, Senior Counsel – Litigation at Al Aidarous explain the lessons on the executive nature of unpaid cheques following a Federal and Local Judicial Principle Unification Authority ruling on Case No. 1/2023.

The Federal and Local Judicial Principle Unification Authority was established in line with Federal Law No. 10/2019, and oversees judicial relations between Federal and Local Judicial Authorities. Article 635 Bis of Federal Decree Law No. 14/2020 (which amended a number of provisions in the Commercial Transactions Law (Federal Law No. 18/1993)) stated: ‘that a cheque, which bears the drawee’s stamp as non-paid for unavailable or insufficient fund, shall constitute an executive instrument as per the Executive Regulation of the Federal Law No. 11/1992 and its bearer shall have the right to demand the coercive enforcement, wholly or partially. With respect to its enforcement and dispute related to it, provisions, procedures and rules provided for in the said Executive Regulation shall apply.’ The equivalent provision in the new Commercial Transactions Law (Article 667 of Federal Decree-Law No. 50/2022) states: ‘1 The cheque where to a notice of unavailability or insufficiency of funds is affixed by the drawee shall constitute a writ of execution, and its bearer may request its full or partial compulsory execution. 2 The provisions, procedures and rules set out in the Civil Procedure Law (Federal Decree-Law No. 42/2022) shall govern the execution thereof and the challenge thereto’. Therefore, according to these Articles, a returned cheque is considered an executive instrument only in cases of insufficient funds or the unavailability of funds, and there is no mention of other reasons for a cheque being returned.

DUBAI COURT’S APPROACH

The Dubai Court of Cassation in DCC Case No. 888/2022 dated 5 April 2023, ruled that a returned cheque, except in cases of the reasons outlined in Article 635 Bis of Federal Decree Law No. 14/2020, should not be treated as a writ of execution. The judgment was driven by the court of cassation interpretation of the legislator’s clear intent to confine this solely to cases of insufficient or unavailable funds.

ABU DHABI COURT’S APPROACH

In Case No. 460/2023 dated 21 June 2023, the Abu Dhabi Court of Cassation asserted that a cheque returned due to the closure of the payer’s account had a similar impact to a cheque marked as returned due to insufficient or unavailable funds. The Abu Dhabi Court then specified that such cheques should be considered as executive instruments, regardless of the provisions outlined in Article 667 of Federal Decree-Law No. 50/2022. In contrast to the Dubai Court, the Abu Dhabi Court considered that a cheque returned due to the closure of the account should be treated as an executive instrument.

AUTHORITY RULING

Given these contradicting judgments, the Attorney General put these conflicting judgments before the Federal and Local Judicial Principle Unification Authority for review.

The authority upheld Abu Dhabi Court approach as account closure was not covered in Article 667, the result for the cheque holder is the same as if the cheque was returned for insufficient or unavailable funds. It was decided an account closure was equal to the indications of a ‘lack of balance’ or ‘insufficient balance’ stated in Article 667 of Federal Decree-Law No. 50/2022. The rationale for this is rooted in the belief that treating an unpaid cheque as a writ of execution in some cases but not when it involves the closure of an account leads to unequal treatment among creditors, even though the outcome is the same for the cheque holder. The significance of the decision lies in its impact on cheque holders. If an unpaid cheque is recognised as a writ of execution, it expedites the recovery process but if a cheque is returned due to an account closure, the cheque holder would have to undergo the full standard trial process rather than direct execution.

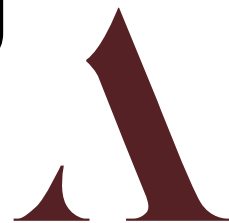


AL AIDAROUS OPEN NEW ADGM OFFICE IN AL REEM ISLAND

Al Aidarous has officially opened a new office at the Abu Dhabi Global Market (ADGM) in Al Reem Island, Abu Dhabi. The official ribbon cutting ceremony to mark the office opening was conducted by HE Salem Al Darei, CEO of ADGM Authority, and Managing Attorney Ali Al Aidarous. Other distinguished guests in attendance included Linda Fitz-Alan, Registrar and Chief Executive of ADGM Courts.

Al Aidarous is proud to be the first law firm to be licensed to open an office in Al Reem Island under the new ADGM licensing regime following the ADGM's expansion into Al Reem. The move highlights the firm's commitment to supporting ADGM's vision and attracting international and regional companies to Abu Dhabi. Having served clients in the UAE for over 27 years and in Abu Dhabi for over 15 years, Al Aidarous is now better placed to enhance its service provision to the ADGM community.

To find out more about the services available at Al Aidarous's ADGM Al Reem Island office contact Hashem Al Aidarous, Partner at hashem@alaidarous.ae



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STRIKING A BALANCE

Waleed Hamad, Head of Litigation and Myriam Simon, Senior Counsel – Litigation at Al Aidarous look at the crucial role of banks in providing financial facilities with regulatory safeguards for public interest.

Article 121 (bis) of Federal Decree-Law No. 23/2022 amending certain provisions of Federal Decree-Law No. 14/2018 Concerning the Central Bank, and the Regulation of Financial Institutions and Activities states: '1 Licensed financial institutions must obtain sufficient guarantees for all types of facilities provided to clients, whether individuals or private entities, in accordance with the client's income, or the guarantee - if any - and the required size of the facilities as determined by the Central Bank. 2. No request, claim, or payment shall be accepted before judicial authorities or arbitration bodies if raised by any licensed financial institution regarding a credit facility granted to an individual or private entity in case they do not obtain the mentioned guarantees in item (1) of this Article. 3 The Central Bank may impose administrative and financial penalties deemed appropriate on licensed financial institutions that violate the provisions of item (1) of this Article'. This decree came into force on 2 January 2023 and Article 121(bis) compels banks and financial institutions to secure adequate guarantees before extending any form of financial facilities to their clients. If there is a failure to adhere to this requirement any subsequent claims made by the bank against its client would be deemed invalid. However, it is important to

note this legislation solely covers individuals and sole proprietors, and does not mention other types of legal entity. Retroactive enforcement is also not stipulated.

CIRCULAR NO. 9/2022 AND ITS EXPLANATORY CIRCULAR NO. 3/2023

After Federal Decree-Law No. 23/2022 was promulgated the Abu Dhabi Judicial Department issued Circular No. 9/2022 and an explanatory Circular No. 3/2023 to clarify Article 121(bis) and broaden its applicability.

The Circular aimed to address three concerns - the retrospective implementation of the Decree to all bank facility agreements, irrespective of their date of inception; the broadening of the Decree's application to all recipients of financial facilities, whether they are individuals, establishments or companies and that in the context of judgments rendered before the issue or enforcement of the Decree, execution should be restricted solely to the guarantees furnished by the customers, rather than involving the guarantor or customer personally.

IN THE CONTEXT OF JUDICIAL PROCEEDINGS

In the Abu Dhabi Court of Cassation Case, ADCC Case No. 480/2023, issued on 25/5/2023, Federal Decree-



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Law No. 23/2022 was invoked on financial facilities issued before the Decree in line with the Circular.

Abu Dhabi Court of Cassation Case No. 1450/2023, dated 19/9/2023 related to a financial institution, had initiated legal action against a corporate debtor and an individual guarantor to recover outstanding financial obligations.

Based on Article 121 of Federal Decree-Law No. 23/2022, the Court of First Instance rejected the financial institution's claim, and this decision was then subsequently upheld by the Court of Appeal.

However, the financial institution appealed this ruling to the Abu Dhabi Court of Cassation arguing that the Decree specifically addressed natural persons and sole establishment excluding legal entities (such as companies).

They also contended that the facility agreement had been concluded before the Decree came into effect.

The Abu Dhabi Cassation Court rejected this defence, stating that the Circular issued by the Judicial Council had expanded the scope of the Decree to include companies, regardless of the date of the facility agreement's conclusion. In cases where judgments were rendered before the enactment of the Decree, and the court compelled debtors to pay the facility

amounts, some debtors sought to limit enforcement to the securities provided. This was decided in the execution No. 767/2017 upheld by the Abu Dhabi Court of Appeal judgment in case No 663/2023.

DUBAI COURT VIEW

There have also been cases on this subject heard by the Dubai Courts. For example, in the Dubai Court of Cassation Case No. 1738/2023 which was issued on 4/4/2024, a lawsuit was filed by a bank against an establishment main debtor and its owner as guarantor to demand joint liability for the outstanding facility amount. The Court of First Instance ruled to compel them to joint liability as determined by the appointed expert, and this decision was then upheld by the Court of Appeal. Subsequently, both the establishment and the guarantor appealed this ruling, raising the application of Article 121 Bis of Federal Decree-Law No. 23/2022 and the Circulars. However, the Dubai Court of Cassation then rebutted these claims, stating that laws do not have retroactive effect unless it is explicitly stated, and there was no provision doing this in Federal Decree-Law No. 23/2022. In addition, these two Circulars did not bind the Dubai courts as they operate autonomously, from the Abu Dhabi Judicial Council.

Unforeseen Emergency



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On 16 April 2024, the UAE experienced its heaviest rain in 75 years, which caused widespread disruption and damage. Oman, Bahrain, Qatar and parts of Saudi Arabia were also impacted.

CONTRACT AND EMERGENCY

The first question with civil liability is always ‘what does the contract say?’ However, exceptional circumstances, such as the recent rains, may not always be provided for in a contract. In such cases even where provision has been made, Article 249 of Federal Law No. 5/1985 will come into play. Article 249 states: ‘If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor so as to threaten him with grave loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests of each party, to reduce the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void.’ This provision is considered an

exception to the general rule that it is not the judge’s function to create or vary contract terms on behalf of the parties.

The UAE legislature has restricted the application of Article 249 to ‘unforeseen emergencies’ which were not foreseen at the time the contract was formed, and which render performance of the relevant obligation burdensome or onerous, but not impossible. Such an event must also be of a ‘public’ nature which means that it affects the entire industry rather than a particular company or project. According to the Egyptian jurist Al Sanhuri, examples of ‘exceptional emergencies’ include earthquakes, wars or epidemics, and floods. The application of Article 249 would result in the reduction of the obligation to a reasonable level, so the consequences are borne by both parties.

It should be noted that there is a difference between unforeseen emergencies of a public nature which render performance of contractual obligations ‘onerous and excessive without reaching the level of impossibility’ and force majeure events under Article 273 of Federal Law No. 5/1985 which render the performance of an obligation impossible and result in

its termination.

CONTRACT AND THE RAINS

Parties to contracts subject to UAE law must consider the impact of the April storms on the performance of their own and other parties’ obligations in order to determine whether (and, if so, to what extent) Article 249 of Federal Law No. 5/1985 on ‘unforeseen emergencies’ or Article 273 Federal Law No. 5/1985 on ‘force majeure’ might apply.

Those who consider arguing based on Article 249 to reduce their obligation to perform should note that an increased burden in itself is insufficient.

The performance must carry with it the threat of ‘grave loss’ in order for the principle to apply. On the other hand, those who seek to resist the application of Article 249 may argue that these storms were foreseen (or at least ought to have been foreseen) as this was not the first time that heavy rains have been seen in the UAE, and therefore the judicial discretion provided for in this provision is simply not engaged. They might even argue, for example, that even if this particular storm was not foreseen at the time the contract was formed, the parties would have expected what could happen in the event of extreme adverse weather in general and so can be taken to have envisaged these types of circumstances.

However, these arguments would be against the spirit of Federal Law No. 5/1985 and the Islamic law principle (Udur) which the provision is derived from.

Even if a contract has terms specifying how the risk of extreme weather events are borne, Article 249 allows the Court to step in and reduce the oppressive obligation to a reasonable level if justice so requires.

This article was co-written by Lee Schama and Noran Al Mekhlafi



Contributor
Chatura Randeniya
Afridi & Angell



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If you would like to hear more about how our lawyers can help you throughout the Middle East from our offices in Qatar, the United Arab Emirates, Saudi Arabia and our network across the region, please contact the individual below who would be delighted to tell you more about our services and introduce you to colleagues across the region.



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Saudi Arabia

Senior Counsel, Anti-Bribery and Anti-Corruption

We are currently working on an exciting opportunity with one of the world's most successful companies in Saudi Arabia who are looking to hire a Senior ABC Counsel. The successful candidate will provide legal advice on a multitude of complex issues related to global anti-bribery and anti-corruption laws and regulations. Applicants must be licensed, admitted to practice, and preferably have a minimum of 6 years' relevant experience.

Ref: *AHS-IM-15257*

Saudi Arabia

Senior Downstream Corporate Commercial Counsel

Our client is offering an exciting opportunity for a Senior Downstream Corporate Commercial Counsel to advance their career within one of the region's most respected organisations. The successful candidate will possess a substantial track record working within the oil and gas industry. It is preferred that applicants have a minimum of 5 years' experience gained from multinational corporations, in-house departments, or distinguished international law firms.

Ref: *TME-IM-15046*

Saudi Arabia

Senior in Kingdom Litigation Counsel, Energy Sector

Our esteemed client is in search of a skilled Senior Legal Counsel to join the substantial in-Kingdom litigation team. This fantastic opportunity presents the chance for a senior Saudi-qualified lawyer to join one of the region's highly regarded organisations. The successful applicant will have a minimum of 6 years' qualification and extensive experience handling and managing a broad array of in-Kingdom litigation matters.

Ref: *TME-IM-15942*

Saudi Arabia

Senior Tax Counsel, Energy Sector

A distinguished and diversified entity in the Kingdom of Saudi Arabia is seeking to onboard a proficient Senior Counsel to advise on tax and benefits. This role involves offering strategic legal advice and comprehensive support to internal stakeholders. The ideal candidate will have a minimum of 6 years' experience, hold a JD or equivalent, and possess a substantial track record as a tax attorney.

Ref: *SSK-IM-14622*

Qatar

Digital Transformation Specialist

Our client is a leading energy business in Qatar, and due to phenomenal growth plans, they are looking to add a Digital Transformation Specialist to their IT team to play a leading role in the company's tech future. Applicants will have a relevant bachelor's degree, a minimum of 15 years of relevant business experience, and a minimum of 5 years of progressive leadership in leading cross-functional teams and enterprise-wide programmes.

Ref: *PML-IM-15961*

Dubai

Senior Legal Counsel, Trade Finance/Logistics

We are currently working on an exclusive opportunity for a Senior Legal Counsel to join a rapidly scaling business. This is an excellent opportunity where the successful applicant will be responsible for contract reviews, structuring, and negotiation, amongst other commercial and regulatory matters. Ideally, candidates will have a minimum of 7 years' experience working for leading international law firms and in-house functions, and will likely be qualified in a common law jurisdiction.

Ref: *RPG-IM-15951*

Abu Dhabi

Senior Legal Counsel, Corporate/Commercial

A leading government entity based in Abu Dhabi is looking for a Senior Legal Counsel to join the team. In this role, the successful applicant will report directly to the CLO in a position of seniority and play a pivotal role in the legal affairs of the department. An Emirati legal qualification is essential, with at least 8 years' experience in an international law firm or in-house organisation.

Ref: *RPG-IM-15894*

Qatar

Legal Counsel, Manufacturing (Aerospace)

Our client, an internationally recognised manufacturer with a global presence, is offering an excellent opportunity for a Legal Counsel to join their team in Doha. Key responsibilities will include a focus on commercial contracts, construction, procurement, and project development. Applicants will preferably have gained a minimum of 3 years' legal experience working for international law firms or in-house legal teams, and must be legally qualified in the UK, Australia, Canada, or New Zealand.

Ref: *RPG-IM-15130*

For more information or to discuss any of these roles please contact Iain Rainey at iain.rainey@jamesonlegal.com, or Jeremy Small at jeremy.small@jamesonlegal.com.