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TEN YEARS ON

Hard though it may seem to believe it is ten years since we published the first issue of Lexis Middle East Law Alert. Our first feature article followed on from the UK's decision to extradite a national who had issued post dated cheques to cover their mortgage in the UAE which bounced. Since then the law governing finance in the GCC has changed dramatically. For example, a later article on Saudi Arabia's first mortgage law also generated a lot of interest. However, the piece which shows just how much the GCC has changed in those ten years, was one we published earlier this year on the crypto-currency and virtual asset regime in the UAE. Although it is not just the types of laws being issued here that have changed in those ten years, it has also been the range of information we now provide lawyers working in the region. As well as the Law Alert, Lexis now publishes three other legal magazines - the MENA Business Law Review - a journal dedicated to business law in the Middle East and North Africa region; Lexis Middle East HR Alert - a magazine aimed at those working in the HR and health and safety professions here, as well as the most recent launch, Lexis Gulf Tax which covers the increasing development of tax law in the GCC. To find out more about being added to the free online controlled circulations of these magazines contact marle.vansandwyk@lexisnexis.com. In addition, we have also published a number of specialist supplements including one this year and last year on the legal framework that has been put in place in Qatar to support the 2022 World Cup and its business legacy. At the heart of all this is the Lexis Middle East Law online service itself and the specialist Lexis Middle East HR site we launched last year for the region's HR profession. The daily monitoring we do of newly issued laws and the hundreds of legal news sources from across this region in English and Arabic we check each day for those services has ensured over the last ten years we have always been aware of key developments.

Claire Melvin - Editor

CONTENTS

WELCOME CHANGE

A new Saudi Companies law has brought with it changes and innovations which, as **Edoardo Betto** and **Thamer Alzayer** of Hourani & Partners explain, look likely to support the Kingdom's booming venture capital market.

Edoardo Betto
Partner
Hourani & Partners

Thamer Alzayer
Associate
Hourani & Partners

"After two years of drafting, consultations and reviews, the Saudi Arabian Cabinet approved the new Saudi Companies Law on 4 July 2022 through Saudi Arabia Cabinet Decision No. 678/1443 (the 2022 Companies Law)," states Edoardo Betto. "This law was then published on 22 July 2022. As a result, the current Saudi companies legislation, issued in 2015, and the Law on Professional Companies have been repealed, modernised and consolidated within the 2022 Companies Law."

"It is significant to note that it took 50 years to update this cornerstone piece of legislation, as the first and original Companies Law was issued in 1967. However, it took only seven years to release new companies legislation from when the previous version was issued in 2015.".

"This clearly shows the speed taken in order to ensure the legislative framework is in line with Saudi's 2030 Vision and a fast-paced economy."

NEW BUSINESS TYPES

"Although we are yet to see the impact of the 2022 Companies Law and will not be able to fully assess this until its Implementing Regulations, which are yet to be issued, come out, this new Law should not simply be dismissed as an updated version of the 2015 Companies Law as, in many respects, it is a complete reboot of that law, " states Thamer Alzayer.

"One example of this is that the 2022 Companies Law has introduced a completely new type of company - the Simplified Joint Stock Company (SJSCs)," Alzayer adds. "This form of company will surely cater for Saudi's booming venture capital market. In addition, drawing on the Saudi Capital Market rules, the concept of small and micro companies has also been introduced to cater for the growing domestic SME and start-up eco-system."

"These entities have been introduced to simplify the management of companies, provide economic, social and structural reforms and changes to the overall business landscape that have been taking place so quickly in Saudi Arabia in recent years and have required significant changes and updates to

companies legislation, greater flexibility for business owners and to encourage investments," Alzayer continues. "The Implementing Regulations will clarify what constitutes a micro or small company."

"Another new concept introduced by the 2022 Companies Law is that of the non-profit company," Betto adds. "The aim is to cater for the third sector and help stimulate social responsibility. These type of company will also be able to receive gifts and bequests, which was something of a grey area previously."

"Professional companies can also now be established among professionals who are licensed to practice different professions, such as auditors and lawyers, subject to what will be stated in the Implementing Regulations and the rules of their relevant professional bodies," Betto adds.

JOINT STOCK AND LIMITED LIABILITY COMPANY CHANGES

"One of the changes we are most excited about is the possibility for Joint Stock Companies (JSCs) to provide for share classes other than ordinary, preference and redeemable, therefore widening the flexibility of company structures to attract investment," Betto states. "This looks likely to stop the trend that in the past saw companies incorporating in other neighbouring jurisdictions which allowed this."

"Another significant change designed to attract and motivate talent is the introduction of the possibility for Saudi JSCs to issue shares or options to dedicated employees for example by way of Employee Stock Option Plans."

"In addition, the 2022 Companies Law has removed the limitation on a maximum of 11 individuals permitted to sit on the board of directors of JSCs as well as the ceiling on their compensation, which was capped at SAR 500,000," Alzayer adds. "This will give these companies greater flexibility on their board structures and the remunerations at Board level, which should help attract top talent to Saudi Arabia at

RELATED LEGISLATION

Article 153 of Saudi Arabia Cabinet Decision No. 678/1443

With the exception of criminal acts, the Company's Statute may provide for the settlement of disputes or conflicts of whatever nature which may arise among the shareholders or between the Company and its president, its manager or any member of its Board of Directors by resorting to arbitration or other alternative dispute resolution methods.

(Source: Lexis Middle East Law)

RELATED STORY

Action Required: A Practical View on the New KSA Companies Law
2022-09-14_39
As part of a surge of issuing and refreshing laws and regulations, Saudi Arabia has recently issued the new Companies Law by Saudi Arabia Royal Decree No. M132/1443 on the Approval of the Companies Law (equivalent to Saudi Arabia Cabinet Decision No. 678/1443 on the Approval of the Companies Law). Shareholders, those who are part of senior management of a Saudi company or banking or financial institutions, are likely to have to start prepairng for the changes.

an executive level."

"The introduction of a wide array of instruments for Limited Liability Companies (LLCs), such as the possibility to issue bonds and sukuks (to raise capital), to pledge shares as a form of guarantee or buy-back their shares to be held in treasury, for a variety of reasons, including to pay off investors, is also generating excitement," Betto adds. "This will provide LLCs with greater flexibility in their approaches."

"The final recognition of drag-along and tag-along rights for JSCs and LLCs is also an interesting development," Betto continues. "Though these forced-sale contractual provisions were common in the past they were largely unenforceable."

"However, the positive impact of this change has been reduced by the fact that the 2022 Companies Law states that, in order to be enforceable, these provisions must be included in the company's articles of association and are subject to the approval of at least 90% of the company's capital which is certainly a high threshold to exercise a drag-along or tag-along right and resembles more of a 'squeeze-out' process. It is hard to see why a 10% minority shareholder willing to exercise a tag-along right would require the approval of the 90% of the capital to exercise such right. Unfortunately, these provisions are not as flexible as those found in some other jurisdictions. We are hopeful the Implementing Regulations will revisit this point."

OTHER CHANGES

"Other areas of change include that shareholder agreements and family charters will also now be officially recognised," states Betto. "In addition, the distribution of interim dividends is also now officially codified and articles of association, bylaws and commercial registration certificates which contain key information like the identity of the owners and, at times, the authority of the managers can also now be officially disclosed to the public. Another area of change is that the notion of control for holding companies has been clarified and their remit expanded."

CORPORATE GOVERNANCE

"However, one of the most significant changes introduced by the 2022 Companies Law has been the codification for the first time ever of the fiduciary duties of company managers and their accountability for any breach of those duties " Alzayer adds. "In fact, a whole new standalone chapter in the law is dedicated to this subject. Hopefully, this will encourage good corporate governance practices which are more closely aligned to those in Western jurisdictions and even neighbouring UAE."

SHAREHOLDERS, JOINT VENTURE AGREEMENTS AND FAMILY CHARTERS

"As noted, the 2022 Companies Law also provides for the recognition of shareholders. Joint venture agreements and family charters as long as they are referenced in the articles of association or bylaws," states Alzayer. "This will validate them before the Saudi courts if there is a dispute between the shareholders. This may imply that the terms of these agreements would override or complement the terms of the articles or bylaws so long as they do not contravene Saudi's mandatory laws. In the past, these agreements were not clearly recognised by the Saudi Arabian courts and enforcing certain provisions included in these supplemental agreements was time consuming," Betto adds.

"Another key change is that the two-year mandatory lock-up period for shareholders of JSCs on incorporation has been removed."

NEXT STEPS

"Saudi Arabia Cabinet Decision No. 678/1443 is due to come into force on 18 January 2023," states Betto. "The Implementing Regulations, which will give a fuller picture of the change, are also expected to be released before or around the same time as the new Law comes into force."

"Both established companies and companies under-formation should review their current articles of associations from the perspective of the new law and amend their constitutional documents and corporate structure to comply with any changes required by the new Law," states Alzayer. "When doing this and deciding what changes to make, they should also take full advantage of the novel provisions in this law which allow for greater flexibility. Existing companies will have to adjust their current structures and Articles of Association within two years of its coming into force, that is by 18 January 2025. As done previously, we expect the Ministry of Commerce to issue new standard model articles of associations and bylaws in due course, which will help with this."

"This new law will enable the increasing number of entrepreneurs and venture capital firms operating in Saudi Arabia to incorporate as SJSC there," Alzayer adds.

"These can be incorporated by one or more shareholders and divided into various classes of shares providing ultimate flexibility from a management perspective. These changes will allow swift access to the Saudi capital and venture market and will provide shareholders with the ability to construct their businesses in a more bespoke way that better aligns with their business needs and ambitions."

"This new law should also encourage the flow of further foreign investments into Saudi by introducing mechanisms and structures widely used in other jurisdictions across the globe and will also likely reduce barriers to entry into this market."

LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE

UAE

ENFORCEMENT OF JUDGMENTS

The Director of the Department of International Cooperation at the UAE Ministry of Justice issued an opinion in a letter to the Dubai Courts on 13 September 2022 that as the Courts of Great Britain and Northern Ireland have enforced a judgment issued by a Dubai Court, that has become final in the UK in the Lenkor Energy Trading DMCC v Puri (2020) EWHC 75 (QB) case, the principle of reciprocity is considered to have been satisfied. The letter adds in the absence of a bilateral treaty covering the enforcement of judgments between the UK and the UAE, Article 85 of Cabinet Decision No. 57/2018 will govern enforcement based on the reciprocity principle. The Letter appeals to the Dubai Courts to apply the principle of reciprocity on enforcement of any judgments issued in the UK to ensure a continuous implementation of reciprocity principle between both countries. Although this letter is not binding on the Dubai Courts, who have discretion to interpret UAE laws, it lends support to remove the uncertainty that surrounded enforcement of UK judgments in the UAE in the absence of treaties that dealt with this matter.

ILLEGAL STAY FINES CLARIFIED

Under the Implementing Regulations to the Law on the Entry and Residence of Foreigners, offenders will be fined 100 AED for each day they are illegally in the country. In some cases, these fines will be imposed from the day following the expiry of the period in which the individual was permitted to reside in the country after their residence permit has either been cancelled or has expired. A decision will be issued by the Chairman of the relevant Authority responsible for each category of resident in order to determine the relevant periods for each. However, this period will not be able to exceed six months from the date of cancellation or expiry of the residence permit in total.

SAUDI ARABIA

TOURISM REGULATIONS

Saudi Arabia's Tourism Ministry has announced it is preparing three new regulations which will regulate the tourism sector. These will apply to sectors including private tourism, the hospitality sector and travel and guiding services. Under the regulations, a private tourism hospitality facility must be within the geographical scope specified by a Ministerial Decision or their authorised representative. The required permit must be valid for the specified time period and it must be within a property designated for residential use. In addition, no more than three permits should be issued for the same authorised person in a property which consists of multiple housing units.

DISCOUNTS AND PROMOTIONS

Saudi Arabia's Ministry of Commerce has stressed the importance of commercial establishments' following the regulations and controls on commercial discounts and promotions. Any establishment or online store must first obtain a licence to offer a discount before those discounts are announced. The percentages of the reduction from and to must be clearly defined and notified to consumers in writing. In addition, exchange and return policies during the promotion period must be clearly disclosed to consumers.

OMAN

PLASTIC BAG IMPORT BAN

Oman's Ministry of Commerce, Industry and Investment Promotion has issued a Ministerial Decision which will come into force on 1 January 2023, banning the import of plastic bags into the country. The decision does not apply to local plastic bag factories and aims to support Omani factories producing these bags by limiting unfair competition from imported products that do not meet environmental standards. Those who violate the Decision will be fined 1,000 Rials.

DUQM AND USUFRUCT CONTRACTS

Oman's Public Authority for Special Economic Zones and Free Zones has approved a registration fee system for usufruct contracts involving real estate properties in the Duqm Special Economic Zone. The Special Economic Zone at Duqm will announce more details on this at a later date.

GCC

UNIFIED BUILDING CODE

GCC Municipal Ministers have announced the launch of a Unified Gulf Building Code. The Code will be used as a guideline for three years. The relevant ministerial committee has also been authorised to update these guidelines whenever necessary,

KUWAIT

EGG EXPORTS

Kuwait's Minister of Commerce and Industry has issued a Ministerial Decision banning the export of fresh eggs from 1 October 2022 to 21 May 2023. However, licensed national farms and chicken and egg production companies will be excluded if they separately obtain a special license from the Ministry of Commerce and Industry for each shipment and prices and quantities in the local market are stable.

FAMILY RESIDENCE VISAS

Following the temporary suspension of family visit and tourist visas, Kuwait's Ministry of Interior has also suspended the issuing of family residence visas until further notice. It has been stated this is a temporary measure but there is currently no information on when the suspension will be lifted. According to a local newspaper, Kuwait's Ministry of Interior will soon issue a decision raising the salary ceiling for family/dependent visas to 800 Dinars from 500 Dinars.

QATAR

FOOD SAFETY SYSTEM

Qatar's Ministry of Public Health has established a new electronic food safety system. The Watheq system has been launched as part of a package of projects which are aimed at raising levels of food safety. It will provide a tight system for the food control process, based on standard work methods subject to the ISO 17020 international accreditation controls. This will be managed through three electronically linked systems - providing a control system for imported and exported food; a food control system in the local market and electronic management of food analysis laboratories.

BAN ON OFFICIAL EMBLEM USE

Qatar's Ministry of Commerce and Industry has banned the commercial use of the State's official emblem in stores and on electronic platforms. The ban has been imposed in line with Qatar Law No. 9/2022 and relates to trademarks, trade indications, trade names, geographical indications and industrial designs and templates. The announcement follows the recent approval of a new state emblem for Qatar which features historical Qatari symbols in a maroon colour including the founder's sword, palm trees, the sea and a traditional boat, against a white backdrop.

E-PAYMENT

Qatar's Ministry of Commerce and Industry has ordered all commercial outlets operating there to provide an electronic payment service to their customers. They should not impose any additional charges for this service. They can provide a bank card service, bank payment wallet or QR code. The announcement follows amendments made to Qatar Ministerial Decision No. 161/2017 On the General and Special Requirements to be Available in Similar Industrial and Commercial Shops and Public Premises by Qatar Ministerial Decision No. 10/2022.

BAHRAIN

TRAINING VISAS

Bahrain has announced a new six month multi-entry visa for those who enter the country for training purposes. The visa will cost 60 Dinars and is renewable for a similar period. Applications can be made at www.evisa.gov.bh. Those wishing to apply must be a trainer or a trainee in either a private or public sector entity. In addition, applicants will need to attach a letter from their employer explaining the details of the training and have a passport with at least six months on it remaining.

QUALIFICATION CHECK

Changes to audit and checks on degrees and qualifications have been approved by the Cabinet. Changes will include audits of qualifications issued by institutions inside and outside Bahrain. Local institutions will be able to audit certificates and there will be a link to the General Secretariat of Higher Education's system. The General Secretariat will then audit the data. Mandatory certificates of equivalence have been cancelled for qualifications issued outside Bahrain. It will be sufficient to check certificates via Ministry of Education approved companies that do the checks. Employers and private sector institutions will be able to use specialist Ministry of Education recommended companies to check the validity of masters and doctorate certificates. Affidavits for depositing thesis in national libraries will continue to be granted under special conditions. To speed up private sector recruitment companies will be able to optionally verify certificates.

REGULATORY ROUND-UP

UAE: The Cabinet has approved the issue of a Federal Law on Public Private Partnership...

Sharjah: Sharjah Decree-Law No. 3/2022 regulating a new Sharjah Fish Resources Authority has been issued..

ADGM: The Financial Services Regulatory Authority (FSRA) has implemented eKYC improvements to help facilitate non-face-to-face digital identity verification ...

DIFC: The DIFC has launched the first global family business and private wealth centre which will provide access to a full range of support services to enable robust legacy and succession planning...

Saudi Arabia: A new unified regulator for the insurance sector in Saudi is to be established...

Kuwait: The suspension of applications for licenses to open new private sector pharmacies has been lifted along with the suspension of applications to practice pharmacy by non-Kuwaitis..

Kuwait: An Administrative Decree ordering shops in residential areas to close at midnight is in effect according to local newspapers...

Oman: Riyada card holders will be exempt from the General Secretariat of Oman's Tender Board registration and classification fees until 22 August 2023...

Oman: Oman's Telecommunications Regulatory Authority has issued Oman Decision No. 1152/2/3/2022/2 regulating the rights of telecommunication service users...

Saudi Arabia: The Capital Market Authority has approved amendments to the Rules on the Offer of Securities and Continuing Obligations...

Qatar: Qatar's Justice Ministry has launched an online legal and judicial studies portal....

Bahrain: The Bahrain Traffic Directorate has begun a clamp down of illegal driving instructors. Those taking a test must first take 22 hours of lessons with a registered instructor in an adapted vehicle...

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

UAE - COOPERATIVES

The UAE President has issued Federal Decree-Law No. 6/2022 on Cooperatives which will apply to both existing and new cooperatives. The law covers a range of areas including the regulation of licensing and the work of the cooperative sector. Under the Decree-Law, cooperatives will be able to allocate a percentage of their annual profits or accumulated profits to social responsibility work, after the receiving the approval of the competent authority and a decision has been issued by their General Assembly. The cooperatives will also have to disclose their profits on their website. Implementing Regulations for this law will also be issued in the future,

KUWAIT - RESIDENCY

A new residency law will be submitted by the government to the National Assembly after the elections to address the demographic structure, reduce expatriate numbers, localise jobs, increase Kuwaitisation in the private sector and reform the economy. The laws that were submitted by the government to the previous National Assembly are going to be submitted again to the new Assembly with a few changes that were requested by previous members of the parliament and some of the candidates who have been running in the elections.

GAZETTE WATCH

UAE Official Gazette Nos. 731-734 Annex – These Gazettes include Federal Decree-Law No. 7/2022 amending Federal Law No. 15/2009 on tobacco control.

Sharjah Official Gazette No. 4 of 2022 – This Gazette includes Sharjah Executive Council Decision No. 24/2022 on the use of single-use plastic bags and materials in the Emirate.

Dubai Official Gazette Nos. 575-584 of 2022 – These Gazettes include Dubai Law No. 15/2022 Dubai Law No. 3/2020 on Dubai Multi Commodities Centre.

Saudi Arabia Official Gazette Nos.4940-4949 – These Gazettes include Saudi Arabia Administrative Decision No. 03/21/2022/1443 on the approval of the amendment of the Implementing Regulations to the Copyright Protection Law.

Qatar Official Gazette Nos 8, 9 of 2022 – These Gazettes include Qatar Ministerial Decision No. 8/2022 amending the Implementing Regulations to the Law of Environment Protection issued by Qatar Ministerial Decision No. 4/2005.

Oman Official Gazette Nos 1450-1460 – These Gazettes include Oman Ministerial Decision No. 125/2022 issuing the Regulation on the Establishment, Management and Operation of docks outside ports.

Kuwait Official Gazette Nos 1592-1602 Annex – These Gazettes include Kuwait Ministerial Decision No. 934/2022 amending Kuwait Ministerial Decision No. 833/2022 on the regulation of the licences of the media and tourism activities at the Ministry of Information.

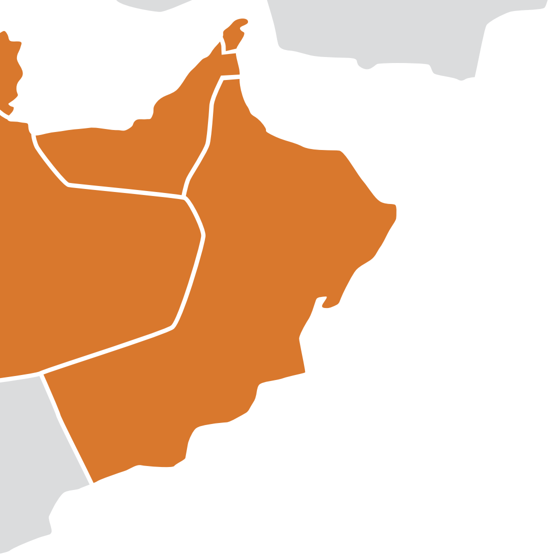
(Source: Lexis Middle East Law Official Gazette Index)

BAHRAIN - LAND

Bahrain Decision No. 44/2022 establishing a government land investment committee has been issued. The committee will be responsible for following up on the mechanism for investing in government land, studying the technical, financial and environmental aspects of requests of entities to manage investments in government land, and presenting these on the electronic platform which has been designated for this purpose in conjunction with the offer for investment in accordance with the laws and regulations.

OMAN - CLIMATE CHANGE

Oman is currently updating their climate affairs regulations to keep up with local and international developments. The aim is that the regulations will monitor the performance of companies and institutions tasked with climate issues who will be expected to either moderate or change their activities to adapt to climate change. A new climate change law will serve as a regulatory code for drafting general provisions on climate change which will cover all sectors in Oman. Preliminary steps include the drafting of a national strategy to alleviate and adapt to climate change. A database has also been set up to collate information on emissions and track progress towards the target for reducing emissions by seven per cent by 2030.



FEATURED DEVELOPMENT

Ibrahim Sattout & Hussein Azmy of ASAR - Al Ruwayeh & Partners examine the key changes brought in by recent amendments to the Kuwaiti's Competition Protection Law Implementing Regulations.

In order to further strengthen the regulatory framework governing competition in Kuwait, the Competition Protection Authority has issued Kuwait Administrative Decision No. 25/2022 which amends Kuwait Decision No. 14/2021 that issued the Implementing Regulations to the Kuwaiti Competition Protection Law (Kuwait Law No. 72/2020). This Decision has brought in a number of key changes to the Implementing Regulations. Firstly, it broadens the range of places an application for exemption from the prohibition of conducting certain acts seen as prejudicial to commercial competition or applications for approval of a transaction creating a economic concentration is advertised. As a result, the Competition Protection Authority's Executive Chairman now has the authority to publish these applications in both the Official Gazette and two daily newspapers, rather than either the Official Gazette or two daily newspapers as was previously the case under Article 59 and 82 of Kuwait Decision No. 14/2021.

In addition, Article 74 of Kuwait Decision No. 14/2021 has also been amended so it specifies which transactions could constitute an economic concentration - which are acquisitions, mergers and joint ventures.

Article 78 of Kuwait Decision No. 14/2021 has also been amended, expanding the list of supporting documents which are now required to be submitted with an economic concentration transaction approval application.

In addition, there is a change in Article 83 of Kuwait Decision No. 14/2021 which gives the Board of the Competition Protection Authority 30 days to decide on an objection that has been submitted by any interested party against a transaction approval application. Article 86 of Kuwait Decision No. 14/2021 also now states that the Chairman has seven days to refer an economic concentration transaction approval application to the Authority's Board so that it can make a decision on it.

Finally, a new Article 105 bis has been added to Kuwait Decision No. 14/2021. This introduces a special mechanism for dealing with multiple complaints which relate to the same legal cause, by authorising the Competition Protection Authority Board to consolidate these complaints following the Executive Chairman's recommendation.

QATAR - INDUSTRIAL ZONES

Qatar's Cabinet has approved a draft industrial zone decision which specifies the necessary terms and conditions to grant a developer a concession to develop and manage an industrial zone. It has been prepared in line with Article 3 of Qatar Law No. 8/2018 on industrial zones.

SAUDI ARABIA - OIL

A consultation on a new draft petroleum and petrochemical law has been issued which is scheduled to end on 24 October 2022. If this new law is approved and issued it will repeal and replace Saudi Arabia Cabinet Decision No. 68/1439, On the Approval of the Law of Trade in Petroleum Products. The aim of the law is to organise operations in both these sectors and increase use of these materials. It is hoped this new law if passed would increase private sector participation in this sector and help guarantee the continuation of supply of these products.

TAX AND FINANCE ROUND-UP

COVERING RECENT KEY TAX AND FINANCE DEVELOPMENTS – REGION-WIDE

UAE

CORPORATE FINES

Companies and entities operating in the UAE who refuse to cooperate with inspectors or auditors will be fined up to 10,000 AED as a result of a Cabinet Decision No. 78/2022 Issuing the Regulation of Administrative Penalties for Acts Committed in Violation of the Provisions of Federal Decree-Law No. 32/2021 Concerning Commercial Companies.

Other fines covered in this Cabinet Decision include fines of up to 100,000 AED which would be imposed on directors or chairmen of boards of directors or their representative in a public joint stock company if the company's general assembly has not been called based on a request from the Authority, the Ministry or the relevant authority.

LIMITED LIABILITY COMPANIES

Cabinet Decision No. 77/2022 On Limited Liability Companies came into effect on 16 August 2022 and applies to limited liability companies incorporated in main land UAE whose entire share capital is owned by a sole shareholder. It introduces new regulations on the management and operation of Sole Shareholder LLCs including incorporation procedures.

Also covered are requirements on name, details of the information that needs to be included in the memorandum and articles of association, as well as rules on general assembly meetings, the appointment of auditors, profit distribution, related party transactions and the sale of shares.

VAT REFUNDS

The UAE's Federal Tax Authority and Planet Tax Free has launched the world's first fully paperless VAT-refund scheme for tourists.

The system links retail outlets and the tax refund scheme.

It has been integrated for purchases at a number of hotels, shopping centres, malls and other retail locations. Shoppers complete a transaction, receive a digital invoice and then share it directly with Planet Tax Free via the system. They can use one of over 100 self-service kiosks available at departure points, for a simple, quick refund experience when they are leaving the country.

Elsewhere, the Authority has confirmed a citizen can reclaim the VAT when building more than one residence. This can be done providing they request the refund for each residence separately. In order to make a claim, various conditions must be met. These include that the residence is newly built on land owned by a citizen and the building must be used exclusively by a citizen or their family. It should also meet the definition of a 'dwelling'. This includes small homes and villas and the building must be used predominantly as a private home for a natural person.

DUBAI

CUSTOMS SELF AUDIT

Dubai Customs has launched what they are calling the 'Self-Audit Finding Service' which is a new voluntary disclosure programme, to encourage importers and exporters to disclose errors and omissions in their customs declarations. There are no fees for submitting a request, or for making an enquiry on this service. However, the disclosure must be complete with all the relevant information on the error or omissions.

The disclosure must be made before notice or commencement of the customs audit process. The importer or exporter must also undertake to pay any difference in customs duties within 15 days. Submissions are made via a Self Audit Form (available on the Dubai Trade login page) along with supporting documents.

SAUDI ARABIA

EQUITY CROWD FUNDING

Saudi Arabia's Capital Market Authority has approved a new regulatory framework for equity crowdfunding and issued a Decision on this subject. As a result the Capital Market Institutions Regulations, Investment Accounts Instructions, Rules on the Offer of Securities and Continuing Obligations and the Glossary of Defined Terms Used in The Regulations and Rules of the Capital Market Authority have been amended. The changes will allow Capital Market Institutions who are authorised to carry out arranging activities to offer securities via Equity Crowdfunding platforms, and to hold their clients' money while carrying out securities crowdfunding. The requirements for custody of clients' money received by capital market institutions who are authorised to carry out arranging activities in the course of carrying out securities crowdfunding and opening and operating investment accounts have also been specified.

VAT RATE CHANGE

Saudi Arabia's Zakat, Tax and Customs Authority (ZATCA) is currently working on amendments their VAT rates.

As a result a 0% rate would apply to locally manufactured military goods supplied to the armed forces and internal security forces. This new rate would apply to a taxable person, registered with the Authority and licensed in military manufacturing by the General Authority for Military Industries.

PASSENGER DISCLOSURES

The Zakat, Tax and Customs Authority (ZATCA) has confirmed passengers leaving or entering the country must disclose if they are carrying 60,000 Riyals or more in their luggage. They must also disclose if they have the equivalent in money, jewellery or precious metals or the equivalent in foreign currencies. They must disclose the items and fill out a declaration form which they then submit electronically via the application or through the Authority's website. Those who fail to comply with these rules could be guilty of money laundering, smuggling or evading taxes or the payment of legal fees.

QATAR

MARKET MAKING INITIATIVE

Qatar's Investment Authority has announced it has launched a market making initiative. Licensed market makers on the Qatar Stock Exchange will be able to access some of the Authority's stock inventory and incentive programmes in order to facilitate markets in Exchange listed stocks. The initiative is being implemented with the Qatar Financial Markets Authority and Qatar Central Securities Depository.

EGYPT

IMPORT DIRECTIVES

Egypt's Central Bank has issued new directives on facilitating imports. Under these directives, foreign currency cash deposits resulting from exports to neighbouring countries such as Libya, Syria, Sudan, Iraq, or Yemen can be accepted in import operations providing the documents supporting the transactions and the value of the goods are submitted. However, the Central Bank must be informed if the deposits result from exports to any other country which is not mentioned in the list.

CAPITAL MARKET LAW AMENDMENTS

Egypt's Prime Minister has issued a Decision amending the Implementing Regulations to the country's Capital Market Law (Egypt Law No. 95/1992). The amendments include articles regulating the work of investment funds as well as new articles to organise the issuing of sustainable development bonds. The amendments also include assigning responsibility for preparing financial statements of investment fund companies to the management services company instead of the investment manager.

TAX AUTHORITY REGISTRATION LIMIT

Egypt's Supreme Constitutional Court has rejected a lawsuit which had challenged the constitutionality of Article 18(1) of Egypt Law No. 11/1991 (the Egyptian General Sales Tax Law). This provision obliges industrial producers whose total sales value of locally produced goods has reached or exceeded an amount specified by the legislator, to register with the tax authority. The court based its judgment on the principles of equal opportunity and equality, between a product which had reached the registration limit and one that had not. A key point was that the law allowed cancellation of the registration, if one of the conditions no longer applied, or if the registrant's sales were less than the registration limit, they liquidated the activity, or completely stopped undertaking it.

MARGIN TRADING RULE AMENDMENTS

The Board of Directors of the Egyptian Financial Supervisory Authority has announced it has approved amendments to the country's margin trading rules. Egypt Financial Supervisory Authority Decision No. 72/2022 amends Egypt Financial Supervisory Authority Decision No. 67/2014.It revokes Article 67 on the maximum limit for margin purchases on the company's securities which was 30% of the company's freely traded shares or 15% of the company's total shares whichever was higher.

It also repeals Egypt Financial Supervisory Authority Decision No. 61/2021, on the rules regulating the practice of brokerage firms and trustees purchasing securities.

TAX TREATY UPDATE

Qatar: The Democratic Republic of Congo (DRC) has approved a Double Taxation Treaty with Qatar, for further approval by the Congolese Parliament.
UAE: The Chilean Senate has approved a Double Taxation Treaty with the UAE.
UAE: The Democratic Republic of Congo (DRC) has approved a Double Taxation Treaty with the UAE, for further approval by the Congolese Parliament.

LISTING PROCEDURE AMENDMENTS

The Board of Directors of Egypt's Financial Supervisory Authority has approved amendments to the rules, listing and delisting of securities on the Egyptian Stock Exchange. The amendments introduce the possibility of temporarily listing the shares of Egyptian and foreign companies on the Stock Exchange's tables before registering with the Authority by allowing the listing of these securities to be a temporary restriction without fulfilling the conditions of the minimum percentage of shares.

TURKEY

SPECIAL VEHICLE TAX

Turkey's President has approved a Decree which will give them the power to set a special consumption tax on vehicles. The new legislation allows the President to make changes to the existing regulations.

The President will be able to increase the upper and lower limits of the special consumption tax by three times the amount or reduce it to zero.

JORDAN

SALES TAX LAW CHANGES

Jordan's Parliament has approved amendments to their Sales General Tax Law. These include reducing the tax returns deadlines from six to two months. Tax authorities there will also collect the amount due instead of setting allocations for collections.

The principle of supplying the goods has also been approved which means selling goods or transferring ownership rights and supplying services.

FIRM FOUNDATION

Two new laws have been issued in Dubai in order to support real estate investment, Mohammed Kawasmi of Al Tamimi & Company, looks at their impact and other recent changes to real estate regulations there.

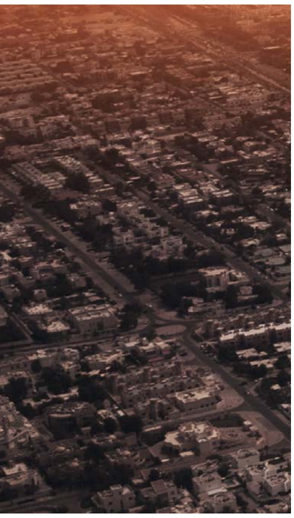
"Two decrees have been launched in Dubai recently - Dubai Decree No. 22/2022 on the Approval of the Privileges of the Property Investment Funds and Dubai Decree No. 23/2022 on the Regulation of Granting Musataha Right on Commercial Lands. Both have been designed in different ways to support real estate investment in Dubai," states Mohammed Kawasmi. "On one hand Dubai Decree No. 22/2022 will provide privileges to real property investment funds which are registered in a newly established register called the Register of Property Investment Funds, based at the Dubai Land Department (DLD). This is also expected, through increased transparency and governance, to provide improved investor confidence in the Dubai real estate investment market."

"While on the other hand Dubai Decree No. 23/2022 is expected to encourage real estate investment on government land as it has set new transparent rules for investors and authorities. These two Decrees and two recent circulars which have also brought in changes impacting real estate have created interesting developments in this market."

PROPERTY INVESTMENT FUND BENEFITS

"However, Dubai Decree No. 22/2022 is not just about improving investor confidence in Property Investment Funds in Dubai," Kawasmi continues. "Another key development is the range of benefits such funds will receive as long as they are registered on the new Register which should reduce their investment costs and increase their profit potential, as they will have the right to acquire properties in all of Dubai."

"Benefits include funds being able to also own properties in areas non-designated for foreign ownership," states Kawasmi. "Therefore, the registered Funds will have more investment options and will not be limited to areas designated for foreign ownership. In addition, they will be able to acquire freehold, usufruct and long-term lease rights for a duration not exceeding 99 years, in Committee determined areas. They will also receive preferential treatment on land transfer fees. For example, when they purchase a property, the DLD will levy fees of 2% of the property's market value instead of the 4%,



which would otherwise be payable equally by the buyer and owner (unless agreed otherwise)."

"In addition, registered Fund founders will be able to contribute properties in-kind (i.e. non-monetary contribution) subject to a payment of AED 50,000 (instead of the previous 4% of the property market value) for a transfer of ownership from the founders to the Fund."

WHO CAN BENEFIT?

"To be included in the Register of Property Investment Funds and gain these benefits, funds must have a valid license; the net asset value of the real estate assets they own at the time of application must be AED 180 million or above; the fund must not be suspended from trading in Dubai's financial markets at the time of application and the fund must pay a registration fee of AED 10,000," states Kawasmi.

Mohammed Kawasmi

Partner

Al Tamimi & Company

"However, funds that fail to meet these conditions, declare bankruptcy, or have a restriction on their activities by virtue of a final judgement will be unregistered," Kawasmi explains. "A Committee for Property Investment Funds has also been established which will identify areas and properties that funds are permitted to invest in. In addition, checks must be conducted to ensure the market value of the fund properties is at least AED 50 million and an investment return is applicable."

"Dubai Decree No. 22/2022 applies to all licensed Property Investment Funds which are regulated in Dubai, including special development zones and free zones (including the DIFC), and all properties located in Dubai, including special development zones and free zones, but excluding properties which are located within the DIFC. The Chairman of DIFC has been given powers to determine privileges for Funds operating within DIFC."

"However, it should be noted that Funds that wish to waive ownership of a property have to obtain a preliminary approval from the DLD to dispose any of its owned properties," states Kawasmi. "If cession is done without that approval, the cession would be deemed void."

MUSATAHA RIGHTS

"Meanwhile Dubai Decree No. 23/2022 has been issued in order to regulate the use and investment in commercial and industrial land which is owned directly or indirectly by the Dubai government," states Kawasmi. "A Musataha Right is defined under Dubai Decree No. 23/2022, as a right in rem (i.e. property right) granted by the Owner to the Musateh (the owner of the Right) to exploit commercial land. "

"It has formalised Musataha Agreements to create a property right that entitles its holder to construct, mortgage, lease or sell the Right for a period of up to 35 years, which can be extendable to a maximum of 50 years," Kawasmi continues. "Although it should be noted that if the parties fail to specify the duration of the Right, the Agreement will not be registered."

"The right will remain valid from the date of its registration until the date of expiry stated in the Agreement, unless it is terminated earlier by the parties," Kawasmi explains. "The parties will be able to renew this right, if the request is submitted two years prior to the expiry of the Agreement. Rights can also be transferred to legal heirs according to Sharia or by a will."

"The main change here is, by granting a Musataha Right rather than a short-term lease, which was the approach previously adopted by the Dubai government authorities, the investor has greater rights," Kawasmi adds. "However, the investor or Musateh also has a number of responsibilities, such as ensuring the completion of the development of the plots without delay, as the right will lapse if the Certificate of Completion is not issued for three consecutive years."

"The Musateh will also ensure that the land is being used in accordance with the mutually agreed objective, and that the land use should not be changed without the owner's prior consent," states Kawasmi. "In addition, construction on the land must be completed within the determined deadlines and a certificate of completion must be extracted within five years from the date of registration of the Right."

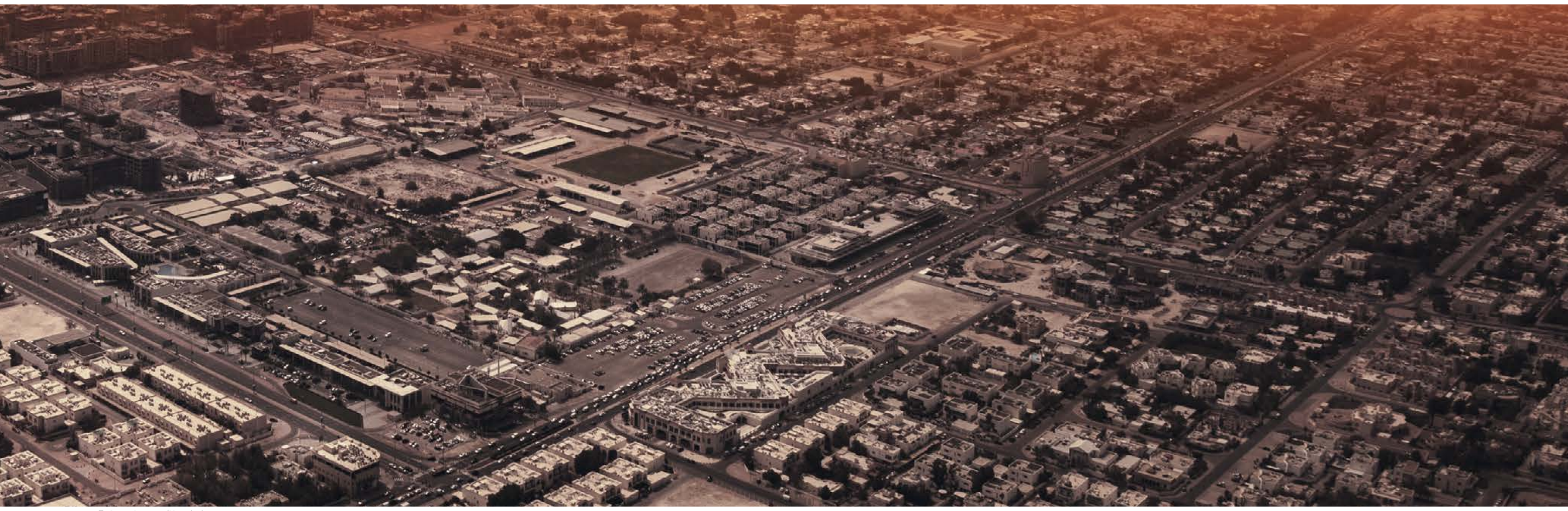
"The Right should also not be subject to any kind of legal disposition, except a mortgage," Kawasmi continues.

RELATED LEGISLATION

Article 7 of Dubai Decree No. 22/2022

Property Investment Funds will be entitled, from the date of their registration in the Register, to the privileges in this Decree. These privileges will remain valid throughout the duration of registration in the Register.

(Source: Lexis Middle East Law)



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"The Musateh can mortgage the Right as a guarantee with the prior consent of the owner and the DLD, in accordance with applicable laws."

"Whilst the Right is valid, the Musateh will own any facility or buildings that have been built on the land and may also legally dispose of these, if the certificate of completion has been issued."

"However, it should be noted that this ownership is limited to the duration of the Right and to the objective for which the construction has been done."

"We may also see other changes within the existing framework adopted by the Dubai government authorities on lease agreements and this may potentially also lead to conversion of existing short term or long-term leases into Musataha Agreements."

PROPERTY ADVERTISING

"In addition, another change impacting the Dubai real estate market was also introduced in July 2022 by the Real Estate Regulatory Agency (RERA) Circular Number 02/2022," states Kawasmi.

"As a result of this Circular, in order to advertise the sale or lease of real estate in Dubai an official permit from RERA must be obtained, and the permit number must be displayed on all advertisements," Kawasmi continues.

"If the advertisement is an written or visual one, it must also include the name of the real estate company. In addition, if the advertisement is for a off-plan project, it must include the developer's name, project name, project number, project location and approved escrow account number," Kawasmi adds.

"The advertising company is responsible for the validity and the credibility of the advertisement, and it must not include any unapproved information," Kawasmi states.

"In addition, a promotional campaign permit must also be obtained for advertisements that include promotions such as free benefits, discounts, free exemptions, and others benefits," Kawasmi explains.

"Marketing real estate through direct calls is also prohibited unless the person has been properly registered."

"It should also be noted that fines have been imposed for non-compliance with this Circular."

TRANSACTION REPORTING

"The final recent change that is impacting the real estate market in Dubai came on 24 June 2022, when the Ministry of Economy and the Ministry of Justice, in partnership with UAE Financial Intelligence Unit (FIU) issued Circular Number: 05/2022," Kawasmi states.

"This Circular provides for new reporting requirements for real estate transactions conducted in the UAE in order to combat money laundering and terrorist financing."

"As a result of this change real estate agents and brokers in the UAE, including those in Dubai are required to file reports to the FIU if a purchase and sale transaction of a freehold property includes a single or multiple cash payment that is equal or above AED 55,000, has used virtual assets for the payment, or there has been use of fund(s) in the transaction that are derived from virtual assets for payment."

"In addition, real estate agents and brokers in the UAE, including those in Dubai must also obtain and record identification documents of the parties (including for individuals and corporate entities) involved in such transactions," Kawasmi adds.

"These reporting requirements will strengthen the anti-money laundering regime and help combat illegal business practices by regulating funds that are generated through virtual asset in property transactions."

Thanks to Mehak Goel for their help in contributing to this article.

RELATED STORY

Dubai: New Real Estate Law Approved

2022-07-20_1

A new Real Estate Law has been approved in Dubai. Dubai Decree No. 22/2022 has been introduced to support the growth of real estate investment funds in the Emirate. It effectively creates a register for property investment funds. The Decree specifies the terms, conditions, and procedures for listing in the Register. Funds looking to be listed in the Register should be licensed by relevant Government authorities including the Securities and Commodities Authority and the DFSA. Funds should not be suspended from trading in Dubai's financial markets at the time of making an application.

CASE FOCUS

Case No .... **DIFC Case No. 004/2022,** Massun v Mousi and Others
Jurisdiction .... **DIFC**
Court .... **DIFC Court of Appeal, 22 July 2022**
Recommended by .... **Outer Temple Chambers**

WHAT HAPPENED?

In this case the DIFC Courts considered appeals arising from an alleged multi-million dollar fraud involving a yacht and a number of properties in Spain. The claimant was an individual and the alleged ultimate beneficial owner of the property which they said had been misappropriated by the first to third defendants. On 22 December 2021, the DIFC Court of First Instance entered immediate judgment dismissing the claimant's claim based on an application of the principles of reflective loss. It was the DIFC Courts' first application of the principle following the decision of the UK Supreme Court in Marex Financial Ltd v Sevilleja [2020] UKSC 31. The judgment was published in redacted form, in Kaamil v Kaawa and Others [2020] CFI 032, DIFC Case No, 032/2020 issued on 21 December 2021. While it dismissed the claimant's claim, the DIFC Court of First Instance also allowed an amendment to the claimant's case to allow them to assert a direct beneficial interest in the property. However, this claim was subsequently dismissed in its entirety on 22 July 2022 by the DIFC Court of Appeal.

WHAT IS REFLECTIVE LOSS?

In Marex Financial Ltd v Sevilleja [2020] UKSC 31 the UK Supreme Court had confirmed shareholders could not bring a claim for the diminution in the value of their shareholding arising as a consequence of some loss sustained by the company, for which the company had a cause of action against a wrongdoer.

This rule arises from the principle that was established in the Foss v Harbottle (1843) case which states that the only party who can claim relief for harm caused to a company, is the company itself and a shareholder cannot suffer any loss which is separate and distinct from the loss of the company.

Following on from the Marex case there were a number of cases put before the English High Court which sought to test whether or not Marex had narrowed the scope of the rule against reflective loss, so it could only be applied in precise circumstances. This led to arguments being raised before the English Courts on whether the rule extended to claims involving chains of companies, for example, if the claimant was not a direct shareholder of the company, but had an interest in the shareholding of a parent company.

This was the situation in Broadcasting Investment Group Ltd v Smith [2020] EWHC 2501. A case which considered the question of whether the rule would also apply to individuals who had a beneficial interest in the shareholding of a company.

HOLDING STRUCTURES OF THE PROPERTY

In the Massun and Kaamil cases, the Property in question was held in the sort of complex structures that are familiar to practitioners who advise ultra-high net worth individuals. The property itself was owned by Company A, whose shareholding was owned by Company B, whose 100% shareholder was Company C, whose shareholding was held on trust for the claimant by another individual/nominee shareholder.

In this case, the claimant as the property's ultimate beneficial owner in fact only had a direct beneficial interest in Company C's shares. The property was acquired by the claimant as ultimate beneficial owner, and it was significant that the property itself never changed hands and was always owned by Company B.

The assets exchanged by the claimant, in acquiring the property, were shares in Company B. In the Court of First Instance, the Third Defendant argued that the claimant's claim was barred by the rule against reflective loss, as the only direct interest held by the Claimant was in the shareholding in the company which was at the top of the corporate structure.

The rule applied because the only conceivable loss suffered by the Claimant was the diminution of her shareholding, and she had no direct claim in relation to the Property. That claim, if it existed, would need to be pursued by Company A, the Property owner.

The Court considered whether the rule as stated in Marex should be applied in the DIFC Court and what the scope of the rule, in Marex was.

On the first point, the DIFC Court followed the UK Courts' approach rather than the approach adopted in other common law jurisdictions, such as the New Zealand Court of Appeal, which held in Christensen v Scott, [1996] 1 NZLR 273 that shareholders have personal rights which, if invaded, were actionable regardless of the rule in Foss v Harbottle. The judge accepted the argument that the DIFC Courts enjoys a close nexus with English Law, which is persuasive authority in the DIFC Courts in line with Article 8(2) of DIFC Law No. 3/2004, and no nexus existed with New Zealand law.

On the second issue, it was argued that whether the rule applied was determined by reference to the loss being claimed, rather than the party claiming the loss. This was significant, because provided the loss could not be seen as separate and distinct from the loss of Company A, it did not matter whether the Claimant was the direct shareholder of Company A, or the shareholder of a company higher up in the corporate holding structure, or for that matter the beneficiary under a trust holding the shares elsewhere in the holding structure.

In terms of shareholders, the Court held that the application of the rule could not be circumvented solely because the claimant was a shareholder of Company B rather than Company A, because the loss was one which was not separate and distinct from B's loss. In other words, Company B's loss had resulted from the loss in the value of the shareholding in Company A, and so the diminution in the shareholding of Company B was not recoverable by shareholders, for precisely the same reason that the shareholders of Company A could not claim for loss of diminution in their shareholdings - which was as a consequence of the alleged misappropriation of Company A's Property.

Therefore, the DIFC Court declined to follow the English High Court's approach in Broadcasting Investment Group Ltd & Others v Smith & Others , [2020] EWHC 2501. In terms of beneficial owners, the Court accepted the submission that the scope of the rule restated in Marex applied to beneficial owners of shares in the same way it applied to direct shareholders following Shaker v Al-Bedrawi & Others [2003] EWCA Civ 1452, otherwise the rule would be easily circumvented in ways which would fail to uphold the principle in Foss v Harbottle. There was no reason in principle why a beneficiary-shareholder should be in a better position than a direct shareholder.

The claimant was granted permission to amend their case by the Court of First Instance, to plead a direct beneficial interest in the property. At first instance, it was held the claimant was therefore permitted to advance their claim that they had a direct interest in the Property, acquired by either an express trust created by those who agreed to establish the corporate structure, or alternatively by way of resulting trust at the time the property was acquired, on the basis they had advanced the consideration for its acquisition.

That point was appealed to the Court of Appeal on the basis the claimant's amended case was not properly arguable as on the creation of an express trust. On the claimant's pleaded case the corporate structure was created by the agreement of the claimant and their advisors, and Company A (i.e. the owner of the Property) was not a party to any contract. Company A was the only party with the competence to deal with the legal estate in the property, so as to settle the assets in trust for the claimant. Therefore, the express trust claim failed because there was no settlor.

On the claim that there was a resulting trust, the property had at all times remained in Company A's hands. To the extent any consideration was advanced for the acquisition of assets, it was for the acquisition of shares higher up in the corporate structure and therefore subject to the findings on reflective loss at first instance. After a long running dispute, the DIFC Court of Appeal dismissed the claim in Massun v Mousi & Ors, DIFC 004/2022.

WHY'S IT SIGNIFICANT?

The case raises a number of interesting points of law which are relevant to individuals or families which hold their wealth through complex corporate structures and trusts. It shows the potential risks of using those structures because of the limitations placed on the ability of an ultimate beneficial owner to directly pursue claims before the Court.

This analysis was written by Stephen Doherty of Outer Temple Chambers.

All Change

Sultan AlJadeed, Director of Legal Affairs of Hungerstation talks about what it is like working in an industry where having a fast response to regulatory change is key.

YOUR BUSINESS AND YOUR ROLE

I am the Director of Legal Affairs at Hungerstation, the first Saudi Food delivery App in the region. We enable users to browse a large selection of restaurants and supermarkets in their cities. Our aim is to connect people with the food they love from their favourite local and global restaurants. We have elevated food ordering through innovative restaurant technology, easy-to-use platforms and we offer an improved delivery experience. Currently we are partnered with over 40,000 individuals and operate in more than 100 cities in Saudi Arabia and Bahrain. As the Director of Legal Affairs, I'm responsible for all Hungerstation's legal and regulatory affairs. I manage the legal department and represent the company with various regulators, Government authorities and in the courts. Regulatory and compliance matters, in particular in relation to areas such as logistics, data protection, competition, employment, and health and safety are important in our industry.

YOUR SECTOR

In our sector one of the recent trends has been the move towards grocery and non-food item deliveries. This industry is relatively new in the Middle East and new regulations have had to be introduced recently to regulate the market and the influx of industry players. The industry also depends on multiple regulators working closely together which has led to a constantly changing legal and regulatory landscape. COVID-19 was a game changer too for us and other food delivery service companies.

Large amounts of regulations on delivery drivers were imposed then mainly because of lockdown and the ban on cars being on the roads. Residents were not allowed to leave their homes and relied on delivery services to meet essential needs. The Saudi Ministry of Interior together with the Ministry of Health and the Communications and Information Technology Commission imposed several requirements on the industry then to ensure public health and safety and facilitate food deliveries. Immediately and without notice companies like ours had to register all their delivery drivers and obtain special permits that allowed them to travel during lockdown. If we had not we would have been shut down immediately and fined. In situations like these our managers rely on us to ensure the company is able to act quickly enough when regulations change, and that we can take decisions

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and implement changes promptly so we stay ahead of regulatory changes. Our staff worked around the clock to register all drivers with the Ministry of Interior and obtain the relevant permits to avoid any disruption of our operations. Drivers also had to comply with health and safety requirements, such as being vaccinated, wearing masks, no longer accepting cash payments, and we could only deliver food that had been sealed and closed by restaurants. The Communications and Information Technology Commission together with the Ministry of Human Resources and Social Development then issued directives requiring non-Saudi freelance drivers to be registered with and sponsored by licensed third-party logistic providers. Our industry had to act quickly to find solutions and avoid disruptions. Fortunately, the Communications and Information Technology Commission then granted an extension to the deadline to comply with these Saudisation requirements. The process for registering drivers became automated and was streamlined with registration connected to the Saudi authorities for quick approval and coordination. This also gave the authorities visibility of delivery orders.

REGULATIONS

The regulatory environment governing the food delivery service sector is in an advanced stage in jurisdictions outside the Middle East while regulations and the legal environment in the Middle East, particularly in Saudi Arabia, is still continuing to develop very quickly, so companies like ours in the Middle East are constantly having to change the way they do business to comply with new regulations. Staying ahead when it comes to regulatory challenges is our key challenge. However, building a strong relationship with the regulators and frequently communicating with them has helped.

It was recently announced the food delivery service

PRACTITIONER PERSPECTIVE

Taha H Tawawala
Partner
Amer Al Marzooqi Advocates & Legal Consultants LLC-SO

Taha H Tawawala, a Partner at Amer Al Marzooqi Advocates & Legal Consultants LLC-SO examines how the regulatory landscape is changing for delivery companies like Mrsool, Jahez and Hungerstation.

As a result of technological changes and COVID-19 there has been tremendous growth globally, including in the GCC/MENA regions, in last mile and food delivery apps. This expansion has helped fuel interest in and has attracted capital from institutional and private investors including global private equity firms looking for medium to long term returns from this sector.

As recently as 2018, the regional food delivery system was primarily based on a simple 'mom and pop' model where customers called a local restaurant and ordered from a physical menu. However, the pandemic spurred an almost immediate widespread adoption and use of delivery apps by the entire economic chain of e-platform users including restaurants, grocery stores and consumers.

The positive trajectory in the regional last mile delivery app sector has led to numerous benefits including an increase in transactions and economic growth, additional investment in technology, greater choices for consumers and new employment opportunities for nationals and residents.

As the sector has evolved, new laws and regulations have been introduced that impact the last mile and food delivery apps sector. The growing regulatory framework is meant to address public policy concerns including on the safety of food being delivered and the health and safety of the delivery agents (drivers) who are now zooming around Riyadh and Dubai on a 24/7 basis. In Saudi Arabia, drivers have to maintain clean vehicles and observe proper hygiene standards. A particular concern in the Kingdom has been the legality of employing these drivers on a freelance basis when considering the local employment regulations.

Concerns have also been raised on the impact on public telecommunication infrastructure usage by delivery chain participants, data privacy and protection of information of app users, and the need for changes in motor insurance to address the growing numbers of freelance delivery drivers. There have also been concerns about the organisation and structure of the delivery industry itself including from a licensing and compliance perspective. Saudi authorities have been considering whether there is a need to license third-party logistics providers supporting these delivery apps.

In Saudi Arabia, the Communications and Information Technology Commission emerged as the primary regulatory body for this industry. The Commission has issued regulations on areas including the registration of delivery agents/drivers, licensing e-platforms or app providers and on the introduction of a regulatory sandbox designed to improve the sector's ecosystem and provide broader public benefits to the various stakeholders including consumers, producers and delivery drivers.

Health and safety regulations have brought in new protocols including those on delivery agents. In addition, digital platforms have been used to monitor vaccination status and staff temperatures to tackle the spread of COVID-19. Penalties for breaches of these standards set by the Commission have included potential suspension or cancellation of delivery agent registrations. There has also been a strong focus on consumer rights and companies are required to adopt and display clear terms and conditions in order to ensure transparency and fairness.

Recent developments seem to indicate that the Transport General Authority in Saudi Arabia is starting to take on a greater role in the regulation of this sector in line with the Kingdom's National Transport Strategy and this will likely impact the regulatory environment there.

As the app based delivery industry continues to develop, stakeholders are also keen to ensure the industry remains healthy, competitive and attractive for investment and there are regulations in place which will support the development and employment of nationals in line with the Saudisation and Emiratisation policies which are also seen as national priorities in the GCC. In addition, local companies and start-ups will need to be supported as the last mile delivery and other app based economic sectors grow, there must also be fostering of investment and innovation in the region and there is increasing use of robots and artificial intelligence products by app developers.

As this happens, Governments will also have to adopt and/or amend laws and regulations to protect the use and processing of consumer data to ensure this information is used responsibly by firms with appropriate safeguards including the use of viable cyber-security solutions by restaurants and app providers. Data will also need to be stored locally to ensure privacy.

It will be important for public policy to ensure there is a light touch regulatory environment which allows businesses, especially those as nimble and technologically driven as those in the mobile delivery applications sector to continue to thrive.

sector in Saudi would be regulated by the Transport General Authority instead of the Communications and Information Technology Commission.

The Communications and Information Technology Commission was the long-standing regulator in our sector and as one of the leading companies in the industry Hungerstation had built strong ties with the Commission. It will be interesting to see how the industry might change in Saudi Arabia with the new supervision of the Authority and we look forward to developing strong links with them too.

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

OGH YES!

The boutique dispute resolution firm OGH Legal is opening a new office in Abu Dhabi which will focus on Abu Dhabi and Al Ain local and Federal court cases. The firm also has an office in Business Bay in Dubai.

Sherif Hikal, the firm's co-founding partner will lead the new office in Abu Dhabi. Hikal has 25 years' experience of acting on complex banking and general commercial litigation cases.

Other changes at OGH Legal include **Suzanne Abdullah's** promotion to the role of Partner in the firm's disputes resolution department.

Suzanne is a specialist TMT and IP disputes lawyer, who joined the firm in 2019 and has more than 17 years' experience in handling complex disputes. She acts as counsel in a broad range of complex and international disputes in various sectors including real estate, construction, oil and gas, IP and IT, as well as on civil, commercial, banking, arbitration and maritime law.

In addition, she advises clients in court litigation in the UAE and Lebanon.

FOLLOW THE DATA

David Yates, who previously worked at Al Tamimi from 2010 to 2013, has re-joined the firm as Partner and Regional Head of Digital and Data. Yates has over 15 years' experience. In his new role he will work with leading legal practitioners in the region.

CORPORATE ASSOCIATIONS

Joza Al-Rasheed has joined The Law Office of Mohammed Altammami, in association with Herbert Smith Freehills as a Corporate Partner in Riyadh.

Joza is qualified to practice law in Saudi Arabia and New York and has extensive experience in M&A, anti-trust and capital markets matters. She was a member of the first class of Saudi female law students.

Previously she has worked at White & Case and Baker McKenzie.

Al-Rasheed has advised international clients and Government institutions on their corporate and regulatory matters. Other past roles have included work in-house at the industrial gas supplier, Air Products as Senior Legal Counsel.

HIGH VOLTAGE

Adam Haque has become a Partner at DLA Piper. Adam will be based in the firm's Dubai office and will be a key member of the broader finance, projects and restructuring team. Haque has over seven years' experience and in the past has advised Governments and developers, as well as local and international lenders on multiple first-of-their-kind utility and infrastructure projects.

He has been a key contributor to the growth of the renewables sector in the region and is currently leading strategic mandates to deliver efficiency and sustainability in the region's water sector.

THE RIGHT ANGLE

Sean Angle has joined Kennedys as a Corporate and Commercial Partner. His practice covers corporate, commercial advisory and transactional work as well as large-scale infrastructure projects. His jurisdictional remit includes the GCC, MENA region and elsewhere in Africa.

Previously, Angle worked as the Head of Corporate and Projects at Stephenson Harwood Middle East.

In his new role his work will cover deals and projects in Dubai and Oman, Africa and the broader Middle East region.

Angle has lived and worked in the GCC for more than 30 years and during that period has spent time working on a variety of projects involving downstream oil and gas, petrochemicals, coal fired, wind and solar power generation plants, large scale industrial plants (such as gold refineries, iron ore pelletising plants and oil refineries), airports, seaports, roads and rail, educational facilities and mixed use real estate developments.

END OF AN ERA

The Chairman of Fragomen, Del Rey, Bernsen & Loewy, **Austin Fragomen** is stepping down as Chairman of the firm and will become Chairman Emeritus.

Austin Fragomen has been the Chairman of the firm for 50 years.

He will be succeeded by **Lance Kaplan** and **Enrique Gonzalez** who will serve as Co-chairs from 1 January 2023.

NO SUBSTITUTE FOR EXPERIENCE

Chris Sioufi has joined EY Law as the leader of their law practice in the Middle East and North Africa.

Sioufi was previously a Partner and the Regional Co-Managing Partner of Dechert's Middle East practice.

Sioufi has over 25 years' experience and his work focuses on a large range of corporate transactions, including mergers and acquisitions, private

OTHER CHANGES

Gowling WLG: Gowling WLG is expanding in the Middle East by opening a new Abu Dhabi offices.

Hadef & Partners: Kevin Cooper has been promoted to Chief Operating Officer at Hadef and Partners.

equity, leveraged acquisitions, collective investment schemes, structured finance and Islamic finance matters. He has also advised both public and private clients.

SHIP-SHAPE

Robert Lawrence and **Ian Chung** have joined HFW as Partners.

Collectively they have more than 30 years' experience of working in the Middle East and join the firm's Dubai office from Clyde & Co.

At Clyde & Co, Lawrence led the International Trade and Transport practice in the region.

He is a leading disputes lawyer whose work has a particular focus on the marine and offshore industries, including English law and Middle East claims arising from EPC contracts, offshore casualties, ship build and ship conversion projects, trade and transport, and marine insurance. He also advises on enforcement proceedings both onshore and in the DIFC. His other areas of work include commercial litigation, joint venture disputes and non-contentious and regulatory matters.

Lawrence acts for a wide range of clients across the Middle East, as well as ship owners with assets operating in the region, including those based in Singapore, Azerbaijan, and Turkmenistan. In his new role he will work closely with the firm's team in Riyadh, as he has significant experience of advising Saudi-based clients and of litigating before the Saudi Commercial Courts and the Saudi Insurance Disputes Committee.

Meanwhile, Chung has returned to HFW, where he was a Partner until 2017.

He specialises in transactional matters in the marine and transportation industries, including M&A and joint ventures, corporate and commercial work, regulatory and licensing, finance and general advisory matters. He also has significant experience of insolvency and restructuring and has acted for banks and borrowers on some of the most significant regional restructurings in recent years.

SMOOTH SAILING

Stuart Davies has joined the law firm Curtis as a Corporate Partner in their Riyadh office.

Davies is an international lawyer with over two decades' experience in corporate, finance and commercial law matters who has lived in the GCC for the last 14 years.

Previously he worked as General Counsel at the Red Sea Development Company.

FOLLOW THE MONEY

Sunita Singh-Dalal has joined Hourani and Partners as Partner in their Private Wealth and Family Offices department. **Sunita** works with UAE regulatory authorities, financial advisers, corporate service providers, family offices and private banks to spread awareness in India and the GCC of the latest developments and updates within the private wealth sector, particularly in relation to the Foundation and Trust Laws which have been implemented by the ADGM, DIFC and RAK ICC.

Sunita is a full member of STEP (Africa and Arabia) and advises and assists clients and advisers with topical matters in the UAE and GCC including estate and succession planning, wealth management, dispute resolution and the implementation of Family Codes of Governance and Family Constitutions.

In addition, she actively supports Jersey Finance with all their GCC and Indian cross border initiatives.

X MARKS THE SPOT

Saba Al Sultani has joined DLA Piper as a Partner in their Intellectual Property and Technology group.

Saba will be based in the firm's Dubai office. Previously she worked at Cedar White Bradley as a Partner and as Head of Trade Marks .

She has extensive experience of advising on contentious and non-contentious IP matters across the region.

She specialises in all aspects of trademark, design, copyright and domain name matters and has acted for some of the world's biggest and best-known brands, including on major global and multi-jurisdictional disputes.

MERGE, MERGE, MERGE

Omar Iqbal has joined Baker Botts LLP as a Partner in their Corporate Department in their Riyadh office.

Iqbal's core practice is transactional. He focuses on private equity, M&A and joint venture work on which he combines significant cross-border experience with extensive local Saudi Arabian expertise.

In the past he has worked both in private practice and inhouse with Samba Financial Group.

He has practiced for over 14 years in the GCC and during that time has developed long-standing relationships with a number of international and local investment banks and leading Saudi Arabian family offices.

Baker Botts operates in Saudi Arabia in association with the Law Office of Mohanned bin Saud Al-Rasheed.

UP AND TECHING

Pinsent Masons has announced that it has launched a new Middle Eastern Technology, Media Telecoms department. As a result, of this move **Martin Hayward** has been appointed as a Technology Partner and will be based in the firm's Dubai office.

Hayward is an experienced TMT practitioner who has wide-ranging experience. This includes work on transformation transactions, telecoms, e-commerce, privacy, data protection and technology with a particular focus on the financial services and telecommunications sectors.

Previously Hayward worked at Al Tamimi & Company where he led their TMT practice.

SEND US YOUR NEWS

If you have news of an appointment or promotion within the legal or financial professions you would like to see reported in Lexis Middle East Law, please send details to: *daniel.emmett-gulliver@lexisnexis.co.uk*

LEXISNEXIS EVENT CALENDAR

UPCOMING AND RECENT EVENTS FROM AURIFER AND LEXIS

UPCOMING EVENTS

ZATCA AMNESTY WEBINARS

October/November 2022

Ellie Abdali and Omar Hisham of Aurifer will hold a number of webinars on the ZATCA Amnesty in Saudi Arabia. These popular seminars have now been running since June. For more information on this event, including the date when confirmed contact lovely@aurifer.tax.

GCC TAX COURSE

October/November 2022

Middlesex University and Aurifer will host a GCC tax course on a number of different dates in October and November. This will provide a comprehensive insight into all tax issues in the GCC.

For more information on this event, visit https://www.mdx.ac.ae/aurifer-gcc-tax-course.

BREAKFAST EVENT FOR PHARMACEUTICALS

21 October 2022

Join Aurifer tax or a breakfast event on CIT-pharmaceuticals. For more information on it, including the date when confirmed contact lovely@aurifer.tax.

RECENT EVENTS

BREAKFAST EVENT FOR PROFESSIONAL SERVICES

30 August 2022

Thomas Vanhee of Aurifer held a breakfast event with Intersect by Lexus on the impact of professional services.

LEXISNEXIS EVENTS

QATAR BUSINESS LAW FORUM CONFERENCE, GALA DINNER & AWARDS CEREMONY

12 October 2022

Following on from the success of previous Qatar Forums, the 7th Qatar Business Law Forum is being hosted by LexisNexis Middle East, the Qatar International Court and Dispute Resolution Centre - QICRDC (LexisNexis' Strategic Alliance Partner), the Qatar Ministry of Commerce and Industry's Department of Legal Affairs, Qatar University's College of Law, and Al Sulaiti Law Firm (LexisNexis' exclusive Law Firm Partner in Qatar).

The Qatar Business Law Forum Conference is expected to attract around 200 legal decision makers to the Law Conference itself (which is specifically designed for inhouse counsel) and many more to its Gala Dinner. As a result, this event will offer a unique, exclusive opportunity to meet existing and potential clients with an interest in Qatar. Sessions will be held in both Arabic and English.

n addition, during the event there will also be an Awards Ceremony to recognise exceptional achievement within the Qatari legal community. To find out more about this Forum go to https://www.lexis.ae/events/qatar-business-law-forum-conference-2022/

OMAN BUSINESS LAW FORUM

14 November 2022

Meanwhile the 5th Oman Business Law Forum is being held in Muscat in November. It will be hosted by LexisNexis Middle East, the Omani Lawyers Association and the Omani British Lawyers Association.

Around 100 legal decision makers are expected to attend the Law Conference (which is specifically designed for inhouse counsel) and will cover the latest legal developments and trends in Oman. Sessions will be held in both Arabic and English. For more information go to https://www.lexis.ae/events/oman-business-law-forum-2022/

KUWAIT BUSINESS LAW FORUM

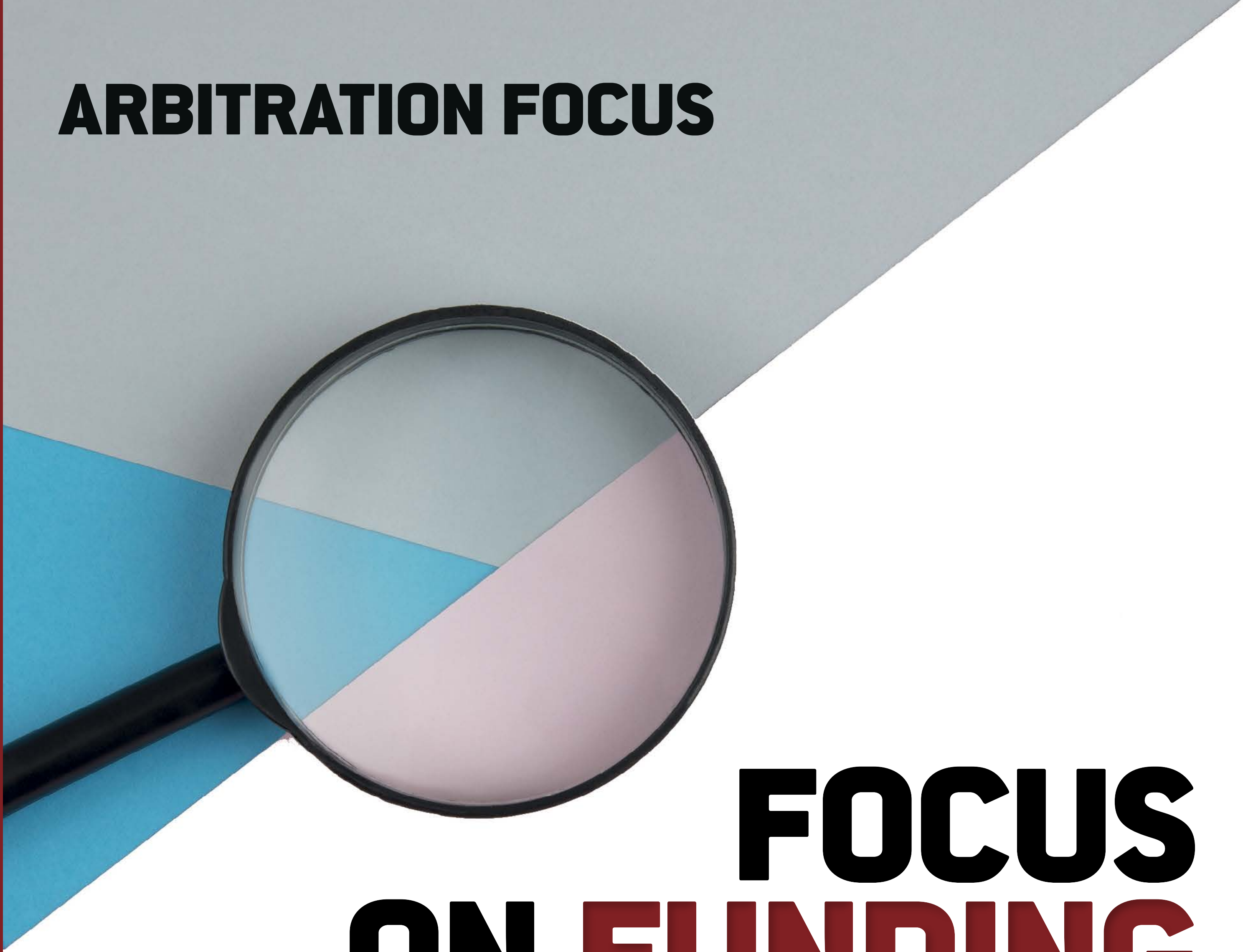
23 November 2022

In addition, the 6th Kuwait Business Law Forum will also be held in Kuwait City during November.

This event will be hosted by LexisNexis Middle East and Al-Yaqout and Al-Fouzan Legal Group. It is expected around 350 legal decision makers will attend the Law Conference (which has been specifically designed for inhouse counsel) and will cover the latest legal developments and trends in Kuwait.

Sessions will be held in both Arabic and English.

To find out more about this forum go to https://www.lexis.ae/events/kuwait-business-law-forum-2022/



FOCUS ON FUNDING

With third-party funding gaining pace, there has been a remarkable increase in the number of institutions that are prepared to finance arbitrations. In a number of leading international arbitration hubs, including in Singapore and Hong Kong new legislative frameworks in this area, such as Singapore's Civil Law (Amendment) Bill No. 38/2016 are helping to pave the way for more third-party funding of international arbitration and associated court proceedings.

In arbitration, third-party funding is an arrangement between a specialist funding company (the funder) and a client (who is typically the Claimant). The funder agrees to finance some or all of the client's legal fees in exchange for a share of the case proceeds, once they have received the proceeds of their arbitration award.

In addition to specialist companies, third-party funders, insurance companies, investment banks, hedge funds, and even law firms have now entered into this funding market.

Firms are also increasingly taking a 'portfolio approach' to their third-party funding, with the proceeds of multiple litigation or arbitration cases being used as collateral to secure other unrelated investment portfolios.

Typically, the funding covers the client's legal fees and any expenses which are incurred during the arbitral proceedings.

POSITION IN BAHRAIN

In most civil law jurisdictions such as Bahrain unless there is a law prohibiting third-party funding of claims, it is assumed that this is permitted, unless there are professional rules which prevent it.

In Bahrain, there are no express restrictions on third-party funding in arbitration but it is still a grey area as it is also not expressly permitted there.

Third-party funders in Bahrain can range from large international funders to small ones, as there is no specification on the capital required to invest in disputes in Bahrain.

CENTRAL BANK TPA REGULATION

In this context, however Bahrain has regulation of TPAs (or Third Party Administrators) who are organisation(s) that process insurance claims and can also be viewed as a method of outsourcing claims processing.

This regulation is covered by Bahrain Law No.

1/2006 (The Central Bank of Bahrain and Financial Institutions Law). In addition, as mentioned in the Central Bank Document CBB Vol 5 Ancillary AU TPAs process claims in connection with offered insurance coverage.

TPA licencees are also referred to as financial sector support institutions in Article 1 of Bahrain Law No. 1/2006.

In order to hold a license in Bahrain, a TPAs must maintain a core capital of 100,000 Dinars. In addition, the Bahrain Central Bank's Rule Book No. 5 related to amendments to Volume 5 related to TPAs has clarified that TPAs could process claims for insurance firms and may also offer their services to self-funded schemes outside Bahrain.

CENTRAL BANK REGULATION OF OTHER FUNDERS

Bahrain Law No. 1/2006 specifies the type of services that banks and other institutions regulated by the Bahrain Central Bank are allowed to offer as per the Central Bank Schedule No. 1/2007 with respect to services subject to the supervision of Central Bank as per Article 39 of Bahrain Law No. 1/2006. Complementary regulation on this matter is found in Bahrain Decree-Law No. 64/2006 Promulgating the Central Bank of Bahrain and Financial Institutions Law. With respect to third-party funding, such funding may be provided by insurance companies, investment banks, hedge funds and other investment funds in Bahrain under Central Bank supervision.

There is no Central Bank text that specifically prohibits a bank or an insurance company from funding a party to arbitration.

Instead it is seen as a business decision whether a party to an arbitration may or may not be funded and the Bahrain Central Bank does not interfere in the type of business that banks and other financial institutions may provide in this area.

Therefore, in Bahrain, there is no law or regulation that expressly prohibits third-party funding of an arbitration or a provision that expressly permits it.

However, the Central Bank's role does mandate the disclosure of third-party funding agreements to the arbitral tribunals which also avoids potential issues at the enforcement stage of arbitral awards.

DISCLOSURE AND POTENTIAL CONFLICTS OF INTEREST

The moment arbitration proceedings are initiated, if third party funding is being used it is also imperative that this use of third-party funding as well as the identity of the funder is disclosed to the arbitrator and the counter-party.

One of the challenging issues when using third-party funding in an arbitration involves the selection and nomination of the arbitrator(s).

There is the potential that a conflict of interest could arise if the nominated arbitrator (or their colleagues, or even the law firm where they work) has a relationship with the funder.

In addition the limited number of potential funders has also raised a concern which requires greater transparency. As a result the disclosure of third party funding agreements has become obligatory in some tribunals while others only order disclosure where it is necessary.

FINDING THE RIGHT FUNDER

The first step when considering third party funding of an arbitrator is to find the right funder.

This will be one which has a good reputation and most importantly, sufficient capital to meet any potential liabilities that could arise from the arbitration.

The next step is to 'package the claim' for the funder so they can assess the merits. This will include providing information on both the liability and quantum (or value of the claim (asset)). The funder will then investigate information on Respondent's position independently (and also in some cases will look into the Claimant's position). It is crucial that the funder is confident about the recovery.

The funder will also have to calculate a detailed budget. Here the return calculation method varies between funders and is normally tailored to the specificities of the case.

Factors such as the expected size of the damages, the expected length of the matter, and the level of risk are normally considered in the calculation.

The recovery potential is also considered which means the funder will want to ensure there is no enforcement issues and that the opposition party is likely to be good enough for the money.

THE FUNDER'S RISKS

There are also risks and issues which those potentially thinking of becoming a third party arbitration funder have to consider.

Here the first obvious point is that if the party they are funding is unsuccessful the invested funds (the arbitration costs) would be lost. In addition, there can be cases where costs are awarded against the non-party. There are also cases where the opponent joins the funder to the proceedings and obtains a non-party costs order against the funder. There can be cases too where the value of the recoverable damages or the costs are reduced due to an opponent's cross claims or the funder's client is unable to recover the damages or costs because of either the opponent's insolvency or an enforcement issue. All these risks need to be considered by a potential third party funder.

This article is taken from a Lexis Middle East Gulf Legal Advisor Practice Note written by Ritambhara Singh, Amira Salah and Sriranjini Garegrat of Al Moayed Chambers (Manama, Bahrain).

Ritambhara Singh

Al Moayed Chambers (Manama, Bahrain)

ARBITRATION CASE FOCUS

RECENT KEY ARBITRATION CASES

Case No .... DIFC ARB 011/2022, Lufto v Linde
Jurisdiction ....DIFC
Court ....DIFC Court of First Instance, 5 July 2022
Recommended by .... Ayesha Karim of Mezzle

WHAT HAPPENED?

On 15 June 2022, a Claimant issued proceedings for recognition and enforcement in the DIFC of an arbitration award which had been made in an ICC arbitration against the Defendant for $80,000,000 plus interest and costs and for a world-wide freezing order against the Defendant and an order for alternative service.

The applications were heard ex-parte and granted by the Court on 5 July 2022. The Claimant then requested a return date on 4, 7, 13 or 14 July 2022.

The Defendant was served on 17 June 2022. According to the freezing order, a return date was to be listed by the Registry within 14 days of service of the order and the Defendant was to provide information about their assets and copies of their passport within seven days of service of the order.

However, the Defendant made an application for an extension of time stating that as the Orders had been made without notice, it would be just and reasonable that the Defendant was granted time to prepare their defence statement and the Defendant's lawyer was travelling on the proposed hearing dates. However, the Defendant did not explain which period of time was being sought for the extension.

The Claimant then opposed the Application stating that the Application was vague and without merit and that the Defendant had failed to comply with the terms of the freezing order.

The questions of law before the DIFC Courts was whether interim orders (in this case the freezing order) and orders for recognition and enforcement of arbitral awards could be made without notice to the other party and whether the Defendant had any remedy when these ex parte orders were passed.

WHAT WAS DECIDED?

The Court held that applications for recognition and enforcement and for freezing orders are invariably applied for without notice to defendants. The Court referred to the Rules of the DIFC Courts 2014.

In particular they referred to Rule 25.8 of the DIFC Court Rules which states that the Court may grant an interim remedy on an application made without notice if it appears to them that there are good reasons for not giving notice.

They also referred to Rule 43.17 of the DIFC Court Rules which states that where a party makes an Arbitration Claim for recognition or enforcement of an award under Part 4 of DIFC Law No. 1/2008 (the DIFC Arbitration Law) this states only the party against who an order is sought need be made a defendant to the Arbitration Claim and the Arbitration Claim may be made without notice.

They went on to refer to Rule 43.70 of the DIFC Court Rules which states that within 14 days after service of an Order made without notice or, if the Order is to be served outside Dubai, within such other period as the Court may set, the defendant may apply to set aside the Order and the award must not be enforced until after the end of that period; or any application made by the defendant within that period has been finally disposed of. They referred finally to Rule 43.71 of the DIFC Court Rules which states that an Order made without notice must contain a statement of the right to make an application to set the Order aside and the restrictions on enforcement under Rule 43.70(2). The Court ruled that in cases of orders for the recognition and enforcement of arbitral awards and for freezing orders, proceedings can be divided into two phases - one without a notice phase followed by a with notice phase.

The ex parte freezing order had stated that where the order was made without notice the Defendant had a right to apply to the Court to vary or discharge the order and the return date provision guaranteed the Defendant a prompt opportunity to oppose the order. The Defendant had 14 days from service of the order for recognition and enforcement to ask the Court to set aside the order. If this period expired without an application being made or, if one was made, after it was finally disposed, only then could the order be enforced.

The order would be dormant, while the Defendant challenged enforcement on the merits. The Defendant could challenge the order for recognition and enforcement by a Part 23 application under the DIFC Arbitration Law (DIFC Law No. 1/2008), in line with Rule 43.70(1) and (4) of the order and challenge the freezing order by giving the reasons to discharge it. The Defendant failed to do either, and instead asked for an extension of time. In addition, the Court found out that the Defendant's counsel had to return to the UAE before the return date on 13 or 14 July 2022. The Defendant had also stated later that no statement of defence was necessary.

Therefore if the Application was made for this purpose, it was no longer required. Most importantly, they had not told the Court what period of time the Defendant sought as an extension. As a result, the Court dismissed the Application.

WHY'S IT SIGNIFICANT?

This case is significant as it discusses recognition and enforcement orders and interim orders made without notice, and it confirms the Defendants rights in these matters.

DIGITAL MOOT COURT

REGISTRATION DEADLINE
September 30, 2022

COMPETITION DAYS
November 26 - 27, 2022

AGENDA

August 22, 2022	Opening of registrations & release of Moot Court problem
September 30, 2022	Registration deadline (closure of team registration)
October 14, 2022	Deadline for seeking clarification on DEC Moot Court Problem
November 4, 2022	Deadline for submission of skeleton arguments
November 26, 2022	DEC Moot Court opening ceremony
November 26 - 27, 2022	Competition days
November 27, 2022	Closing ceremony and awards

Digital Economy Court (DEC) Moot Court

The DIFC Courts DEC Moot Court is open to all university teams, consisting of a minimum of two,and a maximum of four students.

Participating students should be actively enrolled in a Bachelors or Masters programme of law and should not possess any professional pleading experience. The competition consists of a written submission and oral advocacy, with preliminary and final rounds.

REGISTER HERE
https://dec.difccourts.ae/moot-court/

Sub-leasing contracts

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While leasing is common practice for residential properties, offices, retail and industrial uses, it is important to remember in the UAE leasing laws, vary from Emirate to Emirate, as each Emirate is free to enact their own legislation on property and there are also some freezones such as the DIFC which have their own leasing and property laws.

SUBLEASING

Although not a common practice and with direct renting encouraged in Dubai, subleasing does happen in the UAE and can be fraught with potential risks. This was highlighted by a number of recent cases in the DIFC. For example, Laela v (1) Ladessa Lufak, (2) Lakshmana, DIFC Case No. 165/2022 involved overstay and utility payments where a main tenant had not renewed their tenancy but on its expiry had still re-let the property to a sub-tenant who had paid amounts due. In addition, Larue v (1) Lasharon represented by its Manager Mr Latrish (2) Lavada (3) Lavonte, DIFC Case No. 062/2022 involved a sub-let holiday property where the original tenant had also failed to renew the lease but had sub-let the property to tenants for a period which was longer than the original lease. In this case the sub-let tenants were required to vacate the property, even though they had paid their dues under the sub-lease contract to the original tenant, so were not liable for outstanding rent, utility charges or penalties that were due to the property owner as the original tenant had not passed these payments on to the owner. In this case, the original tenant was liable to pay these amounts and was also required to repay a rent free period in their contract with the owner, which had been granted to them because of their default.

KEY LEGISLATION

In main land Dubai, the main law relating to all forms of short-term leasing, whether for residential, office, retail, or other commercial use, is Dubai Law No. 26/2007 On the Organisation of the Relationship between the Lessors and Tenants in Dubai (as amended by Dubai Law No. 33/2008). This law applies across Dubai except for the DIFC which has its own equivalent law (see cases mentioned above). Article 24 and 25 of Dubai Law No. 26/2007 (as amended) deal with subleasing and state a Tenant may not sublease a property to third parties unless the Landlord's relevant written consent has been obtained. Under Article 30 of Dubai Law No. 26/2007 (as amended) if the Dubai Land Department Rental Dispute Centre issues an award terminating a Lease, any Subtenant who has received approval by a Landlord may continue to occupy the property under the terms in the Sublease contract.

This means the Landlord would not be able to bring another Tenant to this unit. Where a Landlord initiates lease termination because of non-payment to them by the Tenant, the Landlord cannot require the Subtenant to pay for the original Tenant. Therefore, by allowing a Tenant to Sublease a rental unit, Landlords risks having great difficulties in getting unpaid rental income and repossessing the property. However, Article 25 of Dubai Law No. 24/2007 states a Landlord is entitled to evict a Tenant where they have sublet the property or any part of it without obtaining the Landlord's written approval. In this case the eviction applies to both the Tenant and Subtenant. However,, Dubai Law No. 26/2007 expressly provides a right to the Subtenant to claim compensation from the original Tenant if they have made the payments and the Tenant has not passed them on.

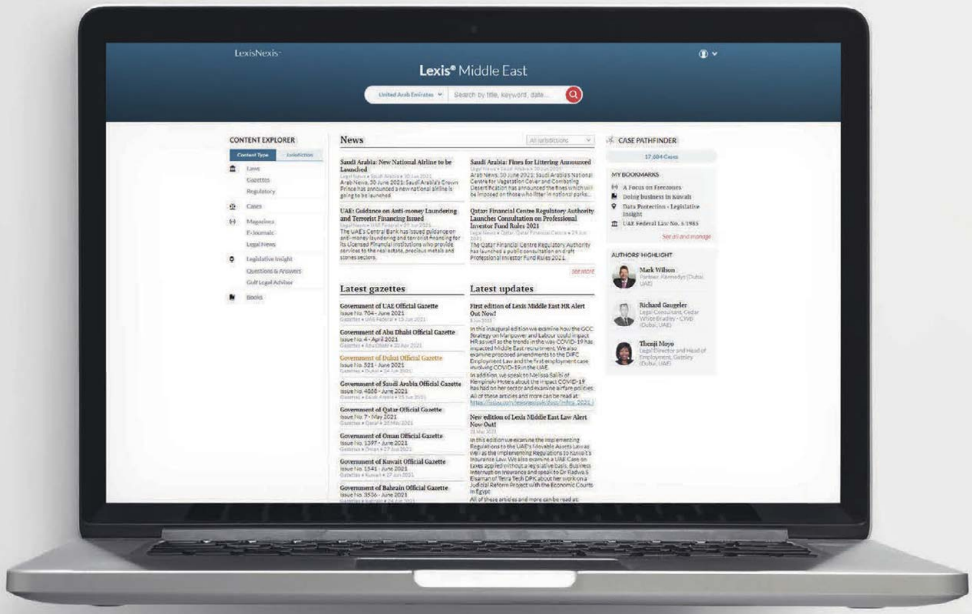
DISPUTE RESOLUTION

The Rental Dispute Centre of the Dubai Land Department deals with disputes arising from the Dubai Law No. 26/2007 (as amended). This Centre generally enforces the Law quite strictly. A Subtenant should ensure as a minimum in their Sublease that there is written approval from the Landlord to the Sublease and there are provisions obliging the Tenant to pay rental amounts to the Landlord. When entering into a Sublease while Article 25 of Dubai Law No. 24/2007 (as amended) provides some protection for subtenants, this is restricted where the Landlord has not consented to the Sublease and it does not provide protection for other aspects, such as non-payment of rent by the Tenant to the Landlord.

OTHER DIFFICULTIES

Another potential risk for a Subtenant is that as their name may not be included on the ejari. This is a document which can be required in order to obtain certain permits in the UAE. Subtenants may also find it is difficult to file, or they are prevented from filing a grievance against the Landlord at the Rental Dispute Centre of the Dubai Land Department, as there is no contractual relationship between them and the actual Landlord.

Contributor
Gerry Rogers
Partner, Galadari Advocates & Legal Consultants



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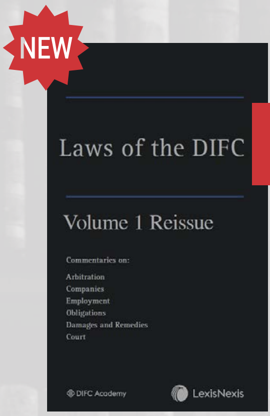
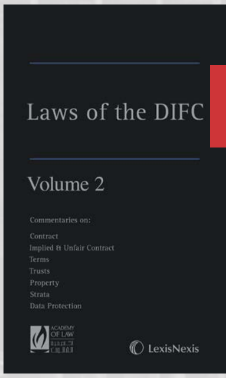


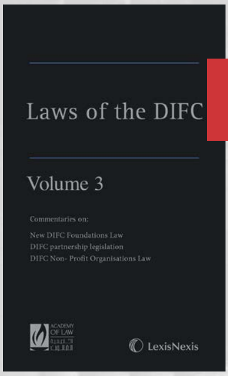
LAWS OF THE DIFC - VOL. 1 REISSUE

Updated analysis and commentaries on Arbitration, Companies, Employment, Damages & Remedies, Obligations and Court Laws.



LAWS OF THE DIFC VOL. 2

Commentaries on Contract, Implied & Unfair Contract, Terms, Trusts, Property, Strata, and Data Protection.

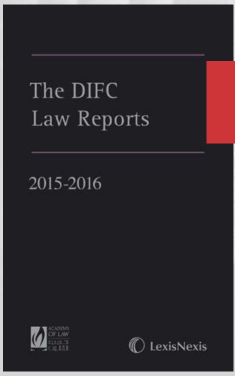


LAWS OF THE DIFC VOL. 3

Commentaries on the new DIFC Foundations Law, the DIFC partnership legislation and the DIFC Non- Profit Organisations Law.

LAWS OF THE DIFC VOL. 4

Commentaries on Operating, Leasing, Intellectual Property, Insolvency, Netting and Security Laws.



DIFC LAW REPORTS 2015-2016

Official law reports of the DIFC for 2015-2016. Contains selected cases for their legal importance. Summaries written by an All England Law Report trained Reporter.

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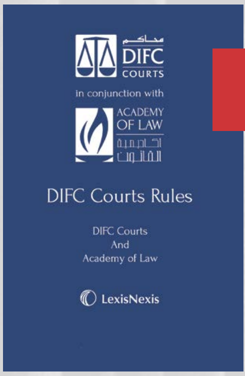

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