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THE LEGAL SECTOR'S DIGITAL REVOLUTION

Caroline Presber

Editor-in-Chief
The MENA Business Law Review

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Dear Readers,

Welcome to our special edition on the digital revolution and the law. LegalTech can make practising law easier, allowing AI to do the routine tasks and lawyers to concentrate on in-depth analysis and creative solutions. It can also streamline corporate governance and compliance. In his article entitled "The Legal Industry and the Perfect Storm", **Rany Sader** writes that lawyers will have to adapt to the legal tsunami that is LegalTech if their practice is to survive. Technology lawyer **Khaled Shivji** goes further to say that lawyers should be the agents of change in "digital disruption". IP legal expert **Rosena Nhlabatsi** explains how ChatGPT can help your legal practice but is not without its own issues.

The digital revolution isn't just changing the way we practise law. It's forcing legislators to rethink old laws and invent new ones – whether it be in the sector of transportation, finance, or employment. In their article on the UNIDROIT Draft Principles on Digital Assets, **Dr Andrew Dahdal** and FinTech practitioner **Omran Al Mulla** discuss a legal framework for digital assets in the MENA region. In a separate article, Omran Al Mulla gives an overview of regulatory requirements for FinTech licensing in Dubai.

In addition to our Feature articles, we have three important case updates, including one on cryptocurrency and another on the first bankruptcy administration enforced in Abu Dhabi.

Finally, our Practical Guidance article features a discussion on contract lifecycle management for technology projects.

LegalTech can make practising law easier, allowing AI to do the routine tasks and lawyers to concentrate on in-depth analysis and creative solutions.

Contract Lifecycle Management

In-House Strategies for Effectively Delivering Technology Projects

Effective contract management aimed at achieving the commercial objectives of the parties almost always plays a crucial role in significantly increasing the chances of technology projects being successfully delivered on time and budget. In this article, we set out a number of general contract management recommendations and techniques that will increase a technology project's chances of success.

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Contract management, or the various other terms used to describe it such as "contract lifecycle management" or "contract administration", broadly refers to the processes and systems required for the effective, efficient, and disciplined management of a technology contract. Effective contract management typically involves using various strategies to maximise operational and financial performance while reducing contractual risks.

Contract management from the start is crucial to properly delivering technology projects, which are becoming more complex, particularly cross-border projects involving the adoption of bespoke technologies. Conversely, improper contract management is a major cause of project failures and loss of significant financial resources, not to mention the painful litigation or arbitration that inevitably follows.

Proper contract management helps parties strategically navigate complex technology projects in a conscious manner, and that mitigates risks and increases a technology project's chances of being successful.

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that mitigates risks and increases a technology project's chances of being successful.

The parties should understand and proactively use the contract to aid the achievement of their project objectives, as opposed to the contract being put on a shelf once it is signed.

The parties should understand and proactively use the contract to aid the achievement of their project objectives, as opposed to the contract being put on a shelf once it is signed.

Although technology projects require tailored contract management, in this article we set out a number of general contract management recommendations and techniques for in-house counsel that will increase a technology project's chances of success.

Set Clear Objectives for Contract Management

The business unit sponsoring the project should set clear objectives regarding what it considers effective contract management. This usually requires the collaboration of the in-house legal team and other internal teams and sometimes external teams, such as specialised technical experts or a legal expert.

Appoint a Contract Manager

The relevant business unit should appoint or hire a contract manager with experience in technology contracts. Parties in technology projects also frequently use external legal counsel to support the contract manager throughout the project, particularly those involving significant legal and technical complexity. This structure will improve operational efficiencies and enable the relevant business and project units to focus on their designated roles rather than devoting valuable time being distracted by legal matters.

Psychology of Contract Management

As a general rule, the contract manager should actively ensure that the relevant teams comply with contractual terms throughout a project.

As a general rule, the contract manager should actively ensure that the relevant teams comply with contractual terms throughout a project. If this is not implemented from the outset, the parties usually end up with confrontational communications, instead of cooperative meetings and discussions.

If the parties operate outside or in contradiction of the terms, the risk of disputes arising substantially increases, and the complexity of the legal issues usually increases in proportion or at an even more rapid pace. This increases costs to both sides, and to a budget item usually underfunded or not funded at all.

Techniques for Contract Management

Contract management involves tracking and monitoring the project from the start to completion, including any applicable post-expiry/termination period, to ensure the organisation's performance is in line with the contract and that any issues are identified and addressed as quickly as possible.

There should be transfer of knowledge from the bid teams to the project management teams, and their input should be included when appropriate.

User guides can be used. These summarise in a clear and practical way the key terms of the contract, including specific parts applicable to each team and/or personnel. There should be transfer of knowledge from the bid teams to the project management teams, and their input should be included when appropriate. The guides can include the following information (among other things):

- a contract management process and its importance to the project's effective realisation, including how the contracts, personnel, policies and other documents are organised and connected to form the overall contract management process;
- the tools (including any software) that will be used for contract management;
- the roles and responsibilities of specific personnel and teams (such as the business unit sponsoring the technology project, the project team, the operational team, and the legal team);
- general and specific contractual risks; and
- policies and how they should be used.

Policies can be created, such as an escalation policy with a clear structure for reporting issues during a project.

Training sessions can be provided to the relevant teams and/or personnel in the project, with full or partial participation from legal teams.

Flowcharts can be used to offer visual clarity to complex

processes and sequences of events, to enable simplified analysis, communication, and cooperation, and to help identify where intervention and corrective action may be required.

Dashboards can make monitoring, reporting, and accountability more efficient and effective by including a collection of key information (such as project status and performance against milestones) in a single convenient location. Dashboards are particularly useful when there are multiple interconnected projects, enabling the rapid identification of underperforming aspects of projects and, as above, identifying whether intervention and corrective action may be required.

Excel spreadsheets are useful for tracking and planning projects, including a project's schedule, deliverables, and budgeting, and generating customised reports. For example, Excel can create visual timeline charts, including a Gantts chart, which can map tasks as to when they started and will likely be completed.

Specialised project management technologies exist for contract management and these can be useful in large and complex projects to streamline certain contract management processes. These can be worth the expense, but, in any case, will not dispense with having a designated contract manager.

Dispute Resolution Process

Contract managers should have oversight of any disputes between the parties and ensure, where appropriate, the proper contractual dispute resolution process and escalation procedures are pursued.

If the proper dispute resolution process is not followed, this could have unfavourable consequences, such as the counterparty arguing that any existing legal proceedings should be paused while the contractually binding dispute resolution processes are exhausted. Such steps can have negative legal, financial, and practical implications.

> *Many dispute resolution clauses in technology contracts are multitiered, requiring a series of non-binding dispute resolution processes (such as negotiation and mediation) before starting arbitration or litigation.*

As with the construction industry, many dispute resolution clauses in technology contracts are multitiered, requiring a series of non-binding dispute resolution processes (such as negotiation and mediation) before starting arbitration or litigation. Such clauses give the parties the opportunity to try and amicably resolve their dispute at an early stage and preserve their commercial relationship without the need for resorting to formal legal action. Where the differences are irreconcilable between the parties, pursuing all the options in a clause before escalating a dispute for binding resolution can be a large and unnecessary expenditure of time and resources. The utility of such clauses must, therefore, be assessed on a case-by-case basis during the contract negotiation stage.

Maintaining Organised Records of Communications

The contract manager should maintain organised records of all communications, such as written correspondence.

In respect of physical and/or virtual meetings, the contract manager can prepare meeting minutes and engage the counterparty in agreeing to the contents, including any next steps and deadlines.

Contractual Amendments

> *Contractual amendments are often required in technology projects, particularly large and technically complex projects where there are many moving parts.*

Contractual amendments are often required in technology projects, particularly large and technically complex projects where there are many moving parts. The contract manager must ensure amendments are properly enacted under the contract to give the parties the required legal certainty and help in avoiding future disputes.

Technology customers, such as banks, often do not want to think about amending a signed contract, having spent months negotiating it, while suppliers, such as software developers, may insist on changes to reflect increased project costs. Many times, however, customers and suppliers do not need to be at odds because it is in the interests of both parties to adjust the contract's scope and potential contingencies.

Especially because the renegotiation of contractual terms is often met with resistance, parties should obtain legal support in the negotiation, drafting, and execution of amendments to ensure any changes made to the main contract continue to be applicable and to eliminate any contradictions and uncertainties.

BIOGRAPHY

TAREK F.M. SAAD is Senior Counsel in the Doha office of Crowell & Moring. He is experienced in resolving complex, high-value commercial disputes primarily involving international parties and issues. Tarek also serves as an appointed arbitrator.

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DIFC Court Hears Ground-Breaking Cryptocurrency Claim

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The Court of First Instance of the Dubai International Financial Centre (DIFC) has handed down judgment following trial of a claim arising from the misappropriation of 300 bitcoins. This is the first time that the DIFC Courts have considered a cryptocurrency case of this kind and the case touches on several of the key questions facing the courts around the world.

(1) Gate MENA DMCC (2) Huobi MENA FZE v. (1) Tabarak Investment Capital Limited (2) Christian Thurner [2020] DIFC TCD 001, Justice Sir Richard Field, 5 October 2022.[1]

1 Facts

A. PARTIES[2]

The First Claimant (formerly known as Huobi OTC DMCC) ("**Huobi**") is a company registered in the Dubai Multi Commodities Centre (**DMCC**) and licensed by the DMCC to carry out "over-the-counter" (**OTC**) transactions in

1. Case summary available on Lexis® Middle East: DIFC DIFC Case No. TCD 001/2020 *(1) Gate MENA DMCC (2) Huobi MENA FZE v (1) Tabarak Investment Capital Ltd (2) Christian Thurner.*

2. *Gate MENA DMCC (2) Huobi MENA FZE v. (1) Tabarak Investment Capital Limited (2) Christian Thurner [2020] DIFC TCD 001, paras. 1 to 2.*

cryptocurrencies (principally, it trades Bitcoin (**BTC**)(**C1**). The Second Claimant ("**Huobi MENA**") is the assignee of Huobi's claim following a change in Huobi's ownership. Huobi MENA had previously been Huobi's majority shareholder.

The First Defendant, Tabarak Investment Capital Limited (**D1**), is a DIFC-registered company authorised by the Dubai Financial Services Authority (**DFSA**), the DIFC's financial regulator, to provide a range of financial services including advising on financial products and arranging investments, credit and custody. The Second Defendant, Christian Thurner (**D2**), was employed by D1 as its director of investments.

B. BACKGROUND

Representatives of C1 had, in early 2020, sought to carry out a trade with a group of buyers represented by an individual, a Russian national, who represented a Slovak company, which the group of buyers used to buy, sell and hold cryptocurrencies. In the negotiated trade, C1 was to obtain and then sell 300 BTC to the buyer's representative for a price to be determined shortly before the transaction was to be concluded, which would include a brokering fee (the "**Trade**").[3]

Through its general manager, C1 had conducted negotiations about the trade with the buyer's representative and D2 for a number of months prior to a meeting on 3 February 2020 at D1's offices in the DIFC (the "**Meeting**").

C1, and its representatives, were introduced to D1 and D2 in late 2019 by an intermediary as part of a search for a suitable local Dubai bank to open an account for a cryptocurrency-related company. The same intermediary later introduced C1's representative to the buyer's representative. In a number of initial meetings which took place between the buyer's representative and representatives of C1 and D1 around Dubai, and in emails between the various parties, the outline terms of the Trade were discussed, under which D1 would facilitate the proposed Trade by acting as escrow agent for both the cryptocurrency and the purchase funds, holding the BTC until the funds were received and then remitting them to the buyer and seller respectively. As part of the mechanics of the Trade, a cryptocurrency "cold" wallet was to be used to hold the private keys in escrow.[4]

D1 sent C1 its Account Opening Agreement (**AoA**) which set out the scope of services that D1 was obliged to provide, but only after due diligence and compliance requirements had been provided.[5] The AoA contained an "entire agreement" clause. In due course, it was signed by C1's general manager and returned to D1. The AoA was subsequently amended by an addendum that set out a list of fees payable upon signing (the "**Addendum**"), although the Addendum was not signed by C1.[6]

In late January 2020, two trial transactions took place between the parties as a proof-of-concept exercise.[7]

C. THE MEETING AND THE TRADE

The Meeting was attended by several representatives of C1, the buyer's representative and his associate, and D2 and his assistant. Immediately beforehand, the Meeting attendees were introduced to D1's founder and CEO.

The Meeting took place in a meeting room in D1's offices in the DIFC. The buyer's representative produced two new Trezor-branded cryptocurrency wallets, unopened from their original packaging. Each wallet generated a 12-word seed phrase upon first use whose purpose was to allow access to the wallet and its contents.[8]

Contrary to the prior agreement between the parties, the buyer's representative insisted that one of his wallets be used for the Trade and that it was to be set up by him. He told those present that the BTC could only be transferred from the wallet if the transferor knew all 12 words of the seed phrase. A member of C1's team objected to the buyer's representative setting up the wallet but ultimately C1's team allowed one of the wallets to be set up by D2 instead (the "**Wallet**"), following D2's proposal and assurances.[9] In particular, D2 told the parties that the 12 words of the seed phrase would be divided between C1 and the buyer. He plugged the Wallet into a laptop and set it up. The first six words of the seed phrase were noted by D2 and his assistant. The laptop was then passed to the buyers' representative and his associate who appeared to write down the other six words of the seed phrase.[10]

The price of the 300 BTC—the subject of the trade—was negotiated and agreed between C1 and the buyer, following which one of C1's representatives transferred the BTC to the Wallet. Proof of the transfer was sent by D2 to the parties. The Wallet was then locked in a safe in D1's CEO's office, while the buyer's representative apparently made arrangements for the remittance of the agreed purchase price to D1. The attendees went to lunch save for the buyer's representative's associate. Around two hours later, the parties returned to D1's offices, discovered that 299.99 of the BTC had been transferred to another wallet without receipt of the agreed purchase price, and called the police.[11]

2 Legal Issues

A. THE CLAIM

The claimants brought a number of claims against the defendants.[12]

I. Contractual Claims

3. *Ibid.*, para. 4.
4. *Ibid.*, paras. 5-17.
5. *Ibid.*, para. 10.
6. *Ibid.*, para. 13.
7. *Ibid.*, paras. 20 and 21.
8. *Ibid.*, para. 23.
9. *Ibid.*, para. 24.
10. *Ibid.*, para. 25.
11. *Ibid.*, para. 26.
12. *Ibid.*, para. 31.

A claim for breach of contractual duties owed under an alleged agreement between D1 and C1 broken down into claims for breaches of express terms and/or implied terms under DIFC Contract Law (DIFC Law No. 6/2004). The express terms alleged to have been breached included the following terms, namely that D1 would:

(i) propose a mechanism for the Transaction which would prevent the buyer from being able to retrieve the BTC before they had paid for them;
(ii) not transfer the BTC to the buyer until they had received payment for the BTC from the buyer;
(iii) not permit the buyer to access or retrieve the BTC until after D1 had received payment for the BTC from the buyer;
(iv) take reasonable care to ensure that the BTC were not transferred to the buyer before D1 received the payment from the buyer;
(v) take reasonable care to ensure that the buyer was not able to access the BTC before D1 received payment from the buyer.

The claim for breach of implied terms was based on Article 17 of the DIFC Implied Terms in Contracts and Unfair Terms Law (Law No. 6/2005 as amended) under which it was alleged to be an implied term of the alleged agreement between C1 and D1 in arranging and supervising the Trade, proposing the modalities of the Trade in the pre-Meeting negotiations and in giving the aforesaid advice, that D1 would act with reasonable care and skill.

II. Tortious and Other Claims

C1 also brought a claim under Article 18 of the DIFC Obligations Law (DIFC Law No. 5/2005, as amended) arising from alleged negligence in the advice given by the D1 and/or D2 before and at the Meeting. In particular, C1 alleged that the D1 and/or D2 owed C1 a duty of care in that the defendants assumed at the Meeting both an advisory role and the responsibility of keeping the BTC safe, which duties were breached by D2 by his:

(a) giving the assurances he is alleged to have given as to the safety of the use of the Wallet;
(b) setting up the Wallet and passing it to the buyer's representatives to note six words of the seed phrase; and
(c) placing the Wallet in D1's safe in the mistaken belief that this would ensure the safety of the BTC.[13]

In support of this aspect of its claim, C1 submitted that various facts supported the imposition of a duty of care, including that:

(a) D1 held out to them that the buyer was a client;
(b) D2 provided advice on the "process" leading up to the Trade;
(c) D1 assumed the role of custodian/escrow agent; and
(d) D1 held it itself out as providing and having experience in crypto-related services including custody and escrow services.[14]

C1 also alleged breaches by D1 and D2 of Article 37 (breach of confidence in their handling of C1's six words of the seed phrase), Articles 71 and 72 (breach of bailment obligations), Article 155 (breach of confidentiality of a banking business) and Article 158 (breach of fiduciary duties) of the DIFC Obligations Law (DIFC Law No. 5/2005) and breaches of the DFSA Rulebook.

III. Interesting Legal and Factual Issues with Global Relevance

Aside from the causes of action, a number of interesting legal and factual issues arose in the First Instance dispute which will be of particular interest to jurisdictions internationally:

The Court permitted expert evidence on cryptocurrency transactions, including their transfer, storage and value.

(a) Expert evidence on duty of care and best practice for custody providers

The Court permitted expert evidence on cryptocurrency transactions, including their transfer, storage and value. At trial, this evidence addressed two main issues:

(a) how the BTC could have been misappropriated from the Wallet; and

(b) the scope of the duty of care owed by the defendants to the claimants (if any), including the relevant security protocols for the Trade.

Expert evidence also explained to the Court on how it was possible to trace the movement of the BTC on the blockchain.

(b) Payment of damages in BTC, or how to quantify damages in fiat currency

C1 sought payment of 300 BTC *in rem*, or damages calculated on alternative bases, including the value of the 300 BTC:

(i) at the date of misappropriation;
(ii) at midday on the date of judgment; or
(iii) at midday on the date of payment following judgment.

Over the course of events, the value of 300 BTC fluctuated from approximately USD 3 million at the time of the misappropriation to a high of USD 18.3 million in November 2021. On the date of judgment, 300 BTC was valued at approximately USD 6.1 million.

3 Findings in the Judgment

The trial before Justice Sir Richard Field took place virtually over eight days in November and December 2021 with the Judge sitting in England and the witnesses giving evidence in

13. *Ibid.*, para. 88.
14. *Ibid.*, para. 99.

Dubai.

The Judge made numerous findings on the parties' factual and expert witness evidence.[15]

A. BREACH OF CONTRACT

The Judge found that terms of an agreement were reached such that:

(i) D1 would provide its existing wallet to receive the 300 BTC from C1 once the price per coin had been agreed;

(ii) D1 would only transfer the BTC to the buyer once the purchase money had been paid by the buyer into an account maintained by D1 in Dubai;

(iii) if the purchase money was received into D1's account, D1 would transfer the BTC to the buyer and transfer the net proceeds from the recipient account to an account nominated by C1;

(iv) if the purchase money was not received, D1 would transfer the BTC back to C1; and

(v) C1 would pay D1 a fee and/or a commission in respect of the Trade.[16]

The agreement would operate alongside and within the framework of the AoA signed by both parties, with D1 (acting by D2) accepting, or being estopped from denying, that the aforesaid terms would apply notwithstanding the entire agreement clause in the AoA.[17]

However, the agreement was subject to:

(ii) the conditions precedent that an account opening fee would be paid by C1 to D1 and D1's due diligence processes being completed, unless these conditions were waived; and

(iii) the commission and other sums due to D1 for participating in the Trade.[18]

The Judge found that D2 was not the "originator" of the modalities which governed how the Trade operated.

The Judge also found that D2 had apparent authority for all that he did and said in the lead-up to the Meeting, but that he lacked authority to agree that the fee/commission C1 was to pay to D1 for the Trade could be paid out of the Trade proceeds, as D1's CEO had told C1's representative that the fee/commission was to be paid prior to the Trade.[19] The Judge rejected C1's position that D1 had waived this requirement by permitting the Trade to proceed in its office without prior payment.[20] Further, because the account opening fee had not been paid, the agreement between C1 and D1 never became a binding contract, and the contractual claims failed.[21]

B. HOW THE BTC WAS MISAPPROPRIATED

The parties' experts agreed that there were four potential means by which the BTC could have been misappropriated from the Wallet. Specifically:

(i) by physical breach,

(ii) by tampering with the Wallet,

(iii) by collusion between the non-claimant parties, and/or

(iv) by the buyer's representatives having scrolled down the screen of the Wallet when they were passed the laptop computer into which the Wallet had been plugged to find and then memorising or recording all 12 words of the seed phrase.

The Judge adopted the experts' view that the last of these options was the most likely explanation.22

C. NEGLIGENCE

The Judge found that D2 was not under a general contractual duty to advise C1 on the ways in which the Trade was to be carried out, but rather he had agreed to perform a narrower set of "relatively simple" tasks.

After considering the evidence on the alleged assurances given by D2 to C1 concerning the security of the modalities of the Trade, the Judge concluded that there had been no breaches by either of the defendants. In particular, the Judge found that:

(i) D2 was not under a general contractual duty to advise C1 on the ways in which the Trade was to be carried out, but rather he had agreed to perform a narrower set of "relatively simple" tasks.[23] This meant that the relationship between C1 and the defendants was not "akin to contract where but for the lack of consideration there would have been a contract".[24]

(ii) The modalities of the Trade and particularly the BTC storage and transfer had been agreed between the representatives of C1 and the buyer, and not D2.

(iii) D2's representations to C1 about D1's experience and capabilities in advising on and/or arranging custodial services in respect of crypto assets were "puffing" without particular details, such that the Judge did not consider that C1 relied on them.[25]

(iv) The insistence by the buyer's representative that the BTC be transferred into the Wallet (rather than D1's wallet) was a "game changer", but ultimately C1

15. *Ibid.*, para. 39 to 54.
16. *Ibid.*, para. 60.
17. *Ibid.*, para. 61.
18. *Ibid.*, para. 64.
19. *Ibid.*, para. 71.
20. *Ibid.*, para. 82.
21. *Ibid.*, para. 83.
22. *Ibid.*, para. 30.
23. *Ibid.*, para. 104.
24. *Ibid.*, para. 105.
25. *Ibid.*, para. 106.

agreed to his insistence in the hope of being able to do future business with the buyer. At the same time, D1 and D2 were at all times subject to the direction of C1 at the Meeting.[26] D2 had not taken the lead in saying anything about the appropriateness of the use of the Wallet but had set the Wallet up and made representations about its security when prompted by C1.[27]

(v) D1 was not a professional adviser (in this case, on the ways of trading BTC) and the facts otherwise departed from *Manchester Building v. Grant Thornton UK LLP [2021] UKSC 20*.[28]

The Judge found that the relationship between the defendants and C1 was not sufficiently proximate for the alleged duty of care to have existed.

Accordingly, the Judge found that the relationship between the defendants and C1 was not sufficiently proximate for the alleged duty of care to have existed. No duty of care was found on the assurances given to C1 because neither of the defendants had assumed any responsibility towards C1 for the statements. It was not reasonable for C1 to rely on the defendants to exercise such a degree of care as the circumstances required. It was not reasonable for C1 to rely on the assurances to the point that it transferred the 300 BTC without receipt of any of the purchase monies.[29]

D. OTHER CLAIMS

Following on from his findings in the main claims above – and principally his findings on negligence – the Judge dismissed the claims based on breaches of confidence, bailment, fiduciary and regulatory duties.

4

Conclusions

The Judge accepted C1's contention that BTC are property, following the English decision of *AA v. Unknown Persons* [2019] EWHC 3556 (Comm).

The Judge's findings in relation to the role of D2 (specifically that he did not advise C1 on the modalities of the Trade and that he did not have authority to agree that D1's fees could be deducted from the proceeds from the Trade) mean the judgment does not contain any insight regarding the appropriate security protocols for custodians of digital assets, or whether the DIFC Court would be prepared to order payment of damages in BTC, or if it would order damages in fiat currency, in what amount and on what basis.

The claimants have been granted permission to appeal on eight grounds. These grounds include appeals on points of fact and law in relation to the claims for breach of confidence, breach of contract, negligence and breach of fiduciary duty. This leaves open the possibility that these issues may yet receive judicial consideration.

The appeal is likely to attract significant interest as it will be one of the first of its kind not only in the DIFC, but globally.

The appeal is likely to attract significant interest as it will be one of the first of its kind not only in the DIFC, but globally. Given the UAE government's focus on promoting digital assets and the recent launch of the DIFC's specialist Digital Economy Court, it is also possible that the Court of Appeal may choose to offer some guidance to those providing custody and escrow services for digital assets in the region irrespective of whether it upholds or rejects the appeal.

The substantive appeal is expected to be heard later this year.

The claimants are represented by Sara Sheffield, Peter Smith, Max Davis, James Colautti and Reem Faqihi of Charles Russell Speechlys LLP and Andrew Spink KC and Justina Stewart of Outer Temple Chambers.

26. *Ibid.*, para. 107.
27. *Ibid.*, para. 108.
28. *Ibid.*, para. 109.
29. *Ibid.*, para. 110.

BIOGRAPHY

SARA SHEFFIELD is a Partner and Head of Common Law Litigation for the Middle East based in the Dubai office of Charles Russell Speechlys.

Sara has over 19 years of experience as a commercial disputes, white-collar crime and regulatory disputes lawyer in Australia, England & Wales and the UAE.
Sara acts in complex commercial litigation in the Dubai International Financial Centre and the Abu Dhabi Global Market Courts in the UAE, and in the English High Court, as well as in arbitration matters before local and international centres. Sara handles a wide range of commercial disputes, often involving cross-border issues, with a focus on:

- Shareholder and partnership disputes
- Financial services disputes
- Fraud, asset-tracing and both civil and criminal recovery actions
- Contentious insolvency matters
- Regulatory (e.g. DFSA) investigations
- Ancillary relief matters including third party disclosure orders and worldwide freezing orders
- Enforcement matters

Sara is one of few lawyers ranked in Who's Who Legal: Asset Tracing and Recovery UAE consecutively from 2018–2023. She is the current Co-Chair of the International Bar Association (IBA) Asset Recovery Committee which was launched in 2023 and a founding member of IWIRC Dubai which is launching in 2023.

Sara previously worked for public prosecution agencies in both Australia (Commonwealth Director of Public Prosecutions) and the UK (SFO).
Sara is admitted to practice in Australia (Queensland), England & Wales, the Dubai International Financial Centre Courts and the Abu Dhabi Global Markets Courts in the UAE, and the Astana International Financial Centre Courts in Kazakhstan.

Sara is also ranked by Chambers Global 2023 as an Up and Coming partner for Dispute Resolution, and is included in the Legal 500 Arbitration Powerlist Middle East 2023.

MAX DAVIS is a Legal Director in the dispute resolution team at Charles Russell Speechlys and is based in Dubai.

Max specialises in high value, multi-jurisdictional disputes involving fraud, corruption and asset tracing, with a particular focus on digital assets. He is the co-author of the UAE chapter of the Virtual Currency Regulatory Review and represents clients in one of the first digital asset recovery claims heard in the DIFC Court in Dubai.

Max has litigated in the Commercial Court, Court of Appeal and Privy Council in London, in the DIFC and ADGM, and as far afield as in the Cayman Islands and Tanzania.

Max also has extensive experience of complex multi-party LCIA arbitrations including in the UK, Middle East and Singapore.
Max is admitted to practise in England and Wales.

PETER SMITH is a Legal Director in the dispute resolution team at Charles Russell Speechlys and is based in Dubai. He is a barrister with experience of a wide range of civil and commercial disputes and sectors, including arbitration, banking and finance, company, construction, employment, insolvency, insurance, media, real estate, technology, and professional negligence.

In the Legal 500 (UAE Dispute Resolution: Arbitration and International Litigation), Peter was recommended as a "Rising Star" in 2020, 2021, 2022 and 2023, and was described as "notable" in 2019. He is included in the Legal 500 Arbitration Powerlist Middle East in both 2022 and 2023.

Peter is admitted to practise in England and Wales (barrister), Dubai International Financial Centre (Part 1 and Part 2 registered), and the Emirate of Dubai. He has appeared before the ADGM Court of First Instance and has rights of audience at the Astana International Financial Centre Court (2019).

Rajabieslami v. Tariverdi and others:

English Commercial Court casts doubt on enforceability of English court judgments in Qatar

In this case, the English Commercial Court provided guidance on obtaining security for costs under the UK Civil Procedure Rules against a claimant residing in Qatar, a State not bound by the 2005 Hague Convention.

Sophie Eastwood
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1

Introduction

This case note examines the recent security for costs ruling in relation to the ongoing case of *Rajabieslami v. Tariverdi and others*[1] concerning an alleged breach of trust to hold shares in a Liberian one-ship company. The case provides useful guidance on the evidence required to establish a "real risk" of non-enforcement under condition or "gateway" (a) of Rule 25.13 of the UK Civil Procedure Rules (**CPR**). It also highlights that the enforcement position in Qatar remains different from that in the UAE, and no assumption can be made that the principle of reciprocity established between the English courts and the UAE will be followed in other GCC States.

1. [2023] EWHC 455 (Comm) (6 March 2023).

2

Facts

The case concerns an ongoing dispute over the ownership of an oil tanker. The claimant, an Iranian national living in Qatar, brought a claim in the English courts alleging that the first defendant, an Iranian national living in England and Greece, had failed to honour a trust to hold shares in a Liberian one-ship company, Desero Shipping Company. The claimant alleges that, after operating the oil tanker on behalf of the owners for more than two years, the first defendant "stole" and sold the vessel. In response, the first defendant alleges that the shares (and the oil tanker) were his outright, having been given to him to settle a bill for Persian carpets totalling just over USD 9 million. The first defendant alleges that he and his family had sold these Persian carpets to the claimant

between 2016 and 2019. On the same day that the claim form was issued, the claimant successfully obtained a freezing injunction restraining the defendants from removing any assets up to the value of approximately USD 7.4 million from the English jurisdiction.

The present judgment arose from the defendants' application for security for costs. Mr. Richard Salter KC (the "Judge"), sitting as a Deputy Judge of the High Court, presided over the two-day contested hearing.

3 Main Legal Issues

A security for costs ruling requires that the application fall within one of the conditions or "gateways" for security permitted in CPR 25.13(2).

A security for costs ruling requires that the application fall within one of the conditions or "*gateways*" for security permitted in CPR 25.13(2). The Court must also decide that it is just, in all the circumstances, to make the order. In the present case, the defendants' application for security relied on the gateways in CPR 25.13(2)(a), (e) and (g). However, the Court found that neither gateway (e) or (g) were made out and the ruling turned on the application of CPR 25.13(2)(a).

This gateway requires that the claimant be:

> *"(i) resident out of the jurisdiction; but (ii) not resident in a State bound by the 2005 Hague Convention, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982".*

A defendant is entitled to protection only when the court is satisfied that there is a "real risk of substantial obstacles to enforcement or of an additional burden in terms of cost or delay" *in enforcing an order for costs against the claimant.*

However, even when the factual requirements for security under CPR 25.13(2)(a) are satisfied (i.e., when a claimant is resident out of jurisdiction and in a non-Convention state), the court must still ensure that, for the purposes of Article 6 and 14 of the European Convention on Human Rights, which prevent discrimination on the grounds of national origin with respect to access to the courts, it exercises its discretion to make an order under this gateway in "*a non-discriminatory manner*".[2] Put simply, security should not automatically be awarded against a non-Convention State resident. Instead, a defendant is entitled to protection only when the court is satisfied that there is a "*real risk of substantial obstacles to enforcement or of an additional burden in terms of cost or delay*"[3] in enforcing an order for costs against the claimant. Residency out of jurisdiction does not necessarily mean that it will be more difficult to enforce a costs judgment.[4] However, clear evidence of potential difficulties or burdens of enforcement in the relevant State, which would not be encountered in the United Kingdom or a Convention State, are capable of providing objective justification for these purposes. The ruling, therefore, turned on the question of reciprocity as between the English and Qatari courts and submission of evidence to the Court on the ease of enforcing any costs judgment in Qatar.

4 Decision

The Court found that, under CPR 25.13(2)(a), there existed a "*real risk of substantial obstacles to enforcement*" and made a security for costs ruling.

The Judge explained that although it was accepted that the factual requirements of this gateway were satisfied (the claimant is resident in Qatar, a non-Convention State), the Court still must exercise discretion, establishing to its satisfaction that there is a "*real risk*" that the defendant would not be in a position to enforce an order for costs against the claimant. In determining this, the defendant does not need to show that there is a "*likelihood*" of obstacles on the balance of probabilities.[5] Instead, the Judge confirmed that a "*real risk*" must be "*supported by solid evidence*" and that a risk that is merely "*speculative or fanciful*" is insufficient.[6]

The Judge found that the materials relied on by the defendants demonstrated that there was a real risk of serious obstacles to enforcement.

The Judge found that the materials relied on by the defendants demonstrated that there was a real risk of serious

2. *Ibid.*, para. 46.
3. *Danilina v. Chernukhin* [2019] 1 WLR 758 (cited).
4. *Nasser v. United Bank of Kuwait* (Security of Costs) [2001] EWCA Civ 556.
5. *Bestfort Developments LLP v. Ras Al Khaimah Investment Authority* [2018] 1 WLR 1099 (cited).
6. *JSC Karat-1 v. Tugushev* [2014] 4 WLR 66 (cited).

obstacles to enforcement. These included an online article dated 4 April 2019 from Lexology on enforceability of foreign judgments in Qatar, signed by two lawyers from a well-known Middle Eastern law firm. This article stated that enforcement of foreign judgments in Qatar "*may be challenging*" and is likely to be refused in the absence of a bilateral or multilateral treaty concerning the reciprocal enforcement of judgments. This position was confirmed by a witness statement from a registered Qatari Advocate, who also informed the Court that in the absence of a treaty, the Qatari courts would require "*concrete evidence*" either through:

(i) examples of Qatari judgments actually having been enforced by English courts without re-examination of the merits; or

(ii) a declaration by the UK Government that Qatari judgments will be recognised in the English courts without re-examination.[7]

The Court noted that there is no treaty between Qatar and the United Kingdom for the reciprocal enforcement of judgments.

The Court noted that there is no treaty between Qatar and the United Kingdom for the reciprocal enforcement of judgments. Furthermore, it accepted that there existed neither evidence of Qatari judgments having been recognised by English courts, nor a UK Government declaration asserting that Qatari judgments would be recognised in English courts. However, the Judge conceded that this may be explained, at least in part, by the fact that Qatari judgments are generally unreported.

The Judge made short shrift of the claimant's argument that neither a government declaration nor "*concrete examples*" *were "absolutely necessary"*[8], and that reciprocity could sufficiently be proved by textual evidence through, for example, expert evidence on the English law position to the possibility of enforcement of a Qatari judgment. The Judge noted that no examples were given of a Qatari court being satisfied by expert evidence about reciprocity in order to enforce a foreign judgment.

The Judge was unpersuaded by the claimant's efforts to draw an analogy between the Qatari and UAE courts.

In a similar fashion, the Judge was unpersuaded by the claimant's efforts to draw an analogy between the Qatari and UAE courts. There, following an English court enforcing a Dubai Court of Cassation judgment, the UAE Ministry of Justice issued a directive confirming that English court judgments could be enforced in the UAE. The claimant argued that this approach would be followed by the Qatari courts if an English court recognised and enforced a Qatari court judgment. However, the Judge agreed with the defendants, finding that there was no analogy, as a concrete example of enforcement in the English courts and a subsequent UAE ministerial decree were first required to establish enforceability of English judgments in UAE courts.

Two additional issues were also considered by the Court:

(i) the effect of an undertaking given by the claimant; and

(ii) availability of enforcement in another jurisdiction against the claimant.

On the first issue, the Court was invited to consider the claimant's undertaking not to challenge enforcement in Qatar of any cost order which the defendants might obtain. In the circumstances, the Judge found that the undertaking offered was not sufficient to overcome the difficulties of enforcement. The Judge concluded that there was no evidence that such an undertaking would be enforced by the Qatari courts.

The Judge accepted that the "central issue" was whether there was a real risk that a cost order could not be effectively enforced against the claimant. The issue was, therefore, not wholly limited to the question of enforcement in Qatar.

With regard to enforcement in another jurisdiction, the claimant submitted that the issue which the Court had to decide was not simply whether there were obstacles to enforcement in Qatar, but whether there was a real risk that the defendants would not be in position to enforce an order for costs against the claimant. The Judge accepted that the "*central issue*" was whether there was a real risk that a cost order could not be effectively enforced against the claimant.[9] The issue was, therefore, not wholly limited to the question of enforcement in Qatar. Nonetheless, this still required the Court to examine, among other things, the nature of the assets, their value, how likely they were to appreciate or depreciate, and how easily these assets could be moved or disposed of, either in the intervening period or if faced with a costs judgement that was likely to be executed against the claimant.

In the present case, the assets concerned shares held by the claimant in a private company incorporated in Sharjah which operates a small refinery there. The claimant confirmed that

7. *Op. cit.*, n. 1, para. 56.
8. *Ibid.*, para. 57.
9. *Ibid.*, para. 69.

he continued to own his shareholding and his "*best guess*" would put the shareholding at around USD 5,233,100.62 (a value that would be nearly ten times the amount currently sought by way of security).[10] The Court was also informed that enforcement could be sought in the UAE regardless of the residency of the person, provided there were assets within the jurisdiction against which enforcement may be sought.

In rejecting the claimant's submission, the Judge found that there was a real risk that the claimant would dispose of these shares, either in the intervening period or if faced with a costs judgment that would likely be executed against him. The Judge referred to the ease with which the claimant could dispose of the shares and questioned the accuracy of the share valuation. This he deemed entirely dependent upon the accuracy of the company's own prediction of future performance, which had not been independently verified.

Finally, the Judge also considered the claimant's "*general way of life and of doing business*".[11] On this account, the Judge found that the fact that the claimant was very familiar with both the use of corporate structures to hold assets and with various methods for moving assets between jurisdictions, as well as the fact that he had chosen to give no information of accounts or other assets held in his own name, meant that there was a "*real risk*" that the claimant would dispose of the UAE shares. In sum, there was insufficient evidence to hold that a judgement could be enforced by the defendants in another jurisdiction, such as the UAE. This would leave the defendants needing to enforce any order of costs against the claimant in Qatar, where there is a real risk that the defendants would face difficulties in enforcement.

On the discretionary question, the claimant argued that the defendants' defence was "*demonstrably a dishonest one*" and based upon fabricated and forged documents.[12] In such circumstances, it would not be just to require security for the costs of such a defence. Further, the claimant referred to the Court's earlier conclusion on the freezing order application that there was a "*sufficient case*" that a serious fraud had occurred. The claimant also drew the Court's attention to the inadequacy of the defendants' initial responses to the ancillary asset disclosure orders made in support of the freezing order. Nevertheless, the Judge found that without the "*benefit both of expert evidence and of full and proper documentary and oral evidence of the surrounding circumstances*", he was not in a position to "*reach a sufficiently reliable conclusion as to the prospects of success*".[13] As such, the Court was not satisfied that the claimant's case was certain or almost certain to succeed at trial so that the gateway should not apply. Moreover, there was no evidence produced to persuade the Court that the claimant would be hindered from continuing their claim.

10. *Ibid.*, para. 67.
11. *Ibid.*, para. 75.
12. *Ibid.*, para. 79.
13. *Ibid.*, paras. 86-87.

5 Analysis

The defendant does not need to prove that there is a "likelihood" of obstacles on the balance of probabilities.

This case confirms that it is sufficient for a defendant on a security for costs application to show objectively justified grounds relating to enforcement or the burden of enforcement, such that there is a "*real risk*" that a defendant will not be in a position to enforce an order for costs against a claimant. The defendant does not need to prove that there is a "*likelihood*" of obstacles on the balance of probabilities.

The decision also provides useful guidance on the evidence required to establish that there is no "*real risk*" of non-enforcement under CPR 25.13(2)(a). In the absence of a bilateral or multilateral treaty between the United Kingdom and Qatar on the reciprocal recognition and enforcement of foreign awards, this evidence would include providing the court with a "*concrete example*" of the English courts having already recognised a Qatari judgement and/or a UK Government statement to the effect that the English courts would recognise Qatari judgments without re-examination.

The case also shows that the use of expert evidence on the possibility of enforcement of Qatari decisions as a matter of principle under English law will not be deemed sufficient evidence to ensure enforceability.

The decision also highlights that it cannot be assumed that the principle of reciprocity now recognised in the UAE will simply be followed by other GCC States. Rather, the position of the UAE courts demonstrates that both a concrete example of enforcement and a subsequent ministerial declaration are required before enforceability can be established.

The decision also highlights that it cannot be assumed that the principle of reciprocity now recognised in the UAE will simply be followed by other GCC States.

The decision also demonstrates that courts will consider enforceability in another jurisdiction in which the claimant

A court will still need to be satisfied that there is no real risk of the assets identified being unavailable if and when the defendant seeks to enforce a cost order.

holds assets. However, a court will still need to be satisfied that there is no real risk of the assets identified being unavailable if and when the defendant seeks to enforce a cost order. The courts may consider, among other things, the nature of the asset, the value of the asset (including the likelihood of the asset appreciating or depreciating in value), the ease with which they could be moved or disposed of, and the likelihood that the claimant will dispose of them, either in the intervening period of or if faced with a costs judgment that would likely be executed against them.

Finally, on the discretionary question, the decision confirmed that a court will have to be convinced that the claim has such a very high probability of success so as to make it unjust in all circumstances to make an order for security for costs. However, this case confirms that an application for security for costs is not the forum for a detailed investigation of evidence or law and the evidentiary bar to reach this conclusion remains high.

BIOGRAPHY

DR SOPHIE EASTWOOD joined McNair International in April 2023. Sophie is a dual-qualified lawyer admitted to practise as a Solicitor in England and Wales (2019) and at the New York Bar (2021). She holds an LL.B from King's College London, an M.Phil and Ph.D from the University of Cambridge, and recently completed an LL.M at Georgetown Law, graduating with Distinction and a place on the Dean's List. Sophie has previously worked in two international law firms in London. She has also taught contract law at Queen's University Belfast.

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JOSEPH DYKE is a Senior Associate at McNair International, specialising in international commercial arbitration and litigation. He obtained a first-class undergraduate History degree (focussing on the Middle East and North Africa) from the School of Oriental & African Studies before completing he Graduate Diploma in Law (GDL) and the Bar Professional Training Course (BPTC) at City Law School in London. He was called to the Bar of England & Wales (Lincoln's Inn) in 2014.

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Administration in UAE – A Close Look into the NMC Group Administration

Administration in the Common Law and in the ADGM Insolvency Regulations is a legal mechanism available to rescue a company as a going concern and aims to achieve a better result for the company's creditors as a whole than would be likely if the company were wound up, or to realise property in order to make a distribution to one or more secured or preferential creditors. The NMC Group litigation was a significant bankruptcy case for the UAE, as the case formally introduced the Common Law concept and mechanism of "administration" into the UAE's Civil Law system.

Hana Al Khatib
Senior Associate
(Team Leader)
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1 Introduction

Bankruptcy and restructuring in the UAE has not been, until recently, a legal proceeding commonly used by enterprises or individuals. The rules of bankruptcy were imbedded earlier in the Federal Law No. 18/1993 on Commercial Transactions, from Article 635 to Article 900. These rules did not constitute a modern, best practices Bankruptcy law. An update or revamp of the law was needed to accommodate the fast growth of the UAE's economy in various non-oil sectors and to attract businesses and international and regional major companies to invest in the UAE. In 2016, a stand-alone special law regulating bankruptcy and restructuring was enacted under Federal Decree-Law No. 9/2016 On Bankruptcy and amended by virtue of Federal Decree Law No. 23/2019 dated 4 September 2019, Federal Decree Law No. 21/2020 dated 27 September 2020 and most recently Federal Decree Law No. 35/2021 dated 20 September 2021 (together, the "**Bankruptcy Law**") laying down the rules and procedures related to the bankruptcy and restructuring of financially distressed commercial enterprises and merchants.

The Bankruptcy Law regulates the entire insolvency process through to the liquidation of assets stage. The law also includes a chapter on preventive composition, which is an option to be used by a debtor if facing financial issues preventing the debtor from paying the debts by their due dates, whereby the debtor seeks the assistance of the court to reach settlements with creditors.

The UAE Bankruptcy Law applies to onshore companies and freezone entities, but not to companies established in freezones with their own insolvency regulations such as the Abu Dhabi Global Market (ADGM) and the Dubai International Financial Center (DIFC).

The UAE is a Civil Law jurisdiction. The ADGM free zone, on the other hand, is a Common Law jurisdiction modeled on English Common Law. The ADGM Insolvency Regulations regulate company insolvency and winding up and parallel the English Insolvency Act, including the legal concept and practice called "**administration**."

By putting a company in administration, the winding up of an enterprise can be avoided, while a viable solution is devised and carried out under the guidance of experienced and licensed administrators to save the company from collapsing.

Administration in the Common Law and in the ADGM Insolvency Regulations is a legal mechanism available to rescue a company as a going concern and aims to achieve a better result for the company's creditors as a whole than would be likely if the company were wound up, or to realise property in order to make a distribution to one or more secured or preferential creditors. This concept and approach is significant. By putting a company in administration, the winding up of an enterprise can be avoided, while a viable solution is devised and carried out under the guidance of experienced and licensed administrators to save the company from collapsing.

2

The NMC Administration

In April 2020, NMC Health Plc ("**NMC Group**") was placed into administration by the English High Court, following an internal investigation finding that the company had been the subject of a substantial fraud. The shares of NMC Group were subsequently delisted from the London Stock Exchange.

The English High Court appointed three licensed insolvency practitioners and managing directors of Alvarez & Marsal as joint administrators of NMC Health plc in April 2020. The NMC Group had 36 key operating subsidiaries incorporated in the UAE, but these companies were not within the jurisdiction of the English courts and therefore not part of the English administration process.

Nevertheless, the 36 operating entities of the NMC Group redomiciled to the ADGM in September 2020 and shortly thereafter applied to the ADGM court to enter into administration. The application was successful and the 36 entities were placed in administration by an ADGM court order ("**Administration Order**"). Two licensed insolvency practitioners and managing directors of Alvarez & Marsal were appointed as joint administrators of the 36 entities to devise and implement a plan that would ensure uninterrupted provision of healthcare services (especially during the pandemic of COVID-19) and financial stability for the NMC Group.

Until that day, administration was not something widely known or practised in the UAE legal environment, and many questions were raised on how an administration was run

Until that day, administration was not something widely known or practised in the UAE legal environment, and many questions were raised on how an administration was run, what the role of administrators was, how such decision would be enforceable against creditors before on-shore courts, whether this concept/mechanism would be similar to restructuring under UAE Bankruptcy Law, and many other questions that did not have ready theoretical or practical answers.

Under the Administration Order, all legal proceedings before courts or arbitration were to be stayed until the conclusion of administration. Despite this, most of NMC's creditors continued their claims before the onshore courts.

Creditors were already at that time pursuing legal actions against NMC entities before the courts in the different emirates, including Abu Dhabi courts. In juxtaposition, the Administration Order rendered by the ADGM court placing the 36 entities in administration was intended to be enforced before the onshore courts, and the ADGM Insolvency Regulations dictate that during administration a moratorium is in place, meaning no legal processes (including legal proceedings) may be instituted or continued against any of the companies placed in administration or their properties except with the consent of the Joint Administrators, or with the permission of the ADGM court. The purpose of the moratorium was to allow a successful restructuring process and ensure equality among the creditors. Under the Administration Order, all legal proceedings before courts or arbitration were to be stayed until the conclusion of administration. Despite this, most of NMC's creditors continued their claims before the onshore courts.

3

Recognition & Enforcement of the Administration Order by ADGM Courts

According to Law No. 12/2020 Concerning the Abu Dhabi Global Market (ADGM), the ADGM courts are considered as courts of the Emirate of Abu Dhabi, and its decisions are issued in the name of the Ruler of Abu Dhabi. ADGM court judgments as well are recognized and enforced directly by the Abu Dhabi courts in accordance with Article 15 of the ADGM Law which states:

> *"a) A judgment creditor may, upon direct application to any of the Emirate's courts, request that court to take any measure or action to enforce any judgments or orders made by the Global Market's Courts, or arbitral awards recognised by the Global Market's Courts; b) The Global Market's Courts may, upon the application of a judgment creditor, deputise an enforcement judge from the courts of the Emirate to take any measure or action to enforce any judgments or orders made by the Global Market's Courts, or arbitral awards recognised by the Global Market's Courts; c) The enforcement judge of the court of the Emirate shall apply the enforcement procedures set out in the Federal Law No. 11/1992[1] referred to without re-examining the merits of the judgment, order or recognised arbitral award."*

Pursuant to this law, the ADGM Courts are treated as local courts operating in the Emirate of Abu Dhabi under the Abu Dhabi Judicial Department, as opposed to being deemed foreign courts issuing foreign judgments.[2]

The mechanism of direct enforcement between the ADGM courts and the Abu Dhabi courts has made the process of enforcing judgments easier, more efficient, quicker, and less costly as currently there is no need to follow the old rigid procedures of enforcing a foreign judgment.

The mechanism of direct enforcement between the ADGM courts and the Abu Dhabi courts has made the process of enforcing judgments easier, more efficient, quicker, and less costly as currently there is no need to follow the old rigid procedures of enforcing a foreign judgment.

In practice, the procedure to be followed by a judgment creditor to enforce an ADGM judgment directly before the Abu Dhabi courts are as follows:

1. Obtaining an executory formula to be affixed on the ADGM Order/Judgment. This is usually done in accordance with the procedures laid down by the ADGM Courts through their online portal, taking into consideration the timelines provided for under the law.
2. Translating the Order/Judgment into Arabic by a certified legal translator.
3. Submitting an application to the Abu Dhabi Execution Court through the ADJD online portal and paying the court fees. The application must be accompanied by a proof of serving the opponent with the ADGM Order or Judgment, also translated into Arabic.
4. The Abu Dhabi Court of Execution will review the application and may seek clarification or request additional documents to be submitted.
5. After an execution file is opened, normal execution procedures will be followed by the Abu Dhabi Execution Judge in accordance with the provisions of the UAE Civil Procedure Law.
6. Once the ADGM Order/Judgment is recognized and enforced by the Abu Dhabi Execution Judge, it can be used as an enforceable Order or Judgment before the Abu Dhabi courts, whether in ongoing proceedings or newly initiated proceedings. The Order or Judgment as well may be used and enforced before other courts in other Emirates (for example before the Dubai courts), however, by the so-called "Deputization or Delegation" process under Article 207 of the UAE Civil Code.

Through its advisors and attorneys, NMC followed this procedure to enforce the Administration Order directly before the Abu Dhabi courts and thereafter through deputisation to the courts in other emirates to stay any ongoing legal proceedings or new proceedings initiated by creditors.

The Administration Order was recognized in most of the onshore court cases, and proceedings were stayed as a result. Thereafter, 34 of the 36 ADGM NMC entities exited administration (except for NMC Healthcare LTD and NMC Holding LTD which remain in administration) following a restructuring process implemented by way of agreeing a Deed of Company Arrangement (**DOCA**) for each company with its creditors and executing the terms of the DOCAs.

A Deed of Company Arrangement (DOCA) is also a new concept and legal vehicle for UAE onshore courts. A DOCA allows a company to enter into an arrangement with its creditors.

A Deed of Company Arrangement (DOCA) is also a new concept and legal vehicle for UAE onshore courts. A DOCA

1. This Law has been abrogated by Federal Decree-Law No. 42/2022On the Promulgation of the Civil Procedure Law.
2. ADGM operates under the Common Law system, which is different from the Civil Law system followed onshore.

allows a company to enter into an arrangement with its creditors. DOCAs become effective and binding after approval from the creditors on the proposed DOCA. DOCAs then become binding against all creditors, regardless of how they voted.

The NMC DOCAs were executed following a meeting of the creditors of the companies in administration in September 2021, when on a group basis, 95% of eligible creditors voted in favour of the DOCAs proposed by the Joint Administrators. As a result, creditors debt claims were released in exchange for "exit instruments" in a new facility. The DOCAs were also approved and declared through a Declaration Order issued by the ADGM Court, which was thereafter enforced by the Abu Dhabi courts through following the aforementioned process.

Under the terms of the DOCA Declaratory Order:

> *"Under and in accordance with the terms of each DOCA, without the consent of the Deed Administrators or the leave of the Court the relevant Deed Company, Creditors shall not:*
>
> > *begin, take any further steps in, or continue, or instruct, direct, or authorise any other person to commence or continue any legal proceedings (including court proceedings, enforcement actions, mediation and arbitration)."*

This was also enforced through the deputization process to the courts in other emirates subsequent to the DOCA Declaratory Order.

The restructuring of the NMC Group was completed in March 2022 when 34 of the 36 entities in administration exited administration and continue to operate on a going concern.

The case formally introduced the Common Law concept and mechanism of administration into the UAE's Civil Law system.

4

Conclusion

The NMC litigation was a seminal bankruptcy case in the UAE. The case formally introduced the Common Law concept and mechanism of **administration** into the UAE's Civil Law system. The legal harmony between the ADGM courts in the free zone and the onshore Abu Dhabi courts made it work, particularly the recognition of ADGM Courts as being part of the Abu Dhabi Courts.

The success of administration in the NMC case represents significant milestone in the bankruptcy regime in the UAE, and the case can be a catalyst for positive change. The UAE legislature should consider incorporating some of the valuable lessons learned from the case into the restructuring procedures of the federal Bankruptcy Law. One proposed amendment would be having the possibility to appoint specialized administrators/insolvency practitioners with wide and extensive experience in companies restructuring in onshore bankruptcy proceedings, in order to rescue the business as a going concern, whether such administrators are from inside or outside UAE or coming from an international background. Another proposed amendment would be the introduction of the concept of a Deed of Company Arrangement through restructuring or administration which would mean inter alia seeking an agreement with creditors on how the company's assets and debts are to be dealt with to ensure that the business remained active while creditors tried to ensure receiving a return or dividends or an equity interest.

All these concepts are tools primarily to protect financially distressed companies from collapsing. They would also reinforce the image of the UAE as the premier business hub in the Middle East, and one that employs the very best international business practices.

BIOGRAPHY

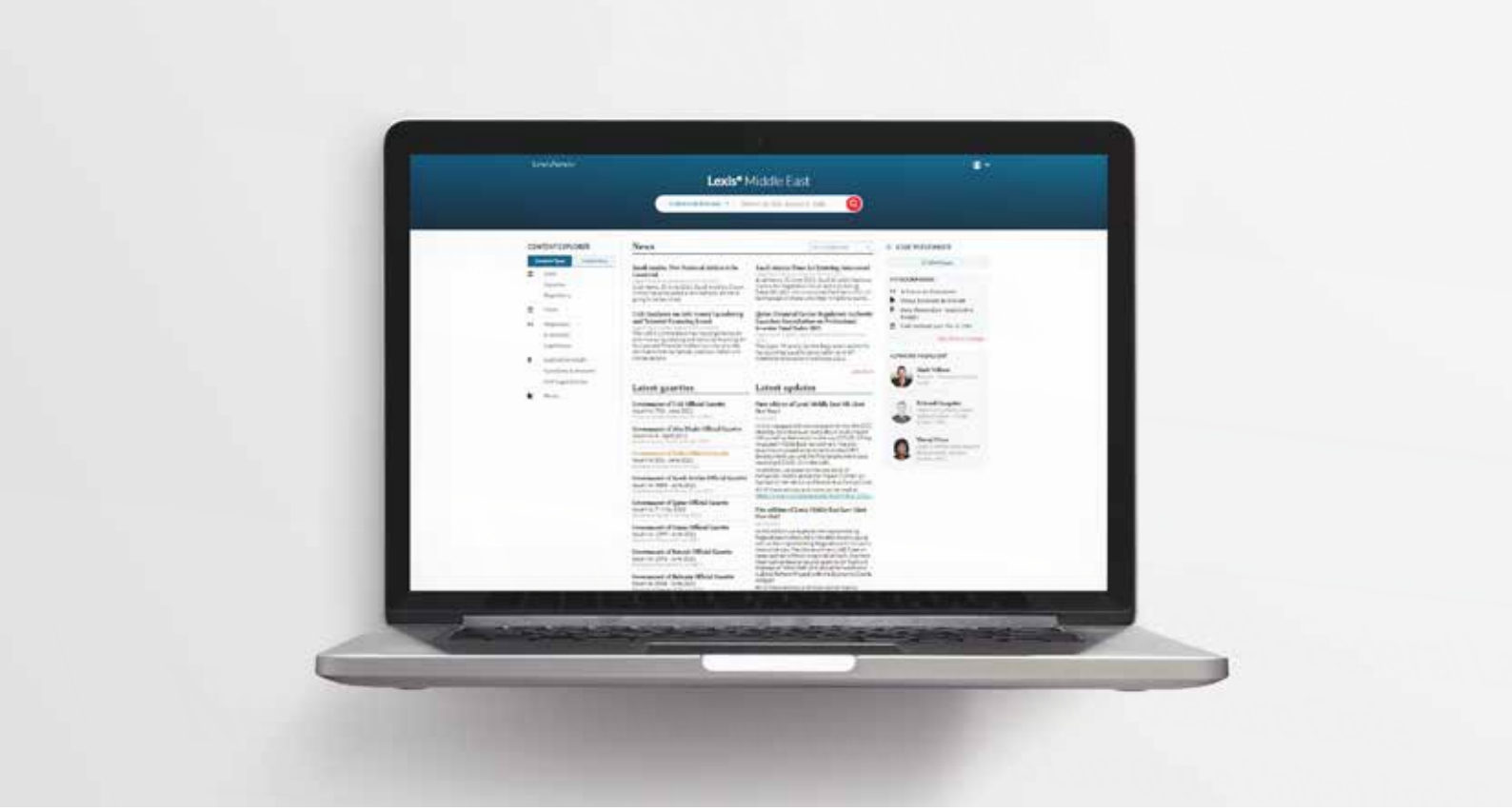
HANA AL KHATIB is a Senior Associate at Global Advocacy and Legal Counsel's Abu Dhabi office.

Hana works on various types of commercial, employment and civil litigation cases, and has considerable experience in bankruptcy and restructuring, construction, commercial agencies-related disputes, employment disputes, and other cases related to the business of local and international clients.

Hana has extensive experience in dispute resolution (including arbitration), commercial disputes and projects, including construction, and has acted on several high-profile, high-value cases in the UAE, including high level cases in bankruptcy and restructuring.

Hana holds a bachelor's degree in law from Yarmouk University in Jordan and an LL.M in European Law & International Commercial Arbitration from the University of Saarland in Germany. She was admitted to the Jordanian Bar in 2012.

Hana is the UAE National Representative at the International Association for Young Lawyers (AIJA).



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The Legal Industry and the Perfect Storm

A legal tsunami is changing the legal sector to a point of no-return. Those who fail to acknowledge this will unfortunately see their fates disappear, as did the dinosaurs thousands of years ago. As in the FinTech sector, this is not only a race to disrupt the industry, but also a contest where the disruptor may be disrupted in a never-ending revolution that has only just started.

Lawyers need not be afraid of using technology or of the availability of tools that utilize big data. This will undoubtedly make their jobs more straight forward and assist the discovery and research processes. The legal community must recognize the urgency of adopting these tools for their survival. There is no choice left to the matter, as more and more clients are pushing for transparency, speed, and lower costs.

Rany Sader
Chief Legal Innovation Officer & Senior Partner
SADER Publishing

1 Introduction

"As DNA is the code of Known life, so law is the code of human society."

Joshua Walker

A colossal change in the legal industry has started. It is a continuum of the major transformations that have been affecting the business world in general.

The rise, at first, of online legal platforms,[1] which are more than just a repository for the laws, has forced many[2] to rethink the way in which lawyers and the profession will evolve.

Most players in the legal scene had been until March 2020 enshrined in their traditionalism, antiquated, having little use and reliance on technology to help them and industry leaders conduct their duties.

1. Many leading legal knowledge providers have started transforming their legal publications into databases, such as LexisNexis (https://www.lexisnexis.com/en-us/gateway.page), Thomson Reuters Westlaw (https://legal.thomsonreuters.com/en/westlaw) and Wolters Kluwer (https://www.wolterskluwer.com/en). In the Middle East, the same legal information providers have launched their regional platform. Moreover, many traditional legal publishing houses such as SADER have been building their legal databases since 1999 (www.saderlex.com). In addition, many start-ups are launching new products making legal information widely available digitally.

2. I would refer you to the eminent Professor Richard Susskind and his eye-opening writings on the Future of Law. Professor Richard Susskind OBE is an author, speaker, and independent adviser to major professional firms and to national governments. His main area of expertise is the future of professional services and, in particular, the way in which IT and the Internet are changing the work of lawyers. He has worked in legal technology for over 30 years. He lectures internationally, has written many books, and has advised on numerous government inquiries. For more information, see: https://www.susskind.com/

Although lawyers are fed up with hearing "innovate or die",[3] most players in the legal scene had been until March 2020 enshrined in their traditionalism, antiquated, having little use and reliance on technology to help them and industry leaders conduct their duties.

In a recent event, we witnessed a craze on social media following the news on an AI bot that would presumably be capable of defending a human in court[4] for the first time in history.

I personally have on many occasions predicted that several components when combined would create the perfect storm that would initiate a legal tsunami, thus changing the industry to a point of no-return. Those who fail to acknowledge this will unfortunately see their fates disappear, as did the dinosaurs thousands of years ago. As in the FinTech sector, this is not only a race to disrupt the industry, but also a contest where the disruptor may be disrupted[5] in a never-ending revolution that has only just started.

2

The Three Pillars of the Legal Tsunami

The components that will create the perfect storm and produce the legal tsunami effect are based on three main pillars:[6]

1 - The rise of the Chief Legal Innovation Catalyst.

2 - The importance of Legal Big Data.

3 - The power of artificial intelligence and robotics.

3

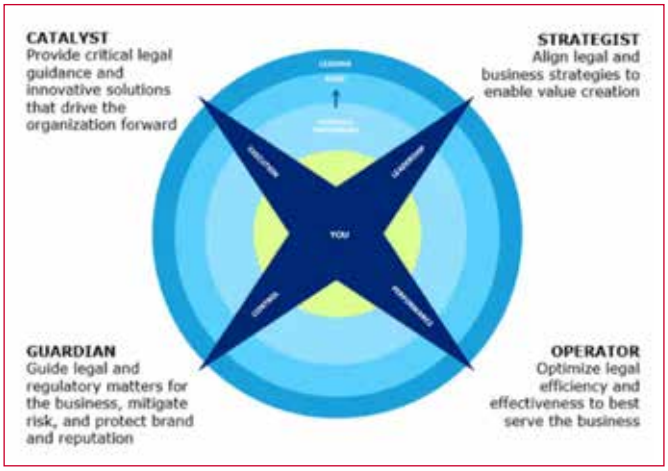
The Rise of the Chief Legal Innovation Catalyst

A Chief Legal Officer (CLO) is usually a gatekeeper of his or her organization. Few roles are as critical to a company.

Lone gone are the days of the General Counsel who simply coordinated with external law firms whenever litigation arose or assisted in contract drafting. Currently, contract drafting[7] has become one of the least of a CLO's duties, which is generally undertaken by the CLO's legal team.

Practically, without the CLO's continual eye on legal developments and involvement in the strategy of a company, most would be placed at risk for either compliance issues or of the inability to implement new products, business streams or solutions. This would involve great costs to a company, not least a reputational cost and a sustainability cost.

According to a Deloitte report, the role of today's CLO is becoming extremely complex, demanding more than mere legal knowledge and operations expertise. *"To be successful, a CLO must master and strike the right balance between "four faces: Strategist, catalyst, guardian, and operator"*: [8]



The main challenge of a today's CLO is to be a "Legal Innovation Catalyst", all while preserving the core and establishing limits to the risks that can be taken in undertaking such innovations

However, the main challenge of a today's CLO is to be a "Legal Innovation Catalyst", all while preserving the core and establishing limits to the risks that can be taken in undertaking such innovations (such as hidden biases reflecting the data

3. Michele DeStefano, The Law Firm Chief Innovation Officer: Goals, Roles, and Holes (November 11, 2018). University of Miami Legal Studies Research Paper No. 18-39, Available at SSRN: https://ssrn.com/abstract=3282729 or http://dx.doi.org/10.2139/ssrn.3282729

4. https://www.businessinsider.in/tech/news/for-the-first-time-in-history-an-ai-bot-will-reportedly-defend-a-human-incourt/articleshow/96785418.cms?utm_source=social_sticky_amp&utm_medium=social_sharing&utm_campaign=Click_through_social_share : the world's first robot lawyer will run on the defendant's smartphone through an app called "DoNotPay" and listen to court arguments in real time, telling the defendant what to say via earpiece.

5. Paul Keyrouz, *Disrupting the Disruptors: a Primer on Fintech & the Future of Money* (Self-Published book, 2022): *"While the Fintech revolution is underway, it is worth remembering that we may only be seeing the tip of the iceberg, as we begin to adopt newer, more optimized ways of using money and carrying out business. Although it may be hard to predict where exactly Fintech will be in the next five or ten years, I can confidently say that it is here and will grow exponentially in the coming years."*

6. Based on my intervention on the Future of Legal Professions Conference held at the Beirut Bar Association in January 2019 in collaboration with LexisNexis.

injected) and thus, striking a balance between their new inceptions and the law, internally and externally.[9]

A CLO should accelerate functional innovation and help implement legal solutions. He or she must quite simply become a "legal engineer":[10] to start being involved more in applying engineering systems to actual legal work and learn new technical jargon[11] that few technology and patent lawyers might have crossed. A CLO must imagine more what should be the best legal ecosystem and how to build its architecture. In brief, CLOs have to be "legal Innovators".

A CLIO[12] should also know what business challenges he or she needs to address through technology, rather than launching into major technology breakthroughs.[13]

A CLIO needs to face a much larger challenge than trying to be a tech nerd: help building a culture in an AI-powered organization

Moreover, a CLIO needs to face a much larger challenge than trying to be a tech nerd: help building a culture[14] in an AI-powered organization,[15] which will be the case of all companies of tomorrow if they do not want to become obsolete in a changing and competitive tech-driven environment. In fact, the CLIO's legal department and external lawyers will need to adapt quickly to such innovations.

Other than lawyers and legal professionals, we are seeing much more involvement of leaders in the legal space and global providers of professional information and software solutions and services giants to innovate in law.[16]

I am also not surprised to read that global non-legal business leaders want to be innovative in the legal sector. Elon Musk made an announcement in May 2022 on Twitter: *"Tesla is building a hardcore litigation department where we directly initiate and execute lawsuits. The team will report directly to me."*[17]

We are witnessing, especially in multinationals, many endeavours lead by innovation catalysts. Such catalysts, who might not come from a legal background or a leadership position, are the ones setting the real grounds for change.

I have always anticipated that the legal industry would be shaken by giants in innovation. We will witness more and more efforts, trials and partnerships to pierce a market that is still in a trial phase. Nonetheless, this is only the start.

The Legal Innovation Catalysts (officers) have emerged. They are coming. It is a matter of time for them to find the best way to use the big data they are collecting.

The Legal Innovation Catalysts (officers) have emerged. They are coming. It is a matter of time for them to find the best way to use the big data they are collecting.

4 The Importance of Big Legal Data[18]

Big data in the legal field is readily available, given the massive amounts of information that a legal service provider, law firm, governmental entity, or any business acquires over the years. We are now realizing the value of this data and how it affects the way we do business or operate.

Legal actors have been reluctant to enter the big data analysis bandwagon, being by nature wary of technology as well as aware of the need to protect client confidentiality.

The world we live in today has changed drastically through the advent of the Internet and developments in information technology. In fact, we are witnessing a cross-industrial change in the delivery of goods and services, and even a change in the goods and services themselves.

Traditionally, a lawyer would be hired because only a lawyer had access to legal doctrine and the skills to interpret it. Before access to legal information was made as freely available, as it is now, it was a hard feat to conduct legal procedures without a lawyer, giving legal professionals a monopoly on the industry.

There has been a shift in the way society thinks about the law, and the technology we use in the operation and distribution of it is developing quickly.

14. Thomas Davenport, "The State of AI in Business", *in* Artificial Intelligence (Harvard University Press, 2019) at XI: *"Executive view AI as a key disruptive technology, employees fear it is a job destroyer, consultants pitch for it as a cure all, and the media hype and deride it endlessly."*

15. Brian McCarthy, Tamim Saleh & Time Fountaine "Building the AI Powered Organization: The main challenge isn't technology. It's culture", Harvard Business review, July-Aug 2019, Vol. 97, Issue 4, at 65: *"At most businesses that aren't born digital, traditional mindsets and ways of working run counter to those needed for AI."*

16. https://blogs.microsoft.com/ai-for-business/ai-powered-legal-workflows/#:~:text=Microsoft%20and%20Wolters%20Kluwer%20Legal%20%26%20Regulatory%20partner%20to%20explore%20AI%2Ddriven%20legal%20workflows: Wolters Kluwer Legal & Regulatory and Microsoft's Modern Work Customer Co-Innovation team (MWCCI) partnered in 2021 to explore potential solutions to legal productivity challenges.

17. https://electrek.co/2022/05/20/tesla-building-hardcore-litigation-elon-musk/

18. Based on my article on "The Growing Use of Information Technology in the Deliverance of Legal Services in the Middle East": https://www.hg.org/legal-articles/the-growing-use-of-information-technology-in-the-deliverance-of-legal-services-in-the-middle-east-31430

Times have changed and access to information is now widespread and freely available to the public. This has been coined the Information Era, and as such, there has been a shift in the way society thinks about the law, and the technology we use in the operation and distribution of it is developing quickly.

The future and shape of the legal industry are changing as dramatically as that of information technology. Access to information, for example, has become extremely liberal and far-reaching. The inception of the Internet has meant that we now have access to all sorts of variations of information types "at the click of a button". Furthermore, governments, court systems, and other public authorities are undertaking initiatives to provide free legal information in an effort to better inform their population. Many governments are making available case decisions, court documents and procedures, electronic versions of legislation and regulations. Take for example the United Arab Emirates Ministry of Justice, which has established a free legal database containing UAE legislation in both Arabic and English.[19]

During the pandemic, law firms, in-house lawyers and legal consultants had to adapt to working remotely. Suddenly, access to legal database became crucial to their survival, particularly in the region.

This is where the legal technology providers have a crucial role to play, not only giving their clients access to much needed information, from cases and legislation to agreement forms, but by providing bespoke solutions dedicated to managing the client's required legal resources, internal documentation, contracts, and client management systems.

This is where the legal technology providers have a crucial role to play, not only giving their clients access to much needed information, from cases and legislation to agreement forms, but by providing bespoke solutions dedicated to managing the client's required legal resources, internal documentation, contracts, and client management systems.

Lawyers need not be afraid of using technology or of the availability of tools that utilize big data. This will undoubtedly make their jobs more straightforward and assist the discovery and research processes. Imagine going through more than one million available cases to find the ones relevant to your analysis. This is where big data and artificial intelligence will help seamlessly sort through the relevant ones. The legal community must recognize the urgency of adopting these tools for their survival. There is no choice left to the matter, as more and more clients are pushing for transparency, speed, and lower costs.

19. www.elaws.gov.ae

The ideal situation is to have a single repository for a law firm's public information, client information, and law firm information so that the machine analysis can do its magic

Legal information companies have a crucial role to play in the emergence of big data. We know that data is accessible—particularly laws and cases—often published on government and court websites. However, the ability to search through them requires complex algorithms and cross referencing to other types of data, which public websites may not have. The ideal situation is to have a single repository for a law firm's public information, client information, and law firm information so that the machine analysis can do its magic, without having to worry about confidentiality and data privacy issues.

With advances in machine learning technology and the growth of legal big data acquired by governments, legal information providers and the like, the legal community will be hit by its first big storm.

5

The Power of Artificial Intelligence and the Arrival of Robotics

Big Data and artificial intelligence[20] are like two faces of the same coin. One facilitates the existence of the other. They coexist beautifully. In fact, more data leads to better predictions.[21]

We have seen the importance of the data we gather, but if we do not have the required algorithms to generate the answers we want or the research results we want, this data is simply worthless files.

Legal AI and AI Governance should be addressed from the ground up.[22]

I personally have always asked myself what AI is and why we jurists should understand it? It is an extremely techy thing that tech experts should deal with. I tried to walk the extra mile to understand more. A few years ago, inspired by one of my childhood friends, I went into this experience of teaching myself much more than the usual "beginner manual on using

20. The term artificial intelligence is not new. It was introduced by a math professor at Dartmouth (USA) named John McCarthy in 1955.

21. Erik Brynjolfsson & Andrew McAfee, "The Business of Artificial Intelligence", Harvard Business Review on Artificial Intelligence (2019) at 14: *"some large systems are trained by using 36 million examples or more."*

22. Joshua Walker, *On Legal AI* (Full Court Press, 2019) an imprint of Fastcase, Inc, at xiii.

AI in the legal profession." I started reading Mariette Awad and Rahul Khanna's book[23] on theories, concepts and applications related to Efficient Learning Machines. It was a completely different science that we jurists from a certain generation will have difficulty, although not impossible, to catch.

And AI is only another part of the puzzle, since the robots are coming, and tech giants are assuring us that it is going to be just fine.[24]

6

It is Still Early but the Tsunami is Coming

The legal industry is not as structured as other industries. It has its own personality, its own culture, and its own restrictions. It cannot be disrupted easily. Automating some courts will not disrupt it. Innovative minds alone will not disrupt it. Compiling information in large databases will not do. Machine learning and AI alone will not disrupt it as well. It is the combination of creative legal catalysts, with big structured legal databases in an advanced robotics ecosystem that will create the perfect storm leading to the largest legal tsunami the industry has noticed.

It is still early, but the revolution is coming!

23. Mariette Awad & Rahul Khanna, *Efficient Learning Machines: Theories, Concepts and Applications for Engineers and System Designers* (Apress Media, 2015).

24. https://www.arabianbusiness.com/industries/technology/415462-the-robots-are-coming :in March 2019, Hewlett Packard Enterprise president and CEO Antonio Neri tells Arabian Business the robots are coming and it's going to be just fine (a cover story by Alicia Buttler).

Tomorrow's lawyers are coming and they are definitely better-shaped and structured to bring the change we are considering.

As per the eminent Professor Rischard Susskind, *"As never before, there is an opportunity to be involved in shaping the next generation of legal services. You will find senior lawyers to be of little guidance in this quest."*[25] Tomorrow's lawyers are coming and they are definitely better-shaped and structured to bring the change we are considering.

They should keep on innovating and figuring out what opportunity to tackle next, because even the best robot with the best data and a best AI won't be as innovative in building our future as us. So good luck!

25. Richard Susskind, *Tomorrow's Lawyers: An Introduction to your future* (Oxford University Press, 2013) at 164.

BIOGRAPHY

RANY JOSEPH SADER represents the 5th generation of the oldest and most distinguished family-owned Arab Legal Information Provider (SADER Legal) established in 1863. Under his leadership since 1996, SADER Law Research Center (established in 1921) has noticed a revolution in the Arab legal research and legal informatics fields. He has conceived and executed a large number of LegalTech and Rule of Law projects in the region. He has also created several leading legal publications and series in the Region such as SADER Annotated Codes Series in Arabic and English.

Rany Sader is also the co-founding Partner of SADER & Associates (Advocates & Legal Consultants), which is considered the leading IP Law firm in Lebanon. As legal strategist, he has over 24 years of experience in advising Fortune 500 leading international clients in various businesses, as well as SMEs and Start Ups, on intellectual property rights, new technologies, and creative industries laws.

Rany Sader is an active member in several local, Arab and international legal associations, and is often invited to speak around the globe.

Lawyers Must Be Agents of Change[1]

Lawyers cannot continue to pay lip service to legal technology and digital disruption. The legal industry must embark upon a wholesale set of reforms by adopting technology to reduce costs, accelerate legal transactions, and automate legal decision making.

Khaled Shivji
Senior Technology Lawyer
Dubai, UAE

11

1 Overview

Lawyers must learn how to guide, influence and shape colleagues' expectations in order to help clients realise the benefits arising out of digital disruption. As stated at the AiEverything Conference in Dubai in May 2019, "*[s]ome people think AI is the future. Its already here.*"

The legal industry is ill-prepared for being digitally disrupted. Our clients are already digitally transforming their businesses by integrating artificial intelligence into their business processes, building networks centred around the Internet of things, and using the blockchain to transact online and to interact with their customers in new and exciting ways.

For example:

- In Dubai, CAFU, a service that delivers fuel to cars on-demand uses artificial intelligence and machine-learning algorithms to forecast where to situate their fuel trucks. Customers benefit from near real-time delivery of fuel and CAFU benefits by being able to maximise the number of transactions it undertakes during peak hours.
- London (UK) still has one of the world's highest rates of premature deaths caused by air pollution. The Mayor of London's office and the Royal Borough of Greenwich have installed IoT connected-air quality monitors that supply real-time data to teams tasked with improving London's air quality. The data allows them to design one-way streets, cycle paths and walkways to direct people away from the most polluted areas.
- Seattle-based coffee chain, Starbucks (you might have heard of them!) wants to enable consumers to be able to use the Eretheum blockchain to track how far their coffee travelled from plantation to coffee cup. We might be on the verge of linking ethical-sourcing with free market economics by enabling consumers to, if they wish, support ethical, conflict-free supply chains.

Lawyers cannot continue to pay lip service to legal technology or digital disruption. The legal industry must embark upon a wholesale set of reforms by adopting technology to reduce costs, accelerate legal transactions, and automate legal decision making. The Association of Corporate Counsel and Major, Lindsey & Africa's in its 2019 Global Legal Department Benchmarking Report stated:

> "*[legal technology] streamline[s] time consuming processes and reduce[s] the amount of time spent on low-value work. It is essential for establishing and maintaining an efficient legal department.*"

We must listen to clients, learn how they require our services, lead that change and steer ourselves from a pathway of uncontrolled disruption (or extinction).

1. This article has been adapted from an article originally published on Lexis Middle East.

Unfortunately, the pace of change is too slow. Fewer than half of all respondents had adopted legal technologies. This indicates that legal departments lack the confidence, expertise and, more importantly, skills, to adopt off-the-shelf legal technology. This is worrying. We must listen to clients, learn how they require our services, lead that change and steer ourselves from a pathway of uncontrolled disruption (or extinction). However, how will we get there?

However, this model relies upon economic market forces to ensure that laypersons are not priced out of being able to afford legal services.

At various points of any economic cycle, a free and functioning market has to "correct" itself by voluntarily permitting new entrants (or involuntarily being disrupted) to enter the market and to lower the cost of services. I believe that the legal industry has no compelling incentives to voluntarily open its doors to new entrants— which means, it must face reform by being disrupted.

2

The Agents of Change

> *"Laypeople need to be empowered to think more like lawyers; but for this to happen, lawyers will need to think less like lawyers and more like agents of social change."*[2]

Lawyers must become agents for change. They must educate, inform, challenge and educate colleagues on how to test and deploy innovative, prototype solutions that meet the needs of tomorrow's clients while respecting the needs of current clients. That is not easy.

The culture within law firms and legal departments also plays a huge role in facilitating change, or as the case may be, resisting change. Change can bring about immeasurable benefits but often does, lead to a lot of emotional pain, stress, failure and recrimination.

We force clients to conform with outdated concepts such as attending face-to-face meetings, billing by the hour, and signing contracts with pen and ink.

We are a profession of laggards—this means as an industry, when new technology emerges onto the market, the legal industry falls into the segment who are traditionally the slowest to adopt that technology, preferring to watch others trial and experiment that technology before adopting it. As a result, we force clients to conform with outdated concepts such as attending face-to-face meetings, billing by the hour, and signing contracts with pen and ink. We do this because it is easier for us to do, rather than admit that we need to change.

There are many reasons for this:

I. Regulatory pressure, or the lack of it

Lawyers are insulated from regulatory pressure to change. Lawyers enjoy a near monopoly on legal services in most jurisdictions. It is universally accepted that legal services ought to be independent from government oversight so as to facilitate the independence of the profession.[3] However, this creates inefficiencies within the legal services market leading to expensive fee structures, a poor allocation of resources (i.e., expensive fee earners tasked with performing low-value work) and clients who experience long contract lifecycles, legal department bottlenecks, and dissatisfaction with the quality of services that they receive. It is no wonder lawyers still form the butt of jokes about how expensive they are to use and how slow they are to provide advice and services.

II. Human habits are very difficult to change

Implementing change within any organisation takes months to achieve because human habits are difficult to change.[4] One of the biggest complaints I have heard from junior lawyers and change managers who pitch new technology is that they uncover a stubborn refusal to adopt new technology because the general counsel or senior partner does not want to have to remember another username and password! Quite ironic to think that despite memorising years of case outcomes, precedents and terminology, the best excuse for not adopting change is a need to remember another username and password.

However, with the right approach to change, organisations can adopt "single sign on" tools or biometric scanners such as fingerprint readers on laptops to reduce the volume of usernames and passwords that need to be memorised. But relies upon the same general counsel and senior partners to work with their IT departments and to champion that change. It turns into a cycle of defeatism whereby change initiatives are continually blocked by budget-holders who might otherwise be able to lead that change.

Digital disruption does not feature within the syllabus of an intensive training programme.

2. S. Golub, The Legal Empowerment Alternative, in Promoting Rule of Law Abroad, In Search of Knowledge (Thomas Carothers ed., 2006), as quoted in "Anyone can think like a lawyer: how the lawyers' monopoly on legal understanding undermines democracy and the rule of the law in the United States", 82 Fordham L. Rev. (2014).

3. The United Nations' Basic Principles on the Role of Lawyers at Article 16 requires governments to ensure that lawyers can act independently while acting in accordance with recognised professional duties, standards and ethics: https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx.

4. D. Rock, "The fastest way to change a culture", https://www.forbes.com/sites/davidrock/2019/05/24/fastest-way-to-change-culture/#303529913d50.

III. Vocational training needs to incorporate disruptive technology

The system of vocational legal training is based upon graduates and trainees learning tried and tested techniques from senior lawyers on how to deliver legal services. The author accepts that the basics need to be mastered; however, digital disruption does not feature within the syllabus of an intensive training programme. Linklaters challenged this model with the launch of its digital internship teaching programme, which is open to all students from a law or non-law background and teaches them about how to use eSignatures, artificial intelligence and other technologies within a legal setting. Law schools should adopt courses like these and equip their students with the confidence, know-how and vision of incorporate digital technology into legal practice.

Some examples of how digital technology can be incorporated into legal practice:

- Social media has lowered the reading age and attention spans of most office-based employees—a legal memo stretching into several pages (and potentially costing thousands of dollars to research, draft, and be signed-off within a law firm's governance processes) might be better kept in the archives and instead distilled to a few lines of advice for a client to use to based their business decisions.
- Legal departments tend to experience strong pressure from shareholders and boards to become leaner, more efficient, and faster at delivering legal services as part of an overall corporate focus to maintain profitability. However, it is very difficult for legal departments to export and commoditise innovation so that it can be sold to other legal departments (or law firms). BT Law was one of the few successful outsourced innovative legal services providers to achieve this—BT plc's legal department created an innovative claims management service to handle accident claims involving its own fleet of vehicles. It was so successful that BT spun off the service to become BT Law, allowing other in-house teams to import innovation into their own organisations. Other legal departments ought to do the same by showcasing their legal processes and offering these on a commercial basis to other organisations and law firms as means of creating and driving shareholder value.
- Clients should be able to use their smart phones to locate law firms anywhere in the world. Clients, should in theory, be able to locate trusted law firms and freelance lawyers online without being compelled to use the lawyer whose office is physically the closest to their place of business.
- Clients should be able to obtain legal news as easily as browsing through a law firm's Facebook timeline. They should be able to access legal content, programming, training guides and even AI-facilitated videos by watching on-demand video streaming sites. They should be able to collaborate with lawyers and share content as easily as using Instagram and Slack.
- In parallel, clients should be able to complete KYC checks online and have a pre-vetted online profile (and credit risk rating). This will enable lawyers to utilise a risk-based approach on how to price their fees as opposed to investing huge sums of money offering client hospitality and bidding for new client mandates.

3 Conclusions

Who should act as a change agent within a law firm? The managing partner? The CIO (assuming they have one)? The professional support lawyers? How about the new trainee?

The answer is: all lawyers, at all levels of seniority. Lawyers need be able to analyse the way in which the industry as a whole operates and to continue to ask themselves "Is there a better way?". Law firms and in-house departments ought to regularly review how they interact with clients, identify pinch-points, and suggest ways to improve accessibility to legal services. This concept does not require lawyers to obtain technology degrees (or be trained in how to apply technology within the workplace); however, it does require a change in mindset and, perhaps, a difficult glance through the looking glass at today's world.

BIOGRAPHY

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Khaled obtained an LL.M and LL.B from the University of Law. He also holds a B.Eng in Internet Engineering from Brunel University London.

ChatGPT in the Legal Industry: Balancing Potential Benefits and Limitations

Innovation is crucial for the legal industry to adapt to the rapidly evolving technological landscape. Although historically the legal profession has been slow to embrace new technologies, the emergence of Artificial Intelligence (AI) demands that the legal sector integrate new tools and processes. AI technologies can increase efficiency, reduce costs, and improve legal services, leading to better access to justice and a more effective legal system. However, the use of technology in the legal domain must align with the legal profession's values and principles, ensuring integrity and upholding the reputation of the legal system. This article examines ChatGPT, an AI-based language model, discussing its capabilities and limitations, and how the legal industry can leverage its potential, while recognizing the potential legal implications and risks. By exploring the opportunities and challenges presented by this emerging technology in law, we can gain a better understanding of its impact in the legal field.

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Introduction

The legal sector has been utilizing Artificial Intelligence (AI) based software for several years now. These applications include contract analysis, legal research, case outcome predictions, and document review, among others.

One of the most recent AI-based applications that has made significant waves in the world of artificial intelligence is ChatGPT. ChatGPT, short for Chat Generative Pre-training Transformer, is a type of generative artificial intelligence software developed by the US-based company, OpenAI, which was launched on 30 November 2022. When prompted, ChatGPT refers to itself as a "*natural language model that uses a type of artificial intelligence called deep learning to generate text*". The model is based on a "*neural network architecture called the transformer model, which is pre-trained on large amounts of text data*" which is capable of generating "*highly coherent and contextually appropriate responses, often resembling human-written text*". Due to its impressive complexity and ability to process vast amounts of data and produce content that resembles human-generated text, ChatGPT has the capacity to facilitate transformation in digital innovation across various industries.

In the legal domain, ChatGPT promises to bring a significant change by transforming how lawyers draft legal documents thanks to its advanced language generation capabilities and ability to analyze vast amounts of data.

In the legal domain, ChatGPT promises to bring a significant change by transforming how lawyers draft legal documents thanks to its advanced language generation capabilities and ability to analyze vast amounts of data. This article will explore the opportunities and risks associated with using ChatGPT in the legal sector. It aims to articulate potential use cases of ChatGPT in the legal sector while examining the legal implications and risks involved in its use. The article seeks to inform legal professionals and stakeholders about the challenges and opportunities associated with incorporating ChatGPT into legal practice by discussing legal and ethical issues.

1

Opportunities for ChatGPT in the Legal sector

I. Generation of Legal Documents

What sets ChatGPT apart from other AI technologies used in the legal sector is its ability to generate text and process vast amounts of data.

With the emergence of ChatGPT, a significant advancement in innovation is made possible, providing new ways for lawyers to leverage AI in their work. ChatGPT has the ability to summarize texts concisely, answer questions, provide information on a wide range of topics, create and analyze works, translate text, draft sophisticated reports, emails, or memos.[1] This software can produce text by predicting the most likely sequence of words to follow based on its learned patterns, resulting in grammatically correct, coherent, and often very convincing text that sounds like it was written by a human. What sets ChatGPT apart from other AI technologies used in the legal sector is its ability to generate text and process vast amounts of data. This makes it an ideal tool for lawyers who need to generate a wide range of legal documents quickly and efficiently. Users can input specific information and instructions for the legal document they wish to create, and ChatGPT's advanced language processing capabilities can understand the input and generate a complete document in a matter of seconds. The emergence of a new platform called LawChatGPT,[2] which utilizes OpenAI's algorithms in combination with pre-defined legal templates, can generate almost any legal document with the right prompts, including legal letters, generating and reviewing agreement clauses, legal research, among others.

ChatGPT's use can eliminate time-consuming tasks and enable lawyers to spend more time on complex legal work.

Since a significant portion of a lawyer's work involves generating written documents such as briefs, discovery requests, responses, communication to clients, and other transactional documents,[3] ChatGPT's use can eliminate time-consuming tasks and enable lawyers to spend more time on complex legal work. The advancement of ChatGPT and other AI technologies can significantly affect how lawyers perform their jobs, providing them with more time to focus on critical thinking, analysis, and strategy development, while also increasing productivity and accuracy. This optimization of resources can also result in AI being able to do tasks that would otherwise require additional legal personnel.

II. Legal Research

Legal research can be an arduous and time-intensive process, encompassing a review of various amounts of primary and secondary sources of law. ChatGPT offers a solution to this challenge, as lawyers can input specific prompts or questions, and the software can generate concise summaries of the relevant sources relevant to the legal issue in question. The benefits of using ChatGPT for legal research include:

- identifying relevant cases by quickly generating lists based on specific prompts or questions;
- generating concise summaries of legal cases;
- assisting lawyers in developing compelling legal arguments;
- identifying critical legal issues; and
- identifying relevant legal resources such as legal databases, research papers, and statutes.

1. Perlman, A., (2023). "The Implications of ChatGPT for Legal Services and Society" Center on the Legal Profession https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/the-implications-of-chatgpt-for-legal-services-and-society/ retrieved on 3 May 2023

2. https://lawchatgpt.com retrieved on 3 May 2023

3. Perlman, A., (2023). "The Implications of ChatGPT for Legal Services and Society" Center on the Legal Profession https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/the-implications-of-chatgpt-for-legal-services-and-society/ retrieved on 3 May 2023

ChatGPT can also answer common legal questions related to a particular area of law and summarize legal principles applicable to a particular issue.

ChatGPT can also answer common legal questions related to a particular area of law and summarize legal principles applicable to a particular issue. Additionally, ChatGPT has the potential to identify potential legal defenses relevant to a particular case or legal issue, providing lawyers with a starting point for developing legal strategies and arguments. Lawyers can save time and effort by automating certain legal research tasks and accessing relevant legal issues and principles through ChatGPT.[4] It is important to note that ChatGPT should not replace human legal research, but instead be used as an aid for lawyers as they conduct their research.

III. Document Review and Analysis

AI systems can be trained to recognize patterns in documents, allowing them to quickly identify relevant documents and analyze them for potential issues.[5] This can help lawyers identify potential risks that may have been overlooked. For example, in the same way that AI has been used for contract review,[6] lawyers can use ChatGPT to review and analyze legal documents for specific clauses or provisions, such as those related to indemnification, limitation of liability, or termination clauses in contracts. Additionally, ChatGPT can be used to check the language used in legal documents for inconsistencies, inaccuracies, or errors, flagging grammatical and spelling mistakes, highlighting potential conflicts in language, and identifying areas where the language could be improved.

ChatGPT can generate predictions of the likely outcome of a case based on the evidence and legal arguments presented, allowing lawyers to adjust their strategy accordingly.

Lawyers can also use ChatGPT to conduct legal analyses of hypothetical or real-life scenarios, providing real-time information and analysis to support legal decision-making. For instance, ChatGPT can generate predictions of the likely outcome of a case based on the evidence and legal arguments presented, allowing lawyers to adjust their strategy accordingly. AI has already been used in the legal sector in this way.[7] By leveraging ChatGPT's impressive capabilities, legal professionals can make predictions about the potential outcome of legal cases, based on the analysis of large volumes of legal data and the identification of key patterns and relationships.

ChatGPT can generate predictions of the likely outcome of a case based on the evidence and legal arguments presented, allowing lawyers to adjust their strategy accordingly.

IV. Client Communication

ChatGPT can be a valuable tool for lawyers to communicate with their clients in a more efficient and effective way. For instance, ChatGPT can be used to generate chatbots. This can be done by training the software on a large dataset of human conversation. This can include examples of questions and answers that are relevant to a particular legal domain. Chatbots can be programmed to provide clients with basic information about their legal issues or cases, such as information about their legal rights and obligations and their potential courses of action. This can help clients to understand their legal situation better and make informed decisions.

ChatGPT can also improve the quality of lawyer-client communication by providing clients with quick answers to their questions.

ChatGPT can also improve the quality of lawyer-client communication by providing clients with quick answers to their questions. Clients can use ChatGPT to ask questions about their case or legal issue, and ChatGPT can provide instant responses based on its analysis of relevant legal documents and precedents.

ChatGPT can be used to generate suggestions and provide guidance on how to structure and phrase letters to clients in an effective and professional manner. To use ChatGPT for writing client letters, lawyers can input the key points they want to include in the letter. Based on this input, ChatGPT can generate a draft of the letter that includes suggested language and phrasing. The lawyer can then review the draft, make any necessary edits or additions, and finalize the letter.

ChatGPT can also be used to generate templates for common types of client letters, such as engagement letters or termination letters. Lawyers can input key details such as the scope of work, and any relevant legal requirements, and ChatGPT can

4. A. Perlman (2023). "The Implications of ChatGPT for Legal Services and Society", Center on the Legal Profession https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/the-implications-of-chatgpt-for-legal-services-and-society/ accessed 3 May 2023.

5. G. Boesch (2023). What is Pattern Recognition? A Gentle Introduction (2023): https://viso.ai/deep-learning/pattern-recognition/

6. *See* A. Heshmaty (2022). "Use of AI in law firms to predict litigation outcomes", https://www.lexisnexis.co.uk/blog/future-of-law/using-ai-to-predict-litigation-outcomes, accessed 4 May 2023.

7. *Ibid.*

generate a template letter that can be customized to fit the specific needs of the client. LawChatGPT is already using various templates for this purpose.[8]

2

The Pitfalls of Using ChatGPT as a Legal Tool

I. Limitations in Accuracy and Legal Nuance

The AI is already known for its tendency to generate plausible but false responses

Utilizing ChatGPT in the legal domain presents a fundamental difficulty of ensuring accurate and reliable results, despite its ability to provide generic legal information or draft standardized documents. In fact, the AI is already known for its tendency to generate plausible but false responses.[9] Also known as artificial hallucination or delusion, this is a term given to confident responses given by an AI that is not justified by its training data.[10] This is a significant drawback for ChatGPT as a legal tool. Lawyers have a duty to provide competent legal advice,[11] and ChatGPT's extensive training on text data may not offer the most current or pertinent insights on a specific legal matter, potentially resulting in serious consequences.

Another inaccuracy could be in using the tool for case outcome predictions. As stated earlier, ChatGPT can be used to generate predictions about the outcome of legal cases based on the available information. However, the accuracy of these predictions depends on the quality of the data used to train the model. If the data is biased in some way, for example, if it disproportionately includes cases that were decided in a certain way due to discriminatory practices, the resulting predictions may also be biased. Algorithm bias in case outcome prediction can have serious consequences, as it can result in certain groups of people being disproportionately affected by the decisions made based on the predictions. For example, if a predictive algorithm is biased against a particular racial or ethnic group, it may lead to unfair or discriminatory outcomes in the legal system. The COMPAS algorithm in US courts is a prime example of AI bias. Due to data and model selection, it predicted false positives for reoffending twice as often for black offenders as for white offenders.[12] It is therefore important to recognize and address algorithm bias in case outcome prediction. Human oversight and review of the predictions generated by AI systems can help to mitigate the potential impact of algorithm bias.

As a machine learning system, ChatGPT may not fully consider or incorporate the intricacies of a particular legal situation or domain

As a machine learning system, ChatGPT may not fully consider or incorporate the intricacies of a particular legal situation or domain, which may require specialized knowledge and expertise necessary to provide specialized legal advice or conduct complex case assessments. This can pose significant difficulties in scenarios where a more comprehensive examination of the law is necessary, or where the legal topic is outside the expertise of the lawyer using the AI. Even if the lawyer reviews the generated text, they may not be able to effectively identify any domain-specific nuances unless they are conversant with the particular domain. Therefore, it is crucial to have any AI-generated text reviewed by a lawyer experienced in the specific domain and use ChatGPT as a tool to amplify legal knowledge and not considered a replacement for a legal expertise.

II. Data Privacy Risks Associated with Using ChatGPT

If a lawyer is using ChatGPT to generate legal documents or provide legal advice, any confidential client information transmitted to the AI system could potentially be compromised.

Using ChatGPT for confidential client communication or sensitive legal matters may raise privacy concerns, and lawyers must take appropriate measures to safeguard client information and uphold their duty of confidentiality. As with any technology that involves transmitting data, there is a risk of interception or unauthorized access to the information being transmitted. If a lawyer is using ChatGPT to generate legal documents or provide legal advice, any confidential client information transmitted to the AI system could potentially be compromised.

8. https://lawchatgpt.com, accessed 3 May 2023

9. https://www.theverge.com/2022/12/5/23493932/chatgpt-ai-generated-answers-temporarily-banned-stack-overflow-llms-dangers, accessed 3 May 2023

10. https://www.deepmind.com/publications/shaking-the-foundations-delusions-in-sequence-models-for-interaction-and-control, accessed 3 May 2023

11. The duty is codified in the terms of legal professional rules, such as the SRA code of conduct of the Solicitors Regulation Authority in the UK or the Model Rules of Professional Conduct (MRPC) created by the American Bar Association.

12. S. Corbett-Davies, *et al.* (2016). «A computer program used for bail and sentencing decisions was labeled biased against blacks. It's actually not that clear». The Washington Post, accessed 2 May 2023.

Lawyers have a duty to uphold the confidentiality of their clients' information.[13] This means taking reasonable steps to safeguard client information, including using secure communication channels and limiting access to the information to only those who have a legitimate need to know. When using ChatGPT, lawyers should take steps to ensure that any client information transmitted to the AI system is encrypted and transmitted over a secure network. They should also ensure that any data stored on the AI system is stored securely and that access to the data is limited to only those who have a legitimate need to access it.

It is best that lawyers only use ChatGPT for non-sensitive legal matters, where the use of the AI system would not compromise the client's confidentiality or privacy.

It is best that lawyers only use ChatGPT for non-sensitive legal matters, where the use of the AI system would not compromise the client's confidentiality or privacy. When dealing with sensitive legal matters or confidential client information, lawyers should use secure communication methods, such as encrypted email or secure file-sharing platforms. Additionally, lawyers should be transparent with their clients about their use of AI technology like ChatGPT. They should inform their clients about the potential privacy risks associated with using the tool.

If personal data of individuals located in the European Union and the European Economic Area is processed by ChatGPT without complying with the requirements of the General Data Protection Regulation (GDPR),[14] it could result in infringement of several GDPR rules. For example, GDPR Article 5[15] stipulates that personal data must be "processed lawfully, fairly and in a transparent manner in relation to the data subject." If lawyers use ChatGPT to process personal data without informing individuals of the purposes for which their data is being used, or if the processing is not lawful, fair, or transparent, it could lead to infringement of this article.

GDPR Article 6[16] requires that data processing must have a legal basis. If personal data is processed by ChatGPT without a lawful basis, such as obtaining consent or fulfilling a legal obligation, it could also result in an infringement of GDPR. Furthermore, GDPR Article 32[17] mandates that personal data must be processed in a manner that ensures appropriate security measures are in place to protect against unauthorized or unlawful processing, accidental loss, destruction, or damage. If ChatGPT fails to implement appropriate security measures to protect personal data, it could result in an infringement of this article.

III. Risks of Copyright Infringement with ChatGPT

Copyright law safeguards original literary works and other forms of authorship. The Berne Convention for the Protection of Literary and Artistic Works[18] is an international agreement that establishes minimum standards for copyright protection across its member countries. The treaty mandates that copyright protection is automatic upon the creation of a work and that the author has exclusive rights to use and authorize its use. Several grounds for copyright infringement are outlined under the Berne Convention, including unauthorized reproduction of a work in any form, including digital means.

To determine whether a work infringes on another's copyright, a comparison is made between the two works to ascertain whether there is a significant similarity between them.[19] This assessment includes analyzing the expression of ideas in the works rather than the ideas themselves. The level of similarity that qualifies as substantial similarity differs by country and hinges on several factors such as the nature of the work and the extent of the similarities.

Generated text could potentially include copyrighted material, unless the generated text falls under applicable copyright exceptions.

Given that ChatGPT is trained on a vast collection of textual data, generated text could potentially include copyrighted material, unless the generated text falls under applicable copyright exceptions. This could lead to copyright infringement litigation against the lawyer or law firm using the generate documents. Furthermore, if a lawyer or law firm uses ChatGPT to create documents that are significantly similar to existing copyrighted works, it may also lead to copyright infringement litigation.

Moreover, the use of ChatGPT for document generation could result in a contributory infringement claim. Contributory copyright infringement[20] is a legal doctrine that holds a party liable for infringement when they have knowingly contributed to or facilitated the infringement committed by another party. This can include providing tools or services that enable infringement, or failing to take steps to prevent it. Contributory infringement is recognized under the copyright law of several countries, including the United States.[21] This legal doctrine is an evolution of the broader principles of tort law, expanding

13. The duty is codified in the terms of legal professional rules, such as the SRA code of conduct of the Solicitors Regulation Authority in the UK or the Model Rules of Professional Conduct (MRPC) created by the American Bar Association

14. The General Data Protection Regulation (2016/679) is a Regulation in EU law on data protection and privacy in the European Union and the European Economic Area.

15. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR).

16. *Ibid.*

17. *Ibid.*

20. https://www.law.cornell.edu/wex/contributory_infringement *Legal information Institute*, accessed 3 May 2023.

21. *See e.g., Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd. 545 U.S. 913 (2005); Sony Corp. of America v. Universal City Studios, Inc.* 464 U.S. 417 (1984).

on the idea that not only the tortfeasor, but also anyone who contributed to the act, should be held accountable for the resulting harm. If a lawyer or law firm using ChatGPT has actual or constructive knowledge that the technology is generating infringing material, they could be held liable for contributing to the infringement.

Conclusion

This article has examined some of the potential impact of ChatGPT on the legal sector. While the use of the AI offers new opportunities, it also poses significant challenges that require careful consideration. Data privacy, potential copyright infringement, and limitations in accuracy and legal complexities are among the key concerns associated with the use of ChatGPT. To mitigate these risks, lawyers and law firms must take appropriate measures to protect their clients' confidential information, review and verify any documents generated by ChatGPT for copyright infringement, and seek legal advice on copyright issues related to the technology.

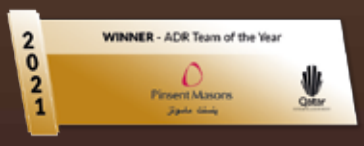
Moreover, lawyers should be aware of potential algorithmic bias when using the tool for case outcome predictions and take steps to address it. While ChatGPT is a promising technology, it is still in its early stages of development, and lawyers must exercise professional judgment when using it. In fact, when asked about the accuracy of its generated text, ChatGPT responded with the following: "*It's important to keep in mind that my responses are generated by an algorithm, and they should be considered as informational rather than professional or expert advice. It's always a good idea to seek multiple sources of information and consult with professionals in relevant fields for more accurate and reliable information.*"

As the application of AI continues to evolve, lawyers and law firms should stay informed of legal developments related to the use of ChatGPT and adapt their practices accordingly. By approaching the use of ChatGPT thoughtfully and cautiously, they can leverage its potential benefits while minimizing its drawbacks.

BIOGRAPHY

ROSENA L. NHLABATSI is a highly accomplished Senior IP Expert at the Qatar Research Development and Innovation Council (QRDI) having joined QRDI at its inception in 2018. In her current position, Rosena spearheads the development of policies and procedures and provides intellectual property advisory services to government entities, private entities, academic institutions, and inventors. With a wealth of experience in the field of intellectual property, Rosena is a certified Recognized Technology Transfer Professional (RTTP), a designation by ASTP, a premier European association for professionals involved in technology transfer. She holds an LL.M in International Economic Law from the University of Warwick (UK).

Rosena's passion for technology and innovation is evident in her avid writing on legal content in the area of technology, innovation, and intellectual property. Rosena's strengths lie in her ability to craft strategies that help entities navigate the complex landscape of intellectual property.



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UNIDROIT Draft Principles on Digital Assets

Guidance for Law Reform in the MENA Region

This article provides a brief overview of the UNIDROIT Draft Principles and encourages lawmakers in the MENA region to consider exploring substantive legal reforms to accommodate digital assets within the broader legal system.

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1

Introduction

Lawmakers have been slow to address the "downstream" private law consequences arising from the acquisition, disposition, or creation of rights relating to digital assets.

Since 2020, the International Institute for the Unification of Private Law *(Institut international pour l'unification du droit privé)* (UNIDROIT), an independent intergovernmental organisation based in Rome, has been working on a set of Draft Principles on Digital Assets and Private Law (**"Draft Principles"**). Many jurisdictions in the MENA region, notably the UAE and Bahrain, have in recent years established regulatory ecosystems supporting digital asset businesses. These frameworks, however, are focused largely on how regulatory bodies will license, oversee and control firms engaged in digital asset businesses. Lawmakers have been slow to address the "downstream" private law consequences arising from the acquisition, disposition, or creation of rights relating to digital assets. UNIDROIT has therefore released a set of Draft Principles meant to facilitate the growth of digital assets within existing legal frameworks. The Draft Principles are technology-neutral and jurisdiction-agnostic. The purpose of the Draft Principles is to guide discussion, promote law reform, and support legislatures towards digital asset-friendly rules consistent with existing legal norms.

This article provides a brief overview of the UNIDROIT Draft Principles and encourages lawmakers in the MENA region to start considering substantive legal reforms to accommodate digital assets into the broader legal system.

2

The Scope of the UNIDROIT Draft Principles

Whether in the form of cryptocurrencies or tokenized real-world assets, digital assets will increasingly continue to be a part of the digital economy. The Draft Principles therefore cover a range of areas where the legal position vis-à-vis digital assets will require clarification. These include:

1. defining digital assets, and electronic records;
2. ownership rights associated with digital assets;
3. conflict of laws in relation to digital assets;
4. defining "control" over digital assets (including change of control, innocent acquirers, transferors and transferees);
5. custodial obligations relating to digital assets;
6. security rights upon digital assets;
7. insolvency and digital assets.

The Draft Principles are narrowly focussed on gaps in private law arising from the rise of digital assets, and purposefully do not address intellectual property law or consumer protection issues.

The Draft Principles are narrowly focussed on gaps in private law arising from the rise of digital assets, and purposefully do not address intellectual property law or consumer protection issues. In Common Law jurisdictions, case law is slowly charting the legal boundaries of digital assets and their interaction with existing legal regimes. Interestingly, judiciaries in non-Common Law jurisdictions such as the UAE have also addressed these issues in several recent cases.[1] The UAE has also seen the establishment of specific judicial tribunals, within the Dubai International Financial Centre (DIFC), dealing specifically with matters arising from the digital economy.[2]

A. DEFINING DIGITAL ASSETS

The definition of "digital asset" already exists in several GCC countries – although the terminology may differ from jurisdiction to jurisdiction. For example, the recently issued Dubai Virtual Asset Law[3] defines "Virtual Assets" and "Virtual Tokens". Likewise, in Bahrain, although authorities have not explicitly defined digital assets, the Central Bank of Bahrain (CBB) has defined cryptocurrencies as "digital assets"[4] and has also provided a legal definition of the concept "electronic records".[5]

The definition provided in the Draft Principles is very broad and establishes a "digital asset" as a sub-class of an "electronic record", with "electronic record" defined as information that is:

I. stored in an electronic medium; and
II. capable of being retrieved.

The concept of "control" is fundamental to establishing an electronic record as a digital asset within the framework proposed by the Draft Principles.

B. PROPRIETY RIGHTS IN DIGITAL ASSETS

The Draft Principles unequivocally provide that digital assets can (and should) be the subject of proprietary rights.

The Draft Principles unequivocally provide that digital assets can (and should) be the subject of proprietary rights. As stated in the commentaries to the Draft Principles (specifically commentary on Principle 3):[6]

> *"...the question whether digital assets can be the subject of proprietary rights has been controversial in several jurisdictions. As courts in multiple high-profile cases have considered that digital assets are the subject of proprietary rights, and several authoritative authors have expressed that digital assets should be the subject of proprietary rights, these Principles advise States to increase legal certainty on this issue and make explicit that digital assets can be the subject of proprietary rights."*

C. LINKED DIGITAL ASSETS

The Draft Principles are also intended to apply to digital assets that are 'linked' to other assets. The mere fact that there is a link between a digital asset and another asset ought not to take the digital asset outside the scope of the legal proposals contained in the Draft Principles. In this context, 'linked' means that a digital asset is connected to another real-world or digital asset in some way. For example, stablecoin architecture links the value of tokens to a bundle of other currencies or commodities. Another example might be digital tokens representing a fractional ownership right over a defined gold reserve. The Draft Principles propose that while the digital assets themselves might be subject to certain legal reforms in

1. Mahmoud Abuwasel, Dubai Court rejects Bitcoin claim lacking proof of crypto-wallet ownership (and solutions for digital asset disputes in the UAE), https://waselandwasel.com/articles/dubai-court-rejects-bitcoin-claim-lacking-proof-of-crypto-wallet-ownership-and-solutions-for-digital-asset-disputes-in-the-uae/.

2. DIFC Courts launches specialised court for the digital economy, https://www.difccourts.ae/media-centre/newsroom/difc-courts-launches-specialised-court-digital-economy.

6. UNIDROIT Draft Principles, page 14.

order to bring them within the existing legal rules, the *link* between digital assets and other assets should be subject to the ordinary laws of the prevailing jurisdiction (i.e. contract law, trust law etc.).

D. APPLICABLE LAW

The ordinary factors determining the applicable law for matters involving digital assets "*have no useful role to play in the context of the law applicable to proprietary issues relating to digital assets.*"[7] As the commentary notes, creators of digital assets are encouraged to "code in code" – that is, to specify the applicable legal regime in the issuing of the digital asset:

> *"Indeed, adoption of such factors would be incoherent and futile because digital assets are intangibles that have no physical situs. Instead, the approach of this Principle is to provide an incentive for those who create new digital assets or govern existing systems for digital assets to specify the applicable law in or in association with the digital asset itself or the relevant system or platform."*

E. CONTROL

The issue of "control", and more so, who is in control of property is an important consideration in private law. In the context of digital assets, the Draft Principles treat "control" as the functional legal equivalent of "possession" of movables (minus the physical aspects) in a proprietary context. Within the Draft Principles, several key features are proposed to determine when a party has "control" over a digital asset. These include the ability of a party to obtain for itself or prevent others from obtaining substantially all the benefit from the digital asset. The ability to transfer this ability to others is also a determinant of whether a party enjoys "control" over a digital asset or otherwise.

Several key features are proposed to determine when a party has "control" over a digital asset. These include the ability of a party to obtain for itself or prevent others from obtaining substantially all the benefit from the digital asset.

Defining "control" is very relevant in a digital context, as a "change of control" need not necessarily mean a transfer of proprietary rights (e.g., the case of hacking). In the case of digital assets, the legal status of custodians, or "innocent acquirers" (both discussed below), raises issues of control and proprietary rights. A clear definition of "control" is therefore vital to a coherent legal order regarding digital assets. The Draft Principles also use the terminology of "ability to exercise control" in preference to "power to exercise control" in order to denote the factual rather than legal nature of this idea.

F. INNOCENT ACQUIRERS AND TRANSFEREES

For both Civil Law and Common Law private lawyers, the *nemo dat quod non habet* rule would be familiar. The Draft Principles make this fundamental rule applicable to digital assets subject to a specific protection for "innocent acquirers". An "innocent acquirer" is a person who received a digital asset in good faith unaware that the seller does not have the right to transfer the digital asset. The Draft Principles also contemplate situations where a transferor transfers the rights in a digital asset while retaining some rights. Indeed, where digital tokens represent a plethora of rights, (e.g., profits, voting, and use rights etc.), these rules will be particularly relevant in avoiding competing claims and determining who may legally assert what rights.

G. CUSTODY, CUSTODIAL DUTIES, RIGHTS OF INNOCENT CLIENTS, AND CUSTODIAL INSOLVENCY

Digital asset custody rules already exist in regulations within those jurisdictions that have established a digital asset eco-system. What the Draft Principles add to existing rules are the relationship of custodians to clients, sub-custodian, other third parties and insolvency proceedings. In arrangements where, for example, a digital asset-trading platform holds the digital assets of a client on the platform (such as the recently collapsed FTX), the Draft Principles propose a framework to inform the nature of the custodial legal relationships between clients, the trading platform, and any intermediaries.

Under the Draft Principles, it is proposed that innocent clients of custodians who have received digital assets enjoy legal protection.

The Draft Principles also establish the concept of "maintaining" a digital asset in contrast to the idea of "control". This distinction acknowledges that with digital assets, there may be layers of custodial relations involving various digital wallet arrangements. Under the Draft Principles, it is proposed that innocent clients of custodians who have received digital assets enjoy legal protection. That is, if a client of a custodian withdraws their digital assets in good faith, their legal rights are protected. The Draft Principles propose that no person may make any proprietary claims against an innocent client in relation to any digital asset unless the client knew, or ought to have known, that those digital assets were subject to other claims when withdrawn.

This is important in the context of insolvency.

If a custodian becomes insolvent, digital assets, according to the Draft Principles, will not form part of the insolvency estate.

7. UNIDROIT Draft Principles, page 23.

Clients, who may have their digital assets in an undivided pool, are to have those assets returned. Where there is a shortfall, the digital assets of the custodian (meeting the same description) will be used to meet the shortfall. Should the claims of clients be unfulfilled, all clients will share the losses in proportion to their holdings.

H. SECURED TRANSACTIONS

The Draft Principles propose that secured interests in digital assets be made effective against third parties via a transfer of control to a nominated custodian.

Quite simply, the Draft Principles confirm that digital assets can be the subject of security rights. Where a digital asset is linked to another asset (see above), existing legal rules in a given jurisdiction will apply. That is, upon the creation of a security right, the ordinary rules of enforcement and priority will determine the legal effect on the digital asset and any other linked assets. As such, the registration of security interests and considerations of competing priorities are unchanged. In most legal systems, security interests are made effective against third parties through publication and registration of the interests. The Draft Principles propose, however, that secured interests in digital assets be made effective against third parties via a transfer of control to a nominated custodian. Control of a digital asset subject to a security right will, according to the proposed arrangements, have priority over other security rights. The rights of secured creditors who have secured their interests in this way can even be enforced against insolvency representatives and any other third party in insolvency proceedings.

3

Conclusion

The UNDROIT Draft Principles on Digital Assets and Private Law form an important first step in the modernization of exiting legal systems. The Draft Principles do not represent a revolutionary legal theory by any measure. Rather, the sensible proposals represent efforts to fine-tune existing legal frameworks to better accommodate and interface with digital assets.

For practitioners, should these rules become law, there are consequential implications for tax liability, insolvency proceedings, structured and secured transactions, and any other area where the prevalence of digital assets may grow. As such, staying ahead of the game and contributing to the discourse on how laws in the MENA region ought to develop will ensue that private law grows in a commercially sensible and coherent manner. For MENA policy makers and lawmakers, it is strongly advised that the progress of the UNDROIT Draft Principles be closely monitored. It is very likely that in coming years MENA governments will undertake targeted reforms of their civil and commercial codes to update their applicability for digital assets. Familiarity with the work of UNIDROIT will surely support such efforts.

BIOGRAPHY

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FinTech Licensing in Dubai

Navigating Regulatory Requirements

For entrepreneurs or persons looking to expand their FinTech business, Dubai is an attractive destination with a strategic location for global reach. Dubai is dedicated to supporting FinTech companies with initiatives like access to venture capital, incubators, and low tax rates. This article intends to serve as an guide for FinTech companies establishing themselves in Dubai. It discusses the regulatory framework – including the Central Bank of the United Arab Emirates (CBUAE) and the Dubai Financial Services Authority (DFSA)– the licensing process, and the ongoing compliance requirements that companies need to follow to operate legally.

Omran Al Mulla
Legal Researcher
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& Legal Consultants

1

Introduction

Since 2008, the FinTech industry has changed dramatically, and from the stage of fighting the new trend, the whole world started to create a fertile ground for FinTech, and for the past few years, countries have encouraged and supported FinTech to make it an essential part of every economy. The Middle East is no exception, particularly the GCC region. Dubai has been actively embracing FinTech and working towards becoming a FinTech hub in the Middle East.

However, as in the rest of the world, obtaining a licence can be challenging. FinTech companies must comply with strict licensing requirements set forth by regulatory bodies to operate legally. Adhering to these requirements can be complicated, as it involves navigating a complex regulatory framework. Companies must be well-prepared and understand the regulatory regime. Compliance with the regulatory bodies is the start and the most crucial aspect of ensuring a solid reputation and smooth operations, which create a conducive environment to grow and get access to a thriving market like Dubai.

2

So Why Dubai?

The UAE is considered one of the most promising economic areas in the MENA region with a strategic location at the crossroads of Europe, Asia, and Africa, making it an attractive destination for FinTech companies looking to access these markets. The strong regulatory framework ensures transparency, security, and safety in financial transactions globally.

Dubai and the federal government of the UAE have taken promising steps toward expanding the FinTech sector, such as by offering wealth incentives to companies wishing to expand in the area. In addition to access to venture capital and incubators, there is also the tax rate, which is considered low in comparison to the tax rate in other jurisdictions.

The Dubai Financial Services Authority (DFSA) has also developed a sandbox environment that is especially intended for testing FinTech services in a secure, regulated setting.

The Dubai Financial Services Authority (**DFSA**) has also developed a sandbox environment that is especially intended for testing FinTech services in a secure, regulated setting. Under this initiative, companies have a place to practise creating technology-driven financial solutions while still abiding by the law and without having to concern themselves with the complexity of obtaining the licence.

Moreover, small and medium-sized FinTech companies in Dubai can benefit from the Dubai Future Accelerators, which focus on innovative solutions in different sectors. Another example is the Dubai Investment Development Agency, which assists SMEs in attracting foreign investment to the region.

In addition, the Dubai International Financial Centre (**DIFC**), has established a FinTech Hive, which connects start-ups with financial institutions and regulatory bodies to develop innovative solutions to address industry challenges.

3

Regulatory Framework

A. REGULATORY BODIES

Dubai FinTech regulatory framework is overseen by four regulatory bodies:

- the Central Bank of the United Arab Emirates (**CBUAE**);
- the Virtual Assets Regulatory Authority (**VARA**);
- the Securities and Commodities Authority (**SCA**); and
- the Dubai Financial Services Authority (**DFSA**).

The DFSA is responsible for regulating financial services within the DIFC. The DIFC operates as a separate jurisdiction within the United Arab Emirates, and the establishment of the DFSA was made possible through a combination of different laws. Federal Law No. 8/2004 on Financial Free Zones enabled the existence of financial free zones in the UAE, while Federal Decree No. 35/2004 created the DIFC as a Financial Free Zone in Dubai. DIFC Law No. 1/2004, also known as the **Regulatory Law 2004**, is the cornerstone of the DFSA's regulatory powers, functions, and objectives, granting the DFSA the authority to establish rules within the DIFC.

On the other hand, while operating outside the DIFC, different regulatory bodies are involved, and one business may need more than one licence from the following three regulatory bodies:

- The **Central Bank of the United Arab Emirates** (CBUAE) is the primary and most extensive regulatory authority responsible for supervising almost all sectors of the financial industry in the UAE, excluding the DIFC and other free financial zones. The CBUAE was initially established by Federal Decree No. 11/1980, and this law has since been repealed and modified. The latest law that governs and organizes the CBUAE is Federal Decree No. 14/2018, which grants the authority to regulate the financial sector in the country to the CBUAE. The law also grants the CBUAE the ability to regulate and supervise all financial institutions across the UAE and specifies the powers that enable them to regulate the financial sector within the country.
- The **Virtual Assets Regulatory Authority** (VARA) was created by Law No. 4/2022, Regulating Virtual Assets in the Emirate of Dubai. This law established VARA and entrusted it with the power to regulate all virtual asset activities within Dubai. In February 2023, VARA published its regulations, which set out guidelines and rules for organizations operating in this sector.
- The **Securities and Commodities Authority** (SCA) was founded by Federal Law No. 4/2000 as a federal agency responsible for supervising financial institutions within the UAE, except for financial free zones such as the DIFC. Alongside the CBUAE, the SCA is an essential regulatory body in the UAE's financial industry, working to ensure compliance with legal frameworks and promoting transparency and investment protection.

It should be noted that the regulatory framework for FinTech in Dubai is evolving quickly, and new regulations are being introduced regularly. However, by understanding the different jurisdictions and regulations of the DFSA and different regulatory bodies, FinTech companies in Dubai can ensure their compliance and operations within the UAE.

B. WHICH FORM OF LICENCE EACH REGULATOR COVERS

Some forms of licence overlap and a FinTech company may choose under which regulator it will fall. In other cases, the company must obtain licence from more than one regulatory body. However, we can see that companies who are operating from the DIFC will only need a licence from the DFSA. The DFSA in the General Module has specified the types of licences they cover from banks to all other financial services.

Outside the DIFC the licensing process is different, as every regulator covers different business sectors. For example, the CBUAE regulates the following sectors:

- banking;
- finance companies;

- exchange businesses;
- payment service providers;
- crowdfunding;
- card payment schemes;
- insurance.

VARA regulates the following activities:

- virtual asset advisory services;
- virtual asset broker-dealer services;
- virtual asset custody services;
- virtual asset exchange services;
- virtual asset lending and borrowing services;
- virtual asset payment and remittance services;
- virtual asset management and investment services;
- virtual asset issuance activities.

Some of the activities and entities that the SCA regulates are:

- trading members;
- clearing members.
- brokers in global markets;
- broker trading in unregulated derivatives contracts and currencies in the spot market;
- securities dealing;
- financial consultation and analysis;
- financial advice and IPO management;
- custody;
- private equity firms;
- covered warrants issuance;
- depository banks;
- commodity brokers;
- crowdfunding.

Unlike companies in the DIFC, for which all licences will be obtained from the DFSA, a FinTech company that will operate in Dubai may require approval from more than one regulator.

Unlike companies in the DIFC, for which all licences will be obtained from the DFSA, a FinTech company that will operate in Dubai may require approval from more than one regulator.

Example

A FinTech business module focuses mostly on the high-volume activities. Its exchange platform will operate in shares exchange and in crypto exchange, and will also give its customers the option to buy goods with the cash they store through the platform. This is a common business module. To operate within Dubai, it must obtain:

- a licence from the SCA to trade in shares;
- a licence from VARA to engage in crypto exchanges; and
- a licence from the CBUAE for payment services.

Can one licence overlap with more than one regulatory authority?

The answer is yes. For example, both the SCA and the CBUAE have the crowdfunding licence. The CBUAE has a loan-based crowdfunding licence with a minimum capital of AED 300,000,[1] while the SCA has the Crowdfunding Platform Operator licence which requires at least AED 1,000,000 paid-up capital to get the licence.[2] If the business model will require a platform, the paid-up capital must not be less than AED 1,000,000, because even if the company manages to get the CBUAE licence with AED 300,000 paid-up capital, it will not be able to obtain the SCA licence if the capital is less than AED 1,000,000, and both licences are required in order to operate. Therefore, in the above example, even if the CBUAE grants the licence, the applicant will still need to raise its capital to AED 1,000,000 to obtain the SCA licence. A company should therefore plan before trying to obtain the licence to avoid any extra expense.

4

Application Process

A. GENERAL APPLICATION REQUIREMENTS

The application process for obtaining a licence in Dubai is challenging, as it varies from one application to another and from one regulatory body to another. As a first step, companies must complete the necessary forms, such as the one provided in the Application Forms and Notices Module (AFN) [VER52/11-22] for the DFSA and provide supporting documentation such as financial statements, business plans, and CVs for key personnel.[3]

- Licensing fees vary depending on the regulatory body but in the DFSA, they range from USD 2,000 to USD 70,000.[4] Companies are required to have a minimum share capital, depending on their proposed transaction volumes, and some licences depend on a bank's Risk Weighed Assets. Banks must also maintain adequate insurance coverage to protect customers.

Companies must also submit a detailed compliance plan that specifies how they will adhere to the regulatory framework, manage risks, prevent fraud and money laundering, and safeguard customer data.[5]

It is important to note that the process may take up to months, and the regulatory authorities may always request additional documentation or information during the application. Delays may happen.

1. Loan-based Crowdfunding Activities Regulation-28th October 2020- ARTICLE 4: PRUDENTIAL REQUIREMENTS.
2. Cabinet Decision No. 36/2022 on Regulating Activity of the Crowdfunding Platform Operator, art. 4.
3. DFSA Rulebook, General Module (GEN) [VER59/04-23], GEN 7.
4. DFSA Rulebook, Fees Module (FER) [VER28/01-23], FER 2.
5. DFSA Rulebook, General Module (GEN) [VER59/04-23], GEN 5.3.7.

B. SANDBOXES

The DFSA Sandbox, the CBUAE Sandbox, and the SCA sandbox are all regulatory sandboxes established for FinTech companies to test their financial technology products without the need to acquire a licence.

The DFSA Sandbox, the CBUAE Sandbox, and the SCA sandbox are all regulatory sandboxes established for FinTech companies to test their financial technology products without the need to acquire a licence.

However, there are some differences between these regulatory sandboxes. While the DFSA Sandbox only regulates companies inside the DIFC, the CBUAE and SCA Sandboxes are open to FinTech companies under their supervision operating across the UAE. There are also the following differences in the application process:

- The application process for the DFSA Sandbox requires more documentation than the application process for the CBUAE Sandbox. The DFSA requires the following:
  - detailed information about their business model;
  - description of products and services;
  - explanation of the company will comply with the regulatory requirements of the DIFC;
  - a risk management plan;
  - financial projections;
  - information about the founders' and key personnel's experience and qualifications.[6]

The DFSA Sandbox requires more documentation because it is located within the DIFC, which operates under a more developed regulatory framework than the rest of the UAE.

- The DFSA Sandbox requires more documentation because it is located within the DIFC, which operates under a more developed regulatory framework than the rest of the UAE.
- The CBUAE and the SCA Sandbox have a more open and flexible application process.
- The CBUAE and the SCA Sandbox have a more open and flexible approach to documentation requirements, allowing FinTech companies to apply with limited documentation.

In summary, the DFSA Sandbox is a more demanding process and is more suited for FinTech Companies operating within the DIFC, while the CBUAE Sandbox is open and accessible, accommodating FinTech companies across the whole of UAE.

6. https://www.dfsa.ae/innovation.

5 Ongoing Compliance Requirements

Let's assume that the licence has been granted. What are the next steps? A regulatory authority's job continue after granting the licence is to monitor the company performance and compliance with laws and regulations. The applicable regulations and the compliance components will differ from one licence to another, and will depend on the nature of the business, which regulatory body that issued the licence, and the size of the company.

Requirements generally include appointing an experienced compliance officer, conducting internal audits, and filing periodic regulatory reports. Below are the main compliance aspects to consider.

A. DATA PRIVACY

FinTech companies are required to adhere to strict cybersecurity standards to protect themselves and their customers from cyberattacks and data breaches.

FinTech companies must ensure that their products or services comply with UAE's data protection and privacy laws such as the Federal Personal Data Protection Law[7] where the rulebooks require that businesses comply with such laws.[8] Data privacy laws have the following requirements:

- Ensuring that the company is operating in a secure and stable IT infrastructure. FinTech companies are required to adhere to strict cybersecurity standards to protect themselves and their customers from cyberattacks and data breaches. This requires deploying strong encryption protocols, regular vulnerability assessments and penetration tests, and adhering to strict access control policies.[9]

7. Federal Decree Law No. 45/2021 on the Protection of Personal Data.

8. *See*, for example, CBUAE Rulebook - Consumer Protection Standards – 6.1.2.1; VARA Regulations – Technology and Information Rulebook – Part II – Personal Data Protection, and Part III – Confidential Information.

9. VARA Regulations- Technology and Information Rulebook – Part I – Technology Governance, Controls and Security – Testing and Audit

- The company must maintain adequate records[10] [11] of customer interactions, transactions, and business activities required to be reported regulatory bodies or in the event of an inquiry. Records must allow for easy retrieval and be presented upon request within authority guidelines.
- FinTech companies need to adopt a comprehensive data protection policy with strict measures to avoid any non-consensual transfer of data, integrate adequate encryption methods, and adopt a privacy by design approach.

B. AML AND CTF

FinTech companies must comply with anti-money laundering (AML) and counter-terrorist financing (CFT) regulations,[12] which require them to conduct extensive due diligence on customers, partners, suppliers, and other third-party affiliates. This includes conducting thorough customer identification, Customer Due Diligence (CDD) and verifying the source of funds/funds trails, in addition to ongoing risk assessments, transaction monitoring, and suspicious anti money-laundering reporting.

C. FRAUD PREVENTION

Companies must implement measures to authenticate customers and prevent fraud.[13] This means:

- verifying the identity of customers;
- confirming the source of funds;
- implementing measures to detect and deter fraud;
- conducting risk-based transaction monitoring; and
- providing regular training to employees in detecting fraud activities.[14]

10. VARA Regulations – Technology and Information Rulebook – Part I – Technology Governance, Controls and Security – Virtual Asset Transactions.

11. CBUAE Rulebook – CBUAE rulebook – 6.1.2.2.

12. *See* CBUAE Guidance for Licensed Financial Institutions on Suspicious Transaction Reporting – 1.3. Legal Basis; SCA Board Chairman Decision No. 21/2019 – art. 2; VARA Regulations – Compliance and Risk Management Rulebook – Part III – Anti-Money Laundering and Combating the Financing of Terrorism – AML/CFT controls; DFSA Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML) [VER22/04-23] – AML 2 Guidance – Purpose of the AML Module.

13. *See* DIFC Law No. 1/2012 Promulgating the Markets Law, art. 54; DIFC Code of Market Conduct, Section 2 and 3.

14. VARA Compliance and Risk Management Rulebook.

D. INTERNAL AUDIT

- As part of compliance, FinTech companies must undergo internal audits and adopt regular risk assessments to identify, assess, and manage risks. Regular review of internal policies and procedures, coupled with external audits, should be carried out to ensure alignment with regulatory requirements and best practice standards.[15]

To conclude, FinTech companies in the UAE must adopt a proactive and holistic approach to ensure compliance standards are met. A robust risk management system including customer protection, data privacy, cybersecurity, fraud prevention, suspicious transactions monitoring, and internal audit processes are critical elements of compliance. Therefore, periodically reviewing policies, procedures and regularly communicating them to internal staff and third-party affiliates are encouraged to minimize compliance risks.

6

Conclusion

Obtaining a FinTech licence in Dubai is a process that requires planning, preparation, and guidance. The licensing authorities is in place to protect customers' interests and ensure that companies are operating legally within the regulatory framework. FinTech companies that undergo this process can build a solid reputation and foster trust with potential clients or investors.

Although the specific regulatory requirements may seem daunting, compliance is essential for operating successfully within Dubai's FinTech sector. The benefits of obtaining a licence far exceed the costs and difficulties of the process. FinTech companies seeking to grow and thrive should therefore aim to comply with the regulations in Dubai to enhance their credibility and maintain the trust of their customers.

15. VARA Compliance Risk and Management Rulebook, Compliance Management and Compliance Management System.

BIOGRAPHIE

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The Legislative Climate for Self-Driving Vehicles in State of Qatar

This article highlights the legislative environment of Qatar's autonomous vehicles and the appropriateness of the legal climate for the integration of this category of vehicles into the road transport industry in Qatar in a harmonious manner that regulates the legal responsibility of the concerned parties, whether they are manufacturers, owners, operators, passengers, or believers, especially with regard to the legislation of traffic, transport, insurance, civil liability, privacy, data protection and related international agreements. Of course, this article does not answer all the questions regarding motor vehicle legislation, as this advanced technology raised many new legal questions that are difficult to fully address at that early stage and are still looking for answers.

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1 Introduction

20 years ago, the legislator could not have imagined a time when vehicles would be driving without the manual intervention of human beings. Traffic legislation in most countries assumed a human element – a "driver". Qatar's Traffic Law, issued by Qatar Decree-Law No. 19/2007 ("**Traffic Law**"), and its Executive Regulation, issued by Qatar Ministerial Decision No. 6/2010 ("**Executive Regulation**"), mentioned the word "driver" 103 times, which indicates the pivotal role of the driver in the road transport industry, without which the transport process could not be carried out.

The driver is also the first and direct cause of most errors during the transport journey, but the technology of the road vehicles industries has evolved such that a car can now fully drive itself.

The driver is also the first and direct cause of most errors during the transport journey, but the technology of the road vehicles industries has evolved such that a car can now fully drive itself. The scales may vary, and it may be possible to develop legislation to accommodate the infrastructure development such as roads and networks.

2

Autonomous Vehicles in Qatar

The State of Qatar has taken a first-of-its-kind move in the region to pilot Level 4[1] autonomous electric buses through the official transport company "Karwa" with the help of the Chinese bus factory "Yutong" under the auspices and supervision of the Ministry of Transport. The Ministry announced that it was developing a comprehensive strategy to regulate autonomous vehicles in the State of Qatar, with legislation to take into account all technical, legal, economic, social and environmental considerations.[2] This development is a testament to Qatar's commitment to the importance of regulation as a condition to accommodate self-vehicles. It comes within the framework of the implementation of the Electric Vehicle Strategy to achieve economic and sustainable development in the transport sector and develop alternative-powered transportation in accordance with the latest global environmentally friendly methods to reduce carbon emissions and provide for a cleaner environment, in line with the Qatar National Vision 2030.[3]

This is no longer science fiction. In the near future, the State of Qatar will be one of the first countries to use this advanced technology in road transport operations for individuals.

This is no longer science fiction. In the near future, the State of Qatar will be one of the first countries to use this advanced technology in road transport operations for individuals. It is conceivable in these circumstances that the driver will no longer be a component of transportation; moreover, it is likely that dispensing with drivers will be a necessary condition to improving the quality and safety of road trips, especially in light of a study conducted by the National Highway Traffic Safety Administration (NHTSA) at the US Department of Transport revealing that 94% to 96%[4] of all traffic accidents are caused by human error

This means that self-driving may contribute to reducing traffic accidents, which in turn deflects the ongoing efforts of the Ministry of Transport in Qatar to reduce road delays by 20% and reduce road fatalities to 66 per 100,000, in addition to reducing vehicle emissions for regular trips by 10% through the Smart Qatar Program (**TAMSU**) under the leadership of the Ministry of Transport, with the aim of driving Qatar's digital transformation journey towards an integrated smart transport system that makes Qatar's transport sector one of the five main pillars of TASMU.[5]

3

Key Characteristics of Autonomous Vehicles

The vehicles that the State of Qatar is testing from Level 4 thus operate automatically, without the need for driver intervention, which is only available on the bus for emergency control purposes.

The characteristics of autonomous vehicles are not very different from other artificial intelligence. Autonomous vehicles have functional characteristics that distinguish them from other traditional vehicles. Self-driving vehicles are divided into five levels. The first four levels are defined by manual or semi-autonomous driving, if they do not dispense with human intervention altogether, whether by continuous manual control throughout the journey or temporary intervention in emergencies only. Level 5 is defined as self-driving, as it operates on its own without a driver, a steering wheel, pedals or manual controls. In all roads and situations, the vehicle drives without a driver, so that the passenger can sit down and enjoy the journey.[6] The vehicles that the State of Qatar is testing from Level 4 thus operate automatically, without the need for driver intervention, which is only available on the bus for emergency control purposes. The bus contains remote sensing sensors and cameras that allow it to see all corners for up to 250 meters, with the aim of enhancing traffic security and safety. Each bus has eight passengers and runs at 40 kilometers per hour. The charging process for its battery takes an average of one and a half hours for 100 kilometers[7].

1. https://hukoomi.gov.qa/en/news/minister-witnesses-level-4-fully-autonomous-electric-minibuses-test-operation
2. https://hukoomi.gov.qa/en/news/mot-developing-a-self-driving-vehicle-strategy
3. https://tdv.motc.gov.qa/tasmu-smart-qatar/transportation
4. https://www.cbmclaw.com/what-percentage-of-car-accidents-are-caused-by-human-error/
5. https://tdv.motc.gov.qa/tasmu-smart-qatar/transportation
6. https://www.sae.org/blog/sae-j3016-update
7. https://deepsense.ai/driverless-car-or-autonomous-driving-tackling-the-challenges-of-autonomous-vehicles/

The idea of self-driving is simply to automate the manual driving of the human driver and replace it with a technical simulation system that controls the vehicle remotely with superior AI capabilities

In short, the idea of self-driving is simply to automate the manual driving of the human driver and replace it with a technical simulation system that controls the vehicle remotely with superior AI capabilities, including the ability to see all directions, intentions, and a rapid response operating system as discussed earlier for the pilot model in the State of Qatar.

If the experiments of this category of vehicles succeed, operational expenses of transport may be reduced, given the possibility of eliminating the human element, the beginning of the end of transport operators' attention to the employment of drivers and supervisors, as well as investment expenses in their selection, development, training, housing, licensing, rehabilitation, healthcare and insurance, not to mention wages and other costs borne by operators and eventually the consumer (passenger).

Moreover, self-driving vehicles may be considered a safe alternative for people with special needs and may increase their integration into society. According to the United Nations, about 10% of the world's population, about 650 million people, suffer from some form of disability,[8] and only 35% of those with disabilities work. The Ruderman Family Foundation of America has revealed that 2 million disabled U.S. citizens can find work if they have access to transportation adapted to their needs, as well as providing USD 19 billion a year in healthcare expenses from missed medical appointments, in the context of the broader expected impacts of autonomous vehicles: USD 1.3 trillion in savings from productivity gains, fuel costs and accident prevention, among other source.[9]

The demand for autonomous vehicles naturally requires the legislator to enact laws that motivate innovators, protect passengers, effectively redefine the insurance umbrella, and integrate this category of smart vehicles with other less intelligent vehicles such as manual and semi-autonomous vehicles in the road transport industry system safely and harmoniously.

To this end, it is not surprising that individuals and operators are increasingly asking for autonomous vehicles to become a priority for international companies specialized in manufacturing vehicles. The demand for autonomous vehicles naturally requires the legislator to enact laws that motivate innovators, protect passengers, effectively redefine the insurance umbrella, and integrate this category of smart vehicles with other less intelligent vehicles such as manual and semi-autonomous vehicles in the road transport industry system safely and harmoniously.

With the success of operational experiments of autonomous vehicles, the activities of racing clubs, global racetracks, and professional race drivers may also need to redefine the rules of the game and develop an infrastructure, environment and competitive climate to ensure the continuity of that exciting sport and keep up with modern technologies that shrink the direct physical role of the racer or professional driver, which may still be its basis but remotely or indirectly.

Regardless of the features of self-driving vehicles, there are some risks, such as the possibility of cyberattacks and remote hacking to disrupt or control vehicles and violate privacy.

Regardless of the features of self-driving vehicles, there are some risks, such as the possibility of cyberattacks and remote hacking to disrupt or control vehicles and violate privacy, as well as the possibility of disrupting vehicle programming and hacking the network. The US Federal Bureau of Investigation warned vehicle manufacturers about the importance of consumers' and manufacturers' knowledge of the threats of hacking the self-vehicle.[10] At the front of this potential risk, the focus of operators and individuals may be on vehicle data processing server power, not just engine power and loading

8. https://www.iberdrola.com/innovation/disabled-vehicles

9. https://rudermanfoundation.org/white_papers/self-driving-cars-the-impact-on-people-with-disabilities/

10. https://venturebeat.com/business/fbi-warns-car-makers-and-owners-about-vehicle-hacking-risks

heavier weight, as a study by PWC[11] in 2016 revealed that the automotive industry was the third highest spent on research and development after health care, software and electronics. The study also found that automotive manufacturers were shifting their focus away from traditional devices and instead investing in software. The study found that the average growth in R&D spending on software and services jumped from 54% in 2010 to 59% in 2015. The study also predicted that it would reach 63% by 2020. In addition, a study published by Ain Shams Engineering Journal[12] revealed the need for countries to pay attention to building a strong and advanced Internet and servers to provide full and secure coverage, as well as to building a smart road network.[13]

It is therefore important that the legislator identify these risks and take precautionary measures to reduce related crimes, especially cybersecurity crimes. These measures will require the establishment of standards and specifications for self-driving cars and cooperation with the competent authorities in countries manufacturing this advanced technology.

4 Transportation and Traffic

If we are to talk about the legislative reform needed to accommodate self-driving vehicles, the first thing that comes to mind is transport and traffic legislation. The Law Regulating Road Transport issued by Qatar Law No. 8/2019 (the "**Land Transport Law**") is capable of containing the idea of self-driving, especially if the legislator deals with its provisions in the Executive Regulation expected to be passed soon.

As for the Traffic Law issued under Law No. 19/2007 (the "**Traffic Law**") and the Executive Regulations issued by the Ministerial Decision No. 6/2010, these provisions regulate manual driving, and they continue to require a driver with a special licence that qualifies the person to drive the vehicle to ensure his or her control over it, its speed, directions and course, and that it is working on the purpose for which it was licensed and the resulting functional characteristics.

> *The Executive Regulations of the Land Transport Law and of the Traffic Law may need to be amended to include several self-driving provisions.*

The Executive Regulations of the Land Transport Law and of the Traffic Law may need to be amended to include several self-driving provisions, as self-driving can sometimes result in creating new traffic violations and accidents which the current Traffic Law does not recognize. This includes failure to update operational programs or installing and using unlicensed software. Other violations, such as violating mobile phone occupancy or viewing any visual material during driving as stipulated in Article 55 of the Traffic Law,[14] may be cancelled. It may therefore be necessary to redefine the concept of traffic violations or accidents to take this new technology into account.

In addition, if we consider the text of Article 18 of the Traffic Law,[15] the Qatari legislature considers the existence of the driver to be an essential component. The vehicle must be driven by a driver with a driving licence. The legislator even assumes that there are several conditions for issuing this licence, in accordance with Articles 31 and 32 of the Traffic Law[16] and its explanation for driving trainers according to the limitations of Article 33 of the same law and the Executive Regulations,[17] this should be used, inter alia, by the need for a licensed driver to drive the vehicle. In addition, emphasis is placed on traffic rules to regulate ethical elements—for example, giving priority and sufficient space to the elderly, children, animals and property.

In addition, traffic rules related to the maintenance of public security, such as the driver's obligation to give way to an

11. https://www.allenovery.com/en-gb/global/blogs/digital-hub/autonomous--connected-vehicles-navigating-the-legal-issues

12. S. Tarek & T.I. Nasreldin, "Towards smart mobility solutions in Egypt: an integrative framework and an applied case study", Ain Shams Engineering Journal, vol. 14, No. 7 (2022).

13. https://www.sciencedirect.com/science/article/pii/S2090447922002982

14. Article 55 of the Traffic Law – "*The driver of the mechanical vehicle shall: 1- Not use the mobile phone or other devices in any way during the driving, using his hand to carry or use it. 2- Not be occupied while driving by watching any visible material on the vehicle TV.*"

15. Article 18 of the Traffic Law – "*During the course of their operation, the mechanical vehicles shall bear the plates or plates under trial, in the manner stipulated in the first paragraph of Article (12) of this Law. It may be driven only by the trader, agent or the person to whom the plates are issued, or the person acting on behalf of any of them, or one of their users or the person he is customer with. In all cases, the driver shall be licensed to drive a mechanical vehicle in accordance with the provisions of this Law.*"

16. Article 31 of the Traffic Law – "*In order to be granted a driving licence, the licence applicant must: 1- Be at least 18 years old in relation to the licences contained in Articles 1, 2 and 6 of the preceding Article, and the learning licences necessary to obtain them, and at least 21 years for a licence referred to in Articles 3, 4 and 5 of the preceding Article, and the necessary learning licence. 2- Prove his medical fitness with a certificate issued by the entity determined by the licensing authority, indicating the health of his eyesight and his structure and absence of impairments that make him incapable of driving. The applicant for a special needs licence must pass the medical examination of the type of need with a medical certificate issued by the entity determined by the licensing authority. 3- Pass the technical driving test and the rules and etiquette of the traffic, the conditions of which shall be determined by the competent authority. The licensed authority may exempt the licence applicant from the test referred to in Clause 3 of this Article, if he has a driving licence issued by a non-Qatari legal authority. The licence applicant shall pay the fees determined by a decision of the Minister.*"

Article 32 of the Traffic Law – "*In order to be granted a public car driving licence, the applicant must, in addition to the conditions stipulated in the preceding Article, meet the following conditions: 1- Be a Qatari national. 2- Not have been sentenced in a crime that violates honour and honesty, or in a motor vehicle driving offence under the influence of a drunkenness or sedation. 3 – Have been in possession of a valid mechanical vehicle driving license for a period of no less than two years. 4- Be familiar with the vital and geographical facilities of the country. The licence applicant shall pay the fees determined by a decision of the Minister. Except for the provision of Clause 1 of this Article, a public car driving licence may be granted to non-Qatari nationals, provided that they are available for this profession, upon the decision of the licensed authority, and with the conditions specified in the executive regulations of this Law.*"

17. Article 33 of the Traffic Law: Persons who teach the driving of mechanical vehicles shall: 1- Be licensed to educate and have a driving licence for a period of not less than five years. 2- Sit next to the student during the driving, and no one else may be riding in the mechanical vehicle during training. The learning shall be in the places specified by the licensed authority, and a sign must be placed in the front of the car and another in the rear of the vehicle, indicating with a clear red line (Learning). The student must carry the licence while learning and provide it to the military from the police force whenever they request it.

ambulance or civil defence or to follow traffic directions, require that the self-driving vehicle be able to read, respond to, understand, and manage traffic security and safety instructions in a harmonious manner, and especially the ability to operate—in the early stages of the launch of self-driving cars—amid other manual or semi-automatic cars. All of this requires not only infrastructure, but also a strong legislative framework that takes this technology into account. The legislator may therefore see the importance of reforming traffic legislation to take into account the technological developments of the era. This is in preparation for the safe, sustainable and regular integration of driverless vehicles within Qatar's road transport ecosystem to guarantee the rights and duties of stakeholders.

5 Privacy and Data Protection

Qatar enacted Law No. 13/2016 on the protection of the privacy of personal data. which in turn adopts several aspects of the General Data Protection Regulation issued by the European Parliament on 27 April 2016 (GDPR) – (Regulation (EU) 2016/679), guaranteeing the protection of the rights of individuals in processing their personal data, ensuring the freedom to transfer such data, and cancellation directive (EC/95/46). In view of the legislator's keenness on compliance with the Personal Data Protection Law, guidelines[18] were prepared to provide information on the compliance mechanism of this law for individuals and other stakeholders such as monitors and processors who process personal data electronically, collect personal data, receive it or extract it in anticipation of its electronic processing or who process personal data through a range of electronic and traditional processing technologies.

Self-driving vehicles collect people's data through sensors, in addition to capturing and recording videos and photos and storing user data.

Self-driving vehicles collect people's data through sensors, in addition to capturing and recording videos and photos and storing user data. Therefore, the protection of data privacy is one of the most important pillars for manufacturing, managing, and operating autonomous vehicles, especially since it may sometimes be necessary to exchange this data with the competent authorities in cases of investigation of accidents or crimes, such as hacking, or collision with another vehicle (whether autonomous or not) or other traffic accident.

18. https://compliance.qcert.org/sites/default/files/library/2020-11/Principles%20of%20Data%20Privacy%20-%20Guideline%20for%20Regulated%20Entities%28English%29.pdf.

The executive may decide to issue regulations under the relevant legislation, requiring manufacturers and self-operating program providers to transmit and archive data captured by the self-driven vehicle immediately before, during and after an accident.

For this purpose, the executive may decide to issue regulations under the relevant legislation, requiring manufacturers and self-operating program providers to transmit and archive data captured by the self-driven vehicle immediately before, during and after an accident so as to allow one to ascertain the causes of the accident and who bears legal responsibility. It is therefore also important that privacy and data protection legislation reconcile the obligation to exchange data with the competent authorities for the purposes of investigation, on the one hand, and the inviolability of the privacy of such individual's data, which is the basis of the Privacy Protection Act, on the other.

6 Insurance

Traffic accidents caused by human error have reached 96%. Self-driving cars may thus reduce traffic accidents and thereby increase insurance coverage, as the decrease in a percentage of accidents is associated with a decrease in the price of insurance policies. The reduced risk for consumers and operators should increase the demand for self-driving vehicles, encouraging manufacturers and reassuring those responsible for their operation, which in turn will ensures continuing movement and innovation within the industry.

Conversely, a decrease in insurance coverage and an increase in operational risks may cause manufacturers to be reluctant to continue to develop the self-driving automobile sector.

An effective legislative framework for insurance coverage may be a key success factor for self-driving vehicles. Insurance companies may thus need to update their automotive insurance system, including their claims management and their policies for self-driving vehicles. This insurance system should take into account a vehicle's AI capabilities, making the claims process smoother.

Insurers should invest in modern technologies and databases to enable an accurate assessment of insurance risks of autonomous vehicles.

Moreover, insurers should invest in modern technologies and databases to enable an accurate assessment of insurance risks of autonomous vehicles. This will allow the insured party to establish optimal controls and conditions for avoiding damage caused by hacking and pirating incidents, for example. Updating the technical and contractual structure of the insured should facilitate the smooth exchange of data necessary for the investigation of accidents in line with applicable laws.

For example, insurers may see the importance of requiring operators or manufacturers to adhere to specific provisions and controls as prerequisites in preparation for the conclusion of the insurance policy.

In this regard, the legislator may also deem it appropriate to enact a compulsory no-fault insurance compensation scheme for drivers, especially those with special needs, on the grounds that the principles of tort, especially common negligence, may hinder victim's access to compensation. The legislator may thus consider it appropriate to review the compulsory insurance policy on the body of vehicles, such as for passengers and drivers, with its traditional functional concept, whose role will begin to disappear simultaneously with the development of autonomous vehicle technology.

7 Legal Responsibility

Reducing the driver's role in the operation of self-driving vehicles may, in turn, reduce the driver's civil responsibility in accidents.

Reducing the driver's role in the operation of self-driving vehicles may, in turn, reduce the driver's civil responsibility in accidents. However, the driver may remain responsible if it becomes apparent that he or she had the ability to control the vehicle in a way that permitted him or her to avoid the accident. Responsibility may be transferred to other parties, such as the manufacturer if the cause of the accident was a manufacturing defect. Responsibility may also be transferred to the operator if the reason for the accident was misuse, or to the owner or user if the reason for the accident was a failure to install licensed software, or failure to follow the acquisition instructions, such as updating of software.

Responsibility may be joint between all parties, as the case may be according to the circumstances of each incident or crime, taking into account the legislative situation.

The shift from zero, Level 1, Level 3 and Level 3 vehicles to L4 AVs onwards is likely to lead to a shift in traditional theories of liability.

The shift from zero, Level 1, Level 3 and Level 3 vehicles to L4 AVs onwards is likely to lead to a shift in traditional theories of liability, hence the sharing of responsibility between the parties involved may be an appropriate solution.

It is worth noting that, by extrapolating the provisions of civil responsibility in existing Qatari legislation, in particular the Civil Code,[19] it is adequately capable of carrying the task of regulating the responsibility associated with the AVs up to the fourth level and quietly with all the parties concerned, whether in terms of providing them with cameras and remote sensing features to collect data and early warning features in the event of accidents. This, of course, is almost already activated in several aspects of consideration, because most of these technologies are already available in most current vehicles, even if they are not self-driving, but in varying proportions. This may not be a major challenge to incubate these vehicles in the road transport industry in Qatar.

Civil liability – whether contract, tort, or product liability – is therefore one of the most important stations at which the legislator may stop to establish a legislative framework for autonomous vehicles and organize the various scenarios.

The legislator may be satisfied with the general rules of liability in the event of an error on the part of the driver, operator or owner, or may even distribute liability among all parties. It should be noted that this may be done, if necessary, by means of comprehensive legislative reform, including the liability of the first factory, conditions of guarantee, and after-sale services and maintenance. The legislator may simply issue guidance on the relevant issues or may determine that new legislation dealing with self-driving vehicles is appropriate.

The legislator may deem it appropriate to limit the manufacturer's liability if it is proven that the operator (consumer) has knowledge of all the risks of a self-driving vehicle

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19. Qatar Law No. 22/2004.

knowledge of all the risks of a self-driving vehicle, because if the operator is fully aware of all the risks of operating the vehicle, it can be said that the operator carries a part of the responsibility with the manufacturer in so far as the risks are known. However, there is no practical assurance that manufacturers, developers and programming designers would be able to adhere to this disclosure obligation, especially if we take into account the fact that self-driving vehicles are ultimately in the field of artificial intelligence, which makes it more difficult to apply this disclosure effectively, given the difficulty of predicting all faults accurately in the future.

8 International Agreements

There are two international conventions that form the basis of traffic legislation in most countries of the world, in particular the State parties, namely the 1949 Geneva Convention on Road Traffic,[20] which the State of Qatar has not ratified, and the 1968 Vienna Convention on Road Traffic,[21] which the State of Qatar ratified in 2013 and which aims to simplify international traffic and enhance traffic safety. It was partially amended in 2016, with the aim of paving the way to accommodate self-driving systems.

As already indicated, the driver is considered the basis for transport operations in most of the international traffic legislation. In most countries, the driver plays a pivotal role in road transport operations. For example, the word "driver" is mentioned 30 times in the Geneva Convention and more than 140 times in the Vienna Convention on Road Traffic) other than annexes).

The impact of the mandatory nature of the driver's presence in driving operations and the role and definition of the driver in these international conventions extends to national traffic laws, especially those of the Member States. The Geneva Convention states that: "*any vehicle must have a driver capable of controlling it at all times.*" This may explain the difficulty for Member States to enact self-driving vehicle legislation.

Article 31, paragraph 1 of the Geneva Convention on Road Traffic states:

> *"Every driver must be able in all circumstances to control the vehicle so that he or she can exercise due and appropriate care, and at all times should be in a position to do all the required maneuvers from it."*

20. https://treaties.un.org/pages/ViewDetailsV.aspx?src=TREATY&mtdsg_no=XI-B-1&chapter=11&Temp=mtdsg5&clang=_en.

21. https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XI-B-19&chapter=11.

> *Some believe that the self-driving system itself may be interpreted as "the driver", while others believe that this is not consistent with the definition of "Driver" in the Geneva Convention*

Therefore, the Geneva Convention on Road Traffic still requires the presence of a driver. However, some believe that the self-driving system itself may be interpreted as "the driver", while others believe that this is not consistent with the definition of "Driver" in the Geneva Convention, and that the driver must be a human being rather than a technical simulation system.[22]

The position of the State of Qatar to ratify the 1949 Geneva Convention on Road Traffic may give Qatar the freedom to amend its traffic legislation to accommodate self-driving vehicles. On the other hand, Article 8, Paragraph 1 of the Vienna Convention on Road Traffic provides:

> *"Every moving vehicle or vehicle group shall have a driver."*

Paragraph 5 states that "*Every driver must be able at all times to control the vehicle or to guide his animals.*"

Thus, under the international legislative climate for self-driving vehicles, the Qatari legislator can enact the necessary legislation to accommodate the 4th level of autonomous vehicles, while for the 5th level, a legislative climate may be required at the global level first, and then national legislation in accordance with the principle of legislative gradualization.

9 Conclusion

> *The birth of Level 4 and Level 5 autonomous vehicles requires legislative intervention to address their legal implications. The current legal frameworks did not anticipate these new technologies at the time of their enactment.*

The birth of Level 4 and Level 5 autonomous vehicles requires legislative intervention to address their legal implications. The

22. https://www.tandfonline.com/doi/full/10.1080/17579961.2019.1665798.

current legal frameworks did not anticipate these new technologies at the time of their enactment. While in some countries, legislators feel that legislative reform is an inevitable prerequisite to catching up with the technology of autonomous vehicles, the legislative approach may vary from country to country. A liberal-progressive legislator may be prepared to deal with self-driving situations in a direct and radical manner, while a conservative legislator may provide temporary fixes to advances in this technology in guidance notes in preparation for creating a legislative environment capable of comprehensive consideration to regulate this new technology. Between this and that, we find a centrist legislator who doesn't destroy the legislation of the past, nor legislate to accommodate the technologies of the future. He makes intermediate adjustments.

From our point of view, all approaches are valid. There is no wrong direction as everyone is always heading towards autonomous vehicles and adapting their conditions in preparation for the enactment of sustainable legislation to accommodate this technology, which has shown a new face of artificial intelligence. Legislation may also vary from country to country according to its international obligations and the treaties to which a country is committed and ratified, as well as its infrastructure and legislative structure.

The State of Qatar has initiated the development of its strategy for self-driving vehicles and is reviewing legislation on smart transport operations through autonomous vehicles, in the belief in the importance of regulating Level 4 motor vehicles in a way that protects the safety of individuals and their properties from the dangers of self-driving vehicles. This strategy would include create a database of test results ensuring the continuity of development and the use of the most efficient means of operating, managing and integrating autonomous vehicles within Qatar.[23]

Accordingly, it can be said that the success of the experiments of autonomous vehicles will place the State of Qatar among the first countries in the world to re-establish the environmental, legislative and technical climate in a way that motivates global innovators and self-driving vehicle manufacturers to deploy and provide their products in Qatar.

23. https://hukoomi.gov.qa/en/news/mot-developing-a-self-driving-vehicle-strategy.

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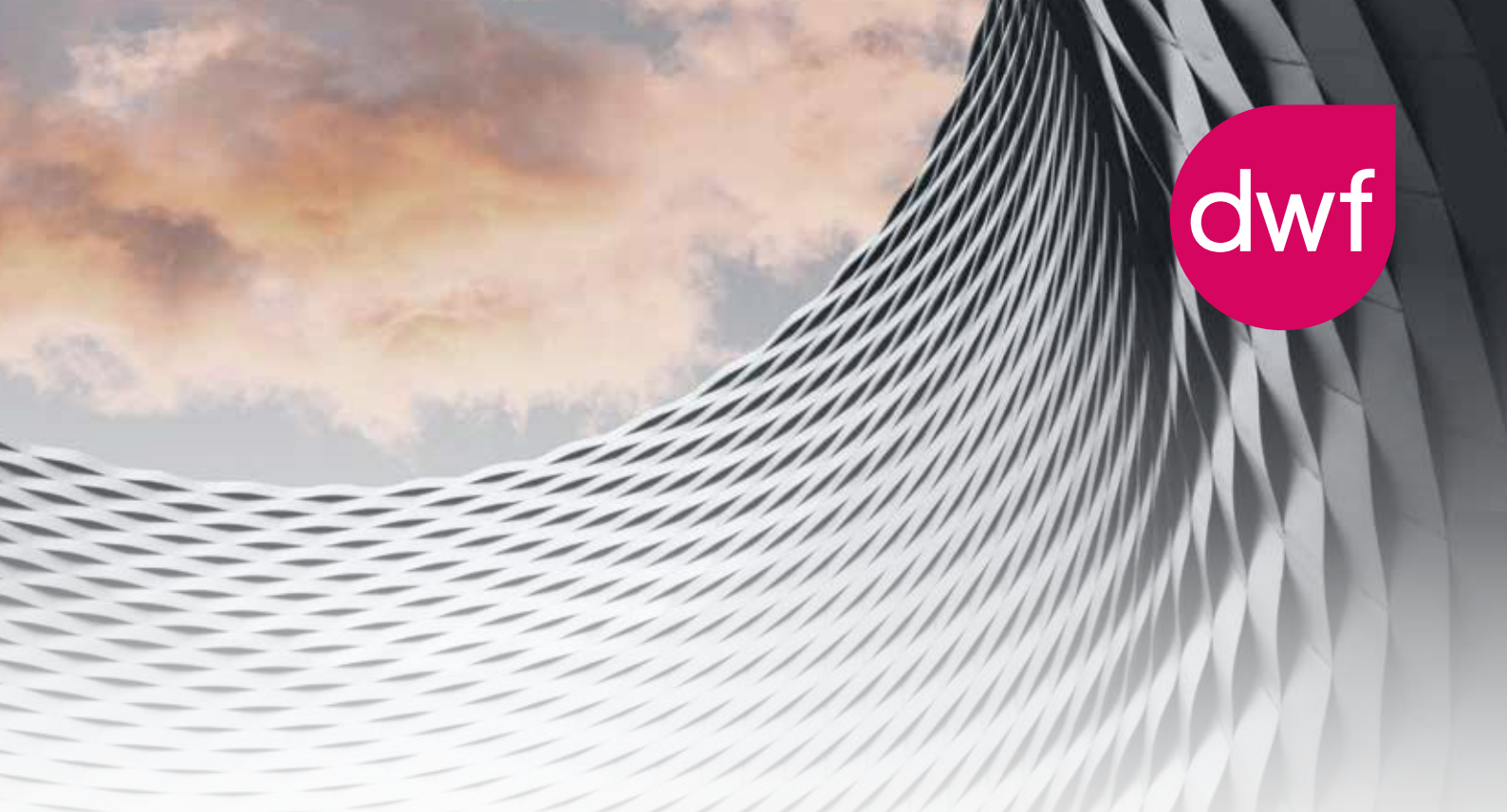

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