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FEATURE FROM SHIP TO SHORE

The new Oman Maritime Law

PROFILE JUDICIARY

Judge Ahmed Bakry Abdalla Hassan Elsayed

CONTRACT WATCH

Job Sharing Contracts

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



A MORE CIVIL APPROACH

Saudi Arabian Civil Transactions Law



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SAUDI AND CIVIL LAW

On our online service Lexis Middle East Law, we have a recommended reading feature which identifies which articles, cases, regulations and news stories have mentioned particular provisions in specific laws, so users can easily find and read relevant material when looking at a piece of legislation. The most frequently referenced law on our service - with over 1,100 relevant cases, 188 practice notes and almost 250 articles and news stories is the UAE Civil Transactions Law (Federal Law No. 5/1985). This is a pattern followed in most of the other GCC jurisdictions we cover too, where the equivalent laws, which like Federal Law No. 5/1985 were also inspired by the Egyptian Civil Code are a cornerstone in the legislative framework, and among the most frequently used pieces of legislation.

Up until now things in Saudi Arabia have been very different - there has been no civil transactions law. The areas covered by the civil transactions laws in Egypt and other GCC states have instead been covered by Shari'a Law.

However, as part of Saudi's efforts to encourage foreign investment, authorities there have felt it important to have specific legislation which covers and clarifies the key commercial areas including contract, tort, obligations and property rights which are covered by these laws in other GCC countries.

It is interesting too that the Saudi authorities have decided to follow the approach taken in those other GCC and have put in place legislation which is inspired by the Egyptian and French civil system. There is a lot to say on this law, given its broad remit - in fact we already have eight articles appearing as recommended reading if you look at it on our online service, as well as a number of relevant practice notes. We have also decided to cover it in this issue with an overview of its application, key changes and how it is set to impact contracts and tort in Saudi Arabia.

Claire Melvin - Editor

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Job Sharing Contracts

A MORE CIVIL APPROACH

Professor Najib Hage-Chahine of Hage-Chahine Law Firm explains the wide ranging impact of the new Saudi Civil Transactions Law on relationships between individuals and their property rights.

“In the past, civil relationships in Saudi Arabia were governed by Islamic Law (Shari’a),” states Professor Najib Hage-Chahine. “However, the legal landscape in Saudi changed with the recent issue of the Civil Transactions Law (Saudi Arabia Royal Decree No. M191/1444).”

This law, which comes into effect 180 days from its date of publication, on 16 December 2023, provides rules that govern civil relationships between individuals and their property in Saudi Arabia. It covers a wide range of topics involving civil rights, obligations, contracts, tort, unjust enrichment, property rights, and other aspects of civil life. It also establishes a civil law framework for Saudi Arabia with the aim of attracting investments by providing clear rules and reducing discrepancies in judicial reasoning.”

WHAT WILL IT APPLY TO?

“According to Article 1, the Civil Transactions Law will apply to all matters within its scope, and to the extent that the codified provisions do not cover a matter, 41 Fundamental Principles listed in the final provisions of the law will then apply. Failing that, the most appropriate principles derived from Shari’a law shall apply.”

“There is a risk that Saudi courts, which are used to applying Shari’a Law, will seek solutions to legal issues in principles derived from Shari’a law, instead

of conducting an interpretation of the rules contained in this new law,” Hage-Chahine states. “Courts may adopt a restrictive interpretation of Article 1 and decide that Shari’a Law will apply every time the Law does not explicitly provide a solution to the legal issue brought before them.”

“Under the fifth preamble, the new law applies retrospectively to events that occurred before it came into force,” Hage-Chahine adds. “The wording of this provision seems to encompass all events including past contractual and non-contractual obligations. In effect,

the Law will be applicable to contracts that were entered into before its enactment and contractual breaches that occurred prior to its entry into force.”

“It follows that contracts signed before 16 December 2023, will be subject to the Law, including any subsequent dispute arising out of these contracts.”

“The solution adopted by the Saudi Legislature seems to deviate from the general rule adopted in other countries whereby contractual obligations remain governed by the law that was in force at the time of conclusion of the contract,” Hage-Chahine notes.

“However, the fifth preamble includes two exceptions,” Hage-Chahine continues.

“The Law is not applicable if a statutory provision



Professor Najib Hage-Chahine
Managing Partner,
Hage-Chahine Law Firm



or judicial principle pertaining to the event contradicts the provision of this law and a party held on to its application. A party that intends to avoid application of the Law to an existing contractual obligation must prove the existence of statutory provisions or judicial principles that were applicable to the contract prior to the Law and that these rules contradict the rules contained in the Civil Transactions Law.”

“The Law also does not apply if the relevant provision relates to a statute of limitations period which started before the Law came into force,” Hage-Chahine adds.

“The retrospective application of the Law may give rise to interpretation challenges which could hinder predictability, especially with past contractual relationships, tortious conduct that occurred prior to the Law and the computation of statute of limitations periods involving situations that were established before the Law.”

KEY CHANGES

“The Preliminary section of the Law contains chapters that deal with fundamental concepts of civil law,” Hage-Chahine states. “The Law has adopted the civil law distinction between Persons and Things. It contains provisions on natural persons (legal personality, domicile, and capacity) and legal persons. It also has a chapter on things and adopts the distinction between movable and immovable objects.”

“In addition, it has adopted the distinction between

RELEVANT LEGISLATION

Article 9 of Saudi Arabia Cabinet Decision No. 820/1444

The place where a person practises a trade or a profession shall be considered his domicile in connection with such trade or profession.

(Source: Lexis Middle East Law)

personal rights and real rights and there is also a chapter dedicated to the lawful and unlawful exercise of rights by adopting the theory of abuse of rights,” Hage-Chahine adds.

“The Saudi Legislature has enacted a general regime of civil obligations which includes rules on sources of obligations, effects of obligations, the transfer of obligations, modalities of obligations and extinction of obligations.”

“There are also clarifications on the rules governing contracts, torts and unjust enrichment. In particular, provisions have been introduced on contract formation, effects of contracts, types of civil liability and compensation of damages. New concepts such as indemnification of moral harm and a statute of limitations on obligations have also been introduced.”

“Saudi Arabia Royal Decree No. M191/1444 also provides specific provisions governing 17 named contracts which legal practitioners and judges will need to carefully review to characterise the situation in which to apply the relevant regime.”

“Finally, the Civil Transactions Law framework is completed by rules on different modalities of property rights (co-ownership and shared wall) and different real rights (usufruct and easement).”

“Saudi Arabia Royal Decree No. M191/1444 seems to be deeply rooted in the Civil Law tradition and reinforces the notion that Saudi Arabia is, at least from the perspective of the law of obligations, predominantly becoming a Civil Law country,” states Hage-Chahine. “As such, we may expect Saudi Courts and Saudi Lawyers to refer to case law and scholarly writings from countries with a similar Civil Law tradition such as Lebanon, Egypt and France.”

CONTRACTS

“Saudi Arabia Royal Decree No. M191/1444 has also introduced general rules on contracts,” Hage-Chahine states.

“In terms of contract formation, five conditions are required for contract validity - consent, capacity, absence of any impairments to consent, subject, and cause. There are also provisions governing the precontractual phase, contract negotiations (Article 41 of the law) and offer and acceptance (Article 33-40 of the law).”

“On the effects of contracts, the law enshrines the principle of the contractual binding force of the contract and privity of contracts,” Hage-Chahine adds.

“As a general rule, a valid contract may not be contradicted or amended unless an agreement or a statutory provision provides otherwise.”

“However, any standard form contract term which is deemed abusive may be amended or waived by the Court (Article 96 of the law). In addition, Article 97 of the law enshrines the theory of unforeseen circumstances which allows the Court to revise an obligation if its performance has become more onerous and the parties have not agreed to renegotiate.”

“Saudi Arabia Royal Decree No. M191/1444 only allows interpretation of contracts if the terms are unclear or ambiguous (Article 104-105 of the law),” Hage-Chahine continues.

“Contracts must be interpreted in accordance with the common intention of the parties, usage and the parties’ previous dealings. Article 105 of the law also adds that a contract will be interpreted in favour of the debtor unless it is a standard form contract and it is then interpreted in favour of the subscriber.”

“On contract dissolution, the law provides contracts end by mutual dissent (see Article 105 of the law), by exercise of an option to terminate the contract (see Article 106 of the law), by termination for breach of contract by court decision or by virtue of a contractual provision (see Article 107 of the law), and by force majeure (see Article 110 of the law),” Hage-Chahine explains.

“Contract dissolution also operates retrospectively unless the contract has a long duration (Article 111 of the law).”

“However, dissolution does not affect dispute resolution and confidentiality clauses which remain in force after dissolution (see Article 113 of the law).”

“The rules on enforcement of obligations, transfer of obligations and extinction of obligations contained in the Law are not specific to contractual obligations and are applicable to all obligations irrespective of their source,” Hage-Chahine adds.

“In addition, as well as the general rules on contracts, there are also specific provisions which cover 17 named types of contracts, including sales, exchange, donation, loan, settlement, rental, service, labour, mandate, deposit, guardianship, partnership and guarantee contracts. Legal counsels who work in specific industries should check whether these provisions will impact the contractual risk-allocation and their employer’s legal rights. These new rules on named contracts may also affect the drafting of these contracts in specific industries.”

TORTS

“Chapter 3 of the second part of the law covers torts,” Hage-Chahine continues. “It essentially describes four types of civil liability.”

“These are liability for unlawful personal acts which force the person whose fault caused the harm to compensate the victim (see Article 120 of the law); liability for unlawful acts of a minor or a mentally or physically deficient person (see Article 129 of the law) (here the Law establishes a presumption of fault on the person in charge of a minor or a mentally/physically deficient person which is rebutted if it is established the person in charge exercised sufficient care in supervising the minor or deficient person); employer’s liability for an employee’s unlawful act (see Article 129(2) of the law) (here it is not explicitly stated in the Law but it appears this type of liability is a strict one, and employers are not exonerated if they establish they had exercised reasonable care and liability for harm caused by an animal or a thing (see Article 130-135 of the law) (here the Law establishes strict liability on guardians of an animal or a thing for harm caused by that animal or thing unless the guardian can establish the harm was not caused by that animal or thing.”

“There are also rules on the indemnification of harm caused by these torts,” states Hage-Chahine.

“Under Article 136 of the law, compensation should cover the entire harm and return the victim to the position they were or would have been in if the harmful act had not occurred. This includes compensation for loss suffered and loss of profits and moral harm (see Article 137-138 of the law).”

“A three-year statute of limitations also applies to tortious claims from the date the victim learnt the harm had occurred and the identity of the responsible person,” explains Hage-Chahine. “In any case, no claim can be heard after a 10-year period has elapsed (see Article 143 of the law).”

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LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE

UAE

E-MEDIATION PLATFORM



The UAE Ministry of Justice has introduced an electronic mediation platform, called Wasata which can be used by parties for alternative dispute resolution. Its main function is e-mediation. It enables the registration, renewal and delisting of mediators, management of requests and sessions, as well as payment of mediation expenses and mediator fees. In cases of non-judicial mediation it will also be possible to use it to submit applications through the MOJ website, have applications examined by the supervising judge, determine mediation costs, hold mediator sessions, and prepare reports and submissions to the Mediation and Reconciliation Centre.

EMIRATISATION CHANGE



The Ministry of Human Resources and Emiratisation (MOHRE) has stated private sector entities with 20-49 employees in 14 key economic sectors will be subject to Emiratisation targets from 2024. The effected entities will have to hire at least one UAE national in 2024 and another in 2025. Employers who fail to comply in 2024 will be fined of 96,000 AED for each unhired UAE national. The fine will increase to 108,000 AED if they are still not compliant in 2025. When a UAE national leaves the employer, they will have two months to hire a replacement before they will become subject to fines. In addition, Ministerial Decision No. 296/2023 On the Standards of Imposition of Administrative Fines According to Cabinet Decision No. 95/2022 on the Offences And Administrative Fines Related to the Initiatives and Programmes of the Emirati Talent Competitiveness Council (NAFIS), and Its Amendments has been issued. This law covers fines when fictitious information is given on an employer's Emiratisation ratios. This can include both altering numbers and modifying worker's classifications.

There are also specific fines where fictitious ratios or incorrect documents are used to benefit from the Emirati Talent Competitiveness Council (Nafis)

programme which supports the hiring and training for Emiratis. Employers who fail to take the necessary steps when a Nafis beneficiary does not join them after being issued with a work permit, does not work for the employer on a regular basis or the Council is not informed when a scheme beneficiary ceases to work with the employer, are subject to fines.

DUBAI

REAL ESTATE FUNDS



The Real Estate Development Division of the Dubai Land Department has introduced a registration process for the Real Estate Funds Franchises and has created an electronic registry for this purpose. This follows on from Dubai Decree No. 22/2022 On the Approval of the Privileges of the Property Investment Funds in the Emirate of Dubai. Those registering these funds will be able to leverage real estate fees when establishing a real estate fund. A fee of 50,000 is levied in exchange for transferring ownership of each property owned by the founder to the real estate investment fund.

SAUDI ARABIA

ARBITRATION SUBMISSION AGREEMENTS



A Ministerial Resolution has been issued approving a model general arbitration submission agreement and a model Saudi Centre for Commercial Arbitration (SCCA) arbitration submission agreement. The approach taken follows Article 13 of Saudi Arabia Cabinet Decision No. 649/1440 and changes as a result of the replacement of Article 113 and 154 of the Government Tenders and Procurement Law Implementing Regulations. The Model SCCA Arbitration Submission Agreement states the SCCA will be the supervisory authority which manages the resolution of disputes between government agencies and contractors in line with Saudi Arabia Cabinet Decision No. 649/1440.

AIR TRANSPORT CHANGES



The Saudi Civil Aviation General Authority has been working on new air transportation regulations. The regulations would require air carriers to be at least 50% owned by Saudi nationals. In addition, individuals and companies in Saudi would not be able to transport passengers or provide postal and goods shipping services by air to and from the country without having a licence from the Authority. Foreign and domestic air carriers would also have to disclose all marketing alliance agreements they enter into, including those involving seat purchases or joint ventures.

KUWAIT

ADVERTISING CLAMPDOWN



The Acting General Director of Kuwait's Municipality has stated commercial advertisement licences are based on specific conditions and requirements in the Advertisement Regulations must be followed. It has also been emphasised that where an advertisement violates Sharia Law, public order, morals, or contains incorrect information or data, the advertisement owner will be fined. The municipality is responsible for reviewing and approving the content of advertisements both before and after the license is issued. They also ensure adverts meet the requirements in the Advertisement Regulations.

VISAS AND PREGNANCY



The Ministry of Interior in Kuwait is considering a number of exceptions to the requirement that women provide a recognised medical certificate stating they are not pregnant when applying for an entry visa. The exceptions being considered include domestic workers accompanied by GCC citizens or diplomats visiting Kuwait, girls under the age of 16 and women over of 50. It is also being considered whether foreigners who are granted entry visas

electronically through online applications should be exempt from this requirement.

QATAR

COMPANY REGISTRATION



The Qatari Trade and Industry Ministry, the Labour Ministry, the Justice Ministry and Interior Ministry have announced the launch of a new set of services within the company registration one window service. From 18 June investors have been able to use these fully digitised services without having to visit the websites or offices of these various ministries.

Changes include an improved process for issuing commercial records which reduces registration requirements and automates internal auditing processes. In addition, the company's registration number will be automatically added to the entity's commercial registry as soon as it is issued via the one window portal.

ENERGY TENDER CERTIFICATION



Qatar Energy has started to require local value (in-country) certification for companies that wish to participate in energy sector tenders. The requirement applies to suppliers who have local registration unless the company has been established for two years or less. Local value is the economic value added from the local process and spending in the state. It is measured using an equation which shows the level of the participation of the revenue in the economy.

OMAN

SOCIAL PROTECTION FUND



Oman Sultani Decree No. 52/2023 On Social Protection has brought together 11 separate pensions schemes in one national scheme called the Social Protection Fund. As a result, social security in Oman cover now extends to expatriate workers who will be covered for employment injury, maternity, and sickness under the same terms as national workers. Reforms have also included an extension of short contributory benefits in the case of workplace injury, paternity and maternity leave, unemployment and

sickness benefits. Maternity leave insurance entitlements under the Social Protection Fund will be full pay for a period of 98 days of which 14 may be prior to the date of delivery. An insured woman is also entitled to leave without the maternity allowance for 98 days within a year from the end of the first period. That leave can be distributed between the insured parents. Paternity leave is seven days on full pay.

BAHRAIN

PLATINUM RESIDENCE



The Bahraini Government has approved a decision to create a Platinum Residency for foreign nationals of good conduct who have lived in Bahrain for at least 15 years and already hold a Golden Residency status. The Platinum Residency will be available to residents who have earned an average basic monthly salary of at least 4,000 Dinars (during the last five years of their residency).

Those with this status have the ability to own real estate and land in most regions of Bahrain and to sponsor residence permits for dependents, including a wife or husband, children, and parents (although these individuals will not be granted work permits). The Golden Residency status which was launched in 2022.

EGYPT

ARBITRATION RULES



The Cairo Regional Centre for International Commercial Arbitration (CRCICA) has issued new draft Arbitration Rules which are expected to come into force later in 2023.

Proposed changes include alterations to emergency and expedited arbitration procedures, joinder of additional parties and consolidation of proceedings.

Use of technology, and third-party funding is also covered.

If these draft rules are approved an expedited procedure for claims with a value under \$2,000,000 would be put in place.

There would also be rules governing the appointment of an emergency arbitrator in cases where a delay would risk causing a party significant harm.

REGULATORY ROUND-UP

UAE: The first licence for self-driving cars in the UAE has been issued to WeRide whose products include Robotaxi, Robobus, Robovan, Robosweeper and an Advanced Driving Solution...

UAE: The UAE has joined the Arab Customs Cooperation Agreement...

Saudi Arabia: The Permanent Committee for Saudi Arbitration Centres has outlined how the licensing of arbitration centres and branches will operate.....

Oman An agreement has been reached with the Saudi Tourism Minister to have a unified tourism visa for the two countries....

Saudi Arabia: The Capital Market Authority has issued draft Regulations on the liquidation of Capital Market Establishments...

Kuwait: The Civil Information General Authority and the Kuwait Municipality are discussing possibly putting a hold on granting licenses to law firms in residential areas....

Saudi Arabia: The Shura Council has asked the Capital Market Authority to assess the viability of setting up a commodities exchange market...

Qatar: New fees for trademark services came into effect on 11 July 2023....

Qatar: Motorcycle deliveries have been forbidden between 10am and 3.30pm during the summer under Qatar Ministerial Decision No. 17/2021...

Kuwait: There is a new visa for those wishing to enter Kuwait for sports, cultural or social activities...

Oman: The Ministry of Labour has issued a circular on the wage protection system...

Oman: Oman's Minister of Agriculture, Fisheries and Water Resources has issued a Ministerial Decision lifting the ban on importing live birds from Iran...

Oman: Regulations on procedures for establishing real beneficiaries in commercial companies have been issued...

Saudi Arabia: Saudi Cabinet Decision No. 164/1444 has been issued and covers the technical specifications, use and installation of security cameras...

Turkey: New Istanbul Financial Centre Regulations have come into force...

Dubai: A new fine payment system has been introduced which speeds the lifting of travel bans...

Saudi Arabia: New rules on selling tobacco in cafes and restaurants...

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

BAHRAIN - RECRUITMENT



A member of the Bahrain Shura council has proposed a draft law which would regulate the recruitment of domestic workers there. The law includes a requirement for accredited recruitment agencies to be established. The law would regulate salaries, contract conditions and the obligations of recruitment agencies when domestic workers have run away. Agencies would be expected to pay 50% of the cost of airfares when domestic workers have run away.

SAUDI ARABIA - DATA PROTECTION



A public consultation has been issued by the Saudi Data and AI Authority (SDAIA) on Regulations on Personal Data Transfer outside the Geographical Boundaries of Saudi Arabia and the Draft Implementing Regulations to this law. Saudi Arabia Cabinet Decision No. 98/1443 (the Personal Data Protection Law) stated further regulations would provide more details on a range of areas including data transfers outside Saudi Arabia. The draft Implementing Regulations provide additional information on a range of areas covered in the law including what is considered personal and family use and the legal basis for Processing. There are also further details on the information which should be provided to Data Subject's when this data is collected and what should happen if a data subject asks a Controller to access their personal data. The other draft Regulations include information on transfers which are based on an Adequate Level of protection, risk assessment and how to safeguard data transferred outside Saudi. They also look at exemptions from these requirements and situations where exemptions are not granted. It has also been confirmed that the Regulator will issue additional Guidelines on the subjects covered in these Regulations. Both consultations ended on 31 July 2023.

KUWAIT - PAY AND BENEFITS



A group of MPs in Kuwait have proposed a bill which proposes a 35% increase in the basic salary of Kuwaiti public sector employees. This would include those appointed through special recruitment regulations. Employees would be able to opt for early retirement after a maximum of 20 years' service. In addition, there would be an increase in the children's allowance.

GAZETTE WATCH

UAE Official Gazette No. 751 - 755 – These Gazettes included the Central Bank Large Exposure Regulations.

Saudi Arabia Official Gazette No. 4981 - 4992 – These Gazettes included Saudi Arabia Cabinet Decision No. 846/1444 Amending the controls related to the sale and lease of on-map real properties.

Oman Official Gazette No. 1493–1505 – These Gazettes included Oman Sultani Decree No. 44/2023 On the establishment of the Khazaen Economic City and the issuance of its Statute.

Qatar Gazette No. 6–9 – These Gazettes included Qatar Ministerial Decision No. 11/2023 determining pharmaceutical preparations which can be authorised to be sold by non-pharmaceutical institutions.

Kuwait Gazette No. 1634–1647 – These Gazettes included Kuwait Decision No. 279/2023 on the registration of companies and offices in the Register of companies and offices approved by the Direct Investment Promotion Authority to submit applications on behalf of investors, for a period of a year from the date of issue of the registration certificate.

(Source: Lexis Middle East Law)

DUBAI - PROPERTY



Dubai Decree No. 31/2023 has been issued amending Dubai Decree No. 23/2020 which covers the sale of residential real estate by heirs in Dubai. As a result, there have been changes to Article 6 of Dubai Decree No. 23/2020 which covers refusals to sell the property. There are also changes to the provision on Appeals against Dubai Land Department decisions on sales of these properties.

OMAN - LABOUR



A new Oman Labour Law, Oman Sultani Decree No. 52/2023 has been issued which repeals and replaces Oman Sultani Decree No. 35/2003. It reaffirms the intrinsic right of Omanis to employment. It underlines the importance of employers having a plan for localisation which is published in their workplace and website. They will also be required to produce a report on Omani workers including their salaries, gender and information on job vacancies. Employers must also have a plan on appointing and training Omanis for leadership roles. The law allows non-Omani employees' employment to be terminated if this is in order to facilitate Omanisation and the employee replacing them is an Omani. It also contains provisions on working hours, leave, salaries, employment of young people, occupational health and safety and the settlement of labour disputes.

QATAR - CUSTOMS



Qatar Ministerial Decision No. 13/2023 which covers handling fees by the customs authority for all goods imported, exported or transported by transit has been issued. A fee of 200 Riyals is charged on every truck or container. In addition, 25 Riyals is charged for every package as well as 200 Riyals for every customs declaration.

FEATURED DEVELOPMENT

Dr Tala Hamad Aladwani explains how Kuwait Decision No. 45/2023 will impact the Electronic Payment of Funds in Kuwait.

Kuwait Decision No. 45/2023 has been issued on the Issuing of Instructions for Regulating the Electronic Payment of Funds. The aim of this legislation is to support the Kuwaiti Central Bank's strategy to maintain a strong advanced financial system and encourage emerging technologies related to electronic payment. Kuwait Law No. 20/2014 On Electronic Transactions, gave the Kuwaiti Central Bank the authority to have oversight of and regulate electronic payments of funds, and to issue binding instructions in this area. This Decision repeals and replaces Kuwait Decision No. 44/430/2018 by which the Central Bank first issued Electronic Payment of Funds instructions in 2018. These have now been replaced as a result of Article 2 of Kuwait Decision No. 45/2023. Article 7 of Kuwait Decision No. 45/2023 explains the activities covered by this law, which include Limited Purpose E-Money (explained in more detail in Chapter 3) and Buy Now Pay Later (BNPL) services (which is a new activity which the Gulf Bank has been the first to implement) and is detailed in Article 25 of Kuwait Decision No. 45/2023. Article 8 of Kuwait Decision No. 45/2023 explains transactions which are out of the scope of this law, such as Payment Transactions executed electronically by the Payer to the Payee through a stored cash value via an E-Payment method, issued by a single issuer and only used to obtain goods or services from the issuer, or a group of companies affiliated to the parent company/trade name. This law includes provisions on governance, risk management, combatting money laundering and terrorist financing, cyber security, business continuity, and customer protection. Through these instructions the Central Bank hopes to ensure a secure, transparent electronic payment eco-system which will safeguard the interests of consumers

and financial institutions in Kuwait.

The law outlines mandatory requirements all financial firms involved in electronic payment or electronic money activities or who operate electronic payment systems must comply with as per their licenses. These licenses differ depending on the activity's size and nature. Those wishing to register for these licences must have a commercial licence, minimum capital requirements, a financial guarantee if required and candidates for senior positions will need to be approved. Their governance arrangements must also be defined and will depend on their business models and the level of risks associated with their activity. Information on their organisational structure, the names of responsible officers, details of roles and people in the senior management, and anyone in a supervisory position are also needed. Applicants must also undertake to abide by the instructions and any other relevant laws or instructions. Companies applying for a licence to operate in this area are also required to provide details of their company strategy. In the case of a large E-Payment service provider or Operator a five-year strategy is needed. While a three-year strategy will be needed for small E-Payment service providers or operators with their application. The strategy should be based on SWOT (Strengths, Weaknesses, Opportunities and Threats) including the company's overall objective financial projections, and other expectations demonstrating they will be able to fulfil capital requirements. Businesses also have to submit a customer protection plan and an exit plan which shows that if they encounter difficulties, they will be able to exit from financial sector in an orderly manner and guarantee the rights of their customers and shareholders.

TAX AND FINANCE ROUND-UP

COVERING RECENT KEY TAX AND
FINANCE DEVELOPMENTS – REGION-WIDE

UAE

FREE ZONE CLARIFICATIONS



Although Federal Decree-Law No. 47/2022 (the Corporate Income Tax law) includes special beneficial provisions for businesses operating within the UAE's Free Zone (FZ) Regime, that law had left questions on areas including the criteria for a person to qualify as a Qualified Free Zone Person (QFZP) and access the 0% Corporate Income rate.

As a result, the UAE Ministry of Finance (MoF) has issued Cabinet Decision No. 55/2023 On Determining Qualifying Income for the Qualifying Free Zone Person for the Purposes of Federal Decree-Law No. 47/2022 on the Taxation of Corporations and Businesses. This covers areas including the QFZP's Qualifying Income, de minimis requirements for non-qualifying income and maintaining adequate substance in a freezone. In addition, Ministerial Decision No. 139/2023

On the Eligible Activities and Excluded Activities for the Purposes of Federal Decree-Law No. 47/2022 on the Business and Corporate Taxation has also been issued. This Decision covers the treatment of activities which are related to import and export of goods.

The MOF also clarified at an awareness session the activity of distributing goods does not have to be taking place within the designated zone physically. Therefore, goods do not necessarily have to pass through the Designated Zone to be considered to be undertaken 'in or from a Designated Zone' and as a result a 'Qualifying Activity' subject to a 0% Corporate Income Tax rate. The MOF also issued a consultation seeking views on certain elements of the proposed framework for the classification of the Qualifying Activities and Excluded Activities detailed in Ministerial Decision No. 139/2023 and Cabinet Decision No. 55/2023 on this subject which originally was due to end on 2 August 2023 but was extended until 9 August 2023. Those responding to the consultation were also asked for any critical feedback or comments they had on applicability of corporate tax to Free Zones in the UAE and about the areas they would

prioritise for further Ministry of Finance and the Federal Tax Authority guidance on this subject.

FATCA AND CRS



The Ministry of Finance Foreign Account Tax Compliance Act (FATCA) and Common Reporting System (CRS) reporting portal has gone live. The deadline for submitting FATCA and CRS annual returns (or nil returns) was also extended to 31 July 2023 (for the 2022 calendar year). All UAE Reporting Financial Institutions (RFIs) must register on this new system, even if they had already been registered for reporting on the previous UAE FATCA and/or CRS reporting portals. Once their registration has been approved by the regulator, they are able to submit their FATCA and/or CRS annual report (or nil return). They should also have completed their risk assessment by 31 July 2023.

VAT APPORTIONMENT



The UAE Federal Tax Authority (FTA) has issued a new guide on input tax apportionment. The Guide provides details of the special methods that can be used by specific entities when the standard method would not lead to a fair and reasonable outcome. There are also details of the procedure and form which has to be used when applying to use a special apportionment method. The Guide replaces the Input Tax Apportionment: Special Methods VAT Guide (VATGIT 1) which was published in March 2023.

MORTGAGE NOTICE



The UAE Central Bank has issued a notice to all banks and finance companies in the UAE outlining the steps they should take to ease the burden of increasing interest rates on loans taken out by UAE nationals on residential real estate. The measures came into effect on 1 July 2023 and cover all residential real estate loans, including loans with an increased Debt Burden Ratios (DBRs), where banks have not postponed any of the interest until after repayment, in addition to loans with

non-increased DBRs where banks have postponed the interest incurred as a result of the higher interest rates. If a customer has monthly income of 40,000 AED or more, banks are permitted to exceed the rate of deduction from their salary or income to satisfy loan payments specified in the regulations. This is currently set at 50%, to cover the interest rate increase, and can be up to a maximum of 60%, if banks bear the remaining uncovered interest as a result of the increased rates. This basically exempts customers from the remaining interest with no extension of the loan term. If a customer has monthly income of less than 40,000 AED, banks can extend the repayment term to cover interest rates increases, up to a maximum of 30 years, while maintaining the deduction percentage from salary or income at 50% as is currently in force, if the bank bears the remaining uncovered interest.

ADGM

SUSTAINABLE FINANCE



The Financial Services Regulatory Authority (FSRA) in the ADGM has announced that the Sustainable Finance Regulatory Framework has come into effect as of 4 July 2023. The Framework provides for a green labelling system which is used for funds, bonds, and sukuk and also establishes comprehensive ESG disclosure requirements. There have been some important changes made to the draft which was consulted on. For example, exempt Funds are subject to the third-party attestation requirement when investing in taxonomy-aligned assets, but Qualified Investor Funds are permitted to self-attest a portfolio's alignment to a taxonomy. Currently no fees are charged to obtain a designation under the Framework.

SAUDI ARABIA


IMPLEMENTING REGULATION CHANGE



Amendments have been made to the VAT Implementing Regulations, Saudi Arabia Administrative Decision No.

3839/1438. These include a deletion of Article 75(5) which had stated that Zakat, Tax, and Customs Authority (ZATCA) was not bound by the tax rulings. In addition, Article 40(7)(d) now states if a taxable person wants to claim an unpaid consideration that has been written off in their commercial books, they must provide a certificate issued by their certified accountant. If the taxable person is not required to appoint an auditor, the authority may accept other supporting documents as evidence. There have also been changes to Article 29(7) which clarify the provision on Financial Services and exempt supplies.

TAX RULINGS

 The Zakat, Tax, and Customs Authority (ZATCA) has issued new Guidelines on Tax Ruling requests. The guide states non-registered tax persons are now also allowed to apply for a tax ruling. However, the Guide no longer commits ZATCA to having to provide a ruling within 45 working days.

QATAR

NEW CAPITAL COMMITTEE

 The Qatar Financial Markets Authority has established a new 'one window for the capital market' committee. The committee will coordinate between different authorities so it is easier for companies to make a public offering and listing of securities on the Qatar Stock Exchange, whether as a result of their incorporation, conversion to a joint stock company, direct listing, or any acquisition or merger. Work carried out will eliminate duplication in the documents and information required by different authorities when companies take these steps as there will be a unified list of the documents and information required from them for each type of deal or transaction in the Qatari financial markets. The new committee will receive, study and review applications for offering and listing financial securities and accept them for trading on the Qatar Stock Exchange. They will also look at applications for registration with the depository by all methods and ensure they comply with all legislative requirements, particularly those highlighted in offering prospectuses and financial assessment reports. They will also

TAX TREATY UPDATE

Qatar: A Double Tax Treaty has been signed with Uzbekistan.


Oman: Russia and Oman have signed a Double Tax Treaty. The UAE has also been in negotiations with Russia on a Double Tax Treaty.

Kuwait: Negotiations have been taking place with Ecuador on a Double Tax Treaty.

Oman: Oman Sultani Decree No. 43/2023 has been issued which ratifies an Agreement Between the Omani and Egyptian Governments on the Elimination of Double Taxation on Taxes on Income and Prevention and Avoidance of Tax Evasion.


review acquisition and merger requests where one of the parties is listed in the financial markets and voluntary delisting requests will also come within their remit.

CUSTOMS GIFT EXEMPTIONS


 The Chief of the Exemptions Section at Qatar's Customs General Directorate has provided information on the situations where gifts are treated as being exempt from customs' fees. He stated that gifts and any passenger's personal belongings should not have a value of over 3000 Riyals if they wish these items to be exempt from customs duties when coming into the country. The items must also not be of a commercial nature. Items will be treated as being of a commercial nature where large quantities have been purchased. Where a passenger brings in items whose value exceeds the 3000 Riyal limit, they must be declared and a customs clearance form completed.

OMAN

PROMOTION GUIDE

 The Omani Tax Authority has issued a VAT guide on promotions which explains the VAT impact of various promotional activities. These can include when customers are given discounts, gifts and samples, provision of vouchers, free services and discount coupons. The VAT impact when barter takes place is also covered, as are buy one get one free deals.

FINANCIAL STABILITY INDEX

 The Omani Central Bank has issued an index which will be used to measure private compound financial stability. The aim is to provide a clear understanding of the financial position locally. The index will use measurements

from 1 to 5 to indicate the level of stability in five component areas. They will include banking stability, regulatory risks, debt sustainability, currency stability and the position in the capital markets. The information will be available to the public on an annual basis.


EGYPT

CUSTOMS CLEARANCE

 The Egyptian Ministry of Finance has issued a decision which gives importers or their customs clearance agents the option to complete preliminary customs clearing processes for goods imported from overseas by paying one per cent of the estimated tax and fees, instead of 30 per cent. Settlement procedures and payment of full tax and fees owed can then be finalised when the goods arrive in Egypt. These will be charged based on the customs tariffs in place at the time of clearance. If the goods are to be exported abroad or destroyed in line with legally prescribed procedures, the Customs Department will reimburse deducted fees.

TURKEY

VAT RATE CHANGES

 In Turkey products and services which were subject to an 8% VAT rate are now subject to a new 10% rate. Those previously subject to an 18% rate are now subject to a 20% rate. A bill was also submitted to the Turkish parliament on 5 July 2023 which included a range of tax changes required to meet the costs of financing Government action on the recent earthquake damage. These include that a VAT exemption for real estate which means that when real estate is held by a corporation for two years and is sold, the corporation would not have to pay VAT would be removed.

FROM SHIP TO SHORE

The new Oman Maritime Law has brought in significant and wide-ranging changes to the legal framework governing the sector and maritime disputes, as Abdullah Hassan Khan and Shehreyar Khan of MAR Law explain.

“Oman now has a new Maritime Law, Oman Sultani Decree No. 19/2023 designed to bring maritime legislation in line with international law and make the legal framework there clearer,” states Abdullah Hassan Khan. “This law repeals and replaces Oman Sultani Decree No. 35/1981. It also states international treaties and agreements take precedence over domestic laws in the event of a conflict between the two which ensures that Oman Sultani Decree No. 19/2023 will work in harmony with international standards.

This is a significant change to the previous position as it explicitly acknowledges the supremacy of international law over domestic law in Oman, albeit to a limited extent.”

“The increasing prevalence of piracy and other illegal activities at sea have made it more important for governments including, the government of Oman to ensure they have legislation in place to address criminal activities at sea,” Shehreyar Khan adds. “Therefore having a comprehensive legal framework in place to handle all possible maritime scenarios has become more important in Oman.”





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"Ensuring the safety and rights of seagoers is also a key element of this law and as a result it has also given new broad powers to the Ministry of Transport, Communications and Information Technology (MTCIT) to investigate marine accidents and issue safety requirements."

"Article 2 of Oman Sultani Decree No. 19/2023 states this law applies to all types of marine navigation, ships, and marine units, whether Omani or foreign, with the exception of those designated for military purposes," Abdullah Hassan Khan explains. "It also exempts state-owned ships designated for public service and non-commercial purposes, except to the extent of the nationality of such ships, their documents, registration, maritime mortgage, and the provisions for marine collision, salvage, and general average losses."

"In addition, it also provides guidelines for Omani vessels in ports in other countries, and for foreign vessels passing through Omani waters or docking in Omani ports, as well as on shipwrecks. There are also requirements on ship registrations, the criteria for crews and on ship ownership."

"However, this law is not just about compliance, it also provides for new commercial opportunities in the Omani maritime sector, including ship building and covers other commercial maritime activities and tourism."

MTCIT POWERS

"Oman Sultani Decree No. 19/2023 has given the MTCIT a range of new powers to regulate maritime activities," Shehreyar Khan continues. "Under Article 3 of Oman Sultani Decree No. 19/2023 the Minister has also been given powers to issue further decisions and regulations in order to implement this law and any international treaties Oman may enter into."

"MTCIT is also responsible for overseeing all matters related to marine navigation and traffic, and the use of ports and berths," Shehreyar Khan adds. "Their other responsibilities include surveying marine areas, issuing necessary maps, approving fees for the use of Omani ports and related services, issuing licenses and certificates for marine, port, and ship services, as well as defining the conditions for the issue, renewal, suspension, or cancellation of these licences."



Abdullah Hassan Khan
MAR Law



Shehreyar Khan
MAR Law

RESPONSIBILITIES AND DISPUTES

"Oman Sultani Decree No. 19/2023 provides a comprehensive framework which outlines the roles and responsibilities of all personnel involved in the maritime sector, the scope of application, and the legal recourse which is available in the event of a maritime dispute," Abdullah Hassan Khan explains. "It helps ensure that all parties are protected, and any legal disputes are resolved in a just and fair manner."

"In addition, Oman Sultani Decree No. 19/2023 now recognises the importance of international maritime law in resolving maritime disputes. As a result, lawyers will now need to have a thorough understanding of the international legal maritime framework and its precedence over local Omani laws."

KEY CHANGES

"There have been a number of significant changes brought in by Oman Sultani Decree No. 19/2023," states Shehreyar Khan. "For example, Chapter 5 of Part 2 of Oman Sultani Decree No. 19/2023 has introduced a new framework for regulating shipbuilding, which shows Oman's commitment to this industry. Article 23 of Oman Sultani Decree No. 19/2023 states that shipbuilding must be under the supervision of one of the marine classification and supervision agencies approved by the Maritime Authority, except in the case of ships made of wood and ships specified by a MTCIT. This is to ensure Omani shipbuilding follows high safety and quality standards."

"Part 5 of Oman Sultani Decree No. 19/2023, also defines the duties of ship agents, cargo agents, and freight forwarders - areas which were not covered in the previous law," Abdullah Hassan Khan explains. "Article 136 of Oman Sultani Decree No. 19/2023 states that the law of the port where a transaction with these agents and brokers occurs will be the governing law for that transaction, unless the parties have agreed otherwise. This helps to clarify the legal position for transactions of this type and should also ensure consistency in application."

"Another key change is that the grounds for seizure of vessels under Oman Sultani Decree No. 19/2023 are much more extensive than was previously the case," Shehreyar Khan adds. "They now include grounds involving the non-payment of costs related to the maintenance of abandoned ships and the support of their crews, fees due for marine affairs services, as well as disputes over the ownership of a ship or the right to profits arising from a ship's use."

"Oman Sultani Decree No. 19/2023 also now provides for provisional seizure of vessels, which a court can order to fulfil a maritime debt," Abdullah Hassan Khan explains. "However, if a creditor wishes to request the provisional seizure of a ship, they must appear before the court within 15 days in order to prove

RELEVANT LEGISLATION

Article 39 of Oman Sultani Decree No. 19/2023

The provisions of this Chapter apply to the Ship whether the Operator is its owner or charterer, with the exception of the Ship whose owner lost possession thereof by an illegal act, and the preferred creditor acted in bad faith.

(Source: Lexis Middle East Law)



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the debt and request confirmation of the seizure. The court will hear the matter on a summary basis.”

CARRIAGE OF GOODS CONTRACTS

“Another change brought in as a result of this law has been to the time limit on lawsuits arising from contracts for the carriage of goods,” Shehreyar Khan adds.

“The previous law had no prescribed limitation period for litigation of this type. Oman Sultani Decree No. 19/2023 now bars lawsuits arising from a carriage of goods contract after two years from the date delivery of those goods should have taken place.”

“This is not the only change on carriage of goods contracts brought in by this law,” Abdullah Hassan Khan continues. “It is also now possible in a carriage of goods contract to refer disputes to arbitration, which will be decided in accordance with the provisions stipulated in Oman Sultani Decree No. 19/2023. In addition, parties can also agree to submit disputes arising from maritime collisions to arbitration. This is a significant change from the previous position under the old law which only made reference to arbitration in the context of collision of sea vessels.”

TOURIST TRAVEL

“Given the importance of tourism in Oman it is also interesting to note that Oman Sultani Decree No. 19/2023 has acknowledged tourist sea travel as a distinct form of maritime transportation,” states Shehreyar Khan. “Passengers now have specific rights and specific obligations have been placed on tour operators. The legal structure has also been put in place for ensuring passenger safety.”

WRECKS

“Chapter 5 of Part 7 of Oman Sultani Decree No. 19/2023 also covers marine wrecks, and consequences resulting from them,” Abdullah Hassan Khan continues.

“There are now new stricter obligations on the shipowner or master to notify the Maritime Authority of

a wreck immediately; and to recover, remove, or refloat the ship within 30 days from the date it sinks, becomes stranded, or its abandonment.”

“These stricter obligations aim to promote greater accountability and responsibility in the maritime industry.”

PENALTIES AND SANCTIONS

“Part 9 of Oman Sultani Decree No. 19/2023 covers penalties for violating this law and MTCIT’s ability to determine administrative sanctions,” states Shehreyar Khan.

“This is a significant change as the previous law did not have a dedicated section on punishments.”

WHAT’S NEXT?

“Oman Sultani Decree No. 19/2023 came into force on 3 April 2023,” states Abdullah Hassan Khan.

“However, as a result of Article 92 of Oman Sultani Decree No. 6/2021 (the Omani Constitution) a law can only apply to events that occur following its promulgation and does not have any effect on the events that occurred before that date unless otherwise stipulated. Therefore, this law will not apply to those involved in previous litigation. It is too early to fully understand the impact this new law will have.”

“In part this is because MTCIT has been granted broad discretion to flesh out and clarify its scope through regulations and decisions.”

“These regulations and decisions will play a critical part in shaping this law’s ultimate impact and until they are in place, it will be difficult to assess the law’s full scope and implications.”

RELEVANT NEWS

Bahrain Shura Council Approves Maritime Transport Agreement with Oman

The Bahrain Shura Council’s Foreign Affairs, Defence, and National Security Committee recommended the approval of legislation which would ratify an agreement for cooperation in the maritime and ports sector between the governments of Bahrain and Oman. The aim of the agreement is to regulate transportation between the two countries, facilitate maritime navigation, ensure maritime safety, and promote commercial exchange. The legislation was issued in Bahrain Law No. 3/2023. On the ratification of the cooperation agreement in the maritime transportation and ports sector between the Government of Bahrain and the Government of Oman Sultanate.

CASE FOCUS

Case No Horizon Energy LLC v Al Buhaira National Insurance Company, DIFC Case No. 015/ 2022, issued on 19 April 2023

Jurisdiction DIFC

Court DIFC Court of Appeal

Recommended by Ayesha Karim

WHAT IS IT ABOUT?

In 2015 Al Buhaira National Insurance Company (ABNIC), insured Horizon Energy LLC, and its subsidiaries and affiliates under a Marine Hull and Machinery Policy and a Marine Hull War Policy for a number of vessels including the BETA. Around December 2019, it was discovered the BETA was missing and Horizon notified ABNIC giving formal notice of its claim for loss on 25 October 2021. The insurer sought further information about the loss but did not receive it. On 7 November 2021 Horizon made a complaint to the Insurance Authority under Article 110 of Federal Law No. 6/2007. (The insurance committee later refused to consider the case on the grounds there was an arbitration clause in the contract which both parties accepted was not the case.) ABNIC formally notified Horizon of its decision to avoid the policies, and on 11 November 2021, ABNIC commenced proceedings in the DIFC Court of First Instance for a declaration the Policies were avoided on the grounds of misrepresentation so ABNIC was not liable to Horizon or alternatively, the claim for its loss did not fall within the cover provided by the policies.

Horizon challenged the ABNIC claim, on the grounds the DIFC Courts lacked jurisdiction over the matter and, in the alternative, that ABNIC's claims should be struck off as an abuse of process. Horizon relied on Federal Law No. 6/2007 (the UAE Insurance Law) and the Insurance Authority Board Resolution No. 33/2019 which established a dispute resolution procedure for UAE insurance disputes. They argued any dispute must be first be adjudicated by the committee established by Federal Law No. 6/2007 and then by the onshore courts with the nearest link to the dispute, which they stated was the Sharjah Court of First Instance, because insurance activity in the DIFC

involving offshore insurance was limited to re-insurance. Article 121 of the UAE Constitution the Union's exclusive legislative and executive jurisdiction over 'insurance matters of all kind'. They also stated ABNIC's claim in the Court of First Instance was an abuse of process as there was a complaint pending before the Insurance Committee.

The DIFC Court of First Instance examined the policy law and jurisdiction clauses which stated the contract would be governed by and construed in accordance with English law and that each party had agreed to submit to the exclusive jurisdiction of the courts of the UAE. It was also stated an arbitration contract would be subject to the law and jurisdiction of the UAE. The Court of First Instance rejected the challenge on both grounds. It found the DIFC courts had jurisdiction over the ABNIC's claim under the opt in jurisdiction conferred by Article (5)(A)(2) of Dubai Law No. 12/2004 and it had long been settled that the DIFC Courts were one of the courts of the UAE within the meaning of the jurisdiction clause in the policy.

The limitation on the DIFC insurance activity did not affect the jurisdiction of the DIFC courts. In terms of the abuse of process argument, the Court of First Instance ruled the dispute resolution regime established by Federal Law No. 6/2007 only regulated complaints instituted by an insured person against an insurer and did not cover claims initiated by the insurer. If that complaint was made, the regime provided for a challenge to 'the competent court of first instance'. The competent court was not limited to an onshore UAE court. It was open to the parties to choose their court or courts of competent jurisdiction.

WHAT WAS DECIDED?

Horizons appealed before the DIFC Court of Appeal on the limited point of jurisdiction using the concepts of context and public policy in terms of the Constitutional provisions and laws regulating offshore free zones to support their case against DIFC Court jurisdiction. The DIFC Court of Appeal ruled neither Federal Law No. 6/2007 nor the Authority Resolution establishing the committee system excluded the DIFC Court's jurisdiction.

The restriction on insurance business in, or from the DIFC did not have any bearing on the DIFC Court's ability to hear insurance disputes, if the parties to the contract had agreed to that.

There was no provision in Federal Law No. 6/2007 preventing or prohibiting parties from agreeing to confer jurisdiction on the DIFC Courts in an insurance contract or, on any other jurisdiction. The dispute resolution regime established by Federal Law No. 6/2007 was limited to complaints instituted by an insured person. It was an administrative process and did not include disputes raised by the insurer. It did not prevent insurers from approaching an appropriate court.

WHY IS IT IMPORTANT?

This case has helped to clarify the interplay between Article 121 of the UAE Constitution (which states the Union shall have exclusive legislative and legislative jurisdiction over insurance matters of all kinds, the disputes resolution regime which has been established by Federal Law No. 6/2007 and the jurisdiction of the free zone courts in the insurance context.

Case No Fat Cat Cafe v AHK Enterprise LLC [2023] QIC (F) 10 issued on 2 April 2023

Jurisdiction Qatar

Court QICDRC Court of First Instance

Recommended by K&L Gates

WHAT IS IT ABOUT?

This case involved a dispute over a temporary lease agreement between two entities established within the Qatar Financial Centre (QFC). It followed the QICDRC Small Claims Track approach which allows for fast, cost-effective case handling without the need for oral evidence or argument. Fat Cat Café LLC filed a claim against AHK Enterprise LLC to recover QAR 37,500, which they had paid under a temporary lease agreement for a kiosk during the FIFA World Cup 2022. The Defendant also counterclaimed QAR 37,500 which was the balance of the sum due under the lease. Fat Cat had leased the kiosk in the Arabian Village Project in order to sell beverages to spectators during the World Cup. The contract term was for 80 days, from 29 September 2022 until 20 January 2023. The rental was QAR 75,000, of which 50% was payable in advance. Fat Cat alleged the Defendant had breached the lease in several ways, including by failing to handover the leased premises on time, by modifying the location of the entrances to the Arabian Village (which impacted the footfall), and by providing a kiosk that did not meet the specifications on the maps and the drawings contemplated in clause 3 of the Lease Agreement.

They sought repayment of the amount they had paid, together with further claims they made for compensation for loss suffered as a result of the contract breach, and payment of fees and expenses incurred in pursuing their claim. However, they subsequently dropped the latter two allegations of

breach, so the case simply focussed on whether they were entitled to be repaid the 50% rent which the Defendant admitted they had paid; or the Defendant was entitled to receive the 50% balance of the rent payable under the lease. Fat Cat had argued the purpose of them leasing the kiosk was to sell beverages at the tournament and they should have had access to the kiosk for the whole tournament period. The period in the lease overlapped with the tournament but did not cover the entire tournament period.

WHAT WAS DECIDED?

The QICDRC Court of First Instance dismissed Fat Cat's claims, concluding they had failed to establish them. The Defendant's evidence was sufficient to disprove the allegations. They showed they had delivered the kiosk when contracted. The Court of First Instance found in favour of the Defendant and directed Fat Cat to pay them the outstanding balance of the rent of QAR 37,500. The Defendant was also entitled to recover their reasonable costs in defending the Claimant's claim and in pursuing its own Counterclaim. Permission to appeal this decision was refused in QFC 0001/2023, [2023] QIC (A) 8.

WHY IS IT IMPORTANT?

This case shows the importance of ensuring that lease agreements are carefully drafted and both parties are clear on their respective obligations. There was a disconnect here between what Fat Cat thought were important issues for them, i.e. sales during the tournament, and what they had actually agreed to in the lease. With a contract for leasing premises for specific events like the World Cup, time to set up and dismantle fixtures must be considered and factored into the required lease start and end date. It is important to take legal advice when drafting a lease and in taking any litigation over a lease. Fat Cat commenced litigation with three allegations of breach but in their Reply, they did not respond to the Defendant's position on two of the grounds. The Court concluded as a result that 'there is no response to the Defendant's answers to these grounds of the claim and in consequence these answers effectively stand uncontroverted'. So, by failing to respond to the Defendant's position in the pleadings, Fat Cat was deemed to have accepted the Defendant's case on those issues. Parties must ensure they respond to all statements made in pleadings which they disagree with. The case also highlights the importance of adhering to the Practice Direction and the evidentiary material submitted. This case was allocated to the Small Claims Track, which was appropriate given its nature and value. As a result, the court relied on the written material which had been submitted by both parties to determine it without oral evidence or argument. It is always important to provide accurate and relevant written material to support a claim or defence, as it may as in this case subsequently form the basis for the court's judgment.



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PROFILE

HEAD OF COMMERCIAL CIRCUIT – JUDICIARY



An effective approach to litigation

Ahmed Bakry Abdalla Hassan Elsayedt explains his role as the head of the Commercial Circuit in the Abu Dhabi Commercial Court and the approach he believes those involved in litigation should take if they are looking to be successful.

YOUR BACKGROUND

I began my legal journey at Cairo University's Faculty of Law, specialising in the English Section. I was awarded a Chevening scholarship by the British Government to study for my master's degree in Public International Law at SOAS, University of London.

Furthering my education, I then studied Communications Law at the University of Hamburg, backed by a scholarship from the German Academic Exchange Service (DAAD).

My curiosity about parallel proceedings in international arbitration also led me to pursue a PhD at the University of Leiden in the Netherlands.

PAST EXPERIENCE

I have spent over two decades in the legal profession. My career began as a public prosecutor, where I honed my skills in criminal law and gained in-depth insights into courtroom dynamics.

I then transitioned to the civil, commercial, and family courts in Egypt. Later, I joined the Egyptian State arbitration department, where I was involved in settling and defending the state in complex investment and commercial disputes.

ARBITRATION

My involvement with arbitration also led to me being appointed as an arbitrator in several commercial disputes, a role that has deepened my understanding of both litigation and arbitration and their interrelationships.

YOUR CURRENT ROLE

Currently, I serve as the head of a commercial circuit at the Abu Dhabi Commercial Court, presiding over a diverse range of business-related cases, including those involving construction disputes, intellectual property rights, insurance, banking disputes and Islamic finance.

During my tenure here, I have gained an in-depth knowledge of UAE law and its intricacies, which has been instrumental in my role as a judge.

Besides my role as a judge, I also take on the responsibilities of a pre-trial judge, managing case progress, setting out procedural agendas, and appointing experts when necessary.



In addition, I have extensive experience of enforcing commercial judgments and arbitration awards, issuing summary judgments and interim measures such as seizing or freezing assets when required.

THE COURT

The Abu Dhabi Commercial Court is unique due to its broad jurisdictional remit and commitment to using advanced technology for efficient case management systems.

Even before the COVID 19 pandemic, the Abu Dhabi Commercial Court had embraced digital solutions and eliminated paperwork, streamlining procedures and facilitating easier case initiation and tracking for litigants.

ACHIEVEMENTS

I am proud to have presided over high-profile cases in the Abu Dhabi Commercial Court, contributing to the development of legal precedents. I have also used my judicial expertise and arbitration background to settle significant investment arbitration disputes for Egypt, including cases at the International Centre for Settlement of Investment Disputes (ICSID), worth a combined \$21.638 billion.

In addition, I played a crucial role in negotiating and drafting 55 commercial agreements between Egyptian state entities and foreign investors.

PRACTITIONER PERSPECTIVE



Waleed Hamad
Head of Litigation
Al Aidarous

Waleed Hamad of Al Aidarous explains how Abu Dhabi Decision No. 28/2019 and the establishment of the Abu Dhabi Commercial Court has changed commercial litigation.

Prior to the establishment of the Abu Dhabi Commercial Court, the distribution of work among the civil, commercial, administrative and labour courts in Abu Dhabi was based on internal regulations and not on subject-matter jurisdiction,

(see Petition No. 763/2010 (Administrative), Abu Dhabi Court of Cassation, dated 6/4/2011).

This meant that if a commercial matter was brought before a civil or administrative court, that court could still have to rule on that matter.

However, as a result of the issue of Abu Dhabi Decision No. 28/2019 On the Establishment the Abu Dhabi Commercial Court, which was issued on 4 September 2019, the Abu Dhabi Commercial Court became the exclusive court for hearing commercial cases.

JURISDICTION

As result, in Abu Dhabi, if a commercial matter is brought before a court other than the Abu Dhabi Commercial Court, that court will now rule on the inadmissibility of that matter due to a lack of jurisdiction over it.

Abu Dhabi Decision No. 28/2019 came into force one month after the Decision was issued, on 4 October 2019 (see Article 10 of Abu Dhabi Decision No. 28/2019).

Article 3 of Abu Dhabi Decision No. 28/2019 gives the Commercial Court jurisdiction over cases of a commercial nature in general, and in particular jurisdiction over cases which arise from the application of certain laws.

These include but are not limited to the Commercial Transactions Law (Federal Decree-Law No. 50/2022), the Agency Law (Federal Law No. 3/2022), the Commercial Companies Law (Federal Decree-Law No. 32/2021), the Bankruptcy Law (Federal Decree-Law No. 9/2016) and UAE Intellectual Property Laws.

USE OF TECHNOLOGY

COVID-19 had a significant impact on the operations of courts in

general, including the Abu Dhabi Commercial Court. It changed the way courts across the globe operate and made remote hearings and paperless case management more common.

However, the Abu Dhabi Commercial Court had already started to introduce advanced technology into its operations before then.

As a result, lawyers, litigants, and witnesses are allowed to attend hearings online in the Abu Dhabi Commercial Court. It is worth noting that the court may still allow in-person attendance in certain exceptional cases based on the court's decision or at the request of one of the parties, provided that permission is granted by the President of the court.

There are no significant differences between managing commercial cases and other types of cases, although in commercial cases, as is the case with this court, the court usually sets shorter periods (which can be about a week) between one hearing and the next.

Litigants at Abu Dhabi Commercial Court have to carefully track their case's progress and be ready to act quickly at each stage.

In addition, since the inception of its case management office system, the Abu Dhabi Commercial Court's office has prepared the entire case online through its electronic portal.

THE LITIGATION PROCESS

Along with remote attendance procedures, in the Abu Dhabi Commercial Court the entire litigation process can now be implemented through the Judicial Department's website. This includes registering the case, exchanging submissions, archiving judgments, filing appeals, and the execution of the final judgment. This system saves the court a significant amount of administrative effort and helps to make its judicial work faster and more efficient.

ENGLISH AND ARABIC

Those embarking on litigation in this court should also note that in all cases heard before the courts of the Emirate of Abu Dhabi, if one of the parties is a non-Arabic speaker, the statement of claim must be submitted in both Arabic and English.

I have also served as a key expert on the EUROJust project, training judges in the MENA region on areas such as money laundering and asset recovery, child abduction, electronic evidence, and the procedural rights of criminal suspects.

EFFECTIVE LITIGATION

When it comes to effective litigation, litigants should maintain clarity on the legal issues involved in their cases and prepare meticulously with relevant evidence and documentation. I highly recommend

litigants have a qualified legal representative to guide them through the process. It is also crucial to comply with the court's procedural rules, attend all scheduled hearings, and approach the proceedings with a professional attitude.

Having a quick response to deadlines, as well as vigilance, integrity, consistency in the positions which are taken all help to increase the chances of success when conducting legal proceedings and as do presenting clear, solid positions on the case without irrelevant documentation.

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

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CORPORATE MOVE AT CLYDE & CO

A team of 13 corporate lawyers who previously worked for PwC in Dubai have moved to Clyde & Co. The new joiners include partners Nora Al Muhamad, Darren Harris, and Alan Wood.

Nora Al Muhamad specialises in family businesses, and she advises prominent family-owned companies on succession planning and legacy projects.

She had been at PwC for almost 11 years, most recently as a director.

Darren Harris who has worked for 12 years in the Middle Eastern represents acquirers, sellers, founders, investors and management teams on cross-border mergers and acquisitions (M&A), private equity, venture

capital, joint ventures and corporate advisory matters across the Middle East, Africa, Europe, and the UK. In the past he has worked for both Addleshaw Goddard and PwC.



In the past, Alan Wood had worked at Pinsent Masons, where he established a regional corporate practice. He has also spent time at Garrett & Co (part of the now-defunct Andersen Legal network) in the UK.

Wood advises private, government owned and multinational corporations, family businesses, and investors on share and asset acquisitions and disposals, mergers and acquisitions (M&A), divestitures, joint ventures, structuring, reorganisations, corporate governance and compliance. He also provides general advice on corporate matters and commercial agreements.



NEW ENERGY IN ABU DHABI



Brodiess, the leading Scottish law firm, has opened an office in Abu Dhabi after working with clients in the region for many years. The new office will be overseen by Brodiess' managing partner, Nick Scott.

Brodiess Middle East LLP is led by infrastructure and oil and gas partners Greg May and Bryan Wilson. Clients in the UAE, Qatar, Oman, and other Middle Eastern countries will be supported from this office.



Greg May, has experience of drafting complex and high value service sector contracts, including turnkey and project management drilling projects for the design, engineering and construction of wells and high value day rate drilling contracts, ranging from deepwater drill ships to shallow water jack-ups. He is



qualified in both English and US law and is also a member of the Association of International Energy Negotiators.

Bryan Wilson has extensive expertise of upstream oil and gas agreements and service sector work. He has over 30 years' experience in the oil and gas industry, and in the past has worked in the Middle East, Aberdeen, and Scandinavia both in-house and in private practice.

Wilson specialises in advising clients on high value and often complex projects in circumstances where diverse and sometimes conflicting strategies prevent economic projects from being developed. He negotiates and clarifies legal and business drivers to enable both upstream and service sector clients to make sensible and pragmatic strategic and tactical decisions.

ARBITRARY MOVES

Jehad Abdulrazzaq Kazim has been appointed the Executive Director at DIAC where she is the first Emirati woman to take up a leadership position at the arbitration centre. She has over 22 years of experience in the legal and alternative dispute resolution (ADR) sectors. Previously she worked as the Vice-President of the Legal Services Sector of Dubai Chambers. She was a graduate of the first group to pass through the Dubai Leaders' Programme at the Mohammed Bin Rashid Centre for Leadership Development. In addition, Robert Stephen has taken up a new role as Registrar at DIAC. He has been a member of the Advisory Committee to the Board of Directors of DIAC since April 2023. Stephen is an internationally recognised arbitration expert who was the former Registrar of the DIFC-LCIA Arbitration Centre and DFSA's Financial Markets Tribunal. He has also spent time

as a partner and Chief Operating Officer of UAE-based specialist arbitration boutique firm Ghaffari Partners, and worked at Herbert Smith Freehills in London, Paris, Moscow, and Dubai. His Deputy Register Christoffer Coello Hedberg who was a former legal counsel at the SCC Arbitration Institute has also recently come to DIAC.

PUBLIC AND PRIVATE

Sahal Khalawi who previously held a senior role at the Saudi Centre of Government, has been seconded to the National Centre for Privatisation and PPP in Saudi and trained at an international law firm has joined Abdulaziz Alajlan & Partners in association with Baker & McKenzie Limited. Khalawi will be based in the firm's Riyadh office. His areas of expertise include strategic, corporate and government advisory, legislative drafting, regulatory affairs and public policy. His primary focus in his new role will be expanding the firm's regulatory and public



OTHER CHANGES

Al Tamimi & Company: Al Tamimi have moved to a new office in Riyadh in the Tadawul Tower within the King Abdullah Financial District.

Norton Rose Fulbright: Norton Rose has moved to new offices in Dubai in ICD Brookfield Place in the DIFC.

Squire Patton Boggs: Legal Director Reem Bangina who works in the firm's global aviation team has moved from Squire's London office to their Dubai Office.

I MOVERS AND SHAKERS I

policy practice, while actively engaging with regulators and policy makers.

A CAREER IN CONSTRUCTION

Construction expert Slava Kiryushin has joined HFW in Dubai as a partner. Kiryushin is a construction dispute specialist in the MENA region who has represented clients in multi-billion disputes involving energy, construction and infrastructure projects. His clients have included national and international oil and gas companies, refining and petrochemical companies, EPC contractors, and oil and gas service companies. He is a solicitor-advocate and often appears for clients in international arbitrations. He also has Part II appearance rights to appear before the DIFC court. Previously he worked at DWF, where he was global co-head of infrastructure, construction and energy.

NEW DEPUTY IN DUBAI

Awad Jaheen has joined the dispute resolution specialists Al Aidarous. He joins the firm as a Partner and will also be the Deputy Head of their Litigation team. Awad has a wealth of experience in Real Estate and Construction Disputes. He specialises in Civil and Commercial law, but also has extensive arbitration experience. Jaheen has been actively involved in the past in cases involving Conflict of



Jurisdiction before the Federal Supreme Court and the Judicial Committee for the Conflict of Jurisdiction between DIFC Courts and Dubai Courts.



However, he is not the only new joiner at Al Aidarous as the firm also has a new Partner Niel Coertse who qualified in South Africa and has worked in the GCC since 2015. Coertse specialises in engineering and construction law and dispute resolution. He has spent time in both Dubai and Qatar where he worked on key projects in the Qatar Economic Free Zones, including the airport logistics zone and the Umm Al Houl port project.



NEW HIRE AT SQUIRE

Nima Fath who previously worked at Jones Day has joined Squire Patton Boggs as a Partner in the Financial Services Practice Group. He will be based in the firm's Dubai office. Fath has over 13

years' experience of acting for lenders and borrowers on a range of complex cross-border banking transactions. This includes conventional, Islamic and multi-sourced financings, across a range of loan products including project finance, syndicated loans, acquisition finance, real estate finance and marine and other asset financings. He has also advised financial institutions, issuers, digital asset and other businesses on regulatory and licensing requirements in the UAE, DIFC and Abu ADGM. In addition, Squire Patton Boggs have also announced that two of their partners Gassan Baloul and Thomas Wilson - have been appointed co-chairs of their Middle East Practice. Baloul was born in the Middle East and brought up both there and in the US. He is a member of the firm's Global Board and leads its Directed Emerging Market Initiatives. He specialises in litigation, arbitration, investigations, and government relations matters involving clients in the Middle East, including governments, financial institutions, and high net worth individuals. Wilson who has been based in the UAE for 15 years is also a dispute resolution and arbitration expert whose specialisms include disputes arising from business and projects in Middle East countries, particularly in the engineering and construction industries.

TECH TEAM ADDITION

Kellie Blyth who has been advising clients in the UAE, Saudi and wider MENA region since 2012 has joined Addleshaw Goddard as a Partner. Kellie specialises in technology and data work. She previously led the Middle East technology and data practice at Baker McKenzie. Her past experiences include advising on complex commercial arrangements, such as outsourcing, digital transformation and data centre related contracts, as well as data privacy and cyber security matters across the region. She has also routinely advised clients on the roll-out of new digital offerings and technology-driven



procurement and implementation projects. Other areas of expertise include FinTech where she specialises in the digital payment and virtual assets sub-sections.



NEW ROLES IN RIYADH

Dentons has continued its expansion in Saudi Arabia where it operates in association with The Law Firm of Wael A. Alissa, with two more hires. Edward Rose and Guy Danalis, who both previously worked at Jones Day, have joined the firm as senior legal consultants and will be based in Riyadh. Rose has been based in Saudi Arabia for over 25 years and has joined the firm's Energy, Transport and Infrastructure practice. His past experience has included advising clients on international energy, infrastructure and related corporate matters. He has experience of acting for a range of clients including government entities, international energy companies, project developers, contractors and large-scale corporations. He specialises in advising on the development and financing of infrastructure projects in Saudi Arabia and the wider Middle East. Danalis spent over a decade in the UAE and is an experienced corporate lawyer whose work focuses on regional and international M&A, joint ventures and private equity transactions. He has led and advised on high-value transactions throughout the GCC and Asia Pacific region.

A HEAD FOR IP

Munir Suboh who was previously the Head of Intellectual Property BSA Ahmad Bin Hezeem & Associates has joined Taylor Wessing as a partner in the firm's international IP and media group. Suboh has over 16 years' experience in IP, media, trademarks, cyber security and technology related matters.

Other specialisms include copyrights patents, trade secrets, domain names, media advisory, regulatory compliance and representation in contentious matters.

SEND US YOUR NEWS

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



Opportunities in the Middle East with Jameson Legal

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

Abu Dhabi

Legal Counsel, 3+ PQE, Heavy Industry Company

Our client, a heavy industry company with significant local backing, is looking to grow its legal team in Abu Dhabi. The successful candidate will work across a range of in-house matters, including commercial contracts, sales agreements, and employment contracts. Applicants should be qualified in the UK, Australia, New Zealand, Canada, or the US, ideally with at least 3 years' experience gained in a reputable law firm.

Reference: IJR-IM-13664

Dubai

Corporate/Commercial Lawyer, Major Investment Group

We are currently working on an exciting opportunity with a world-renowned group that focuses on the investment and delivery of projects for hospitality, commercial property, and residential property clients. It is preferred that applicants have at least 6 years' experience, be qualified in Canada, the UK, Australia, or New Zealand, and possess detailed knowledge and understanding of UAE legislative requirements.

Reference: RPG-IM-14380

Doha

Legal Counsel, 6+ PQE, Innovative Energy Company

A leading fuel company in Qatar is looking to hire a Legal Counsel to work alongside the Legal Manager and other members of the Executive team. Applicants with at least 6 years' experience gained within the oil and gas/energy industry would be preferred. Interested candidates must be qualified in the UK, France, US, Canada, Australia, or New Zealand.

Reference: IJR-IM-14100

Riyadh

Senior Transactional Lawyer, 8+ PQE, Manufacturing

Our client is a leading diversified manufacturing consortium in the Middle East, and they are looking to hire a highly skilled Senior Legal Counsel with substantial commercial expertise. Candidates will ideally have at least 8 years' experience handling commercial contracts and corporate matters, and be adept at handling diverse aspects of commercial transactions.

Reference: SSK-IM-14496

Dubai

Billings & Collections Specialist, US Law Firm

Our client, a large US international law firm, is looking to add a new member to their Billings and Collections team in Dubai. Applicants will ideally have 3-4 years' experience in billings, experience with the Aderant eBilling platform, and experience working in a law firm or legal billing department.

Reference: BHS-PM-14435

Doha

Risk & Compliance Analyst, International Law Firm

A major international law firm is seeking an experienced Risk and Compliance Analyst to join their global risk and compliance function. Successful applicants will ideally have a minimum of 2 years' relevant experience at an international law firm and good knowledge of AML, CTF, and sanction laws and regulations.

Reference: MBP-PM-14498

Abu Dhabi

In-House Legal Role, 6+ PQE, Defense Industry

An incredibly exciting opportunity has arisen to join an entity that is a key driver in developing the economy of the UAE. The successful applicant will ideally be US or UK-qualified, ideally with at least 6 years' experience working at well-regarded law firms or in-house teams. Arabic language skills or experience working in the GCC would be advantageous.

Reference: SSK-IM-14241

Saudi Arabia

Business System Analyst, Leading Energy Company

Our client, a global leader in the energy sector, has a unique opportunity for a Business System Analyst to join their highly valued innovative team. Ideally, applicants should have at least 5 years' experience with hands-on implementation of digital technologies and application development and possess a good understanding of all IR 4.0 solutions and digital tracks.

Reference: DLK-IM-14467

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



The right foundation for tackling a dispute

Shireen Fazal, Partner, Al Aidarous explains the importance of selecting the most appropriate dispute resolution method, particularly with construction disputes which make up a major part of her work.

Prior to reading law, I obtained a bachelor's degree in English Literature and then went on to qualify in law from the Faculty of Law in New Delhi, India. Although literature and law are different fields, both require an analytical and critical approach, and an emphasis on nuances and details. I moved to Dubai at the start of my career in 2002 and so, my practice has predominantly been in the UAE. Moving to a completely different jurisdiction at that early stage made me much more receptive to understanding the country's laws. I now have over 20 years' experience in the UAE, and have developed a deep, organic understanding and appreciation of the UAE law and legal system and can meld together concepts across different jurisdictions and legal systems.

I was primarily involved in transactional work at the start of my career. However, given Dubai's business-centric outlook and the property boom around that period, construction disputes started becoming a staple for many law firms. As was the case for many practitioners, the gravitational pull of construction disputes was inevitable, and I began immersing myself in that practice area.

Construction disputes are by their nature document intensive and highly technical, and involve many legal issues. Close synergy between lawyers and technical experts (in engineering as well as in delay and quantum issues) is required at the outset to ensure both the legal and technical aspects of the case speak with one voice.

The prevailing approach in the national courts on construction litigation is to appoint an expert to investigate the dispute's technical and factual aspects.

In terms of construction arbitration, there is an increasing preference to have technical experts of both sides giving evidence simultaneously at the arbitration hearing, a practice affectionately known as "hot tubbing". This allows the Tribunal to have an interactive assessment of the two conflicting positions and in real time.

One of the more interesting cases I have been involved in was a major, complex and high value construction dispute which was simultaneously heavily contested between the same parties in the Dubai Courts,

DIFC Courts and arbitration. This dispute has required an overarching strategy while remaining vigilant on the dynamic developments as every event has a domino effect on the other forum.

It was like a chess game being played out through effective legal strategy, testing the borders and strains of Dubai's unique jurisdictional boundaries.

With actual legal practice, gauging successes and accomplishments involves navigating a nuanced and inherently subjective landscape.

For me, the true measure of achievement is the ability to discover how a client's meticulously crafted legal strategy, developed in collaboration with my dedicated team, or from exhaustive research focused on a specific aspect, has translated into a favourable and positive result.

This is particularly gratifying, as it stems from the culmination of tireless, often unnoticed work behind the scenes over extended periods.

The choice of the forum for dispute resolution is one of a litigant's most important decisions and various factors have to be considered when selecting a forum for resolving disputes generally, particularly, in construction. Most of the issues that were previously faced by parties in arbitration have now been countered with the promulgation of Federal Law No. 6/2018 and more recently, the DIAC Arbitration Rules 2022.

A major benefit of opting for arbitration is the higher level of scrutiny on technical matters as, the tribunal members are highly experienced and specialised in construction disputes, and almost invariably encourage parties to appoint technical experts, and factual witnesses to support their case. While this makes arbitration the preferred choice for very technical and high value claims, the costs in this process are significantly higher than those in actions before the courts, which makes arbitration unsuitable for low value claims.

There are also certain measures and actions that can be obtained more efficiently and easily before the courts, for example, applications to impose a precautionary attachment of bank guarantees or other assets or payables can be obtained ex parte and within a matter of days.

RECENT ARBITRATION CASE

Arbitration Institution International Chamber of Commerce (ICC)
Issue..... Inadmissibility of claims on non-fulfilment of an agreed precondition
Reported by Al Aidarous

BACKGROUND

In this case, a dispute arose in connection with two projects which were related to the construction, supply, installation, testing and commissioning of a number of power substations.

The Claimant, who was the main contractor, had entered into an agreement with the Respondent, who was a subcontractor, to carry out civil works in both these projects.

The main contractor's case was that the subcontractor had failed to fulfil its obligations under the agreements and as a result the main contractor had suffered significant delay and financial losses.

In particular, the main contractor stated that the subcontractor had caused significant delays to the project and that the work carried out by the subcontractor was either defective and/or incomplete.

As a result of this, the main contractor had to assume the rectification and completion of the relevant work either itself or through other third-party subcontractors.

Therefore, the main contractor advanced a claim for compensation for the costs and damages that it had suffered and advanced various heads of claims.

The subcontractor claimed that the delay was caused by the main contractor and advanced a claim for prolongation costs.

ARGUMENTS RAISED

The main contractor rejected the subcontractor's prolongation costs claim on the basis that the subcontract terms were back-to-back with those of the main contract, which in turn stipulated that there would be no entitlement to prolongation costs. The subcontractor asserted that this exclusion applied only to certain delay scenarios, and that based on the facts of the dispute, such exclusions did not apply.

The subcontractor also asserted a series of defences to the main contractor's claims, including an inadmissibility objection.

The subcontractor asserted that the main contractor had failed to comply with the

contractual preconditions to arbitration and as a result the Tribunal ought to dismiss the main contractor's claim.

TRIBUNAL DECISION

On the matter of the Respondent's prolongation costs claim, the Tribunal held that the main contractor was not liable to pay the subcontractor prolongation costs, since the main contract contained a clause (that was also imported into the subcontract in question), which clearly indicated that no delay related costs were claimable. Accordingly, since the main contractor was not entitled to, and did not receive any such payment from the employer, the subcontractor was not entitled to claim for such costs as well.

As to the subcontractor's inadmissibility argument, the Tribunal held that the contractual clause in question had used mandatory language and it was manifestly clear that in the event of a dispute, amicable settlement had to first be pursued before proceeding to arbitration.

Accordingly, the Tribunal did not accept the main contractor's argument that the clause did not provide for a specific procedural mechanism which was to be followed for this amicable settlement process and did not detract in any way from the fundamental obligation that was set out in the contract's clause to first attempt to amicably settle the disputed issues.

In this regard, the Tribunal highlighted Article 246 of Federal Law No. 5/1985, which mandates that contracting parties must perform their obligations in good faith.

As a result, the Tribunal proceeded to determine whether the Claimant had complied with the amicable settlement clause with regards to its different heads of claim, as had been alternatively argued by the main contractor and ultimately held that the main contractor had in fact fulfilled the requisite preconditions.

POINTS TO NOTE

This case underlines the importance of ensuring that main contract terms are reflected in the subcontract in order to ensure that the main contractor does not end up having to compensate a subcontractor for costs for which the main contractor is not covered under the main contract.

AGENCY AND DISPUTES

A new UAE Commercial Agency Law recently came into force. Myriam Simon, Partner at Al Aidarous looks at its impact on dispute resolution.

© Getty Images/Stockphoto

A new Commercial Agency Law (Federal Law No. 3/2022) came into force in June 2023 and has brought in significant changes. In stark contrast to Federal Law No. 18/1981, which it replaced and strictly limited commercial agency activity practice to UAE citizens or companies wholly owned by UAE citizens, Federal Law No. 3/2022 has introduced a notable exception. International companies can now promote and distribute their products in the UAE provided these products are not already represented by a commercial agent in the UAE and the commercial agency itself is newly registered.

TERMINATION AND EXPIRATION

Disputes often arise around the termination and expiration of agency agreements. Under Federal Law No. 18/1981, the expiration of a contract between an agent and principal had no effect on the agency's registration which meant the commercial agency would remain registered under the agent's name even after the expiration of the contract between the two parties. So principals who wanted to maintain distribution of their products within the UAE had to renew their agency contracts. However, as a result of Article 9 of Federal Law No. 3/2022 a commercial agency will automatically terminate on expiration of the agreed duration, unless it is renewed by mutual agreement. Although Article 10(3) of Federal Law No. 3/2022 states that if either party intends not to renew the agency contract, they must notify the other party at least one year before the contract's expiration date or before half of the stipulated duration, whichever is the shorter period.

From reading both these provisions together it appears a commercial agency contract will terminate

on expiry of its term as long as the party which wishes not to renew it notifies the other party of this either one year before the expiration date, or if the contract is, for example, a one year contract, not less than six months before its expiry date. This ensures transparency and establishes a clear framework for the termination of agency contracts. However, there will also be grounds to challenge expiration if these notification requirements are not carefully followed.

PERMISSIBILITY OF ARBITRATION

Federal Law No. 18/1981 did not explicitly allow arbitration as a forum for disputes between an agent and principal on a commercial agency. As a result, the Federal Supreme Court ruled that any arbitration clause in an agency contract which was registered with the Ministry of Economy and Commerce as a commercial agency would be considered to be invalid (see Federal Supreme Court Judgment, UAE No. 814/2011 dated 12/12/2011).

However, as a result of Article 26 of Federal Law No. 3/2022 this has radically changed. This provision explicitly recognises the permissibility of arbitration as a dispute resolution mechanism for conflicts between an agent and the principal where the parties can resort to arbitration. This provides a route for alternative dispute resolution. However, it is still not clear whether it is mandatory for parties to resort to the Commercial Agencies Committee before initiating arbitration. From a reading of the law parties can directly pursue arbitration without first resorting to the Commercial Agencies Committee and the Committee is competent when a dispute is referred to the court. This will be clarified when parties to new commercial agencies resort to arbitration in their agreements.



Myriam Simon
Partner,
Al Aidarous

RECENT KEY DISPUTE RESOLUTION CASES

Case No DCC Case No. 97/2022 issued on 14 April 2022

Jurisdiction ...Dubai

CourtDubai Court of Cassation

Recommended by Al Aidarous

BACKGROUND

On 2 August 2016, Federal Decree-Law No. 4/2016 On Medical Liability was issued.

Article 18 of Federal Decree-Law No. 4/2016 provided for the formation of a medical expertise committee which was to be made up of doctors from all fields who would exclusively examine medical errors.

The law also stated that this Medical Liability Committee was to be formed by the minister, or the head of the health authority.

Federal Decree-Law No. 4/2016 stated that all medical malpractice claims had to be examined by this Committee before a claim could be filed in court, otherwise it would be inadmissible.

The procedure for resorting to the Committee was also regulated under Article 19 of Federal Decree-Law No. 4/2016. Claims involving medical malpractice must be referred to the health authority, which in turn refers the claim to the Committee.

Article 20 of Federal Decree-Law No. 4/2016 also permits a grievance to be lodged against a decision of the Committee. These must be pled before the Higher Medical Liability Committee within 30 days of the date the Committee's report is issued.

Notwithstanding the fact that Federal Decree-Law No. 4/2016 was issued on 2 August 2016, it only became effective in Dubai on 9 October 2019, following the issue of Health Authority Decision No. 118/2019 which directed the formation of the Committee by the Director General of the Dubai Health Authority.

Following this Decision, any medical malpractice claim filed with the Dubai Courts which had not first been presented to the Committee became inadmissible. This principle has been demonstrated in a Dubai Court of Cassation ruling in which the court rejected the filing of a medical liability claim which was filed with the court before the claim had been presented to the Committee.

DCFI CASE NO. 2040/2021 (CIVIL)

In DCFI Case No. 2040/2021 (Civil), a father of a female child who was born in a hospital in Dubai filed a claim with the Dubai Court of First Instance.

During childbirth, the attending medical physician had committed medical errors which had caused her medical condition to worsen.

Before filing the case, with the Court of First Instance the claimant had contacted the Public

Prosecution Office, which assigned a medical committee.

This committee had concluded that there was no medical liability on the part of the medical practitioner.

Subsequently, the hospital filed a claim claiming treatment costs, and the court hearing that matter assigned a different medical expert committee, which in turn examined the matter and concluded that a medical error had been made by the attending physician.

This prompted the claimant to file an urgent case before the Sharjah court requesting the appointment of a medical expert committee, and that committee concluded that there were gross medical errors.

The court of First Instance issued its ruling on 11 October 2021 dismissing the claim. The claimant then appealed the matter in Appeal No. 1869/2021 (Civil), and the court of Appeal issued its ruling on 8 February 2022 deciding that the case was inadmissible.

As a result the claimant appealed the matter further before the Dubai Court of Cassation in Petition No. 97/2022.

DECISION

In Petition No. 97/2022, dated 14 April 2022, the Dubai Court of Cassation decided that the case was inadmissible as it had been filed with the court without first being presented to the Committee.

This was despite the fact that the issue of medical malpractice had been presented, prior to filing of the claim to more than one medical committee, including a committee formed by the Public Prosecution Office, a committee formed in the case filed by the hospital against the father of the child, and a committee formed before the Sharjah courts.

The Dubai Court of Cassation clarified in its ruling that the Committee formed pursuant to the Decision had become the sole competent Committee to examine medical errors in the Emirate of Dubai.

Therefore, the examination of medical errors by any other committees did not satisfy the procedure which was now required before filing a claim with the Dubai Courts.

WHY IS THIS IMPORTANT?

This case shows that following the issue of Federal Decree-Law No. 4/2016 and Health Authority Decision No. 118/2019 prior to filing a medical negligence case claim with a court in Dubai, it is first necessary to file the claim with the Dubai Health Authority.

The Dubai Health Authority will in turn refer the claim to the Committee.

The Committee will then examine the relevant medical error and issue their report on that matter.

Then, after the deadline for filing a grievance against the report which has been issued by the committee, and not before, the claimant will have a right to file a case before the court.

Job Sharing Contracts



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Although the concept of job sharing and job sharing contracts is common in many jurisdictions across the world it has only relatively recently been introduced in the UAE.

WHAT DO THESE CONTRACTS DO?

These contracts are designed to split one job role between two (or more) employees subject to the condition that the working hours, salary and leave will also be split between the employees proportionately. The position can be split on the basis of tasks, working hours per day (a shift model) or days per week. The model which works best for a specific company will depend on the type of business, type of position and the working models in place.

BENEFITS OF THESE CONTRACTS

Job sharing contracts can provide employers with a model which allows greater flexibility and options when negotiating exceptions and modifications of terms. In many cases this flexibility can also help retain valuable expertise which would otherwise be lost. There can also be greater potential for

innovation, as the employer will be able to employ individuals with a broader range of skills and expertise than would have been possible if they were only able to recruit one person for the role.

Where job sharing contracts are in place, employees can also benefit from increased job prospects in the market, and it allows them to tailor their working hours and schedules to suit their preferences or family or study commitments.

UAE APPROACH

Under UAE labour law, job sharing contracts are treated as a part-time working arrangement. These were first introduced in 2018 by Ministerial Decision No. 31/2018 (Developing a New Employment System Under Part time Contracts). Under Ministerial Decision No. 31/2018, a part-time work arrangement is based on a primary/secondary employer system. This requires the primary employer to bear the majority of the employee's financial entitlements such as holiday pay and the end of service gratuity. When part-time work arrangements were first introduced in 2018, they were not usually an employer's preferred working arrangements as in practice a lot of uncertainty remained on how they operated. However, with COVID-19 companies had to adapt to new ways of working and had to review existing job roles and requirements.

To support this development Article 7 of Federal-Decree Law No. 33/2021 (the new Labour Law) introduced three main work patterns – full-time, part-time and temporary work.

Further detail was provided in Article 5 of Cabinet Decision No. 1/2022 (On the Implementing Regulation of Federal Decree-Law No. 33/2021 Regarding the Regulation of Employment Relationships) which has clarified that job sharing contracts are

regulated by provisions which relate to part-time work. An employee has to obtain a part-time work permit for each employer based on their part-time employment contract that defines their working hours and/or days.

Salary and leave entitlement are then proportionate to the employee's actual working hours.

OTHER REQUIREMENTS

However, it needs to be remembered that with a job sharing contract, a full-time workload is being divided across several employees all on part-time contracts. For this to succeed a different approach is also needed from a practical perspective.

Firstly, this model requires close cooperation between the individuals covering the same role. This can in some cases lead to potential conflict if there are compatibility issues or disagreements on execution and allocation of tasks between the job sharers. This could potentially have a negative impact on productivity.

In addition, as UAE employment contracts are now fixed term contracts there could be greater risk to continuity as time limits on these contracts could lead to frequent switching of job responsibilities.

If a job sharing contract is to work efficiently, it will be heavily dependent on whether multiple employees can work together. In addition, although these types of contract provide greater flexibility job sharing contracts may lead to higher administrative costs for an employer, as employment related expenses, for example training or IT costs, may have to be paid twice (or more depending on the number of employees sharing the role).

Changes to UAE legislation in this area have given employers and employees more flexibility but there are also additional issues and considerations which first need to be taken into account.

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