

LEXIS MIDDLE EAST **LAW ALERT**

تشريعات الشرق الاوسط

August/September 2024

www.lexis.ae

FEATURE FULL FORCE OF THE LAW

Qatari Enforcement Law

PROFILE FINANCIAL MARKETS

Aiman Khair of the Qatar Stock Exchange

CONTRACT WATCH

Non-compete clauses

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

CALLING FOR CHANGE

Telemarketing Law
Changes in the UAE



Is Your Company in Compliance With the Saudi Arabia Data Protection Law?

Know Your PDPL Responsibilities

1 Select a legal basis for processing

2 Implement processing principles

3 Appoint a data protection officer

4 Establish a privacy policy

5 Draft privacy notices

6 Record processing activities

Conduct impact assessment

Secure agreements with processors

Abide by data retention rules

Abide by data destruction conditions

Adhere to data subjects' rights

Ensure notification of data breach

7

8

9

10

11

12

Learn everything you need to know in crystal-clear format with our **KSA Data Protection Toolkit**.



The Lexis Middle East Law Alert magazine is produced by the Lexis Middle East Law online legal and business research service. To find out if you qualify to be added to our regular circulation go to: www.lexismiddleeast.com

Follow us on Twitter:
<https://twitter.com/lexismiddleeast>

ADVISORY BOARD

Zaid Mahayni (IT Services)
Radwa Salah Elsaman (Technology)
Fawaz M A Alawadhi (Consumer)
Lorenzo Bruttomesso (Energy)
Justin Dowding (Online Media)

EDITORIAL

Editor
Claire Melvin
+44 (0) 20 7347 3521
claire.melvin@lexisnexis.co.uk

Assistant Editor

Bonolo Malevu
bonolo.malevu@lexisnexis.co.za

SUBSCRIBE

To join our free controlled circulation contact Tanya Jain
tanya.jain@lexisnexis.com

MIDDLE EAST REGIONAL SALES

Abbey Bergin
abbey.bergin@lexisnexis.com
+97145601200

PRODUCTION

Senior Designer
Jack Witherden

ENQUIRIES

UK
Lexis House, 30 Farringdon Street,
London EC4A 4HH
Tel: +44 (0)20 8686 9141 or
Fax: +44 (0)208 212 1988

France
LexisNexis SA,
141 Rue de Javel,
75015, Paris
France
Tel: +33 (0) 145 58 90 43

This product comes from sustainable forest sources.

Reproduction, copying or extracting by any means of the whole or part of this publication must not be undertaken without the written permission of the publishers.

This publication is intended to be a general guide and cannot be a substitute for professional advice. Neither the authors nor the publisher accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this publication.

© 2024 Reed Elsevier.



Zaid Mahayni
Sedco Holding



Radwa Salah
Elsaman
Tetra Tech



Fawaz M A
Alawadhi
Alghanim Industries



Lorenzo
Bruttomesso
Oman LNG L.L.C



Justin Dowding
ByteDance &
TikTok

HOT ON COLD CALLING

There are some experiences wherever you are in the world you can identify with - and among those is the frustration which comes from being interrupted by unwanted and sometimes persistent telemarketing calls. With growing numbers of us now working more frequently from home such unwanted interruptions are potentially also now more common and more damaging. A number of other countries including the UK, USA, Canada and South Africa have recognised the problems calls of this type can cause consumers and have put Do Not Call registers in place that people can opt in to and telemarketers must check against before making any call. As part of a wholesale reform of this area following the issue of two new laws, the UAE has followed suit and as we explain in this issue, is also establishing a Do Not Call register.

However, what is interesting about this new regulatory regime is just how wide ranging and innovative it is. For a start it covers the whole country - including freezones but it is also more stringent than the regime in many other countries.

When it comes to telemarketing the risks can go beyond simply 'annoying' potential customers as phone calls can potentially come from anywhere. So there is also a risk of consumers being subject to 'sharp' and even potentially fraudulent selling practices which would not be allowed by those operating from the jurisdiction the consumer is in but are difficult to deal with because the telemarketer is actually operating from another jurisdiction.

Therefore it is also encouraging to see with this new regime the UAE authorities are equally determined to tackle that risk by ensuring those telemarketing UAE consumers are locally licensed and calling from UAE numbers.

Claire Melvin - Editor

CONTENTS

FEATURE: CALLING FOR CHANGE	p2
The new UAE telemarketing regime	
FEATURE: FULL FORCE OF THE LAW	p12
Qatari Enforcement Law	
LEGAL ROUND-UP	p6
including DIFC Property Law changes	
LAW MONITOR	p8
including the Implementing Regulations for the Saudi Law on the Rights of Persons with Disabilities	
TAX AND FINANCE ROUND-UP	p10
including Customs voluntary disclosure rules	
IN-HOUSE PROFILE	
Aiman Khair > Qatar Stock Exchange	p19
A Legal Counsel explains how his work is helping to realise the Qatari Financial Sector Strategy.	
MOVERS AND SHAKERS	p21
Round-up of the big moves across the region	
DISPUTE RESOLUTION FOCUS	p24
CONTRACT WATCH	p28
Non-compete clauses	

CALLING FOR CHANGE

Two recent laws have created a stringent new legal framework for telemarketing onshore and offshore in the UAE which comes into force in August. Lama Alkhouli of Maamoun Alkhouli explains how this new regime will operate.

In June two new laws on telemarketing in the UAE - Cabinet Decision No. 56/2024 On regulating marketing via telephone calls and Cabinet Decision No. 57/2024 On the violations and administrative penalties for actions that occur in breach of the provisions of Cabinet Decision No. 56/2024 on regulating marketing via telephone calls were issued," states Lama Alkhouli.

"These new laws apply to all companies licensed in the UAE including those which are located in free zones, which market products or services using marketing telephone calls. Text messages and social media messages which have been initiated by the company and their employees will also be covered."

"As this legislation was published in the Official Gazette on 28 June 2024 and comes into force 60 days



Lama Alkhouli
Legal Consultant
Maamoun Alkhouli
& Associates

after its publication it is set to be enforced on 27 August 2024," Alkhouli continues.

"The aim is to protect consumers from unwanted and/or deceptive marketing calls and to ensure those making these calls comply with ethical and legal standards."

"The UAE Ministry of Economy and the Telecommunications and Digital Government Regulatory Authority (TDRA) which regulates this area in the UAE will also be looking to protect consumer privacy and reduce unwanted interruptions, particularly at inconvenient times," Alkhouli adds.

"TDRA will also work with other regulatory entities on the regulation of specific types of calls. For example, they will collaborate with the UAE Central Bank on the regulation of overseas marketing calls for banking and financial services."

RELEVANT LEGISLATION

Article 3(2) of Cabinet Decision No 56/2024

Natural persons shall be prohibited from making telemarketing phone calls for products or services they provide in their name or in the name of their principals via a fixed or mobile phone number licensed in their name by the telecommunication companies licensed in the State.

(Source: Lexis Middle East Law)

BEFORE STARTING TO TELEMARKE

"Cabinet Decision No. 56/2024 has introduced several new obligations which telemarketers will need to comply with before they start to undertake telemarketing in the UAE," Alkhouli states. "They will need to have first obtained prior approval to do so from the relevant authorities."

"They will also have to ensure their employees have completed the necessary training," Alkhouli continues.

"This will include training on the necessary ethical



© Getty Images/Obanphoto

OTHER RELEVANT GUIDELINES

DIFC Commissioner of Data Protection

The DIFC Commissioner of Data Protection issued guidelines on direct marketing and electronic communications in 2022. Data Protection in the DIFC is covered by DIFC Law No. 5/2020. The guidelines were written before the ‘Do Not Call Registry’ in the UAE existed. However, they provided details of preference services in other jurisdictions and advised marketing lists be cleaned up on a regular basis using such lists. It was also advised any Do Not Call Registry should be checked prior to making a call. When undertaking cold-calling and telemarketing the Guidance advises callers to ensure their Caller ID is available and operational for each cold call. The Guidelines also give advice on uploading contacts from social media.

behaviour and on the basic principles of the use of the ‘Do not call’ register.”

“In addition, in order to practice telemarketing legally they will also be required to only use local telephone numbers with a licensed telecommunications provider which are registered under the telemarketer’s own trade license,” Alkhoulis states.

“In addition, it is also important to note that individuals are not permitted to undertake telemarketing activities in their personal capacity,” Alkhoulis continues.

“It is also necessary for the telemarketer to have established communication channels which can be used for consumers interested in receiving marketing information and the marketer must be able to ensure marketing communications are targeted to these consumers.”

“Telemarketing calls should be recorded and telemarketers must ensure consumers are informed at the start of any call that the call is being recorded,” Alkhoulis explains. “It is important to maintain a record of marketing calls and be able to submit periodic reports to the authorities within one month of the deadline.”

CONSUMER PROTECTION

“As a result of Cabinet Decision No. 56/2024 UAE consumers now have the right to be registered on the ‘Do Not Call’ Register if they do not wish to receive marketing phone calls,” Alkhoulis states.

“As a result, those undertaking the calls are required to have first used that register to check consumer preferences and not to call those who are on the register or who have declined calls.”

“It is important to note that consumers are able to lodge complaints with the authority if they receive unwanted marketing calls,” Alkhoulis adds.

“Consumers, will have this right whether they are on the ‘Do Not Call’ Register or not, if they feel telemarketers have been distracting them or invading their privacy.”

“When it comes to consumer privacy telemarketers are also expected to handle the data they collected from their clients or consumers with respect and practice full confidentiality,” Alkhoulis explains.

“The law prohibits disclosure of a consumer’s personal data without their consent or that data is sold or reprocessed.”

“Telemarketers are also expected to provide data and information about their activities, disclose

how they obtained the consumers’ data, and make sure that data is destroyed within the specified time frame.”

CALL ACTIVITY

“The UAE has been keen to ensure consumers are not unduly disturbed by telemarketing calls,” Alkhoulis states.

“Under Cabinet Decision No. 56/2024 telemarketers can only conduct marketing calls in the hours between 9 AM to 6 PM local UAE time,” Alkhoulis adds.

“They are also prohibited from persistently contacting consumers who have already declined their offers during the initial contact. In addition, only one daily contact attempt with up to two weekly attempts is allowed if initial contact fails.”

CALL APPROACH

“Businesses undertaking telemarketing activity are also expected to give information on their business’s identity and explain the purpose of the call,” Alkhoulis continues. “They are also expected to reveal the source they obtained the consumer’s telephone number from if requested.”

“Telemarketers are also expected to comply with the Code of Conduct issued by the authorities and uphold the highest standards of transparency, credibility and integrity when marketing their products.” Alkhoulis adds.

“This will mean they should avoid using pressurising, misleading or deceptive tactics when selling products or services. They will also be expected to ask whether the consumer is interested in discussing those products or services.”

PENALTIES

“Cabinet Decision No. 57/2024 details the administrative penalties which will apply to those who fail to comply with Cabinet Decision No. 56/2024,” states Alkhoulis.

“Eighteen specific violations and penalties have now been introduced. “It is worth noting that penalties can include warnings, fines, suspension or cancellation of the telemarketer’s license, their removal from the commercial register, and having their communications services cut off.”

“Fines range from 75,000 to 150,000 AED depending on the violation,” Alkhoulis adds.

“They will also increase depending on the number of times the specific violation has taken place. Individuals who breach these laws can also be fined between 5,000 and 20,000 AED. Therefore it is vital that any business or individual who is currently involved in telemarketing activities urgently reviews their current practices, policies and staff training.”

Assistance with this article was provided by Luwam Fikadu

INDIVIDUAL EMPLOYMENT CONTRACTS: A GUIDE FOR EMPLOYERS AND WORKERS

BY ESSA BIN MOHAMMED AL SULAITI



- Your go-to manual on wages, end-of-service payment entitlements, employee leave, termination, and much more
- A must-have reference for Employment Law lawyers and in-house counsel in Qatar


AVAILABLE NOW ON:
WWW.LEXIS.AE

LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE


UAE

INACTIVE SPONSORS

 Ministerial Decision No. 318/2024, On the Mechanisms for Dealing with Establishments That Have Registered Workers and Do Not Actually Practise the Licensed Activity has been issued in the UAE. It covers the mechanisms for dealing with employers which have no real employment relationship with the workers who are registered with them and do not actually practise their licensed activity.

The Ministry of Human Resources and Emiratisation (MOHRE) will use its inspection system and other mechanisms to identify employers of this type. Penalties will include suspending work permits, imposing fines under Cabinet Decision No. 21/2020, and reclassifying the facility as a third category company. The Ministry will also stop offering services to violating companies apart from those involving the cancellation of work permits or valid registration of absconding employees.

MOHRE FEES AND FINES

 The Ministry of Human Resources and Emiratisation (MoHRE) has introduced a new service that allows customers to pay Ministry fees and administrative fines in instalments. This option will be available for those with credit cards from five participating banks - the Abu Dhabi Commercial Bank, Commercial Bank International, Commercial Bank of Dubai, Mashreq Bank, and Rakbank. Those interested in using this service should contact their bank. The minimum instalment will be Dh1,000 with Abu Dhabi Commercial Bank and Dh500 in the case of the other four banks

INDUSTRY REGULATION

 The UAE Government has approved parliamentary recommendations to update Federal Law No. 25/2022 which covers industrial regulation and development. The proposals include providing benefits and exemptions to six types of industrial establishment

which are 100% owned by citizens. The amendments would be made to Article 7 of Federal Law No. 25/2022 which covers industries including those which implement sustainable manufacturing policies, whose work is based on advanced technology in industrial systems and solutions and are based on the exploitation and development of natural resources in the State.

DIFC

PROPERTY LAW CHANGE

 The DIFC has issued a consultation which will see changes to its Real Property Law (DIFC Law No. 10/2018) and the DIFC Real Property Regulations. The changes will impact the purchase of Off Plan Lots, the purchases with a Mortgage, and entering into Leases if the property is within the DIFC. Proposed changes include increasing the period to Register an Off Plan Sale in the Off Plan Register from 30 to 60 days. The timeline for when an Off Plan Sales Agreement can be terminated by a Prospective Owner if a Developer fails to provide a Disclosure Statement after the parties have entered into an Off Plan Sales Agreement may also be clarified. The introduction of a Mortgage Registration Fee in the DIFC based on the Mortgage amount, in line with the fee that applies onshore in Dubai has been proposed along with a standard lodgement fee of \$100 for all Mortgage Instruments being Registered in the DIFC (and \$273 for Islamic Mortgages). An increase in the period to Register a Lease from 20 to 30 days has also been proposed. The consultation ends on 2 August 2024.

SAUDI ARABIA

NEW ANTI-CORRUPTION LAW


 The Saudi Arabian Council of Ministers has approved a new Oversight and Anti-Corruption Authority Law. The law will help strengthen the Authority's powers and will enable the recovery of funds and proceeds resulting from these offences. The Authority will be responsible for a number of different types

of corruption including bribery, assault on public funds, abuse of power, and any other crime classified as a corruption crime under statutory provisions.

INDUSTRIAL PROJECTS

 The Saudi Industry and Mineral Resources Ministry has emphasised the need for those with an industrial project there to notify the authorities of any changes. Where there is either a modification, expansion or suspension of work on an industrial project it is necessary to notify the authorities through the industrial licence amendment service via the Ministry's 'Senaei' platform.

BUILDING CODE

 The Saudi Ministry of Municipal Affairs and Housing has announced changes to the building code which applies to residential property in Saudi. As a result the maximum height of residential villas has been increased from 12 meters to 14 meters. Basements can now be used for housing purposes in residential villas and residential buildings if ventilation and natural light is provided in line with Saudi building code requirements. However, buildings with more than four floors will now need to have a garbage disposal facility that is open on each floor and also connects to a collection room on the ground which has a self-closing door which opens to the outside.

QATAR

LEAVING THE COUNTRY

 The Qatari Interior Ministry has announced a new regulation which will require all residents and visitors to settle any outstanding traffic fines before they will be able to exit the country. The new rule will come into effect on 1 September 2024. From that date, anyone who attempts to leave Qatar by land, air, or sea will be prohibited from doing so until they have paid any pending traffic offence fines. As a result travellers will need to

check they have no unsettled fines and pay any outstanding amounts through the Metrash2 app, the Ministry's website, traffic police sections, or at unified service centres before they can leave the country.

PATENT FEES

 The Qatari Intellectual Property Rights Protection Department of the Ministry of Commerce and Industry has issued a Directive (Qatar Circular No. 2/2024) on patent annuity fees. As a result patent applicants will be able to opt not to pay the annuity fees for the first year if their application is still pending. The third year is calculated from the date of filing or from the international filing date if the application is a PCT-national phase application. However, once the Patent Office has issued a grant decision, the applicant must pay all overdue annuities as well as the grant fees. Any subsequent annuities can be paid on the respective due dates.

OMAN

WAREHOUSE GUIDE

 The Omani Transport, Communications and Information Technology Ministry and the Ministerial Committee for the Development and Enhancement of the Logistics System and Border Crossings have issued a Unified Guide to Warehouse Standards and Requirements. This new guide covers a wide range of warehouse management areas, including tailored designs for different materials, optimal storage capacities, efficient operational workflows, and robust safety and environmental protocols.


SECURITIES SETTLEMENT RULES AMENDED

 The Omani Financial Services Authority (FSA) has issued Decision 127/2024 which amends the regulations on clearing and settlement. There has been a minor change to Article 14 of Oman Ministerial Decision No. 75/2022, which outlines the recording of securities transactions in the electronic system. When executing a sale or

purchase, securities are recorded as 'Deemed Sold Awaiting Settlement' or 'Deemed Bought Awaiting Settlement, Sale Permitted'. Ownership is registered with the buyer on the day of settlement, and this settlement is considered final. In addition, the amendment has added that settlement cannot be conditional or deferred.


BAHRAIN

SKILLS CHECKS

 The Bahrain Labour Ministry and a number of other authorities including Tamkeen are set to introduce new regulations which would require mandatory skill assessments for 25 different trades. The new regulations would require all those wishing to practise any of the designated trades in Bahrain to have obtained a licence after passing a skills assessment exam. Foreign workers who fail to pass the exam would then have their work permits withdrawn. The relevant trades would include mechanics, a number of different trades in the construction industry, those operating factory equipment and health and safety officers. The regulation would not apply to electricians, plumbers, and air conditioning technicians, as these professions are already regulated by other government entities. Licences will also be granted to institutions which wish to conduct these assessments, and to the assessors who will work for these bodies.

TURKEY

CONSUMER LAW CHANGES

 A draft law which will change the Consumer Law (Turkey Code No. 6502/2013) and Electronic Commerce Regulations (Turkey Law No. 6563/2015) has been submitted to the Grand National Assembly in Turkey. The amendments in this draft law cover a range of areas including consumer loan agreements, direct selling and the penalties which apply under the Consumer Law. It should also be noted additional exemptions on the application of the Electronic Commerce Regulations to transactions made abroad have also been put forward, along with changes on the license fee calculation.

REGULATORY ROUND-UP

UAE: The General Commercial Gaming Regulatory Authority (GCGRA) has stated operating unauthorised commercial gaming activities without a valid license is illegal in the UAE...

Abu Dhabi: Abu Dhabi Decision No. 2/2024 on the sampling and inspection of food and animal feed has been issued...

ADGM: The ADGM has enacted regulations safeguarding employees from retaliation for reporting violations which must be implemented by 31 May 2025...

Saudi Arabia: The Saudi government have approved extensive amendments to the labour law there which include changes to holidays and labour contracts...

Qatar: The Qatar Central Bank has issued guidelines regulating distributed ledger technology (DLT) use in the financial sector...

Qatar: The Intellectual Property Rights Protection Department of the Commerce and Industry Ministry has issued new guidelines on the validation of the power of attorney used for IP matters...

Oman: Decisions which will be implemented in September will change the rules on Omanisation...

Oman: Enhancements to the Oman Business Platform will make it easier to use commercial registration services, including those for updating commercial register data and transferring ownership...

Bahrain: The Bahrain Bourse has issued a technical guide to short selling...

Jordan: Guidelines for licensing car rental offices for 2024 have been issued and include changes on total office space and additional parking space for cars...

UAE: In September the UAE will launch a two-month amnesty enabling individuals with expired residency visas to rectify their status or leave the country without facing fines...

UAE: The UAE has suspended issuing Temporary Labour Cards (TLC) for certain UAE Residence Permit holders...

Saudi Arabia: Expatriate workers who test positive for Hepatitis C will not be granted work permits until they have had appropriate treatment...

UAE: A UAE bank has been fined AED 5.8 million for money laundering offences after an inspection discovered compliance issues there...

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

SAUDI ARABIA - SOCIAL INSURANCE



A new social insurance law (Saudi Arabia Cabinet Decision No. 1022/1445) has been issued in Saudi Arabia. The law covers pensions entitlements and contributions, unemployment insurance and payments made as compensation from the scheme for those injured in a work injury or who have developed a listed occupational disease. It also details the maternity pay which is available to women who have contributed to the scheme.

KUWAIT - TENDERS



Two laws have been issued which impact Kuwait Law No. 49/2016 on public tenders. Kuwait Cabinet Decision No. 431/2024 states the Deputy Prime Minister and Minister of State for Cabinet Affairs will be the competent minister for implementing the law on public tenders. In addition, Kuwait Decree No. 81/2024 on the formation of the Central Agency for Public Tenders has been issued and includes the names of individuals who will serve on the board of directors at the Central Tenders Committee.

GAZETTE WATCH

UAE Official Gazettes No 778-779 – These gazettes include Federal Decision No. 7/2024 on controls for referring cases and selecting experts for specialised judicial chambers.

Saudi Arabia Gazettes No. 5035-5039 – These gazettes include Saudi Arabia Ministerial Decision No. 1/4500796124/1445 on the approval of the standards for advertising billboard fees.

Qatar Official Gazettes No. 8-9 – These gazettes include Qatar Financial Markets Authority Decision No. 4/2024 which amends some provisions on ownership of shares of Qatar Stock Exchange listed companies.

Kuwait Official Gazettes No. 1693-1696 – These Gazettes include Kuwait Ministerial Decision No. 199/2024 on the reduction of the prices of the list of medicines and pharmaceutical products in Kuwait.

Oman Official Gazettes No. 1552-1554 – These Gazettes include Oman Sultani Decree No. 33/2024 which has amended Oman Sultani Decree No. 117/2010 on the Court of Appeal.

(Source: Lexis Middle East Law)

UAE - MONEY LAUNDERING



Cabinet Decision No. 71/2024 regulations on violations and administrative penalties levied against those who violate the anti money laundering and financing of terrorism regime have been issued. It repeals and replaces Cabinet Decision No. 16/2021. The regulations apply to Designated Non-financial Businesses and Professions (DNFBPs) who violate Federal Decree-Law No. 20/2018 and Cabinet Decision No. 10/2019 or any decisions which implement these laws. Those who violate these laws and are to be given an administrative penalty are to be notified of that within 20 days of the decision being issued. They then have 30 days under which to raise a grievance. The various relevant fines are listed in Cabinet Decision No. 71/2024 and can be doubled for repeat offences. The highest fine listed in this Cabinet Decision is 1,000,000 AED.

BAHRAIN - FEES



The Financial and Economic Affairs Committee of the Bahrain Council of Representatives is reviewing a proposed law which would reduce business license fees and annual registration fees for commercial entities wholly owned by a Bahraini national. The proposals include a reduction in annual registration fees for eligible commercial entities to 30 Dinars. The annual fee for companies which are 100% Bahraini owned would also be 60 Dinars.



OMAN - TELECOMS



Oman Decision No. 1152/2/19/2024 which covers the regulation and approval of telecommunications equipment in Oman has been issued. The Decision repeals and replaces Oman Decision No. 59/2015. It impacts those who import, deal in and locally manufacture equipment of this type. Approval certificates are required for equipment covered under these regulations. Applications for a customs release permit are also required for each shipment of this type of equipment.

FEATURED DEVELOPMENT

Majed Garoub of Garoub & Associates looks at how the Implementing Regulations of the Law of Rights of Persons with Disabilities may impact businesses.

Saudi Arabia Administrative Decision No. 26/1445 Approving the Implementing Regulation for the Law of Rights of Persons with Disabilities has now been issued and provides the detail those looking to comply with Saudi Arabia Cabinet Decision No. 110/1445 need to be aware of. By way of these laws Saudi Arabia is taking significant steps on ensuring accessibility and inclusion of people with disabilities in the workforce there.

The previous law on this area was the Disability Welfare Law (Saudi Arabia Cabinet Decision No. 224/1421) which has now been repealed and replaced by the new legislation. A person is classified as disabled if they have a long term impairment of physical, mental, intellectual, sensory, or psychological functions that may prevent them from participating fully and effectively in society. The relevant authority will issue a disability certificate to those with disabilities based on an approved evaluation. This will act as official proof of their disability, including the type and degree. Article 4 and 5 of Saudi Arabia Administrative Decision No. 26/1445 cover accessibility to facilities and establishments. There is a requirement to ensure it is possible for disabled people to move independently and in a way that is easy and free from physical barriers.

Technical requirements must also be met to ensure safe access and movement, as well as compliance with Universal Design Principles. However, these accessibility requirements must also be applied in accordance with the provisions in the Saudi

Building Code Application Law, relevant standards, guidelines and specifications.

Article 8-12 of Saudi Arabia Administrative Decision No. 26/1445 covers the rights of disabled people when using public transport. This includes requirements which will apply when the authorities license vehicle rental facilities. Article 29-32 of Saudi Arabia Administrative Decision No. 26/1445 covers employment and job opportunities. It will not be legitimate to terminate the employment contract of a worker with a disability acquired during their employment contract and steps will need to be taken to retain the worker, including rehabilitating them so they can take on another job. An individual with disabilities cannot be discriminated against - directly or indirectly - in any aspect of employment, including work performance, in job advertisements, interviews, hiring, promotions, compensation, benefits, or leave entitlements.

The authorities are expected to raise awareness among those who interact with people with disabilities at work, particularly those in human resources, about the rights of disabled people and train them on appropriate interactions. Penalties for breaches of the law on disability can include imprisonment for up to one year, fines of 250,000 riyals, or both, for anyone who neglects individuals with disabilities, abuses them, mocks them, deprives them of their rights, or exploits them, therefore it is important to be aware of and act on these legislative requirements.

QATAR - AUCTION




Qatar Law No. 54/2024 has been issued which amends Qatar Ministerial Decision No. 23/2016. This law covers the controls which apply when goods which have not been withdrawn from a port or exported are sold at public auction.

TAX AND FINANCE ROUND-UP


COVERING RECENT KEY TAX AND FINANCE DEVELOPMENTS – REGION-WIDE

UAE

VAT AND CONSTRUCTION

 The UAE Federal Tax Authority (FTA) has launched a new smart 'Housing' application to make it easier for citizens to recover VAT on the construction of their new homes. The new application will be launched in two phases. Once the first phase is activated citizen applicants will be able to create their own file, and enter tax invoices related to purchases of construction supplies for their home. They will be able to upload files or attach photos, and submit recovery requests. In the second phase they will be able to scan barcodes from the 'Housing' app and electronically upload tax invoices from registered sales outlets to their account. The new system will eliminate need for submitting paper invoices.


VAT CLARIFICATION

 The UAE Federal Tax Authority (FTA) has released a Public Clarification (VATPO38) on the difference between manpower services and visa facilitation services. 'Manpower services' primarily involve recruiting and assigning personnel who operate under the supervision and authority of a different organisation. However, 'facilitation services' involve providing assistance in obtaining employment visas but without making employees available for work to another organisation. In this case the facilitator's obligations are limited to incurring costs which relate to obtaining an employment visa. In order to qualify as a visa facilitation service rather than a manpower service, the employment visa holder (the facilitator) and the customer must be part of the same corporate group but not be within the same VAT group. In addition, the facilitator should be involved in providing manpower and must not bear any employment obligations. The employees must also work solely for, and be controlled by the customer. While both these types of services are subject to UAE VAT, the taxable amount differs. With manpower services providers, the taxable amount includes the total consideration including the remuneration, benefits, and

recharged costs. Meanwhile, in the case of visa facilitation services, the taxable amount is made up of any fees charged for visa processing (such as typing fees, medical tests and costs of issuing employee Emirates IDs). However, employee salaries and benefits, which the customer is responsible for, are not included in the taxable amount in that case.

ADGM

REGISTRATION FEES

 The ADGM has announced changes to its registration fees. As a result, financial category entities will see their registration fees increase to \$20,000 and the fee for the annual renewal of their ADGM licence will increase to \$15,000. In addition, fees for new and existing technology and FinTech start-ups have also been increased to \$1,500 although the fees for those in the special purpose vehicle category will remain \$1,900. However, the fees which apply to those in the non-financial and retail categories are to reduce and as a result the new registration fees in this category have been halved to \$5,000 and annual licence renewal fees will also now be set at \$5,000. The new fee regime will come into force on 1 January 2025. The previously announced fee exemption for qualifying non-financial and retail businesses on Al Reem Island will also end on 31 October 2024.

DUBAI


VOLUNTARY DISCLOSURE

 Dubai Customs has introduced a new Voluntary Disclosure System which will enable those who have made inadvertent errors or mistaken violations when declaring information in their customs declarations to follow a specific procedure and requirements in order to correct them and pay the necessary additional customs duties. This scheme is based on Article 141 bis of Dubai Law No. 4/1998 (Amending the 1966 Customs Act) which allows the partial or full exemption from customs fines if violations have been voluntarily disclosed

before they are discovered by Dubai Customs. Under this new system it will be possible to submit an approved voluntary disclosure form electronically through the self-audit submission service via the electronic customs systems, along with the supporting documents and records. If this voluntary disclosure is then made before the violations are discovered by the customs authorities, fines may be fully or partially waived. However, any additional customs duties which are due will also have to be paid within 30 days of receiving the financial claim notification and a failure to do so will render the voluntary disclosure request and any related decision null and void.

QATAR

PURCHASE OF OWN SHARES

 The Qatar Financial Markets Authority (QFMA) has issued new regulations on the purchase by companies of their own shares for the purpose of selling. These new regulations require notification of the Authority and the Market, of a Board of Directors' decision to purchase a percentage of the company's shares as soon as it has been issued. In addition, an application also has to be submitted to the Authority on an approved form within two days of the date of issue of the Board of Directors' decision. The Authority then has to issue its decision on the application within 15 days of its submission if the application has fulfilled all the necessary conditions and requirements. However, if this does not happen within the required time there will be an implicit rejection of the application.

CORPORATE GOVERNANCE

 The Qatar Financial Centre Regulatory Authority (QFCRA) has issued a Consultation Paper which includes a number of amendments to the Governance and Controlled Functions Rules 2020 (CTR). These amendments would grant the Regulatory Authority the


ability to require Category B firms to establish one or more board committees. In addition, Category A firms, and other firms determined by the Regulatory Authority would be required to include provisions in material outsourcing arrangements which would allow the Authority to conduct onsite visits of those service providers.

SAUDI ARABIA

ATA CARNET

 The Saudi Arabia Zakat, Tax and Customs Authority (ZATCA) has issued a new user manual on ATA Carnet Temporary Admissions. The Manual offers specific guidance to both importers who have previously used the ATA Carnet system for imports into Saudi Arabia and first time ATA Carnet importers. The ATA Carnet system allows the duty-free and tax-free import of goods brought into a country on a temporary basis for exhibitions and events. Saudi users will be able to check the status of their applications by entering the Request Number to view the details of their temporary admission request in the system.

TAX PENALTY RELIEF

 The Zakat, Tax and Customs Authority (ZATCA) in Saudi Arabia has extended an initiative to cancel fines and exempt taxpayers from financial penalties until 31 December 2024. The six-month extension aims to enable more eligible taxpayers to benefit from the initiative, which was originally introduced to alleviate the economic impacts of the COVID-19 pandemic on businesses. As a result, taxpayers subject to all tax systems in Saudi Arabia can have various fines and penalties waived, including those for late registration, late payment, late return submission, corrections to VAT returns, and field control violations related to e-invoicing and general VAT provisions.

KUWAIT

SUKUKS AND BONDS

 The Kuwait Capital Markets Authority (CMA) has announced plans to establish a dedicated platform for listing and trading bonds and sukuk on the

TAX TREATY UPDATE


Saudi Arabia: An income tax treaty between Saudi Arabia and the Slovak Republic will come into force on 1 August 2024.

Saudi Arabia: The Cabinet has approved tax agreements with Kuwait and Gambia aimed at avoiding double taxation and preventing tax evasion.

Kuwait: Kuwait and Pakistan have reached a consensus to formalise a Memorandum of Understanding (MoU) to revise the 1998 Kuwait - Pakistan Income Tax Treaty.

Kuwait Stock Exchange and has issued a consultation on the subject on its website. The Authority also aims to create a suitable market for investment funds by introducing controls for new types of investment funds, including the Exchange Traded Fund (ETF), which is an open-ended fund listed on the stock exchange.


TAX INFORMATION EXCHANGE

 Kuwait Decree-Law No. 6/2024 On the Exchange of Information for Tax Purposes has been issued. This law follows Kuwait's signing of an international agreement in Paris on 5 May 2017 which was then approved by Kuwait Law No. 76/2018. Since then there have been further agreements which have required legislation to be issued on the exchange of information for tax purposes with other countries and international entities. The framework for doing this is covered in 20 articles. All entities and persons in the Kuwait are required to provide the Competent Authority (which is the Minister of Finance or whoever they delegate) with the necessary Information so it can comply with these agreements. The Authority has the right to request relevant information for supply within 21 days. Each calendar year Reporting Financial Institutions have to send to the Competent Authority a declaration containing the reportable Information they have in their possession. Reporting Financial Institutions are defined as any Financial Institution or a branch of such an Institution which is a resident in Kuwait and not considered a Non-reporting Financial Institution. These Declarations have to be audited and approved by an auditor from the Authority's list of Competent Firms and the firm cannot serve as auditor for the same Financial Institution whose declarations they audit and approve. In

addition, Reporting Financial Institutions must also appoint a Compliance Officer and their clients must complete self certification forms.

BAHRAIN

OPEN BANKING

 From 1 September 2024, all licensed financial and banking institutions in Bahrain will have to comply with 'open banking regulations' detailed in a Bahraini Central Bank Circular. These regulations cover areas including obtaining customer consent, authentication and licensee disclosures. It will also be necessary for them to report on the performance of application programming interfaces (APIs) by service providers, following changes to the Reporting Requirements Module and the Public Disclosure Requirements Module which are found in Volumes 1 and 2 of the Central Bank Guidebook. Amendments will also affect the General Requirements Module in Volumes 1 and 2 of the Guidebook, and the Open Banking Module in Volume 5. Legal entities within the scope of open banking services, information and payment service providers will have to detail customer account data requirements for any use cases which relate to account information. Guidance on business models for information and payment service providers will be included in the Open Banking Module in Volume 5 of the Guidebook. Licensed banks will have to collaborate with the Benefit Company to implement the 'integrated cash flow' model for obtaining initial customer consent and authentication during client onboarding. It should also be noted that information and payment service providers must also agree standard API specifications and service standards with banks which are aligned with the security guidelines which are found in Bahrain's Open Banking framework.



FULL FORCE OF THE LAW

A new law aims to ease enforcement challenges for creditors in Qatar as Mashael Alsulaiti Law Firm explains.

Unfortunately being on the winning side when court judgments, orders or arbitration awards are issued, particularly in the case of foreign decisions is often not the end of the road, as in many GCC countries, including Qatar, enforcement can be a complex and time-consuming process.

Therefore, the issue of a new Qatar Law No. 4/2024 On the Issuance of the Judicial Enforcement Law which will come into force on 19 November 2024 will be a significant step forward when it comes to protecting individual rights, ensuring there is swift execution of justice and supporting economic stability there.

THE IMPACT ON OTHER LAWS

Qatar Law No. 4/2024 has repealed and replaced Book 3 of the Qatari Civil and Commercial Procedure Law (Article 362-518 of Qatar Law No. 13/1990) which covered execution and contained the previous enforcement rules as well as anything else which conflicts with this new law. However, it is important to note other existing rules in Qatar Law No. 13/1990, Qatar Law No. 12/2005 (On the Conditions and Procedures of Appeal by Cassation in Non-Criminal Matters) and Qatar Law No. 8/202 (the Judicial Authority Law) will continue to define procedures in Qatar unless otherwise specified in Qatar Law No. 4/2024.

© Getty Images/Stockphoto



Expand your knowledge and improve your skills.

With LexisNexis drawing on 200 years of heritage as a trusted legal publishing brand, we've built up a strong and close relationship with the legal community. We understand the everyday needs and challenges faced by lawyers. Through a network of training centres and 40 offices worldwide, LexisNexis trains thousands of professionals from junior to top executives and government officials.

In the Middle East, our training programme delivers a cost effective solution tailored to the specific needs of the legal community in the region, delivered by leading experts who are practicing professionals; ensuring they are fully conversant with the latest issues and legislation as well as the implications on business and practice.

View our Middle East training programme at:
[lexis.ae/training-events](https://www.lexis.ae/training-events)

SCOPE

The 111 Articles found in Qatar Law No. 4/2024 cover a range of issues. A specialist Enforcement Court is to be established which will have the authority to adjudicate requests for the enforcement of writs of execution. The law also covers all interim and substantive claims and disputes involving enforcement requests, and the issue and enforcement of relevant judgments, decisions, and orders.

Article 6 of Qatar Law No. 4/2024 explains that writs of execution include court judgments and orders; arbitrary awards; foreign judgments, orders, and official deeds; official papers awarded the power of the writ of execution by Law; documented conciliation agreements and minutes; cheques and registered leased contracts or documented by the competent authority.

ENFORCEMENT JUDGE POWERS

Article 33-44 of Qatar Law No. 4/2024 cover the broad powers the enforcement Judge has been given. Article 36 of Qatar Law No. 4/2024 states that in order to enforce executive instruments, after having notified the debtor, the Judge is able to take any or all of a long list of measures.

These include seizing the debtor's assets equivalent to the value of the executive instrument and selling them; reporting and subpoenaing the debtor; preventing them from conducting certain transactions or benefiting from certain government services for companies and private legal entities; and prohibiting government entities from contracting with the debtor or imprisoning them.

It is also possible for the enforcement Judge to impose a travel ban on the debtor. These travel ban orders are cancelled once the Judgment Debtor has performed the required procedure, paid, or deposited the necessary amount in the Court Treasury, provided a sufficient guarantee, or if there are strong reasons the Judge deems justifiable to cancel the ban.

However, it is worth noting a travel ban of this type would not prevent the relevant authorities from terminating a non-Qatari debtor's residence or ordering them to leave the country or deport them if this is in public interest, if it is established that the Judgment Debtor has no clear property in Qatar that could be subject to enforcement, or if it is established the required procedure is impossible to enforce according to the writ of execution.

When it comes to imprisonment the Judge can order this, at their own discretion or following a request by the

relevant parties. A period of no more than three months per year can be ordered if it is established the party is capable of paying the amount they have been ordered to pay, but has still defaulted. If the debtor is a juristic person the Judge can also order their representative be imprisoned if they have been obstructing the enforcement.

INSOLVENCY

However, it is worth noting that if a Judgment Debtor claims insolvency which is established to the Judge, none of the procedures detailed in Article 36 of Qatar Law No. 4/2024 will apply. Although the Judge can still prevent the Judgment Debtor from engaging in commercial activities or owning shares in commercial companies or contributing to them. They can also announce the Judgment Debtor's insolvency and require entities and persons to disclose any funds which belong to the debtor and deliver them to the Court.

AUCTIONS

In addition to having the authority to order attachments on moveable and immovable property, the Judge can also order the attachment and sale of financial assets like shares, bonds, revenues and stocks. According to Article 82-95 of Qatar Law No. 4/2024 if a Judgment Debtor fails to comply with the substance of the writ of execution, the Judge can order the sale of the attached property by public auction. This is particularly important as it includes directly transferring the proceeds of the execution to the rightful beneficiaries.

CHEQUES

Another key change is found in Article 23 of Qatar Law No. 4/2024. Where the drawee of a cheque has affixed a notice indicating the cheque has bounced due to there being no balance or insufficient funds in the account or only part payment has been made this is deemed a writ of execution. This approach should help expedite the beneficiary's receipt of the cheque amount from the issuer in such cases as they will no longer need to file a lawsuit through a direct request to the competent Enforcement Judge. This should help reduce bounced cheque cases which have in the past flooded the Qatari courts.

EVICCTIONS

Qatar Law No. 4/2024 should also help make things easier when it comes to evictions where tenants have refused to leave the property at the end of the lease. In the past in such cases it was necessary to file a lawsuit before the competent courts. However, under Article 27 of Qatar Law No. 4/2024 a registered or notarised lease contracts which has expired will be considered an executive instrument for eviction. The lease contract must have been registered in accordance with the provisions of Qatar Law No. 4/2008 on Property Leasing or documented by the competent authority if it was not subject to the provisions of Qatar Law

RELEVANT LEGISLATION

Article 5 of Qatar Law No. 4/2024

The enforcement shall be conducted either voluntarily by the agreement of all parties or by force under an order from the Judge.

Compulsory enforcement shall only be carried out by a writ of execution to satisfy a certain, definite, and payable right.

(Source: Lexis Middle East Online)



RELEVANT NEWS

Judicial Enforcement Law Issued

The Judicial Enforcement Law (Qatar Law No. 4/2024) has been issued and will apply six months from its publication in the Qatari Official Gazette. Its main aim is to make court procedures in Qatar easier. One particular notable change is that cheques can now serve as a writ of execution. This change is expected to reduce the numbers of bounced cheques in Qatar.

© Getty Images/Stockphoto

No. 4/2008. The enforcement request must also be limited to vacation of the real estate as a result of the expiry of the period specified in the lease contract and other reasons for eviction would not be covered by this provision.

NOTIFICATION

However, before any enforcement proceedings can begin there are debtor notification procedures which must first take place. Article 31 of Qatar Law No. 4/2024 requires notification of the writ of execution to be sent to the Judgment Debtor's national address.

This notification must include details of the information in the writ of execution and information on the Judgment Creditor and the Judgment Debtor. There must also be a statement on either the procedures which need to be undertaken or the sum that has to be paid.

There should also be a warning notice that if the Judgment debtor does not perform the obligation or submit proof of their performance within ten working days from the notification, the enforcement will be carried out by force.

The debtor will also be informed that all their property, as of the notification date, whether in their own possession or held by a third party, will be considered as a guarantee for the fulfilment of the obligation, and any disposition or concealment of that property in order to evade performance will be punished by Law.

LIABILITY OF HEIRS

Article 32 of Qatar Law No. 4/2024 covers situations where a Judgment Debtor either dies, loses their legal capacity or the person who has been carrying out the procedures on their behalf has lost capacity before the commencement or completion of the enforcement process.

In such cases the Judgment Creditor is able to request that the Judge proceeds with the enforcement against the debtor's heirs or the property or estate's administrator.

However, any enforcement proceeded against the heirs has to be within the limits of the amounts devolved to them from the deceased's estate.

Although an estate cannot be divided or distributed until after the sums which need to be paid under the writ of execution have been paid.

PENALTIES

Without prejudice to any more severe penalty which may be detailed in other laws there are a number of specific penalties which apply under this law and are detailed in Article 105 of Qatar Law No. 4/2024. These are imprisonment for a period of up to three years and/or a fine of up to 100,000 Riyals.

These penalties will apply to those who refuse, without having an acceptable excuse, to implement the orders and decisions issued by the Court after having been notified; and to Judgment Debtors who do anything which might obstruct enforcement or who deliberately smuggle, conceal, or dispose of their property in order to avoid the enforcement from the date of their notification of the enforcement request.

These penalties can also be levied on anyone who facilitates or provides assistance to the Judgment debtor in doing this. These individuals are given the same sentence as the Judgment Debtor. Those who refuse to hand over to the Court property held by them which belongs to the Judgment Debtor, despite being notified to do so or after the insolvency of the Judgment Debtor has been announced will also be penalised in this way.

Although in such cases it is possible for the Court to authorise a settlement on the penalties to be paid either before any criminal action or before a final decision.

However, in such cases the settlement must result in an amount not exceeding half of the maximum fine being paid and there must be the removal of the reasons for the violation.

A settlement of this type would also prevent criminal action being initiated or lead to its termination, if it has started.

The new law aims to streamline enforcement procedures and promote judicial efficiency across Qatar, benefiting businesses and individuals alike by providing legal certainty.

CASE FOCUS

Case No B v C [2024] QIC (F) 20 issued on 5 May 2024

Jurisdiction QFC

Court QFC Court of First Instance

Recommended by Umar Azmeh, Registrar, QICDRC

WHAT IS IT ABOUT?

An Applicant (B) sought to set aside a final arbitration award rendered in an arbitration between them and the Respondent, its joint business partner (C) under Article 41(2)(A)(iv) and 41(2)(B)(ii) of the QFC Arbitration Regulations 2005 (along with Article 9.3 of the Court's Regulations and Procedural Rules). The applicant argued the award was not in the Qatar Financial Centre (QFC)'s interest and/or was contrary to the public order of the QFC and/or the State of Qatar. They stated the arbitration was not conducted in line with the parties agreement. The arbitration was administered by the International Chamber of Commerce (ICC) under its arbitration rules, the arbitration's seat was the QFC, and the substantive law was Qatari law. The joint venture had been set up to secure major road construction projects in Qatar. It was argued that the Tribunal had failed to give effect to mandatory provisions of Qatari law which the parties could not derogate from including that recovery of loss of profits by a shareholder was precluded in arbitrations under the Commercial Companies Law (Qatar Law No. 11/2015). It was also stated the Tribunal had given no or inadequate reasons for finding the Respondent's primary witness reliable and preferring his evidence to that of the Applicant's primary witness. The Tribunal had also awarded interest which was said to be contrary to Qatari law and not in the interest of the QFC. It was also claimed the parties had raised various preliminary issues, e.g. on admissibility and time bars and the Court had not upheld any of those procedural challenges. The Court had reviewed the meaning of 'interest of the QFC' in the Arbitration Regulations, and noted it was based on the UNCITRAL Model Law on Commercial Arbitration which was in turn modelled on the almost universally accepted United Nations Convention on the Recognition and

Enforcement of Foreign Arbitral Awards 1958. There was no real difference between the use of the term 'public policy' in the Model Law and the term 'interest' (of the QFC) in the Arbitration Regulations.

The Arbitration Regulations did make a distinction between the QFC and the State of Qatar (i.e. Interest of the 'QFC'), but the distinction did not have any practical effect as it was difficult to think of a case where the interest of the QFC and the State of Qatar would not align.

'Public policy' or 'public order' included matters such as terrorism financing or money laundering which related to a set of 'basic principles that govern the political system, social consensus, economic rules, and moral values on which the entity of society is based and by which the public good is achieved', see QCC Case No. 348/2015. The fundamentals of international arbitration were reflected in Article 41 of the Arbitration Regulations, and in particular the fact that the public policy ground should be narrowly construed due to the principles of finality and pro-enforcement. International arbitration users valued those policies, along with the knowledge award challenges would be on narrow grounds and were exceptional. The Court believed public policy was rare and must be carefully scrutinised against the strictest standards. The fact a Tribunal incorrectly applied the law to the facts did not infringe public policy. The Court also noted where the 'arbitral procedure' was impugned, the Tribunal had considerable discretion on how proceedings were conducted, and it was not for the Court to review or second-guess procedural decisions a Tribunal would keep in mind. Finally, in line with the policy of minimal curial intervention, the Court would only interfere if serious prejudice had been shown by a party seeking to challenge an award, which included a causation requirement.

WHAT WAS DECIDED?

The application failed on all grounds. The Applicant's arguments did not fall within the 'interest of the QFC'. The Qatar Court of Cassation in QCC Case No. 512/2020 had also ruled that loss of profits were recoverable under Qatari law and the Tribunal had explicitly relied on this decision. The Court ruled it would not interfere with findings of fact and

assessment of evidence by a Tribunal, particularly where as in this case the Tribunal had clearly taken care and shown skill in producing a comprehensive, detailed award. Assessment of evidence was a matter for the Tribunal not the Court, and did not involve public policy issues. This point was well established in international arbitration (e.g. UMS Holding Ltd and Ors v Great Station Properties SA & Anor [2017] EHW 2398). Deficiency in reasons for preferring one witness over another also was not grounds for challenging an award. There were also many QFC Court decisions showing that both pre- and post-judgment interest could be awarded and Article 38(3) of the Arbitration Regulations expressly confirmed interest was recoverable under QFC law, and thus no public policy grounds were engaged. QFC law does not operate in a way that is contrary to Qatari law. There were also numerous decisions from the other Qatari national courts including the Qatar Court of Cassation (e.g. QCC Case No. 31/2019), which ruled awarding interest was permissible. Other provisions of Qatari law, e.g. Article 70 of Qatar Law No. 13/2012 and Article 83 and 85 of Qatar Law No. 11/2015 also allow recovery of interest. The Court reaffirmed the general principles that will apply when it faces an application to set aside an arbitral award: respect for finality, party autonomy and certainty. It noted that one aspect of party autonomy is that the parties choose who is going to decide their dispute and that this involves the acceptance of the risk that the Tribunal might come to a decision that may be wrong in fact or law: the Court does not sit on appeal from a Tribunal's decisions. The Arbitration Regulations are based on international principles and provide narrowly defined grounds for judicial intervention which reflect a pro-enforcement policy.

WHY IS IT IMPORTANT?

This was the first case where the QFC Court has faced an application to set aside an arbitral award. The grounds of challenge included the 'public interest' (or public policy) grounded in the Arbitration Regulations. It shows the approach the Court will take to cases like these will be a pro-arbitration, pro-enforcement policy of minimal intervention and the Court will not lightly interfere with the principle of party autonomy in arbitration to choose how their proceedings are conducted involving an inherent risk that some errors of law and fact – which do not come within the ambit of grounds of challenge in the Arbitration Regulations – must stand.

Case No BCC 29/2023, 00022/5 issued on 9 May 2024

Jurisdiction Bahrain

Court Bahrain Court of Cassation

Recommended by Aseel Zimmo, The First Link

WHAT IS IT ABOUT?

This case involved a dispute between a Bahraini bank

and a Libyan bank over counter-guarantees governed by English law issued for a construction project in Libya.

Bank A had issued bank guarantees in favour of the parties nominated by Bank B for over BHD 6,787,500 under a back-to-back security arrangement.

While the construction was still underway, the contractor claimed a force majeure leading to the termination of the main contract and any ongoing obligation to perform the work. It was undisputed that the bank guarantees were valid at the time the contract was terminated.

The parties issued several counter-demands of 'extend or pay' notices. The Bahrain Chamber of Dispute Resolution (BCDR) (Court of First Instance) summarised the issue to be whether the claim was out of time under English law. The claimant acknowledged a six-year limitation period applied but argued this was extended through correspondence, where the claimant asserted the respondent had acknowledged the debt. The claimant relied on the application of the English Limitation Act 1980, s29(5) and 30. The BCDR Tribunal dismissed the case, deeming it time-barred based on Section 5 of the English Limitation Act 1980.

WHAT WAS DECIDED?

The Bahrain Court of Cassation dismissed the claim, as it was time-barred under section 5 of the English Limitation Act 1980.

The court interpreted the relevant sections of the English Limitation Act 1980 and considered the decision of the English court in *Habib Bank Ltd v Central Bank of Sudan* [2007] EWHC 1767 (Comm), noting its similarity to this case.

The *Habib Bank* case had examined when the statutory limitation period could be extended by acknowledgment or payment.

The Bahrain Court of Cassation agreed with the conclusion reached by the BCDR, that none of the correspondences relating to the respondent was an admission or acknowledgment of liability to pay, as required by English law for extension of the limitation period.













WHY WAS IT IMPORTANT?

The case is significant for two main reasons. First, it marks the inaugural English-language judgment by the Bahraini Courts. Second, the courts interpreted Section 5 of the English Limitation Act 1980 using precedents from English courts to decide on the case as it is permissible for parties to choose a foreign law as the applicable law in litigation before Bahraini courts.

Notably, judgments were issued following the introduction of English-language courts in Bahrain where the judges are renowned regional and international arbitrators, qualified in both civil and common law. The application of English law by a civil law court in Bahrain is particularly noteworthy. This was significantly facilitated by the inclusion of two English lawyers in the composition of the court.

Better content. Better results. More business. The effective lawyer uses Lexis® Middle East.

A powerful, fully integrated online legal research tool, reimagining the practice of law in the Middle East.

SAVE TIME	REDUCE RISK
 <p>One search grants access to the Middle East's largest and most comprehensive database of legislation, case summaries and practical content</p>	 <p>Case summaries from 70 different courts Arabic-English translation of legislation across 20 practice areas Official gazette indexes dating back to the 1970s 12 different types of practice tools and documents Daily legal news service covering 21 countries</p>
 <p>Powerful search doesn't just read the written word, it also uses context and metadata tags to find better results</p>	 <p>Intelligent search recommends content based on your search terms, short-cutting you to key legislation, cases and practical guidance</p>
 <p>Instant linking between research and guidance can supercharge legal work</p>	 <p>Deep search across the widest collection of laws and cases ensures that you build the strongest argument without missing key points</p>
 <p>Natural language search finds the right results without complicated search forms</p>	 <p>Don't just research the law - understand how to use it. Seamless integration between primary sources and practical guidance</p>
 <p>Exclusive content, such as the Sader UAE Annotated Codes, Gulf Legal Advisor practical guidance solution, Legislative Insights, Getting the Deal Through - Corporate Counsel Advisory & Freezones Q&A Guides and digital access to seven regional & international law journals</p>	 <p>All our content is written by local and regional practice area experts and reviewed thoroughly by our editorial team, so you can be certain LexisNexis content is accurate and up to date</p>
 <p>Easily search for content from across 38 MENA onshore jurisdictions and freezones</p>	 <p>Research is easy and intuitive for all levels of experience</p>

There is no other solution with the breadth of Lexis® Middle East

6,200+ Practical Guidance Documents & Tools

18,500+ MENA Case Summaries

800+ Contributing Authors & Law Firms

10,000+ GCC Consolidated Laws (in Arabic & English)

37 Online Books

8,500+ Journal Articles

Find out more at: www.lexis.ae/lexis-middle-east-law/

IN-HOUSE PROFILE

LEGAL COUNSEL – FINANCIAL MARKETS



When Market Means Innovation

Aiman Khair, Legal Counsel at Qatar Stock Exchange explains how his work there is helping to realise the Qatari Financial Sector Strategy.

YOUR BACKGROUND

I studied as an undergraduate at the Faculty of Law in University Khartoum and also completed Postgraduate Diplomas in Business Administration and Applied Computer and Statistics in 1995.

In 2001 I relocated to Oman and worked as a General Counsel for leading listed financial companies there. Corporate law and compliance became important focuses for me and I obtained accreditation as a Compliance Officer from the International Compliance Association in the UK. I also obtained a first in my LLM from the University of Juba.

Then in 2012, I immigrated to Canada where I studied for a Global Professional Masters in Law (GPLLM) from the University of Toronto. I also gained admission to the Bar of Ontario.

While in Canada I studied the Internationally Trained Lawyer Programme (ITLP) through which I secured an internship at Dentons Canada LLP in Toronto, which was a great opportunity to learn from seasoned practitioners working in a range of legal areas. I have practiced as a Corporate Lawyer and Compliance Officer in a number of different countries including Sudan, Oman, Canada, and Qatar for over 25 years, focusing on financial services and capital market laws. I have had a lot of exposure to intricate M&A and corporate-commercial matters.

YOUR CURRENT ROLE

I currently work as Legal Counsel for the Qatar Stock Exchange (QSE), in Doha. The QSE plays a pivotal role in bolstering Qatar's economy by providing investors with a transparent and efficient trading platform.

This is aligned with Qatar's strategic vision to establish the country as a global financial hub and therefore the QSE plays a vital role in positioning Qatar as a prominent player in the regional financial market.

What I like the most about working for QSE is that it promotes a culture of excellence, and fosters professional growth and development among its staff.

I have a strong drive for quality and strive to produce excellent work. At the same time, I'm mindful of balancing that pursuit with practical considerations like client expectations and project



constraints. My goal is to deliver optimal results while operating within the given parameters. To mitigate this, I use assessment methodologies, to ensure an appropriate balance between professional aspirations and practical demands.

I have also found there is a lack of relevant and practical resources catering for legal professionals in the MENA region. I have tried to fill that gap by writing for legal magazines and am also writing a comprehensive guide to legal writing in Arabic called 'Five Skills for Effective Legal Writing: How to Control your Career by Mastering Legal Writing'.

My aim is to provide lawyers and law students with indispensable writing skills which will help them comment on the current dynamic legal market. I have also held lectures and workshops on the subject.

TRENDS AND LAW CHANGES

There have been a number of significant changes which have impacted Financial Markets in Qatar. These include the introduction of the Derivatives Markets and Exchange Rules 2023 (DMEX) by the Qatar Financial Centre Regulatory Authority (QFCRA) in March 2023. These rules have introduced derivative contracts for the first time here, and have provided investors with new ways to diversify and manage their portfolios.

The DMEX rules have enabled investors to hedge against market risks and capitalise on emerging trends. With the introduction of derivative instruments such as futures, options, and swaps, the QFCRA has provided market participants with powerful tools to

PRACTITIONER PERSPECTIVE



Reeda Halawi
Associate
Sultan Al-Abdulla &
Partners

Reeda Halawi of Sultan Al-Abdulla & Partners looks at current Qatar Financial Markets Authority initiatives including work to control insider trading.

As part of their efforts to increase investment levels in Qatar in line with the Qatar National Vision 2030, the Qatar Financial Markets Authority's (QFMA) Board of Directors issued QFMA Decision No. 2/2024 on 12 March 2024, which enacted new rules to control insider trading.

According to QFMA Decision No. 2/2024, an insider is a person who, by virtue of their work, position or professional or personal relationships has obtained access to personal data or core information about a company or their customers, which was not publicly available. Spouses and minor children of the insider may also be considered to be insiders, as well as any other person who could in any way access this sort of information, whether that be through an agreement or through their profession, or any person who has accessed this type of information by any means prior to it becoming publicly available.

In Qatar insider trading is controlled through a set of rules which are intended to protect and secure the system of dealing in financial markets by ensuring the stability of these markets and mitigating potential risks which might result from the unlawful disclosure of confidential information.

Insider trading controls protect security owners and dealers by ensuring that disclosures are made in a way that achieves justice and transparency and prevents conflicts of interest and the unlawful exploitation of an issuing entity's confidential information when they are offering their securities to the public or wish to list their securities in one of the financial markets which is licensed by the QFMA.

QFM Decision No. 2/2024 has introduced new detailed and precise requirements in order to protect confidential information, which applies to those who have access to that information. The Decision targets any data or core information that could potentially affect the securities' value as issued by the listing company, or impact the listing of such securities, if it were

to be unlawfully disclosed.

At present, QFMA Decision No. 2/2024 requires insiders to ensure that any data or information accessed prior to being made available to the public is kept confidential and prohibits insiders from trading in the securities to which such information relates. In addition, insiders are prohibited from disclosing this information to third parties who do not or should not have access to it.

In order to ensure further control over and safeguard confidential information, an insider must also disclose to the listing company – through its internal reporting system – any transaction or work they have previously done in relation to the company's securities or the securities of the parent company, no later than three days from when they start work at that company. They must also commit to following the trading ban periods which are stipulated in the regulations, rules and decisions issued by the QFMA.

This new decision also requires companies to provide the QFMA with a regularly updated list of insiders who have access to confidential trading information, as well as details of their relatives. In addition, they must identify any companies which belong to such insiders.

The relevant markets must then ensure these lists are published on their online platforms so the information is readily available to the public.

Any trades which have been made by these insiders must also be disclosed on the platforms to ensure such insiders comply with the QFMA's applicable rules, regulations and guidelines so investors can be reassured.

Finally, in order to ensure compliance with the confidentiality and transparency requirements prescribed in QFM Decision No. 2/2024, if a breach of any of these requirements is committed, identified or reported, the QFMA reserves the right to take appropriate measures, including initiating investigation proceedings and imposing penalties as prescribed in Article 35 of Qatar Law No. 8/2012.

manage their exposure and optimise their investment strategies.

This development should unlock new opportunities for both local and international financial institutions here in Qatar but it also highlights Qatar's commitment to fostering a robust financial ecosystem.

Another significant change has been the introduction of the third Financial Sector Strategy (FSS) which was issued by the Qatar Central Bank in 2023 and shows Qatar's commitment to enhancing its capital market infrastructure and achieving developed market status. The FSS marks a

transformative phase for Qatar's capital market, as its goal is to create a financial and capital market in the region which leads on innovation, efficiency and investor protection.

The aim is to create an enhanced regulatory framework which aligns with international standards and also provides market transparency and good corporate governance. I am grateful for the opportunity to work with QSE's team which is actively engaged in aligning with the strategic imperatives that have been outlined in the FSS. This work also emphasises the QSE's commitment to driving growth and innovation in the market.

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

In association with

JAMESON LEGAL
Global Recruitment Specialists

A NEWTRIO AT TROWERS

Project finance partner Brad Sanford is one of three new joiners at Trowers & Hamblins. Sanford has extensive experience in Europe, Asia and the Middle East and has knowledge of financing transactions executed under English, UAE and Saudi law. He will work in Trowers's projects, energy and infrastructure team and will be based in Dubai. He previously worked at Ashurst but in the past also spent three years on secondment at the Japan Bank for International Cooperation (JBIC) in Tokyo.



of domestic and international litigation and arbitration across a whole host of jurisdictions including, the UAE, Oman, Bahrain, Qatar, Saudi, Pakistan, India, Nigeria, Yemen, Kenya and Ghana, which includes arbitration (before DIAC, ICC and the LCIA) and litigation on-shore and off-shore. In addition, she often advises clients on GCC agency law. She previously worked as a Legal Director at Clyde & Co.

The third new joiner at Trowers is Rebecca Goldring who has worked for the firm in the past and rejoins them from Penningtons Manches Cooper. Rebecca will work in the firm's private wealth team in Dubai where her work will include advising family offices and trustees on global estate planning, tax efficient investment structures and asset protection.



However, he is not the only new partner in the firm's Dubai office after Nikita Patel also took up a new role there as a partner in their International Dispute Resolution and Litigation team. Nikita has experience



OVER AT OGIER

The international legal and professional services firm Ogier which opened a Dubai office in November 2023 has strengthened its Cayman Islands investment funds practice by moving Dominic Athwal from their London office to Dubai.

In his new role which has also seen him promoted to Counsel, Athwal will spend his time working between the Middle East and the Caymen Islands. In the past he has worked for Pinsent Masons and has been part of finance teams at Bond Dickinson (now Womble Bond Dickinson), DLA Piper, HSBC, and Barclays.

He advises hedge funds, private equity funds, asset managers, sponsors, and family offices on the establishment, regulation, corporate governance and ongoing operation of Cayman Islands domiciled investment funds, and the establishment of venture capital and other funding structures which are based in Cayman Islands.

SCALING NEW HEIGHTS

Robin Hickman as been appointed the new head of Middle East at Addleshaw Goddard.

Hickman has built a strong debt restructuring practice in the Middle East over a 16-year period and will combine work in this area with his new leadership



responsibilities.

He will also continue to work in an advisory role as a Finance partner specialising in complex debt restructuring mandates.

Another change at Addleshaw is that employment law specialist Rachel Hill, who has over 16 years of experience, has joined the firm as a partner.



Her work at Addleshaw will focus on DIFC, ADGM and UAE onshore employment law and advice. Hill is a UK qualified lawyer who has spent the last ten years in the Middle East.

She previously worked at Hadeef & Partners but has also spent time with McCartan Turkington Breen Solicitors, DLA Piper Middle East LLP, and Al Tamimi & Company.

One of her particular areas of expertise involves the procedural requirements for filing litigation before the Dubai Labour Courts.

HEADED TO HADEEF

Corporate law veteran David Baylis who has over 30 years experience has joined Hadeef & Partners as a Senior Counsel. Baylis specialises in structuring and establishing investment funds, but also advises clients on mergers and acquisitions, equity capital markets, private

equity acquisitions and exits.

Art and sports law are also areas where he has particular expertise. His previous roles have included time spent as the Global Head of Private Equity at an international law firm and he is a former advisory board member of the Emerging Markets Private Equity Association (EMPEA). He is a Solicitor of the Senior Courts of England & Wales.

A TAILOR-MADE CHANGES

Paul Taylor who previously worked as the Managing Partner at Eversheds Sutherland's Dubai office has moved to Al Tamimi.

Taylor's new role will be based in Dubai where he will be a partner and the firm's regional head of arbitration. He has over 19 years' of experience of working in the UAE and wider Middle East, where he has

OTHER CHANGES

CMS: Rizwan Osman has become the head of the Corporate law practice at CMS in Saudi Arabia.

Kirkland Ellis: Husni Almousli has moved from the firm's London office to lead their restructuring team in Riyadh.

Global Advocacy and Legal Counsel: M&A specialist Muhammad Bilal Ramzan has become a partner at Global Advocacy and Legal Counsel in Muscat.

Habib Al Mulla & Partners: Regional law firm Habib have opened an office in Moscow.

I MOVERS AND SHAKERS I

handled disputes and arbitrations in the infrastructure, energy, and construction sectors.

However, he is not the only new partner at the firm, as Henry Storrar has also been appointed as a corporate partner in the Abu Dhabi office.

Storrar, has over 12 years of international M&A experience, advising sovereign wealth funds, corporates, and funds on transactions across multiple sectors, including the oil and gas, renewable energy, and technology sectors. He has been based in the region for over five years and was a Senior Legal Counsel at the investment company Waha Capital.

He has also spent time with A&O in Abu Dhabi as well as at Morrison & Foerster and Orrick, Herrington & Sutcliffe in London.

A NEW MOVE FOR MOHSIN

Mohsin Abbasi who previously worked at Clifford Chance in Dubai has now joined Eversheds Sutherland where he will be a Partner in the firm's banking and finance team.

Abbasi has experience in debt capital markets and Islamic finance as well as advising financial institutions, corporate, sovereign and public sector clients on local and international transactions on both the issuer and bank side. His other areas of expertise include conventional bonds, sukuk, structured products, liability management exercises, regulatory capital and ESG issuances.

UNDISPUTABLE LEADER

Natasha Zahid has joined Taylor Wessing as a partner and will work as the head of the firm's disputes and investigations practice in the Middle East and North Africa (MENA). Natasha who previously worked for Clyde & Co undertakes both contentious and non-contentious work. Her sectoral focus includes private clients, regional family businesses, real estate, construction, banking and finance, hospitality, energy, defence contracting, technology, and logistics. She is a dual qualified barrister with qualifications from the Bar of England and Wales and Sindh Bar, Pakistan who has practiced in the region for over two decades.

PUBLIC AND PRIVATE

Lynn Ammar who previously worked as a partner at Cleary Gottlieb will be joining

Clifford Chance in September and will work out of the firm's Abu Dhabi and Dubai offices. Ammar advises corporate and public sector clients, including major national oil companies, sovereign wealth funds, and large pension funds, on transactions across these industries. In particular she focuses on the energy and renewables, healthcare, technology, and consumer products sector. She has over a decade's experience of work in the Middle East and North Africa (MENA) region.

KHOSHAIM CORPORATES

Two new corporate partners have joined Khoshaim & Associates (K&A) in Saudi Arabia. Christian Both and Omar Iqba are both specialists in M&A, joint ventures, investments, venture capital, IPOs, commercial matters, and competition law. Both is a German qualified lawyer who has worked in Saudi Arabia and Germany. In the past he has also spent time in-house at BASF and SABIC and in practice with Freshfields and Clifford Chance. Iqba has led on numerous high-profile transactions in Saudi Arabia and the Middle East. Before joining K&A, he worked in the regional offices of Baker McKenzie, Baker Botts, and Clifford Chance.

A BRAND NEW VENTURE

Haifa Bahaian, former chief legal officer of the Saudi Venture Capital Company (SVC) has joined King & Spalding as a Partner. She will work in the firm's Real Estate and Funds practice group and will be based in their Riyadh office. Her specialisms include funds, private equity, corporate and regulatory work, with a particular emphasis on the Middle East and Saudi Arabia. In the past she has spent time in-house as a senior legal counsel at Olayan Saudi Holding Company and in practice with Latham & Watkins and Baker McKenzie.

NOW OVER IN THE ADGM

CMS have relocated partner Graham Conlon who specialises in M&A, joint ventures and private equity to their new office in the ADGM. Conlon has extensive

cross-border experience and has worked on transactions in the Middle East, Europe and other regions.

ON DEMAND

LawyersOnDemand (LoD), the flexible talent company which offers help with secondments, managed services, direct hire placements and tech integration and implementation has appointed Fatima Seyadi as a UAE talent acquisition and client solutions consultant. Fatima is a Bahraini national who is resident in the UAE and has substantial legal and regional market knowledge. Prior to her new role she had been a Senior LOD flexible lawyer since 2021 having joined the business during the COVID pandemic. She has over 16 years of legal industry experience, which has included time on secondment with a multinational financial service provider.

A STEP UP FOR SINGHI

Surabhi Singhi has been promoted to partner in the corporate group in Bird & Bird's Dubai office. She was previously lead counsel in M&A transactions but also specialises employment law solutions, and has experience in dealing with day to day HR issues. She works with clients in a range of sectors including aviation, retail and consumer, energy, infrastructure, financial services, healthcare, telecommunications and technology.

STARTING AT SOL

SOL International, the UAE based boutique law firm has taken on two new joiners. Lina Bukhari who has an LLB from Manchester Metropolitan University and undertook the Legal Practice Certificate and a Masters of Law at the University of Law in Manchester has joined the firm as a Trainee Solicitor. Lina is fluent in Arabic and English and will work across a range of practice areas including employment, dispute resolution, commercial, fashion and private client law. However, she is not the only new joiner at SOL as they also now have a new paralegal, Sara Nassif who has an LLB in Law with International Relations from Middlesex University Dubai.



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





Unleash your full potential with the new Lexis® Middle East HR

Work faster and more effectively with the new
Lexis® Middle East HR platform.

A complete up-to-date set of employment and health and safety legislation in English and Arabic, Regulations, Questions & Answers, Guidance Notes, Policies, Contract and Letter Templates plus news and articles designed specifically for HR professionals supporting employees from across the Middle East and Turkey.

For more information, contact our team by email:
contact.mena@lexisnexis.fr



Strike Out and a Defendant's Home Run

In a recent ADGM Case involving areas including fraud and breach of Section 242 of the ADGM Financial Services and Markets Regulation 2015 all claims against one Defendant were struck out. **Sadique Mohd, Hashem AlAidarous and Rakshit Jha** of Al Aidarous explain the significance.

BACKGROUND

In ADGM Case No. 265/2022, [2024] ADGMCFI 006 on 23 May 2024, the ADGM Court of First Instance struck out ALL claims against D9, who was one of 13 defendants in a case involving fraud, breach of fiduciary duty, dishonest assistance, breach of Section 242 of ADGM's Financial Services and Markets Regulation 2015, and conspiracy to injure by unlawful means. On 14 November 2022, two UAE-based entities (one of which was listed on the Dubai Financial Market) had instituted proceedings before the ADGM Court against 13 defendants, including D9, claiming fraud had been committed against the Claimants as a result of the 'unlawful' and 'unauthorised' use of AED 320,717,867.84 (around USD 87,317,684.54) to purchase 391,789,341 units of Participation Notes or P-Notes. As at the time of writing this article the case against the other defendants was still pending so this article only deals with the legal principles of the granted strike out application. On 29 August 2023, D9 had applied to strike out all claims against them instituted by the Claimants. Based on this Strike Out Application, the Claimants were allowed to amend their pleadings to cure any deficiency. As the Judge observed on 7 November 2023, when the Strike Out Application was first taken up for hearing: "as matters stand, the Claimants' pleading is one which should properly be struck out. However, it is well established on applications of this kind that, if deficiencies in the pleading might be cured by amendment, it is proper to give an opportunity for such amendment to be made".

As a result, on 8 December 2023, the Claimants filed an amended particulars of claim. However, despite this amendment D9 maintained the amendments in the First Draft were not coherent, comprehensible or adequately particularised; they were not supported by any cogent evidence of the matters alleged, in particular the alleged dishonesty or negligence; and the First Draft had introduced new causes of action - a breach of fiduciary duty



© Getty Images/Stockphoto

and negligence that had no reasonable prospect of success.

In May 2024, the applications were taken up for final hearing. However, on the first day of the hearing, the Claimants conceded that even the amended particulars of claim suffered from several deficiencies. The judgment stated the First Draft was defective in several significant respects (and also contained other more minor errors). The Claimants' representatives, then drafted a significantly altered draft pleading and by an Application Notice of 14 May 2024, supported by a further witness statement applied for permission to amend their pleading in the terms of the Second Draft.

DECISION AND LEGAL REASONS

However, even after this third attempt, the Claimants had failed to remedy the deficiencies and the Court finally struck out all the claims against D9.

Rule 9 of the ADGM Court Procedure Rules 2016 deals with situations where the Court may strike out a statement of case. It states a statement of case may be struck out if it appears to the Court that it discloses no reasonable grounds for bringing or defending the claim; the statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings; or there has been a material failure to comply with a rule, practice direction or Court order.

These rules are mutatis mutandis to the provisions in the UK Civil Procedure Rules 2016 and the judgment in this case relied on several English authorities.

On the principles involving amendment applications, the Court relied on *Kawasaki Kisen Kaisha Ltd v James Kemsball Ltd* [2021] EWCA Civ 33, which stated: “(1) It is not enough that the claim is merely arguable; it must carry some degree of conviction;... (2) The pleading must be coherent and properly particularised; ... (3) The pleading must be supported by evidence which establishes a factual basis which meets the merits test; it is not sufficient simply to plead allegations which if true would establish a claim; there must be evidential material which establishes a sufficiently arguable case that the allegations are correct ...”

There was also a reference to *Elite Property Holdings v Barclays Bank plc* [2019] EWCA, where the court held a claim does not have a prospect where: “(a) it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance; (b) the claimant does not have material to support at least a prima facie case that the allegations are correct; and/or (c) the claim has pleaded insufficient facts in support of their case to entitle the Court to draw the necessary inferences:...”

Based on this, Justice Smith then examined the ingredients of the claims and the supporting evidence in order to conclude if the three versions of the particulars of claim disclosed any grounds for bringing any claims against D9.

On the allegations of dishonesty, bad faith and comparable misconduct, the Court referred to the seminal *Three Rivers District Council v Bank of England (No 3)*, [2001] UKHL 16 case, which held: “of course, the allegation of fraud, dishonesty or bad faith must be supported by particulars.

The other party is entitled to notice of the particulars on which the allegation is based. If they are not capable of supporting the allegation, the allegation itself may be struck out. But it is not a proper ground for striking out the allegation that the particulars may be found, after trial, to amount not to fraud, dishonesty or bad faith but to negligence”.

On this point, the Court also referred to *JSC Bank of Moscow v Kekhman*, [2015] EWHC 3073 (Comm), where it had also been held that: “at the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud.

If the plea is justified, then the case must go forward to trial and assessment of whether the evidence justifies the inference is a matter for the trial judge...”

LESSONS FROM THIS CASE

This ADGM Court of First Instance case is quite helpful as it restates several common law precedents.

In addition, Justice Smith, after placing reliance on *FM Capital Partners Ltd v Marino*, [2018] EWHC 1768 (Comm), provided a valuable insight into the ingredients of ‘dishonest assistance’.

It was stated: “The ingredients of the tort of assisting a breach of fiduciary duty are well-established: there must be a breach of fiduciary duty, but the breach by the fiduciary itself need not be dishonest.

The tortfeasor must have assisted in, induced or procured the breach, playing ‘more than a minimal role’ ... and must have acted dishonestly in doing so.

The tortfeasor has the requisite dishonest state of mind if he deliberately closes his eyes and ears, or deliberately refrains from asking questions to avoid learning something that he would rather not know, and then proceeds regardless”.

After taking into consideration these cited authorities and the facts, the Court unequivocally concluded that none of the versions of the particulars of claim had ever disclosed reasonable grounds for bringing any of the claims against D9.

Despite being afforded several opportunities to put the pleading in order, Justice Smith noted that the claims still did not set out a case against D9 that was properly particularised or coherent or plausible.

As a result, the Court granted the strike out application in favour of D9 and refused the amendment application filed by the Claimants.

This is perhaps one of the first cases in which the ADGM Court has struck out ALL claims against a defendant. However, this case is also a reminder to all litigants and their lawyers of the need to properly particularise their claims.

It is vital to remember a claimant must not rest their case on mere whims and speculations.

Although at the pre-trial stage, the Court is not interested in evaluating the evidence, the claimants must still have brought forward such facts, which even if true or which can be proved at a later stage, must disclose the essential ingredients of the pleaded cause of actions.

If they fail to do this an applicant seeking strikeout could potentially be entitled to a ‘Homerun’.

WITHIN THE RULES



Hashem AlAidarous of Al Aidarous explains the key features of the Abu Dhabi International Arbitration Centre (arbitrateAD) Rules.

On 1 February 2024, the Abu Dhabi International Arbitration Centre (known as arbitrateAD)'s governance structure and rules came into force replacing those of the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC). Under Article 1, these Rules apply where parties agree to refer their disputes to arbitration under the Rules; or to arbitrateAD; or the ADCCAC. Unless otherwise agreed by the parties, these Rules will apply to any arbitration commenced on 1 February 2024 or after that date. Under Article 1(2), when it comes to arbitrations under the ADCCAC rules, the Rules' provisions on emergency arbitrators and expedited proceedings will only be applicable if they have been expressly agreed by the parties. However, ADCCAC rules will continue to apply to pending cases filed before 1 February 2024 (Article 53).

COURT OF ARBITRATION

The Court of Arbitration is an independent administrative body of the Centre which ensures arbitrators' impartiality and the Centre's independence. It operates independently of the Abu Dhabi Chamber of Commerce and Industry (ADCCI). The Court has supervisory authority over arbitrations administered under the Rules. Under Article 3, it is entrusted to appoint arbitrators if parties do not nominate one, address challenges to arbitrators, determination on joinder of multiple parties to an arbitration, and decide on consolidation of two or more arbitrations into a single one. To enhance enforceability, the Court will also scrutinise awards prior to their rendering by tribunals. In addition, before a tribunal's constitution the Court will rule prima facie on whether the Centre has jurisdiction to administer a given arbitration (Article 8(1)).



**Hashem
AlAidarous**
Senior Counsel
Al Aidarous

SEAT OF ARBITRATION

Under Article 22(1) if the parties have agreed on the place of arbitration but there is no express agreement on the seat, the place of arbitration is also the seat. However, in the absence of the parties' agreement, the default seat of arbitration is the Abu Dhabi Global Market (ADGM) (Article 22(2)). As the ADGM follows the English common law tradition, arbitrateAD has a common law jurisdiction as its default seat. Under Article 22(3) the award is also deemed to have been made in the seat of the arbitration, regardless of where tribunals' deliberations or hearings have been conducted.

TIME LIMITS AND EXPEDITED PROCEEDINGS

Awards on the merits must be rendered within nine months at the latest, which commences from the initial case management conference. However, on its own motion or at the tribunal's reasoned request, the Court can extend the time limit for issuing an award. Under Article 38 if a joint request by the parties is made to extend the time limit, the Court will extend it. This time limit brings these Rules in line with those of a number of leading arbitral institutions. Under Article 36(1) the Rules also provide for default expedited proceedings for smaller-scale disputes of up to AED 9 million (based on the sum of all claims and counterclaims). The Rules provide for default expedited proceedings for smaller-scale disputes up to AED 9 million representing the sum of all claims and counterclaims. Under the expedited proceedings, the request of arbitration constitutes the statement of claim and the answer is the statement of defence. A tribunal may also decide

the dispute solely on documentary evidence without the need for a merits hearing. In such cases the award must also be rendered within four months from the tribunal's receipt of the case file.

EMERGENCY ARBITRATION

The Rules also include emergency arbitrator provisions which allow parties seeking urgent preliminary measures before the tribunal's constitution, to file an application for an emergency arbitration to obtain precautionary measures (Article 35(1)). However, to avoid vexatious emergency applications, a non-refundable fee must also be paid. Emergency arbitrators rule on applications within ten days from the date of their appointment, although this can be extended if there is a reasoned request. Emergency arbitrator can decide on their own jurisdiction and require applicants to provide security for costs. The emergency arbitrator's mandate ceases when the arbitral tribunal is constituted.

JOINDER AND CONSOLIDATION

Articles 9-12 provides detailed provisions on dealing with multiple parties, multiple contracts, joinder and consolidation. Under Article 9, a case can be asserted against multiple parties. In addition, under Article 10 in a single arbitration, a party may proceed with

claims arising out of or in connection with multiple contracts. The Court may also join additional parties to an arbitration if all parties agree or where the Court is prima facie satisfied that the joining party falls under the Centre's jurisdiction (Article 11). Under Article 12, if there are multiple arbitrations pending under the Rules, in certain circumstances (for example, if all parties agree or the claims plead based on the same arbitration agreement) these arbitrations will be consolidated into a single arbitration that was first commenced.

AWARDS

Under Article 41(4) each tribunal's member is required to sign the award but such awards can be signed electronically. In addition, the default method of delivery of awards to parties is in digital form and this form is considered an original award. These new Rules have been designed to align arbitrateAD with international best practice and aim to set a balance between effective scrutiny and efficient administration of cases. They help to make arbitrateAD more attractive for domestic and international parties. However, parties which have existing ADCCAC arbitration clauses should seek guidance on the potential impact of these Rules will have on their positions.

Dealing with Experts

Waleed Hamad and Myram Simon of Al Aidarous look at the impact Ministerial Decision No. 210/2024 will have on the work of Experts and Expertise Houses.

Almost a decade after Ministerial Decision No. 116/2015 on the Charter for Technical Experts was introduced it has been repealed and replaced by Ministerial Decision No. 210/2024 On the Charter for Experts and Expertise Houses. This new law provides guidelines and ethical standards for technical experts and expertise houses. The emphasis is placed on a number of fundamental principles such as professionalism, impartiality, fostering a spirit of cooperation, and promoting mutual respect among peers within their field. It also contains specific rules which aim to uphold the dignity and standing of the profession. It emphasises the importance of executing tasks with utmost precision, maintaining unwavering impartiality, and refusing any forms of gifts or favours that could potentially compromise the expert's integrity. Experts must also adhere strictly to the deadlines prescribed by judicial authorities, and ensure no false or misleading information is provided to the court. Transparency is as a core value, and experts must inform all relevant parties in a dispute about essential evidence and give them the opportunity to offer their perspectives or comments. When preparing a report, experts must also include a detailed preamble which outlines the foundational aspects of the preliminary judgment, the procedural steps taken to fulfil the assigned task, and their ultimate findings, along with a well-reasoned opinion. Clarity, accuracy, and logical presentation of

facts and evidence are essential elements that must be reflected in the report's content, in order to ensure its integrity and that it is comprehensive. Responsibilities and guidelines for interacting with judicial authorities and parties involved in a dispute are also highlighted. When it comes to relationships with judicial authorities, those subject to the Charter must adhere to tasks assigned to them and if they are unable to complete that task they should inform the appointing court and provide their reasons. Experts should also withdraw from their work if there is a conflict of interest due to familial or litigation ties with parties in the dispute. They must also meet deadlines set by the court, and not deliberately delay issuing their report. When interacting with parties to the dispute, those covered by the Charter must maintain discipline, respect, and ethics. They must approach their work with accuracy, impartiality, and independence, and ensure clarity to avoid doubts or suspicions. Article 9 of the Charter outlines the requirements for experts when preparing and submitting their reports once they have completed their assigned tasks and Article 13 states that any documents or information acquired while the expert performs their professional duties must be kept strictly confidential. This confidential information should not be disclosed during or after they have completed their work, except in specific scenarios specified in the Decree-Law and its regulations or under a judicial ruling.

Non-compete clauses



© Getty Images/Stockphoto

Where an employee's duties include access to company secrets or if they become acquainted with their employers' customers, an employer will often want to include a non-compete clause in that employee's employment contract. These clauses help to ensure the former employee cannot use business secrets, which could include client contact lists or company secrets which they have had access to while working for their former employer or poach their former employer's customers in order to directly compete with them in their new employment.

UAE LEGISLATION

In the UAE these clauses are now covered in three laws - the UAE Labour Law (Federal Decree-Law No. 33/2021), the Labour Law Implementing Regulations (Cabinet Decision No. 1/2022) and the UAE Civil Code (Federal Law No. 5/1985).

If as a result of their work an employee is aware of their employer's business secrets or has access to their clients Article 10 of Federal Decree-Law No. 33/2021 provides it is possible to state in their Employment Contract that the worker cannot, after the end of the contract, compete with the employer or participate in any competing project in the same sector, as long as this condition is determined in terms of time,

location and type of work to the extent it is necessary to protect the employer's legitimate business interests.

It is important to note these sorts of clauses can only be used where an employee has actual access to business secrets or the employer's clients. Therefore, it would not be appropriate to have a clause of this type included across the board in all employee contracts and for example to also cover cleaners or admin staff who never had this type of access.

In addition, the non-compete period cannot exceed more than two years from the date the contract expires. This condition will also be nullified if the employer terminates the employee's employment contract in a way that breaches Federal Decree-Law No. 33/2021. It is also stated in Article 909 of Federal Law No. 5/1985 these clauses will not apply if it is the Employer who terminates the employee's employment.

In addition, Article 12(1) of Cabinet Decision No. 1/2022 adds a number of additional requirements which must be met.

Non-compete clauses must be limited in their geographic scope and the restriction should only be as broad as is necessary in order to protect the employer's business interests while at the same time not prohibiting the former employee from finding work. They must also be limited in duration and cover no more than two years. However, whether a specific duration which has been included in the contract is deemed to be reasonable will depend on the specific circumstances in the case, and again a balance needs to be struck between protecting the employer and permitting the former employee to find gainful employment in their field or profession. The nature of the

restriction also needs to be clearly set out and should not be vague or general and should include the actual nature and type of work which is being restricted.

REMEDIES

In the UAE if a non-compete clause is breached the onshore courts will not have the power to issue restraining orders to immediately stop the ongoing breach and resulting damages. Compensation for actual losses suffered by the employer due the breach can be awarded by the courts. However, it is necessary to have evidence which proves actual monetary losses were the direct result of the breach which can be time-consuming and difficult. It should also be noted that under Article 910 of Federal Law No. 5/1985 (the UAE Civil Code) even if both parties have agreed that in the event of a breach, the employee will have to pay a particular liability, and that amount is an exorbitant amount which is designed to compel the employee to remain with the employer, that provision would be invalid.

PREVENTING EXECUTION

It is also worth noting where a non-complete clause is in place Article 12(4) of Cabinet Decision No. 1/2022 allows the parties to prevent execution of that clause if the employer and employee have also entered into a written agreement so that the employee (or their new employer) has agreed to pay an amount of up to three months' salary if the former employee is in breach of the non-compete clause.

Where this is the case the burden of proof rests with the former employee to show that they have not breached the non-compete clause or they will have to pay this agreed amount to their former employer.



Contributor
Gloria Estolano
M & Co. Legal



Pinsent Masons
بنسنت ماسونز

As the leading advisor to the Middle East we help you meet your regional challenges

Pinsent Masons' reputation in the legal market is second to none. With the largest team of infrastructure and energy lawyers in the Middle East, as well as lawyers specialising in corporate, technology science and industry, and real estate, we understand the unique issues that affect businesses here. We offer an unmatched depth of knowledge and expertise and advise on a broad range of transactions and disputes in Qatar across our core sectors. In recognition of our experience, we have been named International Law Firm of the Year by LexisNexis awards and are recommended as the go-to firm for advice in the region by all leading directories.

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.



Pamela McDonald
Partner, Head of Doha Office,
Co-Head of International Arbitration

+974 442 69222

+974 5030 3480

pamela.mcdonald@pinsentmasons.com

www.pinsentmasons.com

© Pinsent Masons

A PURPOSE-LED PROFESSIONAL SERVICES
BUSINESS WITH LAW AT THE CORE

983275

Opportunities in the Middle East with Jameson Legal

Jameson Legal is an international legal recruitment company founded in 2010, with specialist divisions for private practice, in-house, interim, and legal tech. We act for client law firms and companies and advise qualified lawyers from NQ to equity partner level, as well as paralegals, compliance professionals, and legal tech professionals.

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@amesonlegal.com, or Jeremy Small at jeremy.small@amesonlegal.com.