The Definitive Business Law Reference
for the Middle East and North Africa

THE MENA BUSINESS LAW REVIEW

مجلة قانون الأعمال لمنطقة الشرق الأوسط و شمال أفريقيا

LexisNexis®

Lexis Kiosque

#04

2022 FOURTH QUARTER / ISSN 2493-3996

عيسى السليطي للمحاماة
ESSA AL SULAITI LAW FIRM

NATIONALLY ESTABLISHED
INTERNATIONALLY RECOGNIZED

ABOUT US

Our in-depth understanding of our clients, legal expertise and international experience enables us to provide attentive, effective representation in a variety of practice areas, including Corporate, Commercial & Construction – with a particular focus on Litigation and Arbitration across various industries and sectors.

"At our firm, our priorities are to advance your interests, cater to all your legal needs and significantly minimize your legal risks and liabilities. When dealing with our team, expect to receive extensive support and expert advice on the legal issues you face."

MR. ESSA MOHAMMED AL SULAITI
FOUNDER & CHAIRMAN

WHAT MAKES US DIFFERENT?

PRO BONO

Pro bono initiatives are an essential part of our work culture and a critical component of our profession. At our firm, our lawyers make the time to provide impactful legal services to non-profit entities within our communities and to employees faced with negligence claims (or other serious claims) by employers or third parties.

OUR CLIENT-CENTRIC APPROACH

We pride ourselves on delivering uncompromising quality and value. Our diverse team of legal professionals offer astute legal counsel and representation to Qatari and international entities in a wide variety of practice areas. We make sure to keep our clients up-to-date on the regulatory and legislative changes that impact their businesses.

TECHNOLOGY

At Essa Al Sulaiti Law Firm, we bring value to our clients not only through our expertise and dedication to our practice, but also through our use of smart-tech solutions that improve overall client experience and increase the efficiency of our service.

ETHICAL & PROFESSIONAL OBLIGATIONS UPHELD

We are unified in our commitment to upholding our ethical and professional obligations towards our clients, legal team, community and marketplace. To that end, we carefully assess all incoming tasks to ensure that there are no ethical concerns or conflicts of interest involved; we immediately disengage under such circumstances.

Scan here to connect

(+974) 4447 1555
(+974) 4466 4606

E: INFO@ESLAA.COM | W: WWW.ESLAA.COM
P.O BOX: 4912 DOHA, QATAR

عيسى السليطي للمحاماة
ESSA AL SULAITI LAW FIRM

/ESLAWFIRM

THE MENA BUSINESS LAW REVIEW
مجلة قانون الأعمال لمنطقة الشرق الأوسط و شمال أفريقيا

Head of Publication / Directeur de la publication
Eric Bonnet-Maes, CEO LexisNexis CEMEA

LexisNexis MENA Managing Director / Directeur de la rédaction
Benjamin Filaferro
benjamin.filaferro@lexisnexis.fr

Editor-in-Chief / Rédactrice en chef
Caroline Presber
caroline.presber@lexisnexis.fr

Editors / Éditeurs
Caroline Presber, Salma Akdad, Rana Al Essa

Editorial Board / Direction scientifique
Faisal Rashid Al-Sahouti, Chief Executive Officer of the QICDRC, Qatar
Dr. Taoufik Azzouzi, Notaire, Enseignant vacataire à la Faculté de Droit de Rabat-Souissi (notaire.azzouzi@gmail.com)
Dr. Walid Ben Hamida, Maître de conférences (HDR) à l'Université Paris-Saclay (walidbenhamida@gmail.com)
Dr. Najet Brahmi, Professeur à la Faculté de Droit de Tunis (najet_brahmi@yahoo.fr)
Dr. Anthony Chamboredon, Associate Professor, Paris Sorbonne University Abu Dhabi & Paris Descartes University
Diana Hamadé, Founder, Diana Hamadé Attorneys-at-Law, UAE (diana@dianahamade.ae)
Dr. Amel K. Abdallah, Associate Professor of Private Law, Carthage University (kamel74@yahoo.com)
Dr. Bashayer AlMajed, Assistant Professor of Law, Kuwait University (padrbashayeralmajed@gmail.com)
Dr. Mark Hoyle, Barrister, ArbDB Chambers (Mark.Hoyle@arbdb.com)
Filali Osman, Professeur agrégé des universités, Université de Besançon (osmanfilali@yahoo.fr)
Michael Patchett-Joyce, Barrister, 36 Commercial (mpatchett-joyce@36commercial.co.uk)
Rany Sader, Managing Partner SADER & Associates Law Firm, CLO SADER Group, Lebanon (rany.sader@saderlaw.com)
Samir Sayah, Managing Partner, Sayah Law Firm Paris, France (samir.sayah@s-sayah.com)
Dr. Bashar H. Malkawi, Professor of Law, University of Arizona (bmalkawi@arizona.edu)

Customer service / Relations clients
relation.client@lexisnexis.fr

Annual subscription / Abonnement annuel
France métropolitaine / Mainland France: €469 HT
Dom-Tom et étranger / France (overseas) and Europe: €519 HT
Rest of world: US $631 (£463, AED 2321) excluding taxes
Prices exclude any applicable taxes.

Sales contact / Contact commercial
The MENA Business Law Review: deeba.sharafuddin@lexisnexis.ae
Lexis Middle East: vincent.slingerland@lexisnexis.com
Lexis Maroc: marc.bouvet@lexisnexis.fr

LEXISNEXIS SA
SA au capital de 1.584.800 euros - 552 029 431 RCS Paris
Principal associé : Reed Elsevier France SA
Siège social : 141, rue de Javel, 75747 Paris Cedex 15

EVOLUPRINT
Parc Industriel Euronord - 10, rue du Parc - 31150 Bruguières
N° Imprimeur : 5803 - N° Éditeur : 5717
Dépôt légal : à parution - ISSN : 2493-3996

Graphic design / Conception graphique
LCG Concepts (Evreux, France) - www.lcg-concepts.fr

Table of Contents Sommaire

Caroline Presber
Editor-in-Chief
The MENA Business Law Review

LexisNexis

If you are a female legal professional working in the GCC or you think your law firm or legal department has done great things for advancing women in law in the GCC, visit www.lexisnexis-womeninlaw.com today and complete your entry form!

Si vous êtes une professionnelle du droit travaillant au CCG ou si vous pensez que votre cabinet d'avocats ou votre service juridique a fait de grandes choses pour faire avancer les femmes dans le droit au CCG, visitez www.lexisnexis-womeninlaw.com dès aujourd'hui et remplissez votre formulaire d'inscription !

2023 WOMEN IN LAW AWARDS

Dear Readers, *Chers lecteurs,*

As I write this editorial, our North Africa editorial team is busy preparing LexisNexis MENA's annual Casa Business Law Forum. I'm impressed by the breadth of topics and the level of expertise of our speakers. The event should prove to be a fruitful forum for discussion and debate on the theme of Legal Aspects of Investment in Morocco in the Digital Age.

More LexisNexis MENA events are coming up in the new year. The **2023 Women in Law Awards** are now open for entries! These awards celebrate women's achievements and innovations in the legal sector in the GCC. Women working in the legal sector and resident in the GCC (for the individual categories) and law firms and legal departments in the GCC (for the company and law firm categories) are eligible to enter. We had a fantastic turnout for the 2022 Women in Law awards and we hope to receive as many entries for the 2023 edition. The winners will be announced at a gala dinner in Dubai on 2 March 2022. If you are a female legal professional working in the GCC or you think your law firm or legal department has done great things for advancing women in law in the GCC, visit www.lexisnexis-womeninlaw.com today and complete your entry form!

You'll find more information on upcoming events in 2023 in this edition of the *MENA Business Law Review*, in addition to articles on the UAE's immigration

NOW OPEN FOR ENTRIES!

regulations, construction projects in the GCC, a guide to managing construction disputes, and the English courts' take on *forum non conveniens*.

I wish all our readers a happy and healthy finish to 2022! See you in the new year!

Au moment où j'écris cet éditorial, notre équipe éditoriale pour l'Afrique du Nord est occupée à préparer le Casa Business Law Forum *de LexisNexis MENA. Je suis impressionnée par l'étendue des sujets et le niveau d'expertise de nos intervenants. L'événement devrait s'avérer être un forum fructueux d'échanges et de débats sur le thème des Leviers juridiques de l'investissement au Maroc à l'ère numérique.*

Plus d'événements LexisNexis MENA sont à venir dans la nouvelle année. Les Women in Law Awards 2023 *sont maintenant ouverts aux candidatures ! Ces prix célèbrent les réalisations et les innovations des femmes dans le secteur juridique du CCG. Les femmes travaillant dans le secteur juridique et résidentes du CCG (pour les catégories individuelles) et les cabinets d'avocats et services juridiques du CCG (pour les catégories des sociétés et des cabinets d'avocats) sont éligibles. Nous avons eu une participation fantastique pour les Women in Law Awards 2022 et nous espérons recevoir autant de candidatures pour l'édition 2023. Les gagnantes seront annoncées lors d'un dîner de gala à Dubaï le 2 mars 2022. Si vous êtes une professionnelle du droit travaillant au CCG ou si vous pensez que votre cabinet d'avocats ou votre service juridique a fait de grandes choses pour faire avancer les femmes dans le droit au CCG, visitez www.lexisnexis-womeninlaw.com dès aujourd'hui et remplissez votre formulaire d'inscription !*

Vous trouverez plus d'informations sur les événements à venir en 2023 dans cette édition de la MENA Business Law Review, en plus d'articles sur la réglementation de l'immigration des EAU, les projets de construction dans le CCG, un guide de gestion des conflits de construction, et la position des tribunaux anglais sur la doctrine du forum non conveniens.

Je souhaite à tous nos lecteurs une fin d'année heureuse et saine en vous donnant rendez-vous l'année prochaine !

البيع على الخارطة

تعكف دولة قطر حاليا على تعزيز نشاط القطاع العقاري والنهوض به في ضوء النمو المتسارع الذي يشهده القطاع في الدولة وخصوصا في مدينة لوسيل، وذلك من خلال إنشاء الهيئة العامة لتنظيم القطاع العقاري والتي سوف تعمل على تحقيق الاستقرار في القطاع العقاري وحماية أموال المستثمرين وتحقيق رؤية دولة قطر في النهضة العمرانية الشاملة.

Qatar is currently working on boosting and advancing the real estate sector in light of its rapid growth in the state, especially in Lusail City, by establishing the Real Estate Regulatory General Authority. The Authority shall work on achieving stability in the real estate sector, protecting the investors' money, and fulfilling the vision of the State of Qatar to reach a comprehensive urban renaissance.

فيصل بن راشد السحوتي
الرئيس التنفيذي لمحكمة قطر الدولية

قامت الدولة خلال السنوات الماضية بإصدار حزمة من التشريعات والقوانين المحفزة للقطاع العقاري بهدف تعزيز اداء القطاع العقاري واستقطاب المزيد من الاستثمارات المحلية والأجنبية، وتشجع الشركات والمطورين العقاريين على النمو والتوسع ببناء الوحدات العقارية الجديدة وذلك استجابة لنمو الطلب على العقارات في السنوات الأخيرة لاسيما زيادة الطلب على الوحدات العقارية.

ومن أبرز التشريعات التي أصدرتها الدولة لتحفيز القطاع العقاري قانون رقم (6) لسنة 2014 بتنظيم التطوير العقاري، والقانون رقم (16) لسنة 2018 بشأن تنظيم تملك غير القطريين للعقارات والانتفاع بها، وقانون رقم (1) لسنة 2019 بتنظيم استثمار رأس المال غير القطري في النشاط الاقتصادي، وقرار مجلس الوزراء رقم (28) لسنة 2020 بتحديد المناطق التي يجوز فيها لغير القطريين تملك العقارات والانتفاع بها وشروط وضوابط ومزايا وإجراءات تملكهم لها وانتفاعهم بها.

ولقد قامت العديد من شركات التطوير العقاري بطرح العديد من العقارات السكنية للبيع بنظام بيع الوحدات السكنية على الخارطة في المناطق التي يجوز فيها لغير القطريين تملك العقارات والانتفاع، حيث نظّم القانون رقم (6) لسنة 2014 بتنظيم التطوير العقاري شروط طرح وبيع تلك الوحدات.

ولقد قامت العديد من شركات التطوير العقاري بطرح العديد من العقارات السكنية للبيع بنظام بيع الوحدات السكنية على الخارطة في المناطق التي يجوز فيها لغير القطريين تملك العقارات والانتفاع، حيث نظّم القانون رقم (6) لسنة 2014 بتنظيم التطوير العقاري شروط طرح وبيع تلك الوحدات.

وتنص المادة 10 من قانون رقم ٦١ لسنة ٢٠١٤ بتنظيم التطوير العقاري على أنه: "يجب لطرح الوحدات المفرزة على الخارطة للبيع، أن يقدم المطور طلباً بذلك إلى الإدارة، مرفقاً به المستندات التالية:

1 – شهادة بفتح الحساب وفقاً لأحكام هذا القانون.

2 – سند ملكيته لأرض المشروع، وما يفيد إتمام الإفراز على الخارطة، موضحاً به جميع بيانات الوحدات المفرزة.

3– الموازنة التقديرية للمشروع مبيناً بها التكاليف الإنشائية، والإيرادات المتوقعة، على أن تكون معتمدة من مراقب حسابات معتمد بالدولة.

4 – مسودة الإعلان عن بيع الوحدات على الخارطة، وفقاً لحكم المادة (11) من هذا القانون.

5 – نموذج العقد.

6 – التصاميم المعمارية والمخططات الهندسية للمشروع معتمدة من قبل الجهات المختصة.

7 – نسخة من العقد المبرم بين المطور والمقاول من الباطن إن وجد.

وتصدر الإدارة موافقتها متضمنة اعتماد مسودة الإعلان ونموذج العقد.

وفي جميع الأحوال، لا يجوز تغيير مسودة الإعلان أو الشروط والأحكام الواردة في نموذج العقد.

وتسري بشأن الطلب المشار إليه، ذات الأحكام والإجراءات المنصوص عليها في المادة (4) من هذا القانون.

إلا أنه قد تلاحظ في الفترة الأخيرة أن بعض شركات التطوير العقاري لم تقم باعتماد نموذج العقود الذي يتم بموجبه بيع الوحدات العقارية من قبل مع الادارة المختصة بوزارة الاقتصاد والتجارة (وزارة التجارة والصناعة حاليا)، وبالتالي تكون تلك الشركات قد خالفت شروط الترخيص تحت طائلة المسؤولية القانونية.

> بعض شركات التطوير العقاري لم تقم باعتماد نموذج العقود الذي يتم بموجبه بيع الوحدات العقارية من قبل مع الادارة المختصة بوزارة الاقتصاد والتجارة (وزارة التجارة والصناعة حاليا)، وبالتالي تكون تلك الشركات قد خالفت شروط الترخيص تحت طائلة المسؤولية القانونية.

كذلك، تنص المادة ٢١ من القانون المشار اليه الى أنه:" يجب على المطور تقديم طلب إلى الإدارة المختصة بوزارة العدل لإفراز الوحدات العقارية للمشروع، مرفقاً به جميع التصاميم المعمارية والمخططات الهندسية، وصورة طبق الأصل من رخصة البناء.

وتتولى الإدارة المذكورة فحص الطلب والمستندات المرفقة به، وإحالته إلى الإدارة المختصة بوزارة البلدية والتخطيط العمراني لاتخاذ الإجراءات المقررة في هذا الشأن".

كما تنص المادة ٣١ من القانون على انه: "يُنشأ بالإدارة المختصة بوزارة العدل سجل عقاري مبدئي، تقيد به جميع البيانات للوحدات العقارية المفرزة على الخارطة، وجميع التصرفات والحقوق العينية التي ترد عليها، والتي من شأنها إنشاء ملكية أو أي حق عيني آخر، أو نقله، أو تغييره، أو زواله، وكذلك الأحكام القضائية النهائية المثبتة لها".

كذلك تنص المادة ٤١ من ذات القانون على انه:" تتولى الإدارة المختصة بوزارة العدل إصدار سند ملكية مبدئي لكل وحدة عقارية مفرزة على الخارطة، من واقع بيانات السجل العقاري المبدئي، موضحاً به جميع البيانات الخاصة بها، مع التأشير في الصحيفة الأصلية لأرض المشروع بما يفيد ذلك."

وتنص المادة (٥١) على انه:" يجوز التصرف في الوحدات العقارية المباعة على الخارطة، والمسجلة في السجل العقاري المبدئي، بالبيع أو الرهن وغير ذلك من التصرفات القانونية.

ويُحظر التصرف في الوحدات العقارية المفرزة على خارطة لم تتم الموافقة عليها من الجهات المختصة، ويقع باطلاً كل عقد يبرم على خلاف ذلك."

وقد تلاحظ أيضا في الفترة الأخيرة أن بعض شركات التطوير العقاري لم تقم بإعطاء المشترين للوحدات العقارية في المناطق التي يجوز فيها لغير القطريين لسند ملكية مبدئي كما اشترط القانون، حيث تتلاعب تلك الشركات بتكييف العقد على انه حجز لوحده سكنية عوضا ان يكون عقد بيع على الخارطة قبل اكتمال انشائها. وعلى ذلك، فإن تلك الممارسات المتبعة من بعض شركات التطوير العقاري عند بيع الوحدات السكنية قبل البدء بالإنشاءات أو خلال إنشائها وتكييف العقد على أنه حجز لوحدة سكنية تكون بالمخالفة للقانون.

ويترتب على ذلك ان تلك الشركة تكون قد خالفت شروط الترخيص الممنوحة لها وتحايلت على المشترين مما يترتب عليه نشوء الحق للمشترين للمطالبة بالتعويض عن الضرر الذي لحق بهم وما فاتهم من ربح.

> وعلى ذلك، فإننا تأمل من الجهات المعنية بالدولة بتشديد الرقابة على شركات التطوير العقاري لتحقيق الاستقرار في القطاع العقاري وحماية أموال المستثمرين وتحقيق رؤية دولة قطر في النهضة العمرانية الشاملة.

وعلى ذلك، فإننا تأمل من الجهات المعنية بالدولة بتشديد الرقابة على شركات التطوير العقاري لتحقيق الاستقرار في القطاع العقاري وحماية أموال المستثمرين وتحقيق رؤية دولة قطر في النهضة العمرانية الشاملة.

وتجدر الإشارة إلى أن مجلس الوزراء الموقر قد وافق في جلسته المنعقدة بتاريخ 7 سبتمبر 2022 على الموافقة على تعديل بعض أحكام القانون رقم (6) لسنة 2014 بتنظيم التطوير العقاري، كما وافق المجلس الموّقر على مشروع قرار أميري بإنشاء الهيئة العامة لتنظيم القطاع العقاري. وسوف تساهم التعديلات الجديدة على القانون وبإنشاء الهيئة العامة لتنظيم القطاع العقاري بلا شك في ضبط وتنظيم القطاع العقاري، وتشجيع دخول المستثمرين الجدد إلى السوق العقاري من خلال توضيح أسس العلاقة التعاقدية بين المطوّر والمستثمر، وإزالة الغموض الذي يكتنف بعض العقود المستخدمة من قبل بين المطوّرين، حيث تسعى الدولة إلى تحفيز القطاع العقاري، والنهوض به في ضوء النمو المتسارع الذي يشهده القطاع في الدولة وخصوصا في مدينة لوسيل.

سيرة

يشغل **السيد فيصل** بن راشد السحوتي منصب الرئيس التنفيذي لمحكمة قطر الدولية منذ أبريل 2014، وهو أيضا عضو في المجلس الاستشاري للمحكمة، ويتولى تصريف جميع الشؤون الإدارية والمالية والقانونية لمحكمة قطر الدولية ومحكمة التنظيم. و قد شهدت المحكمة خلال فترة توليه الحالية تطورا ملحوظا في الشؤون الإدارية و التقنية ، لاسيما الارتقاء بخدماتها الإلكترونية المقدمة للمتقاضين و المحامين ، من خلال الاشراف المباشر على تطوير نظام إدارة الدعوى بالمحكمة ليصبح بشكل إلكتروني بالكامل، كذلك، فقد عمل السيد السحوتي على تنمية و تطوير الموارد البشرية و تعزيز سياسة التوطين في الوظائف الإدارية من خلال رفدها بالقيادات الشابة القطرية، و استقطاب الكفاءات القانونية الوطنية للعمل في إدارة قلم الكتّاب ، و كافة الاقسام الادارية الأخرى بالمحكمة، و قد التحق السيد السحوتي للعمل في محكمة قطر الدولية في عام 2011 حيث عمل مساعدا للقضاة في تحضير ملفات الدعاوى كما عمل في قلم كتّاب المحكمة.

وفي عام 2017، ترأّس السيد السحوتي المجلس التنفيذي المسؤول عن تنظيم منتدى قطر للقانون في العام 2017 والذي يعد من أهم المؤتمرات الإقليمية والدولية لتعزيز وتكريس مفهوم سيادة القانون.

و في عام 2019، عَيّنَ مجلس الوزراء السيد السحوتي عضوا في لجنة التظلمات بهيئة قطر للأسواق المالية بموجب قرار المجلس رقم 22 لسنة 2019.

ومنذ العام 2019، يشغل السحوتي عضوية مجلس خريجين جامعة قطر، بالإضافة إلى عضويته في اللجنة المالية ضمن المجلس.

ويحمل السيد السحوتي شهادة البكالوريوس في القانون من جامعة قطر، وشهادة الماجستير في القانون التجاري من جامعة نوتنغهام في المملكة المتحدة. والسيد السحوتي مُحكم دولي معتمد، كما أنه وسيط قضائي معتمد من قبل معهد CEDR في لندن، وقام بالتحكيم في عدد من القضايا التحكيمية في دولة قطر.

ويشغل السيد السحوتي عضوية المجلس العلمي لمجلة LexisNexis في منطقة الشرق الاوسط وشمال إفريقيا. وللسيد السحوتي العديد من الاسهامات البحثية المنشورة في عدد من المجلاّت الدولية المحكّمة.

Qatar International Court and Dispute Resolution Centre

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

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

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

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

Visit our online bookstore to learn more about this book and to order your copy :

Middle East: www.lexis.ae/publications
UK and overseas: www.store.lexisnexis.co.uk

LexisNexis®

LexisNexis
Middle East & North Africa

What's in your Practical Toolbox?

Lexis® Middle East's Practical Guidance is your gateway to deeper and more accurate research.
www.lexismiddleeast.com

QUESTIONS & ANSWERS
Frequently asked questions by in-house lawyers on various topics, with answers provided by leading experts from across the MENA region.

PRACTICE NOTES
GCC tailor-made "how-to" guidance prepared and updated by leading experts and linked to related legislation and cases. These also include Comparative Practice Notes.

CHECKLISTS & FLOWCHARTS
Visual practice tools created to help users understand the workflow of a new topic or to check current procedures to ensure that no step is overlooked.

SKILLSETS FOR LAWYERS
Soft skills and practical tips on being the best lawyer you can be, building and growing your firm and/or legal team.

FORMS & PRECEDENTS
Detailed model documents including, typical clauses and contract templates, standard form contracts, agreements, letters, clauses, definitions, board minutes, forms, notices, schedules, policies, licenses, resolutions etc.

PRACTICE GUIDES
"All you need to know" guides for a number of sectors and industries: Arbitration Data Protection, VAT, Excise Tax, Capital Markets and Employment etc. with direct access to forms, guidelines and e-services.

COMPARATIVE TABLES
Overview of key issues across a number of Practice Areas, comparing regulations and practices of onshore GCC jurisdictions, freezones and foreign jurisdictions. The Tables include direct links to practical guidance from different global LexisNexis sources.

LEGISLATIVE INSIGHTS
In-depth examination and analysis of key legislation and their practical implementation, written by leading experts from across the Middle East.

TOOLKITS
Single view of all documents and practical insight on a particular topic or industry.

OUR COVERAGE

- 17 Practice Areas
- 20 Jurisdictions
- 200+ Contributing Firms & Institutions
- 500+ Authors

Book a free demo of Lexis Middle East on LEXIS.AE/DEMO

Implementing Regulations under the UAE Immigration Law

Following the issuance of Implementing Regulations (Cabinet Decision No. 65/2022) to Federal Decree-Law No. 29/2021 concerning the entry and residence of foreigners, new visa rules have come into force in the UAE. This article summarizes the changes.

Suite à la publication du règlement d'application (décision du Cabinet n°65/2022) du décret-loi fédéral n°29/2021 concernant l'entrée et le séjour des étrangers, de nouvelles règles en matière de visas sont entrées en vigueur aux EAU. Cet article résume les changements.

Gordon Barr
Partner, Employment & Incentives
Al Tamimi & Company

Roxanne Vesuvala
Senior Paralegal
Al Tamimi & Company

On 5 September 2022, Cabinet Decision No. 65/2022 (the "**Implementing Regulations**") came into force, implementing the changes briefly touched upon in Federal Decree No. 29/2021 (the "**Immigration Law**") and replacing Federal Decree No. 350/1997 in its entirety.

1 Long-Term Self-Sponsored Visas

Of significance, particularly from an employer's perspective, is the expansion and introduction of various self-sponsored long-term residence visas that expatriate employees (i.e., other than UAE and other Gulf Cooperation Council (**GCC**) national employees) may consider obtaining, in place of existing employer-sponsored residence visas. The granting of any long-term visa is subject to the individual meeting minimum qualification requirements.

While ten-year golden residence visas were already available prior to the issuance of the Implementing Regulations, the Implementing Regulations expand the basis of granting such visas to include investors, entrepreneurs, exceptional talents, scientist and specialized professionals, exceptional students, humanitarian workers and frontline workers such as nurses, paramedics, and laboratory technicians.

Separately, green residence visas are valid for a five-year period and an individual may be granted such a visa on the basis of his or her investment in the UAE, self-employment, or on the basis of the individual being a skilled worker.

Separately, green residence visas are valid for a five-year period and an individual may be granted such a visa on the basis of his or her investment in the UAE, self-employment, or on the basis of the individual being a skilled worker. While applications for green visas are currently being accepted in practice, we are aware that such visas have not been issued as yet. We expect the position to change in due course.

The minimum qualification requirements for an expatriate employee to be issued a green visa are set out below:

- the employee's job title must be in the first, second or third skill levels (essentially, senior job titles). A list of job titles and corresponding skill levels is available via the Ministry of Human Resources and Emiratisation (**MOHRE**);
- the employee must have an undergraduate degree or equivalent; and
- the employee must earn a minimum monthly salary of AED 15,000 (USD 4,083) or equivalent in other currencies.

2

Employer Considerations

A. COST

Where an employee is eligible to receive a long-term self-sponsored visa, employers in the UAE will save costs related to visa fees, as:

(i) the cost of obtaining such visas works out as being less; and

(ii) the cost is borne by the applicant (i.e., the employee) noting that many employers are nevertheless willing to pick up the cost involved.

Employers are still required to provide employees with all statutory entitlements, including medical insurance coverage (which is mandatory in the emirates of Dubai and Abu Dhabi), despite an employee's self-sponsored status.

Employers are still required to provide employees with all statutory entitlements, including medical insurance coverage (which is mandatory in the emirates of Dubai and Abu Dhabi), despite an employee's self-sponsored status.

While employers are not required to assist with the application process itself, an employer must not prevent an employee from applying for and obtaining a long-term self-sponsored residence visa either.

B. CONTRACT TERMINATION

Given that the employment and immigration regimes in the UAE are intrinsically linked, where an existing expatriate employee (who is sponsored for UAE residence visa purposes via their employer) applies for a long-term self-sponsored residence visa, the employer will, in most cases, need to terminate the current employment contract and cancel the existing work permit and residence visa (see exceptions in some free zones below). When the employee's new long-term visa is issued, the employer will then need to re-apply for a work permit or access card via the MOHRE or relevant free zone authority (as relevant). As part of the application process, the employer will also need to submit a new employment contract to MOHRE or relevant free zone authority.

C. WAGES

In mainland UAE, where the government monitored Wage Protection System (**WPS**) is in place, employees will continue to be paid their salaries via WPS, and the employment arrangement is similar to that of employees who are sponsored for UAE residence visa purposes via a family member.

The position in some free zones is slightly different, as set out below (although the position may change from time to time and the list below is non-exhaustive):

- In the Jebel Ali Free Zone (**JAFZ**), the existing employment does still need to be terminated and the visa cancelled, as set out above. The company will then enter into a new employment contract; however, the JAFZ authority does not require the company to submit the new contract at this stage. An internal company employment contract between the company and the employee will therefore suffice. Where there is already one in place, a short contract amendment letter may be issued to the employee to confirm the updated arrangements. Long-term visa holders will be issued a "Permanent Access Card" to legally work in JAFZ.
- JAFZ is currently the only free zone where employees must be paid their salaries via WPS however Permanent Access Card holders do not need to be paid via WPS.
- Similarly, in the Dubai Multi Commodities Centre (**DMCC**), once the employee obtains a long-term residence visa, a new employment contract does not need to be submitted in order to obtain an Access Card. The employer may therefore enter into an internal contract or amendment letter, as preferred.
- In the Dubai International Financial Centre (**DIFC**), the employment relationship does not need to be terminated. Rather, the employer can submit a pre-approval request to the DIFC on behalf of an employee. If

approved, the employee's existing visa and access card will need to be cancelled, however the DIFC will generate a No Objection Certificate, confirming that the employee's employment will continue despite the change in visa sponsorship status.

D. END-OF-SERVICE GRATUITY

Where employment is terminated, expatriate employees are entitled to payment of termination benefits and entitlements (including any end of service gratuity (ESG)) under the UAE Labour Law. However, paying ESG on termination of employment due to the employee's visa change will result in a situation where employees lose their accrued service and are required to start accruing ESG from the date of the new employment relationship, without recognition of previous service. Since the ESG is conditional upon employees completing a minimum of one year of service and accrues at a rate of 21 calendar days' basic wage per year of service for the first five years and 30 calendar days' basic wage thereafter, that approach will mean that employees are not legally entitled to ESG until they complete one year of service under their new visa, and will take longer to benefit from the higher rate of ESG. For this reason, the most commonly deployed option is to "roll over" ESG and accrual of other benefits such as annual leave (instead of paying them out on visa cancellation). The parties can agree to this via a short letter agreement and/or via the new employment contract, as preferred.

Employees will also be required to sign a standard format visa cancellation form which is submitted to the MOHRE / relevant free zone authority, acknowledging receipt of all termination dues. Employees are typically unwilling to sign such a document without comfort that their accrued entitlements will be rolled over. The short letter agreement or new employment contract mentioned above, clearly stating that prior service remains applicable for the purposes of accrued benefits such as ESG, is generally sufficient to provide that comfort.

3

Other Immigration Changes

The Implementing Regulations set out additional immigration changes, the most significant of which are listed below:

Employment visa duration: The Implementing Regulations also set out that regular residence visas (sponsored by an employer) will be limited to a maximum of two years. While this does not affect employers in mainland UAE, employers in free zones (where three-year visas were issued in the past) will be affected. For the avoidance of doubt, any existing three-year visas will continue to be valid for the duration of their issuance. Any new or renewed visas will only be issued for two-year periods going forward.

Sponsoring sons: Under the previous immigration regime, sons of UAE residence visa holders could only be sponsored by family until the age of 18 years. After the age of 18 years, applications for exceptions could be made on humanitarian grounds; however, doing so was generally a lengthy process. The Implementing Regulations allow male and female expatriates to sponsor sons until the age of 25 years. Unmarried daughters and children with disabilities may be sponsored by family regardless of age.

Retiree residence visa: Retirees over the age of 55 years may apply for a 15-year retiree residence visa subject to fulfilling one of the below:

- Owning real estate in the UAE, or having a financial deposit within our outside the UAE worth at least AED 1 million (USD 272,257); or
- Fixed annual income is at least AED 240,000 (USD 65,341) or equivalent in other currencies.

Grace periods are now extended depending on the type of residence visa issued.

Extended grace periods: While not specifically provided for in the Implementing Regulations, the UAE immigration authorities recently announced that grace periods have been extended. For background, after a residence visa is cancelled, UAE residents are given a grace period to either obtain alternative sponsorship for UAE residence visa purposes or to exit the UAE. Historically, the grace period was 30 calendar days, regardless of the type of visa. Grace periods are now extended depending on the type of residence visa issued, as set out below:

- Golden and green visas holders and family, expat widows, expat ex-spouses, students who have completed their studies, and employees whose job title (listed with the MOHRE / relevant free zone authority for UAE residence visa purposes) is in the first and second skill levels: 180 calendar days' grace period.
- Employees whose job title (listed with the MOHRE/ relevant free zone authority for UAE residence visa purposes) is in the third skill level: 90 calendar days' grace period.
- Residents who are under the sponsorship of family (other than golden and green visas) or an employee (other than those in the first to third skill levels listed above): 60 calendar days' grace period.
- All other residents, including those who have investment, partner, remote worker or retirement visas: 30 calendar days' grace period.

The recent changes are demonstrative of a relaxation of the labour market to continue the trend of encouraging expatriates to view the UAE as a longer-term place of residence and help stabilize the job market.

بعد صدور اللائحة التنفيذية للمرسوم بقانون اتحادي رقم 29 للعام 2021 المتعلق بدخول وإقامة الأجانب، والصادرة بموجب قرار مجلس الوزراء رقم 65 للعام 2022، دخلت قواعد جديدة لتأشيرات الدخول حيز التنفيذ في الإمارات العربية المتحدة. تلخص هذه المقالة تلك التغييرات.

BIOGRAPHY

GORDON BARR is a Partner within Al Tamimi & Company's Employment & Incentives practice and has worked in the Middle East since 2011. He previously worked with a leading UK law firm, acting for a wide range of blue-chip clients for whom he appeared before Employment Tribunals throughout the UK. Prior to a career in law, Gordon spent several years in financial services.
Gordon advises on the full spectrum of employment and immigration law issues throughout the employment life cycle with a particular focus on disputes, whether before the UAE or DIFC Courts. In respect to the latter, Gordon is a DIFC-registered practitioner with full rights of audience.
A key part of Gordon's practice involves compensation and benefits advice where he advises across all sectors and with a specific focus upon banking, financial services and technology.
Gordon can be contacted at G.Barr@tamimi.com.

ROXANNE VESUVALA is a Senior Paralegal in the Employment & Incentives practice in the Dubai office of Al Tamimi & Company. Roxanne assists Associates and Senior Partners in various litigious and non-litigious matters including for blue chip clients. She is well-versed in queries related to UAE labour laws and visa requirements including its various free zones. She also assists in coordinating multi-jurisdiction advice between various Al Tamimi offices and collates and issues regular employment, immigration and health and safety updates to clients.
Roxanne can be contacted at R.Vesuvala@tamimi.com.

Expand your knowledge and improve your skills.

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

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

View our Middle East training programme at:
lexis.ae/training-events

LexisNexis®
Middle East & North Africa

The English Courts' View on the "Convenience" of Litigating in the UAE

When assessing whether they have jurisdiction over a dispute, the English courts consider if England is "clearly and distinctly" the appropriate forum for the determination of the action, against the relative "convenience" of another forum in which the dispute can be heard.
This article considers cases in which English courts have considered the advantages and disadvantages of commercial disputes being heard in the courts of the United Arab Emirates as the alternative to England.
The conclusion is that the English courts recognise the quality of dispute resolution in the UAE as an alternative forum for dispute resolution and are prepared to cede jurisdiction accordingly.

Lorsqu'ils évaluent s'ils sont compétents pour connaître d'un litige, les tribunaux anglais examinent si l'Angleterre est "clairement et distinctement" le forum approprié pour statuer sur l'action, contre la "commodité" relative d'un autre forum dans lequel le litige peut être entendu.
Cet article examine des cas dans lesquels les tribunaux anglais ont examiné les avantages et les inconvénients des litiges commerciaux devant les tribunaux des Émirats arabes unis comme alternative à l'Angleterre.
La conclusion est que les tribunaux anglais reconnaissent la qualité du règlement des différends aux Émirats arabes unis en tant que forum alternatif de règlement des différends et sont prêts à céder leur compétence en conséquence.

Peter Smith
Legal Director
Charles Russell Speechlys

1

Introduction

The recent case of Abu Dhabi Commercial *Bank PJSC v. Bavaguthu Raghuam Shetty and others*[1] in the English Commercial Court raised again a question of private international law that is highly pertinent to international commercial relations between the UAE and England: where should any dispute be heard?

Contractual agreements or rules of law have weight in that analysis but a key part of the consideration of whether the English court will assert its jurisdiction over the dispute is if:

> In all the circumstances the *forum conveniens* for the determination of the litigation is clearly and distinctly England... At this stage of the enquiry, *"... the task of the court is to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice ..."*.[2]

Unless the English court finds that it is the "convenient" or "natural" forum for the dispute, the court may dismiss the action in favour of the alternative forum even if it is otherwise the proper venue for the dispute and the court has jurisdiction over the case and parties.

Unless the English court finds that it is the "convenient" or "natural" forum for the dispute, the court may dismiss the action in favour of the alternative forum even if it is otherwise the proper venue for the dispute and the court has jurisdiction over the case and parties.

The requirement to establish England as clearly and distinctly the convenient forum to hear the claim is intended *"to provide a robust and effective mechanism for ensuring that claims which do not have their closest connection with this jurisdiction will not be accepted here"*.[3] The importance of the forum conveniens test as a brake on permitting claims to be heard in England was raised in the *Shetty* case, in light of the requirement to concentrate on the specifics of the pleaded claim and ask whether, assuming the facts to be true, there is a real issue to be tried.[4] It also arose in respect to the operation of other rules such as the one which allows a foreign defendant to be served if it is a "necessary and proper party" under the English court rules against a domestic so-called "anchor" defendant.

If an alternative forum exists which is *prima facie* more appropriate, the English court will look to see what factors exist that indicate the alternative to be the natural forum for the dispute. As Lord Templeman explained in *Spiliada Maritime Corp v. Cansulex Ltd*,[5]

> *The factors which the court is entitled to take into account in considering whether one forum is more appropriate are legion. The authorities do not, perhaps cannot, give any clear guidance as to how these factors are to be weighed in any particular case. Any dispute over the appropriate forum is complicated by the fact that each party is seeking an advantage and may be influenced by considerations which are not apparent to the judge or considerations which are not relevant for his purpose.... In the result, it seems to me that the solution of disputes about the relative merits of trial in England and trial abroad is pre-eminently a matter for the trial judge.*

In the same case, Lord Goff suggested those factors may include the availability of witnesses, the law governing the relevant transaction, and the places where the parties respectively reside or carry on business.[6]

Parties challenging the English court's jurisdiction were historically restricted in directly criticising a foreign court. English case law established that clear and cogent evidence was required that proceedings before a foreign court would fall below the minimum acceptable standards of doing what justice required before direct criticism would be weighed in the balance.[7] But, in the opinion of a leading practitioners' text, since 2009 the English courts have been more willing to assert jurisdiction on the basis that *"as the foreign court cannot be trusted to do justice, the case should be allowed to proceed in England"*.[8] Several cases have found that foreign venues for the English dispute would be unsuitable alternative courts because of the *"state interest in the outcome of the litigation"* although these appear to be confined to instances where the alternative is litigation in Russia or other CIS jurisdictions.[9]

In recent years, a small number of cases in England have forced the courts to weigh up the convenience of litigation in England vis-à-vis the UAE. This article considers those cases to see whether there is any discernible change in their treatment of the UAE courts, meaning the federal and Emirati courts outside of the civil and commercial jurisdictions of the Abu Dhabi Global Market and the Dubai International Financial Centre. It also shows how even-handed the English courts are in considering the UAE as an alternative venue for a dispute.

1. [2022] EWHC 529 (Comm), 1 April 2022, HH Judge Pelling QC.
2. *Altimo Holdings and Investments Limited v Kyrgyz Mobile Telephones Limited* [2011] UKPC 7 [2012]. 1 WLR 1804, Lord Collins at paragraphs 71 and 88, cited in *Shetty* at para. 14(iii).
3. *Cairo (Nile Plaza) LLC v. Brownlie* [2021] UKSC 45; [2021] 3 WLR 1011 per Lord Lloyd-Jones, [82]).
4. Following *Okpabi v. Royal Dutch Shell plc* [2021] UKSC 3; [2021] 1 WLR 1294.
5. [1987] 1 AC 460 at 465.
6. *Ibid.* at 477-478.
7. *The Abidin Daver* [1984] AC 398 per Lord Diplock, at 411. This tightened the previous rule in *El Amria* that one of the factors to be considered in an assessment of forum conveniens is whether the claimant would be prejudiced by having to sue in the foreign court because he would be unlikely to get a fair trial for political or other reasons.
8. *Dicey, Morris & Collins on the Conflict of Laws*, 16th edition (London: Sweet & Maxwell, 2022) at [12-041].
9. *Ibid.*, footnote 198 to [12-041].

2

English Judgments on Litigation in the UAE

A. MIDDLE EASTERN OIL v. NATIONAL BANK OF ABU DHABI[10]

In this case, both parties were incorporated within the UAE. The defendant bank successfully obtained a stay in claims in contract and tort against it in England that were based on its considerable delay in transferring money at the claimant's instruction to a third party which subsequently went into liquidation (in its defence, the bank alleged that the delay was caused by instructions from the UAE Central Bank relating to money laundering). The relevant jurisdiction clause was interpreted as permitting claims to be brought outside the UAE by the bank, but not by the claimant, with the inference that the present claim should be brought in the UAE.

The claimant complained, firstly, that the relationship between the authorities in the UAE and the bank was such that a fair trial was unlikely. It filed evidence alleging that the bank was able to *"prevent or hinder commercial activity by foreign-controlled companies for 'non-commercial geopolitical reasons'"* and that the bank was *"not likely to be held to judicial account in the UAE"*.[11] The judge dismissed these complaints as lacking clear and cogent evidence. He noted that an appellate decision of the UAE courts overturning a first-instance decision against the claimant suggested the likelihood of a fair trial in the UAE.

The judge also rejected the other complaint made by the claimant which was that the then-existing UAE law was undeveloped regarding insolvency and economic loss.

On the other factors, the judge found the UAE courts to be clearly and distinctly the more appropriate forum:

- both the claimant and the bank were incorporated in the UAE;
- the claimant's bank account with the bank was at its branch in Dubai which held the funds at the heart of the dispute;
- the core facts of the bank's defence related to UAE money laundering laws; and
- the UAE courts were judged to be "*best placed*" to decide whether the bank wrongly refused to transfer the funds under UAE law before the Attorney-General of Dubai placed a lien over them.

10. [2008] EWHC 2895 (Comm), 27 November 2008, Mr. Justice Teare.
11. Paragraph 24.

The only connection to England was that the claimant's loss was sustained there, but that was an insufficiently strong reason not to enforce the jurisdiction clause, as the type and location of the loss complained of was reasonably foreseeable when the agreement was formed.

The only connection to England was that the claimant's loss was sustained there, but that was an insufficiently strong reason not to enforce the jurisdiction clause, as the type and location of the loss complained of was reasonably foreseeable when the agreement was formed. Furthermore, it could not be a basis on which to characterise the applicable law of the alleged tort as anything other than UAE law (even if the applicable law of the agreement was English).[12]

B. AIZKIR NAVIGATION INC v. AL WATHBA NATIONAL INSURANCE COMPANY[13]

In a claim by an Egyptian assured against its UAE-based insurer, the relevant clause in the marine insurance policy said that claims were to be *"settled in accordance with English law and practice and shall be so settled in Abu Dhabi (UAE)"*. Setting aside permission to serve out of the jurisdiction, the English court found this amounted to an exclusive jurisdiction clause in favour of the Abu Dhabi courts, which there was no overwhelming or very strong reason to displace.

In any event, applying the *Spiliada* factors, the judge found that the UAE was clearly and distinctly the most appropriate forum.[14]

The judge was satisfied that the UAE courts were unlikely to disapply the agreed substantive law of the insurance contract (English law). The absence of a dedicated maritime court in Abu Dhabi was not a strong factor; nor were:

- concerns about the language of proceedings being in Arabic rather than English, with worries over the costs of translation;
- the different prospects of recovering costs (in the UAE, minimal costs recovery is possible *inter partes*) particularly given the probability of cheaper litigation in the UAE;
- the different features of litigation in the UAE, where there is no automatic disclosure and rarely oral evidence which is in any event not tested by cross-examination; or
- delays in the UAE courts, given that there are delays in all court systems.

The judge noted the lack of precise indications of prejudice in any of these factors, as well.

12. Paragraphs 28 to 35.
13. [2011] EWHC 3940 (Comm), 16 November 2011, Judge Mackie QC.
14. Paragraphs 20 to 54.

The factual links between the dispute and England were thin: all the personnel connections (the parties, brokers, and managers) were with Egypt or the UAE, the insurance contract was negotiated elsewhere, the vessel had been nowhere near the UK, and there was no connection to the London insurance market except in regard to the process of settling the claim (which was to follow Lloyds of London practice).

C. VITOL BAHRAIN EC v. NASDEC GENERAL TRADING LLC[15]

The claimant purchased cargoes of oil from the first defendant, which were delivered to shore tanks at a port in the UAE. The third defendant claimed that the first defendant had been set up by its former general manager who had dishonestly misappropriated the cargoes. The first and third defendants were UAE companies. The fourth defendant, an English bank, had a security charge over some of the cargoes. The third defendant brought proceedings in the UAE against the owner of the shore tanks asserting ownership of the oil. The claimant brought a claim in England seeking a declaration that the third defendant had good title to the oil, joining the first and fourth defendants as parties.

The claimant contended that England was the appropriate jurisdiction for its claim because English law and jurisdiction clauses were in the purchase contract with the third defendant. It also alleged that the first and fourth defendants were necessary and proper parties to the litigation. The claimant obtained permission to serve out of the jurisdiction, following which the first defendant joined in the third defendant's proceedings in the UAE, seeking a declaration that it owned the oil and joining the claimant to those proceedings. The claimant also obtained an *ex parte* anti-suit injunction against the third defendant which was set aside at the return date hearing, the judge at the return date (Males J) concluding that Fujairah in the UAE was the natural forum for the determination of the question of the title of the cargoes rather than England.

The third defendant successfully relied on Males J's findings in its application to set aside the permission to serve out.[16] An argument based on issue estoppel failed: the anti-suit injunction application was different from the set-aside application because an application to set aside permission to serve out had to be determined by reference to the position when permission was granted; permission would not be discharged because the circumstances had changed. However, the judge considered that England was not clearly and distinctly the appropriate forum as at the date of the permission application based on the following reasoning:

- the claimant had no claim that it could pursue in England independently of a claim against the first defendant;
- there was no claim to which the first defendant could be said to be a necessary or proper party;
- but for the first defendant's assertion of title in the cargoes, the claimant would have no claim for a declaration against the third defendant;
- without the first defendant being joined as a party there would be no point in the claimant pursuing a declaration against the third defendant regarding the relationship between the claimant and the third defendant.

The presence of the fourth defendant in England was not enough to make England the natural forum; the fourth defendant had not brought any claim against the claimant or the third defendant. The UAE was the available forum for the determination of title of the cargoes by the claimant and the first and third defendants, on which the fourth defendant's claim depended. There would be no risk of duplication or inconsistent judgments if the claimant was required to pursue its claim against the first defendant in the UAE. The claimant could not render unavailable or less available a more appropriate and available forum (i.e., the UAE) by choosing not to participate in proceedings in that forum.

D. QATAR AIRWAYS GROUP QCSC v. MIDDLE EAST NEWS FZ LLC AND OTHERS[17]

This claim arose out of a broadcast on the Al Arabiya 24-hour news channel. An economic blockade, including an air blockade, had been imposed upon Qatar in June 2017 by Saudi Arabia, the UAE, Bahrain and Egypt (the blockade States). Qatari-registered aircraft could only use airspace belonging to the blockade States through permitted air corridors. A journalist produced a video which the defendants published online and on social media. The airline claimed that the video falsely and misleadingly conveyed the message that there was a real danger that its flights might legitimately be shot down and that passengers would be subjected to harsh treatment when their planes were grounded.

The claimant brought a claim for damages before the English courts against those it held responsible for the publication and obtained permission to serve out of the jurisdiction.

In striking out the claims against the second defendant (an English entity used as an anchor to ground jurisdiction in the English Courts), the judge dismissed the remaining challenges to the court's jurisdiction and refused to set aside permission to serve out. The claimants had made submissions that there was a real risk of injustice before the UAE courts, citing *The Greek Fighter,*[18] a case in which the court had remarked on delays to the progress of the English litigation due to related litigation in the UAE courts, but the judge dismissed this submission.

The judge found that England was the most appropriate forum for the claim. In respect of the UAE courts, he found that they would not be a "perceived neutral forum" for a number of reasons.

15. [2014] EWHC 984 (Comm), 4 April 2014, Mr Justice Popplewell.
16. Paragraphs 40 to 59.
17. [2020] EWHC 2975 (QB), 6 November 2020, Mr. Justice Saini.
18. *Ullises Shipping Corp v. Fal Shipping Co Ltd* [2006] EWHC 1729 (Comm), 14 July 2006, Mr Justice Colman, at paragraph 373.

The judge found that England was the most appropriate forum for the claim.[19] In respect of the UAE courts, he found that they would not be a *"perceived neutral forum"* for a number of reasons, including:

- the fact that the blockade between the UAE and Qatar gave rise to the "*highly political circumstances*" of the dispute and the "*hostile environment*" faced by the claimant there;
- the low or even non-existent loss suffered by the claimant in the UAE;
- the lower publication of the video and press reportage of the video compared to the United Kingdom; and
- the "*less functionally appropriate*" nature of the UAE legal system compared to the English courts, with the "*very real risk of prejudice*" towards the claimant in the conduct of its claim.[20]

The Dubai International Finance Centre was a respected institution but neither party had any connection with it. It was a "*litigation island*" within the UAE, having perceived superior neutrality and higher quality compared with local courts, but it had no superiority compared to English courts.[21]

England was also a neutral forum with other connections to the case:

- the claimant had significant connections to England;
- substantial publication of the complained-of footage had occurred there, as had significant press coverage;
- a substantial arguable loss had been incurred in the jurisdiction, where English law would apply to those losses;
- the English courts and the specialised Media and Communications List would be well-suited to trying the claim;
- witnesses for both sides could attend without difficulty or concern; and
- the parties would have equality of arms in legal representation there.[22]

E. AHMAD ABDEL RAHMAN NIMER v. UNITED AL SAQER GROUP LLC AND OTHERS[23]

The English court set aside an order granting permission to serve out of the jurisdiction on defendants in the UAE, finding that the natural forum for the dispute was Abu Dhabi. The claimant, based in Canada, had been the CEO of the defendant group of companies and claimed GBP 24 million of damages alleging that he had entered the contract terminating his employment under duress. The claimant served the fifth defendant on a visit to London and, having established him as an anchor defendant, obtained permission to serve the other defendants in the UAE. It was common ground between the parties that the natural forum for the dispute was Abu Dhabi unless there were special circumstances requiring the case to be tried in England.

The claimant contended that he would not receive a fair trial in Abu Dhabi because of the defendants' great power and influence there.[24] He cited five cases that, he said, showed the defendants had manipulated the criminal and civil justice systems.[25]

The judge dismissed these objections.[26] The claimant failed to demonstrate that there was a real risk he would not get a fair trial in Abu Dhabi. His evidence was unreliable when subject to close scrutiny, particularly when compared with documentary evidence. The five cases he referred to did not support allegations of impropriety by the defendants, who had not won some of those disputes and who provided evidence of other cases they had not lost. He failed to provide any expert evidence which, although not required, was to be expected in a case like this. His evidence was partial and uncorroborated by external, unbiased sources; and, without the hearing becoming a minitrial (which was to be avoided), the evidence he provided did not rebut the independent evidence of Transparency International and the World Justice Project, deployed in *Qatar Airways*, that there was no real risk of injustice before the UAE courts.

The claimant also alleged that his personal safety would be in jeopardy if he returned to Abu Dhabi because the defendants had threated to harm him and cause him to be prosecuted for allegedly forging his employment contract, threats the defendants had allegedly made to a previous CEO with whom they had also fallen out and had apparently planned to kidnap.

These allegations failed because the claimant was unable to demonstrate an objective, well-founded fear of returning to Abu Dhabi. His allegations of planned kidnapping were *prima facie* implausible and not determinable on the evidence before the master; any prosecution of the claimant by the defendants was time-barred under UAE law and it seemed unlikely that the police, prosecutor and judiciary in the UAE could be persuaded to disapply those bars in a case that would be subject to intense public and media scrutiny; there was insufficient basis to make a general finding that the UAE's elite were able to abuse the country's legal processes; and the claimant had remained in the UAE for three years after signing the termination agreement, living in a property leased from the defendant companies at a discounted rate, thereby undermining his alleged fears.

F. THE SHETTY CASE

The claimant extended credit facilities to an English company and various subsidiaries, including its main one in the UAE. The English company was placed into administration in April 2020 as details emerged of a large-scale fraud among the defendant companies, who had allegedly committed fraud by failing to disclose debts of nearly USD 5 billion.

The claimant brought various tortious claims in the English court against the English corporate defendant and its controlling shareholders and obtained a worldwide freezing order in support. The claimant served proceedings on the first defendant in England under s.1140 of the Companies Act

19. Paragraphs 347 to 381.
20. Paragraph 377.
21. Paragraphs 379.
22. Paragraph 378.
23. [2021] EWHC 50 (QB), 18 January 2021, Master Davison.
24. Paragraphs 12 to 15.
25. Paragraphs 16 to 24.
26. Paragraphs 26 to 53.

2006 (which permits service on a director of a foreign company at an address within the jurisdiction which the director has registered under the Act) and obtained permission to serve the remainder outside England on the basis that they were necessary and proper parties to claim against the first defendant and alternatively because of the connections between England and the alleged torts.

The English court subsequently refused the claimant's application to continue the worldwide freezing order and stayed the substantive claim. The court found that there was a real issue to be tried, and that the defendants had all been properly served. However, these findings were overridden by the existence of Abu Dhabi as the forum clearly and distinctly more appropriate for the trial than England. There were no circumstances requiring, as a matter of justice, the claim to be tried in England.

The judge considered that the governing law of the dispute was UAE law, as the law of the country in which the damage occurred, rather than England, which was the place where the event giving rise to the damage occurred.

The judge considered that the governing law of the dispute was UAE law, as the law of the country in which the damage occurred, rather than England, which was the place where the event giving rise to the damage occurred. The damage occurred when a UAE-based company received funds or otherwise benefitted from the credit facilities offered by a UAE-based bank, and the loss occurred where the loan was drawn down, not where the contract to make the loan available was formed. The direct damage could not be characterised to have occurred in England.

Even if the damage had occurred in England, all the defendants were either resident or had their central place of administration in the UAE at the time the damage occurred. The alleged torts were not manifestly more closely connected with England, and UAE law would therefore apply. The contracts on which the claimant relied were between it and the first defendant and not with the remaining defendants who were alleged to have been involved in the conspiracy to defraud; the agreements therefore did not evidence a prior relationship between the claimant and those defendants.

On *forum conveniens*, the judge found that the connections between the non-English defendants and England were much weaker than their connections with Abu Dhabi:[27]

- most of the defendant shareholders were either UAE citizens or Indian nationals and long-time residents in Abu Dhabi with substantial business interests and assets in the UAE;
- the claimant itself was UAE incorporated and had no connections to England other than its engagement of lawyers in London to prepare some of the loan documentation;
- the lending itself took place in the UAE;
- the alleged torts took place in the UAE in that the implied representations alleged in the claim were received and acted on in the UAE if they were received and acted on at all; and
- the loss which the claimant sought to recover from the defendants was suffered in the UAE where the loans were drawn down against by UAE domiciled entities.

As the governing law of the dispute was the law of the UAE, issues of UAE law were better resolved by the UAE courts than the English court, particularly where there would be a right of appeal on those legal issues in the UAE.

As the governing law of the dispute was the law of the UAE, issues of UAE law were better resolved by the UAE courts than the English court, particularly where there would be a right of appeal on those legal issues in the UAE.

The judge also found it likely that there would be significant costs savings if the case was litigated in the UAE rather than to England.

G. AL MANA LIFESTYLE TRADING LLC AND OTHERS v. UNITED FIDELITY INSURANCE COMPANY PSC AND OTHERS[28]

In the most recent consideration of the UAE as a forum, the judge rejected jurisdiction challenges brought by three insurers located in the UAE, Qatar and Kuwait respectively. The claimants had brought claims for COVID-19-related business interruption losses, seeking USD 40 million in indemnities under insurance policies issued by the first to third defendants. Each policy contained a jurisdiction clause that provided:

> *"Applicable law and jurisdiction: In accordance with the jurisdiction, local laws and practices of the country in which the policy is issued. Otherwise England and Wales UK Jurisdiction shall be applied, [sic] Under liability jurisdiction will be extended to worldwide excluding USA and Canada."*

The judge rooted her analysis in the wording of the material clause in upholding the claimants' position that the clause permitted proceedings to be brought either in the country where the policy was issued or in England and Wales.

The judge rejected the defendants' contentions on *forum non conveniens*, which were not strong enough reasons for disapplying the jurisdiction clauses.[29] The defendants argued that

27. Paragraphs 149 to 183.

28. [2022] EWHC 2049 (Comm), 29 July 2022, Mrs Justice Cockerill

29. Paragraphs 90 to 101.

none of the parties was located in or connected with England; none of the alleged losses was sustained in England, caused by the COVID-19 pandemic in England or by the UK government's response; all the relevant documentation was elsewhere, primarily in the Middle East; UAE, Qatari and Kuwaiti law respectively governed the policies and local courts were best placed to apply those laws; none of the policies was placed in England and the defendants' reinsurers were not based in England. However, these reasons were presumed to fall *"squarely within the ambit of what the parties must be taken to have anticipated"*. On the other side of the ledger, the English court's expertise in claims for indemnity for COVID-19-related business interruption losses was a relevant factor, as well as the convenience of bringing all the claims before a single neutral court and the English court's experience in dealing with issues of foreign law.

In particular, the judge noted that

> *"Rightly, neither side has suggested that the Claimants would not be able to obtain a fair trial in the UAE, Kuwait or Qatar. And, again rightly, neither side has suggested that those local courts would not be equipped to handle the claims in an efficient, cost-effective and timely manner."*[30]

3 Conclusions

The English courts clearly do not have an expansive attitude towards their jurisdiction when the UAE is an alternative venue.

There are several takeaways from these cases.

- UAE parties dealing with English entities should have confidence that the existence and operation of the UAE courts are not a strong reason not to enforce a jurisdiction clause in their favour.
- The English courts clearly do not have an expansive attitude towards their jurisdiction when the UAE is an alternative venue.
- No discernible bias or favour can be detected in the English courts on behalf of parties based in England over parties based in the UAE or elsewhere who wish not to be sued in England.
- The English courts are extremely unwilling to impugn the UAE civil and criminal justice system. As *Nimer* demonstrates, the "clear and cogent" threshold for evidence of injustice in the UAE is a high one. The claimant in *Nimer* advanced a weight of evidence of purported injustice that the English court was not prepared to accept at face value.
- In all cases, the interpretation of any contractual arrangements lies at the heart of the analysis.

In this selection of cases, English courts have found on every occasion bar two - *Qatar Airways* and *Al Mana* - that the natural forum for a dispute is the UAE.

- The political circumstances of *Qatar Airways* were unique: the dispute arose in the context of a dispute between the UAE and Qatar that precipitated in part the publication of the complained-of video, and which was going to undermine the strength of any reasons for stopping the English litigation in favour of litigation in the UAE.
- *Al Mana* is an example of a jurisdiction clause, whether exclusively or non-exclusively in favour of England, being upheld and not overridden by extraneous factors.

Where issues over "forum shopping" have arisen such as in *Vitol Bahrain*, the English courts have viewed the entire nexus of proceedings in the round, including between competing courts of the UAE.

As Lord Templeman explained in Spiliada, there is no prescriptive list of factors that the English courts will consider when weighing the convenience of litigation between England and the UAE.

As Lord Templeman explained in *Spiliada*, there is no prescriptive list of factors that the English courts will consider when weighing the convenience of litigation between England and the UAE. Some factors, like the governing law of the dispute, are considered in every case; others, such as the process of litigation in the UAE, are not. These cases show however that the English Court will apply a careful analysis and are prepared to decline jurisdiction in favour of the UAE when necessary. In many of these cases, to varying extents the parties relied on expert evidence on the law and dispute resolution processes of the UAE.

30. Paragraph 91(iv)

تأخذ المحاكم الإنكليزية، عند تقييم اختصاصها القضائي للنظر في نزاع ما، بعين الاعتبار إن كانت إنكلترا هي المكان المناسب بشكل واضح للبت في النزاع بالمقارنة مع مدى ملائمة مكان آخر نسبيا للنظر في هذا النزاع.

تتناول هذه المقالة القضايا التي قامت فيها المحاكم الإنكليزية بمعاينة مزايا وعيوب قيام محاكم الإمارات العربية المتحدة بالنظر في نزاعات تجارية كبديل لإنكلترا.

تخلص المقالة إلى أن المحاكم الإنكليزية تدرك جودة حلول النزاعات في الإمارات العربية المتحدة كمكان بديل لتسوية للنزاعات وبالتالي فهي مستعدة للتنازل عن الولاية القضائية لصالحها.

BIOGRAPHY

PETER SMITH is a barrister with experience of a wide range of civil and commercial disputes and sectors, including arbitration, banking and finance, company, employment, insurance, insolvency, media, real estate, technology and construction, and professional negligence.
In the Legal 500 (UAE Dispute Resolution: Arbitration and International Litigation), Peter was recommended as a 'Rising Star' in 2020, 2021 and 2022, and was described as "notable" in 2019. He was included in the inaugural Legal 500 Arbitration Powerlist Middle East (2022).
Peter is admitted to practise in England and Wales (barrister), Dubai International Financial Centre (Part 1 and Part 2 registered), and the Emirate of Dubai. He has appeared before the ADGM Court of First Instance and has rights of audience at the Astana International Financial Centre Court (2019).
He is a door tenant at Outer Temple Chambers (London, Dubai and Abu Dhabi).
Peter can be contacted at Peter.Smith@crsblaw.com.

The Middle East: Safe Harbour for the Global Construction Industry

In spite of the global economic slowdown, the Middle East has proved particularly resilient and is set to invest unprecedented capital in various large-scale projects in the coming decade. This offers the construction sector, which is usually seriously affected by economic headwinds, with an unparalleled opportunity for growth and success. In this article, we explore some of the major projects and developments underway or set to commence in the Middle East in the near future, with particular focus on Saudi Arabia, Qatar and the UAE and discuss what this means for the construction sector as a whole in the region.

Malgré le ralentissement économique mondial, le Moyen-Orient s'est révélé particulièrement résistant et devrait investir des capitaux sans précédent dans divers projets à grande échelle au cours de la prochaine décennie. Cela offre au secteur de la construction, qui est généralement gravement touché par les vents contraires économiques, une opportunité de croissance et de réussite sans précédent. Dans cet article, nous explorons certains des principaux projets et développements en cours ou qui devraient commencer au Moyen-Orient dans un proche avenir, avec un accent particulier porté sur l'Arabie saoudite, le Qatar et les Émirats arabes unis et nous discutons de ce que cela signifie pour le secteur de la construction dans son ensemble dans la région.

Andrew Mackenzie
Partner, Head of Litigation, Arbitration & Investigations (Middle East)
DLA Piper

Terrick Mccallum
Senior Associate
DLA Piper

1 Introduction

With the threat of a global recession looming large on the horizon and the economic aftermath of the COVID-19 Pandemic still being felt heavily across the globe, one would be forgiven for thinking that even the world's strongest economies will face challenging times without much hope of real economic growth over the coming months and potentially, years. Couple this with the energy crisis, the increase in interest rates, high inflation, and the ongoing conflict in

Ukraine, to name but a few issues currently being experienced, and the economic outlook becomes bleak for many countries.

During times of instability and economic downturn, the construction industry is usually heavily affected. This is because, put simply, building is an inherently expensive endeavour. This is especially the case in respect of large-scale projects. Despite being expensive at the best of times, the costs of building have skyrocketed as a result of higher interest rates, disruption to supply chains, increased costs of materials and equipment owing to the slowdown in their manufacturing (particularly due to the ongoing effects of COVID-19 in major industrial countries), and labour resourcing issues. These factors, along with the fact that securing financing is difficult in economically challenging times, usually leads to a stark decline in the construction industry.

Given the negative outlook, most developers and construction houses across the globe will no doubt be taking a conservative approach to expenditure on large-scale projects, at least until the economic tides turn.

While that appears to be a likely reality for most regions, this is, most emphatically, not the position in the Middle East, which is set to exponentially increase its expenditure on large-scale projects between now and 2030 with various so called "mega projects" across the region and, in particular, the rise of the "giga projects" in the Kingdom of Saudi Arabia.

In this article, we explore some of the major projects and developments underway and set to commence in the Middle East in the near future, with particular focus on Saudi Arabia, Qatar and the UAE and discuss what this means for the construction sector as a whole in the region.

2

Saudi Arabia's Giga Project Program

The Kingdom of Saudi Arabia has committed to its 2030 vision which aims, in part, to:

- diversify its economy;
- promote tourism;
- develop outlying areas; and
- bring prosperity to the nation.

As part of this vision, Saudi Arabia has launched its Giga Project Programme made up of 15 individual projects across Saudi Arabia.

As part of this vision, Saudi Arabia has launched its Giga Project Programme made up of 15 individual projects across Saudi Arabia. The total estimated value for the Saudi Giga Projects is USD 750 billion, to be spent by 2030, of which, approximately USD 30 billion has already been awarded in contracts.

The six largest Saudi Giga Projects by investment value, account for approximately 92% of the total value of the Saudi Giga Project Programme and are discussed briefly below.

A. NEOM

NEOM is by far the largest of the planned Giga Projects with an estimated total investment value of approximately USD 500 billion. Circa USD 13 billion worth of contracts have already been awarded.

NEOM is, for the time being, planned to consist of three main components being:

- **The Line**, a megacity set to house approximately 9 million people, be 170 kilometers long, half a kilometer tall, and 200 meters wide, with an underground train service to move inhabitants and visitors the total length of the line in approximately 20 minutes;
- **Trojena**, a tourism destination located approximately 50 kilometers from the Gulf of Aqaba on the Red Sea. It is set to have a manmade lake and skiing village, and has been awarded the 2029 Asian winter games due to its cooler climate; and
- **Oxagon**, a maritime city and fully automated port set to house, among other things, a green hydrogen complex.

B. THE ROSHN PROJECT

The Roshn Project, with an estimated total investment value of USD 90 billion, is aimed at catering for the growing demand for housing in the Kingdom.

It seeks to develop and provide affordable housing for Saudi nationals across the Kingdom commencing with project Sedra, which is planned to develop approximately 30,000 homes in Riyadh.

The intention is to also develop at Makkah, Asir, and Jeddah in the coming years.

C. DIRIYAH GATE PROJECT

The Diriyah Gate Project, set in northwest Riyadh, plans to develop, among other culturally important sites, Saudi Arabia's Al Turaif UNESCO World Heritage Site to become the world's largest cultural city, thus boosting tourism and promoting Saudi Arabia's heritage.

The estimated total investment value is approximately USD 50 billion.

D. KING SALMAN INTERNATIONAL PARK PROJECT

The King Salman International Park Project has an estimated total investment value of USD 23 billion and will create a green park in Riyadh spanning over 16 square kilometers.

The Park is also to house a royal arts complex, a visitors' pavilion, a golf course, and an equestrian centre.

E. JEDDAH CENTRAL URBAN DEVELOPMENT PROJECT

With an estimated total investment value of USD 20 billion, the Jeddah Central Urban Development Programme plans to revitalize approximately 5.7 square kilometers of Red Sea coastline to develop tourism and livability in the area.

The Project envisages developing a world class opera house and oceanarium in addition to the area's roads and infrastructure.

F. RED SEA DEVELOPMENT PROJECT

The Red Sea Development Project is perhaps the most advanced of all the Saudi Giga Projects and is set to open in 2023.

The Project spans 28,000 kilometers over 90 previously untouched islands forming part of Saudi Arabia's Red Sea archipelago and is set to employ more than 35,000 people and rely solely on renewable energy sources with a ban on single use plastics and zero waste to landfill.

The Project has an estimated total value of approximately USD 16 billion, of which approximately USD 6.5 billion has already been awarded in contracts.

In addition to the scale of the Saudi Giga Projects, they are also set to be green, with a heavy focus on carbon neutrality and the prohibition of single-use plastics. This will have major effects on project supply chains, including the procurement of so called "green materials" such as green steel and cement.

3 Qatar

Qatar is also implementing a 2030 vision, which consists of multiple multibillion US dollar Mega Projects, including the Doha railway, airport and port projects. The most notable of these projects include:

A. LUSAIL CITY

With an estimated total value of USD 45 billion, Lusail City is to develop approximately 35,000 square kilometers of previously undeveloped land into a fully functioning city consisting of:

- housing for up to 200,000 people;
- hotels;
- mosques;
- schools;
- shopping complexes; and
- sporting stadiums.

Lusail City also plans to be one of the most technologically advanced in the region.

While Lusail City is largely compete, it illustrates Qatar's continued investment in and commitment to its large-scale projects in pursuance of meeting its 2030 vision.

B. QATAR INTEGRATED RAIL PROJECT

Given the imperative for a wide-reaching rail network as a result of the FIFA World Cup 2022, the Qatar Integrated Rail Project aimed to construct and operate in excess of 300 kilometers of mainline rail and approximately the same distance of metro and light rail.

The estimated total value of the project is USD 40 billion and is set to be completed in approximately 2026.

C. NORTH FIELD OFFSHORE PROJECT

In October 2022, Qatar awarded a contract for the construction of two offshore natural gas compression complexes as part of its North Field Production Sustainability Offshore Compression Complexes Project situated off the northeast coast of Qatar.

The total estimated value of the Project is USD 4.5 billion.

D. HAMAD INTERNATIONAL AIRPORT EXPANSION (PHASE 2B)

Qatar plans on extending concourses D and E at its Hamad International Airport set to commence in early 2023.

The expansion includes plans to construct a 7,000 square meter indoor tropical garden and 270 square meter water feature and will increase the airport's capacity to more than 60 million passengers annually.

The estimated investment value of the expansion is USD 1 billion.

E. FIFA WORLD CUP STADIUMS

Qatar invested between USD 8 billion and USD 10 billion for the construction and renovation of the eight stadiums used during the FIFA World Cup 2022.

Qatar invested a total estimated USD 220 billion on the wider infrastructure upgrades ahead of the FIFA World Cup.

The above illustrates Qatar's continued investment in its 2030 vision, which has and will result in continued large-scale construction projects.

4

United Arab Emirates

The UAE is no stranger to making big investments in large-scale projects. One need look no further than the world's tallest building, the Burj Khalifa, which cost an estimated USD 1.5 billion to construct, or the 2020 world Expo held by Dubai in 2022, for which it invested an estimated USD 120 billion in the project and associated infrastructure.

> *Despite the globe's impending economic woes, the UAE shows no signs of slowing down when it comes to investment in large-scale projects.*

Despite the globe's impending economic woes, the UAE shows no signs of slowing down when it comes to investment in large-scale projects which include:

A. MOHAMMED BIN RASHID SOLAR PARK

While not a new Project, the Mohammed Bin Rashid Solar Park is one of the largest single-site solar parks in the world and which continues to expand with multiple planned phases yet to be constructed.

It's sixth phase is set to become operational in late 2025 and represents a total estimated investment value of USD 13.6 billion to date.

B. DUBAI ROYAL ATLANTIS RESORT AND RESIDENCES

At the estimated cost of USD 5.1 billion, the Royal Atlantis Resort and Residences is set to officially open in January 2023.

The project will consist of more than 690 hotel rooms, more than 230 luxury apartments and 90 swimming pools.

C. ABU DHABI NATIONAL OIL COMPANY OFFSHORE EXPANSION

The Abu Dhabi National Oil Company has recently awarded a contract for in excess of USD 1.5 billion for the expansion of its offshore drilling operations.

As part of the project, ADNOC is focusing on satisfying the ever-growing demand for more environmentally friendly natural oil and gas exploration.

D. GUGGENHEIM MUSEUM

The Guggenheim Museum in Abu Dhabi is planned to be completed in 2025 with an estimated total project value of USD 1.5 billion.

It is planned to house 28 galleries spanning 11,600 square meters with an additional 23,000 square meters in terrace space surrounding the main building.

5

Outlook for the Middle East's Construction Sector

As discussed, the construction sector is vulnerable to economic downturn and the negative economic outlook in the coming months (and potentially longer) poses a threat to role players in the industry - at least in most regions.

However, given the Middle East's commitment to development and diversification of their economies, in part, through the various large-scale projects discussed above, the construction industry appears to be enjoying a uniquely protected status and can look forward to a glut of work in the coming decade.

> *The demand for construction in the Middle East is so great, that one of the major concerns will be satisfying that demand with contractors, equipment, materials and labour.*

In fact, the demand for construction in the Middle East is so great, that one of the major concerns will be satisfying that demand with contractors, equipment, materials and labour.

Furthermore, the requirement for greener transportation, building techniques and materials will also pose a challenge in meeting demand and will require enormous investment in the shipping and industrial sector to supply these large-scale projects.

A. CONSTRUCTION AND THE LEGAL INDUSTRY

Given the enormous investment when undertaking a construction project and in light of the increased risk associated with construction due to the current economic climate, prudent developers and contractors are well advised to seek specialist legal assistance in all phases of the construction process from legal practitioners specializing in the construction industry.

This includes the brokering of project finance, the negotiation and preparation of construction and supply contracts, ongoing contract management and, when required, dispute resolution. With the exception of dispute resolution, all of the above legal disciplines are vital to ensure not only the ultimate delivery of a project, but that it commences at all and can be instrumental in avoiding disputes in the long run.

Regarding the dispute resolution phase, this is often seen as a "grudge purchase" owing to its inherently high cost and risk. However, in light of the increasing appetite for third party litigation funding in the Middle East, which is designed to lessen or even illuminate a litigant's legal expense and risk, the usual barriers to litigation are being dramatically lessened, resulting in an upswing in litigious proceedings in the construction sector. Dispute resolution lawyers and clients alike would therefore be well advised to familiarize themselves with the major role players, processes, and general requirements associated with third party litigation funding. For instance, DLA Piper has established an entirely independent entity, Aldersgate Funding, whose sole function is to provide third party litigation funding and which is backed by AIM listed Litigation Capital Management with access to more than GPB 150 million in committed capital.

6 Conclusion

In spite of the global economic slowdown, the Middle East has proved particularly resilient and is set to invest unprecedented capital in various large-scale projects in the coming decade. This offers the construction sector, which is usually seriously affected by economic headwinds, with an unparalleled opportunity for growth and success.

أثبت الشرق الأوسط مرونته بالرغم من التباطؤ الاقتصادي العالمي، ومن المتوقع أن يقوم بضخ رأس مال غير مسبوق في مشاريع ضخمة متنوعة خلال العقد المقبل. يوفر هذا لقطاع الإنشاءات، الذي عادة ما يتأثر بشكل كبير بالصعوبات الاقتصادية فرصة لا مثيل لها للنمو والنجاح. نستكشف في هذه المقالة بعضا من المشاريع الكبيرة الجاري التحضير لها والتي من المتوقع أن تبدأ في الشرق الأوسط قريبا مع التركيز على السعودية وقطر والإمارات العربية خصوصا ومناقشة ما يعني هذا بالنسبة لقطاع الإنشاءات بمجمله في المنطقة.

BIOGRAPHY

TERRICK MCCALLUM is a South African-qualified lawyer focusing on construction and commercial arbitration, having represented a wide array of global and regional client's across the Gulf and Africa in local and international arbitrations.
Terrick has represented clients in numerous arbitration forums including DIFC-LCIA, LCIA, ICC, DIAC, UNCITRAL, ICSID and AFSA as well as representing clients in disputes before the DIFC and ADGM Courts.
Terrick has acted on high value and complex construction disputes in the energy, infrastructure, civil and hospitality sectors, as well as advising clients on complicated multi-jurisdictional commercial disputes.
In addition, Terrick has represented multinational conglomerates and listed companies in the mining and financial sectors on high value disputes.
Terrick can be contacted at Terrick.Mccallum@dlapiper.com

ANDREW MACKENZIE is a Partner and Head of Litigation, Arbitration & Investigations (Middle East), based in Dubai since 2009. He is ranked in Chambers Global, Legal 500 and Who's Who Legal for Dispute Resolution. Andrew will be your lead attorney throughout the entire arbitration process and is available and committed to overseeing all phases in this arbitration process.
Andrew works extensively across the Middle East, Africa and Asia, acting for governments and international corporations advising on construction matters and on complex commercial disputes under a variety of civil and common law systems.
Andrew also handles construction, engineering and energy disputes. He has tried cases in all of the major arbitration forums including ICSID, ICC, LCIA, SIAC, UNCITRAL and DIAC. He also holds full rights of audience before the DIFC Courts, sits as an arbitrator and has written and presented at numerous international conferences on arbitration and dispute resolution.
Andrew can be contacted at Andrew.Mackenzie@dlapiper.com.

Managing Disputes During the Life Cycle of a Construction Project

Construction projects have an almost unique ability to generate disputes, which are often expensive and drawn out. This article reviews recent industry reports from HKA and Arcadis, and aims to provide some real-world tips to help employers, main contractors and subcontractors avoid, and where that is not possible, mitigate disputes.

Les projets de construction ont une capacité presque unique à générer des conflits qui sont souvent coûteux et interminables. Cet article passe en revue les récents rapports de l'industrie de HKA et Arcadis, et vise à fournir des conseils concrets pour aider les employeurs, les entrepreneurs principaux et les sous-traitants à éviter et, lorsque cela n'est pas possible, à atténuer les conflits.

James Cameron
Partner
Fenwick Elliott LLP

1 Introduction

Construction projects are often extremely complicated affairs, bringing together a number of parties from across the globe. As a result, construction projects are almost uniquely susceptible to global supply chain issues and the geopolitical landscape. Further, there is often vast sums of money involved and political pressures at play, and as a result, construction projects generate some of the most significant disputes in the world.

Against that backdrop, and in the current climate of rising prices and supply chain disruption, it is more important than ever for those who are involved in construction projects to have in place appropriate dispute resolution strategies that are aimed at avoiding, and where that is not possible, minimising disputes as much as possible. This article will set out why it is so important to get this right by reference to the cost of getting it wrong, and draw on the recent industry reports from Arcadis (now part of J.S. Held) and HKA and real-world experience to provide a list of practical tips for parties to assist avoid and/or mitigate disputes during the life cycle of a project.

2 Counting the Cost of Construction Disputes

In HKA's CRUX Insight Report,[1] HKA analysed over 1,600 multi-year projects in 100 countries with a cumulative capital expenditure of more than USD 2.13 trillion. The cumulative

1. Available online at https://www.hka.com/download-crux-insight-fifth-edition-battling-the-headwinds/.

value of sums in dispute exceeded USD 80 billion, and the total extensions of time sought amounted to more than 840 years. The average value of claims amounted to 35.1% of the budgeted capital expenditure, and the average extensions of time would project a project's schedule by 68.6%.

The position in the MENA region was even more pronounced. In the Middle East, HKA analysed 380 projects in 12 countries with an average capital expenditure of more than USD 1.7 billion. The average cost claim was USD 154 million, and the average extension of time claim was 83.1% of the project's schedule. In Africa, HKA analysed 40 projects in 16 countries with an average capital expenditure of more than USD 2.1 billion. The average cost claim was USD 103 million, and the average extension of time claim was 82.9% of the project's schedule.

These numbers are stark, and were similar in HKA's CRUX Insight Report from the previous year.[2] How can an employer in the MENA region accurately budget for a project where it is likely to face such sizeable claims? How can a contractor plan their pipeline of work where it will likely take almost twice as long to complete a project as originally scheduled? Considering these findings highlights the importance of having an effective dispute avoidance/mitigation strategy.

3

The Main Causes of Construction Disputes

The table below sets out the top three causes that were identified by HKA in their latest CRUX Insight Report and Arcadis in their Global Construction Disputes Report 2022:[3]

	HKA CRUX Insight Report 2022	Arcadis Global Construction Disputes Report 2022
1	Change in scope	Poorly drafted or incomplete and unsubstantiated claims
2	Contract interpretation issues	Errors and/or omissions in the contract document
3	Design information was issued late	(tie) Parties failing to understand/comply with contract obligations Owner-directed changes

Not understanding the contract, not having a clear idea of the scope at the beginning of the contract term, not administering the project correctly. Anybody involved in construction disputes will be familiar with these themes; they are consistent throughout the industry, and entirely predictable.

2. Available online at https://www.hka.com/crux-insight-2021-operating-in-uncertain-times/.

3. Available online at https://www.arcadis.com/en-gb/knowledge-hub/perspectives/global/global-construction-disputes-report.

4

The Most Important Factors in the Mitigation and Early Resolution of Disputes

Arcadis in their report go one step further and identify the most important factors in the mitigation and early resolution of disputes:

2022	Arcadis Global Construction Disputes Report 2022	2021
1	Owner/Contractor willingness to compromise	1
2	Accurate and timely schedules and reviews by project staff or third parties	2
3	Contractor transparency of cost data in support of claimed damages	3

As can be seen from that table, Arcadis's findings were the same in their last two reports. These points will be addressed further below. This accords with practical experience, in particular the factor that was identified as being the most important: the parties' willingness to compromise.

In the sections that follow, this article will identify some "top tips" for avoiding and mitigating disputes at each stage of a construction project's life-cycle, with reference to the findings of HKA and Arcadis and lessons learned from practical experience.

5

Top Tips: Pre-Contract Phase

The first and most important question to ask is whether you have the right procurement strategy.

The first and most important question to ask is whether you have the right procurement strategy. We are involved with a major contractor with many years' experience operating all around the world revisiting the manner in which they procure design, in particular moving from a lump-sum amount to hourly rates. This shift was a consequence of their consistent experience of facing hundreds of design change requests on their major projects. Employers and main contractors should be willing to reconsider the "traditional wisdom", and ensure they are implementing the lessons learned from other projects into their procurement pipeline.

Another trite, but often overlooked, point is to ensure that the contract is clear and properly drafted, and that the parties understand their contractual obligations. Anybody working in construction disputes will have experience of wrestling with the "Frankenstein's Monster" of contract, where the various documents that form the contract are inconsistent or incomplete or incomprehensible. So many problems can be avoided if the parties properly understand what it is they have signed up to.

A strategy we have seen work well is to draft a contract users' guide during the negotiations of a contract. This can be a helpful way to spot problems with the contractual framework, as it brings into focus the need to ensure the contract is comprehensible and hangs together correctly, and will give you the best chance of ensuring those administering the contract will not run into problems down the line.

6

Top Tips: Execution Phase

Change is inevitable. It is among the top causes of disputes identified by both HKA and Arcadis, which would be consistent with the experience of anybody working in construction disputes. Therefore, it is critically important that the baseline is clearly set at the outset, and the party performing the works has a clear plan for how they are going to complete the scope.

Employers and main contractors should encourage those further down the line to submit accurate, 'warts and all' programmes.

In relation to programme updates, it is often tempting for a main contractor or subcontractor to submit a programme setting out where they wish they were or identifying events that they wish were delaying them. Unrealistic programme updates may serve short-term ends but may well cause you problems down the line. Employers and main contractors should encourage those further down the line to submit accurate, 'warts and all' programmes. It is important to have a realistic view on time for completion, as this will allow the parties to work collaboratively on mitigation strategies for any delay or adjust project priorities, and realistic programme updates are the only way to achieve that.

Another key point for the party making a claim to ensure that they have submitted their contractual notices in on time. It is often thought that serving notices will be seen as being "too contractual" but in our experience that is not the case. We have had a horror story of a contractor being told not to serve notices and instead reaching a series of "gentlemen's agreements" with the employer's representative. The employer's representative was then replaced and the contractor found themselves facing an uphill battle in relation to their claims.

Notices also serve an important purpose. They give the parties the opportunity to identify potential issues early, and they give the receiving party the opportunity to consider whether they can pass the claim along. Colin Powell is quoted as having said "bad news isn't wine – it doesn't improve with age", and in our experience the wisdom of statement is true when it comes to serving contractual notices. While there are arguments around the strict application of notice provisions in many jurisdictions in the MENA region, it is always preferable in our experience to take that piece off the board and avoid the argument altogether.

The next key to the early resolution of claims is for the party making a claim to set out precisely their contractual/legal basis for entitlement and to properly substantiate their costs.

The next key to the early resolution of claims is for the party making a claim to set out precisely their contractual/legal basis for entitlement and to properly substantiate their costs. This was the third main factor in the early resolution of disputes identified by Arcadis, and in the real world cannot be overstated. Parties making claims should consider early on whether they can be more transparent in the presentation of their cost data. Not only will this give them a better chance at being able to negotiate a resolution of the claim, but should resolution not be possible, it will put them in a favourable light in the eyes of any independent decision maker such as an adjudicator or arbitrator.

The importance of resolving disputes early should not be overlooked. It is of course much more difficult to resolve disputes once parties have become entrenched, so processes should be implemented to ensure disputes are not left to fester and grow.

7

Top Tips: Post-Completion Phase

Those who live and breathe the project will always know it best but can often be too close and have too much personally invested in the outcome to provide anything like an independent view.

Anybody who is involved with construction disputes will appreciate that it is not always possible to avoid disputes altogether. Once a dispute has arisen, in our experience having an early independent assessment is crucial. This may mean engaging outside consultants or legal counsel, but it may also mean getting a view from elsewhere within the business. Those who live and breathe the project will always know it best but can often be too close and have too much personally invested in the outcome to provide anything like an independent view. Therefore, those in the position of deciding whether to pursue disputes should ensure they are getting an outside voice before matters escalate.

An early independent assessment will also assist in identifying where you can compromise. Compromise does not mean rolling over, but as Arcadis noted, it is the most important factor in determining whether you will be able to resolve or mitigate a dispute before it gets out of hand.

The final point is an obvious one, but very often not implemented. It is important that parties genuinely engage in the dispute resolution processes set out in their contracts. The early stages of a multi-tiered dispute process are often treated as a "tick-the-box" exercise. This should be avoided wherever possible. Anybody who has been in the industry for long enough will have experience of a case that was perceived as being "un-settleable" being resolved by agreement, and so it is important that those involved in construction disputes leave space for such outcomes.

8 Conclusion

Construction disputes are a fact of life. However, the parties who employ the tips outlined above will, in our experience, have a much better chance of protecting their projects from the potentially devastating impact of disputes that get out of hand.

تتسم مشاريع الإنشاءات بقدرة فريدة على إثارة النزاعات والتي غالبا ما تكون نزاعات باهظة التكلفة ومطولة. تستعرض هذه المقالة تقاريرا حديثة من هذه الصناعة من شركتي HKA وArcadis لغاية تقديم نصائح واقعية لمساعدة أصحاب العمل والمتعاقدين الرئيسيين والمتعاقدين بالباطن لتجنب النزاعات إن أمكن ذلك.

BIOGRAPHY

JAMES CAMERON is a Partner at Fenwick Elliott LLP with experience in a broad range of dispute resolution procedures and industries, including aviation, infrastructure, oil & gas, electrical power distribution and telecommunications. James has acted employers, main contractors and subcontractors, with a special focus on those operating in the Middle East and Africa. He has particular experience in high value ICC arbitrations involving complex claims on major infrastructure projects, often applying local substantive law. Recommended in the areas of Contentious Construction and International Arbitration in The Legal 500 UK, James stands out as *"a rising star in construction litigation. He is razor sharp, has an excellent understanding of the construction industry, and is extremely efficient and user-friendly"*. Clients praise him for being *"totally on top of the details"* and having *"an eye to the big picture"*, as well as being *"engaging, incredibly hardworking and brilliant to work with – clients love him"*.

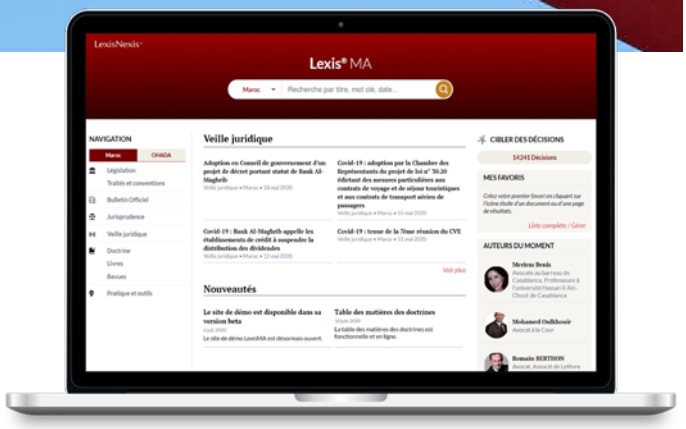
James can be contacted at jcameron@fenwickelliott.com.

Demandez une démo sur https://LexisMA.info

Lexis MA

Une expertise éditoriale centenaire et une technologie de pointe au service des praticiens des droits marocain et OHADA

Les juristes jouent un rôle clé dans la compétitivité du Maroc sur la scène internationale. Avec la base de données juridique Lexis MA, LexisNexis met son savoir-faire et ses innovations au service des praticiens des droits marocain et OHADA afin qu'ils puissent optimiser la sécurité juridique de leurs conseils et de leurs actes, leur productivité et leur performance pour aborder sereinement toujours plus de nouveaux défis.



65 auteurs

700 contenus pratiques

200 synthèses encyclopédiques et études législatives

15 000 décisions avec abstract et une analyse LexisData pour les plus importantes

25 codes tenus à jour dont certains annotés et commentés

2 revues (Droit et Stratégie des Affaires au Maroc, REMALD)

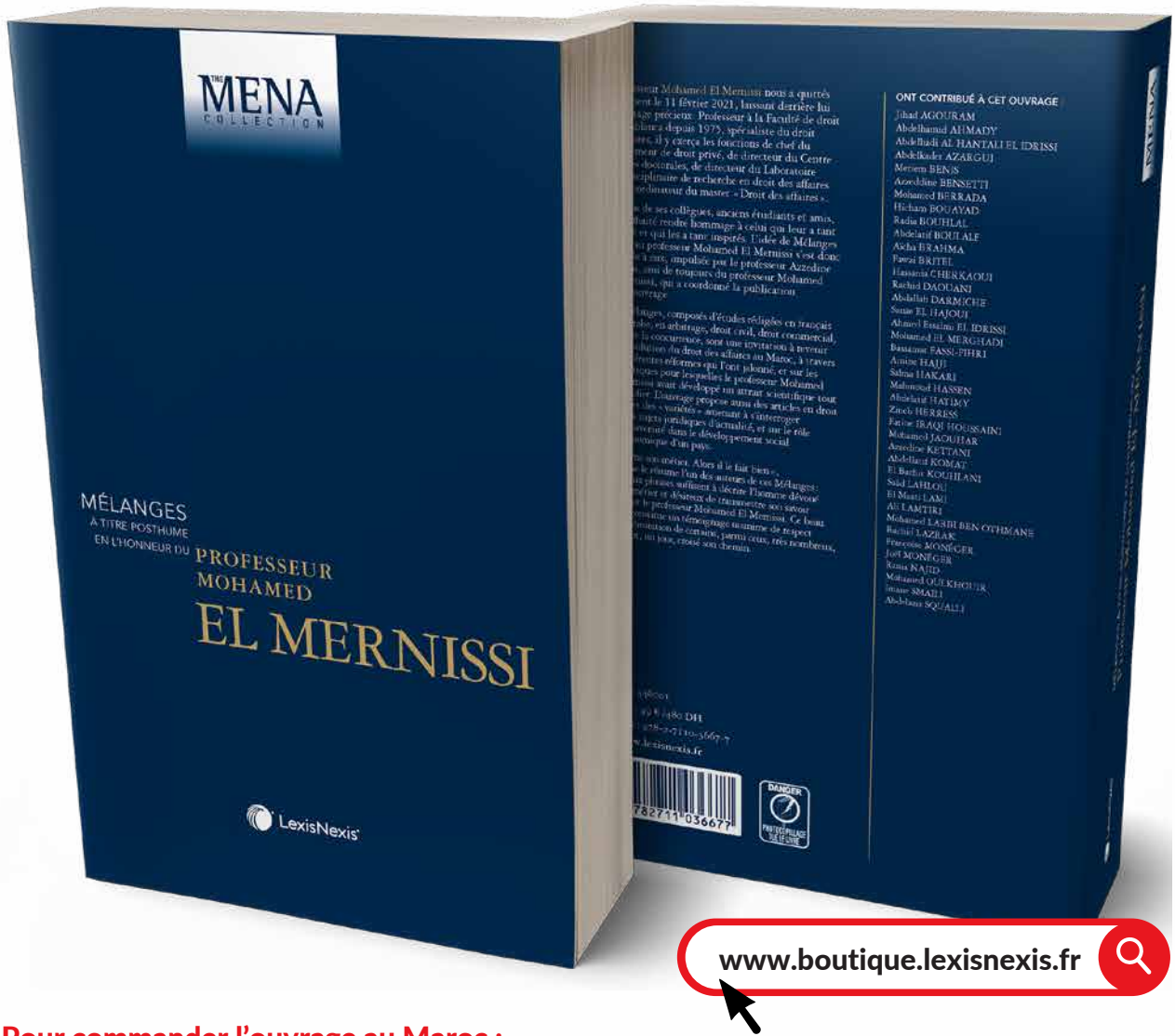
15 ouvrages directement accessibles à la lecture en ligne

LexisNexis®
Middle East & North Africa

LexisNexis®

Mélanges à titre posthume en l'honneur du professeur Mohamed El Mernissi

36 contributions en langues française et arabe
coordonnées par le professeur Azzedine Kettani



Pour commander l'ouvrage au Maroc :

Siham OUADAD
IKONE Juris,
5, rue Zarara, Maârif,
20000 Casablanca, Maroc
s.oudad@ikoneconseil.ma
+212(0)5 22 25 58 42

IKONE JURIS

Où va le droit des affaires en Tunisie ?

Lecture dans la législation d'exception et dans la nouvelle Constitution

La Tunisie connait aujourd'hui des mutations tout azimut. Le droit n'en est pas moins en reste. Le droit des affaires en est une illustration topique. Et pour cause, la complexité de l'état actuel des textes régissant cette discipline juridique. D'un côté, la nouvelle Constitution tunisienne du 25 juillet 2022 semble s'inscrire dans une logique de retrait par rapport au libéralisme de naguère. Les principaux décrets-lois promulgués pendant l'État d'exception se rattachent eux aussi à cette même logique. D'un autre côté, l'attraction des investisseurs semble tenir d'un souci majeur des autorités publiques tunisiennes. Les textes ont été récemment modifiés de façon à renforcer la soustraction de plusieurs activités économiques à la condition de l'autorisation administrative préalable. D'où la question de savoir où va le droit des affaires en Tunisie aujourd'hui. Répondre à cette question impose une

The new Tunisian constitution of 15 July 2022 appears to be part of a logic of withdrawal from the liberalism of the past. The main legislative decrees promulgated during the state of emergency are also linked to this logic. However, attracting investors is a major concern of the Tunisian public authorities. The texts of the constitution have been modified in order to strengthen the exemption of certain economic activities from the requirement of prior administrative authorization - hence the question of where business law is going in Tunisia today. Answering this question requires a preliminary definition of "business law", especially as business law and economic law tend to be confused with one another. Business law tends to meet two objectives: A strengthening of business ethics on the one hand and the democratization of the economy on the other. These two objectives

Dr Najet Brahmi Zouaoui
Professeure à la Faculté de Droit et des Sciences politiques de Tunis.
Directrice de la Chaire ALECSO pour l'arbitrage commercial international.
Avocate près la Cour de Cassation

définition préalable de la sphère juridique de ce droit. La définition serait d'autant plus indiquée que droit des affaires et droit économique semblent aujourd'hui tenir des notions confuses.
Aspirant à sa propre autonomie terminologique, le droit des affaires tend au fond à répondre à deux objectifs : un renforcement de l'éthique des affaires d'une part et la démocratisation de l'économie de l'autre. Les deux tendances sont nettement et clairement proclamées par le législateur tunisien dans le cadre du préambule de la nouvelle Constitution tunisienne du 25 juillet 2022.

are clearly proclaimed by the Tunisian legislator within the framework of the preamble of the new Tunisian constitution of 25 July 2022.

L'interrogation sur le sens de l'évolution du droit des affaires en Tunisie se trouve aujourd'hui au cœur des débats juridiques et économiques. Et pour cause, la complexité des paramètres de réflexion inspirant une politique libérale du droit des affaires pour les uns et une politique conservatrice pour les autres. Et pour s'en tenir à une seule illustration de cette hésitation entre les deux modèles de politiques, l'on s'en tient au seul texte de la nouvelle Constitution en Tunisie qui, si elle reprend à son compte la promotion du développement économique en Tunisie[1], n'en est pas moins sans ériger la fraude fiscale au rang d'une infraction[2], opter pour une **« démocratie économique »**[3], garantit « la **coexistence** entre les secteurs public et privé, et œuvre à assurer la **complémentarité** entre eux sur la base de **la justice sociale** »[4]. Le développement économique n'est alors plus rattaché au modèle libéral où « le laisser faire, laisser passer »[5] est maitre. Il est plutôt rattaché à une démocratie économique qui, étrange au vocabulaire juridique en place, n'en est pas moins sans inviter à une meilleure définition. C'est aussi le cas pour le droit des affaires qui appelle à une définition préalable de sa notion avant de mettre en relief les intérêts qui s'attachent aujourd'hui au sens de son évolution dans une perspective juridico-économique.

1. Préambule de la nouvelle Constitution.
2. Art. 15 alinéa de la nouvelle Constitution.
3. Préambule de la nouvelle Constitution.
4. Art.17 de la Constitution du 30 juin 2022.
5. Principe gouvernant la liberté du commerce et de l'industrie depuis naguère.

Le droit des affaires : quelle notion ?

Le droit des affaires est souvent confondu avec le droit économique. Le vocabulaire juridique de l'Association Henri Capitant, tout en relevant ce chevauchement entre les deux matières, n'en retient pas moins la marque de leur diversité. Aussi y lit-on une conception large du droit des affaires **(A)** qui semble contenir le droit économique sans s'y limiter **(B).**

A. LE DROIT DES AFFAIRES : UNE CONCEPTION LARGE DU TERME

Le droit des affaires procède aujourd'hui d'une conception large, tenant à la fois à la définition des affaires comme domaine de ce droit que du droit des affaires lui-même. Aussi, les affaires s'entendent-elles au sens du vocabulaire juridique de l'Association Henri Capitant comme étant des « opérations de toute nature, liées à l'exercice d'une activité industrielle, commerciale ou financière »[6] (exemple de droit des affaires). Le droit des affaires est défini, au sens du même lexique juridique comme « termes souvent employés comme synonyme moderne de droit commercial mais dont l'acception est plus large ; branche du droit englobant, au-delà de la distinction du droit public et du droit privé, la **règlementation des différentes composantes de la vie économique** : ses cadres juridiques (exemple de règlementation du crédit, de la concurrence, etc.), ses agents, les biens et services qui en

6. Henry Capitant, Vocabulaire Juridique de l'Association Henry Capitant, Edit. PUF 2018, p. 41.

sont l'objet, les activités économiques (production, distribution, consommation) ».[7]

B. LE DROIT DES AFFAIRES, UNE CONCEPTION PLUS LARGE QUE LE DROIT ÉCONOMIQUE

Ainsi défini le droit des affaires, souvent confondu avec le droit économique, s'en distingue.

Ainsi défini le droit des affaires, souvent confondu avec le droit économique, s'en distingue. Le Dictionnaire juridique de l'Association Henri Capitant fait état de cette distinction entre droit des affaires et droit économique. Et pour ce dernier, plusieurs nuances sont apportées. Aussi, au sens juridique général du terme, sont ajoutées des acceptions spéciales et vagues de cette notion.

Au sens juridique, le droit économique est l'expression doctrinale désignant l'ensemble des règles gouvernant l'organisation et le développement de l'économie industrielle relevant de l'État, de l'initiative privée, ou du concours de l'un et de l'autre.[8]

Plus spécialement, c'est le droit « qui a trait à l'ensemble des activités commerciales et industrielles, à l'exclusion des activités financières et des phénomènes monétaires ».[9] Il s'oppose « en ce sens à monétaire, financier ».[10]

En plus, « Plus vaguement, le droit économique est synonyme de patrimonial, pécuniaire, financier, pour caractériser, dans le droit des biens ce qui a une valeur appréciable en argent ».[11] Exemple : Intérêt économique, préjudice économique ».

Le droit des affaires aujourd'hui : quels intérêts ?

Incontestablement, le droit des affaires est aujourd'hui au cœur des mutations. Aussi, historiquement rattaché à une conception libérale, ce droit est à présent appelé à répondre d'une certaine éthique avec des dosages différents selon les politiques législatives dans l'un ou l'autre des pays. Il semblerait aussi développer un ordre public économique directeur,[12] synonyme d'une nécessaire moralisation des affaires.

En Tunisie, et depuis la proclamation de l'État d'exception le 25 juillet 2021, une politique de moralisation du droit des affaires s'est notoirement dessinée.

En Tunisie, et depuis la proclamation de l'État d'exception le 25 juillet 2021, une politique de moralisation du droit des affaires s'est notoirement dessinée. Plusieurs décrets-lois ont été promulgués dans ce sens dont notamment le décret-loi n°2022/14 portant spéculation illicite. En soi, le qualificatif illicite renvoie moins au droit qu'à la morale. La législation d'exception semblerait ainsi répondre des tendances actuelles du droit des affaires de plus en plus marqué par une éthique des affaires nettement affirmée – une tendance qui n'a pas tardé à être affirmée dans la Constitution de la 3e République proposée au Référendum le 30 juin 2022 et adoptée le 25 juillet 2022.

Cette tendance à la moralisation du droit des affaires irait de pair avec la législation économique déjà en vigueur, qui cherche, depuis des années durant, à renforcer l'idée de la bonne gouvernance[13] dans la vie économique en général et dans le droit de l'investissement en particulier. La pratique du droit des affaires dénote cependant d'un décalage par rapport aux principes sus-indiqués. Nombreuses sont les marques de la violation de l'éthique des affaires. L'affirmation d'une tendance législative favorable à l'éthique des affaires serait donc à mieux mesurer au vu de la pratique de ce droit.

Tel est aussi le cas pour la deuxième tendance synonyme, l'a-t-on déjà souligné, de démocratisation de l'économie et particulièrement traduite par l'introduction en droit tunisien des sociétés communautaires.[14] C'est une tendance qui appelle à être mieux définie surtout que le droit en vigueur retient déjà et depuis quelques années des textes qui favorisent la liberté de l'investissement, le crowdfunding,[15] les startups et les contrats de partenariat public privé. L'interrogation sur la nouvelle tendance serait d'autant plus justifiée qu'ainsi rappelés, ces différents instruments juridiques se rattachent beaucoup plus au système libéral que socialiste. Il va sans dire que la démocratisation de l'économie s'oppose en large mesure à l'idée de la liberté qui gouverne ces différents instruments juridiques. Se poserait alors la question de savoir si le droit des affaires en Tunisie devrait désormais marquer un repli par rapport à ses choix d'antan ?

Ainsi révélés, les intérêts de la présente étude justifient une double réflexion sur les deux tendances proclamées dans la Constitution de la 3e République, dont notamment ce passage vers aussi bien une éthique **(première partie)** qu'une démocratisation **(deuxième partie)** de la vie des affaires en Tunisie.

7. *Ibid.*
8. Henry Capitant, *op. cit.*, p. 385.
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. Sur cet aspect de la question, *voir* Najet Brahmi Zouaoui, Rapport introductif, *in* Najet Brahmi Zouaoui, Le nouveau Droit de l'investissement en Tunisie, Regards croisés sur l'Europe et l'Afrique, CPU 2018, p. 3, n°11. *Voir aussi,* J. Couard, L'investissement socialement responsable dans l'espace euro-méditerranéen, Etude comparée entre l'Europe du Sud et le Maghreb *in* Najet Brahmi Zouaoui, Le nouveau Droit de l'investissement en Tunisie, *op. cit.* p. 31.
13. Sur cet aspect de la question, *voir* Bonne gouvernance au niveau local pour accroitre la transparence et la redevabilité dans la prestation de services : Expériences de Tunisie et d'ailleurs, OCDE 2018.
14. *Infra* n° 26.
15. Sur une étude analytique et critique du Crowdfunding en droit tunisien, *voir* Najet Brahmi Zouaoui, L'application de la loi sur le Crowdfunding est-elle pour demain, ? Leaders du 22 septembre 2020, www.leaders.com.tn.

1

Vers une éthique des affaires en Tunisie

Une meilleure vulgarisation de cette évolution du droit des affaires en Tunisie **(B)** suppose une présentation préalable du contexte international **(A)** de ladite évolution.

A. L'ÉTHIQUE DES AFFAIRES DANS UN CONTEXTE INTERNATIONAL

Au sens juridique, l'éthique s'entend de « l'ensemble des principes et valeurs guidant des comportements sociaux et professionnels, et inspirant des règles déontologiques (Code de bonne conduite, de déontologie ou de bonnes pratiques) ou juridiques (lois dites bioéthiques) »[16]. C'est en d'autres termes un encadrement juridique de la règle morale synonyme d'un droit naturel qui, aussi ancien que l'histoire de l'humanité, continue à véhiculer les sociétés modernes et saisit le droit positif à chaque fois que la moralisation de la règle de droit semble s'imposer.

Ainsi définie, l'émergence de l'éthique comme paramètre associé au droit a particulièrement émergé dans le domaine médical à l'occasion de l'évolution technologique à la fin du 20e siècle. Le corps humain, jusqu'alors sacré, devait répondre de plusieurs interventions qui visent à provoquer artificiellement une grossesse[17] ou à greffer un organe au corps d'un individu après don d'un organe répondant des mêmes fonctions de la part d'un autre. Le droit retient alors désormais le terme bioéthique comme synonyme de l'éthique dans le domaine médical. Le vocabulaire juridique de l'association Henri Capitant, faisant droit de cité au terme éthique, retient la bioéthique pour en faire état.[18]

Depuis, l'éthique a gagné plusieurs domaines du droit. Et l'on croit aujourd'hui trouver dans l'éthique du droit des affaires la principale marque de cette évolution. L'évolution est si marquée en Europe que l'université supposée accueillir l'évolution du droit dans toutes ses composantes met en place aujourd'hui un master droit et éthique des affaires. Par ailleurs, un intérêt particulier est aujourd'hui porté à la thématique « Droit et éthique des affaires ». Une doctrine favorable à l'éthique des affaires s'est progressivement développée.[19] Son domaine est de plus en plus élargi. On en trouve l'écho déjà dans le droit des sociétés commerciales où elle est associée à la bonne gouvernance. Elle commande aujourd'hui la pratique de l'arbitrage aussi bien sur le plan interne qu'international. La moralisation de l'arbitrage est une tendance qui s'affirme. La charte d'éthique est un préalable indispensable à tout projet de réseautage entre les institutions d'arbitrage.[20]

B. L'ÉTHIQUE DES AFFAIRES EN TUNISIE

L'État d'exception devait rétablir de l'ordre aux objectifs malmenés et bafoués de la révolution du 14 janvier 2011 dont notamment la liberté et la dignité. « Les dix ans passées (2011-2021) ont malheureusement révélé un abus regrettable des biens publics, chose qui a contribué à la dégradation de la société tunisienne tous azimut ».[21] Le choix est donc pour restaurer les idéaux bafoués. Le législateur tunisien a alors frappé fort sur les mains des « hors la loi ». Dans son intégralité, la législation économique est marquée par un recours frappant à la règle pénale **(a).** Dans le décret-loi n° 2022/13 portant réconciliation économique, le choix a porté sur la réconciliation sociale aux lieu et place de la condamnation **(b)**.

a) Une tendance affirmée vers la pénalisation

« C'est le décret-loi n° 2022/14 relatif à la lutte contre la spéculation illicite qui incarne la marque de la tendance législative vers la pénalisation. Composé de 28 articles, ce décret-loi retient une définition trop extensive de la spéculation illicite ».[22] Le domaine de l'incrimination est du coup très large. Tout acteur économique, même exerçant le commerce à titre très incident pourrait tomber sous le coup dudit décret-loi.[23] Il risque de lourdes peines pénales. Le chapitre dernier du décret-loi portant peines pénales érige la spéculation illicite au rang d'un crime. Et selon la gravité de l'acte incriminé, la peine varie, entre dix, vingt et trente ans de prison. Et lorsque le spéculateur agit dans le cadre d'une bande ou détient la marchandise en vue de la faire intentionnellement sortir du territoire tunisien, il sera condamné à perpétuité.[24]

Ainsi présenté, le dispositif pénal n'a pas manqué à susciter plusieurs réserves. Le texte serait de l'avis de certains auteurs une véritable menace à l'initiative privée. Nul ne saurait réellement entreprendre une activité économique s'il était menacé de prison ferme, pour un acte ou un autre ! La vie des affaires ne saurait s'accommoder de peines de prison aggravées et fermes. Le droit pénal économique n'était-il pas toujours présenté comme le droit pénal des affaires qui ne doit en aucun cas en freiner le jeu. Il va sans dire que la spéculation illicite est une infraction qui se rattache moins au droit pénal classique qu'économique.

b) Un choix confirmé de la réconciliation économique

Régie par le décret-loi n° 2021/13, « la réconciliation économique vise à substituer à l'action publique et à ses effets dont instruction, jugements et peines, une réparation pécuniaire ou la réalisation de projets nationaux ou régionaux ou locaux selon le besoin ».[25] « Elle entraine, une fois exécutée, la purge de la situation légale du demandeur de la réconciliation de tout doute de corruption ainsi que sa réinsertion dans

16. Gérard Cornu, Vocabulaire Juridique, Association Henri Capitant, 12e édition mise à jour, PUF, Edition 2018.
17. A travers ce que la médecine convient aujourd'hui d'appeler la procréation ou l'insémination artificielle.
18. Gérard Cornu, *op. cit.*, p. 424.
19. J. Théron, L'éthique de l'entreprise, La semaine Juridique Entreprise et affaires, n° 25, 20 juin 2013, p. 1359.
20. J. B. Racine, Droit de l'arbitrage, Thémis droit, PUF, 2016, p. 79, n° 84.
21. Préambule de la nouvelle Constitution du 30 juin 2022.
22. Art. 4 du décret-loi n° 2022/14.
23. Art. 2 du décret-loi n° 2022/14.
24. Art. 17 du décret-loi n° 2022/14.
25. Art. 1 du décret-loi n° 2022/14.

le domaine social et économique sur la base des principes de la transparence et de la loyauté ».[26] Elle concerne les infractions portant sur les deniers publics, les biens de l'État, la corruption, le blanchiment d'argent, la fiscalité, la douane, le change, le marché financier, et les établissements publics.[27]

La réconciliation économique est assurée par la commission nationale de la réconciliation économique qui œuvre sous tutelle de la Présidence de la République. Ses membres sont désignés par un décret présidentiel pour un mandat de six mois susceptibles de prolongation une seule fois.[28] Cela veut dire que la commission doit finir les tâches qui lui reviennent au bout d'une année à partir de la nomination de ses membres. Se pose alors la question de savoir si les délais d'action de la commission sont suffisants pour permettre une meilleure réalisation de ses tâches. La question serait d'autant plus justifiée que pour mieux assurer ses tâches dont notamment l'évaluation et la détermination des montants que le demandeur de la réconciliation doit à l'État, la commission de la réconciliation économique peut « le cas échéant recourir à des experts ».[29] Il va sans dire que la tâche de ces derniers n'est pas aisée. La pratique a toujours révélé une lenteur au niveau de la reddition des rapports d'expertise. Le demandeur de la réconciliation peut en tout cas contester devant la commission de la réconciliation économique les résultats de l'expertise.[30] Et lorsque toutes les démarches de la réconciliation sont assurées, il sera à nouveau réinséré dans la société et est appelé à contribuer du développement économique de la Tunisie. De quel modèle économique aurait-il à répondre ? La législation économique décrétée pendant l'État d'exception serait source d'hésitation ».[31]

2

Vers une démocratie économique

Le choix proclamé dans la Constitution tunisienne du 16 août 2022 en faveur de la démocratie économique s'inscrit dans une tendance législative nettement affirmée depuis le la proclamation en Tunisie de l'État d'exception (B). C'est une politique qui semble s'écarter des choix classiques du législateur tunisien qui se rattachent nettement au modèle économique libéral (A).

A. LE MODÈLE ÉCONOMIQUE TUNISIEN DANS SON CONTEXTE HISTORIQUE

Adhérent depuis longtemps au modèle économique libéral, la Tunisie est de plus en plus confirmée dans ce choix. Sa stratégie intensément affichée en faveur de la promotion des investissements étrangers en est le signe le plus révélateur.

Adhérent depuis longtemps au modèle économique libéral, la Tunisie est de plus en plus confirmée dans ce choix. Sa stratégie intensément affichée en faveur de la promotion des investissements étrangers en est le signe le plus révélateur. La suppression au mois d'avril 2022 des autorisations administratives pour exercer l'activité économique répond parfaitement du choix économique libéral du législateur tunisien.

B. LE MODÈLE ÉCONOMIQUE TUNISIEN APRÈS LE 25 JUILLET 2021 : UNE DÉMOCRATIE ÉCONOMIQUE PROCLAMÉE ET CONFIRMÉE

Affiché depuis le 25 juillet 2021 dans le discours du Président de la République portant proclamation de l'État d'exception, la nécessaire lutte contre l'injustice sociale a été érigée au rang d'une valeur suprême contenue dans le préambule de la nouvelle Constitution tunisienne. Une de ses principales consécrations serait contenue dans le décret-loi n° 2022/15 du 30 mars 2022 relatif aux sociétés communautaires.

a) La démocratie économique dans la Constitution du 25 juillet 2022 [32]

Le choix du législateur tunisien en faveur d'une démocratisation de l'économie serait une réaction à l'encontre d'une exploitation inégalitaire et injuste des richesses du pays.

Le choix du législateur tunisien en faveur d'une démocratisation de l'économie serait une réaction à l'encontre d'une exploitation inégalitaire et injuste des richesses du pays. Et c'est justement pour lutter contre cette réalité désormais insupportable que la nouvelle Constitution aussi bien dans

26. Art. 5 du décret-loi n° 2022/14.
27. Art. 6 du décret-loi n° 2022/14.
28. Art. 8 du décret-loi n° 2022/14.
29. Art. 24 du décret-loi n° 2022/14.
30. Art. 24 du décret-loi n° 2022/14.
31. *Voir* Najet Brahmi Zouaoui, Législation économique en Tunisie et État d'exception : Le bilan 2021-2022, Leaders du 16 octobre 2022, www.leaders.com.tn.

32. C'est la 3e Constitution de la Tunisie indépendante. Elle vient se succéder aux deux Constitutions de 1959 et de 2014 et est réputée être la Constitution de la 3e République. Les deux premières sont respectivement appelées la Constitution de la première République (1959) et la Constitution de la 2e République (2014). Elle a été adoptée le 25 juillet 2022 à la suite d'un référendum et promulguée par le décret présidentiel n° 2022/691 du 17 août 2022 portant promulgation de la Constitution de la République tunisienne.

son préambule que dans son texte a confirmé une nécessaire restauration de la justice sociale hélas rompue. La démocratisation de l'économie serait le moyen pour la réalisation d'une telle restauration.

Le préambule de la nouvelle Constitution (25 juillet 2022)

Nettement marqué par une volonté de lutter contre l'injustice sociale, ce préambule dispose que :

« Nous le peuple tunisien, détenteur de la souveraineté, avons réalisé, à compter du 17 décembre 2010, une ascension sans précédent dans l'histoire, nous nous sommes révoltés contre l'injustice, la tyrannie, l'affamement et les abus dans tous les aspects de la vie.

Nous le peuple tunisien, qui avons pâti et enduré pendant plus d'une décennie suite à cette révolution bénie, n'avons cessé de soulever nos revendications légitimes de travail, de liberté et de dignité nationale, mais en retour nous n'avons reçu que de fallacieux slogans et promesses, la corruption n'a fait que s'aggraver, la spoliation de nos richesses naturelles et de nos deniers publics n'a fait que s'accentuer en l'absence de toute redevabilité.

Profondément animés par la responsabilité historique, nous étions, alors, dans l'obligation de redresser le cours de la révolution, voire même le cours de l'histoire, mission accomplie le 25 juillet 2021, date de la commémoration de la proclamation de la République ».[33]

La démocratie aussi bien politique qu'économique devrait restaurer cette déplorable et regrettable injustice. Et le préambule de proclamer dans ce sens que :

« Nous, tout en approuvant la présente nouvelle constitution, **croyons que la vraie démocratie ne réussira que si la démocratie politique est assortie d'une démocratie économique et sociale,** et ce en donnant au citoyen le droit de choisir librement ses représentants, d'instaurer la redevabilité de ces derniers, et lui donnant **le droit à une répartition juste des richesses nationales** ».

Ces valeurs proclamées sont pleinement consacrées par le dispositif même de la nouvelle Constitution.

Le dispositif de la nouvelle Constitution

Une série de dispositions sont à signaler en faveur de la démocratie. Aux termes de l'article 16 de la nouvelle Constitution :

« Les richesses de la patrie appartiennent au peuple tunisien. L'État doit œuvrer à la répartition de leurs revenus sur la base de la justice et de l'équité entre les citoyens dans toutes les régions de la République.

Les conventions et les contrats d'investissement relatifs aux richesses nationales sont soumis à l'Assemblée des représentants du peuple et au conseil national des régions et des districts pour approbation ».

Et aux termes de l'article 17 de la Constitution :

« L'État garantit la coexistence entre le secteur public et privé et œuvre à assurer la complémentarité entre eux sur la base de la justice sociale ».

Et l'article 19 de la Constitution d'ajouter que « L'administration publique et tous les services de l'État sont à la disposition du citoyen sur la base de de l'impartialité et de l'égalité. Toute discrimination entre les citoyens en raison d'une quelconque appartenance est une infraction punie par la loi ».

Ainsi proclamée, la nécessaire démocratisation de l'économie a déjà vu ses prémices émerger dans certains décrets lois antérieurs à la Constitution du 25 juillet 2022.

b) La démocratie économique dans les textes antérieurs à la Constitution du 25 juillet 2022

Il en va particulièrement du décret-loi n° 2022/15 portant sociétés communautaires qui, de l'avis de certains commentateurs, renvoie au régime des corporations tel que connu dans la Tunisie de la fin des années soixante du siècle dernier. On y retrouve expressément la marque des valeurs proclamés par la Constitution tunisienne dont particulièrement les remparts de, la démocratie économique synonymes de justice sociale et répartition égale des richesses entre les citoyens.

Au sens de l'article 1er du décret-loi n° 2022/15 portant sociétés communautaires, il est prévu que « ce décret-loi vise à déterminer le régime juridique des sociétés communautaires ». « Est réputée société communautaire au sens de ce décret-loi, toute personne morale créée par un ensemble des habitants d'une région bien déterminée et qui vise à réaliser **la justice sociale** et **la répartition égale des richesses** à travers un **exercice collectif** d'une activité économique dans la région où ils résident ».[34] « Les sociétés communautaires visent à réaliser **le développement régional** notamment dans les délégations municipales conformément à **la volonté collective des habitants** et compte tenu des besoins de leurs régions ainsi que de leur spécificité ».[35] « Elles procèdent notamment au :

1. lancement des projets économiques de nature à répondre des besoins des habitants et aux spécificités de la région ;
2. la gestion et l'administration du ou des projets dans la région concernée ;
3. la gestion et l'administration **des terrains socialistes** dans la limite des textes en vigueur ;
4. la participation au mouvement de développement durable et à la bonne gouvernance conformément aux législations en vigueur ».[36]

Ainsi définies, les sociétés communautaires sont gouvernées par un ensemble de principes dont notamment :

- le principe de la participation des citoyens au développement des régions où ils résident ;
- la priorité de l'Homme ainsi que de la valeur du travail collectif sur le gain individuel ;
- la réalisation des intérêts privés dans le cadre de l'intérêt collectif ;
- aucun participant ne peut avoir beaucoup plus qu'une part ;
- chaque participant ne peut avoir qu'une seule voix et ce quelle que soit la part de sa participation au capital

33. Paragraphes 1, 2 et 3 du Préambule.

34. Art. 2 du décret-loi n° 2022/15.
35. Art. 3 du décret-loi n 2022/15.
36. Art. 5 du décret-loi n 2022/15.

de la société au moment où les décisions doivent être prises ;
- l'équité entre les participants au niveau de la participation au capital social ;
- l'adhésion libre et le retrait volontaire et la lutte contre toute forme d'exclusion sociale ;
- une propriété collective insusceptible de division ;
- la répartition d'un pourcentage des soldes sur les participants. [37]

Critiquable à plus d'un égard, la formulation de cet article permet de rattacher les sociétés communautaires à un modèle économique socialiste beaucoup plus libéral. Pour s'en convaincre, il suffirait de souligner la prédominance d'une part de la volonté collective sur l'initiative privée et de l'intérêt général de la collectivité sur celui des particuliers de l'autre ! La question qui se pose est alors de savoir si la Tunisie chemine vers de nouveaux choix économiques et si elle est en train de marquer un repli par rapport au modèle 20e siècle ? Ce ne serait semble-t-il pas le cas. Il suffirait pour s'en convaincre de rappeler le texte du décret présidentiel n° 2022/317 du portant suppression des autorisations administratives pour l'exercice des activités économiques[38] ainsi que la quête de la Tunisie d'une meilleure place en tant que partenaire et acteur économique prometteur et fiable. La tenue très récente à Tunis de la TICADE 2022 en est le signe le plus significatif. Comment donc concilier entre une ouverture économique proclamée et décidée d'une part et un conservatisme souligné au niveau de la législation relative aux sociétés communautaires de l'autre ? Une réponse pourrait être trouvée dans la logique de l'État d'exception qui, tout en étant exceptionnel, n'en est un pas moins sans chercher à assurer le retour dans les meilleurs délais à l'État ordinaire. Le caractère exceptionnel justifierait alors le choix des sociétés communautaires qui, dans la logique du législateur de l'État d'exception, seraient de nature à restaurer une égalité rompue entre les Tunisiens dans la dernière décennie. C'est l'idée de la répartition égale des richesses qui devrait alors être maîtresse ! Mais le fait que l'État d'exception n'est qu'exceptionnel et qu'il n'y a aucune autre raison d'être que d'assurer le retour à l'État normal, explique largement la confirmation par la Tunisie de son adhésion au modèle économique libéral. Cette lecture serait d'autant plus justifiée que la politique du compromis, notamment traduite par l'idée de la complémentarité entre le secteur public et le secteur privé, est expressément retenue dans la nouvelle Constitution en Tunisie. L'article 17 de la nouvelle Constitution dispose dans ce sens que : **« L'État garantit la cohabitation entre les deux secteurs public et privé et garantit la complémentarité entre eux sur la base de la justice sociale ».** La Tunisie serait alors à l'heure des compromis mais aussi des défis ! Aurait-elle à l'emporter ? Seul le temps nous répond ! Nous devrions cependant lire dans l'histoire de la Tunisie, les perspectives d'une réponse favorable au futur du compromis. La Tunisie a toujours été une terre de compromis.

37. Art. 6 du décret-loi n° 2022/15.

38. Décret présidentiel n° 2022/317 du 8 avril 2022 modifiant et complétant le décret gouvernemental n° 2018/417 du 11 mai 2018 relatif à la publication de la liste exclusive des activités économiques soumises à autorisation et de la liste des autorisations administratives pour la réalisation de projets, JORT n°65 du 18 avril 2022.

يبدو أن الدستور التونسي الجديد الصادر في 15 يوليو 2022 يمثل منطق التراجع عن ليبرالية الماضي. كما ترتبط المراسيم التشريعية الصادرة أثناء حالة الطوارئ بهذا المنطق أيضا. إلا أن جذب المستثمرين يشكل مصدر قلق كبير للسلطات التونسية. وقد عدلت النصوص الدستورية لتعزز الاستثناءات الممنوحة لبعض النشاطات الاقتصادية من شرط الحصول على إذن إداري مسبق ومن هنا برز السؤال "إلى أين يتجه قانون الأعمال في تونس اليوم؟".

تتطلب الإجابة عن هذا السؤال إيجاد تعريف أولي لـ"قانون الأعمال" خاصة مع وجود ميول للخلط بين قانون الأعمال وقانون الاقتصاد.

يهدف عادة قانون الأعمال إلى تحقيق هدفين: تعزيز أخلاقيات العمل من جهة وإضفاء الطابع الديمقراطي على الاقتصاد من جهة أخرى. وقد أعلن المشرع التونسي عن هذين الهدفين بوضوح في ديباجة الدستور الجديد الصادر في 25 يوليو 2022.

BIOGRAPHIE

DR NAJET BRAHMI est spécialiste du droit des sociétés et de l'arbitrage et a publié de nombreux articles et ouvrages. Elle est co-directrice scientifique d'un recueil d'essais intitulé « La procédure civile dans les pays de l'Union pour la Méditerranée : approche comparative et internationale » (Bruylant 2020).

Dr Brahmi est l'auteure d'articles publiés dans la Revue Tunisienne de Droit (CPU), Tunisian Legal News (Faculté de Droit et des Sciences Politiques de Tunis), la Revue de Droit des Affaires Internationales (Sweet & Maxwell), The MENA Business Law Review (LexisNexis), et la Revue d'Arbitrage et de Médiation (Montréal).

Dr Brahmi est arbitre international accréditée auprès de la Chambre Arbitrale Internationale de Paris et du Centre Régional d'Arbitrage Commercial International du Caire. Elle est également membre élue du Conseil scientifique de la Faculté de Droit et des Sciences Politiques de Tunis pour le mandat 2020-2023 et Directrice de l'Unité de Recherche en droit comparé de l'Université Tunis Elmanar.

Dr Brahmi est titulaire de la Chaire ALECSO pour l'arbitrage commercial international.

سلطان العبدالله ومشاركوه
Sultan Al-Abdulla & Partners

QATAR COUNSEL
WHEN IT MATTERS.

@sapqatarlaw

www.qatarlaw.com

Pinsent Masons
بنسنت ماسونز

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

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

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

Pamela McDonald
Partner, Head of Doha Office
+974 442 69222
+974 5030 3480
pamela.mcdonald@pinsentmasons.com

www.pinsentmasons.com

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

391967

Legal Conferences

UAE

20-22 February 2023 Abu Dhabi

11th ICC MENA Conference on International Arbitration

ICC's annual MENA conference is taking place in person on 21-22 February 2023.

An ICC Institute Advanced Level Training on Complex Arbitrations will take place on 20 February 2023.

Who should attend?

- Practising lawyers
- Arbitrators, mediators
- Corporate counsel
- Academics.
- Professionals interested in and/or involved in international arbitration in the Middle East.

For more information, visit: https://2go.iccwbo.org/icc-mena-conference-on-international-arbitration.html

17-18 January 2023 Dubai

World Litigation Forum

World Litigation Forum was formed in 2016 to promote the legal sector and to discuss the issues and challenges faced by legal peers around the globe. To find solutions and enable legal peers to network and discuss, different editions of legal conferences and events are organized in the USA, Europe, Asia and UAE.

The 13th edition of World Litigation Forum will take place on 17-18 January 2023 at Pullman Dubai Creek City Centre. This edition aims to enhance the effectiveness of litigation laws by organizing interaction between legal stakeholders in the public and private sectors. More than 300 legal professionals from law firms and organizations across the world will gather in Dubai to discuss the latest in the legal industry and to showcase their products, services, and solutions.

For more information and to register, visit: https://worldlitigationforum.org/dubai/.

2 March 2023 Dubai

LexisNexis® Women in Law Awards 2023

WHAT ARE THE WOMEN IN LAW AWARDS?

On 2 March 2023, LexisNexis® Middle East is hosting the 2nd edition of the LexisNexis® Women in Law Awards 2023, celebrating women's achievements and innovations in legal practice. These awards are also here to recognise those organisations that have put efforts into promoting women and equality of opportunity within their teams.

WHY THE WOMEN IN LAW AWARDS?

At LexisNexis®, we have decided to celebrate the inspiring women we have been able to meet and work with over years in the legal field by showcasing their excellence and achievements. It is also an opportunity to highlight how gender equality within a team can enable the success of a law firm or a company by honouring the most innovative gender equality initiatives.

The 2022 Women in Law award winners

AWARD CATEGORIES

Law Firm and Company Categories

- Legal Department of the Year
- Law Firm of the Year (Regional Firm)
- Law Firm of the Year (International Firm)
- Equality Initiative of the Year

Individual Categories

- General Counsel of the Year
- Legal Counsel of the Year
- Arbitration Lawyer of the Year
- Banking, Finance & Restructuring Lawyer of the Year
- Construction Lawyer of the Year
- Corporate Lawyer of the Year
- Employment Lawyer of the Year
- Litigator of the Year
- Rising Star – Private Practice Lawyer of the Year
- Private Practice Lawyer of the Year
- Law Firm Leader of the Year
- Legal Services Innovator of the Year
- Professional Achievement Award

HOW TO PARTICIPATE

You may nominate yourself or a colleague in the individual categories listed

Gateley's Dubai legal team won the award for Equality Initiative of the Year at the 2022 Women in Law Awards

above or your organisation in the law firm and company categories. A person may not be nominated in more than three categories.

Visit https://www.lexisnexis-womenin-law.com/categories/ to view the eligibility criteria for each category and to download an entry form.

DEADLINE FOR ENTRIES IS 11:59 PM ON WEDNESDAY, 11 JANUARY 2023 Gulf Standard Time.

BOOK YOUR SEAT!

Don't miss out on this unique event. To reserve your seat or table, visit: https://www.lexis.ae/events/.

1 March 2023 Dubai

Chambers Middle East Awards 2023

The Chambers Middle East Awards recognise a law firm's pre-eminence in key jurisdictions in the region. They also reflect achievements over the past 12 months including outstanding work, impressive strategic growth, and excellence in client service. They honour the work of national and international law firms across the region based on the research for the recent edition of Chambers Global Guide.

For more information and to reserve a table, visit: https://chambers.com/events/chambers-middle-east-awards-2023.

QATAR

8–9 February 2023 Doha

Conference on International Commercial Legislation: Trends and Perspectives

Qatar University College of Law is organizing an international conference on "International Commercial Legislation: Trends and Perspectives" in partnership with the Ministry of Commerce and Industry and in collaboration with the United Nations Commission on International Trade Law (UNCITRAL). The conference will be held on 8-9 February 2023 in Doha, Qatar. On that occasion, the College of Law will be celebrating with the United Nations the 41th anniversary of the adoption of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The conference will cover the following main themes:

• The Role of UNCITRAL in the Harmonization of National Laws.

• The Impact of Model Laws and International Principles and Guidelines in Drafting National Laws, in particular:

- The Impact of the UNCITRAL Model Law on International Commercial Arbitration.
- The Impact of UNCITRAL texts on electronic commerce.
- New Trends in Small and Medium Enterprises.
- The Impact of the CISG on private transactions.
- The broader adoption and use of the CISG in Arab countries.
- Other related topics.

For more information and to register, visit: https://www.qu.edu.qa/law/news-and-events.

KUWAIT

12–13 February 2022 Kuwait City

UIA / International Association of Lawyers - Seminar on the Latest Developments in Sports Law the Gulf Region

Registration and information on the programme for this seminar will be available soon.

For more information, visit: https://www.uianet.org/en/events/sports-law-latest-developments-gulf-region?backlist#program.

ALGERIA

27–28 January 2022 Algiers

UIA / International Association of Lawyers – Seminar on the Role of the Lawyer in Supporting Investment and Dispute Resolution

Registration and information on the programme for this seminar will be available soon.

For more information, visit: https://www.uianet.org/en/events/role-lawyer-supporting-investment-and-dispute-resolution?backlist.

LexisNexis on the Ground

LexisNexis® Middle East Practical Guidance Awards

LexisNexis® Middle East hosted the Practical Guidance Author Awards Ceremony on 13 October 2022. The event recognised and celebrated those who have contributed significantly to our books, magazines, journals, and the Practical Guidance offering available on our online legal database, **Lexis® Middle East**.

Awards were given on a company and individual level. Congratulations to all the winners!

- Egypt Practical Guidance Award - **Youssry Saleh Law Firm**
- Lebanon Practical Guidance Award - **Tohme Law Firm**
- Bahrain Practical Guidance Award - **Raees + Co**
- Kuwait Practical Guidance Award - **Al-Shaitan Legal Group**
- Oman Practical Guidance Award - **Trowers & Hamlins**
- Qatar Practical Guidance Award - **K&L Gates**
- Saudi Arabia Practical Guidance Award - **AlMaghthawi & Partners**
- UAE Practical Guidance Award - **Gateley LLP**
- Regional Law Firm Practical Guidance Award - **BSA Ahmad Bin Hezeem & Associates LLP**
- International Law Firm Practical Guidance Award - **Pinsent Masons**

LexisNexis® Middle East Practical Guidance Award

- **Charles Russell Speechlys**
- Professor Khawar Qureshi KC & Catriona Nicol, **McNair International**, Aurore Deeb, **D&C Legal Services**
- Eamon Holley, **DLA Piper**
- Nezar Raees, **Raees + Co**
- Sam Habbas, **ASAR - Al Ruwayeh & Partners**
- Ahmed Al Barwani, **Al Tamimi & Company**
- Ali Naveed Arshad, **Mohammed Al Ruqaishi Law Firm**
- Maria Mariam Rabeaa Petrou, **Said Al-Shahry & Partners (SASLO)**
- Zain Satardien, **Hourani & Partners**
- Lamisse Bajunaid, **Dr. Qaisar H. Metawea Law Firm** in alliance with **PwC Legal Middle East**
- Karim Wali, **K&A**
- Christopher Williams, **Bracewell LLP**
- Maria Palmou, **Galadari Advocates & Legal Consultants**
- Sara Khoja, **Clyde & Co**
- William L Nash III, **Morgan, Lewis & Bockius LLP**
- Charlotte Jackson, **Charles Russell Speechlys**

Developments in International Arbitration with Gary Born

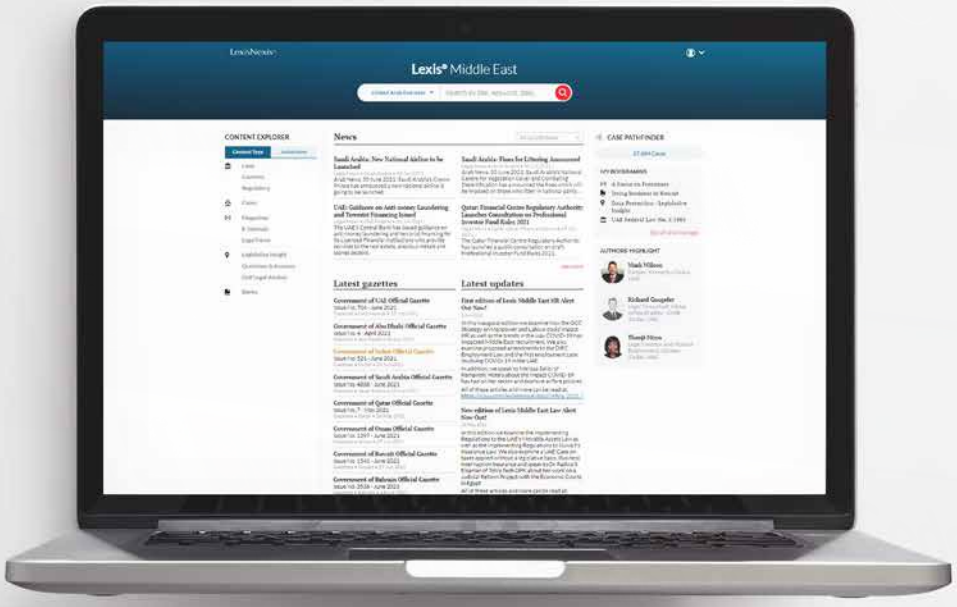
In partnership with the **Saudi Center for Commercial Arbitration (SCCA), SOL International Ltd,** and **Burhan Almarifa**, LexisNexis® Middle East was pleased to host the inaugural Developments in International Arbitration Seminar in Riyadh, Saudi Arabia, on 27 November 2022.

Special guest speaker **Gary Born**, one of the world's pre-eminent experts on international commercial arbitration and international litigation, provided his valuable knowledge and insight on the recent changes in international arbitration and the latest developments in arbitration in Saudi Arabia.

Special thanks to our incredible speakers and moderators:

- **Gary Born**, Chair of the International Arbitration Practice Group at WILMER CUTLER PICKERING HALE AND DORR LLP
- **Walid Abanumay**, Chairman of the SCCA
- **HRH Princess Hala Bint Khaled Bin Sultan Al-Saud**, Chair of Burhan Almarifa
- **Dr Hamed Merah**, CEO of the Saudi Center for Commercial Arbitration (SCCA)
- **Christian P. Alberti**, Chief of ADR and General Counsel of the Saudi Center for Commercial Arbitration (SCCA)
- **Sarah Malik**, CEO of SOL International Ltd.

A big thank you goes to all participants, and specifically, the SCCA, SOL International Ltd, and Burhan Almarifa, for making this event a success!



Unleash your full potential with Lexis® Middle East.

The Middle East is a vibrant and rewarding business hub that legal practitioners can now fully tackle with Lexis® Middle East's straightforward access to decisive online legal content in English.

18,500+ MENA Case Summaries

9,950+ GCC Consolidated Laws (in Arabic & English)

6,200+ Practical Guidance Documents

800+ Contributing Authors & Firms

135 GCC Regulators

Essential information you can't get anywhere else
On top of fully amended and consolidated laws translated from Arabic to English by our strategic partner Sader Legal Publishing, and regulatory material for more than 100 freezones and agencies, Lexis® Middle East is the only platform that includes translations of all GCC gazette indexes and more than 18,500 case summaries.

Accomplish tasks faster with know-how from leading local practitioners
The Lexis® Middle East platform encompasses a complete up-to-date set of practical guidance tools and documents: *Questions & Answers*, *Getting the Deal Through Country Guides*, *Precedents*, *Checklists*, *Toolkits*, and more than 1,700 GCC-specific Practice Notes from *Gulf Legal Advisor (GLA)*.
GLA makes your life easier by enhancing your research and getting you up to speed quickly on new or changing topics in your practice area.

Through practical guidance provided by expert lawyers, GLA gives you the *what*, *how*, and *why* of GCC laws and allows you to confidently advise, negotiate and draft more effective documents, more efficiently.

Work at maximum efficiency with cutting-edge features
The new powerful search engine comes with numerous innovative features such as *Fast track*, *Drilldown*, *Case Pathfinder*, and dynamic tables of contents that have been designed for quick and easy access to the information that you need.

Stay on top of the latest developments
Receive exclusive online access to seven law journals and magazines such as The Oath, *The MENA Business Law*, *The International Journal of Arbitration* and more; regional office law firm newsletters from Al Tamimi & Co., Clyde & Co, Hadef & Partners... and daily news updates drawn from over 300 local, regional and international sources.
Receive alerts regarding any new content or content updates on the platform via our fully customizable alert module.

Support you can count on
With our GCC-wide team on the ground supported by our London and Paris offices, our team is on hand to assist you face-to-face or remotely to ensure that you make the best out of our solutions.

Book a demo of Lexis® Middle East and start your free trial today: Lexis.ae/demo

LexisNexis®

AL SULAITI LAW FIRM
السليطي للمحاماة والإستشارات القانونية

DELIVERING RESULTS THAT EXCEED EXPECTATIONS

A Qatari Law Firm with a Regional Reach and a Global Outlook

Al Sulaiti Law Firm provides a full range of cutting-edge legal services to both local and international clients. An experienced team of diverse, multilingual professionals bridging cultural and linguistic barriers by offering legal services in Arabic, French, English and Italian.

lLitigation & Dispute Resolutionl Corporatel Real Estate & Constructionl Taxl
Banking & Financel Energyl IT & Telecommunicationsl Intellectual Propertyl

EGYPT | TÜRKIYE | QATAR | KUWAIT | ITALY

www.alsulaitilawfirm.com