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Qatar International Court and Dispute Resolution Centre

A Guide to the Court and Regulatory Tribunal: Procedure and Jurisprudence

By **Khawar Qureshi QC** and **Catriona Nicol**

With contributions from Rt Hon The Lord Thomas of Cwmgiedd, President of the Qatar International Court, and Christopher Grout, Registrar of the Qatar International Court and the QFC Regulatory Tribunal.

A unique publication providing a concise overview and explanation of the Qatar International Court and QFC Regulatory Tribunal's legislation and case law.

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The MENA Business Law Review

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In this issue of the MENA Business Law Review, we are delighted to feature an article summarizing the background legislation and legal reforms which have made the FIFA World Cup 2022 possible.

Dans ce numéro de la MENA Business Law Review, nous sommes ravis de présenter un article qui résume le contexte législatif et les réformes juridiques qui ont rendu possible la Coupe du Monde de la FIFA 2022.

LEGAL MILESTONES

Dear Readers, *Chers lecteurs,*

This issue of the MENA Business Law Review touches on three important legal milestones in the Gulf.

Over the past decade, the world has been watching and waiting as Qatar prepares for the 2022 edition of world's most popular tournament, the FIFA World Cup. The preparations, including the construction of new roads, an underground metro rail service, and state-of-the-art stadiums, have been accompanied by reforms in labour law, adaptation of immigration laws, and an Enabling Law ensuring that key stakeholder interests in the World Cup are protected.

In this issue of the MENA Business Law Review, we are delighted to feature an article summarizing the background legislation and legal reforms which have made the FIFA World Cup 2022 possible. The author, **Khadeja Al-Zarraa,** is familiar with this legislation as it has been the core of her work for a number years!

The UAE federal government has recently released a consultation paper on the implementation of a corporate tax. This consultation paper will be an essential handbook in understanding the implementation of the new corporate tax, which will come into effect next year. **Mourad Chatar** and **Ilias Paraskevopoulos** provide an excellent guide to all aspects of the implementation and application of this new tax, as set out in the consultation paper.

Finally, **David Russell AM RFD QC** tells us everything we need to know about an important case on the application of English tort law in the DIFC.

Three important subjects in this issue, in addition to articles touching on corporate finance, tourism and developments in civil litigation.

Ce numéro de la MENA Business Law Review aborde trois jalons juridiques importants dans le Golfe.

Au cours de la dernière décennie, le monde a observé et attendu que le Qatar se prépare pour l'édition 2022 de l'événement le plus populaire au monde, la Coupe du Monde de la FIFA. Les préparatifs, y compris la construction de nouvelles routes, un service de métro et des stades ultramodernes, ont été accompagnés de réformes du droit du travail, d'adaptation des lois sur l'immigration et d'une loi d'habilitation garantissant que les principaux intérêts des parties prenantes dans la Coupe du monde sont protégés.

Dans ce numéro de la MENA Business Law Review, nous sommes ravis de présenter un article qui résume le contexte législatif et les réformes juridiques qui ont rendu possible la Coupe du Monde de la FIFA 2022. L'auteur, ***Khadeja Al-Zarraa****, connaît bien cette législation car elle est au cœur de son travail depuis plusieurs années !*

Le gouvernement fédéral des Émirats arabes unis a récemment publié un document de consultation sur la mise en œuvre d'un impôt sur les sociétés. Ce document de consultation sera un manuel essentiel pour comprendre la mise en œuvre du nouvel impôt sur les sociétés, qui entrera en vigueur l'année prochaine. ***Mourad Chatar*** *et* ***Ilias Paraskevopoulos*** *fournissent un excellent guide sur tous les aspects de la mise en œuvre et de l'application de cette nouvelle taxe, comme indiqué dans le document de consultation.*

Enfin, ***David Russell AM RFD QC*** *nous dit tout ce qu'il faut savoir sur une affaire importante sur l'application du droit anglais de la responsabilité civile dans le DIFC.*

Trois sujets importants dans ce numéro, en plus d'articles touchant au financement des entreprises, au tourisme et à l'évolution du contentieux civil.

The Industrial Group Ltd v. Abdelazim El Shikh El Fadil Hamid

In this case, originally commenced by the Claimant but ultimately determined in respect of the counterclaim, judgment was given by Justice Sir Richard Field on 6 April 2022.

The original claim was for recovery of money said by the Claimant to have been misappropriated by the Defendant, who counterclaimed for unpaid termination payments and damages for malicious prosecution and abuse of process. The principal legal issue was whether the torts of abuse of process and malicious prosecution, neither of which is specially recognised in the DIFC Law of Obligations, could apply within the DIFC.

Dans cette affaire, initialement engagée par le demandeur mais finalement jugée en faveur du défendeur, le jugement a été rendu par le juge Sir Richard Field le 6 avril 2022.

La demande initiale concernait le recouvrement de l'argent déclaré par le demandeur comme ayant été détourné par le défendeur, qui a présenté une demande reconventionnelle pour des indemnités de licenciement impayées et des dommages-intérêts pour poursuites malveillantes et abus de procédure. La principale question juridique était de savoir si les délits d'abus de procédure et de poursuites abusives, dont aucun n'est spécialement reconnu dans la loi sur les obligations du DIFC, pouvaient s'appliquer au sein du DIFC.

David Russell AM RFD QC

Barrister
Outer Temple Chambers

In this case, originally commenced by the Claimant but ultimately determined in respect of the counterclaim, judgment was given by Justice Sir Richard Field on 6 April.[1]

The original claim was for recovery of money said by the Claimant to have been misappropriated by the Defendant, who counterclaimed for unpaid termination payments and damages for malicious prosecution and abuse of process.

1. *The Industrial Group Ltd v. Abdelazim El Shikh El Fadil Hamid* [2018] DIFC CFI 029.

1

What Happened?

The Defendant was an employee of the Claimant, a DIFC company with associated companies in the Kingdom of Saudi Arabia (KSA). He had originally been employed by the KSA company, but in 2013 transferred to Dubai. Initially, he had a good relationship with the chairman of the company, whom the court found dominated the Claimant's affairs. As part of that relationship, he often paid the chairman's personal expenses from his own bank account, in due course seeking reimbursement.

By January 2018, the Defendant decided that he wished to retire due to the pressure created by his conflicting obligations to the Claimant on the one hand and the payment of the chairman's expenses on the other and advised the Chairman accordingly. Relations between the parties thereafter deteriorated dramatically.

In the period to 24 April 2018, the Claimant and, in particular its Chairman, sought to persuade the Claimant to withdraw his resignation and, thereafter, to attend to an orderly transfer of company records and other mechanics of the hand over. On the face of it, the Defendant was entitled to believe, and did believe, that matters were proceeding without animosity on the part of the Claimant. He also sought reimbursement of sums then owing to him.

At the same time, the Claimant had commenced legal proceedings in the DIFC Courts by way of an *ex parte* application for an order that the Defendant surrender his passport to the Court and not leave the UAE. In seeking that order, counsel for the Claimant asserted that the group's internal audit had established that payments totalling around AED 1.3 million had been made to the Defendant without proper authorisation and *"it appeared that (the Defendant) had actively sought to conceal these transactions from the Group"* (at [25]).

Supporting witness statements asserted, in relation to the payments made by the Defendant, that he *"was trying to make these without the chairman's knowledge and intending that the transactions not be disclosed"* (at [26]).

The Defendant gave 90 days' notice of resignation on 29 April (at [29]). On 8 May, the Defendant was formally dismissed. Among the grounds relied upon were that the request for payment of AED 610,000 made at the January meeting was a *"flagrant breach"* of the Group's internal policies (at [31]).

Further proceedings in the DIFC Court were commenced by both parties–by the Claimant in which it was asserted that the Defendant dishonestly transferred Group funds to his own bank account and by the Defendant that he had been wrongly dismissed. At the same time a complaint was made to the Dubai police (at [37] to [[41]).

The latter complaint resulted in a confiscation of the Defendant's passport and an extensive review of the documents and proceedings by a Court expert attached to the Dubai Courts, to which both parties contributed. Ultimately, the Court expert concluded that the Defendant's version of events, and, in particular, his entitlement to payment, had been confirmed by a review of the documentation and the Defendant's passport was returned to him (at [67] to [74]).

A default judgment for the Claimant which had been obtained in the meantime was set aside with indemnity costs, and ultimately the moneys in dispute were paid to him (at [75] and [76]). However, the termination payment was not, the Claimant contending that the Defendant had been lawfully dismissed.

The Court found, in summary, that the senior management of TIG, particularly the Chairman, egged on by TIG's lawyers, adopted a course of action decided on shortly before 18 April 2018, which was designed to ensure that the Defendant was not involved in the steps they had determined to take to assemble as formidable and one-sided a case as could be put together in order to have Mr. Hamid charged with and convicted of embezzlement and his passport confiscated.

Unsurprisingly, the consequences of these proceedings were extremely damaging to the Defendant (at [77]) - During the period in which Mr. Hamid was facing the DIFC Courts proceedings and the complaint made to the Dubai Police, he was separated from his family who had to return to Sudan. He was without an income and in constant fear that the default judgment would prove the criminal complaint and that he would be imprisoned. He felt ashamed by the loss of his reputation. Most of his family and friends disowned him. His health deteriorated, he lost his house and was unable to get a job. He had previously lived with his family in a villa in Mirdif, Dubai. For a period after his dismissal, he lived in a one-bedroom apartment in Sharjah but after almost a year he could no longer afford the rent and had to live in a shared room with two other people in Ajman.

2

What Was Decided?

A. SUMMARY DISMISSAL REQUIREMENTS

The test for summary dismissal specified in Article 59A of the former DIFC Employment Law[2] and now re-enacted in the 2019 Employment Law[3] is a two-stage test, the first of which (*"where the conduct of one party warrants termination"*) involves the common law test for summary dismissal, whereas the second (*"whether a reasonable employer would have terminated the employment on that ground"*) is an objective test unrelated to the beliefs or understanding of the employer concerned, which departs from the test applicable in the common law (whether a reasonable employer *could* have terminated the employment on that ground) – see *Elseco v. Lys* [2016] DIFC CA 011 (5 July 2017) at 24 and *Christopher James McDuff v. KBH Kaanuun Ltd* [CA-003-2014].

In the present context, the Court held that although there was a technical breach of the Claimant's authorisation policy in respect of some of the payments made to the Claimant by way of reimbursement, as they were not specifically approved in writing by the Chairman (at [152]), because the Claimant had documents in its possession establishing the entitlements to payment, the first stage of the test was not satisfied ([at 154]); however, if the first test had been satisfied, the second was not:

> *"In my judgment, a reasonable employer in the position of TIG in all the circumstances, including the many years during which Mr Hamid had worked for the company enjoying a very high level of trust and respect, would not have dismissed Mr Hamid. Instead, the reasonable employer would have carried out a balanced, fair and open-minded investigation into the transactions, at the end of which it would have been established that Mr Hamid was entitled to have received the*

2. DIFC Law No. 4/2005 (now repealed).
3. DIFC Law No. 2/2019.

reimbursement payments leading to the conclusion that he should not be dismissed. Such an investigation would have included inviting Mr Hamid to attend non-hostile meetings to explain the transactions by reference to the relevant documents held within the Finance Department and would have included interviews with staff members within that department, including Mr Raghuvanshi who was involved in making accounting entries in respect of many of the transactions and had maintained an excel record thereof. What a reasonable employer in the position of TIG would NOT have done would be to proceed as TIG did, namely, unfairly to develop a hostile and unbalanced case against Mr Hamid deliberately excluding him from the process with the objective not only of dismissing him summarily but also obtaining the confiscation of his passport by pursuing a criminal complaint that Mr Hamid was guilty of embezzlement ending with his conviction of that crime." (at [156]).

As a consequence, the termination was not lawful, the Defendant was entitled to his end of service gratuity and, as it had not been paid, to the penalty then provided in the Employment Law which by the time the case was determined exceeded AED 7.5 million.

A question arose as to the effect of the enactment of the 2019 Employment Law, which has a different penalties regime where a matter is before the Courts. The Court applied the earlier law which was much more onerous.

B. ABUSE OF PROCESS AND MALICIOUS PROSECUTION

Neither of these torts are specifically recognised in the DIFC Law of Obligations. Against that background, the Claimant asserted that the Law of Obligations operated as a code and excluded such claims.

Neither of these torts are specifically recognised in the DIFC Law of Obligations.[4] Against that background, the Claimant asserted that the Law of Obligations operated as a code and excluded such claims. The Defendant contended that, because the DIFC Courts were courts of common law and because there was no specific DIFC Law which precluded the availability of such torts in the DIFC, they ought to be regarded as applicable.

The Court's findings, in relation to the conduct in question, are set out above.

It had been held by the Privy Council in *Crawford Adjusters (Cayman) Ltd. v. Sagicor General Insurance (Cayman) Ltd.* [2013] UKPC 17 that in the law of the Cayman Islands, the tort of malicious prosecution extended to claims brought in civil proceedings. In *Willers v. Joyce* [2016] UKSC 43, the UK Supreme Court adopted the Privy Council's reasoning in Crawford *Adjusters* and confirmed that as a matter of English law, the tort of malicious prosecution extends to civil proceedings.

Given the factual findings, it seems reasonable to assume that the elements of these causes of action would have been made out under English law. The award of indemnity costs while setting aside the default judgment necessarily reflects a critical view of the Court in respect of aspects of TIG's conduct of the litigation.

The "waterfall" provision in Article 8(2)(d) of the DIFC Law on the Application of Civil and Commercial Laws in the DIFC[5] provides:

"(1) Since by virtue of Article 3 of Federal Law No.8/2004, DIFC Law is able to apply in the DIFC notwithstanding any Federal Law on civil or commercial matters, the rights and liabilities between persons in any civil or commercial matter are to be determined according to the laws for the time being in force in the Jurisdiction chosen in accordance with paragraph (2).

(2) The relevant jurisdiction is to be the one first ascertained under the following paragraphs:

(a) so far as there is a regulatory content, the DIFC Law or any other law in force in the DIFC; failing which,

(b) the law of any Jurisdiction other than that of the DIFC expressly chosen by any DIFC Law; failing which,

(c) the laws of a Jurisdiction as agreed between all the relevant persons concerned in the matter; failing which,

(d) the laws of any Jurisdiction which appears to the Court or Arbitrator to be the one most closely related to the facts of and the persons concerned in the matter; failing which,

(e) the laws of England and Wales."

The DIFC Courts has considered on a number of occasions how gaps in the DIFC legislative scheme are to be treated. In *Dutch Equity Partners Limited v. Daman Real Estate Capital Partners Limited* [2006] CFI 001, Hwang J (as he then was) considered the application of this provision and observed:

"87. As the statutory Companies Law in the DIFC is clearly based on common law principles, the common law jurisprudence of England and other Commonwealth countries is persuasive authority on principles of company law and the interpretation of similar statutory provisions. Further, there is express reference to the application of the laws of England and Wales under Article 8(2)(e) of the Law on the Application of Civil and Commercial Laws in the DIFC (DIFC Law No. 3 of 2004) ("DIFC Law No.3").

88. Article 8(2) of DIFC Law No. 3 provides a framework for ascertaining the applicable laws in each case. Since neither the 2004 nor the 2006 Companies Laws of the DIFC provide an exhaustive code of company law, the default position under Article 8(2)(e) of DIFC Law No. 3 is that the laws of England and Wales (particularly the common law) will apply to supplement the provisions of the DIFC Statutes."

However, in *Re Forsyth Partners Global Distributors Limited and others* [2007] CFI 005, the same judge considered what law should apply in respect of preferential debts in a liquidation. At the time, Regulations had not been promulgated providing for the order of preferential debts, although the primary legislation provided that such regulations might be made. In that situation, it became necessary to determine whether the result was that there was simply no law in relation to the preferential debts, and therefore no recognition of such debts, or whether the gap was filled by reference to the laws of either the UAE or England and Wales. His Honour reasoned as follows:

'37. There is no applicable law of a jurisdiction other than that of the DIFC that was expressly chosen by any DIFC Law. Accordingly, Article 8(2)(b) of DIFC Law No. 3 does not apply.

38. Article 8(2)(c) of DIFC Law No. 3 is also inapplicable as there was no evidence adduced of any agreement between the Liquidators (and other relevant persons concerned in the Petitions) as to the applicable law of a Jurisdiction.

4. DIFC Law No. 5/2005.

5. DIFC Law No. 3/2003.

39. Accordingly, the only other serious candidates under Article 8(2) of DIFC Law No. 3 appear to be (i) UAE Law (applying Article 8(2)(d)), or (ii) English law (applying Article 8(2)(e)).

40. It is worthwhile to note, however, that the starting point in this analysis is that each scheme for preferential debts derives from the priorities and social conditions existing in the relevant country. There is therefore no presumption that the principles of insolvency are universal, and certainly no natural presumption that UAE law or English law was intended to apply in the DIFC.

41. Bearing this in mind, I note that there are factors in both the UAE and English laws on preferential debts that militate against the applicability of either law in the DIFC.

42. In my view, UAE law is not applicable in the present case as there are other factors in UAE insolvency law that may be influenced by priorities and social conditions in the UAE. For instance, Sharia alimony awarded under Islamic law to an employee's wife and children takes priority over any amounts due to the employee under Article 4 of the Labour Law. The recognition of Islamic law may not necessarily be a relevant consideration in the DIFC, as DIFC laws do not envisage the direct application of Islamic law. The preferential status of payments due to the public treasury over employee claims under Article 4 of the Labour Law is also likely to be influenced by priorities and economic considerations in the UAE.

43. Likewise, English law is not applicable in the present case as there are factors in English insolvency law that are influenced by the priorities and social conditions in England and Wales that do not necessarily apply in the DIFC. For example, the concept of "redundancy" and "occupational pension schemes" are both peculiar to the English common law and do not apply to the DIFC. The preferential status accorded to coal and steel productions under Section 386(1) of the Insolvency Act also demonstrates that preferential debts in England and Wales are driven by national economic interests that are not necessarily relevant to the DIFC. As the 1982 UK Report of the Insolvency Law Review Committee on Insolvency Law and Practice (Cork Report) points out (at paragraph 1428), "[preferential debts were] introduced in an effort to ease the financial hardship caused to a relatively poor and defenceless section of the community by the insolvency of the employer" at a time when "there was no welfare state and wages were low".

44. The English legislative history on preferential debts also buttresses my view that preferential status was accorded to certain types of claims that were clearly influenced by the social conditions of England and Wales. The wages and salaries of clerks, servants, labourers and workmen were first given preferential status under the English Companies Act 1883, which formed the basis of the Insolvency Act. This was clearly a social effort to ease the financial hardship amongst certain poorer sections of the community.

45. Taking into account all these factors, it is my view that the legislature of the DIFC intended to have its own law regarding preferential debts. Even though there is not yet any pronouncement from the DIFCA as to which debts are preferential, this does not mean that UAE law or English law applies in default.

46. Since the position is that the DIFC Insolvency Law envisages that there will be regulations on preferential debts specified by the DIFCA, the conclusion that I draw is that the legislature wished a regime of preferential debts to be established under local law, and not by reference to another system of law. In effect, what the legislature has said is that DIFC will have its own regime on preferential debts and not rely on default provisions or English or UAE law as submitted by Counsel for the Liquidators. Accordingly, the legislature has pre-empted the applicability of any other laws in favour of DIFC law on preferential debts even though there is as yet no DIFCA promulgated list of preferential debts until such promulgation is made.

47. Accordingly, until such promulgation is made, there are presently no preferential debts in any insolvencies carried on under the DIFC Insolvency Law (DIFC Law No. 7 of 2004) in the DIFC.'

So the issue to be resolved in the view of Hwang J–if indeed there was a lacuna in the law–was whether there was an exhaustive code under DIFC law or a specific exclusion of foreign law. It there was either, there was no scope for the operation of the laws of England and Wales.

So the issue to be resolved, in the view of Hwang J–if indeed there was a lacuna in the law–was whether there was an exhaustive code under DIFC law or a specific exclusion of foreign law. It there was either, there was no scope for the operation of the laws of England and Wales. If not, the gap was filled by reference to the laws of England and Wales.

The Court in the instant case concluded that causes of action for abuse of process and malicious prosecution did not exist in the DIFC because the "waterfall" provision in Article 8(2)(d) of the DIFC Law on the Application of Civil and Commercial Laws in the DIFC had the effect that it was the law of the DIFC which applied as the Jurisdiction most closely connected to the facts and persons concerned.

The question thus became whether or not DIFC law included torts not provided for in the Law of Obligations by reason of Article 8(2)(e). At one point the Defendant's position appeared to be that Article 8(2)(e) had that effect:

> *'201. Relying on Article 8 of the Law of Obligations, it is submitted on behalf of Mr Hamid that the Law of Obligations does contemplate actionable causes of action that are not provided for in that Law. Article 8 provides:*
>
> *'8. Rights cumulative*
>
> *(1) The existence of a right of action under this Law is without prejudice to any other right of action under this Law or any other law. [Emphasis supplied]*
>
> *(2) A claimant may sue a defendant in respect of any right of action under this Law.'"*

The absence of recognition of either tort in the Law of Obligations and the concession recorded in [199] below (which appears to reflect a change of position from that recorded in the above paragraph) that the torts sued on had to be provided for in the Law of Obligations (as opposed to not excluded by it) may well have been fatal to this aspect of the Defendant's case:

> *'196. In order to determine the law governing these tortious claims one must resort to Article 8 (2) of the Law on the Application of Civil and Commercial Laws ("the Waterfall Provision"), paragraph (c). It is plain that DIFC law applies to the abuse of process claim since the proceedings were all conducted in the DIFC Courts. What about the malicious prosecution claim? In its Closing Submission, TIG observes that the criminal complaint engaged the criminal processes in Dubai so that*

complaints about TIG's conduct in that process are governed by UAE law as the law that has the closest connection to the facts of and the persons concerned in that matter. UAE law includes an offence of knowingly making false statements to the police but there is no civil cause of action equivalent to the English tort of malicious prosecution and none is alleged.

197. In my judgment, however, it is reasonably arguable that DIFC law is the law most closely connected with the facts and persons that feature in the malicious prosecution claim given that TIG is a company incorporated in the DIFC and the criminal complaint was closely connected to a contract of employment governed by DIFC law. I therefore propose to assume that the law applicable to TIG's tortious claims for both Malicious Prosecution and Abuse of Process is DIFC law.

198. I pressed Mr Bowden, counsel for Mr Hamid, to tell me what his case was for contending that the torts relied were part of DIFC law. He responded:

> *"The simple answer to that is that this is a common law court, there are common law causes of action and the DIFC law, and particularly the laws of Obligation, do not exclude the other torts, so that they are inclusive."*

199. When it came to closing submissions, it was common ground that the torts sued on had to be provided for in the Law of Obligations in order to be sued on in this case. TIG contends that the Law of Obligations is a complete Code for DIFC torts. The remedies available in the event of such liability are set out in the Law of Damages and Remedies. These remedies expressly require some breach of DIFC legislation. Thus Article 23 of the Law of Damages and Remedies creates the right to damages in the event of a breach of an obligation under the Law of Obligations, Articles 24 and 25 limit compensation to losses caused by breaches of the Law of Obligations and Article 35 provides a general right to remedies "where a person commits a breach of any requirement, duty or obligation which is imposed under any DIFC Law …".

200. TIG submits that the torts sued on are not provided for in the Law of Obligations and accordingly Mr Hamid's claim based on the malicious prosecution and abuse of process torts must fail.'

If this view be correct, one consequence is that if the case were to arise in the Abu Dhabi Global Market, whose Courts apply the law of England and Wales on a more general basis,[6] the torts would be held to be applicable.

The discussion of the issue in the reasons suggests that in the view of the Court, this aspect of the case was not as fully argued as it might have been. As noted above, DIFC Laws such as the Law of Contract[7] have generally not been regarded as codes, but as setting out the general rules in respect of which elucidation has frequently been obtained by reference to the law of England and Wales–as indeed was the case in *Dutch Equity Partners*. And the very existence of the DIFC Courts and their inherent right to control abuse of process may well provide a basis for argument that such conduct is actionable as well as subject to formal disciplinary processes.

6. ADGM Application of English Law Regulations Subsection 1(1)
7. DIFC Law No. 6/2004.

3 Why This Case is Important

The decision highlights two significant aspects of DIFC law:

(i) The need for employers, if considering summary termination of employment, to carefully review their proposed action not only from the standpoint of their own assessment of the position, but from the likely standpoint of disinterested third parties–including proceeding fairly and being seen to do so–as this will be the standard applied by the Court if the matter comes before it; and

(ii) To the extent that the Law of Obligations does not provide for a tort known to the common law, unless this decision is varied on appeal, such tort will not be recognised by the DIFC Courts.

DIFC Laws such as the Law of Contract have generally not been regarded as codes, but as setting out the general rules in respect of which elucidation has frequently been obtained by reference to the law of England and Wales.

The decision is now the subject of an appeal by both parties and no doubt the second aspect of the matter, as well as the consequence of the enactment of the 2019 Employment Law in respect of the penalties regime, will be more fully explored in the appeal.

في هذه القضية، التي بدأها المدعي أولا لكن الحكم صدر في سياق الدعوى المقابلة، أصدر القاضي سير ريتشارد فيلد الحكم في 6 أبريل 2022.

كان الهدف من الادعاء الأصلي هو استعادة الأموال التي يقول المدعي أن المدعى عليه اختلسها وقد قام المدعى عليه بدوره برفع دعوى مقابلة مطالبا فيها بالدفعات المستحقة بسبب إنها الخدمة والتعويض عن الملاحقة القضائية الكيدية واستغلال الإجراءات.

تتعلق النقطة القانونية الرئيسية بإمكانية تطبيق الأحكام المتعلقة بالأضرار الناجمة عن استغلال الإجراءات والملاحقة القضائية الكيدية في مركز دبي المالي العالمي، وكلاهما غير معترف به في قانون الالتزامات الخاص بمركز دبي المالي العالمي.

BIOGRAPHY

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David Russell was President of the Taxation Institute of Australia from 1993 to 1995, and of the Asia Oceania Tax Consultants' Association (AOTCA) from 1996 to 2000. He has been appointed an AOTCA Honorary Adviser for life, an Honorary Member of the Taxation Institute of Hong Kong and an Advisor of the Global Tax Advisors Platform.
David Russell was Deputy Chairman of STEP WorldWide during 2018 and 2019 and was Chair of its Governance Committee, a co-chair of the UAE Chapter of the International Section of the New York State Bar Association, an Academician of The International Academy of Estate and Trust Law (and is currently a Council member) and since 2016 has been a member of Legal Week's Private Client Global Elite.
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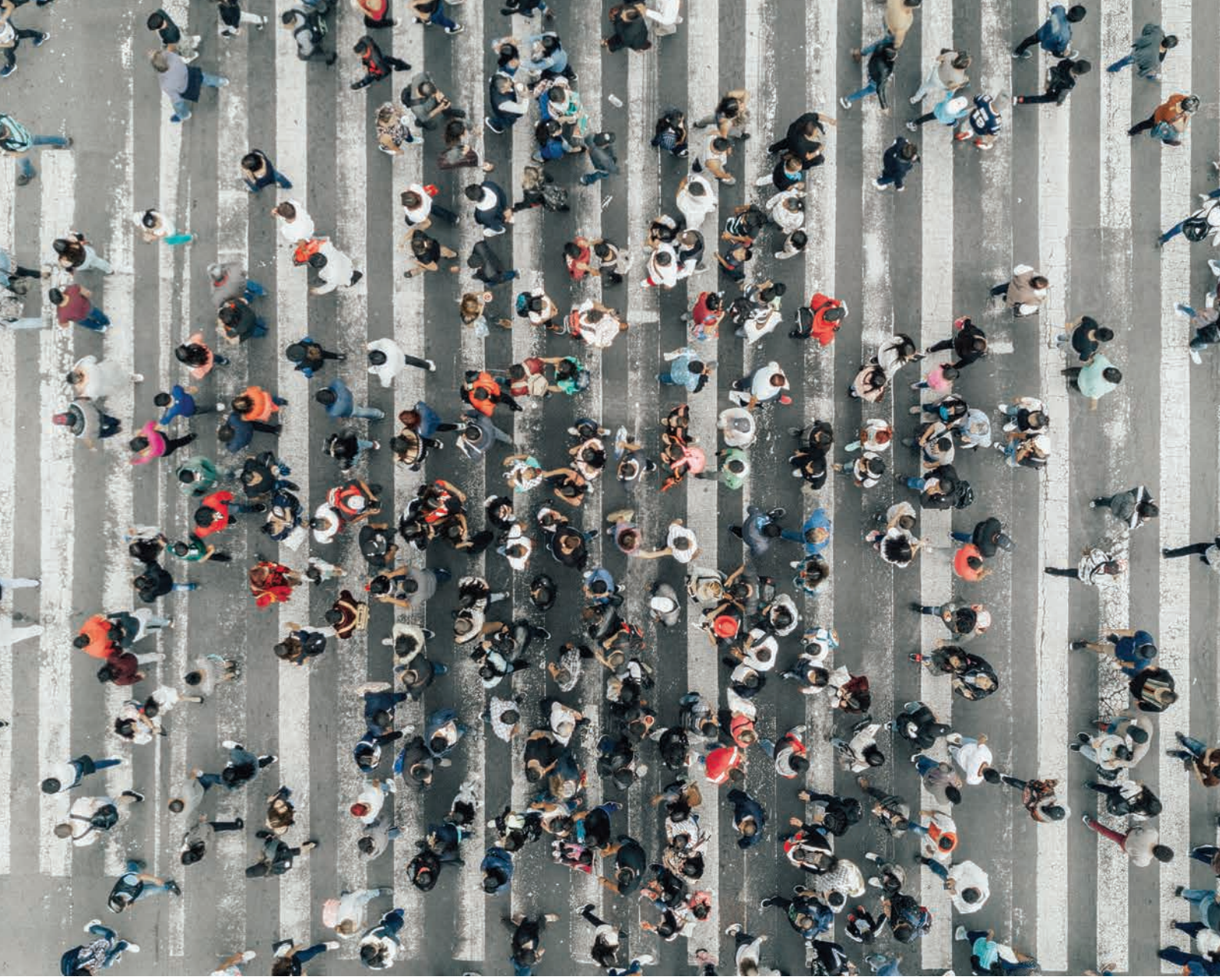

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Oman's Crowdfunding Regulations

On 14 November 2021, the Omani Capital Market Authority amended the Executive Regulations of the Capital Market Law to permit the operation and use of crowdfunding platforms in Oman, subject to the conditions set out in the Rules for Crowdfunding Platforms.

In this article, we provide a high-level analysis of the Rules for Crowdfunding Platforms.

Le 14 novembre 2021, l'Autorité omanaise du marché des capitaux a modifié le règlement d'application de la loi sur le marché des capitaux pour autoriser le fonctionnement et l'utilisation de plateformes de financement participatif à Oman, sous réserve des conditions énoncées par la réglementation applicable aux plateformes de financement participatif.

Dans cet article, nous fournissons une analyse approfondie de cette réglementation.

Maria Mariam Rabeaa Petrou
Senior Associate
SASLO

Alaa Al Hinai
Associate
SASLO

1 Introduction

On 14 November 2021, the Capital Market Authority (**CMA**) issued Decision No. 151/2021 amending the Executive Regulations of the Capital Market Law (Decision No. 1/2009, as amended) (the "**Executive Regulations**"). Decision No. 151/2021 came into force on 22 November 2021.

Decision No. 151/2021 specifies the activity of crowdfunding as a regulated activity by the CMA and companies operating crowdfunding platforms are considered to fall under the broader category of "*companies operating in the field of securities*". Decision No. 151/2021 further provides that Omani registered companies or branches of foreign companies must hold a licence issued by the CMA in order to undertake activities of providing and operating a crowdfunding platform.

On 21 November 2021, the CMA, via Oman Capital Market Authority Decision No. E/153/2021, issued the Rules for Crowdfunding Platforms (the "**Rules**"), which came into force on 22 November 2021. We anticipate that the CMA will issue additional decisions, forms, guidance and instructions in respect of the Rules.

2

Types of Crowdfunding[1]

An Operator (defined as a *"legal person licensed by the CMA to carry out the activities of crowdfunding platform"*) is permitted to invite investors and donors from inside or outside Oman and to provide funding through the platform to any company or commercial enterprise inside or outside Oman in accordance with the terms and conditions prescribed in the Rules. Pursuant to the Rules, the CMA currently only authorises an Operator to carry out one or more of the following four types of crowdfunding, subject to obtaining a licence:

(a) Donation Crowdfunding: raising funds through donations without expecting any return.

(b) Reward Crowdfunding: obtaining funds in consideration for a product which may be in the form of an early release or a special edition, or a service on commencement of operation or production.

(c) Equity Crowdfunding: raising funding in exchange of issuing shares in the capital of the Applicant for Funding. Such shares may be convertible or tradable.

(d) Peer-to-Peer Crowdfunding: obtaining funds in consideration of issuing conventional investment notes or Islamic investment notes including invoice financing which are convertible or tradable. Such funding instruments may be convertible to equity.

3

Crowdfunding Restrictions

A. RESTRICTIONS ON OPERATORS

The Executive Regulations prohibit the Operator from collecting funds for lending purposes.[2] In addition, the Rules restrict Operators from:

(a) investing in funding applications on behalf of any person;[3]

(b) providing direct or indirect financing to investors or Applicants for Funding. However, Operators are allowed to invest in any crowdfunding requests presented on their platforms.[4]

B. RESTRICTIONS ON FUNDING

Funding collected through a platform may only be granted to companies and commercial projects, not to individuals.

Funding collected through a platform may only be granted to companies and commercial projects, not to individuals.[5] As an exclusion to the foregoing, the following entities are prohibited from obtaining funding through a crowdfunding platform:

(a) public joint stock companies;

(b) companies and commercial projects that do not have specific business plans; and

(c) non-profit organisations and associations.[6]

C. INVESTMENT LIMITS

The investment limits invested through crowdfunding platforms depend on the category of investor. The Rules categorise investors as follows:

(a) Sophisticated Investors:[7]

(1) units of the State's administrative apparatus;

(2) entities licensed by the CMA including capital market institutions, companies operating in the field of securities, insurance and Takaful insurance companies;

(3) financial institutions licensed by the Central Bank of Oman;

(4) pension funds;

(5) a company or an investment fund with total assets exceeding OMR 1,000,000 (or its equivalent in a foreign currency);

(6) high net worth individuals:

(i) an individual whose personal assets or joint assets with his or her spouse exceed OMR 500,000 (or its equivalent in a foreign currency), excluding the value of the individual's primary residence;

(ii) an individual whose gross annual income in the last 12 months is not less than OMR 30,000 (or its equivalent in a foreign currency); or

(iii) an individual who, jointly with his or her spouse, has a gross annual income in the last 12 months exceeding OMR 50,000 (or its equivalent in a foreign currency).

(b) Angel Investors:[8]

(1) an investor whose personal assets exceed OMR 300,000 (or its equivalent in a foreign currency);

(2) an investor whose gross annual income in the last 12 months is not less than OMR 20,000 (or its equivalent in a foreign currency); or

(3) an investor who, jointly with his or her spouse, has a gross annual income in the last 12 months exceeding OMR 30,000 (or its equivalent in a foreign currency).

(c) Retail Investors: investors who do not fall within the definition of an Angel Investor or a Sophisticated Investor.[9]

With the exception of equity crowdfunding, any category of investor may invest in any investment note of any Applicant for Funding hosted on the platform, after submitting a declaration disclosing the category of investor to which the investor belongs, subject to the following investment limits:

(a) Sophisticated Investors: no restrictions on investment amounts;

(b) Angel Investors: no restrictions on investment amounts; and

1. Rules, art. 3.
2. Executive Regulations, art. 128 *(bis)*.
3. Rules, art. 19(1).
4. Rules, art. 19(3).
5. Rules, art. 4.
6. Rules, art. 5.
7. Rules, art. 1.
8. Rules, art. 1.
9. Rules, art. 1.

(c) Retail Investors: a maximum of OMR 20,000 at any period of time.[10]

Any investor may invest in equity crowdfunding, after submitting a declaration disclosing the category of investor to which the investor belongs, subject to the following investment limits:

(a) Sophisticated Investors: no restrictions on investment amounts;

(b) Angel Investors: a maximum of OMR 100,000 within a 12-month period; and

(c) Retail Investors: a maximum of OMR 3,000 per Applicant for Funding, with a total amount not exceeding OMR 20,000 within a 12-month period.[11]

4 Operator Licensing

We understand from Article 128*(bis)* of the Executive Regulations that an Omani registered company or branch of a foreign company may carry on the commercial activity of crowdfunding. The minimum share capital required for an Oman registered company to undertake such activity is OMR 25,000.[12] With respect to branches of foreign companies, neither the Executive Regulations nor the Rules specify whether the foreign company is required to have a certain share capital or have been established for a minimum number of years.

An Omani registered company or branch wishing to undertake the commercial activity of crowdfunding platform must satisfy all other conditions provided in the Rules and the Executive Regulations and submit an application to the CMA

An Omani registered company or branch wishing to undertake the commercial activity of crowdfunding platform must satisfy all other conditions provided in the Rules and the Executive Regulations and submit an application to the CMA which must include, among other things, the following documents:

(a) the approval of any other relevant regulator(s);

(b) proof that it is not under liquidation and does not have any pending litigation in any court of law;

(c) proof that its assets have not been placed under judicial control, whether inside or outside of Oman;

(d) a written undertaking which provides, among other things, that:

(i) the electronic systems used by the Operator are safe, efficient and reliable and that they were tested and checked according to internationally acceptable standards;

(ii) it has sufficient financial, human, technical and other resources to manage its operations;

(iii) it has adequate measures in place to ensure the security of information systems, systems capacity, business continuity plan and procedures, risk management, data integrity and confidentiality, record keeping and audit trail, for daily operations and to meet emergencies; and

(iv) it has in place sufficient IT and technical support arrangements.

The CMA has exempted applicants from paying the CMA fees until the end of 2022. As of 1 January 2023, the one-time fee for the licence will be OMR 150,000. The fee to undertake the activity will be OMR 5,000 payable once.[13]

The Executive Regulations prohibit Operators from engaging in any other commercial activity.

5 Operator's Obligations

Operators are under several obligations under the Rules, including those under Part IV of the Executive Regulations. Operators have obligations to both their regulator (i.e., the CMA) and users of their crowdfunding platform. The Rules define a user as an investor, donor and an Applicant for Funding.[14]

A. OPERATOR'S OBLIGATIONS TO THE CMA

The Operator's obligations to the CMA are listed in Article 19 of the Rules. These are in addition to the Operator's obligations under the Executive Regulations. The obligations are several, but examples of these are that the Operator must:

(a) exercise due diligence when carrying out its business and activities;

(b) obtain and maintain investors' risk declarations prior to investing through the crowdfunding platform;

(c) ensure that the fundraising limits imposed on the Applicant for Funding and the investment limits (where applicable) imposed on the investors are not breached;

(d) have written procedures in place in respect of, among other things, the rights and obligations of users, its fees, and risk statement – it is to be noted that investing through crowdfunding carries risks and such risks will vary from platform to platform and from the type of crowdfunding offered through each;

(e) exercise due diligence and perform KYC checks;

(f) have in place procedures to monitor anti-money laundering, counter terrorism financing and the like in respect of all users and comply with applicable anti-money laundering legislation;

(g) ensure that the disclosure documents of the Applicant for Funding are accurate, fair and not misleading;

(h) reject applications if these violate Omani laws or breach the interests of investors; and

10. Rules, art. 37.
11. Rules, art. 9.
12. Decision No. 151/2021, art. 2.
13. Decision No. 151/2021, art. 1.
14. Rules, art. 1(7).

(i) have in place adequate procedures to monitor and manage conflicts of interest.

The Rules also place certain obligations on the Board of Directors of an Operator, including:

(a) immediately notifying the CMA of any irregularity or breach of any law or regulation, or a material change in the information submitted to the CMA, as required under the laws, or becoming aware of any matter which has, or is likely to have, an adverse impact on the Operator's ability to meet its obligations or carry out its functions in accordance with the Rules;

(b) identifying and managing risks associated with its business and operations.

B. OPERATOR'S OBLIGATIONS TO INVESTORS

Similarly, the Operator owes obligations to the investors investing through the crowdfunding platform. Generally, the Operator's obligations to investors include:[15]

(a) to treat investors fairly, with honesty, integrity, equality, not be discriminated against, and to avoid conflicts of interest;

(b) to prioritise the interests of the users of the platforms over personal interests or interests of third parties;

(c) to keep disclosed information and data confidential;

(d) to inform investors of any material adverse change to the proposal of the Applicant for Funding, such as, the discovery of false or misleading statements in offer disclosures, or of a material omission, or where there is a material change or development in the circumstances relating to the offering or the Applicant for Funding; and

(e) to publicly disclose through the platform if the Operator or any of its directors, shareholders or employees hold shares in an Applicant for Funding or pay a referrer or introducer, or receive payment in any form in connection with an Applicant for Funding hosted on its platform.

In addition to the above, the Operator must comply with the requirements regarding the funds raised from investors or donors for the Applicant for Funding and kept with the Operator.[16] The Operator must:

(a) ensure it has adequate systems and controls in place to maintain accurate and up-to-date records of the money held and ensure that such money are properly safeguarded from inappropriate use by its officers and are segregated from its own bank accounts;

(b) establish and maintain one or more escrow account(s) in a bank licenced by the Central Bank of Oman, or where an Islamic investment note is offered through the platform, a sharia-compliant account with a licensed Islamic bank is opened and maintained;

(c) immediately or at the latest within five business days, return the money to the investors or donors where the fundraising campaign is unsuccessful – the same applies where the Applicant for Funding withdraws its application, or fails to meet its obligations or the funds exceed the target amount; and

(d) transfer the funds raised to the Applicant for Funding where a fundraising campaign is successful. The release of funds to the Applicant for Funding must only be done after the Operator provides a written statement to the CMA confirming that the amount sought was raised, all legal requirements and obligations have been satisfied and that there was no material adverse change relating to the offer during the offer period.

15. Rules, art. 22.
16. Rules, art. 27-30.

6

Obligations of the Applicant for Funding

An "Applicant for Funding" (defined as a *"legal person seeking funding hosted on the platform"*) must submit sufficient information and documents to the Operator, including the following:

(a) information describing the key characteristics of the business and the Applicant for Funding;

(b) information explaining the purpose of the fundraising, target funding amount, target offering period and the minimum required percentage of the raised funds from the target funding amounts;

(c) information relating to the business plan of the Applicant for Funding, if any;

(d) financial statements.

During the offering period, the Applicant for Funding must also disclose through the platform the following data in accordance with the rules and procedures of the Operator:

(a) information relating to it, its management, financial statements, business plan, purpose of requesting crowdfunding, target funding amount, proposed offering period and the required percentage of acceptance (if any);

(b) data or information requested by the investors, or errors or adverse material changes to the Applicant for Funding or its project;

(c) rewards or potential investment risks; and

(d) exit procedures from any investments (to the extent there are any).

The Applicant for Funding must enter into an agreement with the Operator and pay the Operator's fees, as determined by the Operator.

Any information submitted or disclosed to the Operator must be true and accurate, otherwise the Applicant for Funding risks being held liable.

The Applicant for Funding must keep its investors informed through effective, transparent and regular communication, and keep them updated on the progress of the business, its financial position, and utilisation of the funds raised.

The obligations of the Applicant for Funding do not stop when the Applicant for Funding is successful in its fundraising. The Applicant for Funding must keep its investors informed through effective, transparent and regular communication, and keep them updated on the progress of the business, its financial position, and utilisation of the funds raised.

The amount the Applicant for Funding may request through the crowdfunding platform depends on the period the Applicant for Funding has been in existence. Where an Applicant for Funding has

been in existence for a period of less than 12 months, the maximum requested funding amount is OMR 100,000. If the Applicant for Funding has been in existence for a period of 12 months or more, it may request funding amounts exceeding OMR 100,000.[17]

7 Looking Forward

Two of the priorities of Oman Vision 2040 are:

(a) economic diversification and fiscal sustainability: a diversified and sustainable economy that is based on technology, knowledge and innovation, operates within integrated frameworks, ensures competitiveness, embraces industrial revolutions and achieves fiscal sustainability; and

(b) the private sector, investment, and international cooperation: an empowered private sector driving a national economy that is competitive and aligned with the global economy.[18]

The offering and use of the crowdfunding platforms is expected to lead to the growth of Oman's GDP, increase in entrepreneurship, lead to the creation of jobs, enhance competition, and increase in investment, research, development and innovation. Start-ups and SMEs will be able to kickstart their projects through alternative means of funding rather than through traditional banking methods and this will likely lead to innovating projects spring into life.

Via a public announcement dated 3 March 2022, the CMA announced that it granted a licence to the first crowdfunding platform Operator in Oman who is licensed to offer both equity and peer-to-peer crowdfunding.

We expect the number of crowdfunding platforms operating in Oman to increase in the near future.

We further expect that the CMA and, potentially, other regulators in Oman will amend the existing legal and regulatory framework to promote and develop more fintech products to enhance innovation in the financial and capital market sectors through the use of blockchain technology. This will very likely attract both local and foreign investors.

17. Rules, art. 10.

18. Oman Vision 2040.

في 14 نوفمبر 2021، قامت الهيئة العامة لسوق المال العماني بتعديل اللائحة التنفيذية لقانون سوق رأس المال للسماح بتشغيل واستخدام منصات التمويل الجماعي في عمان، مع مراعاة الشروط المنصوص عليها في قواعد منصات التمويل الجماعي.

في هذه المقالة، نقدم تحليلا عاما لقواعد منصات التمويل الجماعي.

BIOGRAPHY

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FIFA World Cup Qatar 2022: Legislative Developments

For almost 12 years, the world has been watching Qatar as it prepares to host the FIFA World Cup, and the world has marveled at the developments the nation has undertaken in preparation for the tournament. As a result of being awarded the hosting rights, there have been significant legislative developments in Qatar in key areas such as immigration and labour law, safety and security, and intellectual property protection, together with commercial legislation. To comply with its bid, Qatar has amended and enacted several laws and ministerial decisions to further support its hosting efforts.

These legislative developments have also supported increased foreign investment in key sectors in the country. Notably, on 29 July 2021, Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022 (the "**Enabling Law**") was enacted. The Enabling Law is the cornerstone of the operational set-up for the Competition, as it implements the commitments made by the State of Qatar towards FIFA. This article will discuss in

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Depuis près de 12 ans, le monde observe le Qatar alors qu'il se prépare à accueillir la Coupe du Monde de la FIFA, et le monde s'émerveille des développements que la nation a entrepris en préparation du tournoi. Suite à l'attribution des droits d'organisation de la compétition, des développements législatifs importants ont eu lieu au Qatar dans des domaines clés tels que le droit de l'immigration et du travail, la sûreté et la sécurité, la protection de la propriété intellectuelle, ainsi que la législation commerciale. Pour se conformer aux exigences de sa candidature, le Qatar a modifié et promulgué plusieurs lois et décisions ministérielles afin de soutenir davantage ses efforts d'organisation.

Ces développements législatifs ont également été réalisés en vue de soutenir l'augmentation des investissements étrangers dans les secteurs clés du pays. Notamment, le 29 juillet 2021, la loi qatarienne n° 10/2021 concernant les mesures d'accueil de la Coupe du Monde de la FIFA, Qatar 2022 (la « loi d'habilitation »), a été promulguée. La loi d'habilitation est la pierre angulaire

.../...

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detail the key legislative developments arising as a result of Qatar being awarded the hosting rights for the FIFA World Cup Qatar 2022, specifically the provisions of the Enabling Law and its impact on conducting business in Qatar.

du dispositif opérationnel de la compétition, car elle met en œuvre les engagements pris par l'État du Qatar envers la FIFA. Cet article traitera en détail des principaux développements législatifs résultant de l'attribution au Qatar des droits d'organisation de la Coupe du Monde de la FIFA Qatar 2022, en particulier des dispositions de la loi d'habilitation et de son impact sur la conduite des affaires au Qatar.

On 2 December 2010, following Qatar's successful hosting of the Asian Games in 2006, Qatar was announced as the first Arab State to host the FIFA World Cup to be held in 2022 (the "**Competition**"). From 21 November to 18 December 2022, Qatar will welcome through its borders 32 teams to participate in the Competition, and hundreds of thousands of fans and spectators will arrive, many visiting Qatar for the first time.

After the Olympics, the World Cup is the most watched sporting event across the globe, bringing with it an incredible amount of exposure. Unquestionably, major sporting events like the World Cup present a large array of legal issues to be considered by the hosting country. Since the announcement of Qatar's successful bid, the Supreme Committee for Delivery and Legacy (the "**Supreme Committee**") has worked hard with stakeholders in preparation for the Competition, including developing a sporting event legislative framework necessary to support the facilitation and hosting of the Competition, and providing the groundwork for future major sporting events.

1 Labour Reforms

The most notable legislative development has been in the area of labour, which has attracted worldwide focus due to human rights concerns in relation to expatriate workers prevalent in global sporting events of this nature. Qatar has a unique population structure as the number of expatriate workers is significantly higher than the number of Qatari nationals. Currently, Qatar provides jobs for almost two million people.[1] This is due to the country's rapid infrastructure development and the corresponding booming construction industry.

Qatar has addressed issues pertaining to workers' rights in its labour regulations. Predominantly, Qatar has sought to address the issue of sponsorship and to ensure the due payment of salary and other entitlements.

As a result, Qatar has addressed issues pertaining to workers' rights in its labour regulations. Predominantly, Qatar has sought to address the issue of sponsorship and to ensure the due payment of salary and other entitlements. Consequently, legislators in Qatar introduced significant amendments to Qatar Law No. 13/2004 (as amended) (the "**Labour Law**"), which applies to many expatriate workers. These labour law reforms include cancellation of exit permits, which required the employer to approve the employee's right to leave the country for any purpose, by virtue of Qatar Law No. 13/2018 amending provisions of Qatar Law No. 21/2015 regarding the Regulation of Entry and Exit of Foreigners and their Residence and Qatar Ministerial Decision No. 95/2019 on the Controls and Procedures for the Exit of some Categories of Expatriates who are not subject to the Labour Law.

On 30 August 2020, H.H. the Emir Sheikh Tamim bin Hamad Al Thani enacted Qatar Law No. 17/2020 regarding the Minimum Wage for employees and domestic workers (the "**Minimum Wage Law**"). The Minimum Wage Law applies to the following categories:

1. all private sector employees (i.e., every natural person who works for an employer and is subject to the employer's guidance and supervision); and
2. domestic workers (i.e., domestic workers who perform household duties under the supervision and management of the employer such as chefs, housekeepers and drivers).

The Minimum Wage Law gives the Minister of Administrative Development, Labour and Social Affairs Ministry (**ADLSA**) the authority to set the minimum wage for the above-mentioned categories by a Ministerial Decision, which shall be reviewed and amended at least once a year by a specialized committee to be formed. The Decision is required to take into consideration economic factors, including the economic development, competitiveness, productivity and the needs of the employees and their families.

On 9 September 2020, the Minster of ADLSA issued Ministerial Decision No. 25/2020 setting the minimum wage at QAR 1000 per

1. Government Communications Office, Labour Reform, https://www.gco.gov.qa/en/focus/labour-reform/#:~:text=In%20March%202021%2C%20Qatar%20introduced,unless%20provided%20by%20their%20employer.

month. In addition, the Ministerial Decision provided that in case the employer does not provide the employee with adequate housing and food, the employer must provide the employee with the following allowances:

1. minimum of QAR 500 per month for accommodation expenses; and
2. minimum of QAR 300 per month as food allowance.[2]

The Ministerial Decision provided a six-month transition period for employers to prepare and ensure compliance.[3]

2

Enabling Law for FIFA World Cup Qatar 2022

The enactment of the Enabling Law is a significant milestone in Qatar's preparations for hosting the Competition, through which Qatar seeks to ensure that key stakeholders' commercial interests are protected, and to ensure that Qatar's numerous commitments in its bid for the Competition are honoured.

On 29 July 2021, H.H. the Emir Sheikh Tamim bin Hamad Al Thani enacted Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022 (the "**Enabling Law**"). The enactment of the Enabling Law is a significant milestone in Qatar's preparations for hosting the Competition, through which Qatar seeks to ensure that key stakeholders' commercial interests are protected, and to ensure that Qatar's numerous commitments in its bid for the Competition are honoured.

The Enabling Law is the cornerstone of the operational set-up for the Competition as it implements the commitments made by the State of Qatar in the Government Guarantees and Hosting Agreements, which each bidding nation executes as part of its bid book. In essence, the Government Guarantees and the Hosting Agreements govern the contractual relationship between FIFA as the owner of the Competition, and the State of Qatar as the hosting nation, and details the obligations of Qatar in relation to key hosting areas. These areas include but are not limited to commercial rights, safety and security, immigration, taxes, banking and foreign exchange, transportation, medical assistance, and intellectual property rights.

Pursuant to these obligations and consistent with prior hosting nations, it was necessary for Qatar to issue legislation that enables it to perform its obligations, some of which contradict, or are not expressly covered by, existing laws and regulations.

The Enabling Law comprises of ten chapters covering the following key areas:

- Chapter one: Definitions and general provisions
- Chapter two: Procedures of entry, exit and work in the state
- Chapter three: Exemptions
- Chapter four: Safety and security
- Chapter five: Banking and foreign currency operations
- Chapter six: FIFA rights
- Chapter seven: Broadcasting and advertisement
- Chapter eight: Transportation
- Chapter nine: Volunteers
- Chapter ten: Penalties and final provisions

A. GENERAL PROVISIONS

The Enabling Law is considered a special temporary law enacted to achieve a specific purpose. Its provisions are to be applied for the purpose of holding activities to host the Competition, and do not exceed the "Competition Period".

The Enabling Law is considered a special temporary law enacted to achieve a specific purpose. Its provisions are to be applied for the purpose of holding activities to host the Competition, and do not exceed the "Competition Period", defined as the period commencing ten days prior to the first match and ending five days after the last match in the Competition.[4] Therefore, it is important to note that its application is limited to a specific period and purpose.

B. IMMIGRATION AND LABOUR

A significant number of people are expected to come to Qatar for employment as a consequence of the Competition. The Qatar Labour Law and Qatar Law No. 21/2015 Regulating Entry and Exit of Expatriates generally govern the entry and employment of expatriate employees. However, the Enabling Law seeks to regulate immigration and labour related issues concerning entry to Qatar in connection with the Events around the Competition in an expedited manner to account for the volume of people that will be entering the country to work for that short period.

Pursuant to the Enabling Law, Qatar will issue entry permits in an expedited manner for certain categories of entities, including FIFA, companies associated with the operations of the Competition, volunteers and fans. Entry permits issued pursuant to the Enabling Law will expire at the end of the Competition Period, being five days after the last match in the Competition.[5]

2. Qatar Ministerial Decision No. 25/2020 on the Determination of Minimum Wages of Domestic Workers Helpers, art. 2.

3. Qatar Ministerial Decision No. 25/2020 on the Determination of Minimum Wages of Domestic Workers Helpers, art. 5.

4. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 2.

5. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 4.

Notably, the Enabling Law provides employees in certain entities, including FIFA and companies associated with the operations of the Competition, with an exemption from providing a copy of a work permit, which is currently applicable for any foreign national entering Qatar to work.[6] This exemption is intended to facilitate the entry of thousands of employees working with, or for the key entities responsible for, carrying out activities related to the operation of the Competition.

The Enabling Law designates the Security Committee as the entity responsible for issuing necessary entry permits, which is an exemption from the Residency Law that affords that power to the Ministry of Interior.[7] The Security Committee is the entity in charge of the security elements of the Competition. It was formed by Decision No. 2/2011 of the Chairman of the Board of Directors of the Supreme Committee and is chaired by H.E. the Prime Minister of the State of Qatar and Minister of Interior.[8] The Security Committee's mandate includes overseeing the safety and security aspects of hosting the Competition. Hence, it is the entity best suited to be able to issue entry permits in expedited manner.

The Enabling Law also exempts FIFA and other specified entities from the requirements of any labour regulations currently in effect in the State of Qatar, including the Labour Law and Qatar Financial Centre Employment Regulations

The Enabling Law also exempts FIFA and other specified entities from the requirements of any labour regulations currently in effect in the State of Qatar, including the Labour Law and Qatar Financial Centre Employment Regulations, and other laws and regulations if applicable, and instead refers to the provisions of their employment agreement to regulate the relationship between the parties, including working hours, renumeration and termination.[9] Hence, employers have more flexibility in setting working hours and other key provisions. This exemption also ensures that FIFA and other specified entities do not have to have separate employment agreements for that specific period, which can increase costs and may require these entities and their employees time to review and understand the provisions of the Qatar Labour Law, which can be different that the laws they adhere to abroad.

C. EXEMPTIONS

The Enabling Law affords a number of key exemptions to FIFA and other specified entities, including an exemption from the payment of certain fees relating to their operations in Qatar, and exemptions from applicable taxes and customs, all as stipulated in the Government Guarantees.

In accordance with the Government Guarantees issued by Qatar as part of its bid to host the Competition, the Enabling Law affords a number of key exemptions to FIFA and other specified entities, including an exemption from the payment of certain fees relating to their operations in Qatar, and exemptions from applicable taxes and customs, all as stipulated in the Government Guarantees.[10] Specific decisions regarding the procedural elements of these exemptions are expected to be issued by the relevant authorities.

D. SAFETY AND SECURITY

Ensuring a safe and secure event is of significant importance to Qatar as the host nation and to FIFA as the owner of the event. Attention has been given in the Enabling Law to providing the Security Committee with the necessary power to operate the security elements of the Competition. In this regard, the Chairman of the Security Committee has the power to issue necessary instruction and guidelines in relation to security procedures to ensure the safety and security of the delivery of the Competition.[11] Furthermore, the Enabling Law affords the Chairman of the Security Committee the power to decide how certain acts committed during or by virtue of the Competition, which may be in violation of existing laws and regulations, are to be treated. The Enabling Law provides that the Chairman may publish instructions in relation to these matters in the media in order to ensure adequate public awareness.[12]

6. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 6.
7. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 4.
8. Decision No. 2/2011 of the Chairman of the Board of Directors of the Supreme Committee for Delivery and Excellence.
9. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 7.
10. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 8.
11. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 10.
12. *Ibid.*

E. BANKING AND FOREIGN CURRENCY OPERATIONS

The Enabling Law stipulates that no restrictions may be imposed on the purchasing and selling of the State's or foreign currencies during the Competition Period.

The Enabling Law stipulates that no restrictions may be imposed on the purchasing and selling of the State's or foreign currencies during the Competition Period.[13] This includes the entry and exit of currencies to and from the State of Qatar, which currently applies limits to a certain declared amount. Furthermore, the exchange and conversion of foreign currencies into US dollars, euros and Swiss francs in connection with operations related to the Competition may not be restricted.[14] This is intended to facilitate the exchange of different currencies by all visitors to the State of Qatar during the Competition Period. As regulator, the Qatar Central Bank has the power to implement these exemptions prior to the beginning of the Competition Period if needed. Furthermore, the banking authorities of the State are required to organize simple and efficient banking processes during the Competition Period.[15]

As a result of Qatar's compliance with the Government Guarantees issued to FIFA in relation to banking and finance, the Qatar Central Bank (**QCB**) has recently issued QCB Circular No. 3/2022 affording certain exemptions to VISA. VISA, a financial services corporation, is one of FIFA's sponsors for the Competition. The company has been granted exclusivity in stadium purchases and ticket purchases to the matches.[16] However, the potential exercise of this exclusivity right is in direct conflict with the existing QCB Circular No. 95/2013, which restricts and regulates the use of debit cards as a payment method for online purchases made through websites. It provides for two directives to all banks operating in Qatar:

(i) that they should not allow their customers to use debit cards through websites; and

(ii) that the debits cards should only be allowed to be used through QCB's e-payment gateway (QPAY) by entering the card's PIN number.[17]

In effect, for the duration of the Competition, the exclusive use of QCB's e-payment gateway for debit cards has been temporarily suspended in order to allow VISA, as a FIFA sponsor, to exercise its exclusivity rights.

By issuing QCB Circular No. 3/2022, the QCB allows the use of VISA debit cards exclusively for online purchases, mobile app purchases and at event locations, including at tickets sale venues during the duration of the Competition Period. Any such payment will be processed through VISA's own electronic payment gateway, rather than through QPAY. In effect, for the duration of the Competition, the exclusive use of QCB's e-payment gateway for debit cards has been temporarily suspended in order to allow VISA, as a FIFA sponsor, to exercise its exclusivity rights.

F. FIFA INTELLECTUAL PROPERTY RIGHTS

In any major sporting event, the financial investment of sponsors is crucial to the event's success, forming the basis of licensing and merchandising agreements that earn revenues to support the development of the sport. As such the Enabling Law seeks to regulate FIFA's commercial rights relevant to the Competition. FIFA Intellectual Property Rights cover a wide variety of rights including:

- the name and logo;
- slogan and anthem of FIFA;
- official titles and names designating the Competition;
- mascot;
- logos;
- billboards;
- identification symbols;
- designs and slogans;
- trophies and medals; and
- artistic and musical works.[18]

The Enabling Law specifically provides a non-comprehensive list of "FIFA Intellectual Property" and the commercial rights FIFA enjoys as they relate to the Competition, and moreover prohibits, without authorization by FIFA, the use, registration, imitation, reproduction or modification of such intellectual property.

While these rights are generally protected under existing intellectual property legislation in Qatar, the Enabling Law specifically provides a non-comprehensive list of "FIFA Intellectual Property" and the commercial rights FIFA enjoys as they relate to the Competition, and moreover prohibits, without authorization by FIFA, the use, registration, imitation, reproduction or modification of such intellectual property.[19] The Enabling Law stipulates penalties for infringement of FIFA Intellectual Property Rights—which are notably more severe than what would be imposed by existing intellectual property laws in Qatar—in order to deter any potential infringement.[20]

13. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 13.
14. *Ibid.*
15. *Ibid.*
16. FIFA, https://www.fifa.com/about-fifa/commercial/partners/visa.
17. QCB Circular No. 95/2013.
18. Qatar Law No. 11/2021 on the Protection of FIFA Trademarks, Copyrights and Neighbouring Rights, art. 14.
19. *Ibid.*
20. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 38.
Ibid.

In addition to enacting the Enabling Law, H.H. the Emir Sheikh Tamim bin Hamad Al Thani has enacted Qatar Law No. 11/2021 on the Protection of FIFA Trademarks, Copyrights and Neighbouring Rights (the "**FIFA IP Law**"). The enactment of the FIFA IP Law represents a significant effort by the State of Qatar to protect the substantial investments made by the State, FIFA and its commercial partners. The FIFA IP Law governs the registration of all FIFA IP rights, including FIFA Trademarks and FIFA Copyrights and Neighbouring Rights. FIFA Trademarks are defined to be all trademarks belonging to FIFA in relation to the Tournaments organized by FIFA and hosted by the State of Qatar until the conclusion of the FIFA World Cup Qatar 2022 even if not registered in the State of Qatar.[21]

The FIFA IP Law refers to the notability of FIFA Trademarks, which means that they are protected regardless of whether they have been registered in Qatar, as long as they are protected in any member country to the Paris Convention for the Protection of Industrial Property to which Qatar is a party pursuant to Qatar Decree No. 31/2001.[22] This protection is afforded regardless of whether the goods or services of the third-party trademark are identical or similar to the goods and services of the FIFA Trademarks.

Article 7 of the FIFA IP Law refers expressly to the prohibition mentioned in Article 8(8) of Qatar Law No. 9/2002 regulating Trademarks, Trade Indications, Trade Names, Geographical Indications and Industrial Designs and Templates (the "**Trademarks Law**"). Such prohibition bars the registration of signs which are identical or confusingly similar to the public, to a mark already registered or for which an application was filed by a third-party for identical or similar goods or services, or signs that are widely famous. The prohibition in Article 8(8) of the Trademarks Law therefore applies to any third-party trademarks that are identical or similar to any translation or transliterations of the FIFA Trademarks, or to any substantial part thereof.

Pursuant to Article 10 of the FIFA IP Law, FIFA is exempt from any fees associated with the registration of trademarks, deposit of works, audio recordings, performances of performers and its radio broadcasts.

G. UNFAIR COMPETITION

There are various sources of unfair competition that the Enabling Law seeks to specifically expand upon under existing Qatari laws, including in connection with misleading consumers regarding services or products endorsed by FIFA or the Supreme Committee, holding fan events, using tickets for the purpose of advertisement or hosting public viewing events—all without the prior approval of FIFA.[23] Hotels or tourism service providers are not permitted to offer tickets with their packages without the approval of FIFA. Violation of these provisions carries fines of up to QAR 500,000 or imprisonment for up to a year.[24]

H. TICKET SALES

The issuance and sale of tickets to the Competition is strictly an exclusive right afforded to FIFA. Pursuant to that right, the Enabling Law prohibits the issuance, sale, resale, redistribution and trade in tickets without FIFA's authorization.

The issuance and sale of tickets to the Competition is strictly an exclusive right afforded to FIFA.[25] Pursuant to that right, the Enabling Law prohibits the issuance, sale, resale, redistribution and trade in tickets without FIFA's authorization.[26] This is a key provision given that existing laws in Qatar do not criminalize the resale or trade of tickets for sporting events and therefore it addresses the existing legislative gap by criminalizing theses key acts which negatively affects sporting tournaments of this scale. Further, FIFA being the holder of the exclusive rights in relation to tickets is also afforded an exemption from the prior approval required to process the personal data of nationals and residents of the State of Qatar who purchase tickets.[27]

I. ESTABLISHING COMPANIES

A vast array of expertise is required to bring a sporting event the size of the World Cup to life. As such, the Enabling Law affords FIFA and other specific entities responsible for delivering aspects of the Competition the right to establish a presence in the State of Qatar under an applicable regime with 100% foreign capital.[28] While this provision is consistent with existing laws, the exemption is limited to activities related to the Competition and the presence of such companies is to expire upon the lapse of 90 days after the end of the Competition Period, unless those companies have sought to change their status or if the Council of Ministers extends this period based on a request from the Supreme Committee.[29]

The Enabling Law also affords those entities with a simple expedited liquidation process. In this respect, on 27 April 2022, the Minister of Commerce and Industry issued Qatar Ministerial Decision No. 39/2022 on the Mechanism of Registration, Establishment and Liquidation of Companies Conducting Activities for Hosting FIFA World Cup Qatar 2022. The Decision sets out the procedures and required documents to be submitted for FIFA and other specific entities responsible for delivering aspects of the Competition, to establish companies in Qatar. The Decision notably refers to an expedited process of registration, which is one day from receipt of a completed application.[30] Furthermore, given that the exemption afforded to these companies only allows it to remain operational for the Competition Period, the Decision states in Article 4 that the

21. Qatar Law No. 11/2021 on the Protection of FIFA Trademarks, Copyrights and Neighbouring Rights., art. 1.

22. Qatar Law No. 11/2021 on the Protection of FIFA Trademarks, Copyrights and Neighbouring Rights, art. 7.

23. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 18.

24. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 38(1).

25. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 19.

26. *Ibid.*

27. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 21.

28. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 23.

29. *Ibid.*

30. Qatar Ministerial Decision No. 39/2022 on the Mechanism of Registration, Establishment and Liquidation of Companies Conducting Activities for Hosting FIFA World Cup Qatar 2022, art. 3.

companies will automatically be deregistered by the laps of 90 days after the end of the Competition Period. The decision further provides for simplified process of liquidation to allow these companies to liquidate in an expedited manner.

J. COMMERCIAL RESTRICTION AREA

It is prohibited to exercise any commercial or other activities on match day and the day preceding it in the Commercial Restriction Area. The right to advertise or promote in the Commercial Restriction Area is afforded FIFA or its delegate.

To support the financial investment made by sponsors of the Competition, and in line with the commitments made by Qatar in the Government Guarantees, the Enabling Law creates a "**Commercial Restriction Area**", which is the area adjacent to the Stadium or any Events Location, as determined by FIFA, with a radius not exceeding two kilometers, including the airspace above, and calculated from the middle of the Stadium or Events Location.[31] It is prohibited to exercise any commercial or other activities on match day and the day preceding it in the Commercial Restriction Area. The right to advertise or promote in the Commercial Restriction Area is afforded FIFA or its delegate.[32] An exception has been provided to existing businesses that fall within the Commercial Restriction Area radius in order to be allowed to continue their operations in accordance with the specific rules and instructions issued by FIFA.[33]

K. FIFA ADVERTISEMENTS

Given the value of advertisements to the overall success of the Competition, the Enabling Law seeks to specifically regulate FIFA advertisements during the Competition Period. It is prohibited to advertise or promote in any other method in the Events Location or the Commercial Restriction Area during the Competition Period, and the period starting two days prior to the date of the preliminary or final draw ceremonies, until the day following the end of the draw ceremonies unless authorized by FIFA or its delegate.[34]

Notably, FIFA advertisements will be exempt from the provisions of Qatar Law No. 7/2019 on the Protection of the Arabic language and Qatar Law No. 1/2012 on the Regulation and Control of the Placement of Advertising.[35] In this regard, FIFA will not be required to apply for a permit from the relevant municipality where the advertisement is intended to be placed. Instead, FIFA will submit an application to the Supreme Committee, which is the designated entity responsible for approving FIFA advertisements. Furthermore, pursuant to this exemption, FIFA will only be required to place advertisements in the English language, and not both English and Arabic.

L. VOLUNTEERS

The Enabling Law allows FIFA and the Supreme Committee to use volunteers without the need to obtain a work permit.

Volunteers have the potential to contribute to not only the economic, but the social value, of a major sporting event. Existing laws in the State of Qatar do not specifically regulate the work of volunteers. The Enabling Law incorporates a chapter that addresses the use of volunteers in the Competition. In this regard, the Enabling Law allows FIFA and the Supreme Committee to use volunteers without the need to obtain a work permit.[36] Foreign volunteers will be issued entry permits for either one or multiple entries which is set to expire at the end of the Competition Period.[37] Volunteers are also exempt from any application of taxes associated with their volunteering activities.[38]

M. PENALTIES

The Enabling Law introduces a new offence not regulated by existing laws in relation to the sale, resale and distribution of tickets without FIFA approval.

The Enabling Law stipulates severe penalties for certain offences committed in violation of the law. The Enabling Law introduces a new offence not regulated by existing laws in relation to the sale, resale and distribution of tickets without FIFA approval.[39] Furthermore, pursuant to Article 40, the Secretary General of the Supreme Committee has the power to reconcile with the perpetrators of any offences stipulated in the Law, including offences in relation to tickets, provided that the monetary fines listed in the reconciliation table are paid. According to the reconciliation table annexed to the Law, offences in relation to tickets carry a monetary fine that is uniquely linked to the number of tickets subject to a single offence. Therefore, if an individual resells, without FIFA's permission, more than one ticket, the monetary fine required to be paid in order to reconcile is three times the values of each ticket. Alternatively, if the number of tickets exceeds eleven tickets, the monetary fine is five times the value of each ticket. Furthermore, the fines are doubled in case the perpetrator is a legal person.

It is also important to note that the person responsible for actual management of the legal person charged with a violation will be

31. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 1.
32. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 29.
33. *Ibid.*
34. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 28.
35. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 30.
36. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 35.
37. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 36.
38. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 37.
39. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 19.

subject to the same penalty if it is proven that he or she was aware of the violation, or if a breach of duties contributed to the commission of the crime.[40] The Enabling Law also states that a legal person will be jointly liable to pay the ordered fines and compensations if the violation was committed by one of its employees or on its behalf or for its interest.

N. BENEFITS TO FANS

A major sporting event is bound to attract a large number of fans. Fans visiting the State of Qatar for the Competition will be afforded a number of benefits, including (subject to health and security reasons) easy entry procedures to the State of Qatar, free public transportation on match days[41] and access to emergency medical treatment[42] in the Competition Period.

O. COVID-19 PANDEMIC

While it's not clear how the current global pandemic in relation to COVID-19 will affect the operations of the Competition, the Enabling Law takes into account the potential effect it may have by referencing the State of Qatar's right to reject or revoke an entry permit for health-related reasons.

2 Conclusion

The hosting of the FIFA World Cup Qatar 2022 will bring together people from around the world, and showcases Qatar as not only a business, but a sporting destination. The work that has been done by the State of Qatar to legislatively support the event should ensure that the Competition is a great success.

40. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 39.

41. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 33.

42. Qatar Law No. 10/2021 Concerning the Measures for Hosting the FIFA World Cup Qatar 2022, art. 12.

منذ قرابة 12 عامًا، كان العالم ينظر إلى قطر وهي تستعد لاستضافة كأس العالم لكرة القدم، وقد اندهش العالم من التطور الذي أحرزته الدولة استعدادا للبطولة. حدثت تطورات تشريعية مهمة في قطر في مجالات رئيسية مثل قانون الهجرة والعمل والسلامة والأمن وحماية الملكية الفكرية، إلى جانب التشريعات التجارية نتيجة لمنح قطر حقوق الاستضافة. ولغاية الالتزام بشروط الاستضافة، قامت قطر بتغيير وتفعيل عدة قوانين وقرارات وزارية لتدعم جهودها الرامية لاستضافة كأس العالم.

كما دعمت هذه التطورات التشريعية زيادرة الاستثمار الأجنبي في القطاعات الرئيسية في البلاد. يجدر بالذكر منها القانون القطري رقم 10 للعام 2021 الذي تم فُعل في 29 يوليو 2021 المتعلق بإجراءات استضافة كأس العالم في 2022 ("قانون التمكين").

يعد تفعيل قانون التمكين علامة فارقة في استعدادات قطر لاستضافة كأس العالم لكرة القدم 2022، والتي تسعى قطر من خلالها إلى ضمان حماية المصالح التجارية لاصحاب المصلحة الرئيسيين، ولضمان تنفيذ التزامات قطر العديدة في عرضها للمسابقة. إن قانون التمكين يمثل حجر الزاوية للإعداد التشغيلي للمسابقة، حيث إنه ينفذ الالتزامات التي تعهدت بها دولة قطر تجاه الفيفا. سيناقش هذا المقال بالتفصيل التطورات التشريعية الرئيسية التي نشأت نتيجة منح قطر حقوق استضافة كأس العالم لكرة القدم قطر 2022، وتحديدا أحكام قانون التمكين وأثره على ممارسة الأعمال التجارية في قطر.

BIOGRAPHY

KHADEJA AL-ZARRAA is an experienced bilingual attorney specializing in litigation dispute resolution, regulatory compliance, and general corporate and commercial advisory work at Al-Ansari & Associates law firm. She has over 11 years' experience practising law in Qatar and is a highly regarded practitioner with diverse practical knowledge of the laws of Qatar. Ms. Al-Zarraa is a licensed attorney before the Court of Cassation in Qatar and in the State of New York.

As a Senior Associate, Ms. Al-Zarraa has been extensively involved in the firm's work pertaining to FIFA World Cup Qatar 2022. She has been instrumental in advising on draft legislation and ministerial decisions and compliance and operational issues in relation to the tournament, including accommodation, ticketing, taxation, banking and foreign exchange operations, commercial rights, trademark and data protection issues.

Prior to joining Al-Ansari & Associates, Ms. Al-Zarraa worked at Al Jazeera Media Network and RasGas Company limited (now merged with QatarGas). In her previous roles, Ms. Al-Zarraa worked on managing all local and international litigation for the high-profile Qatari establishments in which she was employed. In these roles, she handled a diverse case load, comprising employment, civil, media, and criminal cases in multiple jurisdictions, including the United States, the United Kingdom, Europe, Turkey, Qatar, and Egypt.

Ms. Al-Zarraa holds a Bachelor of Law from Qatar University and Master of Laws in International Dispute Resolution from Fordham University in the United States.

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The UAE's New Corporate Tax Regime

This article summarizes the key points of the public consultation document released on 28 April 2022 by the UAE Ministry of Finance on the upcoming corporate tax regime.

From the outset, the ambition of the UAE is to implement the most attractive corporate tax regime for domestic and foreign investments, not just regionally but globally.

Cet article résume les points clés du document de consultation publique publié le 28 avril 2022 par le ministère des Finances des Émirats arabes unis sur le futur régime d'imposition des sociétés.

Dès le départ, l'ambition des EAU est de mettre en place le régime d'imposition des sociétés le plus attractif pour les investissements nationaux et étrangers, non seulement au niveau régional mais mondial.

Mourad Chatar
Regional Tax Partner
Value Square

Ilias Paraskevopoulos
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1 Introduction

On 20 May 2022, public consultation regarding the document on the upcoming corporate tax regime, was closed. The document was released by the UAE Ministry of Finance ("**UAE MoF**") on 28 April following the announcement of the UAE corporate tax regime (the "UAE CT regime") guiding principles made at the end of January.

It seems that the UAE MoF opted for a post-decision consultation process with a very short time because corporate tax is a market-sensitive topic in the UAE. Therefore, MoF wanted to avoid that some parties could gain unfair advantage from being consulted.

Overall, the business community has welcomed the opportunity to participate in the public consultation, which has been perceived as a real opportunity for an open dialogue between private and public institutions on the tax space. This is supported by the fact that the UAE MoF also organized a workshop on the 20 May with the Federal Tax Authority by inviting a select number of UAE-based multinationals for a discussion on ways to reduce the compliance burden and ease the implementation process.

The business community is now looking forward to the publication of the corporate tax regulations, which are expected to be released before the summer break and which will apply for fiscal years starting on and after 1 June 2023.

2

In Scope and Out of Scope Persons

A. INDIVIDUALS

Section 3.2. of the public consultation document clarifies that the implementation of UAE CT regime will be without parallel tax on the personal income of domestic and foreign individuals. Namely, salaries, rentals, dividends and investment income are out of scope of the UAE CT regime.

Although there will be no personal income tax, the UAE CT regime will apply to individuals with a business activity from which they collect revenues.

B. LEGAL ENTITIES

I. In Scope

The UAE CT regime has a scope wide enough to encapsulate most of the UAE economy, which is mainly composed of small and medium-sized enterprises (SMEs) making up 94% of total number of companies operating in the country, 86% of the private sector's workforce, and 40% of Dubai's GDP only.

Similar to other corporate tax regimes, the UAE CT regime will apply to any enterprise incorporated in its jurisdiction, including branches of foreign legal entities.

Similar to other corporate tax regimes, the UAE CT regime will apply to any enterprise incorporated in its jurisdiction, including branches of foreign legal entities. It should be noted that no legal entities are exempt from corporate tax. Thus, limited liability companies, private shareholding companies, and public joint-stock companies established under the UAE laws are considered as taxable persons for the purposes of UAE CT regime.

It has been also clarified that the UAE CT regime will apply to any business operating under a trade licence, even if carried out by the government or semi-governmental bodies.

Furthermore, the UAE CT regime will adopt the concept of Permanent Establishment (**PE**) in accordance with the OECD Model Tax Convention. Entities incorporated in foreign jurisdictions but effectively managed and controlled by the UAE will therefore be treated as being incorporated in the UAE for corporate tax purposes.

UAE-based groups having a legal presence in a foreign exotic jurisdiction without the necessary economic substance should watch out for the PE concept. . The UAE has already adopted County-by-Country reporting (**CBCR**) requirements for the fiscal years starting on or after 1 January 2019. Thus, the UAE tax authorities can use data obtained from the CBCR to target UAE multinational enterprises with subsidiaries in exotic places with no or limited economic substance and high profits.

Payments for access to intellectual property such as royalties from UAE to foreign related entities are expected to be challenged during future tax audits.

In particular, payments for access to intellectual property such as royalties from UAE to foreign related entities are expected to be challenged during future tax audits. In this respect, it is highly recommended that UAE-based groups take the opportunity to review their transfer pricing policy for intangibles to ensure that it is in accordance with the OECD concept of DEMPE functions (Development, Enhancement, Maintenance, Protection and Exploitation of intangibles).

II. Out of scope

In section 3.3 of the public consultation document, a business engaged in the extraction and exploitation of UAE natural resources, public bodies, and federal and emirate governments will automatically be exempt from the UAE CT regime. UAE wholly owned Government entities- carrying out sovereign or mandated activities, as well as charities and public benefit organizations, will be exempt upon request.

Regulated investment funds and real estate investment trusts will be prompted to apply to the Federal Tax Authority (FTA) for the exemption if they meet the requirements.

Finally, partnerships, unincorporated joint ventures, and associations of persons are to be treated as transparent from a UAE corporate tax perspective i.e., these will not be subject to UAE corporate tax. Those structures are transparent for tax purposes in the UAE and there is a look-through principle whereby the individuals or companies behind the partnerships are taxed if they are resident.

3

Free Zones

One of the main reasons why the UAE has been an attractive destination for foreign direct investments is the existence of the free zones. The free zones provide many advantages that encourage foreign investments, such as complete foreign ownership, absence of currency regulations, tax benefits, and import/export duty exemptions.

The UAE MoF has recognized the importance of the free zones for the attraction of foreign investments as well as for the development of economy. However, the proposed CT regime is designed to make it less attractive to establish a business in a Free Zone, only to avoid corporate taxes and hence eliminate intra-UAE competitiveness based on taxation criteria. In particular, businesses established in Free Zones will enjoy a 0% corporate tax rate on incomes sourced from outside the UAE or from the same or another Free Zone, provided that the entity:

- Delivers audited financial statements;
- is in full compliance with the economic substance rules; and
- has no mainland-sourced income other than passive revenues.

Free Zone businesses will be subject to the regular corporate tax on revenues sourced from UAE mainland-based businesses.

On the other hand, Free Zone businesses will be subject to the regular corporate tax on revenues sourced from UAE mainland-based businesses. An exemption for the above rule will be passive revenues (i.e., interest, royalties and dividends) and revenue from the sale of goods from a designated zone for VAT purposes to mainland-based businesses.

Example: A business established in a Free Zone sells products to its parent entity, located in Germany, and to a UAE-based third party, which is a mainland-based business. Furthermore, the Free zone entity has granted a loan to a third party in the mainland and provides management services to its parent.

In the above case, the Free Zone entity will enjoy 0% corporate tax rate on its income from the sale of products and from the provision of management services to its parent entity because the latter is outside of the UAE. Moreover, a 0% corporate tax rate will be applied to interest received on the loan to the third party because it is a passive income sourced in a mainland business. Finally, the income from the sale of products to the third party will be taxed at the regular corporate tax rate.

4

Taxable Income

Accounting Standards

The public consultation document proposes a clear and simple approach for the determination of taxable income. It is proposed that taxable income be equal to the accounting profit (or loss) as stated in the financial statements with a minimum number of book-to-tax adjustments. The approach is taxpayer-friendly and eliminates complexities arising from potential differences between accounting rules and tax rules. Complexity and compliance costs will thus be reduced.

With respect to the Accounting Standards, the UAE allows the enterprises to choose any internationally accepted accounting standards to ensure reduced compliance costs for smaller taxpayers such as start-ups and SMEs.

Dividends and Capital gains

Dividends and capital gains on shares from domestic businesses will be exempt from corporate tax. The same exemption will apply to dividends and the capital gains on shares from foreign businesses, provided minimum 5% participation and taxation in a foreign jurisdiction at 9%.

Tax Losses

The amount of losses that may be used against taxable income will be capped at 75% of the taxable income of each year.

The UAE CT regime will allow the taxpayers to carry forward losses indefinitely on condition that ownership has not changed of more than 50% of the entity from the first day of the fiscal year a loss is incurred to the last day of the fiscal year in which a loss is offset against taxable income. This criterion will not be applied to the businesses listed on a recognized stock exchange. Moreover, the amount of losses that may be used against taxable income will be capped at 75% of the taxable income of each year.

There will be no tax relief for losses created before the effective date of the corporate tax.

Thin Capitalization and Non-Deductible Expenses

Interest expenses will not be deductible to the extent that the surplus of interest expenses compared to interest income exceeds 30% of EBITDA.

In line with Action 4 of the BEPS, the public consultation document proposes thin capitalization (more precisely "interest limitation") rules to be determined in connection with the taxable profits before interest, tax, depreciation, and amortization (EBITDA). Specifically, interest expenses will not be deductible to the extent that the surplus of interest expenses compared to interest income exceeds 30% of EBITDA.

The thin capitalization rules do not apply to businesses carried on by individuals, credit institutions, insurance companies and other regulated financial services entities.

Furthermore, the UAE CT regime will set out a limitation regarding expenses that may be deducted from a business. In particular, as mentioned in section 5.33 of the public consultation document, the UAE CT regime will allow enterprises to deduct up to 50% of expenses made to entertain customers, suppliers, and shareholders. Such expenses need not be business-related.

The UAE CT regime will also provide for Foreign Tax Credits, which will be the lower of the amount of tax paid in a foreign jurisdiction and the UAE CT payable on the foreign-sourced income. The UAE CT regime will also provide the choice between a credit or an exemption mechanism to avoid double taxation.

5

Corporate Tax Rates

Following the announcement of the UAE MoF, the public consultation document confirms the application of the three-tiered CT rates. More specifically:

- Taxable income below AED 375,000 will be taxed at 0%.
- Taxable income above AED 375,000 will be taxed at 9%.
- Pilar 2 MNEs will be subject to a separate corporate tax rate, which will be announced later as work is ongoing with the OECD Inclusive Framework.

For start-ups and small businesses, the public consultation document refers to relief for small businesses in the form of simplified financial and tax reporting obligations. More clarifications on this point will be provided later on.

6

Withholding Tax Policy

The UAE aim to adopt a clear, simple and one of the most attractive withholding tax policies globally. Clearly, the goal of the UAE is to avoid double taxation in order to build a position as a world leading destination for investment.

According to the public consultation document 0% withholding tax will apply on domestic and cross-border payments made by UAE businesses. For instance, royalties, dividends and interest paid by domestic enterprises will be subject to 0% withholding tax.

It is also useful to note that there is no obligation for filing withholding tax returns.

7

Transfer Pricing Rules

The arm's length price may be determined by using one of the OECD transfer pricing methods or a different method if OECD transfer pricing methods are not applicable.

In line with the OECD Transfer Pricing Guidelines, the UAE will apply the internationally recognized arm's length principle. The arm's length price may be determined by using one of the OECD transfer pricing methods or a different method if OECD transfer pricing methods are not applicable.

A. DEFINITION OF "RELATED PARTY"

The definition of "related party" included in the public consultation document is similar to the definition that one finds in other corporate tax regimes. The term "related party" extends to legal persons, individuals and any other body of persons.

According to section 7.4 of the public consultation document, "related parties" should be understood as:

- *"Two or more individuals related to the fourth degree of kinship or affiliation, including by birth, marriage, adoption or guardianship."*
- *"An individual and a legal entity where alone, or together with a related party, the individual directly or indirectly owns a 50% or greater share in, or controls, the legal entity."*
- *"Two or more legal entities where one legal entity alone, or together with a related party, directly or indirectly owns a 50% or greater share in, or controls, the other legal entity."*
- *"Two or more legal entities if a taxpayer alone, or with a related party, directly or indirectly owns a 50% share of each or controls them."*
- *"A taxpayer and its branch or permanent establishment."*
- *"Partners in the same unincorporated partnership."*
- *"Exempt and non-exempt business activities of the same person."*

B. DEFINITION OF "CONNECTED PERSONS"

The UAE CT regime will also introduce the term "Connected Persons". The introduction of this term was necessary due to the absence of personal tax and it is targeting individuals behind the corporate layer.

According to section 7.7 of the public consultation document, a "Connected Person" should be understood as:

- *"An individual who directly or indirectly has an ownership interest in, or controls, the taxable person."*
- *"A director or officer of the taxable person."*
- *"An individual related to the owner, director or officer of the taxable person to the fourth degree of kinship or affiliation, including by birth, marriage, adoption or guardianship."*
- *"Where the taxable person is a partner in an unincorporated partnership, any other partner in the same partnership."*
- *"A Related Party of any of the above."*

Businesses should disclose and document all transactions with "Related Parties" and "Connected Persons" in a specific disclosure form.

If a business cannot demonstrate that the salary paid to its owner complies with the arm's length principle and has a business purpose, the expense will be disallowed for tax purposes.

If a business cannot demonstrate that the salary paid to its owner complies with the arm's length principle and has a business purpose,

the expense will be disallowed for tax purposes. Thus, the individual income of the owner will be taxed indirectly at the regular corporate tax rate.

C. TRANSFER PRICING REQUIREMENTS

The UAE CT regime adopts the three-tiered transfer pricing documentation approach recommended by the OECD (Master File, Local File and CBCR) in its BEPS Action 13. As already mentioned, the UAE has introduced CBCR for the fiscal year starting on or after 1 January 2019, while the public consultation document introduces the concept of Master File and Local File.

The Master File will contain information regarding the group, its operations and business lines, as well as information regarding the related parties, and the Local File will contain specific information regarding the intercompany transactions at group entity level.

Apart from the preparation of Master File and Local File, businesses will have the obligation to submit a disclosure form, which will include their transactions with "Related Parties" and "Connected Persons".

The MoF has not yet announced the thresholds, deadlines, and the relevant penalties. More clarifications are expected on these points, as well as whether the taxpayers will be required to file the Master File and Local File or have it ready upon request.

D. INTRAGROUP LOANS

In line with chapter X of the OECD Transfer Pricing Guidelines, the UAE CT regime will assess not only if the applicable interest rate is in compliance with the arm's length principle but also if there is a valid business reason for the intragroup loan under review. In other words the tax authorities would assess the financial capacity of the borrower in order to be granted the loan and if a third party would have accepted to provide such loan.

E. FLEXIBILITY GIVEN TO THE GROUPS

Although the UAE CT regime will apply the arm's length principle in line with OECD Transfer Pricing Guidelines, the flexibility given to the Groups from section 6 of the public consultation documents appears to move in the opposite direction.

The transfer of losses between entities of the same Group will be permitted on condition that the entities have at least a 75% common shareholder.

More specifically, according to the public consultation document, the transfer of losses between entities of the same Group will be permitted on condition that the entities have at least a 75% common shareholder. The tax impact is capped to 75% of the taxable income of the company receiving the losses in the relevant period.

Furthermore, full consolidation for tax purposes will be allowed for a UAE resident group of companies, provided a 95% common ownership condition is met. To form a tax group, a notice signed by the parent company and all its subsidiaries will need to be sent to the FTA and an accounting consolidation will need to be prepared.

The UAE CT regime will also allow an exemption or deferral of corporate tax upon a business restructuring, such as transfer of assets or liabilities between group companies, provided the assets and liabilities being transferred remain within the same group for a minimum of three years.

Obviously, the aforementioned provisions are in contrast with the application of the arm's length principle mentioned in section 7 of the public consultation document. For instance, the question arising regarding the transfer of losses between related parties is why a third party would accept to receive losses from another party. More clarifications are expected from FTA on this topic.

8

Deadline for Income Tax Returns

The deadline for submission of an Income Tax Return and payment of the tax due is within nine months after the end of the reporting fiscal year.

Businesses subject to corporate tax will have to register with the Federal Tax Authority to obtain a Tax Registration Number (TRN). However, it must be clarified whether the TRN will be different or the same as the one already provided for VAT purposes.

9

Concluding Remarks

On the 5 September 2021, the UAE announced its ten principles for the next 50 years to come. The second principle states that the UAE will focus on building the best and most dynamic economy in the world.

In those principles, it is stated that the economic development of the country is the supreme national interest and that all state institutions across federal and local levels must bear collectively the responsibility of building the best global economic environment.

In this regard, it can be firmly stated that the UAE MoF has fulfilled its responsibility with the newly designed corporate tax regime. The business community is looking forward to the publication of the law, its executive regulations, as well as needed guidance to clarify the grey zones to roll this tax out smoothly.

تلخص هذه المقالة النقاط الرئيسية للاستطلاع العام الذي بدأته وزارة المالية الإماراتية في 28 أبريل 2022 المتعلق بنظام ضريبة الشركات.
كانت دولة الإمارات العربية المتحدة تطمح منذ البداية إلى تطبيق نظام ضريبة للشركات يكون أكثر جاذبية للاستثمارات المحلية والأجنبية ليس فقط على المستوى العالمي وإنما على الصعيد العالمي أيضا.

BIOGRAPHY

MOURAD CHATAR has more than 15 years' experience in international tax & transfer pricing projects, including planning, restructuring, documentation and tax audit projects for various industries, including the life sciences, information technology, manufacturing & distribution, and oil & gas.
Mourad has a substantial experience in Business Model Optimization (BMO) projects entailing functional analysis, corporate tax and transfer pricing model design, defence file strategy design, as well as documentation.
In the course of his international tax and transfer pricing career, Mourad has been involved in a number of major transfer pricing projects for top tier multinationals operating in the Middle East and Europe. In particular, he was involved in major on-site projects for Europe's top institutions in planning, group-wide corporate tax policy design, implementation, documentation and tax audits.
Mourad is a Chartered Tax Advisor of the Institute of Tax Advisors and Accountants and holds a master's degree in International Tax Law from Solvay Brussels School of Economics and Management.

ILIAS PARASKEVOPOULOS is a Senior Tax Manager at a tier 1 accounting firm. He has over ten years' experience in tax advice, specializing in transfer pricing.
Since 2011, he has worked for a large number of European multinationals in a range of industries, including the chemical, consumer goods, software, life sciences, financial services, electronics, e-commerce, and TMC industries.
Ilias has gained significant experience both in performing and coordinating comprehensive transfer pricing studies, planning, documentation, and litigation projects, as well as advising multinational corporations in the context of business model optimization restructuring projects.
Ilias also has significant expertise in managing "Competent Authority" procedures, pioneering the negotiation of both unilateral and multilateral APAs.

إضاءات على عقد إعادة الشراء (اتفاقية الريبو) : دراسة مقارنة

This article discusses the definition, importance, functions and elements of a repo agreement. The repo agreement is one of the most important financial tools used by central banks to control a country's monetary policy.

Cet article traite de la définition, de l'importance, des fonctions et des éléments constitutifs d'un accord de mise en pension. L'accord de mise en pension est l'un des outils financiers les plus importants utilisés par les banques centrales pour contrôler la politique monétaire d'un pays.

الدكتور زين العابدين شرار

المستشار القانوني الأول في مكتب
الرئيس التنفيذي
محكمة قطر الدولية

شهدت أسواق (الريبو) نمواً واضحاً في منطقة مجلس التعاون الخليجي بسبب ارتفاع إصدارات السندات الحكومية وأذونات الخزينة التي تصدرها المصارف المركزية؛ حيث تعد تلك السندات والأذونات الأوراق المالية الرئيسية المستخدمة كضمان (Collateral) في اتفاقية الريبو. ويُعد عقد إعادة الشراء للأوراق المالية (Repurchase Agreement)، أو ما يعرف اصطلاحا بين المصارف التقليدية في أسواق المال في دول العالم باتفاقية الريبو (Repo Agreement)، من أهم الأدوات التمويلية المستخدمة عالميا في سوق النقد من قبل البنوك التجارية والاستثمارية وشركات التمويل والمصارف المركزية. ومن أشهر العقود النموذجية المستخدمة لإعادة شراء الأوراق المالية ما يعرف بالاتفاقية العامة الرئيسية لإعادة الشراء Global Master Repurchase Agreement أو (GMRA). ويُصنف عقد أو اتفاقية إعادة الشراء بأنه عقد مركب؛ إذ هو عبارة عن أحكام عقود متعددة ضمها عقد واحد، كما يصنف بأنه من عقود المعاوضة؛ حيث يحصل فيه كل متعاقد على مقابل لما أعطى أو لما التزم به، بالإضافة إلى كونه من العقود الملزمة للجانبين لما يولده من التزامات على عاتق كلا الطرفين، كما أنه عقد رضائي لا شكلي فلا يشترط فيه الرسمية، بل يكفي مجرد التراضي لانعقاده وفقا للقواعد العامة. وهناك العديد من التعريفات لعقد أو اتفاقية إعادة شراء الأوراق المالية Repo Agreementومنها أن اتفاقية إعادة الشراء هي عبارة عن بيع أوراق مالية أو أصول قابلة للتسييل بسعر محدد مع التعهد بشرائها من المشتري في تاريخ محدد وسعر محدد. كما ذهب البعض إلى تعريف عقد إعادة الشراء بأنه تعهد من البائع بإعادة شراء الأوراق المالية بتاريخ محدد وسعر محدد يذكر في عقد الاتفاقية. كما ذهب البعض الآخر إلى تعريف عقد إعادة الشراء بحسب طبيعة استخدامه، وعرفه بأنه العقد الذي تستخدمه البنوك المركزية لإعادة شراء الأوراق المالية الحكومية من البنوك التجارية للسيطرة على المعروض النقدي.

ويلاحظ على هذه التعاريف بأنها تتسم بالعمومية، ولا تعطينا فكرة واضحة عن ماهية عقد إعادة الشراء. وفي تقديرنا فإن التعريف القانوني لعقد إعادة الشراء هو أنه: «عقد يلتزم بمقتضاه البائع بأن ينقل ملكية أوراق مالية معينة إلى المشتري مقابل مبلغ محدد يُمثل قيمة الأوراق المالية الإجمالية محل العقد مخصوما منها نسبة متفق عليها ومحددة على أن يلتزم البائع بإعادة شراء تلك الأوراق المالية المباعة أو مثيلاتها في أجل متفق عليه مقابل مبلغ يمثل نفس قيمة الأوراق المالية المباعة أو مثيلاتها ومن دون خصم أي نسبة مضافا عليها رسوم استخدام مقابل ثمن المبيع». وبالتحليل القانوني لعقد إعادة الشراء للأوراق المالية أو عقد الريبو، يتبين أن العقد يُقسّم التزامات البائع إلى التزامين رئيسيين وهما:

1- التزام من البائع بنقل ملكية أوراق مالية معينة إلى المشتري في أجل محدد.

2- التزام من البائع بإعادة شراء الأوراق المالية التي باعها إلى المشتري أو مثيلاتها من الأوراق المالية في أجل محدد.

كذلك يقسم عقد إعادة الشراء التزامات المشتري إلى التزامين رئيسيين هما:

1- التزام من المشتري بشراء أوراق مالية معينة من البائع مقابل مبلغ نقدي يمثل قيمتها الإجمالية مخصوما منها نسبة معينة متفق عليها وفي أجل محدد.

2- التزام من المشتري بإعادة بيع الأوراق المالية التي اشتراها من البائع أو بيع مثيلاتها إلى ذات البائع مقابل قيمتها الإجمالية بالإضافة إلى رسم محدد (seeF opeR) وفي أجل متفق عليه. وجدير بالملاحظة أن السبب في خصم نسبة معينة من قيمة الأوراق المالية الإجمالية، والتي يطلق عليها اصطلاحا في اللغة الإنجليزية (Hircuts)، عندما يقوم المشتري بشرائها من البائع، هو أن تلك الأوراق المالية تشكل الضمان الخاص (Collateral) للمشتري في استيفاء حقه إذا ما أخل البائع بالتزاماته في إعادة شرائها في الأجل المحدد. وبعبارة أخرى، إذا ما قام المشتري بشراء الأوراق المالية بقيمتها الإجمالية الحقيقية من البائع ومن دون خصم أي نسبة من ثمنها، فإنه بلا شك يكون عرضة لمخاطر سوقية عالية، فعلى سبيل المثال قد يبيع المشتري تلك الأوراق المالية بأقل من قيمتها الحقيقية في السوق بسبب استعجاله في الحصول على السيولة النقدية، أو بسبب الركود في التعامل في الأوراق المالية في السوق، أو غيرها من الأسباب.

وقد جرى العرف المصرفي على قبول خصم تلك النسبة من قيمة الأوراق المالية المباعة من قبل البائع إلى المشتري. وبالرغم مما هو شائع في الأوساط المالية على تسمية

الأوراق المالية المباعة من قبل البائع إلى المشتري في عقد إعادة الشراء أو اتفاقية الريبو (ضمانا)، إلا أنها بالمفهوم القانوني لا تعتبر ضمانا خاصا، وإن كان يوجد تشابه كبير بين ما يطلق عليه ضمانا في عقد إعادة الشراء وبين مفهوم الضمان الخاص والذي يقوم على مبدأ التأمينات الخاصة. فالضمان الخاص يتحقق عن طريق الرهن الحيازي. ويُعرف الرهن الحيازي بأنه عقد يلتزم بمقتضاه المدين بأن يُسلم إلى الدائن شيئاً ضمانا لدين عليه، ويترتب للدائن بمقتضى هذا العقد حق عيني يخوله حبس الشيء المرهون حتى استيفاء الدين، كما يخوله أن يتقدم على الدائنين العاديين والدائنين له في المرتبة في اقتضاء حقه من ثمن هذا الشيء وفي أي يد يكون. ومؤدى ما تقدم، أن الضمان الخاص يتطلب تخصيص مال معين مملوك للمدين للوفاء بحق الدائن يتم الاتفاق عليه في عقد الرهن؛ حيث يستوفي الدائن حقه من هذا المال قبل غيره من الدائنين. ولتوضيح ذلك نضرب المثال التالي، فإذا قام شخص بإقراض مبلغ من النقود إلى شخص آخر لقاء رسم معين على أن يرد الأخير المبلغ في أجل متفق عليه، فيقوم المقرض بإبرام عقد رهن حيازي تبعي لعقد القرض، لضمان استيفائه لحقه من المقترض إذا ما أخل الأخير بالتزامه في إعادة المبلغ المقترض في الأجل المحدد، فإذا كان محل عقد الرهن الحيازي بضائع معينة مثلا، فيستطيع المقرض (المرتهن) بيعها إذا لم يقم المقترض بتنفيذ التزامه برد المبلغ المُقترض. غير أن تخصيص المال المعين لا يوجب نقل ملكيته من الراهن إلى المرتهن، بمعنى أن المال المرهون يبقى في حيازة المرتهن، ويستطيع التنفيذ عليه إذا ما أخل الراهن بالوفاء بالتزاماته. إلا أن التنفيذ على الشيء المرهون في معظم القوانين العربية يكون وفقا للإجراءات التي يقررها قانون المرافعات ومنها الحصول على إذن من المحكمة لبيع الشيء المرهون. ويبطل شرط تملك الشيء المرهون تلقائيا عند عدم الوفاء بالدين، كما يبطل شرط البيع دون إجراءات أو ما يسمى بشرط الطريق الممهد. فروقات وفي هذا الخصوص، ينبغي علينا التفرقة بين عقد إعادة الشراء وعقد الرهن الحيازي، حيث إن المشتري في عقد إعادة الشراء يُعد مالكا للأوراق المالية، ويستطيع أن يتصرف فيها ببيعها لاستيفاء حقه إذا ما تخلف البائع عن تنفيذ التزامه بإعادة شرائها في الأجل المحدد، وبدون اللجوء إلى المحكمة للحصول على إذن منها لبيع تلك الأوراق المالية، حيث إن ملكية الأوراق المالية قد انتقلت من البائع إلى المشتري وفقا لعقد إعادة الشراء، ويحوز المشتري تلك الأوراق المالية باعتباره مالكا لها، لا باعتباره مرتهنا حائزا لأوراق مالية مرهونة له ضمانا لالتزام البائع. وقد تسمى اتفاقية إعادة الشراء أو اتفاقية (الريبو) أحيانا منظورا لها من جانب المشتري باتفاقية إعادة الشراء العكسية أو ما يعرف باتفاقية الريبو العكسية (Reversed Repo). ويمكن تعريف عقد إعادة الشراء العكسية أو اتفاقية الريبو العكسية (Reversed Repo) بأنه عقد يلتزم بمقتضاه المشتري بشراء أوراق مالية معينة من البائع مقابل مبلغ محدد يمثل قيمة الأوراق المالية الإجمالية محل العقد مخصوما منها نسبة متفق عليها وفي أجل متفق عليه مع التعهد بالالتزام ببيعها أو بيع مثيلاتها إلى ذات البائع مقابل مبلغ يمثل نفس قيمة الأوراق المالية المباعة أو مثيلاتها ومن دون خصم أي نسبة، بالإضافة إلى رسوم استخدام مقابل ثمن الأوراق المالية المباعة. وغالبا ما يتم تحديد سعر الرسم الواجب دفعة من قبل بائع الأوراق المالية عند إعادة شرائه لها عن طريق نسبة مئوية من مجمل قيمة الأوراق المالية المباعة. ويحدد البنك المركزي في الدول التي تجيز تشريعاتها بالتعامل في اتفاقية إعادة الشراء أو اتفاقية الريبو تلك النسبة المئوية. وتجدر الإشارة إلى أن اتفاقية إعادة الشراء تنص على أن أرباح أو عوائد الأوراق المالية المدفوعة إلى المشتري خلال فترة ملكيته لها وقبل إعادة شرائها من قبل البائع في الأجل المتفق عليه تكون من حق البائع على الرغم من أن المشتري هو المالك الحقيقي لتلك الأوراق؛ إذ يتوجب عليه في مثل تلك الحالات أن يقوم بتحويل قيمة الأرباح أو عوائد الأوراق المالية إلى البائع. وتسمى الأرباح أو عوائد الأوراق المالية التي يحصل عليها البائع من المشتري اصطلاحا باللغة الإنجليزية بـ (Manufactured Coupons) أو (Manufactured Dividends). وتستخدم المصارف المركزية عقد إعادة الشراء أو اتفاقية الريبو كأداة فعالة لتحقيق سياستها النقدية والتي تمثل أداة مرنة للسيطرة على حجم الائتمان وتعديل مستويات السيولة. فعلى سبيل المثال، عندما تقوم المصارف المركزية بإبرام عقود إعادة الشراء لبيع سنداتها المالية إلى البنوك التجارية والاستثمارية المحلية وغيرها من شركات التمويل، فإن ذلك يؤدي إلى سحب السيولة النقدية من السوق المالية، وعندما تقوم البنوك المركزية بإعادة شراء سنداتها المالية مضافا إليها رسوم الاستخدام فإن ذلك يؤدي إلى زيادة السيولة النقدية في أسواقها المالية. ومن ناحية اقتصادية يعد عقد إعادة الشراء للأوراق المالية وسيلة من وسائل إقراض النقود بضمان الأوراق المالية، حيث إن الجهة طالبة التمويل تقوم بإبرام عقد إعادة الشراء مع الممول الذي يقوم بتقديم التمويل المطلوب نظير ضمان الأوراق المالية المقدمة إليه من الجهة طالبة التمويل. إلا أنه من الناحية القانونية -وكما أشرنا سابقا- فإن تكيف عقد إعادة الشراء للأوراق المالية يعد عقد بيع وليس عقد اقتراض للأوراق المالية. أشهر الأوراق المالية أما عن أشهر أنواع الأوراق المالية شيوعا والتي يمكن استخدامها في اتفاقية شراء الأوراق المالية فهي كما يلي:

1- السندات الحكومية وهي أكثر الأوراق المالية شيوعا في استخدامها في اتفاقية إعادة شراء الأوراق المالية.

2- أذونات الخزينة.

3- سندات الشركات.

4- أسهم الشركات.

وتقسم اتفاقية الريبو إلى ثلاثة أنواع رئيسية وهي كما يلي:

1- اتفاقية إعادة الشراء المفتوحة: (OPEN REPO) في هذا النوع من الاتفاقية فإنه لا يحدد تاريخا معينا للشراء ولا تتم إعادة الشراء للأوراق المالية إلى أن يطلب ذلك أي من طرفي الاتفاقية.

2- اتفاقية إعادة الشراء القصيرة (SHORT DATED REPO) في هذا النوع تكون فترة ما بين بيع الأوراق المالية وإعادة شرائها قصيرة جدا تتراوح ما بين شهر إلى يوم واحد.

3- اتفاقية إعادة الشراء ذي الأجل (TERM REPO) وفي هذا النوع تكون فترة ما بين بيع الأوراق المالية وإعادة شرائها أكثر من شهر.

ويتشابه عقد إعادة الشراء أو اتفاقية الريبو مع العقد النموذجي للاتفاقية العامة الرئيسية لإقراض الأوراق المالية Securities Lending Agreement (GMSLA) Global Master. وتُعرَف الاتفاقية العالمية لإقراض الأوراق المالية (عقد إقراض الأوراق المالية) بأنه عقد يلتزم بمقتضاه الطرف الأول (المقرض) بنقل ملكية أوراق مالية معينة وبصفة مؤقتة إلى الطرف الثاني (المقترض) مقابل مبلغ نقدي أو أوراق مالية بالإضافة إلى رسم، على أن يلتزم الطرف الثاني (المقترض) برد الأوراق المالية أو مثيلاتها بناء على طلبها أو في نهاية الأجل المتفق عليه مقابل التزام المقرض برد المبلغ النقدي المدفوع له من المقترض أو الأوراق المالية المقدمة منه أو مثيلاتها. ومؤدى ذلك، أنه في عقد إقراض الأوراق المالية يتعهد مقرض الأوراق المالية بأن ينقل إلى المقترض ملكية أوراق مالية معينة في مقابل مبلغ نقدي يتم الاتفاق عليه أو مقابل أوراق مالية أخرى يتم الاتفاق عليها بالإضافة إلى رسم محدد، على أن يرد المقترض الأوراق المالية أو مثيلاتها إلى المقرض بناء على طلبها من قبل المقرض أو في الأجل المحدد في العقد على أن يقوم المقرض برد ما دفعه المقترض سواء كان ذلك المبلغ النقدي أو الأوراق المالية. وفي حالة إخلال المقترض بالتزامه في رد الأوراق المالية المقترضة بناء على طلب المقرض أو في الأجل المتفق عليه، فيستطيع المقرض أن يتصرف بالمبلغ النقدي أو في بيع الأوراق المالية المقدمة من المقترض وذلك لاستيفاء قيمة الأوراق المالية التي أقرضها. وكما في اتفاقية إعادة الشراء، فإن أي أرباح أو عوائد على الأوراق المالية تكون من حق المقرض خلال فترة ملكية المقترض لها وقبل ردها في الأجل المتفق عليه على الرغم من أن المقترض هو المالك الحقيقي لتلك الأوراق؛ حيث يتوجب عليه في مثل تلك الحالات أن يقوم بتحويل قيمة الأرباح أو عوائد الأوراق المالية إلى المقرض. وبالرغم من شيوع تسمية هذا النوع من العقود بعقد إقراض للأوراق المالية إلا أن التكييف القانوني الصحيح أنه يعد أحد عقود البيع؛ وذلك لتوافر خصائص عقد البيع، حيث إن المقرض (البائع) يقوم بنقل ملكية الأوراق المالية إلى المقترض (المشتري) مقابل مبلغ نقدي أو مقابل نقل ملكية أوراق مالية معينة أخرى. ويختلف عقد إقراض الأوراق المالية عن عقد الإقراض بضمان الأوراق المالية، حيث إن الأخير قرض مضمون برهن، بمعنى أن المقرض يلتزم أن ينقل إلى المقترض ملكية مبلغ من النقود أو أي شيء مثلي آخر على أن يرد المقترض إلى المقرض في الأجل المحدد مثله نوعا وصفة ومقدارا، ويلتزم المقترض (الراهن) بأن ينقل مقابل القرض حيازة أوراق مالية معينة إلى المقرض (المرتهن). فإذا أخل المقترض بالتزامه عند حلول أجله فللمقرض أن يطلب من المحكمة الترخيص له ببيع الأوراق المالية المرهونة بالمزاد العلني أو بسعرها في السوق، وأن يستوفي حقه من ثمن المبيع قبل غيره من الدائنين. أوجه التشابه هناك أوجه للشبه بين الاتفاقية العامة الرئيسية لإعادة الشراء والاتفاقية العامة

الرئيسية لإقراض الأوراق المالية. ونستطيع أن نلخص أوجه الشبه بين الاتفاقيتين بالآتي:

- نقل ملكية الأوراق المالية فكما رأينا مما تقدم، يشترط أن يتم نقل ملكية الأوراق المالية من البائع إلى المشتري في اتفاقية إعادة الشراء ومن المقرض إلى المقترض في اتفاقية إقراض الأوراق المالية.
- الانتقال المؤقت لملكية الأوراق المالية وكذلك نستخلص أن انتقال ملكية الأوراق المالية من البائع إلى المشتري في اتفاقية إعادة الشراء، ومن المقرض إلى المقترض في اتفاقية إقراض الأوراق المالية يكون مؤقتا وفقا للأجل المحدد المتفق عليه.
- الضمان يعتبر المقابل الذي يقدمه كل من البائع في اتفاقية إعادة الشراء، والمقترض في اتفاقية إقراض الأوراق المالية بمثابة الضمان الذي يستطيع كل من المشتري في اتفاقية إعادة الشراء والمقرض في اتفاقية إقراض الأوراق المالية من التصرف فيه لاستيفاء حقهما عند إخلال الطرف الآخر بالتزاماته.
- الأرباح أو العوائد على الأوراق المالية تعتبر الأرباح أو العوائد على الأوراق المالية وفقا لاتفاقية إعادة الشراء خلال فترة ملكية المشتري لها من حق البائع، وكذلك تعتبر الأرباح أو العوائد على الأوراق المالية وفقا لاتفاقية إقراض الأوراق المالية خلال فترة ملكية المقترض من حق المقرض.
- كيفية معرفة أي من الاتفاقيتين يجب استخدامها؟ غالبا ما يتم استخدام عقد إعادة الشراء أو اتفاقية الريبو من قبل الجهات المصرفية الراغبة في الحصول على التمويل لفترة قصيرة أو طويلة بحسب الأحوال والتي تملك عددا من الأوراق المالية والتي ما تكون عادة سندات حكومية مستحقة الوفاء في تاريخ مؤجل، حيث تقوم ببيع تلك السندات إلى الجهة الممولة مقابل مبلغ معين ومن ثم تقوم بإعادة شرائها، بالإضافة إلى رسم معين تدفعه إلى الجهة الممولة.

ولتوضيح ما تقدم نضرب المثل التالي: فإذا كان لدى البنك (س) عدد من السندات الحكومية المملوكة له ومستحقة الوفاء في 2023/1/1 وكان البنك بحاجة إلى السيولة المالية لتغطية صفقة ما فيستطيع البنك أن يتفاوض مع جهة تمويل لتقوم بتمويله مقابل إبرام عقد إعادة شراء أوراق مالية معها، حيث يقوم البنك ببيع السندات الحكومية إلى الجهة الممولة مقابل مبلغ نقدي على أن يتعهد بشرائها مرة أخرى بنفس مبلغ الشراء مضافا إليه رسم يتم تحديده عند إبرام الاتفاقية. ففي المثال السابق يتبين أن صاحب المصلحة في الحصول على السيولة هو البنك وعلى ذلك فإنه سيتفاوض على بيع السندات الحكومية التي يملكها إلى الجهة الممولة مقابل الحصول على السيولة مع التزامه بإعادة شرائها في الأجل المتفق عليه، بالإضافة إلى رسم محدد واجب الدفع إلى الجهة الممولة. كما تتضح أيضا مصلحة جهة التمويل في إبرام عقد إعادة الشراء للحصول على قيمة الرسم عندما يقوم البنك بإعادة الشراء لسنداته في الأجل المتفق عليه. أما في عقد إقراض الأوراق المالية أو اتفاقية إقراض الأوراق المالية، فإنه يستخدم من قبل الجهات التي في حاجة إلى أوراق مالية معينة غير متوافرة في السوق المالية، وتكون على استعداد لاقتراضها من الجهات المتوافرة لديها مقابل رسم محدد وضمانات يتم الاتفاق عليها من قبل الطرفين. ولتوضيح ما تقدم نضرب المثال التالي: إذا كان لدى البنك (س) عدد من الأوراق المالية، ويوجد وسيط مالي بحاجة ماسة إلى تلك الأوراق غير المتوافرة لديه وذلك لتسوية صفقة ما، فإن من مصلحة البنك في هذه الحالة أن يقوم بإبرام عقد إقراض للأوراق المالية المتوافرة لديه، وليس القيام بإبرام عقد إعادة الشراء، حيث يقوم البنك -والذي يسمى المقرض- بنقل ملكية الأوراق المالية التي يمتلكها إلى الوسيط -والذي يسمى المقترض- وبصفة مؤقتة مقابل مبلغ نقدي أو أي أوراق مالية أخرى يتم الاتفاق عليها -وتسمى الضمان- بالإضافة إلى رسم محدد. ففي المثال أعلاه، يتضح لنا أن صاحب المصلحة في الحصول على الأوراق المالية هو الوسيط المالي الذي لا تتوافر عنده تلك الأوراق والتي هو في حاجة إليها. كذلك يتبين أن مصلحة البنك في إبرام اتفاقية إقراض الأوراق المالية للحصول على قيمة الرسم عندما يقوم الوسيط برد الأوراق المالية المقترضة أو مثيلاتها. ملاحظة: إن الرأي الذي تحتويه هذه المقالة يعبر فقط عن رأي الكاتب وليس بالضرورة عن رأي هيئة قطر للأسواق المالية.

يتناول هذا المقال تعريف اتفاقية الريبو وأهميتها ووظائفها و عناصرها. وتعد اتفاقية الريبو أحد أهم الأدوات المالية المستخدمة من قبل البنوك المركزية للتحكم في السياسة النقدية للدولة.

سيرة

الدكتور زين العابدين شرار، هو المستشار القانوني الأعلى في مكتب الرئيس التنفيذي في محكمة قطر الدولية، ولديه خبرة متميزة في القطاع القانوني تزيد على 23 عاما. وقبيل انضمامه لمحكمة قطر الدولية، فقد شغل الدكتور شرار منصب مدير إدارة الشؤون القانونية والإنفاذ في هيئة قطر للأسواق المالية، كما أنه كان عضوا في لجنة التأديب خلال فترة عمله بالهيئة لمدة ثلاث سنوات. وقد درّس الدكتور شرار مادة قانون الشركات وحوكمة الشركات في عدد من الجامعات الأسترالية، كما انه قدّم المشورة القانونية بشأن المسائل والمواضيع القانونية المختلفة لأعضاء مجالس الإدارات في عدد من الشركات العامة المدرجة في البورصة في دولة استراليا. وقد عُين الدكتور شرار بمنصب دكتور القانون التجاري المساعد في جامعة قطر، حيث تولى تدريس مساقات القانون التجاري، وقانون الشركات، وقانون التحكيم. كما أنه قام بتدريس مساقات القانون التجاري، والقانون البحري والجوي في كلية احمد بن محمد العسكرية. كذلك فقد ألقى الدكتور شرار العديد من المحاضرات القانونية المختلفة في مركز الدراسات القانونية والقضائية بوزارة العدل في دولة قطر. والدكتور شرار وسيط معتمد من قبل مركز تسوية المنازعات (CEDR) في لندن، وهو أيضا محكم معتمد ممارس من قبل مركز التحكيم التجاري لدول مجلس التعاون الخليجي. وقد تولى الدكتور شرار مزاولة أعمال الوساطة والتحكيم التجاري في العديد من القضايا التجارية والإنشائية. كما انه يتولى مهام التدريب المهني المتخصص لبرامج تسوية المنازعات. وللدكتور شرار العديد من الإسهامات البحثية المنشورة في المجلّات القانونية المتخصصة المرموقة. والدكتور شرار حاصل على شهادة البكالوريوس في القانون، وشهادة الماجستير في القانون التجاري الدولي، والدكتوراة الاحترافية لمزاولة اعمال المحاماة (JD)، وشهادة الدكتوراة الأكاديمية في العلوم القانونية (SJD) من جامعة بوند في استراليا والتي ركزت اطروحتها على موضوع حوكمة الشركات.

A New Era: English Language Litigation in the Kingdom of Bahrain

Over the past six months, there has been a significant shift in domestic litigation in the Kingdom of Bahrain. The recent issuance of various decrees and regulations will have a direct impact on the way in which cases will be heard before the Courts of Bahrain and, in particular, the Court of the Bahrain Chamber for Dispute Resolution (BCDR).

The issuance of the new Regulations on 23 December 2021 under Bahrain Decision No. 134/2021, coupled with the appointment of new judicial deputies and judges under Bahrain Royal Order No. 3/2022, paves the way for a "first-of-its kind" in the Middle East region, whereby domestic litigation can now be heard and determined in English. In addition, non-Bahraini lawyers may now represent parties before the BCDR Court if the action is taken in association with a Bahraini Lawyer.

.../...

Au cours des six derniers mois, il y a eu un changement significatif dans les litiges d'ordre privé au Royaume de Bahreïn. La récente publication de divers décrets et règlements aura un impact direct sur la manière dont les affaires seront entendues devant les tribunaux de Bahreïn et, en particulier, devant le tribunal de la Chambre de Bahreïn pour le règlement des différends (BCDR).

La publication du nouveau règlement le 23 décembre 2021, en vertu de la décision de Bahreïn n° 134/2021, associée à la nomination de nouveaux juges et adjoints judiciaires en vertu de l'ordonnance royale de Bahreïn n° 3/2022, ouvre la voie à une « première de ce genre » dans la région du Moyen-Orient, où les litiges internes peuvent désormais être entendus et résolus en anglais. En outre, les avocats non bahreïnis peuvent désormais représenter

.../...

Jodie Martyndale-Howard
Associate
Charles Russell Speechlys

The ability to have cases heard in English and for parties to be represented by their preferred legal counsel will no doubt have an impact. The measures will affect cases which would by their nature have fallen within the BCDR's jurisdiction, but they will also affect in-market contract drafting, with a drive towards having disputes heard in the English language before the Courts rather than in arbitration.

des parties devant le tribunal de la BCDR si l'action est intentée en association avec un avocat bahreïni.

La possibilité de faire entendre des affaires en anglais et pour les parties d'être représentées par le conseiller juridique de leur choix aura sans aucun doute un impact certain. Ces mesures affecteront des affaires qui, par leur nature, doivent relever de la compétence de la BCDR, mais elles affecteront également la rédaction de contrats commerciaux, avec une tendance à recourir au contentieux plutôt qu'à l'arbitrage pour faire juger ces litiges en anglais.

1

Background

The BCDR was established in 2009 by the issuance of Bahrain Decree-Law No. 30/2009, which was later amended by Bahrain Decree-Law No. 64/2014.

Many companies and entities are familiar with the BCDR Arbitration Centre. It has become popular as the administrative body of arbitrations primarily involving Bahraini entities. The latest developments put the BCDR Court front and center of the latest legislative developments.

The BCDR Court's jurisdiction now encompasses any claim involving a commercial company where the value exceeds BHD 500,000 (approximately USD 1.3 million).

The first amendment that paved the way for the latest developments was the issuance of Bahrain Decree-Law No. 26/2021, which came into effect as of 1 October 2021. It expanded the BCDR Court's jurisdiction from being primarily in respect of financial institutions licensed by the Central Bank of Bahrain and disputes of an international commercial nature. The BCDR Court's jurisdiction now encompasses any claim involving a commercial company where the value exceeds BHD 500,000 (approximately USD 1.3 million).

This extended remit will mean that many more cases will now automatically fall within the BCDR Court's jurisdiction, taking them outside of the usual jurisdiction of the domestic Courts of Bahrain.

It should be noted that judgments of the BCDR Court are considered final judgments. As such, they cannot be appealed. This means that the only legal recourse is annulment by the Court of Cassation. Thus, unlike judgments of the Court of First Instance, which can be appealed to the Court of Appeal and upwards to the Court of Cassation, the process of obtaining a final and binding judgment involves only one set of legal proceedings.

2

Latest Developments

A. THE REGULATIONS

The first development was the issuance of Bahrain Decision No. 134/2021 by the Minister of Justice, Islamic Affairs and Endowments, pursuant to which the Regulations on Procedures for Resolution of Disputes in turn dictates which matters the Bahrain Chamber for Dispute Resolution has Jurisdiction over (the "**Regulations**").

The Regulations, which are only available in Arabic at this stage on the BCDR's website, include several developments, including Article 5, which states that parties may choose to have a dispute heard in the English language where the following criteria are met:

1. the contract is in a language other than Arabic;

2. the use of English must be agreed in the contract, by the parties' communication or by way of a special agreement; and
3. the use of the English language must be submitted during the case administration process and within the relevant time-frames.

Translations of pleadings, reports and judgments will no longer be required for non-Arabic speaking managers and personnel of Bahraini companies, nor of non-Arabic speaking experts.

The use of the English language for cases will come with many advantages including:

- Translations of documents will no longer be required. This can be an extensive and expensive exercise to undertake, particularly for disputes relating to technical industries such as construction whereby the contract and project documentation will be hundreds if not thousands of pages of data and information.
- Translations of pleadings, reports and judgments will no longer be required for non-Arabic speaking managers and personnel of Bahraini companies, nor of non-Arabic speaking experts. This cannot only be expensive, but delays the ability to properly review submissions and evidence.

No other domestic courts within the GCC allow for cases to be heard in a language other than Arabic. As such, this is a unique and important development within the Bahrain legal system. It has, as a minimum, important judicial efficiency implications if nothing else. Regular judicial users will view these developments as being much needed in Bahrain and indeed the wider region given the brevity of global inward and outward trade and investment to the region.

Furthermore, Article 23 allows for non-Bahraini lawyers to represent and appear on behalf of parties including filing the case with the BCDR, provided that such action is taken in association with a Bahraini lawyer who is admitted before the Court of Cassation. This is a drastic shift away from the previous position in which only Bahraini lawyers could represent a party. This move will be widely welcomed by the international law firms based both in Bahrain and outside that represent Bahraini companies and their associated global partners, affiliates and subsidiaries.

B. THE NEW JUDICIARY

On 19 January 2022, by way of Bahrain Royal Order No. 3/2022 on Appointing and Assigning Judges and in which for the first-time, non-Arabic-speaking and non-Bahraini-speaking judicial deputies and judges were appointed to the Bahrain Court of Cassation.

Within the Royal Order, such judicial deputies and judges (together referred to as the "**New Judges**") were delegated on a full-time basis to the Court of the BCDR.

The New Judges are:

1. Professor Jan Paulsson
2. Mr. Neil Kaplan QC
3. Dr. Michael Hwang SC
4. Mr. Adrian Cole
5. Mr. Michael Grosse
6. Ms. Nadine Debbas Achkar
7. Mr. Simon Greenberg
8. Dr. Kareem Hafez
9. Ms. Amani Khalifa

The appointment of the New Judges goes together with the new Regulations allowing for cases to be heard in English.

Each case before the BCDR Court will be heard by a Tribunal formed of three members, two of which are Court of Cassation lawyers and the third from the BCDR Court's roster of neutrals.

Each case before the BCDR Court will be heard by a Tribunal formed of three members, two of which are Court of Cassation lawyers and the third from the BCDR Court's roster of neutrals.

The New Judges include several widely recognized names within the Middle East legal and arbitration community. Their specializations range from general corporate commercial, to telecoms, banking, finance & fintech, real estate, construction and projects, among others.

The expertise of the New Judges in various industry sectors will likely provide a level of comfort to parties when drafting dispute resolution clauses, as parties know that the judges will not only be fluent in English but that the judges forming the tribunal to hear the dispute will understand the nuances of the party's industry sector, which is pertinent to the dispute.

The level of understanding of different industry sectors is something more commonly seen within the arbitration sphere where parties are generally able to choose among themselves members of the tribunal. To have such capability underpinning the Bahrain system will be greatly welcomed. This is also no doubt one of the reasons why in most high-value contracts across key sectors in Bahrain, including those which the New Judges are specialists within, that arbitration has become the favoured method of dispute resolution.

3

Final Thoughts

While at this stage no cases are yet to be heard in front of the New Judges under the Regulations, they mark an important step in the continued development of the Bahrain legal system. This is important not just for Bahraini companies but also international companies looking to invest in Bahrain by way of opening branch companies or stand-alone limited liability companies as it will help to drive confidence in domestic legal proceedings. It also gears the drivers for inward and outward investment. Investors, funders and the like must have complete confidence in any jurisdiction's judicial capability as a gatekeeper to safeguarding business and investments. These developments will create that unique confidence in the Bahrain market and in its judicial system.

What impact this has on parties choosing to refer matters to the BCDR Court over arbitration is yet to be seen but will no doubt form a key consideration of contract drafters moving forward as well as formulating underlying strategies as to dispute avoidance, use of ADR and dispute resolution generally.

حصل تحول كبير في التقاضي المحلي في مملكة البحرين على مدى الأشهر الستة الماضية. وسيكون للمراسيم واللوائح التي صدرت مؤخرا أثر مباشر على طريقة نظر القضايا أمام محاكم البحرين خصوصا محكمة غرفة البحرين لتسوية المنازعات.

إن إصدار اللوائح الجديدة في 23 ديسمبر 2021 بموجب قرار البحرين رقم 134/2021 وتعيين نواب قضائيين وقضاة جدد بموجب الأمر الملكي البحريني رقم 3/2021 يمهد الطريق لسابقة في منطقة الشرق الأوسط حيث يمكن الآن سماع الدعاوى القضائية المحلية والبت فيها باللغة الإنكليزية. كما أنه بإمكان المحامين غير البحرينيين الآن تمثيل الأطراف أمام محكمة غرفة البحرين لتسوية المنازعات بمشاركة محام بحريني.

لا شك أن القدرة على الاستماع إلى القضايا باللغة الإنكليزية وتمثيل الأطراف من قبل المستشار القانوني المفضل لديهم سيكون لها تأثير. ستؤثر هذه الإجراءات على القضايا التي تقع بطبيعتها ضمن اختصاص غرفة البحرين لتسوية المنازعات، ولكنها ستؤثر أيضا على صياغة العقود في السوق، مع التوجه نحو الاستماع إلى المنازعات باللغة الإنكليزية أمام المحاكم بدلًا من التحكيم.

BIOGRAPHY

JODIE MARTYNDALE-HOWARD is an Associate at Charles Russell Speechlys in the firm's Bahrain office. She advises on local and international construction claims management, disputes, litigation and arbitrations throughout the Middle East region.

Jodie advises on Contractor to Employer and Sub-Contractor to Main Contractor claims relating to issues from delays, variations, termination, as well as design and quality issues.

In addition, Jodie assists with drafting of construction contracts such as EPC Turnkey, Design & Build as well as subcontracts, using both bespoke forms and regionally recognised standards including the FIDIC 1999 and 2017 suites.

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Fully Booked: A Return to Form for the Middle East Hospitality Sector

While the Middle East is experiencing significant recovery in the tourism sector, the post-COVID world has created new opportunities and challenges which hospitality brands need to be mindful of when thinking to the future. Emerging trends in the areas of hospitality, lifestyle, health and fitness, and branded residences have given rise to opportunities. At the same time, the sector continues to face a number of challenges, including market disrupters, social media influence, international sanctions, sustainability and data protection.

Alors que le Moyen-Orient connaît une reprise significative dans le secteur du tourisme, le monde post-COVID a créé de nouvelles opportunités et de nouveaux défis dont les marques hôtelières doivent tenir compte lorsqu'elles envisagent l'avenir. Les tendances émergentes dans les domaines de l'hôtellerie, de la qualité de vie, de la santé et de la remise en forme, et des résidences de marque ont donné lieu à des opportunités. Dans le même temps, le secteur continue de faire face à un certain nombre de défis, notamment la désorganisation du marché, l'influence des réseaux sociaux, les sanctions internationales, la durabilité, et la protection des données.

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After a very difficult two years for the hotel and tourism industry, things are finally looking up. The trading conditions during the COVID-19 pandemic for the hospitality sector around the world have been extremely tough, but the Middle East is witnessing remarkable recovery indicators.

Throughout the pandemic, the hospitality sector has been forced to deal with a plethora of issues, such as monitoring travel restrictions, crisis and outbreak management, reduction in staff, reviving tourism and tourism security, cultural and environmental sustainability, and using digital technology applications in both dated and modern

ecosystems. In addition, a constantly changing regulatory landscape in relation to vaccination and quarantine requirements and isolation time periods for both staff and visitors has presented significant challenges.

These challenges are evolving, however, and are now different to those present at the start of the pandemic. Many countries are experiencing human resourcing challenges and reporting significant staff shortages due to employees with COVID-19 being required to isolate and a delay while new staff are hired and trained to replace those who lost their jobs during the pandemic.

Fast-tracked by the war in Ukraine, brands will need to deal with inflation and owners and operators will be forced to pay more for supplies, including F&B, energy, and other important goods and services.

Hotels will also need to navigate difficult macroeconomic factors that did not exist two years ago. Fast-tracked by the war in Ukraine, brands will need to deal with inflation and owners and operators will be forced to pay more for supplies, including F&B, energy, and other important goods and services. There are ongoing supply chain and logistical issues affecting all sectors, including the hospitality sector.

Nevertheless, the future is looking brighter for the Middle East hospitality sector. International arrivals to destinations in the Middle East were 52% higher in January 2022 than in the same month in 2021 and with the FIFA World Cup taking place in Qatar at the end of 2022, the entire region is expecting a tourism boost. According to the February 2022 GCC tourism market report, domestic tourism expenditure is expected to reach USD 26.6 billion in 2022 and GCC domestic tourism expenditure is expected to increase by more than 5% by 2024.[1]

The UAE, in particular, recovered quickly largely due to remaining "open for business" during much of the past two years compared to regional and international comparators. A number of brands in the UAE are currently reporting a return to 2019 RevPAR (revenue per available room) levels. The UAE cleverly promoted domestic tourism during 2020, which was crucial for the rapid recovery of the tourism sector in the country. Expo 2020 hosted by Dubai in 2021 and 2022 also encouraged an aggressive recovery with visitor numbers exceeding 20 million.

Our Middle East hotel clients are citing some interesting shifts and trends in their post-COVID existence. While they expect a more positive trajectory in the coming months, there are also some key challenges to navigate.

1. Gulf Cooperation Council (GCC) -Tourism Source Market Insight, 2022 Update / https://www.globaldata.com/store/report/gcc-tourism-source-market-analysis/#tab-key-players

1

Trends

A. TECHNOLOGY

Mobile check-in, keyless room access, use of QR codes at F&B outlets and app use in hotels are also becoming the normal way of operating.

Our hospitality clients are reporting a big focus on technology and improving their digital offerings (such as revamping loyalty programmes and creating applications to verify digital COVID vaccine certificates and travel authorisations). Mobile check-in, keyless room access, use of QR codes at F&B outlets and app use in hotels are also becoming the normal way of operating. Many of these technology initiatives are a direct result of the pandemic, with hotels and guests keen to limit surface contact where possible.

B. LIFESTYLE TRENDS

Hotel owners and operators have reimagined themselves as providers of experiences, rather than simply a place to stay the night. Lobbies have been transformed from functional spaces for mere guest check-in into shared workspaces and mixed-use spaces. These transformations serve to promote hotels' F&B, well-being, and other experiential offerings such as talks, seminars and tastings. Some hotels offer customers membership packages to use the shared workspaces or mixed-use spaces while enjoying discounts or perks, such as free unlimited coffee, at the hotel's F&B outlets.

In order to promote a sense of community, lobbies are being touted as mixed-use spaces in which talks from experts are given, group meet-ups take place, local musicians play intimate concerts, and individuals can work remotely using high-speed, free Wi-Fi.

While Airbnb continues to disrupt the hospitality industry, particularly in cities lacking affordable alternatives to the luxury brands, many boutique and lifestyle brands are seeking to mitigate Airbnb's effects (whose appeal, in addition to price, is allowing tourists to live like a local in the city they are visiting) by positioning themselves as part of the local community. The ancillary, but by no means unintentional effect, is an uplifting of local businesses, communities, and staff. These boutique and lifestyle brands provide guests with stylish and sustainable branded apparel to create brand affinity, instant cameras to photograph their local stay, and scooters or bicycles to allow them to move around the city freely. In addition, these boutique and lifestyle brands are procuring specialty and artisanal goods from local suppliers (for example, bread from local bakeries and coffee from local roasters), and showcase artwork created by local artists in both common areas and bedrooms. All these features allow hotels to present themselves as more than just a provider of rooms.

As more people work remotely, employers are also now using hotels to host more internal and external events to encourage staff to

collaborate and socialise in person with their colleagues. Use of a hotel space grants employers and employees assurances in relation to privacy and confidentiality, cleanliness, hygiene, and quality F&B.

C. HEALTH & FITNESS

As travellers seek to maintain their health and fitness habits while they travel, hotels are seeking to collaborate with local gyms, trainers and class providers. Hotels are also encouraging quality external providers to come to the hotel and provide fitness and yoga classes, boot camps, tennis lessons and the like. Some hotels have now installed expensive training equipment which gained popularity at home during the pandemic, such as Peleton bikes.

In addition, many hotels have club membership offerings for local individuals and families which permit members to use the gym, pools and other hotel facilities and provide discounts on F&B and accommodation.

These changing trends offer the hospitality sector an opportunity to respond to consumer demands and leverage their position in the market by accommodating these new lifestyle shifts.

D. BRANDED RESIDENCE DEALS

We are seeing a big increase in branded residence deals and the trend is set to continue with a number of operators jumping on this profitable bandwagon. Big hotel brands are putting aside significant investment and resources to fund such endeavours. Hotel owners are particularly interested in this space as it presents a good way for them to finance developments.

Historically, branded residential developments have been the focus of big-name luxury and prestige brands but, in the last few years, some new mass consumer names have entered the scene. Some of these new arrivals target a more modest price point, while others lean into their boutique and lifestyle appeal. This shift demonstrates the growth of the hotel lifestyle marketplace and the fact that there is an increased demand across different segments of the market at different price points.

Leading real estate consultancies have reported that branded residences command a premium of 30% over comparable non-label schemes.

The reason behind the popularity of these branded deals is that, for consumers, the label offers a level of security about what the purchaser is acquiring (particularly in relation to management, safety, design, finish and experience). It inspires confidence and convenience. Customers (whether they are the buyers themselves or visitors renting the property for short or longer-term stays) value the fact that a branded residence offers the hotel experience, including in respect of cleanliness (a key concern since the pandemic) in a home setting. This represents a distinguishing feature between the branded residence and, for instance, an Airbnb booking. Leading real estate consultancies have reported that branded residences command a premium of 30% over comparable non-label schemes.

For owners and operators, branded residences create a captive residential audience within which there are opportunities to offer F&B, retail and leisure outlets within a single space or development.

2 Opportunities and Challenges

While the Middle East is demonstrating significant recovery in the tourism sector, the new post-COVID world has created both new opportunities and new challenges which brands need to be mindful of when thinking to the future.

There has always been a notable preference for luxury brands in the Middle East, and while those are still in demand, there is also renewed focus on lower cost options, especially for mass events such as the FIFA World Cup 2022 in Qatar. We expect the World Cup to boost tourism in the entire region as visitors will fly in and fly out of Qatar for the tournament.

Saudi Arabia presents a huge opportunity for big brand hotels, as it focuses on becoming an international and domestic leisure destination. With a population in excess of 35 million people, most of whom are under the age of 35, it has all of the makings of a tourism hotspot: plentiful financial resources and investment, ambitious leadership focussed on the task, beautiful and well-preserved natural tourism, a young dynamic population, as well as global tourism destinations such as Makkah and Madinah. Saudi Arabia is perfectly positioned to take advantage of a mix of leisure and religious tourism.

While there are a number of obvious areas for growth and expansion in the hotel industry over the coming years, the sector continues to face certain challenges.

A. DISRUPTORS & SOCIAL MEDIA

There remain questions around the legality of operating and renting unregistered and unlicensed bed and breakfast properties in certain jurisdictions in the Middle East which still need to be resolved.

One challenge faced by hoteliers is the presence of Airbnb. Hotels globally have been concerned that Airbnb is encroaching on their territory and have been forced to diversify their advertising platforms and offerings. Almost all hotels now promote their offerings across aggregator websites such as Expedia, Skyscanner and Bookings.com and do not rely solely on conventional advertising platforms. There remain questions around the legality of operating and renting unregistered and unlicensed bed and breakfast properties in certain jurisdictions in the Middle East which still need to be resolved.

Hotels also need to be able to effectively manage social media campaigns, ambassadors, and deal with the impact of "influencers". A hotel marketing department needs to be able to tailor effective, politically sensitive marketing campaigns and ensure that brand ambassadors uphold the values and standards of the hotel chain and do not bring it into disrepute.

B. SANCTIONS

Hoteliers around the world are managing an increased focus on sanctions and compliance due to the war in Ukraine. Brands have had to consider—from a legal, commercial, and reputational perspective—how to manage any presence they have in Russia in light of aggressive sanctions and geopolitical pressure more generally. However, the withdrawal from Russia presents an opportunity for brands in the region, as travellers could opt for the sunnier climes of the Middle East. The GCC member States have generally remained neutral over the war in Ukraine and have taken a very different approach to a number of other countries in continuing to welcome all Russian visitors to their hotels.

C. SUSTAINABILITY

Sustainability continues to a big challenge for the tourism sector. As the UAE aims to reach 40 million annual hotel visitors by 2031, it needs to balance that agenda with the pressure on hotels to adopt sustainable practices. Brands need to remain committed to protecting the Middle East's natural environment, reducing pollution and waste, promoting job opportunities in the local market, and maintaining marine wildlife. Tourism has always been a mixed blessing in that while it can be extremely lucrative and a great source of income for the world economy, it accounts for a significant proportion of global greenhouse gas emissions. With that in mind, Saudi Arabia has embarked on the ambitious 92-island Red Sea project where there will be a cap on visitors per year and a number of islands will remain uninhabited to protect marine wildlife and other endangered species. Dubai has equally committed to growing its public beaches and green spaces (parks and nature reserves). Jordan and Oman have always been big proponents of sustainable tourism, hosting an enviable array of world heritage sites.

D. DATA PROTECTION & PRIVACY

The growing awareness of data protection and privacy, along with the enactment of new modern data protection laws, in the Middle East is something hotel brands and hotel rewards programmes will need to take heed of.

While hotels, hotel rewards programmes and hotel booking platforms with operations in Europe have had to contend with the GDPR for a number of years, this will likely be new territory for home-grown regional brands. Equally, cybersecurity has been on the agenda elsewhere for some years, with high profile cyberattacks against international brands resulting in the loss of millions of guests' data and significant regulatory fines. Cybercrime is a real issue facing hotel brands and their customers alike and still needs to be fully tackled by hotel owners and operators. It has been estimated that cybercrime will cost the world USD 10.5 trillion annually by 2025.[2] In addition to the financial costs associated with cybercrime, there is the reputational cost, which cannot be quantified and, once the damage is done, can be extremely difficult to reverse.

2. CyberCrime Magazine (2020) Cyber Crime to Cost the World USD 10.5 trillion Annually by 2025. Available at: https://cybersecurityventures.com/hackerpocalypse-cybercrime-report-2016/ (Accessed June 2022).

With hotels now processing more sensitive personal data than ever before (such as health data related to COVID tests, vaccine certificates and the like), data protection is a key consideration for the sector.

With hotels now processing more sensitive personal data than ever before (such as health data related to COVID tests, vaccine certificates and the like), data protection is a key consideration for the sector. It will be imperative for hotels and other sector stakeholders to ensure that good data hygiene measures are maintained to effectively protect customer and personnel data. Moreover, many jurisdictions in the Middle East are implementing strict data sovereignty laws, restricting the export of personal data outside of the jurisdiction unless certain exceptions apply or consents are obtained. This will be vital to understand for global brands seeking to draw insights from guest data and market effectively to customers across various jurisdictions.

E. MANAGEMENT AGREEMENTS

In light of the recent pandemic and global lockdowns, owners and operators alike are seeking better ways to protect their legal and commercial interests.

We have seen various challenges associated with negotiating hotel management agreements between owners and operators. In the post-COVID world, there is no "one size fits all" or "market standard" approach, and terms and conditions applicable to agreements can vary considerably between regions, industry segments and hotel groups. In light of the recent pandemic and global lockdowns, owners and operators alike are seeking better ways to protect their legal and commercial interests. For example, owners are requiring greater certainty around costs and capital expenditure incurred by operators, and operators are keen to ensure stability and that a consistent revenue stream is maintained in the face of tourism uncertainty and declining profits, which often provide owners with termination and walk away rights from hotel management agreements. The sanctions in Russia have reminded brands about the need for ease in being able to terminate such agreements. Both owners and operators in the region are also seeking greater flexibility in commercial arrangements generally to be able to adapt to changing market conditions.

With the increasing prevalence of branded residences, operators are also being asked to manage residential components of hotels in addition to the actual hotel itself. While this arrangement has the potential to be profitable for owners and operators, it also increases the likelihood of disputes as individual owners have a vested interest in the development as well. It is therefore essential for owners and operators to ensure that their hotel management agreements clearly set out the delineation of responsibility and allocation of liability between the owner and the operator.

3

Conclusion

Confidence in investment in the hotel sector is gradually being restored to the region. This is evident from recent statistics, occupancy rates, and apparent investment in the GCC. Oman Tourism Development Company recently signed two strategic agreements with international hotel operators Nikki Beach to operate a five-star resort in Yiti and Four Seasons to develop and operate another resort in Muscat. Similarly, Ennismore has signed a Memorandum of Understanding with the Kingdom of Saudi Arabia's Tourism Development Fund to explore the investment of USD 400 million into developments for Ennismore's lifestyle brands in at least 12 destinations in the Kingdom. Oman and Saudi Arabia are not alone and the UAE and other GCC countries also have a number of premium brand hotels opening in the next year.

With the world opening up post-COVID and the relaxation of travel and social restrictions, hotel bookings in the region are returning to pre-pandemic levels and there is optimism again about the future of the hotel and tourism industry in the Middle East.

فيما يشهد الشرق الأوسط انتعاشا كبيرا في قطاع السياحة، خلق عالم ما بعد الكورونا فرصًا وتحديات جديدة يجب على شركات الضيافة ذات العلامات التجارية الانتباه لها عند التخطيط للمستقبل. أدت الأنماط الناشئة في مجالات الضيافة ونمط الحياة والصحة واللياقة البدنية والمساكن ذات العلامات التجارية إلى ظهور بعض الفرص. في الوقت ذاته، لا يزال القطاع يواجه عددا من التحديات، بما في ذلك الأمور التي تعرقل السوق، وتأثير وسائل التواصل الاجتماعي، والعقوبات الدولية والاستدامة وحماية البيانات.

BIOGRAPHY

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Affaire Bank Melli Iran contre Telekom Deutschland GmbH

Quel équilibre entre la préservation des intérêts économiques de l'Union européenne et son autonomie ?

L'arrêt *Bank Melli c. Telekom* de la Cour de justice de l'Union européenne constitue une affaire d'une importance particulière car il s'agit de la première jurisprudence de la Cour de justice relative à l'interprétation du règlement dit de blocage[1]. Cette affaire, s'est présentée comme l'occasion pour la Cour de justice de clarifier certains points dans l'application de ce règlement et de pouvoir se prononcer sur des notions d'une importance primordiale pour l'Union européenne, telles que la préservation des intérêts de celle-ci et de son autonomie, dans le contexte où la tendance à imposer des sanctions extraterritoriales est croissante.

The Bank Melli v. Telekom *judgment of the Court of Justice of the European Union is a case of particular importance because it is the first case law of the Court of Justice relating to the interpretation of the so-called "Blocking Regulation". This case presented itself as an opportunity for the Court of Justice to clarify certain points in the application of this regulation and to be able to rule on concepts of paramount importance for the European Union, such as the preservation interests of the EU and its autonomy, in the context where the tendency to impose extraterritorial sanctions is growing.*

Maryam Sodayreh
Doctorante en droit
de l'Union européenne

1. Règlement (CE) n° 2271/96 du Conseil du 22 novembre 1996 portant protection contre les effets de l'application extraterritoriale d'une législation adoptée par un pays tiers, ainsi que des actions fondées sur elle ou en découlant.

1

Acte I : négociations, sanctions, conclusion du Plan d'action global commun[2]

Aux fins de contextualiser la problématique qui est au cœur de l'affaire *Bank Melli Iran* (BMI), il est important de rappeler plusieurs étapes clés dans l'évolution de la crise nucléaire iranienne. En effet, à partir de 2003 une initiative *ad hoc* a été lancée par la France, l'Allemagne et le Royaume-Uni, avant d'intégrer le Haut représentant de l'Union au processus de négociations sur le nucléaire iranien, ce qui a abouti à la conclusion de l'accord de Paris en 2004. Ce dernier accord n'a jamais pu être appliqué et son échec résulte notamment de la pression américaine sur les États européens engagés dans les négociations avec l'Iran. En effet, une européanisation d'un processus diplomatique en vue de résoudre la crise nucléaire iranienne n'était pas envisageable pour les Américains sans leur participation. À l'époque une solution négociée n'était pas dans la ligne de conduite sévère de la politique américaine vis-à-vis de l'Iran.

Après l'échec de l'accord de Paris, l'action européenne s'est focalisée d'une part, sur le maintien des négociations avec l'Iran et d'autre part, sur le recours aux sanctions : celles du Conseil de sécurité mais aussi les sanctions autonomes de l'Union européenne. Il a fallu douze ans avant d'aboutir à la conclusion du Plan d'action global commun en 2015, dans un cadre multilatéral[3], cette fois avec la participation des cinq membres du Conseil de sécurité, l'Allemagne et l'Union européenne. Cet accord a été qualifié d'une réussite diplomatique majeure dans la résolution de la crise sur le nucléaire iranien et le secrétaire général de l'ONU a estimé que « l'Union européenne est un acteur clef dans les négociations internationales, notamment dans les négociations du P5+1 sur le dossier nucléaire iranien »[4]. Le Conseil de sécurité à son tour a noté « le rôle de coordinateur joué par l'Union européenne pour permettre de convenir de ce plan »[5].

2

Acte II : sortie américaine du PAGC et imposition de sanctions extraterritoriales

C'est dans ce contexte et après des années[6] d'efforts, tant sur le plan diplomatique que sur le plan des sanctions onusiennes et unilatérales avec des conséquences considérables sur l'économie et la population iranienne, que le président américain Donald Trump a décidé de se retirer de l'accord sur le nucléaire iranien et de réimposer des sanctions à l'encontre de l'Iran. Toutefois, avant d'évoquer la problématique des sanctions extraterritoriales, il convient de rappeler que depuis 2000 la tendance américaine a été de viser toutes relations commerciales et bancaires avec l'Iran à travers l'imposition d'amendes colossales aux banques et entreprises européennes. Pour ne citer qu'un exemple, une amende a été imposée par les autorités américaines à la BNP Paribas d'un montant de « 8,9 milliards de dollars[7] pour avoir fait transiter de l'argent via les États-Unis de 2004 à 2012 au nom des clients (notamment) iraniens (650 millions d'USD). De plus, la banque a été exclue des opérations de compensation en dollars pendant un an pour ses opérations financières sur le pétrole et le gaz, et plusieurs cadres, y compris son directeur général des opérations du groupe, ont été invités à quitter la banque »[8].

> *Suite à la sortie américaine de l'accord sur le nucléaire iranien en 2018, outre le fait que les sanctions américaines ont de nouveau été réactivées, les sanctions secondaires ont été imposées à l'égard de l'Iran.*

Suite à la sortie[9] américaine de l'accord sur le nucléaire iranien en 2018, outre le fait que les sanctions américaines[10] ont de nouveau été réactivées, les sanctions secondaires ont été imposées à l'égard de l'Iran. En effet, « les responsables américains ont insisté pour que les entreprises européennes se conforment aussi au rétablissement des sanctions. Le conseiller à la sécurité nationale, John Bolton, a fait savoir que le rétablissement des sanctions américaines était effectif « immédiatement » pour les nouveaux contrats et que les entreprises déjà engagées en Iran auraient quelques mois pour en sortir »[11]. Au-delà de l'indignation des Européens, le règlement de blocage de 1996 a été réactivé et comme l'a rappelé l'Avocat général dans ses conclusions, « en réaction à ces mesures de sanctions, l'annexe à la loi de blocage de l'UE a été modifiée en 2018[12] aux fins d'y inclure davantage de législation américaine, principalement la législation visant à faire exécuter les sanctions à l'encontre de l'Iran »[13]. Ce

2. Ci-après le PAGC.

3. Le Plan d'action global commun (ci-après PAGC) du 14 juillet 2015, a été adopté entre d'une part, les cinq membres du Conseil de sécurité et l'Allemagne et l'Union européenne, et, d'autre part, l'Iran.

4. CS/11813, 9 mars 2015, déclaration du secrétaire général de l'ONU, p. 3.

5. CS/11279, 14 févr. 2014, déclaration présidentielle, a).

6. Pour davantage de développement sur le dossier nucléaire iranien et le PAGC, *V. D. Momtaz, « Garantir la nature exclusivement pacifique du programme nucléaire de l'Iran (le plan d'action conjoint du 24 novembre 2013) »* in Ida Caracciolo and al., Nuclear Weapons : Strengthening the International Legal Regime, Éd. Eleven international Publishing, 2016, pp. 45-74.

7. Il faut rappeler que le lien de rattachement pour imposer ces amendes aux banques européennes par les autorités américaines a été l'utilisation du dollar.

8. CJUE, 12 mai 2021, Bank Melli Iran contre Telekom Deutschland GmbH, Conclusions de l'avocat général, affaire C-124/20, note de bas de page n° 11.

9. La légalité d'une telle sortie au regard du droit international ne sera pas traitée dans le cadre du présent article. Toutefois, il faut attirer l'attention du lecteur sur le fait que cette sortie a été la conséquence directe d'un changement de politique nationale d'une des parties à l'accord, bien que les retentissements de celui-ci aillent au-delà de la seule participation américaine, notamment en raison de l'imposition des sanctions secondaires aux entreprises des autres parties à l'accord, empêchant ainsi l'exécution de leurs engagements en vertu de l'accord.

10. Comme la Cour l'explique au point 19 de la présente affaire, « ces sanctions concernent les personnes visées par la liste des ressortissants nationaux expressément identifiés et des personnes dont les avoirs sont bloqués » (Specially Designated Nationals and Blocked Persons List) (ci-après la « liste SDN »), établie par l'Office of Foreign Assets Control (OFAC) [Office de contrôle des avoirs étrangers (OFAC), États-Unis], sur laquelle figure BMI. En vertu desdites sanctions, il est interdit à toute personne d'entretenir, en dehors du territoire des États-Unis, des relations commerciales avec une personne ou une entité figurant sur la liste SDN ».

11. https://www.lemonde.fr/international/article/2018/05/09/fin-de-l-accord-avec-l-iran-des-contrats-de-plusieurs-milliards-s-envolent_5296328_3210.html

12. Règlement délégué 2018/1100.

13. CJUE, 12 mai 2021, Bank Melli Iran contre Telekom Deutschland GmbH, Conclusions de l'avocat général, C-124/20, point 24.

règlement vise à interdire aux entreprises européennes de se conformer aux législations extraterritoriales. Il s'agit d'une démarche très politique de l'Union européenne avec toutefois des lacunes considérables sur le plan pratique[14].

3

Acte III : arrêt de la Cour (grande chambre) du 21 décembre 2021, *Bank Melli Iran contre Telekom Deutschland GmbH*

C'est dans ce contexte que la présente décision préjudicielle a été rendue par la Cour de justice relative à l'interprétation du règlement de blocage. En effet, dans le cadre d'un renvoi préjudiciel[15], le Tribunal régional supérieur d'Hambourg a posé cinq questions préjudicielles[16] à la Cour de justice de l'Union européenne et plus particulièrement sur l'interprétation de l'article 5 du règlement n° 2271/96[17] du Conseil, tel que modifié par le règlement n° 37/2014[18] du Parlement et du Conseil ainsi que le règlement délégué 2018/1100[19] de la Commission.

Selon les termes de la Cour, Bank Melli Iran (ci-après BMI) « qui dispose d'une succursale en Allemagne, est une banque iranienne détenue par l'État iranien. Elle a conclu avec Telekom, qui est une filiale de Deutsche Telekom AG dont le siège est situé en Allemagne et dont environ la moitié du chiffre d'affaires provient de son activité aux États-Unis, plusieurs contrats en vue de la fourniture de services de télécommunications ... Dans le cadre des différents contrats conclus entre ces parties, Telekom a fourni à BMI plusieurs services de télécommunications, lesquels ont toujours été payés par BMI dans les délais. Les services prévus par ces contrats sont essentiels à la communication interne et externe de BMI en Allemagne. Selon la juridiction de renvoi, sans ces services, BMI ne peut pas participer aux relations commerciales à travers son établissement situé en Allemagne »[20].

Après la sortie américaine de l'accord sur le nucléaire iranien en juillet 2018, la BMI qui était visée par la liste SDN du Trésor américain, reçoit en novembre 2018 une notification de la résiliation des contrats de la part de Telekom.

Après la sortie américaine de l'accord sur le nucléaire iranien en juillet 2018, la BMI qui était visée par la liste SDN[21] du Trésor américain, reçoit en novembre 2018 une notification de la résiliation des contrats de la part de Telekom. La BMI a contesté les modalités de cette résiliation des contrats par Telekom et devant la juridiction de renvoi elle invoque « que la résiliation des contrats en cause au principal n'était pas conforme à l'article 5 du règlement n° 2271/96. BMI prétend que cette résiliation est exclusivement motivée par la volonté de Telekom de se conformer aux sanctions secondaires adoptées par les États-Unis »[22].

Ainsi, pour la première fois, une juridiction nationale, en l'occurrence le Tribunal régional supérieur d'Hambourg, utilise le mécanisme du renvoi préjudiciel afin d'obtenir des clarifications de la Cour de justice sur l'interprétation de l'article 5 du règlement de blocage. Cette affaire, très attendue[23], est d'une importance particulière, à la fois pour les institutions européennes à l'origine de l'adoption et de l'application du règlement, mais aussi pour les entreprises européennes concernées par les dispositions du règlement. Toutefois, il faut tenir compte du fait que dans le cadre d'un renvoi préjudiciel en interprétation, la Cour a pour mission de répondre aux questions posées par la juridiction nationale et son rôle n'est pas d'aller au-delà de ce qui est prévu par les traités[24] afin de remédier aux maintes problématiques d'un acte des institutions de l'Union, rôle attribué au législateur.

Tout d'abord, la Cour rappelle les objectifs poursuivis par le règlement de blocage. Elle précise en effet que le règlement « a pour objet, ainsi que cela ressort de son sixième considérant, de protéger l'ordre juridique établi ainsi que les intérêts de l'Union et ceux des personnes physiques ou morales exerçant des droits sous le régime du traité FUE, notamment en éliminant, neutralisant, bloquant ou contrecarrant de toute autre manière les effets des lois, des règlements et des autres instruments législatifs mentionnés à l'annexe dudit règlement »[25].

Après avoir rappelé sa méthode d'interprétation du règlement, qui tient compte « non seulement des termes de celle-ci, mais également de son contexte et des objectifs poursuivis par la réglementation dont elle fait partie », la Cour répond à la première question préjudicielle posée par la juridiction allemande sur l'interdiction posée par l'article 5 du règlement de blocage selon lequel *« aucune personne visée à l'article 11 ne se conforme, directement ou par filiale ou intermédiaire interposé, activement ou par omission délibérée,*

14. Un nouvel instrument est en train d'être mis en place, il s'agit de la « proposition d'un règlement du Parlement européen et du Conseil du 8 décembre 2021, relatif à la protection de l'Union et de ses États membres contre la coercition économique exercée par des pays tiers », V. *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0775*

15. Le renvoi préjudiciel, défini à l'article 267 TFUE, est un mécanisme en droit de l'Union européenne permettant au juge national de suspendre une affaire pendante devant cette juridiction afin de poser une question en interprétation ou en validité du droit de l'Union européenne à la Cour de justice de l'Union européenne.

16. CJUE (gr. ch.), 21 déc. 2021, Bank Melli Iran contre Telekom Deutschland GmbH, aff. C-124/20.

17. Règlement (CE) n° 2271/96 du Conseil du 22 novembre 1996 portant protection contre les effets de l'application extraterritoriale d'une législation adoptée par un pays tiers, ainsi que des actions fondées sur elle ou en découlant, art. 5.

18. Règlement (UE) n° 37/2014 du Parlement européen et du Conseil du 15 janvier 2014 modifiant certains règlements relatifs à la politique commerciale commune en ce qui concerne les procédures d'adoption de certaines mesures.

19. Règlement délégué (UE) n° 2018/1100 de la Commission du 6 juin 2018 modifiant l'annexe du règlement (CE) n° 2271/96 du Conseil portant protection contre les effets de l'application extraterritoriale d'une législation adoptée par un pays tiers, ainsi que des actions fondées sur elle ou en découlant.

20. CJUE (gr. ch.), 21 déc. 2021, Bank Melli Iran contre Telekom Deutschland GmbH, aff. C-124/20, points 16 et 17.

21. Specially Designated Nationals and Blocked Persons List (ci-après SDN).

22. CJUE (gr. ch.), 21 déc. 2021, Bank Melli Iran contre Telekom Deutschland GmbH, aff. C-124/20, point 25.

23. À titre indicatif, les attentes des praticiens dans ce domaine sont clairement exprimées dans l'article suivant : « Interprétation de la loi de blocage européenne : première saisine de la Cour de justice de l'Union européenne dans l'affaire Banque Melli Iran c/ Telekom Deutschland GmBH »: https://www.hugheshubbard.com/news/interpretation-de-la-loi-de-blocage-europeenne-premiere-saisine-de-la-cour-de-justice-de-lunion-europeenne-dans-laffaire-banque-melli-iran-c-telekom-deutschland-gmbh

24. Article 267 du Traité sur le fonctionnement de l'Union européenne.

25. aff. C-124/20, point 35.

aux prescriptions ou interdictions, y compris les sommations de juridictions étrangères, fondées directement ou indirectement sur les lois citées en annexe ou sur les actions fondées sur elles ou en découlant »[26].

A. UNE INTERPRÉTATION EXTENSIVE DE LA NOTION D'INSTRUCTION ADMINISTRATIVE

Autour de l'interdiction imposée par l'article 5 du règlement, la Cour est amenée à clarifier la notion « d'instruction d'une autorité administrative ou judiciaire »[27]. Sur ce point, la Cour suit les conclusions de l'avocat général en affirmant qu' « une prescription ou une interdiction peut, selon le sens courant de ces termes, découler non seulement d'un acte à caractère individuel ou d'un faisceau de décisions individuelles, mais aussi d'un acte à caractère général et abstrait »[28].

Par la suite, elle ajoute qu'au regard de l'objectif poursuivi par le règlement visant à « protéger l'ordre juridique établi et les intérêts de l'Union en général »[29] les législations étrangères sont susceptibles « de produire leurs effets, notamment par la simple menace de conséquences juridiques susceptibles d'être appliquées en cas de méconnaissance de ces lois par les personnes visées à l'article 11 de ce règlement. Il s'ensuit que le règlement n° 2271/96 ne serait pas apte à contrecarrer les effets desdites lois et à poursuivre ainsi efficacement l'objectif susvisé si l'interdiction énoncée à l'article 5, premier alinéa, de ce règlement était subordonnée à l'adoption d'instructions par les autorités administratives et judiciaires des pays tiers ayant adopté les mêmes lois ».[30]

> *Ainsi, il est possible de déduire du raisonnement de la Cour qu'à la sortie américaine de l'accord sur le nucléaire les déclarations des autorités américaines peuvent être considérées comme suffisantes afin que l'interdiction de l'article 5 du règlement s'applique.*

Par conséquent, la Cour, en interprétant de la manière la plus large l'interdiction posée par l'article 5, tente de donner un maximum d'effet à la portée du règlement « en ce sens qu'il interdit aux personnes visées à l'article 11 de ce règlement de se conformer aux prescriptions ou aux interdictions prévues par les lois annexées, même en l'absence d'instruction des autorités administratives ou judiciaires des pays tiers qui ont adopté ces lois visant à en assurer le respect ».[31] Ainsi, il est possible de déduire du raisonnement de la Cour qu'à la sortie américaine de l'accord sur le nucléaire les déclarations[32] des autorités américaines peuvent être considérées comme suffisantes afin que l'interdiction de l'article 5 du règlement s'applique.

B. ENCADREMENT JURIDIQUE PAR LA COUR AUTOUR DE LA QUESTION DE LA RÉSILIATION D'UN CONTRAT

Concernant la deuxième question préjudicielle sur la résiliation des contrats par Telekom, la Cour, dans un premier temps, précise la nature d'un règlement, en rappelant qu'en vertu de l'article 288 TFUE « le règlement a une portée générale et il est directement applicable dans tout État membre ».[33] Ainsi, en ce qui concerne le règlement de blocage, il impose « cette interdiction formulée en des termes clairs, précis et inconditionnels, s'explique par la circonstance que les personnes visées audit article 11, dans l'exercice de leurs activités notamment commerciales, y compris par leurs éventuelles décisions de résilier des contrats, sont susceptibles de concrétiser des effets extraterritoriaux des lois annexées, que ledit règlement vise précisément à contrecarrer ».[34]

Par la suite, elle clarifie qu'une obligation de motivation de la décision de résiliation de la part de l'entreprise européenne n'est pas requise au vu du règlement. Toutefois, concernant la charge de la preuve, elle impose aux personnes visées par l'article 11 du règlement, c'est-à-dire les entreprises européennes, « d'établir à suffisance de droit que son comportement ne visait pas à se conformer auxdites lois ».[35] La Cour motive son raisonnement en matière de charge de la preuve par le fait qu'il est difficile pour l'autre partie d'apporter des éléments de preuve relatifs aux raisons d'une résiliation par l'entreprise de l'Union européenne. Comme l'a souligné M. l'avocat général au point 95 de ses conclusions, « de tels éléments sont susceptibles de relever du secret des affaires ».[36]

C. QUELLE ARTICULATION ENTRE UNE LIBERTÉ ÉCONOMIQUE ET DES INTÉRÊTS PROTÉGÉS PAR L'ORDRE JURIDIQUE DE L'UNION EUROPÉENNE ?

Concernant la sanction de la violation de l'interdiction posée par l'article 5 du règlement, la Cour, dans un premier temps, souligne « l'absence d'harmonisation au niveau de l'Union européenne » et la liberté des États membres d'imposer des sanctions à l'entreprise qui se conforme à une législation extraterritoriale. La Cour relève la liberté des États membres en matière de sanction sans toutefois relever que la disparité des sanctions entre différents États membres peut être considérée comme une source d'atteinte à la bonne application du droit européen et contraire au principe d'égalité.

Puis dans un second temps, la Cour rappelle « qu'il appartient aux juridictions nationales, seules compétentes pour interpréter et appliquer le droit national, de vérifier si, eu égard à l'ensemble des circonstances du cas d'espèce, lesdites sanctions répondent à de telles exigences et présentent un caractère effectif, proportionné et

26. Article 5 du Règlement n° 2271/96.
27. aff. C-124/20, point 42.
28. aff. C-124/20, point 46.
29. aff. C-124/20, point 49.
30. Aff. C-124/20, point 49. - V. les conclusions de l'avocat général dans la même affaire aux points 63 et 64.
31. Aff. C-124/20, point 51.
32. Voir en ce sens l'article précité du Monde du 9 mai 2018 : « Outre les avionneurs américain Boeing et européen Airbus, le conglomérat industriel General Electric et les constructeurs automobiles allemands Volkswagen et franco-japonais Renault-Nissan pourraient être touchés par la décision des États-Unis de sortir de l'accord sur le nucléaire iranien, alors que les responsables américains ont insisté pour que les entreprises européennes se conforment aussi au rétablissement des sanctions ».
33. Aff. C-124/20, point 56.
34. Aff. C-124/20, point 57.
35. Aff. C-124/20, point 67.
36. Aff. C-124/20, point 66.

dissuasif ».[37] Cependant, la Cour invite la juridiction de renvoi à procéder à un examen de proportionnalité, ce dont elle est traditionnellement habituée à faire dans le cas d'un conflit entre deux libertés fondamentales. En effet, la Cour rappelle que la liberté d'entreprise est une liberté fondamentale sur le fondement de l'article 16 de la Charte des droits fondamentaux et les principes généraux du droit. Par la suite elle définit la liberté d'entreprise comme « le droit, pour toute entreprise, de pouvoir librement disposer, dans les limites de la responsabilité qu'elle encourt pour ses propres actes, des ressources économiques, techniques et financières dont elle dispose ».[38]

Dans la suite de son raisonnement la Cour tente de contextualiser la liberté d'entreprise en prenant d'autres impératifs en compte. En effet, pour la Cour « la liberté d'entreprise consacrée à l'article 16 de la Charte ne constitue pas une prérogative absolue, mais doit, d'une part, être prise en considération par rapport à sa fonction dans la société et, d'autre part, être mise en balance avec les autres intérêts protégés par l'ordre juridique de l'Union ».[39] Ainsi, elle reconnaît une limitation à la liberté économique, tout en rappelant qu'une telle limitation « doit être prévue par la loi, respecter son contenu essentiel et doit, dans le respect du principe de proportionnalité, être nécessaire et répondre effectivement à des objectifs d'intérêt général reconnus par l'Union ou au besoin de protection des droits et des libertés d'autrui »[40].

En l'occurrence, la possibilité de résilier un contrat ainsi que le libre choix du partenaire économique pour l'entreprise européenne, constitue une liberté économique qui « se distingue des autres libertés fondamentales » selon la Cour « en ce que cette liberté peut être soumise à un large éventail d'intervention de la puissance publique susceptible d'établir, dans l'intérêt général, des limitations à l'exercice de l'activité économique ».[41] Il est possible de déceler derrière la notion d'intérêt général, et au vu des objectifs poursuivis par le règlement de blocage, l'importance de la préservation de l'autonomie de l'ordre juridique de l'Union. Pour rappel, la préservation de l'autonomie de l'ordre juridique de l'Union a été, dès 1964, un impératif majeur dans la jurisprudence de la Cour qui devait délimiter son ordre juridique, d'une part, par rapport à celui des États membres et d'autre part, par rapport à l'ordre juridique international. Selon la Cour, l'Union européenne est un ordre juridique « propre et intégré au système juridique des États membres ».[42] Il est donc compréhensible qu'avec le danger[43] que l'extraterritorialité d'une législation étrangère pèse sur les intérêts et l'autonomie de l'Union européenne, comme étant un élément d'ingérence, la Cour soit amenée à accepter une atteinte à la liberté économique des entreprises européennes afin de préserver l'effectivité du droit et l'autonomie de l'ordre juridique de l'Union européenne.

La légitimité de l'Union en tant qu'acteur autonome qui a participé à la résolution diplomatique et conventionnelle de la crise sur le nucléaire iranien est au cœur de la problématique des effets de la législation extraterritoriale américaine.

Il existe un autre impératif qui, sans être directement cité dans la présente affaire, doit être pris en compte en filigrane, en raison de l'impact des sanctions extraterritoriales américaines sur l'autonomie stratégique de l'Union. En effet, il ne faut pas passer outre le fait que la contrepartie de l'accord sur le nucléaire était la possibilité pour l'Iran d'avoir des relations commerciales avec les entreprises notamment européennes. Le nombre considérable de contrats passés entre l'Iran et les entreprises européennes entre l'adoption de l'accord et avant la sortie américaine en témoigne. Ainsi, la sévérité de l'interprétation de la Cour peut se comprendre par la prise en compte de l'importance du maintien des relations commerciales entre l'Union européenne et l'Iran en vue de la préservation de l'accord et par le biais de la protection de l'ordre juridique de l'Union des effets de la législation extraterritoriale américaine. La légitimité de l'Union en tant qu'acteur autonome qui a participé à la résolution diplomatique et conventionnelle de la crise sur le nucléaire iranien est au cœur de la problématique des effets de la législation extraterritoriale américaine. Par ailleurs, comme l'avocat général Hogan l'a évoqué au début de ses conclusions, « les défis posés au droit de l'Union par l'extraterritorialité de certaines législations devraient également se poser avec acuité dans les prochaines années dans le domaine cher à la Cour, à savoir celui de la protection des données à caractère personnel ».[44]

Toutefois, une interrogation sur le rôle du juge de l'Union européenne s'impose. Quelle posture doit être admise pour le juge de l'Union qui, d'une part doit préserver les intérêts économiques des entreprises européennes contre les effets extraterritoriaux de la législation américaine, et qui, d'autre part, doit préserver l'autonomie de l'Union européenne devant un ordre juridique tiers qui ne cesse d'intervenir et de s'imposer à l'action extérieure de l'Union européenne ? Une tentative de réponse à cette interrogation peut être la suivante : la Cour de justice est avant tout le juge de la bonne application du droit européen, tel qu'il existe. Il appartient à présent au législateur européen d'intervenir dans ce domaine avec détermination en vue de pallier les lacunes du règlement de blocage.

37. Aff. C-124/20, point 74.

38. Aff. C-124/20, point 78.

39. Aff. C-124/20, point 80.

40. Affaire C-124/20, point 81. Sur le test de proportionnalité il existe une jurisprudence abondante de la Cour de justice dont la Cour elle-même fait référence dans la présente affaire : CJUE, 22 janv. 2013, Sky Österreich, aff. C-283/11, point 48.

41. Affaire C-124/20, point 81.

42. Affaire 6/64, 15 juill. 1964, Costa c. Enel, pt 1158.

43. Selon les conclusions de l'avocat général, « une grande partie de la législation américaine mettant en œuvre ces sanctions cherche soit à imposer des sanctions à des entités de pays tiers qui font du commerce avec l'État cible, soit à interdire à ces entités de pays tiers de faire à leur tour du commerce avec les États-Unis d'Amérique ». – V. Conclusions de l'avocat général, affaire C-124/20, point 3.

44. Affaire C-124/20, point 49. - V. les conclusions de l'avocat général dans la même affaire, note de bas de page 5.

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BIOGRAPHY

MARYAM SODAYREH-VIALLET est doctorante en droit de l'Union européenne à l'Université Paris-Saclay où elle a enseigné le droit européen.
La thèse de Maryam Sodayreh-Viallet porte sur les relations extérieures de l'Union européenne et l'Iran. Dans ce cadre, elle a spécialement travaillé sur les sanctions de l'Union européenne à l'encontre de l'Iran.
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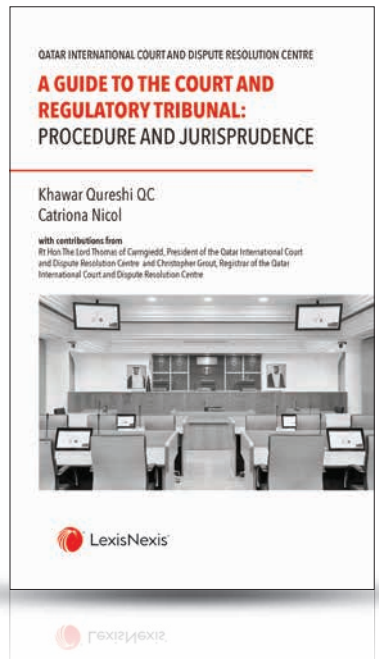

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