

# LEXIS MIDDLE EAST **LAW ALERT**

تشريعات الشرق الأوسط

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## **FEATURE NOTHING TO HIDE**

The Qatar Anti-concealment law

## **PROFILE WORKFORCE SOLUTIONS**

Elizabeth Dunne Chandler of NES Fircroft

## **CONTRACT WATCH**

Asymmetric jurisdiction agreements

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



# WHAT'S DIFFERENT WITH DATA

Amendments to the Saudi Data Protection regime

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# BEING HEARD

While in many other jurisdictions public consultations are a standard part of the legislative process, in this region they have tended to be less common. We do see them in financial freezones such as the DIFC and QFC when changes to regulations and legislation are proposed. However, up until recently in many of the jurisdictions in this region draft laws were rarely published in public before the final law was officially issued. That said we understand consultations do go on across the region when legislation is being developed and feedback is sought and listened to from those with expertise in the relevant area.

This is an area where we have seen change in Saudi Arabia where public consultations are now becoming more common. There are copies of draft laws are being publicly published on the internet for consultation and we are also seeing public consultations by regulators including the Zakat, Tax and Customs Authority (ZATCA) on regulatory changes they plan to make.

Many lawyers find it useful to read these consultation documents, draft laws, and regulations in order to be forewarned of what might be coming down the track. However, in jurisdictions which publish statistics on those who have replied to particular public consultations, I have often been surprised by how few entities have decided to submit responses to the authorities. Perhaps there is some doubt that authorities will listen to their concerns when new laws are proposed. In this issue, we have included an example of a law change that clearly showed legislators were listening, and has led to changes in the law on data protection in Saudi. In this case, following concerns raised after the law was actually issued and just before it was due to come into force the legislators decided to issue amendments to the law. It shows how worthwhile it is expressing opinions on changes both during consultations and after.

Claire Melvin - Editor

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# WHAT'S DIFFERENT WITH DATA

Nick O'Connell, Partner, Digital & Data, Al Tamimi & Co explains why amendments to Saudi Arabia's personal data regime were needed and what might be their impact.

**"S**audi Arabia's Personal Data Protection Law (Saudi Arabia Cabinet Decision No. 98/1443) was originally published in September 2021 and expected to come into force six months later in March 2022," states Nick O'Connell. "However, the night before it was due to come into force, the government issued a notice advising that the full enforcement of the law would be postponed until March 2023."

"At the same time, the draft Regulations, which had been published for public consultation only shortly before were withdrawn. No further context was given," O'Connell continues.

"There was some expectation that amendments were being prepared, and a revised version would become available for public consultation later. That happened at the end of 2022."

"However, following the public consultation on the draft amendments, there was silence until late March 2023, when it was announced that amendments to



**Nick O'Connell**  
Partner, Al Tamimi  
& Co

the law had been approved by the Council of Ministers," O'Connell explains.

"Shortly after that, the amendments were published, and became available in late March / early April 2023."

## WHY CHANGE?

"There does not appear to have been any specific 'official' reason for why these amendments were needed, although it is fair to say that the law, as it was originally published had created some concerns, particularly among large multinationals with an interest in the Saudi market," states O'Connell.

"There were a number of concerns, but the two main ones were the absence of a 'legitimate interest' basis for personal data processing (and over-reliance on data subject consent), and the apparently strict and impractical approach which was to be taken to data transfers (which seemed to impose heavy data localisation requirements, and limited scope for transfers)."

"Whether all these concerns were valid is difficult to say, but the fact the authorities have decided to



© Getty Images/stockphoto

enhance the law instead of simply allowing it to come into force as originally drafted is commendable.”

### COMING INTO FORCE

“The amended Personal Data Protection Law will now come into force 720 days after the law was originally published, which means on 14 September 2023,” states O’Connell.

“In addition, the 12-month grace period, which was first contemplated when the Personal Data Protection Law was originally published, has not been changed and will still apply.”

“The grace period means that the law will not be enforced until 12 months after the law comes into force which is mid-September 2024,” O’Connell explains.

“This essentially gives those subject to the law a year within which to put their personal data processing operations in order, and ensure they are complying with its requirements.”

“Currently, as the associated Regulations have not yet been issued, it is difficult to know exactly what steps will need to be taken to ensure compliance,” O’Connell continues.

### RELEVANT LEGISLATION

#### Article 5(1) of Saudi Arabia Cabinet Decision No. 98/1443

Notwithstanding the cases provided for in the Law, Personal Data may not be processed or the purpose of its Processing changed without the consent of its owner. The Regulations shall set out the conditions for such consent, the cases where the consent should be express and the terms and conditions for obtaining the consent from the legal guardian if the Personal Data Owner is incapacitated or lacks capacity.

(Source: Lexis Middle East Law)

“While the law contains some level of detail, much of the required detail will be spelt out in the Regulations.”

“Exactly when the Regulations will be issued is still unclear, but we would expect them to be finalised on or before 14 September 2023.”

“Ideally, and most likely, the relevant authority will make the draft Regulations available for public consultation. It will be important to ‘watch this space’ when this happens, as so much still needs to be fleshed-out in these Regulations.”



## RELEVANT NEWS

### **Saudi Arabia: New Amendments have been introduced to the Personal Data Protection Law**

The Personal Data Protection Law (Saudi Arabia Cabinet Decision No. 98/1443) was recently amended pursuant to Saudi Arabia Cabinet Decision No. 604/1444 On the Approval of the Amendments to the Personal Data Protection Law. These amendments were preceded by a public consultation launched by the Saudi Data and Artificial Intelligence Authority (SDAIA) in late 2022.

## MAIN CHANGES

"The amended Personal Data Protection Law contains a number of changes," states O'Connell.

"Many of these changes have involved pushing detail to the Regulations. Despite this there are now some significant changes in the law."

"For example, if certain criteria are met, personal data can now be transferred from Saudi Arabia to a foreign country which offers an appropriate level of protection without prior regulatory approval," O'Connell adds.

"However, there still seem to be greater restrictions on sensitive personal data, and unless the Regulations reflect typical mechanisms for data transfers (such as BCRs, SCCs, and adequacy decisions), data transfer may still remain a concern."

"Another change is that, with some exceptions, legitimate interests can now be a primary basis for processing personal data (separate to consent), subject to data subject rights and interests. This is a significant enhancement to the law, as was originally drafted."

"In addition, data controllers will now need to appoint data protection officers where required by the Regulations."

"Previously, there did not seem to be any threshold for the requirement to appoint a DPO," O'Connell continues.

"Entities outside Saudi Arabia who process personal data of individuals in Saudi Arabia also no longer need to appoint a representative in Saudi Arabia, although compliance implications do still exist for these entities. This requirement was suspended under the old law and has now been removed."

"However, whether the Regulations will introduce a similar requirement remains to be seen."

"The Regulations will also outline the requirements for notifying the regulator and data subjects in case of data breaches," O'Connell states.

"Previously, there did not seem to be any threshold for data breach notification obligations," O'Connell continues.

"The establishment of a 'National Register' of data controllers is also being contemplated, but there is no longer a specific requirement for controllers to register their processing in an electronic portal."

"At a practical level, this may not result in any material difference."

"The amendments to the Personal Data Protection Law have also addressed several other areas, including clarifying the regulator's powers and functions, updating the provisions on data processors and

privacy policies, modifying penalties for breaches, and making it easier for controllers to appoint processors," O'Connell continues.

"The amendments have also made the language clearer and addressed a number of ambiguities. However, there are still a number of outstanding issues, and whether these will all be addressed via the Regulations remains to be seen."

"At present the main areas of concern involve the data transfer provisions," O'Connell emphasises.

"The amendments have put a lot of pressure on the Regulations on this point. If they do not suitably address data transfers, by including the types of accommodations the market would expect (based on approaches taken internationally), then this could significantly undermine the law."

"The responsible authority does have a good understanding of what is required in this regard, but the law-making process could result in others, less familiar with personal data protection as a concept, feeding into the process and inadvertently undermining the effectiveness of provisions aimed at facilitating cross-border data flows."

"In addition, although the amendments themselves are clear, there remain some aspects of the law itself that could have benefitted from amendment, such as the broad definition of data subjects (which includes deceased persons - not at all typical), and a prohibition on duplicating government documents (which seems unintentionally broad)."

## NEXT STEPS

"At present some businesses are taking a 'wait and see' approach, and plan to take concrete steps once further detail is available in the Regulations," states O'Connell.

"While others are currently reviewing their data processing operations, and associated documentation, to try to make it as compliant as possible, based on the information now available in the law itself, on the basis that they will then only need to 'fine tune' once the Regulations are published."

"Either of these options is legitimate, and their suitability can depend on aspects like risk appetite, level of maturity in terms of existing data protection compliance, budget, and business plans," O'Connell states.

"For example, we have a client that is about to start a major IT project, involving cloud services outside Saudi Arabia, and because of this project's status, they believe it is vital to consider data protection compliance considerations now, even though they may need to duplicate effort once the Regulations have issued," O'Connell continues.

"However, one aspect that can be addressed now is awareness training, as training based on the law as it now stands may be adequate for many roles in an organisation, while other roles will also benefit from 'deeper' training once the Regulations are published," concludes O'Connell.

# SCCA Arbitration

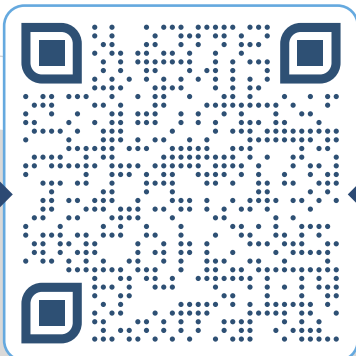
# Rules 2023

# is now in force!



- Introduction of the SCCA Court
- Promotion of Use of Technology
- Expansion of the Arbitral Tribunal's Discretionary Powers
- Coverage of Various Emerging Practices

**SCCA Arbitration  
Rules 2023**



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# LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE

## UAE

### CONTRACTS MUST MATCH



The Undersecretary for Labour Affairs at the UAE's Ministry of Human Resources and Emiratization (MOHRE) has emphasised what should be included in agreement between employers and employees. The Ministry has issued a Ministerial Decision outlining the requirements for licenses, templates, job offers, and contracts. According to this decision, employers and employees are obliged to use the approved templates provided on the Ministry's website. The Ministry has allowed for the possibility of including different conditions in the employment contract compared to those specified in the initial job offer, but only in two cases. The first is when the employment contract offers additional benefits to the worker beyond those that were initially included in the job offer. The second case is when appendices are added to the contract, as long as they do not contradict the provisions of the Labour Law and its executive regulations.

### VETERINARY AMENDMENTS



The Federal National Council in the UAE has recently approved amendments to Federal Law No. 10/2002 on veterinary medicine. The changes include updates to the definitions of licenses for veterinary facilities and practitioners, as well as registration records for veterinarians and auxiliary veterinary professions.

These changes aim to make it easier for veterinary practitioners to obtain licenses and to attract foreign investment in the sector. They also waive experience requirements for newly graduated national people, supporting efforts to increase Emiratization in the field.

## DUBAI

### DRONE REGULATIONS



Dubai Law No. 10/2023 has been issued and amends certain

provisions regulating drone use in Dubai. The law sets out specific criteria for designing and operating 'Drone Airports' in Dubai. It also requires the development of necessary infrastructure, and the provision of fuel and power supplies for these airports. The Dubai Civil Aviation Authority (DCAA) is responsible for creating and approving standards and criteria for Drone Airports. They will also approve engineering designs for both governmental and non-governmental use and oversee the implementation of these designs and plans for stations, facilities, and infrastructure. However, Dubai Aviation Engineering Projects (DAEP) will be responsible for designing Drone Airports, stations, and infrastructure which are to be specifically for governmental use.

## DIFC

### NEW RULES FOR VENTURE STUDIOS



New regulations known as the Venture Studio Regulations 2023 have been created by the DIFCA Board of Directors under their authority in DIFC Law No. 5/2018 (the DIFC Companies Law). These rules will apply to individuals and companies defined as Venture Studios or Venture Studio Companies, including those seeking incorporation or continuation in the DIFC.

In addition, it has launched the world's first venture studio platform 'Studio Launchpad', with the aim of attracting leading start-ups and corporate venture studios in global finance and digital asset technologies.

## SAUDI ARABIA

### NEW SCCA ARBITRATION RULES



The Saudi Centre for Commercial Arbitration (SCCA) has published their revised SCCA Arbitration Rules, which will apply to all arbitrations filed on or after 1 May 2023. The new rules will also enable the SCCA Court which was announced in November 2022 to

become fully functioning following their issue and the replacement of the existing SCCA Committee for Administrative Decisions. The SCCA Court, will now be in charge of making key administrative decisions involving SCCA administered arbitrations. Other changes to the Rules include the general promotion of the use of technology in filing documents and managing cases. Technology will now play a key role, particularly with smaller claims, by embedding the ODR Procedure Rules as an opt-out where the aggregate amount in dispute is less than 200,000 Riyals. The Arbitral Tribunal's discretionary powers have been expanded in areas including determination of the most effective format for hearings (including remote hearings), the ability to reject changes in party representation as a procedural safeguard, the ability to encourage parties to resort to mediation where appropriate, limitation on the length of written statements or requests, and electronic award signing.

The new Rules also add two additional reasons for arbitrator challenges which are a failure to perform, and a manifest lack of the party-agreed qualification. They also cover a number of emerging practices and issues in international arbitration, including the need for consolidation, coordination of parallel arbitrations, third party funding, publication of redacted awards without party objection, and the need for cybersecurity, privacy, and data protection.

### NEW SAUDI FREE ZONES



It has been announced that Saudi Arabia intends to launch four new Special Economic Zones (SEZs). The new SEZs will be the Abdullah Economic City (KAEC) SEZ, Ras Al-Khair SEZ, Jazan SEZ, and Cloud Computing SEZ. They will focus on advanced manufacturing, maritime activities, metal conversion and logistics, and cloud computing.

Their launch is being viewed as the initial phase of a long-term programme designed to boost Saudi's cargo capacity, bolster supply chains, and enable the country to become a global logistics hub.



OMAN

## STATE LAND FOR ENTERPRISES



Oman's Minister of Housing and Urban Planning has released Ministerial Resolution No. 90/2023, allowing small and medium-sized enterprises (SMEs) to utilise state-owned land, in line with the relevant regulations governing the usufruct of Oman's land.

The resolution also allows the allocation of at least 10% of land in commercial, industrial, agricultural, and tourism projects for distribution through the usufruct system to SMEs by the Ministry of Housing and Urban Planning.

KUWAIT

## RESIDENTIAL CURFEW FOR BUSINESSES



Kuwait's Ministry of Interior for Public Security, Operations and Traffic Affairs has issued a directive to enforce the Kuwait Municipality's decision to close associations, restaurants, and pharmacies in private residential areas after midnight to improve public safety and regulate demographics in Kuwait. Work will be allowed at the main association in the area and in shops, restaurants, and pharmacies located inside. The decision also affects food trucks in residential areas after midnight and restaurant branches which only operate for the delivery of orders without opening the restaurant.

QATAR

## NOTARY PUBLIC LAW



Qatar Law No. 1/2023 on Documentation has been issued to improve documentation services and facilitate electronic transactions. The law introduces the title 'notary public' for the first time and regulates the work of these individuals. In order to hold this position, an individual must take an oath before the minister. They then have the power to undertake documentation, verify identity, eligibility, and consent, and ensure documents comply with the law and regulations. These notaries will

also be able to certify signatures on request, verify the date and stamp submitted documents with the time and date of completion. It is hoped this law will improve documentation services, and help facilitate transactions.

## JOB CLASSIFICATION



Qatar's Ministry of Labour has introduced the Private Sector Job Classification Guide, which is aimed at standardising job descriptions and classifications in that sector. The guide has been developed to keep pace with changes in Qatar's labour market and growing business activities and is part of the national strategy for the second phase 2018-2022. The guide will serve as a uniform national reference for all entities in Qatar to use for residency and work permits and simplify the process of exchanging information and data between labour market entities. The ministry hopes the guide will also enable relevant authorities to prepare strategic plans for the labour market and workforce planning.

BAHRAIN

## INTERNATIONAL COURT



The Supreme Judicial Council of Bahrain and the Supreme Court of Singapore are understood to be currently in discussions to establish a collaborative framework which will help support Bahrain in the establishment of the Bahrain International Commercial Court (BICC). The BICC is intended to be an international court which will specialise in the resolution of transnational commercial disputes.

It will be primarily modeled on the Singapore International Commercial Court (SICC). In addition, the Chief Justice and Vice President of the Supreme Judicial Council, along with the President of the Court of Cassation, and the Chief Justice of Singapore, have signed a memorandum of understanding and a Memorandum of Guidance on the enforcement of money judgments. Further strengthening of judicial ties between the two countries is also expected.

Bahrain has also recently appointed Court of Cassation (Supreme Court of

## REGULATORY ROUND-UP

**UAE:** Dubai Chambers has launched a Family Business Advisory Committee to oversee the Dubai Centre for Family Businesses and provide technical and administrative support...

**Saudi Arabia:** Regulations for a permanent committee which will decide on objections by government agencies on allocations of areas in mining complexes and requests for mining licenses have been approved....

**Qatar:** The Hayya Platform has been relaunched as a single portal for tourism and event visas...

**Kuwait:** The Deputy Prime Minister has directed the Public Authority for Manpower to sign new cooperation frameworks to recruit expatriate workers from new countries...

**Bahrain:** The Justice, Islamic Affairs, and Awqaf Ministry and the Labour Market Regulatory Authority in Bahrain have partnered to assist workers in submitting administrative claims...

**Oman:** A decision has been issued to establish an executive committee made up of members from Oman and Saudi Arabia to oversee a project to develop an integrated economic zone in Al Dhahirah Governorate...

**Iraq:** The Central Bank has issued guidelines on pre-paid cards.....

Bahrain) judges who are internationally renowned in commercial dispute resolution. These judges will also sit on applications for recognition and annulment of high-value arbitral awards and ancillary proceedings related to arbitration.

## HOME BASED SOCIAL INSURANCE



The Social Insurance Organisation is supporting home-based entrepreneurs who use the Khatwa Programme by allowing them to subscribe to the social insurance system in line with Bahrain Edict No. 39/2014 On insurance for self-employed workers. This means they can apply for self-employment and employer insurance. To qualify, they must meet certain conditions, such as obtaining an official license, being aged between 18 and 50 when first joining, and not being a pensioner or subject to any retirement or insurance laws.

# LAW MONITOR

## RECENT LEGAL DEVELOPMENTS IN THE GCC

### UAE- FREEZONES



Cabinet Decision No. 41/2023 has now been issued in the official gazette formally detailing the expansion of the geographic area covered by the Abu Dhabi Global Market (ADGM). With the ADGM's current location at Al Maryah Island at a 95% occupancy level expansion was needed. The ADGM will now include Al Reem Island, increasing the financial freezone's geographic area to ten times its current footprint. At present it is unclear if a transition period will apply to entities currently based on Al Reem Island, which types of entities would fall under ADGM rules and jurisdiction, or if dual licensing arrangements might apply,

### KUWAIT - DATA PROTECTION



Amendments have been issued to the Kuwaiti Data protection law, Kuwait Decision No. 42/2021. The amendments made include to a preamble to the law which recognises changes in areas such as Cloud Computing, Internet of Things and other technologies and Article 1 to 7.

### BAHRAIN - PROPERTY



Bahrain Decision No. 38/2023 has been issued in the official gazette. This law amends Article 1 of Bahrain Decision No. 43/2003 which is a law which covers ownership of non-Bahraini nationals of real estate and land in Bahrain.

### GAZETTE WATCH

**UAE Official Gazette No. 747 - 750** – These Gazettes included Ministerial Decision No. 138/2023 on the trade in Hydro fluorocarbons (HFCs).

**Saudi Arabia Official Gazette No. 4975 - 4980** – These Gazettes included Saudi Arabia Cabinet Decision No. 619/1444 on the National Committee for Tobacco Control.

**Qatar Official Gazette No. 4-5 of 2023** – These Gazettes included Qatar Ministerial Decision No. 37/2023 specifying state entry and exit points.

**Oman Official Gazette No. 1486 -1492** – These Gazettes included Oman Capital Market Authority Decision No. K/25/2023 which suspended application of Oman Capital Market Authority Decision No. K/4/2023 on the standard policy form for borrowers' life insurance.

**Kuwait Official Gazette No. 1627 - 1634** – These Gazettes included Kuwait Ministerial Decision No. 16/2023 which amended Kuwait Ministerial Decision No. 833/2022 on media and tourism activities.

(Source: Lexis Middle East Law)

### OMAN - SHIPPING



A new Maritime Law has been issued in Oman, Oman Sultani Decree No. 19/2023. Significant features of the new law include updated regulations on maritime personnel, including new maritime labour contracts, and a change to the rules on vessel registration under the Omani flag. There are also new rules on maritime accidents and penalties, maritime liens and enforcement, as well as provisions on ship and cargo agents, freight forwarders and brokers.

## SAUDI ARABIA - LABOUR



There have been reports in the local press in Saudi Arabia that there are currently 31 proposed amendments to Saudi Arabia Cabinet Decision No. 219/1426 On the Approval of The Labour Law. According to these reports proposed amendments include establishing a 40-hour weekly work hour limit in the private sector, and that employers would also be required to pay overtime at a rate of at least 1.5 % of basic pay for extra hours worked by employees. Other changes are said to include an extension of compassionate leave to three days in the case of the death of a sibling. This leave is currently only given on the death of spouses, children, and parents.

## FEATURED DEVELOPMENT

Joycia Young and Lamisse Bajunaïd of Clyde & Co explain some significant proposals in the draft Saudi Intellectual Property (IP) Law released recently for consultation.

The Saudi Authority for Intellectual Property (SAIP) issued a draft intellectual property (IP) law and legislative notes as part of a consultation in April. It proposes to harmonise and unify the main principles governing IP rights and IP related activities in Saudi in a single law. It should be noted the draft defines 'Intellectual property' as 'creations of human thought and creativity in areas of IP'. The Draft will apply to all types of IP rights and transactions within Saudi, including special economic zones (SEZ). The draft law lists ten 'Areas of IP' including copyright and related rights, inventions, industrial designs, layout designs of integrated circuits, plant varieties, utility models, trademarks, collective marks, public authority and occupational establishment marks, geographical indications, and trade secrets, in addition to any other type of IP governed in the future by a specialist law promulgated and implemented by SAIP. Previously, IP related matters in Saudi were supervised by the Ministry of Culture and Media, Ministry of Commerce and Industry, and the King Abdulaziz City for Science and Technology (KACST) but these responsibilities were unified and transferred to SAIP when it was established. However, IP rights in Saudi are still governed by separate specialist laws, including the Copyright Law (Saudi Arabia Royal Decree No. M41/1424), Law of Patents, Layout Designs of Integrated Circuits, Plant Varieties, and Industrial Designs (Saudi Arabia Royal Decree No. M27/1425), and GCC Trademark Law (Saudi Arabia Royal Decree No. 51/1435), their implementing regulations and other key regional and international Saudi ratified agreements. It appears these separate IP laws will not be repealed when the Draft Law is enacted as long as no conflict arises. The Draft Law will provide a legislative roadmap which would integrate common principles in current specialist laws and ensure, where appropriate, a consistent, harmonised approach cross all IP rights. There would be links between IP matters and other

relevant touchpoints in the wider KSA legal landscape, such as the judicial system, bankruptcy laws, competition law, financing and other commercial transactions. The Draft IP Law also aims to provide a framework to support the creation of IP rights, motivate rights' owners to manage and commercialise them, and facilitate an environment for IP investment. Many the proposed articles reinforce current SAIP applied principles whether on the basis of specialist laws, SAIP regulations, international treaties, or customary practice. Chapter 3 covers principles on ownership of IP rights generated by Artificial Intelligence (AI) activities. It is proposed that these rights may be eligible for protection where there is prominent human contribution, in which case they will be owned by the person who took necessary measures to generate them. However, IP rights will vest in the public domain if there is no material human contribution to their creation. A fast-track procedure to assess IP rights arising from emerging technologies has been proposed. Funds, incubators and accelerators, in cooperation with SAIP, would need to set policies for managing, commercialising, growing and determining the IP rights arising from businesses they finance (see Article 28).

Article 29 of the draft also clarifies that IP rights are considered to be assets that may be subject to liquidation proceedings and requires entities to value them before issuing any decision to liquidate. Finally, Article 30 proposes an umbrella prohibition against the use of any IP areas in any kind of non-competitive practices, so the Saudi Competition Law and any relevant international treaties now expressly extend to IP rights. The authorities must value the potential economic concentration of IP assets that may require approval by the Saudi General Authority for Competition (GAC), the threshold for which is SAR200 million. The consultation ended on 4 May 2023, but next steps are still to be announced.

## QATAR - COURTS



The Qatari Cabinet is understood to have endorsed some draft decisions of the Minister of Commerce and Industry on court procedural rules. The decisions involve the procedural rules and regulations of the QFC Civil and Commercial Court and the QFC Regulatory Tribunal.



# TAX AND FINANCE ROUND-UP

COVERING RECENT KEY TAX AND  
FINANCE DEVELOPMENTS – REGION-WIDE

## UAE

### NO TAX FOR CHARITIES



A list of Qualified Public Benefit Entities has been published as part of Cabinet Decision No. 37/2023. They will be exempt from Corporate Income Tax if they meet conditions outlined in Article 9(1) of Federal Decree-Law No. 47/2022 On the Taxation of Corporations and Businesses and are listed in the Cabinet Decision as required by Article 9(2). It has been clarified that these entities are eligible for tax exemption because they operate for the wider public benefit, e.g. for charitable, religious, cultural, healthcare and educational purposes but under Article 9(3) of Federal Decree-Law No. 47/2022, the Federal Tax Authority may request information from them to ensure continued compliance. Donations, grants or gifts to these entities may be tax deductible in line the Corporate Income Tax Law.

### TRANSFER PRICING



Ministerial Decision No. 97/2023 has been issued on the requirements for maintaining transfer pricing documentation for UAE corporate income tax law, Federal Decree-Law No. 47/2022 purposes. It states a Taxable Person must maintain both a master file and a local file in accordance Article 5(2)) of Federal Decree-Law No. 47/2022 in the relevant Tax Period, if the Taxable Person, for any time during the relevant Tax Period, is a Constituent Company of a Multinational Enterprises Group as defined in the Cabinet Decision No. 44/2020 that has a total consolidated group Revenue of 3,150,000,000 AED or more in the relevant Tax Period or if their Revenue in the relevant Tax Period is 200,000,000 AED or more.

Further information is given on what should be included in the Local File. However, it is also stated in the law that the authorities will issue guidelines on the application of this Decision's provisions and maintaining transfer pricing documentation.

### TAX DEREGISTRATION



The UAE Federal Tax Authority has issued two decisions on tax periods and deregistration timelines. Under Decision No. 5/2023, a taxable person can apply to change their tax period for reasons such as liquidation, aligning financial years, or legal reasons but the application must be made within six months of the end of the original tax period. They may only extend the current tax period up to 18 months or shorten the following period to a minimum of six months. Decision No. 6/2023 states a taxable person can apply for tax deregistration within three months of the cessation of business activities or dissolution.

### CORPORATE INCOME TAX



The UAE Federal Tax Authority has issued an Explanatory Guide on the Corporate Income Tax Law. Federal Decree-Law No. 47/2022. It includes a section on elections by freezone persons to be subject to tax but merely states details on the conditions for doing this will be issued in a Cabinet or Ministerial Decision. There is more detailed information on calculating taxable income, including the types of adjustments that should be made to the accounting net profit (or loss) before tax as stated in the financial statements.

There is also information on reliefs when there are transfers within a qualifying group and on business restructuring relief.

## ADGM

### PRIVATE CREDIT FUNDS



Following on from a Consultation the ADGM's Financial Services Regulatory Authority (FSRA) has enacted a regulatory framework enabling collective investment funds based in the ADGM to invest in credit funds. These amendments which allow Private Credit

Funds to operate in or from ADGM have led to changes to the Financial Services and Markets Regulations, FSRA Fund Rules, Islamic Finance Rules, and Glossary Rules. A fund may make investment in 'Credit Facilities' (by origination, purchase or participation), investment in equity of the fund's borrowers (or its group) and holding financial instruments for the purpose of cash management or hedging.

The fund must also be a close-ended Qualified Investor Fund or Exempt Fund which is managed by an Authorised Fund Manager (within the FUNDS Rules' context). Venture Capital Funds will not be permitted to be a Private Credit Fund.

## DUBAI

### 30 DAYS GRACE



Dubai Customs Notice No. 4/2023 has been issued and has updated the grace period for submitting customs declarations and supporting documents after import and export clearance.

This grace period is now 30 days rather than the previous 14-day period. Late submissions beyond the grace period will lead to a fee of 5 AED per day being levied, up to a maximum of 300 AED per declaration. The new guidelines also include a list of supporting documents, explain exemptions, and cover record keeping requirements.

## SAUDI ARABIA

### VAT AND USED CARS



The Zakat, Tax and Customs Authority (ZATCA) has authorised the calculation of VAT on the profit margin when selling qualified used cars rather than on the total sales value.

This change will begin on 1 July 2023.

The decision applies to dealers who are licensed to deal in cars and is expected to lead to a reduction in the price of used cars and an increase in

their sales.

ZATCA has clarified that allowing the tax to be deducted using the profit margin method is part of efforts by them to reduce VAT on qualified used cars.

The profit margin method targets car agencies and showrooms registered with ZATCA for VAT purposes and who practice the car trade under specific conditions.

#### KUWAIT

### SECURITIES ACTIVITIES RESOLUTION



Kuwait's Capital Markets Authority (CMA) has issued Resolution No. 56/2023 on developing provisions on Module Five (Securities Activities and Registered Persons) of the Executive Bylaws of Law No. 7/2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and their amendments.

The Resolution covers in particular provisions for renewing and cancelling the securities activities license when an application has been submitted by the licensed person in line with CMA Board of Commissioners' Resolution No. 11/2023

The procedural sequence and time limits required for applying for a renewal or cancellation of a securities activities license are detailed, as are the required documents and information needed for a renewal or cancellation.

### K-ENTITY RETENTION



Kuwait's Ministry of Finance has issued Kuwait Circular No. 8/2023 which allows K-Entities to reclaim 80 per cent of the 5 per cent tax retention withheld on companies enjoying tax incentives as per the Kuwait Direct Investment Promotion Authority's regulations. K-Entities can reclaim the remaining 20 per cent through regular means.

The 80 per cent can be released immediately upon providing proof of submission of the tax return to the Department of Inspection and Tax Claims.

The remaining 20 per cent can

## TAX TREATY UPDATE

**UAE:** Cambodia and the UAE have been negotiating a Double Tax Treaty (DTT)

**Qatar:** Qatar has signed a Double Tax Treaty (DTT) with Egypt

**Qatar:** The Ukrainian Parliament has approved the Protocol to a Tax Treaty with Qatar

**Kuwait:** Kuwait and San Marino have 'initialled' a Double Tax Treaty (DTT).

then be released after the company completes the standard process of undergoing the tax inspection process, obtaining a tax assessment and obtaining a retention release letter.

#### QATAR

### SIMPLIFIED TAX RETURN REQUIREMENTS



The Qatari General Tax Authority (GTA) has clarified the requirements for submitting a simplified tax return for companies owned by Qatari citizens or GCC nationals.

These requirements include having a residence in Qatar, having capital less than 1 million Qatari Riyals, generating revenue less than five million Qatari Riyals, and having headquarters in Qatar.

The GTA has also stated the deadline for submitting a tax return for the 2022 tax year 2022 had been extended to 31 May 2023 for all entities subject to the income tax law. The original deadline was 30 April 2023.

### INVESTMENT PORTAL LAUNCHED



The Qatari Investment Promotion Agency (IPA) has announced the launch of the Invest in Qatar portal. The portal is an online platform that is designed to help support investors in Qatar.

The new website will provide free online resources to help investors and foreign companies who are looking for business partners and opportunities in the private and public sector in Qatar.

It will also allow investors to review current tenders and connect with other members.

They will also be able to reach out to the IPA's investor relations team for direct support on establishing businesses and companies in Qatar.

#### TURKEY

### DEBT PUSHDOWN



Turkey Law No. 7440/2023 on Restructuring of Certain

Receivables and Amendments to Certain Laws now allows financing costs incurred for a share purchase to be deducted from the corporate income tax base at the acquired company if the loan is transferred to that company through a merger. Previously, Article 5(3) of the Turkish Corporate Income Tax Law allowed financing costs incurred in a share purchase at the Special Purchase Vehicle (SPV) level to be deducted but it was not possible to deduct these financing costs from a new company's business profits if there was a merger of the SPV and the acquired company.

### EARTHQUAKE TAX



Turkey Law No. 7440/2023 on Restructuring of Certain

Receivables and Amendments to Certain laws has introduced an extra one time tax on corporate taxpayers who benefit from certain exemptions and deductions in the calculation of their corporate income tax base. The tax is being called the Earthquake tax as it will be used to generate funds for Turkish earthquake victims. Those in the disaster area are exempt from it. Based on 2022 corporate income tax calculations, 10% will be levied on exemption and deduction amounts applied on business income under the Corporate Income Tax Law and other laws, and on the tax base within the reduced corporate tax rate under Article 32/A of the Corporate Income Tax Law, without being associated with the business income of the period. 5% will also be levied on income subject to the participation income exemption under Article 5/1-a of the Corporate Income Tax Law and on exempt income obtained from abroad and certified to bear a tax burden of at least 15%.

# NOTHING TO HIDE

Omar Qouteshat of Sultan Al Abdulla & Partners explains the impact the Qatar Anti-Concealment Law can have when non-Qataris are engaged in commercial activities there.

**“**In March 2023, Qatar Law No. 3/2023, On Combating the Concealment of Non-Qataris Practicing Commercial, Economic and Professional Activities in Violation of the Law which is known as the Qatar Anti-concealment Law was issued,” states Omar Qouteshat.

“It repealed a previously law of the same name Qatar Law No. 25/2004.”

“This law defines the crime of concealment as permitting a non-Qatari, whether they are a natural or a legal person, to carry out any of the prohibited acts which are listed in this law, and more specifically the acts that are set out in Article 2 and 3 of Qatar Law No. 3/2023, and other relevant provisions,” Qouteshat continues.

## **PROHIBITIONS AND PROFIT SHARES**

“According to Qatar Law No. 3/2023, non-Qataris are not entitled to engage in any commercial activities in Qatar unless they are registered or authorised under the regulations governing those practices,” Qouteshat adds.

“Article 2 of Qatar Law No. 3/2023 then stipulates that non-Qataris, whether they are a physical or juristic person, are prohibited from practising or engaging in any unauthorised commercial, economic or professional activities.”

“However, Qatar Law No. 3/2023 goes further by introducing additional penalties for non-Qataris who obtain greater percentages of a company’s profits than those stipulated in that company’s Articles of Association,” Qouteshat explains.

“These measures are designed to prevent non-Qataris from recording a lesser percentage of the company’s profit in order to reduce the tax which is due on those profits.”

“For example, shareholders in a Limited Liability Company can have a different percentage of the profits of that company than the percentage of shares they actually own in the company, and this is permitted,” Qouteshat explains. “However, if the shareholder is a non-Qatari, they must ensure they do not earn a profit percentage which goes beyond the amount which is stipulated in the company’s Articles of Association.”

“In addition, Article 3 of Qatar Law No. 3/2023 prohibits anyone, whether they are a physical or juristic person from assisting a non-Qatari in concealing unauthorised activities,” Qouteshat states.













“This includes enabling a non-Qatari to engage in any commercial, economic or professional activities, or make investments, whether by allowing them to use the concealer’s name, license, commercial or professional record, or in any other way which enables the

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non-Qatari to evade their legal obligations, regardless of whether these actions are done to benefit the non-Qatari, or the concealer, both or a third party.”

### THE ANTI-CONCEALMENT COMMITTEE

“Qatar Law No. 3/2023 has also expanded the authority of the Anti-Concealment Committee, a body which also existed under the previous law,” states Qouteshat.

“However, in addition to its previous powers which included receiving reports on violations of the law, this Committee is now also authorised to devise strategies and programmes which are aimed at combating concealment and ensuring implementation of the law.”

“This Committee’s role also includes coordinating with the relevant authorities to implement the provisions of Qatar Law No. 3/2023,” Qouteshat adds. “It also has the right to request information from these other authorities.”

“This expansion of the Committee’s powers makes it clear Qatar is now focusing on combatting unauthorised activities of this type, far more than it did under the previous legislation.”

“In addition, as was the case under the previous legislation, certain Committee members have the status of judicial control officers,” Qouteshat adds. “Those who have these roles have the authority to enter the headquarters of companies, establishments and offices in order to inspect any books, documents, computers or any other media which is used for data storage, if evidence of a concealment offence is present.”

“The Anti-Concealment Committee also has the authority to keep any documents found or obtain a copy of them.”

### QATAR CENTRAL BANK’S ROLE

“However, one of the most significant changes brought in by the new law is found in Article 6 of Qatar Law No. 3/2023,” states Qouteshat.

“As a result of this provision, the Qatar Central Bank (QCB) and the Anti-Concealment Committee will now work together to ensure compliance with Qatar Law No. 3/2023.”

“This means the QCB will provide the Anti-Concealment Committee with financial statements it receives from local banks and financial institutions of those who are suspected of carrying out suspicious

unauthorised financial transactions or who have been suspected of any other concealment activity,” Qouteshat adds.

“Without prejudice to the provisions of Qatar Law No. 20/2019 On Anti-Money Laundering and Combating the Financing of Terrorism financial institutions must now inform the QCB in a statement, about any person who is carrying out financial transactions which show signs of Concealment, and the QCB will then submit these to the Anti-Concealment Committee,” Qouteshat explains.

**Omar Qouteshat**  
Senior Associate  
Sultan Al Abdulla &  
Partners

“Consequently, any person who is suspected of engaging in a concealment crime in Qatar will be reported and investigated.”

### INDIVIDUAL OBLIGATIONS

“However, it is not just the QCB and financial institutions who now have a duty to report suspicions of concealment to the Committee,” states Qouteshat.

“In addition, Qatar Law No. 3/2023 obliges individuals, who become aware of any concealment activities by virtue of their position or their workplace, to immediately report such an activity to the Anti-Concealment Committee.”

“It is also important to note that a failure to make such a report may result in a fine of up to 100,000 QAR being levied on that individual,” Qouteshat adds.

“These fines can also extend to lawyers, auditors, and any other individual who fails to report a concealment crime,” Qouteshat continues.

### REPORTS IN BAD FAITH AND FALSE ALLEGATIONS

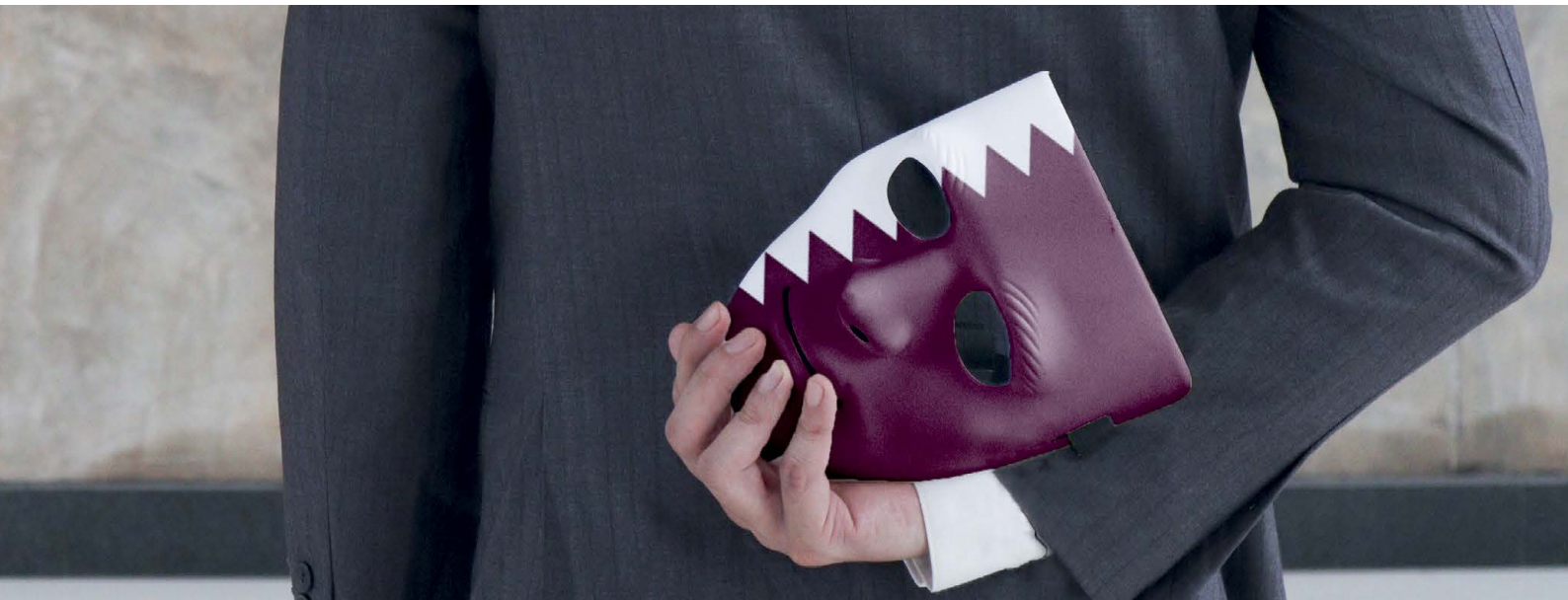
“Qatar Law No. 3/2023 also provides for the imposition of a fine of up to 100,000 QAR on each individual who makes a report in bad faith or who makes false allegations about a suspicion of concealment,” Qouteshat states.

## RELEVANT LEGISLATION

### Article 8 of Qatar Law No. 3/2023

Without prejudice to any more severe penalty stipulated in any other law, whoever violates the provisions of Articles 2 and 3 of this Law shall be sentenced to imprisonment for a period that does not exceed two years and to a fine that does not exceed (QAR 500.000) or to any of both sanctions. Multiple fines shall be imposed in cases there are multiple offending persons, stores or facilities.

(Source: Lexis Middle East Law)



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## OTHER PENALTIES

“Those who engage in concealment crimes can also face imprisonment of up to two years, and/or a fine not exceeding 500,000 QAR,” states Qouteshat.

“These penalties are more severe than under the previous legislation, where the prison term could be only up to one year.”

“The court also has the authority to seize money, which is related to, or derived from, a concealment crime,” states Qouteshat. “In addition, Qatar Law No. 3/2023 gives the Qatari courts the authority to deport a non-Qatari from Qatar, once their sentence has been served.”

“It should also be noted that under Qatar Law No. 3/2023, the Qatari courts now have the authority to prohibit a violator of this law from engaging in relevant activities for a period not exceeding three years,” Qouteshat continues.

“In addition, under this law, the Qatari courts can also issue an order to publish the verdict of the judgment in the local newspapers or via electronic means at the expense of the individual who has been convicted.”

## MANAGEMENT LIABILITIES

“Similarly, Qatar Law No. 3/2023 also explicitly provides that the person who is responsible for the actual management of the legal entity which has engaged in, or supported, a concealment crime will be punished with the same penalty, that is to say imprisonment of up to two years and/or a fine of up to 500,000 QAR, where it is proven that the individual had knowledge of the crime or contributed to its occurrence due to their negligence,” Qouteshat explains.

## TREATMENT OF INFORMERS

“However, Qatar Law No. 3/2023 does exempt individuals who inform the competent authorities of

the occurrence of any concealment-related crimes from these penalties provided that notification takes place before the authorities have discovered the crime or before its commission,” states Qouteshat. “Although, if notification has taken place only after the authorities have discovered the crime, only the competent court has the authority to suspend the execution of the sentence, and in that case only if notification has been made prior to the final judgment and it results in the seizure of the remaining perpetrators, or other proceeds of the crime.”

## INSTRUMENTS OF THE CRIME AND OTHER ACTION

“It should also be noted that in all cases, the instruments of the crime will be confiscated by the appropriate authorities,” Qouteshat adds.

“The new law also requires both the concealer and the concealed to severally pay all the fines, taxes and other liabilities which have resulted from their crime.”

## RECONCILIATION

“However, one final point of note is that Qatar Law No. 3/2023 has also given the Minister of Commerce and Industry the authority to reconcile those crimes prescribed in this law in certain circumstances,” Qouteshat adds. “Although, this can only be done prior to proceeding with a case, or during the court procedures, and in any case before the final sentence, provided that half of the maximum penalty is paid by the offender.”

## RELATED NEWS

### **Qatar: Commercial Concealment Law Published**

Qatar Law No. 3/2023 On combatting the concealment of non-Qatari individuals working in commercial, economic, and professional activities in violation of the law has been published in the Official Gazette. If any individual violates of the provisions of Article 2 and 3 of Qatar Law No. 3/2023, Article 8 stipulates punishment in the form of imprisonment for up to two years and a fine not exceeding 500,000 QAR. However, a harsher penalty in accordance with other laws can also be imposed without prejudice.

(Source: Lexis Middle East Law)



# CASE FOCUS

**Case No** .... DCOA Case No. 2875/2021 on 29 March 2023

**Jurisdiction** .... Dubai

**Court** .... Dubai Court of Appeal

**Recommended by** .... Hussain Lootah & Associates

## WHAT IS IT ABOUT?

The plaintiff who was a leading auditing company, filed Commercial Case No. 1717/2019 against an Investment Fund, before the Dubai Court of First Instance seeking, among other things, an order confirming they had been cleared of any debt, compensation, or liabilities in favour of the Investment Fund which were related to any of the accounting/auditing services the auditing company had provided to the Defendant and their related parties.

In addition, they requested confirmation of the Plaintiff's exclusive ownership of any drafts, working papers, correspondence, internal documents and the like which were relevant to the auditing services the Plaintiff had provided to the Defendant and their related parties.

The Investment Fund denied the Plaintiff's claims in their entirety and filed a counterclaim seeking, among other things, for the case to be sent to a Panel of Experts which specialised in the financial audit of public joint-stock companies and investment funds in order to prove the Plaintiff's breach of their legal and contractual obligations while auditing the Investment Fund's accounts, the submission of misleading reports, and other matters including that they had not reported violations and embezzlement by the Fund's Director.

The Defendant, then sought in a counter claim against the auditing company to order the Plaintiff, as a counter Defendant, to pay compensation totalling 234 million USD. On 29 September 2021, the Dubai Court of First Instance dismissed both the original claim and the counterclaim.

The Defendant (the investment fund) then appealed the Court of First Instance judgment in Commercial Appeal Case No. 2875/2021, and the Plaintiff (the Auditor) also counter-appealed the ruling in Commercial Appeal Case no. 2882/2021.

## WHAT WAS DECIDED?

Before ruling on the merits of the dispute the Dubai Court of Appeal, appointed a panel of three experts who specialised in the financial auditing of the accounts of public joint-stock companies and investment funds.

After an inspection and study of the parties' related evidence, the Expert's Panel submitted their report, in which it concluded that the audit company and the investment fund had entered into a contract for the provision of financial auditing services and other relevant services to the investment fund and that the auditor had committed several professional errors and mistakes while auditing the Investment Fund's financial statements, and this was considered to be a breach of their professional standards according to the International Auditing Standards. The Panel concluded as a result that the Investment Fund was entitled to compensation of USD 231.7 million

On 29 March 2023, the Court of Appeal adopted the Expert Panel's findings and decided in Appeal Case No. 2875/2021 filed by the Investment Fund to overrule the Dubai Court of First Instance's ruling which had dismissed the counterclaim and to oblige the auditor to pay to the Investment Fund 231.7 million USD.

While in the Counter-Appeal Case No. 2882/2021 filed by the auditor, the Court of Appeal upheld the ruling of the Court of First Instance, dismissing the principal claim which had been filed initially by the auditor.

## WHY WAS IT IMPORTANT?

This case represents a practical demonstration of how Article 23 of Federal Law No. 12/2014 On the Regulation of the Auditing Profession works. This article provides that an auditor is responsible for the integrity of their audit work and the accuracy of the data contained in the auditor's report.

An auditor is also liable to pay compensation for damage which has been caused to their client as a result of their professional error or negligence committed by them while they are exercising their profession.

**Case No ....** Mikly v Mitro, DIFC Case No. 030/2023 on 30 March 2023

**Jurisdiction ....** DIFC

**Court ....** DIFC Small Claims Tribunal

**Recommended by ....** Clyde & Co

## WHAT IS IT ABOUT?

Judgment was recently given in the DIFC Small Claims Tribunal on a claim and counterclaim which had arisen from a disputed termination of employment.

Facts in the judgment were sparse, but it appears that the Defendant in the dispute was an employee, who was employed by a beauty salon or nail spa, which was the Claimant in the matter. The employee resigned on 8 January 2023 but continued working at the salon until 6 February 2023, which the judgment stated meant that the employee had served her notice period.

However, while the employee was still working her notice, her employer filed a claim against her, claiming compensation for breach of the employment agreement.

The employer specifically claimed that the employee had not followed certain sanitisation requirements which were set by the employer, that the employee had provided poor customer service, and that she had offered private sessions to customers outside of the employer's premises.

These were described in the judgment as reasons for 'misconduct' although it did not appear that the employer had dismissed the employee.

It is not clear why the employer had chosen to bring a claim in the Small Claims Tribunal against the employee while she was working her notice. It would have been preferable for the employer to have conducted a disciplinary process against the employee and to have subsequently terminated her employment, either with or without notice, depending on the severity of the misconduct.

Indeed, the lack of process, absence of prior warnings, or any evidence quantifying any of the losses suffered by the employer were the reasons stated by the Tribunal for dismissing the employer's claim.

In response to the employer filing a claim against her, the employee then filed her own claim against the employer which was subsequently joined by the Tribunal to the first claim, as a counterclaim) on 10 February 2023.

The employee sought payment for her salary both before and during the notice period and accrued but untaken annual leave.

## WHAT WAS DECIDED?

While the employer had admitted to the employee's claims, there still remained a dispute between the parties on the salary which was to be used in order to calculate the amounts due.

Interestingly, in determining the point in favour of

the employee, and accepting a higher salary amount, the Tribunal accepted as evidence of an agreed contractual term a WhatsApp message between the two parties, in which the employer had stated that the employee's salary had been increased because the employee deserved it, and a salary transfer receipt which showed she had received the higher salary level.

The employee had also sought a penalty for the late payment of amounts due to her under Article 19 of DIFC Law No. 2/2019 which the court rejected.

## WHAT WAS IMPORTANT?

Article 19 of DIFC Law No. 2/2019 (the DIFC Employment Law) states that an employee is entitled to receive a penalty payment of a day's wages for every day that monies which are owed to them on termination of their employment are outstanding, following a period of 14 days after the employee's termination date.

However, this is subject to certain restrictions on the size of the amount owed against which a penalty may be awarded which are found in Article 19(3) of DIFC Law No. 2/2019. These require that the amount owed must be in excess of the employee's weekly wage.

In addition, Article 19(4) of DIFC Law No. 2/2019 also states that the penalty payment will be waived by the court in respect of any period during which a dispute is pending in the Court regarding any amount due to the employee under Article 19(1) of DIFC Law No 2/2019.

However, DIFC Law No. 2/2019 does not specify that in such a case that the dispute needs to have been brought by the employee.

In this particular case, the DIFC Small Claims Tribunal decided to decline to award any penalty, on the basis that firstly the employee had failed to quantify the amount which she would have been entitled to.

In addition, the fact that the initial claim had been brought by the employer prior to the actual termination of the employee's employment was important. In this case the employee had still been working her notice when her employer brought their claim against her.

The employee had also brought her counterclaim against the employer before the expiry of the required 14-day period following the termination of employment.

As a result, the DIFC Small Claims Tribunal considered that both the earlier claim by the employer, and the claim by the employee which was brought within the 14-days period after termination were brought prematurely and the penalty for late payment on amounts due on termination was not payable.

However, what is not clear from the decision in this case, is whether, had the employee waited the correct amount of time after the termination of her employment to file her counterclaim, if the penalty would then have been awarded.

It is possible, given the fact that the employer had already brought a claim, if that had been the case, the Tribunal would have still chosen to waive the penalty award, in compliance with Article 19(4) of DIFC Law No. 2/2019.



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# IN-HOUSE PROFILE

## DIRECTOR – WORKFORCE SOLUTIONS



### Talent and Energy

Elizabeth Dunne Chandler Legal and Commercial Director - Middle East, UK and Europe NES Fircroft explains how the switch to renewable energy is impacting her work and making cross-border employment legislation more important.

#### YOUR BACKGROUND?

I began my legal career as a Barrister in Ireland, where I focused on commercial litigation. I then decided to take a break to travel, which ultimately led me to an in-house position in Dubai. My past roles have included working as a Legal Advisor for Proserv Middle East and a Senior Legal Counsel for Petronash Middle East, as well as various positions at NES Fircroft. Whilst in Dubai, I dual qualified as a UK Solicitor and reclassified as an Irish Solicitor, which involved renouncing my association with the Bar. However, litigation will always be my passion and when you work in-house, as I do, you get to use many of those skills every day. I now specialise in minimising and controlling legal risk and find my Bar background helps with challenging negotiations and when I have to present solutions to complex legal issues

#### YOUR ROLE AND BUSINESS?

I am the Legal and Commercial Director for the Middle East, UK and Europe for NES Fircroft which is a workforce solutions specialist that provides staffing services worldwide across the oil and gas, power, renewables, infrastructure, life sciences, mining, and chemicals sectors. I joined NES Fircroft as the Legal and Commercial Manager in the Middle East, before becoming the Head of Legal and Commercial and now the Legal and Commercial Director. At the start of this year my role expanded, and I now also lead the team in UK and Europe. I am accountable for the company's overall risk management across those regions which is comprised of a team of 15 lawyers and trainees who I manage, train and develop and act as an ultimate escalation point. My main responsibilities are quite varied and include strategic alignment of the legal functions with the business, ensuring compliance and risk mitigation in the jurisdictions, handling litigation and advising senior stakeholders on critical business risks to provide compliant and workable solutions. In addition, we work to build and evolve the legal strategy to align with the sales and operations, so they can do business as compliantly and efficiently as possible in the countries where we operate in. NES offers a full range of staffing solutions including contract, permanent (direct) hire, managed solutions, and



mobility/EOR services. We have over 80 physical staffed offices globally, staffed by teams working in the same time zone who communicate in the local language to ensure they can offer talent solutions tailored to clients' needs, wherever they are. We have offices in cities including Abu Dhabi, Dubai, Muscat and Doha, as well as London, Mannheim, Oslo and Paris. We work primarily in the energy sector and provide the skilled engineering and technical workforce needed to support clients as they work towards reducing the environmental impact of traditional energy assets and develop renewable energy sources. As the energy sector transforms into a decarbonised, digitalised industry, we have to ensure talent pools are available and we have the right balance of skills and experience to deliver on future projects.

The focus on alternative energy and investment in renewable solutions means knowledge share is becoming more important and this makes cross-border employment legislation and global mobility compliance all the more pressing for international energy businesses. At present we are witnessing significant developments in equality in the Middle East, particularly in gender equality, and I am very excited to watch this develop over time, with pay transparency regulations and more diversity at the top table.

Our geographical spread ensures we fully understand the intricacies of regional legislation and are not managing issues remotely from the UK. In addition, to support the compliance personnel, we operate a committee structure which is focused on key areas of concern.

## PRACTITIONER PERSPECTIVE



**Thomas Wigley**  
Partner  
Trowers & Hamlin

Thomas Wigley of Trowers and Hamlin looks at the practicalities of bringing foreign experts into Oman.

Oman Sultani Decree No. 35/2003 On the Promulgation of the Labour Law provides the framework for private sector employment in Oman. It requires labour clearance by the Ministry of Labour and the provision of a labour visa before any foreign nationals (except GCC nationals) can

be employed in a full-time position by an employer in Oman. As a result of Omanisation (national policies on the localisation of the workforce), there can be delays when trying to obtain labour clearances in Oman and companies are often required to justify their requests for labour clearances for foreign employees. A labour clearance is only granted if there are not enough Omani nationals available to carry out the required job or occupation and if the employer has met the specified Omanisation percentage in their business.

The employer must also apply to the Ministry of Labour for a labour visa to be issued for each foreign employee they bring into Oman. A labour visa will only be granted if certain conditions are met. One such condition is that the foreign employee must possess the professional qualifications and/or technical skills required. This must be demonstrated by submitting the relevant degree or professional certificates with the application. This can sometimes be a challenge as some experts will have the necessary experience but not the educational degrees being requested by the Ministry of Labour, especially as some post graduate qualifications are not recognised in Oman. There are also other visa options available which enable foreign experts to be brought in on a short-term basis (e.g. for specific projects or to provide advice on a specific area). For example, foreign experts can be brought into Oman on express visas for short

term stays. An express visa is a single-entry visa which is valid for three weeks from the date of issue and is renewable for a period of one week. However, it should be noted that this type of visa is not convertible into an employment visa. Express visas are issued to foreign businessmen and 'highly qualified' professionals to enable them to attend business meetings or conduct interviews and give lectures or seminars. An express visa does not in itself entitle a foreigner to work in Oman.

Another alternative is a multiple entry visa with a validity period of no more than one year. These are available to nationals of certain countries (usually foreign investors and businessmen). While a multiple entry visa does not in itself entitle a foreigner to work in Oman, a holder of this type of visa may nevertheless perform what are described as 'business development activities'.

While there is no official restriction on converting a multiple entry visa into an employment visa, in practice, doing this can be problematic.

When it comes to visas a positive development in June 2022, was the reduction of visa fees by the Ministry of Labour. Visa fees for expert foreign workers have been reduced around 85% (and have gone from 2,001 OMR to around 300 OMR). It is worth noting that one of the pillars of Oman's Vision 2040 is empowering the private sector by creating an attractive investment environment and reforming the labour market should be part of this process. It will be interesting to see what further initiatives the Omani government decides to implement in this respect, and how this might impact some of the challenges currently being faced by the private sector in Oman when attempting to recruit foreign experts.

Raya Al Harthy, Senior Associate of Trowers & Hamlin also contributed to this article.



Each committee has oversight and responsibility for ensuring compliance on issues such as sanctions, supplier due diligence (DD), anti-bribery and corruption and risk. Separately, we undertake monthly contractual compliance auditing and reporting and check every placement made against the individual's contract and against a list of 'best practice' requirements. We believe our current compliance rating of 99.5% is unsurpassed in the industry but are committed to achieving 100% through continually evolving our practices to keep pace with evolving legislation.

The main challenge in the Middle East is the quickly evolving legal landscape, which is constantly growing and adapting, which is excellent, but as a legal function also keeps us on our toes. In EU and UK there are fewer changes but new employment status legislation and the push from various legislators to align the employed status across Europe is a key area. We are always looking to explore, and expand into new markets and

countries, and to manage that you have to hire the best talent and adopt robust training to develop technical ability and commercial skills. As legal professionals we must evolve and adapt our legal thinking so we can practically and proportionately assess how new laws might affect the business.

My key aim is to provide constructive and solution-based advice, adding real value to the company. I was most proud of our team's work during the initial months of COVID 19 when we had to deal with mass job insecurity, travel and immigration restrictions, and employment laws which were amended overnight in the Middle East.

Our priority was to ensure the protection of our workforce, as well as managing client needs. During this period, we clearly demonstrated the value an in-house legal team provides to the business, as we were able to ensure as little disruption to overall business operations, as possible.

# MOVERS AND SHAKERS

## A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

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### NEW ROLES AT SPEECHLYS

Charles Russell Speechlys LLP has recently promoted four of their Middle East team. Mazin Al Mardhi, who previously worked as a Senior Associate in the firm's Dubai office has become a Partner. Al Mardhi is part of the Speechlys's Construction, Engineering and Projects team and has worked with clients in various sectors including construction, engineering, manufacturing, trading, insurance and hospitality. His work has recently been focused on construction disputes. He has represented clients in high-value disputes in various arbitration institutions, and in the national courts in the UAE and Bahrain.

In addition, Reem AlMahroos and Lara Haidar have been appointed Legal Directors. Reem has over a decade of experience in real estate, and previously worked in-house for a major Bahrain-based real estate developer. Her work focuses on large to medium sized community developments and complex strata projects which have mixed-use components. However, she also advises on commercial and retail leases and is an expert



in hotel and hospitality matters.

Lara Haidar, who was previously a Senior Associate, specialises in Media and Entertainment, Intellectual Property, and Technology. In the past, she has worked for leading international and regional firms in the UAE and co-founded a boutique TMT and Intellectual Property firm. She specialises in providing practical legal and commercial advice on a wide range of areas, including protection and enforcement of intellectual property, joint ventures, commercial agreements, and disputes.

In addition, Jonathan Fisher who advises on general company and commercial matters and has a broad range of experience in corporate M&A transactions and joint ventures in the local and international markets, has been promoted to Senior Associate. Fisher is based in Speechlys's Bahrain office and his recent work has included transactions in the banking and finance, construction, engineering, retail and consumer products, electrical services, real estate, healthcare, and educational sectors.



### CATHERINE COMES TO CROWELL

New York qualified lawyer, Catherine Martinez has joined Crowell & Moring LLP as counsel, as the firm looks to expand their banking and finance capabilities in their Doha office. Catherine has experience in banking, finance, capital markets, and complex corporate transactions. In addition to her in-depth knowledge of the Qatari legal market, she has worked closely in the past with global organisations across the Middle East, Turkey, and Europe.



Omani listed companies, sovereign owned entities, and private entities who he has advised on governance and regulatory issues. His practice spans a broad range of sectors including energy, securities, insurance, leasing and financing. The new partnership will complement DLA Piper's existing office in Muscat.

### RESTRUCTURING IN RIYADH

Amar Meher is to join Addleshaw Goddard as the fifth partner in their new Riyadh office, pending regulatory approval. Meher will lead the firm's banking, finance, and restructuring practices in Saudi Arabia, alongside a group of four other partners. He has extensive experience in debt restructurings, conventional and Islamic finance, and Sharia-compliant structured products. In the past he has been involved in some of the most complex and significant restructurings in Saudi. The firm's new office is to offer a full-service capability in corporate, banking and finance, and infrastructure assignments, and is expected to employ eight lawyers and paralegals at launch.

Addleshaw Goddard currently has offices in a range of locations in the region



including in Doha, Dubai, and Muscat.

### MORE SAUDI MOVES

Linklaters has hired Amro Bakhaidar, who previously worked at the Saudi Arabian firm Khoshaim & Associates as a partner. Linklaters is the latest international practice to obtain a licence to establish itself in Saudi and is opening an office in Riyadh.

Bakhaidar, who specialises in equity capital markets and public M&A transactions, will lead the new office alongside two existing Linklaters partners. This move gives Linklaters its third base in the region, as it already has an office in Abu Dhabi and in Dubai.

### OMANI COLLABORATIONS

International law firm DLA Piper which has had a presence in Oman for over 15 years has agreed to collaborate with Al Lawati Law, an Omani law firm led by Managing Partner Mehdi Al Lawati. Together they will provide legal services to clients in Oman and the wider Middle East region. Mehdi Al Lawati is a skilled corporate and commercial lawyer who has practised in Oman for over 16 years and regularly advises clients in the Middle East, including on Capital Market and Securities Law, restructuring and integration, M&A and the establishment of investment funds. In the past his clients have included



### OTHER CHANGES

**Carter Ruck:** Charles Enderby Smith who played a significant role in securing the annulment of financial sanctions imposed on former Egyptian President Hosni Mubarak and his family by the European Court of Justice and European General Court following the Arab Spring has been promoted to Partner at the UK Law firm.

**Al Tamimi:** Al Tamimi & Company's Moroccan office has been granted Casablanca Finance City (CFC) status.



### APPOINTMENTS IN ARBITRATION



Rebecca Kelly, an expert in litigation, arbitration and compliance in Dubai has been made a partner at Clyde & Co. Kelly has re-joined the firm after an

absence of nine years. She previously worked for Morgan, Lewis & Bockius, where she was the managing partner of the firm's Dubai office and led its Middle East regulatory and disputes team. Her past experience has involved companies in the construction, infrastructure, finance, industrial, technology, transport, general trading, education, healthcare, and pharmaceutical sectors. In her new role, she will continue to advise multinational corporations on compliance and enforcement, including sanctions, anti-bribery, anti-corruption, and anti-money laundering laws.



Other new hires at the firm include financial lines insurance specialist Olivia Darlington who joins Clyde & Co as a partner in Dubai and

previously worked at Simmons & Simmons. Olivia has broad expertise in contentious insurance matters and specialises in Professional Indemnity, FI, D&O and Cyber business lines.



While over in Saudi Arabia, Lamisse Bajunaïd has joined Clyde & Co's intellectual property (IP), technology and commercial group as a senior associate in the Riyadh office.

With a decade of experience, she specialises in advising clients on IP protection strategies and commercial transactions for intangible assets, such as copyright, patents, trademarks, goodwill, and know-how. Lamisse is well-versed in Saudi Arabia's data protection laws and also has expertise in emerging technologies. In the past, she has worked with clients from various sectors, including education, healthcare, hospitality, retail, and technology. She is also a certified IP trainer by WIPO and SAIP and is fluent in English and Arabic. Her work includes drafting contracts for IP sales, licensing, M&As, joint ventures, tenders, procurement, franchising, and distribution.

### LINKS FOR GREENBERG TRAURIG IN SAUDI

Greenberg Traurig, a law firm in the US Top 20 has announced it is to affiliate with the Khalid Al-Thebity Law Firm in Saudi, who previously worked with Squire Patton Boggs, in Riyadh.

As a result of this development, the founder of Khalid Al-Thebity Law Firm, Khalid Al-Thebity, has joined Greenberg Traurig as a managing shareholder. Other shareholders and associates from the firm are expected to follow soon.

The Khalid Al-Thebity Law Firm has been operating in Saudi Arabia for more than 25 years. The firm advises private, government and quasi-government clients on matters including corporate, finance, project and project finance, PPP, infrastructure, natural resource, real estate, corporate restructurings, and legislative and regulatory matters.

Greenberg Traurig is expected to apply to operate as a joint venture with the Saudi lawyers under new rules which require Saudi partners to hold at least 25% of the joint venture. Greenberg Traurig also has an office in Tel Aviv.

### ALEJANDRA MOVES TO CVML

Alejandra Esmoris has joined CVML Limited, a law firm which was founded in 2003 and has offices in Paris and Dubai. She will work in the DIFC as the firm's Head of Private Clients.

Alejandra is a private client practitioner who has extensive experience in international succession planning, asset protection, and corporate structuring for legacy purposes as well as cross-border tax related issues.

She has also been a full STEP member since 2020 and she is an active member of the STEP Arabia Committee.

Her practice includes advising high net worth individuals on family matters and succession planning in the UAE, including for the registration of wills, marriage agreements and establishment of vehicles such as trusts, foundations, and/or special purpose vehicles. Alejandra also advises corporate clients on commercial and corporate

matters, including negotiating, drafting, reviewing, and mitigating risk on a wide range of legal documents and agreements such as shareholder agreements, sales purchase agreements, employment contracts, agency and distribution agreements, or commercial leases.

Prior to joining CVML, Alejandra practiced both in Switzerland and in the UAE with leading firms.

### NEW ADDITION TO PWC EMPLOYED



UK qualified solicitor Saher Khan has recently joined PwC Legal Middle East. She will be based in Dubai and work as a Senior Associate. Saher has over five years' experience and specialises in employment and labour law. Prior to joining PwC, Saher worked at a number of law firms in the UAE, including at SOL International Ltd, where she gained valuable experience in corporate law, litigation, legal research, and legal writing. She has an LLB degree from Middlesex University Dubai and a Graduate Diploma in Law (GDL) from Leeds Beckett University.

PwC is a multinational professional services network which provides audit, assurance, consulting, and tax services, as well as legal services. It established in the region four decades ago and operates in many countries, including Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, the Palestinian territories, Qatar, Saudi Arabia and the UAE.

### NEW ROLE AT FICHTE FOR VODA

Dr Laura Voda has been appointed a Partner in the corporate and commercial group at Fichte & Co. Fichte & Co. which was launched in 2005 is based in Dubai. In addition to corporate law services, the firm also specialises in providing legal advice in niche areas, such as blockchain, data, AI and fintech.

Dr Voda's work will include corporate set-up and structuring, legal advice on tax structuring, investments, commercial contracts, and complex corporate structures with cross-border components.

### SEND US YOUR NEWS

If you have news of an appointment or promotion within the legal or financial professions you would like to see reported in Lexis Middle East Law, please send details to: [corrine.joseph@lexisnexis.com](mailto:corrine.joseph@lexisnexis.com)



# Opportunities in the Middle East with Jameson Legal

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

## **Qatar**

### **Commodities Compliance Officer, Energy Company**

Our client is offering the opportunity to lead the trading compliance function within a major energy company in the Middle East. This is a broad compliance role encompassing advisory, monitoring, and trade surveillance. Applicants will require at least 5 years of trading compliance experience.

*Reference: MBP-IM-12638*

## **Qatar**

### **Senior Counsel, 10+ PQE, O&G Producer**

Our client, a leading employer and O&G producer in Qatar, is looking to hire a Senior Counsel for its Trading & Marketing department. Applicants must be qualified in the UK, US, Australia, or an EU jurisdiction, with at least 10 years' experience focused on trading and compliance.

*Reference: IJR-IM-13208*

## **Saudi Arabia**

### **Risk & Compliance Director, Investment Fund**

A major investment fund in Saudi Arabia is looking for an experienced Risk & Compliance professional to lead and develop their Risk & Compliance programme. The ideal candidate will possess over 15 years' experience, with strong knowledge of risk and compliance management, and Risk Management Standards.

*Reference: MBP-IM-13878*

## **Saudi Arabia**

### **In-House Tech Lawyer, 7+ PQE**

Our client is developing a one-of-a-kind project that prioritises innovation and technology. They are seeking a transactional lawyer with at least 7 years' legal experience gained at a leading international firm and/or in-house legal team, focused on negotiating and drafting technology agreements.

*Reference: SSK-IS-14032*

## **Saudi Arabia**

### **Corporate Legal Director, 5-15 PQE**

An incredibly exciting opportunity has arisen to work with a key industry driver of Saudi Arabia. The successful candidate will join an established legal team and provide expert legal advice on all corporate matters, focusing on M&A and joint ventures. Applicants will ideally have 5-15 years' PQE with relevant corporate experience.

*Reference: JRS-IM-13265*

## **Saudi Arabia**

### **In-House IP Lawyer, 5+ PQE, Development Project**

One of the world's largest development projects is looking to hire an experienced IP lawyer. This is an incredibly interesting and varied role, comprising of patents, trademarks, and licensing work. Applicants will require at least 5 years' PQE in IP law, gained within leading law firms or leading companies in industry.

*Reference: JRS-PM-12988*

## **Saudi Arabia**

### **Commercial/Procurement Lawyer, 4-6 PQE, Major Project**

Our client is seeking a commercial attorney to work on Procurement matters. The successful applicant will be joining the legal team of one of the largest and most prestigious projects being developed in the Middle East. Our client is looking to hear from lawyers with 4-6 years' PQE gained within highly regarded law firms or in-house teams, and strong experience working on general contractual matters.

*Reference: JRS-IM-13501*

## **Abu Dhabi**

### **Legal Counsel, 3+ PQE, Manufacturing Company**

A manufacturing company is looking to hire a Legal Counsel in Abu Dhabi. Working closely with the General Counsel, this role will encompass a range of in-house work, including general commercial contracts and drafting, sales agreements, and employment contracts. Applicants should be qualified in the UK, Australia, New Zealand, Canada, or the US, with at least 3 years' PQE.

*Reference: IJR-IM-13664*

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



## Triple the expertise

Hashem AlAidarous Partner at Al Aidarous, qualified in three jurisdictions, explains the differences between dispute resolution in the UAE, the US and Australia.

### YOUR BACKGROUND

I am a UAE national, who has been admitted as a Lawyer by the Supreme Court of Queensland, an Advocate by the UAE Ministry of Justice, and an Attorney by the New York Supreme Court. I am also registered with the DIFC Courts. I have a Master's degree in International Corporate and Commercial Law from King's College London, a Graduate Diploma in Legal Practice from Queensland University of Technology, a Certificate in Legal Practice in the UAE, and a Bachelor of Laws from University of Queensland. I trained with a number of international law firms and have previously worked as an inhouse counsel in one of the top government-owned corporates. The time I spent as a board member at a UAE-based public joint stock company and at a foreign company have given me the necessary management skills for my current role as a Partner at Al Aidarous.

As a lawyer qualified in three jurisdictions, I notice a difference between the UAE civil law system and the common law systems of the US and Australia. Broadly, the UAE courts adopt an inquisitorial approach when resolving disputes in which fact-finding is driven by the courts, who also have control over the evidence, as opposed to the adversarial approach seen in Australia and the US where the discovery process is driven by the litigants.

The UAE courts do not follow the traditional common law standards of proof such as the 'balance of probability' test in civil claims. The final decision in a civil case is at the discretion of the trial judges hearing the case by assessing the litigants' evidence, provided that the judgment is based on plausible reasons.

Generally, civil matters before the UAE courts are determined based on written submissions supported by documentary evidence. UAE courts do not usually hear oral arguments from the parties and counsel, and if it is allowed, the judge closely supervises the witness' testimony, questions them and controls examination and cross-examination.

### YOUR WORK

I assist in driving the Firm's vision and strategy by overseeing core operations, developing new business opportunities, and creating a talent pipeline. I also run our Abu Dhabi Office and maintain its positive clientele base.



I specialise in Dispute Resolution, especially international and domestic arbitration and complex litigation before UAE Courts, particularly on Construction and Engineering, Civil, and Corporate and Commercial matters.

I strive to find the best dispute resolution solutions for clients not only from a legal perspective, but also from economic and commercial perspectives, taking into account enforceability of such solutions in their desired jurisdictions down the line. I am involved in cross-border litigation which means addressing conflict of law rules, choice of forum issues and explaining foreign legal concepts that may be unfamiliar in certain forums.

I also highlight the stare decisis and ratio decidendi of certain common law cases. When it comes to international arbitration, I consider issues such as the procedure to be followed in a given arbitration, whether to adopt a procedure based on civil law style memorials or common law style pleadings and the importance of such determinations. With arbitration you also have to consider when, how and why it might become necessary to bifurcate proceedings under the context of different legal systems and the consequences which could arise from doing that.

My advice to clients from Australia and the US who are thinking of taking action in the UAE is to obtain advice from a local counsel in the UAE at the early stages before proceeding with dispute resolution here.



### RECENT KEY DISPUTE RESOLUTION CASES

**Case No ....** DCC Case No. 535, 537/2022 on 9 February 2023

**Jurisdiction ...** Dubai and UAE

**Court ....** Dubai Court of Cassation

**Reported by ....** Al Aidarous

#### BACKGROUND

In this case a number of Dubai-based lawyers had been subject to disciplinary penalties which had been issued by the Grievance Committee of the Dubai Legal Affairs Department against a decision issued by the Professional Conduct Committee for Advocates and Legal Consultants in the Emirate of Dubai.

The lawyers were then suspended from practicing law for a specific period in line with a decision which had been issued by the Grievance Committee and as a result, they decided to challenge this decision before the Dubai Court of First Instance in DCFI Case No 42/2020 (civil).

#### THE LAWYERS' CASE FOR NULLIFICATION OF THE GRIEVANCE COMMITTEE OF THE DUBAI LEGAL AFFAIRS DEPARTMENT DECISION

The lawyers requested the nullification of the Grievance Committee Decision on the basis that the administrative resolutions establishing the Professional Conduct Committee and Grievance Committee were both void as they had not been published in the Official Gazette.

As a result, the lawyers argued that both committees were not legally constituted and therefore, the decision issued by the Grievance Committee was not valid.

On 30 May 2022, the Court of First Instance nullified the Grievance Committee Decision relying on the legal grounds that had been argued by the lawyers but rejected the other reliefs that had been sought.

#### DUBAI COURT OF APPEAL RULING

The lawyers and the Dubai Legal Affairs Department then appealed the Dubai Court of First Instance Judgment in DCOA Case No. 861/2022, DCOA Case No. 913/2022, and DCOA Case No. 790/2022.

On 8 September 2022, the Dubai Court of Appeal decided to merge the three appeals and then dismissed them and upheld the Dubai Court of First Instance judgment.

#### ARGUMENTS BEFORE THE COURT OF CASSATION

Following on from this, the Dubai Legal Affairs

Department appealed the Dubai Court of Appeal ruling before the Dubai Court of Cassation in DCC Case No. 537/2022.

The parties submitted that both the lower courts had erred in their judgment as they had failed to differentiate between administrative resolutions which are not subject to mandatory publication in the Official Gazette in order to be effective, and laws that mandatorily need to be published in the Official Gazette in order to have effect.

#### THE DUBAI COURT OF CASSATION'S DECISION

However, based on their review of the provisions of the UAE Constitution and Federal Law No. 32/2015 On the Official Gazette, the Dubai Court of Cassation dismissed the appealed judgment.

This was based on the differentiation between legislation and administrative resolutions.

The Dubai Court of Cassation explained that while legislation must be published in the Official Gazette in order to be given effect, the position in the case of administrative resolutions is different.

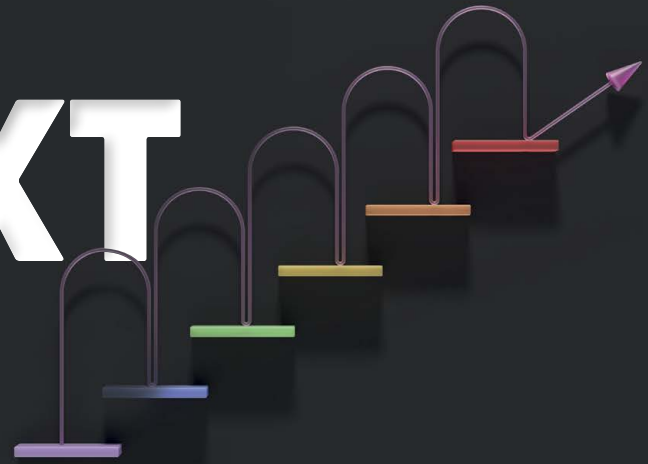
Administrative resolutions have effect and are binding on administrative authorities from the date of their issue and are binding on the relevant individuals from either the date of their publication in the Official Gazette or from the date of their notification to the relevant individuals or from the date on which the latter have an undisputable knowledge of the contents of the administrative resolution.

Based on this distinction, the Dubai Court of Cassation affirmed that the resolutions which had established the Professional Conduct Committee and the Grievance Committee (and consequently also the decisions issued by these committees) should have effect and be binding on relevant individuals, including the lawyers in this case, not necessarily through publication in the Official Gazette but also if there was evidence that the lawyers had been notified or had undisputable knowledge of the content of these administrative resolutions.

#### THE IMPACT OF THE COURT OF CASSATION JUDGMENT ON THE STATUS AND POWER OF ADMINISTRATIVE AUTHORITIES

We endorse the Court's decision. However, had the Court of Cassation in this case decided to follow the approach taken by the lower courts, this would have led to a critical legal situation where all administrative resolutions issued by administrative authorities which had not been gazetted would have been subject to potential challenge by relevant individuals and by the authorities themselves.

# THE NEXT STEPS



Al Aidarous's International Arbitration Department explain how multi-tiered dispute resolution clauses which set pre-arbitral procedural requirements are treated in the UAE.

© Getty images/istockphoto

**M**ulti-tiered dispute resolution clauses are common in commercial contracts, particularly in international agreements. They prescribe a layered process for conflict management, obliging the parties to take specific measures before resorting to arbitration. Typically, these measures are non-binding variants of ADR, such as negotiation, mediation, or conciliation. Typically meant to save time and costs, tiered dispute resolution clauses also have the potential to make the dispute resolution process more intricate, particularly if disputes involve non-compliance with the clause. Local courts and arbitral tribunals have long struggled with the legal consequences of such non-compliance, with debates typically centring around whether the issue is one of admissibility or jurisdiction. The crucial consequence of this distinction is that admissibility matters do not touch on the arbitral tribunal's substantive jurisdiction and cannot form the basis of setting-aside proceedings against the award (see Article V of the New York Convention and the English Arbitration Act 1996, s67). Effectively, the choice between admissibility and jurisdiction determines who has the final say on adjudication of the violation of the tiered dispute resolution clause - the tribunal or the courts.

## IS A MULTI-TIER CLAUSE BINDING?

In DCC Case No. 124/2008, the Dubai Court of Cassation stated that: 'according to the general principles of contracts; the parties to it may stipulate any condition that they find appropriate as far as it is not against public policy. The parties may agree conditions precedent that must be followed before recourse to arbitration. If the condition precedent is not satisfied the request for arbitration should be inadmissible'. However, if pre-arbitration steps are not clearly defined, the court will be unable to determine whether or not they were abided by. For example, the words 'amicable settlement' are not sufficiently clear to form the basis for an objection that the contractual preconditions were not followed. As stated in Dubai Court of Cassation, DCC Case No. 75/2015, 'the [...] agreement provides no

guidance as to what such amicable settlement entails and contains no material facts to enable the Court of First Instance to determine whether or not the settlement was pursued'. In the UK, historically, pre-arbitral steps in multi-tiered dispute resolution clauses did not constitute a jurisdictional condition precedent to arbitration, without there being clear language to that effect (see *Emirates Trading Agency LLC v Prime Mineral Exports Private Ltd* [2014] EWHC 2104 (Comm)). However, delving into the question of non-compliance with pre-arbitral steps, the Court in *Republic of Sierra Leone v SL Mining Ltd* [2021] EWHC 286 (Comm) explained the difference between admissibility and jurisdiction. The Court noted the trend in international literature that pre-arbitral steps are treated as matters of admissibility as opposed to jurisdiction, and endorsed that view in this case. The Court considered that the issue of compliance with escalation clauses relates to whether a claim can be heard by the arbitrators at the time when it is brought, as opposed to whether it can be brought to arbitration at all. It felt the former was a clear indication that the issue was one of admissibility. In the US, pre-arbitral steps in multi-tier dispute resolution clauses will not constitute jurisdictional conditions precedent to the commencement of arbitration, unless expressly agreed otherwise.

The language of the multi-tiered dispute resolution clause and whether it is a clear and express condition precedent are key. MENA region Courts generally enforce multi-tiered dispute resolution clauses and expect parties to comply with any preconditions to arbitration they have agreed to. For example, a Dubai Court of First Instance case (DCFI Case No. 757/2016 Commercial) ordered the annulment of an arbitral award on the basis that the Claimant had no evidence showing the dispute was ever referred for the Engineer's decision under Clause 67 of the FIDIC Red Book.

Similarly, the Dubai Court of Appeal (DCA Case No. 795/2018) rejected the appointment of an arbitrator before the parties had exhausted the contractual Dispute Adjudication Board process.

### RECENT ARBITRATION CASES

**Arbitration Institution....** DIAC  
**Issue....** Extension of Arbitration agreements to non-signatory individuals  
**Reported by....** Al Aidarous

#### BACKGROUND

This dispute arose from a project financing arrangement which had been entered into between the Claimant, who was the project owner, and the First Respondent, a corporate entity which was a Financing Company under which the Claimant was to be granted a loan, and the security was a cash investment of a specific amount.

The Claimant made the required cash investment, but did not receive the loan amount, so he initiated an arbitration claim against the Financing Company, and an officer of the Financing Company who had signed the contract on its behalf (the Second Respondent) along with two other individuals from the Financing Company (the Third and Fourth Respondents) - a shareholder and the managing director, who the Claimant alleged had lured him into signing the contract.

#### ARGUMENTS RAISED

The seat of arbitration was Dubai, and the governing law was the laws of Dubai.

The Claimant, in involving the three individuals, sought to rely on the 'extension of the arbitration agreement to a non-signatory' theory and, among other grounds, piercing the corporate veil.

The individual Respondents' primary counter argument was that a cumulative reading of Article 4(1) and 7(1) of Federal Law No. 6/2018 on Arbitration (the UAE Arbitration Law), logically leads to the conclusion that a valid arbitration agreement must be signed by an individual and must be in writing.

#### TRIBUNAL'S DECISION

The Arbitration Tribunal found that the Third and Fourth Respondents were bound by the arbitration agreement, through application of the concept of implied consent.

The basis of the Tribunal's decision on this point was that Article 4(1) and 7(1) of Federal Law No. 6/2018 did not stipulate a requirement for there to be a signature in an arbitration agreement and that the only legal requirement imposed by UAE law in order for there to be a valid arbitration agreement was that the agreement must be in written form.

In addition, the Tribunal found that by virtue of Article 125, 129, 130 and 132 of Federal Law No. 5/1985 on Civil Transactions (the UAE Civil Code) which dealt with offer and acceptance (that may be express or

implied) the concept of 'an implied acceptance of an arbitration agreement' was applicable in the UAE. The Tribunal went on to elaborate on this point and explained that as an arbitration agreement is fundamentally an agreement, it is subject to all the general rules which govern a contract, except where certain specific provisions are provided in the Arbitration Law.

#### NON-SIGNATORY DEEMED A PARTY

As a result, the Tribunal stated that a party who did not actually sign an arbitration agreement could be deemed to be a party where it had impliedly accepted the written arbitration agreement as inferred from the conduct of that party, either through its participation in the contract negotiation, its performance, or in the negotiation of the settlement of a dispute which had arisen from such a contract in a manner that indicated that the party was fully aware of the arbitration agreement.

By adopting this concept of the extension of an arbitration agreement to a non-signatory party, the Tribunal, based on the evidence submitted, found that the Third and Fourth Respondents (a Shareholder and the Managing Director of the Financing Company, respectively) were heavily involved in the transaction.

They had been involved in the negotiation stages of the contract, they had made representations that they owned and/or were decision makers at the Financing Company and that the company had sufficient financial power to provide the promised loan to the Project Owner.

In addition, following the signing of the agreement, they had continued to make representations over a significant period of time.

For example, initially, they had provided the Project Owner (the Claimant) with assurances that the loan was being processed and subsequently, they had confirmed that the loan was approved and that it had apparently already been released to the Claimant's account.

As a result, the Tribunal held that arbitral agreements can be extended to non-signatories based on their conduct, that is to say, consent will be deemed to exist when the non-signatory plays an active role in the performance of a contract that contains an arbitral agreement.

#### SECOND RESPONDENT'S ROLE

On the other hand, the Tribunal held that the Second Respondent, (the Financing Company Officer who had signed the agreement) was not party to the arbitration agreement.

His role had been limited to signing the agreement on behalf of the Financing Company, and he had no personal involvement except for being a representative of the company.



## Is It Asymmetric?



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**A**symmetric jurisdiction clauses (or unilateral option clauses) provide one party with the option of which court or forum they may bring proceedings, while limiting the other to bringing proceedings to one specific jurisdiction. These clauses can for example, enable one party to opt for either arbitration or court litigation if they wish, or that one party can bring proceedings in any court of competent jurisdiction they choose. They are often found in financing transactions (usually for the lender's benefit) and allow them to initiate action in multiple jurisdictions. However, they must be carefully drafted and can be subject to challenge (particularly when there are asymmetrical options to arbitrate). In the past they have been held unenforceable in a number of jurisdictions usually on the grounds they violate public policy.

### DIFC COURT CASE

This issue was covered by the DIFC Courts, in *Lara Basem Musa Khoury v Mashreq Bank Psc* DIFC Case No. 2022/007 which, considered if Ms Khoury (a bank client) could bring a claim against the bank before the DIFC Court as the right to do so in the agreement was conferred only on the bank.

It stated: 'This Agreement shall be governed by, and be construed in accordance with, the laws of the Dubai International Financial Centre

(DIFC). The [Claimant] agrees, for the benefit of the Bank, that any legal action or proceedings arising out of or in connection with this Agreement against it or any of its assets may be brought in the relevant courts of the DIFC.

The [Claimant] irrevocably and unconditionally submits to the jurisdiction of the relevant courts of the DIFC. The submission to such Jurisdiction shall not (and shall not be construed so as to) limit the right of the Bank to take proceedings against the [Claimant] in the courts of any other competent jurisdiction...'. The client argued this should be interpreted in such a way that she was entitled to bring proceedings against the bank in the DIFC Courts but the bank stated the clause gave only them the unilateral right to bring claims against her in the DIFC Courts, and this right was not reciprocally available to her.

The DIFC Court of First Instance ruled the client had agreed claims could be brought against her in the DIFC Courts, but the Bank had made no such reciprocal agreement. She appealed the ruling.

The DIFC Court of Appeal noted the asymmetry of the clause made for a degree of disquiet and served to reflect the imbalance between the comparative market power of banks and their customers, but still dismissed the appeal, rejecting the argument the clause was an 'opt-in' clause which conferred jurisdiction on the DIFC Courts by virtue of Article 5(A)(2) of Dubai Law No. 12/2004 as there was no clear, specific provision by which the client could bring her claim before the DIFC Courts.

It was held the clause was only for the bank's benefit. The Court specifically commented that asymmetrical clauses were familiar in international banking practice and, in part at least, served

a legitimate commercial purpose. The English Court decision in *AG v Pauline Shipping Ltd* [2017] EWHC 161 (Comm), was cited with the approval which had noted asymmetric jurisdiction agreements were a long-established, practical feature of international financial documentation.

Although the bank succeeded, the extensive debate in this case demonstrated that asymmetrical dispute resolution clauses can be challenged and must be carefully drafted.

This case turned on the interpretation of the clause, rather than the enforceability of a unilateral option clause as a matter of principle. Ms Khoury did not appear to have argued an asymmetrical clause was repugnant per se.

Nevertheless, this case represents an affirmative acceptance of asymmetric dispute resolution contracts and the validity of such clauses by the DIFC Courts.

The ADGM Courts have also previously adopted the common law approach and affirmed these clauses. However, while the two UAE common law courts appear to have affirmatively accepted the enforceability of asymmetrical dispute resolution clauses, their enforceability in onshore UAE courts is less certain.

The UAE civil law courts may not be as open to enforcing them, and could invoke principles of public policy, requirements of good faith and balance of rights so those seeking enforcement would have a higher threshold to meet.

Enforcement of unilateral option clauses that confer a right on one party to opt for arbitration could be particularly problematic, as UAE Courts have consistently held that arbitration is an exceptional form of dispute resolution requiring a clear and unambiguous agreement by the parties.



### Contributors

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