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LAW ALERT

تشريعات الشرق الاوسط

January/February 2024

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FEATURE DIRECTION OF TRAVEL

Omani Tourism Law

PROFILE CONSTRUCTION

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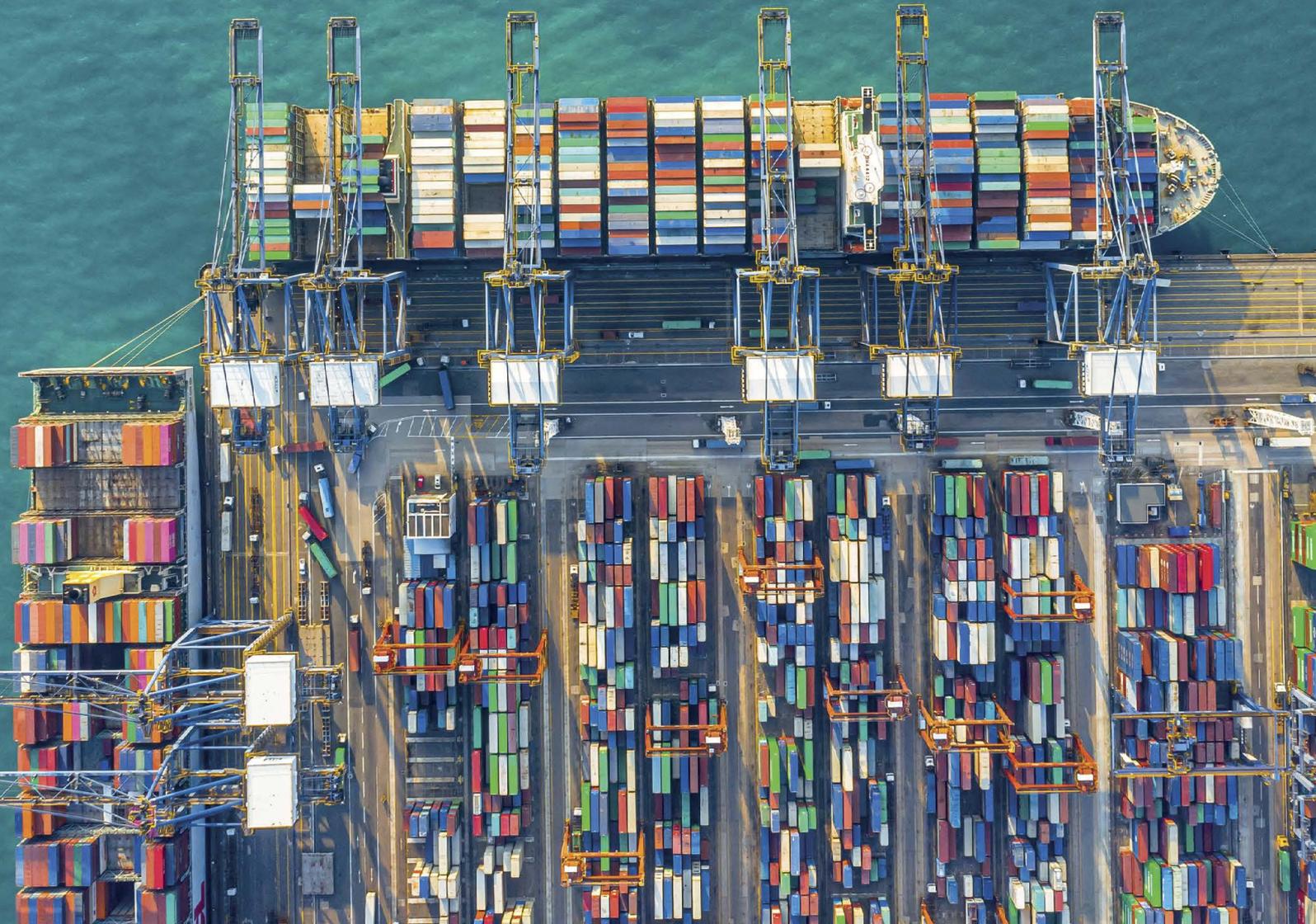
CONTRACT WATCH

Arbitration Clauses

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

NAVIGATING A SEA CHANGE

The new UAE Maritime Code





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Pamela McDonald
Partner, Head of Doha Office,
Co-Head of International Arbitration

☎ +974 442 69222

☎ +974 5030 3480

✉ pamela.mcdonald@pinsentmasons.com

www.pinsentmasons.com

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EDITORIAL

Editor
Claire Melvin
+44 (0) 20 7347 3521
claire.melvin@lexisnexis.co.uk

SUBSCRIBE

To join our free controlled circulation contact Tanya Jain
tanya.jain@lexisnexis.com

MIDDLE EAST REGIONAL SALES

Abbey Bergin
abbey.bergin@lexisnexis.com
+97145601200

PRODUCTION

Senior Designer
Jack Witherden

ENQUIRIES

UK
LexisNexis, Quadrant House,
Sutton, Surrey, SM2 5AS
Tel: +44 (0)20 8686 9141 or
Fax: +44 (0)208 212 1988

France
LexisNexis SA,
141 Rue de Javel,
75015, Paris
France
Tel: +33 (0) 1 45 58 90 43

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SEA CHANGES

To some people ships and the shipping industry may seem a thing of the past, but particularly in the Middle East region as a result of the important role this industry plays in product transportation in key sectors such as energy, maritime law remains a very important area.

As recent and previous blockages in the Suez Canal (through which around 12% of global trade passes) have shown us, shipping problems can have catastrophic impacts on the wider economy - and lead to inflation, shortages, unemployment and business failures.

In 2022 Bahrain issued a new Maritime Law which was the most comprehensive piece of legislation to have been issued there since the issue of the Penal Code back in the 1960s. While in 2023 two more GCC states - Oman and UAE issued new Maritime legislation. We cover in UAE changes detail in this issue. In part these new laws reflect GCC Governments' desires to develop the maritime industry in their own countries, and ensure that this industry is robust and well regulated. There has also been a recognition that in order to succeed in doing this, encouraging foreign investment will be key.

Therefore, as is the case in this new UAE law, ownership of national flagged vessels is one of the key areas we are seeing within these legislative changes - in order to encourage foreign investment.

This law has also made changes to the liabilities of carriers and shippers so will be of interest not just to those working in this sector but to all those who send goods by sea. Finally, this new UAE law also reflects the impact changes in technology, such as electronic documentation are making to the law in all types of sectors and industries, including to more traditional industries such as the shipping and maritime sector.

Claire Melvin - Editor

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NAVIGATING A SEA CHANGE

A new Maritime Code has been issued in the UAE which is set to bring in substantial changes for shipping and trade there in March 2024, as Mohamed El Hawawy, Natalie Jensen and Mahmoud El-Sayed of Ince & Co Middle East explain.

“The recent issue of a new Maritime Code (Federal Decree-Law No. 43/2023) in the UAE has sent ripples across this sector,” states Mohamed El Hawawy.

“This law has introduced substantial changes which promise to redefine the operational and infrastructural environment of the shipping and trade industries in the UAE.”

“The previous law, Federal Law No 26/1981 currently governs UAE maritime matters,” Natalie Jensen adds. “However, Federal Decree-Law No. 43/2023 will come into force on 29 March 2024.”

SHIPS AND OWNERSHIP

“Firstly, there has been a significant change on UAE flagged vessel ownership,” Mahmoud El-Sayed states.

“Under Federal Law No 26/1981 only individuals with UAE nationality or companies with a UAE national majority shareholder were allowed to register a vessel under the UAE flag. However, Federal Decree-Law No. 43/2023 now allows foreign individuals or entities to own a vessel registered under the UAE flag, provided they have a domicile, business office, or ship

management office in the UAE, as part of the UAE’s strategy of attracting more foreign investment into key industries in the country.”

“Meanwhile, when it comes to the key area of ship arrests, Federal Decree-Law No. 43/2023 has adopted a similar approach to the previous UAE Maritime Code on the definition of ‘maritime debt’ which entitles a creditor to arrest a vessel,” El Hawawy continues.



Mohamed El Hawawy

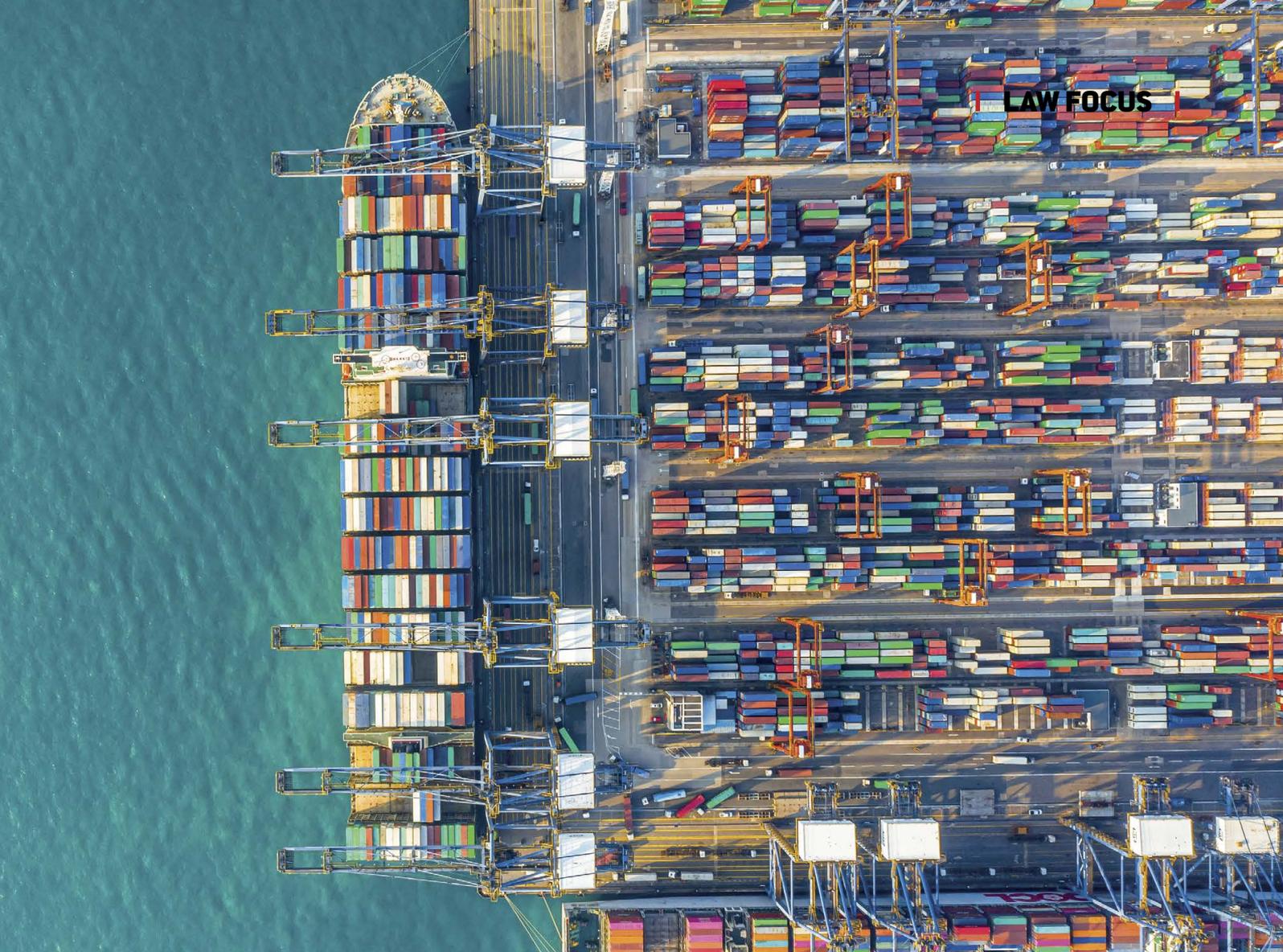
Joint Managing Partner, Ince & Co Middle East

“However, the new Law has expanded the list of specific debts that now qualify as a ‘maritime debt’ so that they also include, for example, port fees, channels, docks, harbours, other watercourse fees, and any dispute arising from a contract of sale of the vessel.”

“Another change that has been introduced by the new law is that the party seeking an arrest must now provide countersecurity at the time of obtaining it.”

“The amount of this countersecurity will then be recorded as a first priority right against the vessel, in accordance with Article 29 of Federal Decree-Law No. 43/2023.”

“In addition, in order to align with international standards, Federal Decree-Law No. 43/2023 acknowledges that a Letter of Undertaking (LOU) issued by P&I Clubs or another financial institution, subject



© Getty images/Stockphoto

to acceptance by the competent court, can serve as a guarantee for the claim amount and as means for releasing and lifting an arrest,” Jensen explains.

“This change has been put in place to avoid overly encumbering UAE ports with arrested vessels taking up much needed space, and will help to ensure a more efficient continuation of trade in the region,” Jensen adds.

AGENTS

“There has also been a number of important changes in the new law on agents,” states El-Sayed.

“Previously, Federal Law No. 26/1981 did not distinguish between different types of agents involved in the marine transportation process, which meant that the courts would fall back on the relatively outdated and non-marine specific general provisions on agents and brokers which were found in the Commercial Transactions Law (Federal Decree-Law No. 50/2022),” El-Sayed adds.

“Federal Decree-Law No. 43/2023 has now introduced distinct chapters which involve stakeholders involved in various stages of marine transportation, specifically ship agents, cargo agents, and transit agents.”

“These chapters outline the roles and obligations of each agent type.”

RELEVANT LEGISLATION

Article 14 of Federal Decree-Law No. 43/2023

Ships entered in the ship register shall fly the State’s flag, and no other ship shall have the right to hoist it, subject to compliance with international maritime agreements and customary practice.

(Source: Lexis Middle East Law)

LIMITED LIABILITY

“Another area of change has been on limiting liability. Federal Law No. 26/1981 allowed owners, charterers or operators to limit liability based on a vessel’s tonnage,” states El Hawawy.

“However, since its enactment the UAE has acceded to various international maritime conventions and ratified them into domestic law, including the Limitation for Liability of Maritime Claims (LLMC) which provides a framework enabling vessel interests to limit their liability in specific circumstances.”

“Federal Decree-Law No. 43/2023 now specifically incorporates the grounds under which shipowners or charterers can limit their liabilities, closely mirroring those in the LLMC,” Jensen adds.

“Another significant change has been the addition of a provision on the establishing of a limitation fund.

“This is a crucial development as although the UAE

RELEVANT LEGISLATION

Article 78 of Federal Decree-Law No. 43/2023

Before and during the sea voyage, the Operator is obligated to take all necessary measures to ensure the seaworthiness of the Ship. The Ministry determines the requirements that shall be met in equipping the Ship in accordance with international agreements and maritime customs.

(Source: Lexis Middle East Law)

ratified the 1976 LLMC via Federal Decree No. 118 /1997, the UAE courts previously lacked the means to order the constitution of a fund without ‘internal legislation’ detailing the specific rules related to such a fund,” El-Sayed explains.

“However, Federal Decree-Law No. 43/2023 now provides clarity on establishing the limitation fund, which will act as security for a claim and disburse settlement funds,” **El Hawawy states.**

“It is worth noting that the provision on the constitution of the limitation fund also states that the court located in the

area where the accident occurred will have exclusive jurisdiction in respect of constitution of the fund, streamlining the legal process, ensuring a more organised mechanism for resolution, and will help develop the precautionary measures on securing those claims,” Jensen adds.

CARRIER AND SHIPPER LIABILITY

“Federal Decree-Law No. 43/2023 has also brought in a new approach carrier and shipper liabilities,” states El Hawawy.

“With shippers it codifies the obligation of the timely delivery of goods and due payment of freight to the carrier, so they conform to agreed upon terms and prevailing customs,” Jensen states.

“It also ensures legal protection to third parties which are unaware of any unpaid freight at the time the bill of lading is issued.”

“In addition, a shipper’s duty to prepare goods appropriately for sea transport, including by packing and stacking, in order to prevent harm to individuals, property, or the vessel is also emphasised.”

“Shippers must now also indemnify against damage resulting from the actions of the shipper and their subordinates, or defects in the goods.”

“These provisions highlight the importance of ensuring shipped goods and associated acts do not pose risks to the vessel, the cargo, or third parties, and there is a fair and transparent course of dealing between various stakeholders in the transportation process,” **El Hawawy explains.**

“Meanwhile, when it comes to the carrier, Federal Decree-Law No. 43/2023 provides a framework for ensuring accountability of a carrier, which includes emphasising the importance of the obligations to maintain the vessel’s seaworthiness, ensure timely and intact delivery of goods, and adhere to loading and unloading procedures,” El-Sayed adds.



Natalie Jensen
Partner, Ince & Co
Middle East



Mahmoud El-Sayed
Managing
Associate, Ince &
Co Middle East

“A requirement for explicit permission and complete documentation when loading goods on deck, has also been introduced to ensure transparency and compliance with regulations and customary practices.”

“In addition, the carrier is now liable for loss or damage to goods from the time of receipt until delivery, and they must demonstrate the application of reasonable steps to avoid loss or damage or make it impossible. This provision also expressly emphasises the carrier’s liability for loss of cargo as a result of fire, if negligence is proven.”

ELECTRONIC BILLS OF LADING

“In line with moves towards digitisation of commercial transactions, bills of lading can now be issued electronically,” Jensen states. “Confirmation that electronic

bills of lading have the same evidentiary weight as traditional hard copy bills of lading, and tradability, as in delivery and endorsement, of bills of lading through electronic channels also shows the UAE maritime industry is embracing technological change.”

MARITIME INSURANCE CLAIMS

“It is also worth noting that Federal Decree-Law No. 43/2023 has reduced the time limit for filing a marine insurance claim to one year instead of the previous two-years.”

WHAT’S NEXT

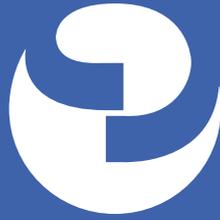
“It is expected that the Ministry of Energy and Infrastructure will issue an executive regulation to Federal Decree-Law No. 43/2023 which may reveal more details,” El Hawawy continues. “We also anticipate that practice guidelines will be provided by the courts on matters such as the acceptance of Club LOUs and the process of establishing the limitation fund.”

“Meanwhile individuals and organisations in the maritime industry should thoroughly review this new law, in particular any areas which have changed which could affect their operations. They should then look at revising their internal policies, including safety protocols, environmental practices, and other operational procedures,” Jensen adds.

“Training programmes should also be put in place to ensure staff understand these changes and can comply with new requirements. It should be remembered that after 29 March 2024, Federal Law No. 26/1981 will no longer be valid, and parties will have to conform with the regulations stipulated in the New Maritime Law,” El-Sayed states.

“Failure to do so will result in the UAE courts disregarding any arguments based on the previous law put forth by the parties, so understanding these changes is vital.”

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LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE

UAE

FAMILY BUSINESSES

 The UAE Ministry of Economy has clarified the registration requirements which apply to family businesses there. Family businesses are now required to register on a new Unified Family Businesses Registry which has been established. Majority shareholders of a family-owned company must apply for registration in the official registry through the relevant authority in each Emirate. Once the Unified Registry Department at the Ministry has received the necessary information and documents it will be responsible for managing the registration of the family company and issuing appropriate certificates. It will be possible to de-register a family company from the register either at the request of an interested party or by a relevant authority decision.

ADGM

JURISDICTIONAL REACH

 The ADGM has announced it has officially extended its jurisdictional reach to include Al Reem Island following the issue of Cabinet Decision No. 41/2023. Since 1 November 2023, new businesses planning to establish on Al Reem Island have had to secure a commercial licence from the ADGM rather than Abu Dhabi's Economic Development Department. Once the commercial licence has been issued, the recipient is subject to the laws, regulations and administrative requirements of the ADGM. The ADGM has also amended various regulations in order to provide for transitional arrangements which will support existing Al Reem Island businesses. These existing businesses will be exempt from having to comply with the ADGM's registration and licensing requirements and specific regulations until 31 December 2024.

This will give them time to obtain the licences and permits they need to operate after this date. During this transitional period, the existing businesses on Al Reem Island will be able to choose to renew their Abu Dhabi Economic Development

Department licence or apply for a Global Market licence or permit instead. However, Abu Dhabi Economic Development Department licences will not be valid for operation in the ADGM beyond 31 December 2024.

DUBAI

SINGLE USE PLASTIC

 A ban on single-use plastic bags and products came into force in Dubai on 1 January 2024. The ban applies to single-use disposable products and recycled ones, including plastic and non-plastic items, regardless of their material composition. This includes plastic and non-plastic single-use products, as well as food delivery packaging materials, fruit and vegetable wrapping, thick plastic bags, plastic containers and packaging materials which are either partially or entirely made of plastic, including those used for plastic bottles, snack bags, wet wipes, balloons, and balloon sticks. It covers mainland Dubai and private development zones and free zones.

From 1 January 2025, as a result of Dubai Executive Council Decision No. 124/2023 products like plastic stirrers, table covers, cups, styrofoam food containers, plastic straws, and plastic cotton swabs, will be banned.

The ban will then be extended to plastic plates, plastic food containers, plastic tableware and beverage cups and plastic cup lids from 1 January 2026.

Offenders will be fined 200 AED for a single offence and the penalty will be doubled up to a maximum of 2,000 AED if the offender repeats the offence within one year of their first offence.

ABU DHABI

ARBITRATION CENTRE

 The Abu Dhabi's Chamber of Commerce and Industry has announced the launch of a new Abu Dhabi International Arbitration Centre in the Emirate which is to be established from 1 February 2024. The new centre will replace the Abu Dhabi Commercial Conciliation

and Arbitration Centre (ADCCAC)'s rules and governance structure.

Cases which are currently being heard under the existing ADCCAC rules will continue to be administered by the Centre. However, from 1 February 2024, new disputes will be administered under these new arbitration rules.

SAUDI ARABIA

CONTRACTING RULES

 The Saudi authorities have announced some exceptions to contracting rules which apply to international companies that were approved by the Cabinet towards the end of December and came into force on 1 January 2024. International companies which wish to secure government contracts in Saudi Arabia, including contracts related to NEOM, Expo 2030 and Qiddiya, will have to have headquarters in Riyadh. The Decision does not apply to companies with contracts below one million Riyals, contracts executed outside of Saudi Arabia, for deals with companies that are the sole providers of their service or commodity and emergencies that can only be covered by a foreign company without their headquarters in the capital. International companies which do not have their headquarters in Riyadh will still be able to compete for government tenders, but the government agencies will only be able to approve them if they are technically superior and 25% cheaper than the next best offer, or there are no competing offers. The rules do not specify how many contracts below one million Riyals a foreign company will be able to sign with the same government agency.

LANDLORDS' REMEDIES

 The Ejar platform has confirmed landlords will be able to seek a judicial remedy if their tenants violate the terms of their contract. The landlord will be able to seek compensation for each day of delay when a tenant refuses to vacate the property after the contract has expired.

However, this will only be possible, if there was also a term in the contract that a fine would be imposed on the tenant if they delayed vacating it. The Ejara platform made this announcement following a query from an individual on tenants' rights.

KUWAIT

SKILLS TESTS

 Kuwait's Public Authority for Manpower has announced plans to sign a memorandum of understanding with the Public Authority for Applied Education and Training in order to draw up practical and technical skill tests which will be mandatory when expatriate work permits are renewed.

The tests will apply to both new recruits and those whose work permit expires. An electronic link will enable the Residency Affairs Department at the Interior Ministry to cancel the residency of those who do not take the tests. It is understood these tests will be rolled out gradually with the contracting sector targeted first.

BAHRAIN

DISABLED EMPLOYEES

 Bahrain's Shoura Council has approved amendments to the 2006 People with Disabilities Care, Rehabilitation and Employment Law, which will require employers in both the public and private sectors to recruit more disabled people. Under the amendments, employers with 50 or more employees will have to double their recruitment quota of disabled people from 2% to 4%.

OMAN

SIMPLER START UPS

 Oman's Commerce and Investment Promotion Ministry has announced that businesses will be able to be started there by foreign investors without them first needing a residency card. Foreign investors will instead be able to register via the Oman Business Platform even if they are in their home country or accessing the platform remotely. It will be possible for them to access the Platform by logging into the Non-Citizens/

Non-Residents' category on it. Once they provide the information required, their request will be verified.

FURNITURE SALES

 The Omani Justice and Legal Affairs Minister has issued a Decision, Oman Decision No. 757/2023 banning trading in second hand furniture which is made from foam, textiles and clothes. Those who violate this decision will be fined up to 1,000 Rials. However, the fine will be doubled for repeat offences. In addition, if violations continue a fine of 50 Rials a day will be levied for each day the breach of these rules continues up to a maximum of 2,000 Rials.

TURKEY

META FINE

 Turkey's Competition Authority has decided to fine Meta Platforms 160,000 US Dollars a day for failing to meet their data collection obligations. The company has been fined 4.8 million TRY in total. These daily fines have been payable since 12 December 2023. The Authority investigated the mandatory data sharing which was introduced with a software update in 2021. Meta had stated this update would not take effect in Turkey, and all users, including those who had already approved the updated version could continue using WhatsApp with full functionality.

EGYPT

LAND OWNERSHIP

 The Egyptian Parliament has approved an amendment to the Desert Lands Law (Egypt Law No. 143/1981) which will allow foreign investors to own state land. It is hoped the change will help attract more foreign investment into the country. The aim is to give foreign investors the right to obtain the land necessary to practice or expand their activities in line with the Investment Law (Egypt Law No. 72/2017). The change will bring in exemptions to Article 11 and 12 of Egypt Law No. 143/1981.

REGULATORY ROUND-UP

Dubai: The Dubai Family Business Centre has issued a special guidance template for family business articles of association...

Abu Dhabi: The Abu Dhabi Municipality has suspended the issuing and renewal of food truck licences in certain parts of the city...

Saudi Arabia: Private sector companies with 50 employees or more will have to provide cooperative training for students ..

Saudi Arabia: The Public Prosecution has issued a warning about potential penalties where auditors fail to notify the company through the appropriate channels or officials of any violations, which appear to be criminal offences...

Iraq: The Iraqi government is considering establishing a free zone ...

Bahrain: The Chamber of Commerce and Industry has announced it has established a Commercial Dispute Settlement Centre...

Bahrain: MPs have proposed switching the weekend to Saturday and Sunday...

Saudi Arabia: The Data and Artificial Intelligence Authority has issued new guidelines on the safe use of Generative Artificial Intelligence..

Sharjah: The Chamber of Commerce and Industry and Real Estate Registration Department has announced property registration fee discounts...

Kuwait: Private sector pharmacies licensed to trade in prescribed medicines will be required to register with a new electronic Department of Health system which will track prescriptions...

Oman: A waste sector privatisation law is to be introduced and will cover the production, import export, transportation, collection, storage, use, treatment, recycling and disposal of all kinds of waste....

Oman: The Consumer Protection Authority has issued a Decision banning the trading of e-cigarettes, shisha and all accessories.....

Qatar: A public consultation on proposed Network Neutrality Guidelines by Qatar's Communications Regulatory Authority has been scheduled to end on 25 January 2024...

UAE: A new Bankruptcy Court will be established in the UAE in line with Federal Decree-Law No. 51/2023 Bankruptcy and Restructuring Law which comes into force on 1 May 2024...

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

QATAR - LOCALISATION



The Qatari Cabinet has approved a draft law on the localisation of jobs in the private sector and referred it to the Shura Council for approval. The law aims to make the job market more appealing to Qatari nationals, help companies attract Qataris citizens and promote Qatari participation in the private sector.

SAUDI ARABIA - HEALTH



Saudi Arabia's Shoura Council has approved an amendment to the Health Professions Practice Law. The amendments give the Health Ministry the authority to regulate and control independent Saudi health practitioners in the appropriate specialisms. The Implementing Regulations specify the appropriate specialisms and conditions and controls required. There are also provisions on health services provided at home.

UAE - PROCUREMENT



Federal Law No. 11/2023 on Procurement in the UAE Federal Government has been issued. The law covers areas including purchasing methods, and tender procedures. There are also details on how bids are evaluated as well as on the preparation, signing and amendments to procurement contracts.

GAZETTE WATCH

UAE Official Gazette No. 760-766 – These Gazettes include Federal Decree-Law No. 32/2023 on finance leases.

Saudi Arabia Gazette No. 5002-5015 – These Gazettes include Saudi Arabia Cabinet Decision No. 293/1445 amending the Electronic Transactions Law.

Oman Official Gazette No. 1515 – 1520 – These Gazettes include Oman Decision No. 322/2023 on the digital transformation of notarial services.

Qatar Official Gazette No. 14 – 16 of 2023 and No. 1 of 2024 – These Gazettes include Qatar Ministerial Decision No. 178/2023 amending the Implementing Regulations to Qatar Law No. 29/2006 on building control.

Kuwait Gazette No. 1657 - 1669 – These Gazettes include Kuwait Decision No. 759/2023 on the Regulation for specifications and requirements for the construction and operation of radio communication stations Communication Towers.

(Source: Lexis Middle East Law)

KUWAIT - INSURANCE



Kuwait Law No. 70/2023 has been issued on 27 December 2023. The Law deals with Standardisation Regulation on insurance policies against civil liability arising from traffic accidents.

OMAN - SOCIAL PROTECTION



The Omani Social Protection Law Implementing Regulations Oman Decision No. R/7/2023 have now been issued. The Social Protection law Oman Sultani Decree No. 52/2023 covers a range of areas including maternity and sick pay, and work injury and occupational disease insurance. It also includes provisions on a saving scheme for employees.

FEATURED DEVELOPMENT

Angelika Hellweger of Rahman Ravelli explains how changes brought in by Cabinet Decision No. 109/2023 On the Regulation of the Real Beneficiary Procedures will help tackle financial crime.

Cabinet Decision No. 109/2023 On the Regulation of the Real Beneficiary Procedures was issued in November as part of targeted measures designed to help tackle money laundering and terrorism financing in the UAE. This law has replaced an earlier Cabinet Decision on this subject Cabinet Decision No. 58/2020. Its main focus is changes to the ultimate beneficial ownership (UBO) requirements. It has revised delegation of responsibilities, changed time frames for notifications of ownership changes to the authorities and created oversight procedures which are designed to increase the Registrar's effectiveness.

The Beneficial Owner of a legal person is anyone who owns or exercises ultimate control over a legal person, through shares or stocks of direct or indirect ownership by 25% or more of the legal person's capital, or has the right to vote by 25% or more, including holding that ownership through a chain of ownership or control, or through control by any other means, such as the right to appoint or dismiss the majority of their Directors. Article 5 of Cabinet Decision No. 109/2023 details who should be considered the Beneficial Owner if no such natural person can be found or there is confusion on this.

Companies which are wholly owned by the Federal or Local Government or any other companies wholly owned by these companies, financial freezones and Governmental Partners are exempt from this Decision. Cabinet Decision No. 109/2023 addresses the use of 'complex legal structures' and the need for more transparency by giving the authorities the means to assess the often detailed

relationships between entities in order to determine exactly who is benefiting from the movement of illicit funds. It details the information the legal person must provide to the Registrar when registering or applying for a licence. It is stressed that the legal person must have a clear and detailed address that is registered in the State, notified to the Registrar, and used to receive all correspondence and notifications.

A new Anti-money Laundering and the Financing of Terrorism Unit is to be established at the Registrar.

The Registrar has also been given the authority to modify anti-money laundering and counter terrorism measures to address particular risks from particular entities. The Registrar is now delegated the power to issue administrative sanctions, which was a power previously held by the Minister. The appeals process for these sanctions has also been revised.

Under Article 11(8) of Cabinet Decision No. 109/2023 the Registrar has the responsibility for preserving registers and data is consolidated in the hands of the Registrar. Previously these roles were given to 'the legal person, the person in charge of its management, the liquidator, or other persons'. In addition, under Article 8(4) of Cabinet Decision No. 109/2023, any interested party can now apply directly to the Registrar, to ask for a Beneficial Owner's record to be corrected. Cabinet Decision No. 109/2023 is likely to raise the UAE's profile as a proactive fighter in the battle against financial crime, as it emphasises the UAE's wish to see greater clarity and improved regulation and enforcement in this area.

BAHRAIN - TELEMEDICINE



Bahrain's Shoura Council has approved a new telemedicine law. This new law will see telemedicine and regular medicine being separately regulated in Bahrain. This legislation will enable patients to access medical consultations, diagnoses, treatment prescriptions, obtain progress reports and have their symptoms observed remotely. Those operating in these areas without a licence or violating this new law would be fined up to 1,000 Dinars.

TAX AND FINANCE ROUND-UP

COVERING RECENT KEY TAX AND FINANCE DEVELOPMENTS – REGION-WIDE

UAE

SHORT-TERM CREDIT

 The UAE Central Bank has amended their Finance Companies Regulations in order to establish a regulatory framework for Buy Now Pay Later offers and other short-term credit facilities. Short-term credit will be able to be offered by entities which operate as agents of licenced banks or finance companies as long as they have Central Bank approval. Entities licenced as Restricted Licence Finance Companies will also be able to carry out this activity. However, unlicenced entities who are carrying out any form of short-term credit activity and wish to continue to do so will either need to apply to the Central Bank for a Restricted Licence Finance Companies licence or partner with a licenced finance company or bank.

NATURAL PERSON TAX

 The UAE Federal Tax Authority (FTA) has issued a guide (CTGTNP1) to the criteria which will be used to determine if a natural person is subject to Corporate Income Tax and the compliance requirements. The guide includes a range of practical examples which explain how the Corporate Income Tax Law (Federal Decree-Law No. 47/2022) applies to natural persons conducting business in the UAE (whether they are resident or non-resident for Corporate Income Tax purposes). If an individual is classified as a Resident Person and their aggregate Turnover from Business or Business Activities carried out in the UAE is over 1 million AED, their Taxable Income will include earnings obtained inside and outside the UAE.

In the guidance the UAE considers fees paid to board members to be a 'wage' and therefore not subject to Corporate Income Tax.

GROUP TAX GUIDE

 The UAE Federal Tax Authority (FTA) has issued a Group Tax Guide (CTGTGR1) which is designed to provide

general guidance to Taxable Persons, on the taxation of two or more juridical Resident Persons who have formed a Tax Group. The Guide explains what a tax group is and the conditions which apply when establishing one.

There is also advice on the attribution of taxable income between group members, and what happens when there is a change in members or the group ceases.

DIFC

CRYPTO TOKENS

 The DFSA has launched a consultation on proposed changes to its Crypto Tokens Regulation which will end on 4 March 2024. The proposed amendments are to the regime which covers individuals who want to provide financial services activities in terms of crypto tokens. There will not be changes to the investment token regime. There have been concerns about the length of time these applications take and their costs. Proposed changes include a reduction in the application fee from 10,000 to 5,000 US Dollars. The DFSA is also proposing more flexibility when it comes to Fiat Crypto Tokens. There are also proposals to expand the definition of an eligible custodian for a fund manager of an external fund, or authorised firm offering the units of foreign funds that invest in Crypto Tokens. Eligible custodians may either be an authorised firm who is licenced to provide custody of Crypto Tokens or a person who the relevant fund manager or authorised firm has, after performing due diligence, assessed as having adequate custody arrangements.

AUDIT CHANGES

 The DFSA has announced a consultation on changes to its audit regime which will end on 1 March 2024. If approved, changes will be made to the Auditor Module (AUD) and Glossary Module (GLO) of the Authority's Rulebook, as well as to the Regulatory Law, DIFC Law No. 1/2004. The changes are intended to improve audit quality and address issues

related to the DFSA's supervision of Registered Auditors and Audit Principals.

The proposed changes would see amendments to Article 97C(1)(b) of DIFC Law No. 1/2004 so a person would not be able to play a substantial role in the preparation of an audit of a DIFC entity's financial statements unless they were a Registered Auditor.

Registered Auditors would also be able to appoint a designated person or a Senior Officer (which would be a new role) who would have day-to-day management, supervision, and control of the Registered Auditor. There are also proposals for new requirements on the fitness and propriety of those who are appointed as a Senior Officer, and their roles and responsibilities.

SAUDI ARABIA

TAX AMNESTY

 The Zakat, Tax and Customs Authority (ZATCA) has announced there will be a further extension to their Tax Amnesty deadline. The amnesty which was designed to help taxpayers who had been negatively impacted by COVID 19 was previously due to end on 31 December 2023. Under the initiative, taxpayers, provided they meet certain conditions, will be exempt from having to pay fines for late registration, late payment and late filing of returns, fines imposed on voluntary disclosures for correcting VAT returns, and fines for violations of VAT field control, including those related to the e-invoicing regulations.

Taxpayers who wish to benefit from this new amnesty will have to submit all unfiled tax returns that were required to be submitted, or otherwise declare all taxes owed that were not previously declared during the extended period ending 30 June 2024.

They will have to pay in full outstanding principal tax debts or otherwise agree on a repayment schedule with ZATCA provided that payments are made according to the agreed schedule without defaults, during the extension period. Where the penalties are related to failure to register, as well as meeting the other conditions, they will have

to comply with all applicable registration requirements by 30 June 2024.

CUSTOMS GUIDELINES

 The Zakat, Tax and Customs Authority (ZATCA) has issued new regulatory guidelines which are designed to streamline customs procedures.

These explain customs procedures related to importing, exporting, and transiting goods.

They also specify the documents for import, modifying customs data, pre-clearance of goods and commitments regarding non-disposal of goods.

Transit and temporary admission procedures are also included, as are exemptions which apply to personal baggage and used household items, and the conditions for exempting commercial samples, guarantees, and refunds.

BAHRAIN

OVERSIGHT FUNCTION

 The Bahraini Central Bank has launched a Financial Market Infrastructures (FMIs) and Payment Oversight Framework. The new Framework outlines the oversight function's key roles, objectives, expectations, powers, standards, approach and tools.

It has been launched to strengthen the legal basis of protecting settlement finality and netting arrangements.

The main aim of this change is to ensure financial stability by mitigating and lowering systemic risk and present core principles for effective banking supervision

QFC

PRUDENTIAL FRAMEWORK

 The Qatar Financial Centre Regulatory Authority (QFCRA) has launched a consultation on proposed amendments to the prudential framework for QFC Islamic authorised banks which ends on 16 March 2024.

The amendments will be incorporated into the Islamic Banking Business Prudential Rules 2015 and are contained in the Islamic Banking Business Prudential (Amendment) Rules 2024.

TAX TREATY UPDATE

UAE: Federal Decree No. 192/2023 ratifying a double taxation agreement between the UAE and Côte d'Ivoire has been issued.

Saudi Arabia: A double taxation agreement has been signed with Slovakia.

Oman: A Decree has been issued approving a double taxation agreement with Russia.

UAE: Federal Decree No. 200/2023 ratifying an agreement between the UAE and Tanzania has been issued.

Oman: The Kazakhstan Finance Minister has been authorised to sign an income and capital tax treaty with Oman.

Saudi Arabia: Saudi Arabia has entered into a tax treaty with Gambia.

The aim is to align the QFC with the Islamic Financial Services Board Prudential Standards for Islamic banks and specific elements of the Basel Committee on Banking Supervision. They include changes to capital adequacy requirements on credit risk and market risk for Sharia compliant financing and investment instruments, such as profit-sharing investment accounts and exposures relating to investments in Sukuk, securitisations and real estate transactions.

There are also proposals to amend the capital charge framework for counterparty credit risk for Sharia compliant hedging instruments, and the credit risk management framework and equity investments in Islamic investment funds.

EGYPT

TAX CHANGES

 The Egyptian government has announced it is currently considering a raft of tax changes. These include a draft income tax law which is currently being drawn up by the Egyptian Tax Authority.

In addition, the Finance Minister has also stated that tax exemption limits are to be increased and steps are to be taken to put in place legislative changes which would see strategic industrial projects being exempt from various taxes for five years.

The Finance Ministry is also understood to be preparing a draft law which would change the regulations on ending tax disputes without resorting to litigation.

NBFI CHANGES

 The Egyptian Financial Regulatory Authority (FRA) has published

Egypt Decision No. 249/2023 which amends Egypt Decision No. 53/2018 on the rules and regulations for licensing and continuing the licensing of non-banking financial institutions (NBFI).

Egypt Decision No. 249/2023 alters the required representation of women on the board of any NBFI. It also changes who can be the founder of an NBFI. In addition, 25% of an NBFI's capital must now be held by financial institutions or at least two-thirds of the company's capital must be held by qualified investors.

These legal changes do not apply to pre-existing NBFIs but licensed NBFIs who have not yet started their operation will have to comply with them within a maximum of six months as of the date of issue of Egypt Decision No. 249/2023 or their license may be withdrawn.

TURKEY

LISTING RULES

 Borsa İstanbul A (BIST) has amended its Listing Directive leading to a changes in the IST Star Market, BIST Main Market and BIST Sub-Market listing requirements.

As a result, the market value of shares offered by the issuers to be listed on the BIST Star Market cannot now be lower than TRY 1,000,000. In addition, the market value of shares offered by issuers which are to be listed on the BIST Main Market cannot be lower than TRY 250,000,000 and in the case of the BIST Sub-Market the minimum value is now TRY 100,000,000 which has been increased from TRY 40,000,000.

However, the threshold for the minimum public float ratio for the BIST Star Market has now been reduced to 10%.

DIRECTION OF TRAVEL

Following a recent legislative change in Oman Ahmed Al Barwani of Al Tamimi & Company explains where the tourism sector there is now heading.

“Oman Sultani Decree No. 69/2023 On the Promulgation of the Law on Tourism was issued towards the end of last year and is in line with the Omani Government’s Vision 2040 to develop this sector,” states Ahmed Al Barwani.

“This new law has repealed and replaced the previous law in this area (Oman Sultani Decree No. 33/2002) which was the first law to properly regulate the Omani tourism sector,” Al Barwani adds.

“Oman Sultani Decree No. 69/2023 has simple language and is clear and specific.”

“It was needed in order to codify a number of administrative practices which had not previously been included in any Omani law or regulation,” Al Barwani continues.

“After looking at the tourism sector and the need to open it up and further promote it so that it was more attractive to both foreign and local investors, Omani legislators felt it was necessary to have a new separate tourism law replacing the old law in this area which had been mainly administered and regulated by the Ministry of Tourism,” Al Barwani explains.

“This Ministry has also now been replaced by the new Ministry of Heritage and Tourism,” Al Barwani adds.

“As its name implies this new Ministry’s functions will include both heritage and tourism, as heritage is seen as an essential element in Omani tourism, and it is hoped linking these two areas in a single Ministry will help strengthen and benefit the tourism sector,” Al Barwani states.

“There have also been a number of new laws issued recently, including a new foreign capital investment law, and there was a need for the tourism law to be consistent with this legislation, so legislative amendments were needed.”

KEY CHANGES

“Oman Sultani Decree No. 69/2023 has introduced a number of important changes, including a change to the definition of tourism.”

“This is now defined as the travel or movement of an individual or group of people from outside Oman to inside or vice versa for a temporary basis or for entertainment, exploration, or any other tourism purpose,” Al Barwani explains.

“Touristic areas are also now defined as any geographical area which is located within the land or territorial water or the interior of Oman that includes geological features, natural climate or heritage elements.”



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“Government land allocated for tourism has been defined as land used for the purpose of usufruct or utilisation or conducting of tourism activities.”

“A tourism activity of any type can now only be conducted if those undertaking it have a license,” Al Barwani continues.

“This means those who operate or manage hotels or tourism establishments in Oman or foreign tourism companies who have established a branch or office there will need written approval from the Ministry of Heritage and Tourism in line with the law in order to do so.”

“It should also be noted that these licenses cannot be transferred or assigned to third parties without prior approval of the Ministry,” Al Barwani states.

“Hotels and tourism establishments will also be bound by the conditions imposed by the Ministry on them after they have coordinated with the relevant other authorities in Oman.”

“The Ministry of Heritage and Tourism will determine the fees for these licenses and other services it provides, following approval from the Ministry of Finance.”

“In addition, hotels and tourism establishments in Oman will also now be categorised, as will restaurants and tourist cafés.”

“The different levels and types of categorisation which apply to each of them will be updated periodically in a manner which will be prescribed by the regulations,” Al Barwani continues.

“Hotel and tourism establishments will also be required to disclose their category and forbidden from stating they have a higher category than the one which has been granted by the Ministry to them to either the public or their guests.”

“Hotels and tourism establishments and institutions and any other entity which operates in the tourism sector will also have a statutory obligation to provide the Ministry with the statistics on a range of areas including guests, revenue and any other details the Ministry requests.”

“Article 2 of Oman Sultani Decree No. 69/2023, also prohibits any work which contradicts or could be contrary to public policy or morals, or would have an impact on the safety and security of Omani society and the stability or reputation of Oman or the environment in the tourism sector.”



MINISTRY POWERS

“Some Ministry of Heritage and Tourism employees will also be granted judicial status by a Ministerial Decision,” Al Barwani explains.

“Any natural person or juristic entity will also be able to take a usufruct over a piece of governmental land or use that land or they will be able to operate or manage, or lease, any touristic area with the approval of the Ministry.”



Ahmed Al Barwani

Partner

Al Tamimi & Co

“It should also be noted that the Ministry will be in charge of concluding contracts for these projects in the manner stipulated in the implementing regulations to this law which are yet to be issued,” states Al Barwani.

“The Ministry of Heritage and Tourism also now has powers to coordinate with the other relevant authorities in order to specify and list the touristic areas and sites, or any governmental land.”

“They will also investigate potential new sites and areas that could be used for tourism purposes,” Al Barwani continues.

“This could potentially be a challenge as there are a number of different authorities which will need to issue approvals in relation to land allocated for tourism investment purposes which may include, but will not be limited to, the Ministry of Housing and the Ministry of Interior as well as local municipalities,” Al Barwani states. “The specification and allocation of this land will be made by Ministerial Decision following the final approval of the Council of Ministers.”

“The Ministry will also have responsibility for the supervision, use and regulation of tourism sites and regions which have been specified in this way and developed.”

RELEVANT LEGISLATION

Article 12 of Oman Sultani Decree No. 69/2023

Tourist and Hotel Facilities, restaurants and tourist cafés shall be classified in categories and types. Such classification shall be periodically renewed for each of them in accordance with the provisions of the Regulation.

(Source: Lexis Middle East Law)



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“They will also coordinate with relevant authorities on the promotion and adoption of relevant plans for that purpose in line with criteria and conditions which will be set out in the regulations.”

PENALTIES

“A number of new penalties have been introduced to ensure this new legislation is complied with,” states Al Barwani. “For example, those who carry out a tourism activity or operate and manage a hotel without a license, will be imprisoned for at least 10 days but not more than six months, and/or a fine of between 6,000 Rials and 50,000 Rials will be levied.”

“Meanwhile those who misrepresent their Ministry category to either the public or hotel guests will be fined between 1,000 and 4,000 Rials.”

“The Minister will also have the power to impose administrative penalties in relation to any violations of the provisions of the regulations to be issued implementing the provisions of the Law and these penalties will not exceed 6,000 Rials,” Al Barwani states.

“In addition, the Minister also now has the power to settle or agree with an entity or person who has violated provisions of Oman Sultani Decree No. 69/2023 or its regulations on the fine amount they are to pay as long as that fine is not less than double the minimum fine amount or not over double the maximum fine amount detailed in the legislation.”

WHAT'S NEXT?

“At present, there are no practical changes entities in the tourism sector will have to make,” states Al Barwani. “However, there are likely to be changes brought in by the new implementing regulations when they are issued.”

“These implementing regulations will set out in more detail the conditions and requirements for the licensing of tourism activities, requirements on the operation and management of hotels and tourism institutions and any other points which have been specified in the Law as being regulated in the Regulations.”

“It is also likely that the Ministry’s change of name will not be the only change we will see in that context and there will also be a number of other changes adopted internally within the new Ministry and its departments as a result of these legislative changes,” Al Barwani adds.

“Oman Sultani Decree No. 69/2023 comes into force six months from the date of its publication which is on 23 April 2024,” Al Barwani explains.

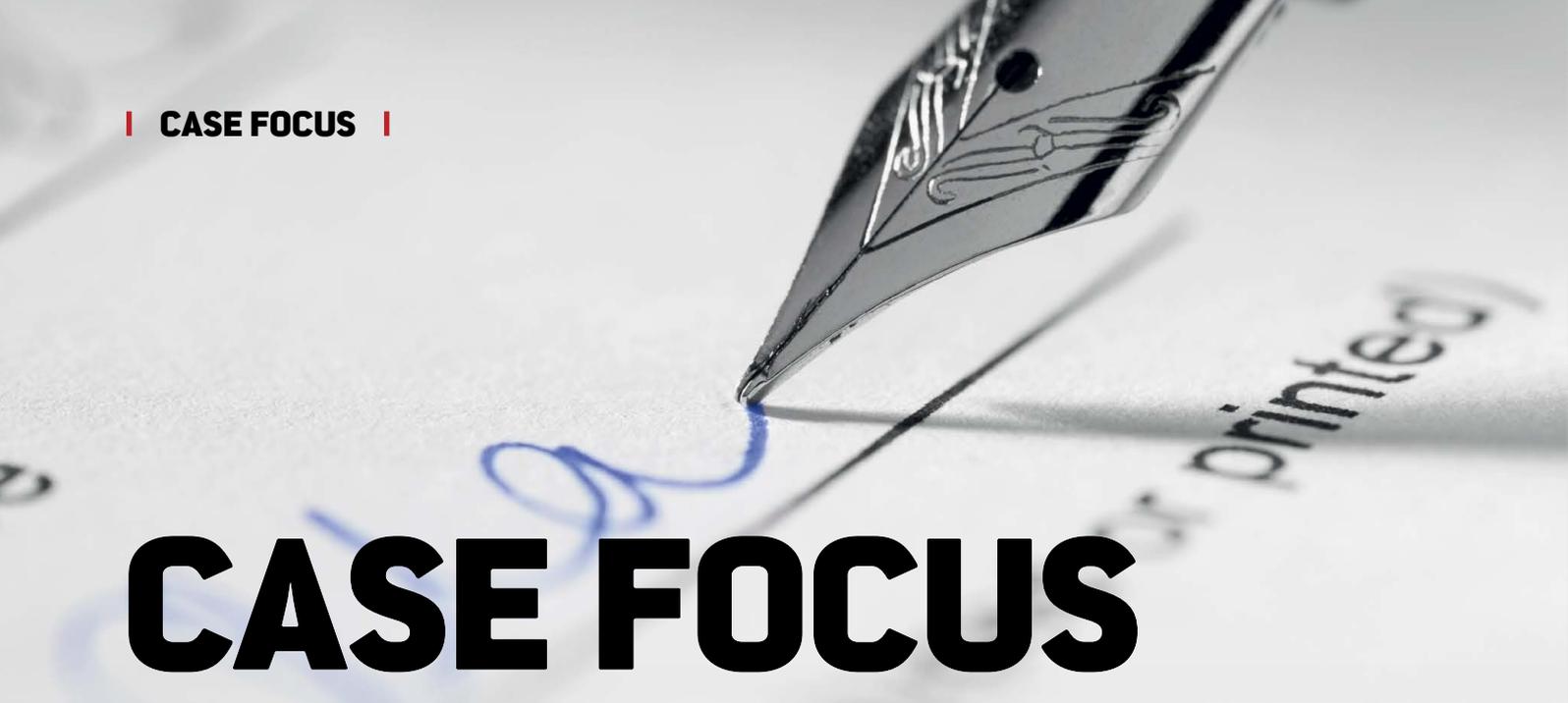
“It is recommended that any currently licensed entities or any other entities that may or will be affected by these changes in the future follow up with the relevant departments at the new Ministry so that they can understand any new requirements they may now need to comply with.”

“It will also be advisable that these entities put in place any necessary changes as early as possible rather than waiting to comply with the new provisions in this Law and its regulations when their license expires as this could potentially expose them to penalties.”

RELEVANT NEWS

New Tourism Law Approved

Under Oman Sultani Decree No. 69/2023, the Heritage and Tourism Minister will issue the Implementing Regulations to the Law, and other regulations and decisions necessary to implement it. The regulations and decisions which are currently in force will continue to be enforced, until this new legislation is in force. The Ministry will also be responsible for coordinating with the relevant authorities to identify and classify tourist sites in the Sultanate as well as follow up and explore new potential tourist sites. In addition, the Ministry will also be responsible for overseeing the exploitation and regulation of the designated tourist sites. Foreign tourism companies will be able to set up branches or offices in the Sultanate after obtaining a licence from the Ministry. Oman Sultani Decree No. 33/2002 will be revoked along with anything else that contravenes or contradicts the new Law.



CASE FOCUS

Case No AC Network Holding Limited & Others v. Polymath Ekar SPV1 & Others, [2023] ADGMCA 0002 issued on 17 November 2023

Jurisdiction ADGM

Court ADGM Court of Appeal

Recommended by Faridah Sarah of Ingmiresy Limited

WHAT IS IT ABOUT?

This case involved a company, Ekar Holding Limited, which was a car sharing company registered in the ADGM.

In 2020, in line with a Shareholders' agreement, the company's minority shareholders were issued with a 'Drag Along Notice' by its majority shareholders, which would have had the effect of forcing the minority shareholders to sell their shareholding to a third party purchaser.

The minority shareholders challenged the validity of this Drag Along Notice, arguing that the purchaser was not a 'bona fide purchase' but was actually the majority shareholder, who was acting through another company.

The minority shareholders claimed that this was a breach of the shareholders' agreement and was conspiracy by unlawful means to breach the agreement.

The judge in the Court of First Instance decision held, after hearing the evidence, that the majority shareholder lacked knowledge that their conduct was unlawful and therefore dismissed the claim.

The judge declined to follow a 2021 decision of the Racing Partnership v Done Bros [2021] Ch 233, which was a decision by the courts in England and Wales in which the claimant did not have to prove the defendant knew his actions would be a breach of contract.

The judge at first instance held that English Law was not settled on this issue and that although the case was relevant, the ADGM was not bound by it.

The case was then appealed to the ADGM Court of Appeal on the grounds that the Court had erred in law in holding that it was not bound by a decision of the English Court of Appeal.

The Court had erred in law in holding that it was not bound to follow the decision of the majority of the Court of Appeal in the Racing Partnership case. In addition, it had erred in law in holding that liability for 'unlawful means' conspiracy was dependent on the Claimant proving that the tortfeasor knew that the proposed acts would amount to a breach of contract.

Article 1(1) of ADGM Application of English Law Regulations 2015 stated: "the common law of England (including the principles and rules of equity) as it stands from time to time, shall apply and have legal force in, and form part of the law of the Abu Dhabi Global Market".

DECISION

The ADGM Court of Appeal decided the Drag Notice issued on 27 April 2020 was invalid.

The expert witnesses retained by the Claimants and the Defendants (with the exception of the Seventh Defendant) were ordered to reconvene, and if possible agree, their further assessment of the value of the Claimants' individual shareholdings in Ekar Holding Limited as at 27 April 2020.

The Court of Appeal disagreed with the Court of First Instance and held that Article 1(1) of ADGM Application of English Law Regulations 2015 required the ADGM Courts to directly apply English law principles, including the doctrine of precedent and that the decision in the Racing Partnership case was indeed binding authority on the ADGM.

WHY WAS IT IMPORTANT?

This case confirms the direct enforceability of English common law in the ADGM.

The decision is significant as it strengthens the ADGM Court's global position as a court of certainty and predictability as it is required to apply English law set by precedent.

This gives foreign investors and businesses a sense of confidence in the ADGM Courts as a dispute resolution forum and will likely attract further investment within this financial freezone in the future.

Case No Muhallam v Muhaf, DIFC Case No. ARB 021/2022, issued on 19 September 2023

JurisdictionDIFC

CourtDIFC Court of First Instance

Recommended byGordon Blanke of Blanke Arbitration

WHAT IS IT ABOUT?

On 29 December 2022, the Claimant made an ex parte application, i.e., an application without notice to the Defendant, to the DIFC Court of First Instance for the recognition and enforcement of a provisional or interim award, whereby the Claimant was granted an interim measure in the form of an arbitral award.

On 23 January 2023, HE Justice Shamlan Al Sawalehi ordered the enforcement of the arbitral award on an ex parte basis.

In these proceedings, the Defendant applied for the DIFC Court’s Enforcement Order to be set aside on the basis of the DIFC Court’s lack of jurisdiction in circumstances where the seat of the arbitration was outside the DIFC.

The interim measures had been recognised and enforced by the DIFC Court under Article 42 of DIFC Law No. 1/2008 (the DIFC Arbitration Law). The Claimant stated that the only way which was open to the Defendant to challenge the Enforcement Order was under Article 44 of DIFC Law No. 1/2008.

According to the Defendant, the DIFC Court’s jurisdiction for the enforcement of interim measures was limited to situations covered by Article 24(2) of DIFC Law No. 1/2008.

This did not apply to arbitrations with a non-DIFC seat.

In addition, it was argued that Interim measures were not capable of qualifying as arbitral awards for the purposes of Article 42 and 43 of DIFC Law No. 1/2008 which cover the recognition and enforcement of arbitral awards.

The question was whether the enforcement order in fact enforced an arbitration award.

DECISION

Justice Shamlan dismissed the Defendant’s Application on the basis that the DIFC Court did have proper jurisdiction under Article 42 and 43 of DIFC Law No. 1/2008 albeit within limits.

According to Justice Shamlan, interim measures may be enforced both under Article 24(2) of DIFC Law No. 1/2008 and under Article 42 of DIFC Law No. 1/2008 when read together with Article 43 of DIFC Law No. 1/2008.

Article 7(1) of DIFC Law No. 1/2008 stated: “Subject to paragraphs (2) and (3) of this Article, this Law shall apply where the Seat of the Arbitration is the DIFC”.

Article 24(2) of DIFC Law No. 1/2008 stated: “With the written permission of the Arbitral Tribunal a party in whose favour an interim measure has been granted

may request from the DIFC Court of First Instance an order enforcing the Arbitral Tribunal’s order or any part of it. Any request for permission or enforcement made under this Article shall be simultaneously copied to all other parties.”

“Unless the Arbitral Tribunal at any time directs otherwise, the party making a request to the DIFC Court of First Instance under this Article shall be entitled to recover in the Arbitration any legal costs and DIFC Court of First Instance fees reasonably incurred thereby.”

This, when read in light of Article 7(1) of DIFC Law No. 1/2008, was limited in its application to interim measures granted in DIFC-seated arbitrations.

Article 42 and 43 of DIFC Law No. 1/2008 were not subject to this limitation and applied to both arbitral awards issued in DIFC and non-DIFC seated arbitrations alike.

However, Article 24(2) of DIFC Law No. 1/2008 expressly applied to the enforcement by the DIFC Courts of interim measures that take the form of arbitral awards.

Likewise, although according to Justice Shamlan, Article 42 and 43 of DIFC Law No. 1/2008, did not make any express mention of their application to the enforcement of interim measures, they embraced a sufficiently wide meaning of the term ‘arbitral award’ that they did also encompass interim measures that took the form of awards.

In addition, Justice Shamlan clarified that Article 24(2) of DIFC Law No. 1/2008 established a summary procedure for the enforcement of interim measures that took the form of an arbitral award where the seat was the DIFC.

This meant that unlike Article 42 of DIFC Law No. 1/2008, the application of Article 24(2) of DIFC Law No. 1/2008 did not require the prior recognition of the underlying arbitral decision, which was directly (and immediately) enforceable.

Nor could an enforcement application under Article 24(2) of DIFC Law No. 1/2008 encounter a challenge of the kind that a defendant would typically have available to them in defense to an action for recognition and enforcement under Article 44 of DIFC Law No. 1/2008.

WHY IS THIS IMPORTANT?

This case is important as it means subject to the differences outlined above, a beneficiary of interim measures that take the form of an award may choose between using the summary enforcement procedure under Article 24(2) of DIFC Law No. 1/2008 on the one hand and the option under Article 42 and 43 of DIFC Law No 1/2008 on the other.

However, it should be noted that the Article 24(2) of DIFC Law No. 1/2008 option, is only available in DIFC-seated arbitrations and also requires prior permission from the tribunal to make an application to enforce before the DIFC Courts.



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IN-HOUSE PROFILE

GLOBAL LEGAL OPERATIONS LEAD – CONSTRUCTION



From regional to global

Bethan Onions, Global Legal Operations Leader at Arup who has recently moved from a regional to global role explains how that has changed her focus.

BACKGROUND

I grew up in the West of England but was lucky enough to attend the United World College of the Atlantic. This school was established after World War II as a practical response to the search for peaceful solutions. Students from over 90 countries attend it. My experience at UWC Atlantic led me to working at Arup which has at its heart the concept of service, or social usefulness. After completing of the International Baccalaureate there, I studied for an LLB in Law and Human Rights at the University of Essex, then completed the Bar Vocational Course at the City Law School. I then joined Arup but at the same time studied part-time for an MSc in Construction Law and Dispute Resolution at King's College London. While at Arup, I have been on several secondments and have spent time working in various barristers' chambers in London and have also supported the Arup Legal Team in New York. The firm also granted me a three-year leave of absence so I could move to Pakistan with my husband during which time I worked on a freelance basis for Lawyers on Demand to ensure that I kept up to date with the law.

CURRENT ROLE AND COMPANY

Arup is an independent firm of designers, planners, engineers, consultants and technical specialists, who work across every aspect of the built environment. It employs over 18,000 people across 34 countries. Our firm has over 40 years' experience of working in the Middle East and has a strong presence in the UAE through our offices in Dubai and Abu Dhabi. However, our work spans the whole region. We work collaboratively with public authorities, local developers, multinational organisations, and architects to support the sustainable urban development of cities through the delivery of innovative, low energy and low carbon solutions for the built environment. Until very recently I led our in-house legal support to the operating groups in what we call our Focus Markets - India, Middle East, South Africa, East Africa, Mauritius and Emerging Markets and Development Clients. My key responsibilities included day-to-day operational legal support from both a contentious and non-contentious perspective, provision of strategic level advice and counsel to the business leadership and supporting



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the wider Arup business navigate the different cultural contexts and opportunities associated with working in the Focus Markets. I am proud of the support I was able to provide in negotiating and executing the contracts for sea level mapping for Bahrain, the new Dubai Building Code and the Abrahamic Family House – a project that brings together three of the world's major religions within one stunning interfaith complex. I have recently been appointed Global Legal Operations Leader. This role involves building on the work I did in Focus Markets to develop, support and work closely with our Global General Counsel to ensure delivery of the Arup Legal Team's goals and ambitions, which are aligned to the wider Arup Strategy. This will include developing and implementing a Legal Operations Strategy to assist the Arup Legal Team in improving the way we support the wider Arup business. One of my main challenges is the universal one of trying to do more with less. I try to meet these challenges in a multi-faceted way, through close collaboration with the business and the wider legal team to drive effectiveness and efficiency. This includes considering our strategic alignment with the business, gathering and using data to provide insights into how we can improve financial planning for the team and the wider firm to align around operational efficiency, structuring our teams, managing our knowledge, documentation and workload and using technology appropriately to support all these priorities.

TRENDS AND CHANGES

Although, we may seem immune from global inflationary issues in the Middle East we are seeing its impact on the supply chain. This is having an impact

PRACTITIONER PERSPECTIVE



James Cameron
Partner,
Fenwick Elliott

James Cameron of Fenwick Elliott takes a look at the Dubai Building Code.

The Dubai Building Code (DBC), is a consolidated, single set of standards for construction and building design requirements, which was officially approved in October 2020 by the Dubai Executive Council, and came into effect in December 2021. The DBC is a significant document and along with the UAE Fire Life Safety Code of Practice (UAE FLSC), takes precedence over other adopted codes and standards. Before this Code was introduced there were various sources of codes and circulars issued by various government departments in Dubai which regulated building design and construction and no single source. This would often cause issues for those involved in projects, as well as delays and additional costs, and often also resulted in disputes. The DBC, provides a single unified source for buildings which is accessible freely online. It also provides a one-stop-shop for obtaining approvals for operations and licenses. This standardisation and greater certainty has also increased investor confidence in the sector. The primary objective of the DBC is to ensure the health, safety, welfare, and convenience of people in and around buildings in Dubai. In addition, the DBC also includes a number of minimum requirements which cover areas including limiting the impact on the surrounding environment and sustainable development of buildings. The Code is over 800 pages long and is divided into 10 parts which cover a whole range of building design requirements, each of which set out performance statements defining broad outcomes that the completed building is expected to achieve. These cover general areas, but then architecture, accessibility, vertical transportation, the building envelope, structure, incoming utilities, the indoor environment, security and villas. The fire safety requirements which are provided in the parts of the Code cross reference to the relevant sections of the UAE FLSC. The DBC applies to the design of new buildings and when changes are made to existing buildings. In such cases it covers renovation including change to linings, finishes or strengthening of a structure but does not involve any reconfiguration of internal spaces. It also covers

modification including the fit-out of a space or unit or change to a service system or building element. Reconstruction, which is defined as modification that is not stand-alone, is also covered. It affects adjacent egress routes or systems that are not part of the reconstruction area so a larger part of a building might need to be closed or occupied for a period of time. It also deals with change of use or occupancy of part or all of the building and addition, where there is an increase in the building's gross area or built-up area, and/or height or depth. In addition, the Code further categorises the different types of occupancies that it applies to. These include Assembly (for example, amusement parks, theatres, cinemas, restaurants, museums, galleries, places of worship, libraries, exhibitions, and conference centres), Business (for example offices, professional services, government centres, post offices and banks), Educational (such as universities, colleges and schools), Hotel establishment (including hotel apartments, guest houses, and resorts) and Residential (which includes apartments, studios, student, staff or labour accommodation, villas, and town houses). Other categories included Parking, Retail, Mall, Industrial such as factories or workshops and Storage which includes warehouses. Alternative solutions which meet the Code's performance statements are permitted for projects which cannot reasonably meet the prescribed requirements and where costs for changes to existing buildings would be disproportionate to the owner or developer. The DBC does not apply to infrastructure such as road and rail bridges, tunnels, culverts, metro stations, hydraulic structures, buried and overhead utilities, power stations, antennas and masts, wind turbines and nuclear facilities, marine structures like canals, dams, levies, piers, jetties, and wharves, oil and gas structures or structures such as tents, cranes, storage racks, scaffolding, form work, and false work structures subject to specific loading conditions. Historical buildings are also exempt from it where the building's original character is to be retained. Instead historical buildings conform to the relevant authority's guidelines. However, buildings in heritage areas or considered to be heritage buildings must follow the DBC. This article was co-written by Shahed Ahmed, Senior Associate, Fenwick Elliott.

on how we approach some of our designs because of increasing costs of materials in the industry. In addition, we are also seeing far more concern for the planet and global warming and an increasing interest in what we can, and should, do about this. Of particular concern from a legal perspective is designing for a changed climate and working with clients to ensure their new or re-purposed assets are resilient in the face of climate change. This requires looking at familiar approaches to terms and conditions and contracting arrangements from a fresh perspective. Data privacy and data protection are fast developing legislative areas in the Middle

East. This may not seem to directly affect the construction sector, but Arup's work covers many disciplines that are impacted by the new legislation. For example, in the UAE, we have a strong local integrated planning team which undertakes complex stakeholder and community engagement as well as foresight and research. Therefore, compliance with new and evolving data privacy legalisation in the region is vital. Luckily, we work closely with our global colleagues who have experience of ensuring compliance with legislative frameworks of this type across multiple jurisdictions so we have existing systems in place to help react to these changes.

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

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AI AND OTHER CHANGE AT AL TAMIMI

Al Tamimi & Company have become the first firm in the region to partner with Harvey, a leading provider of generative Artificial Intelligence solutions which are tailored to the legal sector. This new relationship will enable them to harness Harvey's advanced AI platform and leverage cutting-edge technology such as natural language processing, machine learning and data analytics. They also intend to work with Harvey on refining and improving the Arabic language capabilities of the platform.

However, this is not the only recent change at Al Tamimi. Jody Waugh has also been elected as the firm's new Managing Partner, with effect from 1 January 2024. He will succeed Samer Qudah, who has led the firm since 2019 and will now continue as a Partner and Head of Corporate Structuring there.

Jody Waugh has been with Al Tamimi & Company for over 16 years, and was as Partner, the Head of Banking & Finance, and the Deputy Managing Partner. He has a distinguished track record of advising some of the region's leading banks and financial institutions on complex and innovative transactions.

There have also been a number of other partner appointments at the firm. These include Willem Steenkamp

who worked at the firm until 2018 and has been re-appointed as a Partner in the company's corporate commercial department and will lead their commercial contracts and commercial agency practice in Dubai.

Aaron Dikos is now a Partner in the corporate commercial practice, having returned to the firm following a period working as a consultant. Dikos has over 16 years' experience of working in the region and focuses on corporate, commercial, and financial transactions, including mergers and acquisitions, private equity, corporate structuring, and public-private partnership projects. Hamza Abu Hassan has also been promoted to Partner in the firm's corporate commercial practice in Jordan, while Omar Al Humaid and Ahmed Mahomed have been promoted to Partners in the firm's corporate structuring practice in Riyadh. Mohamed El Dessouky is also now a Partner in the firm's litigation practice in Dubai and Mohamed Negm has also been promoted in the firm's dispute resolution practice in Riyadh. Other changes include Ahmed Hashem and Yasser Madkour who are also now Partners in the firm's transport and insurance practice in Jeddah and Dubai, respectively. While Mariam Sabet is now a Partner in the firm's intellectual property practice.

NEW MANAGING PARTNER

There has also been a change of Managing Partner over at Habib Al Mulla and Partners where Amir Alkhaja has taken over the reins.

Alkhaja has over 15 years' experience of working in the UAE and specialises in commercial, white-collar crime and banking litigation. He has a valid UAE law licence and the right of audience in local and federal UAE courts. In the past he has successfully represented various types of clients, involved in local and cross-border disputes across the GCC and MENA region.



KEEPING IT REAL

King & Spalding LLP has appointed Malek Al Rifai as a real estate partner in their corporate, finance and investment practice. Al Rifai will be based in the UAE, but his work will focus on a combination of UAE, Saudi Arabia, and other matters from across the wider MENA region. He will be supported by the firm's real estate lawyers in the Middle East, Europe, UK, and US offices in his work.

Al Rifai's practice focuses on



structuring and executing complex transactions for clients across the Middle East region, including developers, owners, investors, stakeholders, financial institutions, investment funds and Real Estate Investment Trusts.

He has experience of a variety of public and private real estate and corporate real estate transactions, including M&A, financings, project development, joint developments, and hotel management agreements. His work in the past has also included a range of asset classes including offices, hospitality, education, retail, health care, industrial and mixed-use properties.

LITIGATING LEADERSHIP

Galadari Advocates & Legal Consultants has appointed Hussein Ahmad Al Momani as a Partner in their litigation practice.

Al Momani who is a bilingual lawyer has over 25 years' experience. He has

previously held leadership positions at Baker & McKenzie – Habib Al Mulla.

He has wide ranging experience which includes commercial, construction, real estate, criminal, employment, and intellectual property matters.

Other changes at the firm, include the appointment of Naji Khairallah as Partner in their corporate commercial practice.

In his new role, Al Momani's work will

OTHER CHANGES

Al Tamimi & Company: In Oman Al Tamimi has merged with local law firm, BK Law whose founder Basma Al Kiyumi will now be a Partner and Head of Dispute Resolution - Oman at Al Tamimi.

CMS: CMS has opened a new office in Riyadh, after receiving their foreign law firm licence from the Saudi Arabian Justice Ministry,

Kennedys: Kennedy's Dubai Office has relocated to Office Building 5, One Central.

PwC Middle East: Menna Helmy has been appointed Legal Manager at PwC Middle East.

Shearman & Sterling: Sultan Almasoud, the Head of Shearman & Sterling's Riyadh office in association with The Law Firm of Dr Sultan Almasoud, has been appointed to Saudi Arabia's Capital Markets Authority advisory committee.

I MOVERS AND SHAKERS I

focus on corporate, commercial, and M&A projects. He has over ten years' experience of advising companies across the Middle East on corporate-related matters, including company formations, trademark matters, structuring and re-structuring, complex mergers and acquisition transactions and has led negotiations and drafting of commercial agreements.

Al Momani has past experience of advising regional and international clients in the Middle East on drafting and reviewing different types of agreements, including joint venture agreements, franchise and distribution agreements, management agreements and the provision of securities advice.

He also has experience of work in a range of industries including hospitality and tourism, healthcare, technology and cyber security, manufacturing, construction and design, media and culture, and contracting.

REGIONAL CHANGES

CMS Oman has announced they have appointed Shehab Farouk as Legal Director in their Muscat office dispute resolution team.

Farouk has over 15 years' experience of working in international commercial arbitration in the Middle East.

In the past he has made significant contributions to the field of arbitration. For example, in 2020, he played a pivotal role in drafting the Oman Commercial Arbitration Centre's Arbitration and Mediation rules.

He is also a Fellow of the Chartered Institute of Arbitrators and was recently appointed as the Regional Representative for the London Court of International Arbitration Young International Arbitrators' Group.

His legal practice covers a wide range of areas, but focuses primarily on providing expert advice on matters related to Omani law. His areas of expertise include civil, commercial, corporate, arbitration and construction law. In the past he has represented major construction companies in both state court and arbitral tribunal proceedings.

Meanwhile, CMS's new office in Riyadh will be led by Mohammed Aldowish who is a seasoned commercial litigation partner.

Aldowish joins the firm from Clyde & Co, where he headed the disputes practice in Saudi Arabia and was a key

member of the Middle East dispute resolution group.

He has substantial expertise in advising Saudi and international clients on matters, including infrastructure and construction, shareholder and joint venture, commercial agency and distributor disputes.

His other areas of work include commercial arbitration claims and court proceedings in Saudi Arabia. In addition, he often provides advice on construction contracts for major projects governed by Saudi Arabian Government Tenders and Procurement Law.

IN GOOD COMPANY

Benjamin O'Brien-McQueenie has been appointed as Partner in Trowers & Hamlin's corporate practice in Oman.

Previously O'Brien-McQueenie worked at Trowers's Bahrain office. In his new role he will lead the corporate team and will focus on corporate transactions and providing legal advisory services in the MENA region.

O'Brien-McQueenie has a proven track record in handling a range of corporate transactions across the GCC region and experience of advising international and regional clients who have interests in or from the Middle East. He also provides advice to banking institutions, private equity investors and sovereign wealth funds.

However, he is not the only new joiner in Trowers's Oman office as he is joined there by Li Ying Teng who will work as an Associate in the International Corporate Department and new Associate Aida Al Jahdhami.

PROJECT MANAGER

Chad Passlow has been appointed as Counsel in the global projects department in the Baker Botts Dubai office.

Passlow's work will primarily focus on project financing and project development in the energy and infrastructure sectors in the Middle East.

His advisory portfolio covers various industries, including oil and gas, carbon capture, utilisation and storage, energy transition and renewables, such as wind, solar, hydro power and conventional power and infrastructure projects.

He previously worked as Vice President, Legal of the Downstream Industry, Marketing & Trading at ADNOC.

NEW FIRM ON THE BLOCK

A new law firm, Ajith M Legal Consultancy has been established in Dubai. The firm's Founding Principal Ajith Madhavan has 23 years' experience, of which 13 years has been based in the Middle East and India. Previously, Madhavan was General Counsel of Aster DM Healthcare, where he was responsible for ensuring the company's compliance with regulations. He has also been a Legal Manager of the Concept Group of Companies in Dubai, a Legal Consultant at Dar Al Adalah Advocates & Legal Consultants in Dubai and was a lawyer at the High Court of Kerala in India from 1998 to 2006. The new firm will advise on corporate structuring, risk management, developing internal policies and procedures and will assist in managing medical malpractice claims. It will also provide advice to healthcare providers who are looking to ensure their compliance with regulations, minimise legal risks and facilitate the smooth operation of healthcare facilities and services in the UAE.

BACK ON TOP

Linklaters has re-appointed Scott Campbell as Managing Partner – Middle East who has taken over from Jonathan Fried, who has decided to focus full-time on the company's growing capital markets practice.

Campbell has over 23 years' experience of working in the region and was previously based in the company's Dubai office.

He was Managing Partner for eight years. His past experience also involves leading on a wide range of corporate M&A and corporate finance transactions in the region.



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Arbitration: What's New?

Sadique Mohd, Arbitration Lead at Al Aidarous explains how arbitration has changed since he began his career over 20 years ago.

BACKGROUND

I am from Singapore and have worked for over 22 years in the legal profession, half of which have been in Dubai. I specialise in arbitration and have full rights of audience before the DIFC Courts (Part 2), the Supreme Court of Singapore, Court of the Astana Financial Centre, ADGM Courts and the Singapore International Commercial Courts. I am proud to say that a number of the cases I have been involved in have been landmark cases. I spent a decade as a litigation lawyer and then joined the largest construction company in the world as their General Counsel. I gained substantial expertise in the construction industry, as I was actively involved in a number of high-value, legally and technically complex cases in a range of jurisdictions including the Gulf, Tanzania, Singapore, Fiji, and Sweden. This state owned company has over 20,000 employees and billion-dollar construction projects and disputes, which means there are no construction legal problems I have not already seen. This experience has helped me when cross examining construction experts and engineers, and in understanding technical aspects of construction disputes. I was also a General Counsel at a vibrant hotel brand. During my time there I negotiated purchases of yachts and private jets which helped me better understand commercial objectives and stakeholders' rationale and how they think and operate. This is useful in arbitrations as arbitrators tend to be commercially minded and commercial approaches generally appeal to them. My most interesting case to date involved a Dubai hotel takeover. There were a number of interesting legal issues and I believe it was the most-high profile and largest hospitality dispute of its kind in the UAE. It also led to satellite litigation across the world in courts and arbitrations.

My current role as arbitration lead at Al Aidarous has been a natural progression from these experiences. Al Aidarous conducts complex and high value arbitrations for blue chip clients. I am fortunate to have a strong supportive team who have great knowledge and with whom it is possible to pool common experiences. When you work in arbitration you do not tend to see much difference between jurisdictions. Arbitrations are generally flexible and as the legal practitioners and arbitrators come from all over the world, there is a certain homogeneity in the way things operate globally.

However, one key difference between arbitration in the UAE and in Singapore is that here most arbitration cases involve real estate or construction related issues, while in Singapore the areas covered tend to be more varied. When I became involved in arbitration 20 years ago, arbitrations were seen as nothing more than glorified mediations because of issues with enforceability. However, things have changed since then and it is almost impossible to set aside arbitral awards now. Courts in both the UAE and Singapore are now adopting a more a pro arbitration approach.

The most significant change in arbitration in the UAE in the last year has been the issuing of Federal Decree-Law No. 15/2023 in September 2023 which has made significant amendments to the UAE Arbitration Law (Federal Law No. 6/2018). As a result, the arbitration process in the UAE is now more mature, sophisticated and user-friendly. There is now a greater emphasis on virtual hearings. The law also explicitly provides for the confidentiality of arbitration proceedings, unless parties agree otherwise. A new exception has also been introduced, which allows arbitrators to be selected from the controlling body of the arbitration institution administering the proceedings.

The amendments reflect the UAE's commitment to aligning its arbitration laws with international standards. There is also currently a conscious effort to promote arbitration in the UAE.

In-house counsels have to keep up with these developments as a dispute in arbitration is very different from one in courts.

Arbitration is like a game of chess which requires strategy and calculated moves. In house counsels should also ensure they are familiar with the various institutional arbitration rules and devise bespoke model clauses for arbitration as part of their dispute resolution provisions.

It also helps if they are more involved with their external counsels at every step in the arbitration's procedural timetable.

In addition, it is important that they choose a law firm that is familiar with UAE law to represent them as that is the governing law for most contracts in the UAE.

Arguing UAE arbitration cases governed by UAE law in a common law style can lead to adverse outcomes.

RECENT KEY DISPUTE RESOLUTION CASES

Arbitration Institute DIAC
Issue...Plagiarism and Impartiality and
Independence of Expert
Reported by...Al Aidarous Advocates & Legal
Consultants

BACKGROUND

Article 4 of the Chartered Institute of Arbitrators' Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration (the CI Arb Protocol) states: "1 An expert's opinion shall be impartial, objective, unbiased and uninfluenced by the pressures of the dispute resolution process or by any Party".

In line with this, Article 5.2 c of the IBA Rules on the Taking of Evidence in International Arbitration 2020 requires experts to include in the report a statement of their independence from the parties, their legal advisers and the arbitral tribunal.

The main purpose of this provision is not to exclude experts with any connection to the participants or the subject matter of the case from being involved in it but instead to emphasise the duty of a party-appointed expert to evaluate a case independently and neutrally.

In this case, a contractor commenced arbitration against an employer (who was our client) for the recovery of almost 300 million AED in a construction dispute which involved a mixed residential and hotel development in the UAE. A significant part of the sum which was claimed involved prolongation costs and relied on the contractor's success in proving time at large for the extended period claimed for.

In support of the contractor's case against the employer, the contractor appointed an independent delay expert to prove their case, including on the time it said was at large.

The contractor's expert spent a significant amount of his time at large discussion on common law precepts, which however was not the governing law of the contract. The expert also slavishly cited academic literature in his expert report in support of the time at large proposition.

PLAGIARISM

While the case was in progress our team discovered that almost all of the contractor's delay expert's time at large discussion appeared to have been lifted from an online article which had been written a few years earlier by third party authors.

A comparison of the materials immediately demonstrated an uncanny similarity to that text and that the text had been copied. Plagiarism had taken place as both excerpts were identical right down to typos and punctuation.

During the hearing, when the contractor's delay expert was being cross-examined, a comparison table highlighting the exact matches in the two texts was presented to the three-member tribunal. The chairman, even though it was later revealed he was colour blind and unable to see the red highlights, was yet able to see the similarities between the two texts. When faced with this issue the contractor's delay expert first tried to pass the similarities off as a coincidence and claimed he had never seen the earlier article before.

However, when pressed, he admitted that he may have received some 'inspiration' from the other text. Counsel for the contractor attempted to downplay the situation by arguing that time at large was in any event a question of law and not an issue for the expert.

STRIKING OUT

However, the damage had been done and the contractor's expert had lost all credibility. The expert was asked to leave the room while the employer's counsel from our firm made an application to strike out the portions of the expert report that had been tainted by plagiarism. The tribunal accepted the striking-out application.

NEGATIVE EFFECT

The end result was a loss of over 200 million AED from the contractor's claim as they could not peg their time at large analysis on the expert because the expert had lost all semblance of independence and impartiality.

Normally, the correlation between plagiarism and an expert's duty to be impartial and independent is not something that would be considered. However, if an expert is prepared to plagiarise material it also highlights other potential issues, including that they may not have the required knowledge of the topic, they are being intellectually disingenuous and are prepared to champion their appointing party's position and at any cost.

KEY TAKEAWAYS

This case highlights how important it is for party-appointed experts to maintain the highest standards of professionalism and integrity, particularly when they are playing a pivotal role in arbitration proceedings.

The credibility of the arbitration process hinges on the impartiality and competence of the experts involved.

This means that any compromise in these areas can have profound consequences for the parties involved in the arbitration.

This can be particularly significant in construction disputes where the arbitration tribunal tends to rely on technical experts to present and elucidate the complexities of the case.

CREDITOR'S RIGHTS

Waleed Hamad of Al Aidarous considers practical ways to safeguard creditor's rights where there are asset disposal challenges.



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When debtors receive notice of impending legal action, they often attempt to swiftly dispose of assets in order to leave creditors without viable funds for execution, thereby undermining the intended purpose of the execution bond.

LEGISLATIVE MEASURES

Legislators have established mechanisms to help creditors claim their dues from debtor-held funds, which are found in Article 396-400 of Federal Law No. 5/1985. If the debtor's assets are less than their debts, the debtor is not obliged to donate their money. Then when a creditor claims from a debtor with property less than total debts, the debtor may not dispose of their property either through netting or donation. Article 396 of Federal Law No. 5/1985 states, "If obligations, whether due or deferred, exceed or are equal to the assets of the obligor, then he may not make any voluntary disposition, he is not bound to make or which practice does not dictate that he must, and an obligee may apply for an order declaring that such a disposition is ineffective as against him." While Article 397 of Federal Law No. 5/1985 states, "If obligees make a claim against an obligor whose assets do not exceed the obligations due to them, he may not make any voluntary disposition over his property or dispose of it by way of a commutative contract notwithstanding the absence of preference, and the obligees may apply for an order declaring that the disposition is ineffective as against them, and may also apply for an order for the sale of his property and that they share in the proceeds thereof in accordance with the provisions of the law". There are penalties for violations of these provisions, which allow the creditor to pursue a 'nullification' of the disposition/transaction lawsuit, shifting the burden of proof to the debtor. Article 398 of Federal Law No. 5/1985 adds, "If an obligee alleges that the debt exceeds the assets of the obligor, he needs only prove the amount of the obligations due by him, and the obligor himself must prove that he has assets exceeding the value of the obligations."



Waleed Hamad
Head of Litigation
Al Aidarous

REAL WORLD APPLICATION

In 2015, a natural person creditor initiated an arbitration case (Abu Dhabi Case No. 1586/2014) against a foreign company debtor with property in the UAE resulting in a judgment of around AED 200 million in July 2020. While attempting to execute this judgment, the creditor discovered the debtor had disposed of their funds within the UAE. We advised the creditor to initiate proceedings for the non-enforcement of debtor action. It was found in August 2020, after the arbitration award was issued and before the start of execution procedures, that the debtor had sold his shares at a value significantly below their market value. A lawsuit for nullification of the disposition was filed against the debtor (Abu Dhabi Case No. 3425/2022 Commercial). Despite the debtor's claims of good faith, the court ruled in favour of the creditor. The debtor appealed the judgment (Abu Dhabi Appeal No. 519/2023 Commercial) maintaining their good faith defense and offering to pay the purchase price. The Court of Appeal upheld the initial verdict, emphasising good faith was not a condition for non-enforcement.

The debtor then appealed before Abu Dhabi Court of Cassation (Case No. 889/2023 Commercial Objections), arguing errors in application of the law. The Court of Cassation rejected the appeal, and stated the burden of proof lies with the debtor to demonstrate solvency at the time of disposition.

The creditor proceeded with the implementation of the judgment, reclaiming the shares, and prepared to sell them to satisfy the debt. This case highlights the importance of vigilance in safeguarding creditor rights amid the challenges posed by debtors' asset disposal tactics.

It also emphasises the effectiveness of legal routes in holding debtors accountable for their actions. The judiciary's consistent approach has reaffirmed the significance of debtors' burden of proof to demonstrate solvency at the time of asset disposal.

THE RIGHT ARBITRATOR

As recent US and Singaporean cases show choosing the right arbitrator can have a significant impact on the outcomes according to Sadique Mohd, Arbitration Lead at Al Aidarous.

The District Court for the Eastern District of Louisiana refused to enforce an arbitration agreement where the parties had agreed to resolve their disputes under the DIFC-LCIA Arbitration Rules. In *Baker Hughes Saudi Arabia Co Ltd v Dynamic Industries, Inc and others* (Civil Action No. 2:23-cv-1396 (E.D. La. Nov. 6, 2023)), the US District Judge found that as the DIFC-LCIA Arbitration Centre no longer existed (and had been replaced by DIAC), the arbitration clause was invalid.

The judge stated, “Whatever similarity the DIAC may have with the DIFC LCIA, it is not the same forum in which the parties agreed to arbitrate. That forum is no longer available, and this Court thus cannot compel the Plaintiff to arbitrate. Accordingly, no enforceable forum selection clause compels the dismissal of this case on the ground of forum non conveniens.”

If the judge in this case had been an arbitrator in an arbitration, the claimant’s prospects would have been even worse, as the arbitration would have been terminated at the jurisdictional stage.

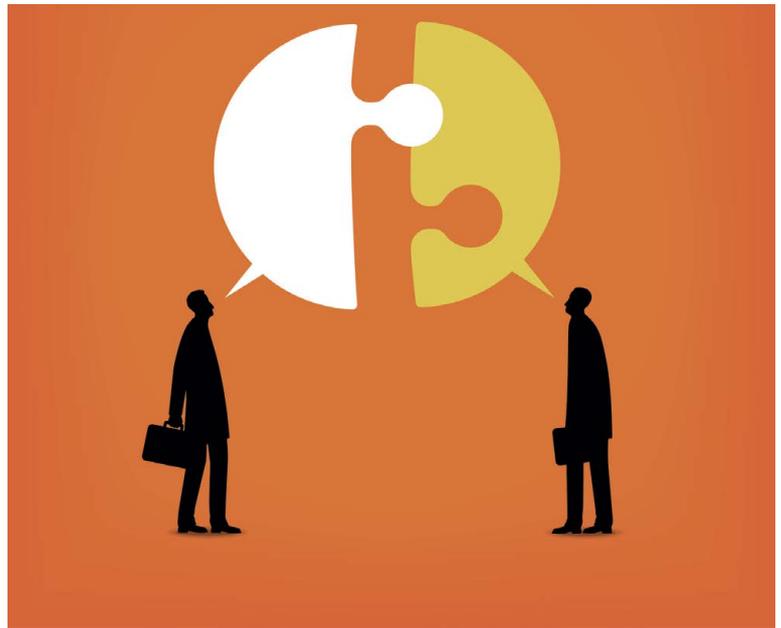
Therefore, this case highlights the importance of appointing an arbitrator who is familiar with the arbitration landscape of your seat or locality, and who understands the arbitration world ‘in your area’.

Another reminder of the importance of choosing the right arbitrator, although for a different reason came in the Singapore case of *CVV and others v CWB* [2023] SGCA(1) 9. In this decision, the Court affirmed that merits of a case could not be revisited. It was stated: “For better or for worse, parties in an arbitration must accept the consequences of their choice of the arbitral tribunal as regards the merits of the award, irrespective of the degree of their dissatisfaction with the outcome in the award.”

KEY ATTRIBUTES FOR AN ARBITRATOR

So following on from these cases what are the key attributes to consider when you are looking for an arbitrator?

- **Robustness:** A robust arbitrator will influence the identity of the chairperson and strengthens your case during the panel deliberations. Ideally, the chairperson your arbitrator recommends to



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the other party’s arbitrator will be someone your arbitrator can collaborate effectively with, and may lead to alignment of opinions, potentially securing two votes in your favour. Cordial parties seldom disagree.

- **Expertise in Specific Issues:** It is advisable to opt for an arbitrator who has a profound understanding of the specific issues in dispute. Early identification of these key issues is also crucial to ensuring the arbitrator’s appointment aligns with the evolving nature of the case.
- **Availability:** It is vital to have an arbitrator who is available. It is important to ensure they have enough time to sit in the case before you appoint them. You should avoid selecting a high-profile arbitrator solely based on their prestige, as their busy schedule may limit their ability to dedicate sufficient time to your case and as a result they may be out-argued during deliberations.
- **Strategic Intelligence:** Obtain intelligence on the other party’s choice of arbitrator and compare this to the IBA rules. Strategically challenging the other party’s first choice of arbitrator can also be advantageous.
- **Identify the Ring Leader:** Understanding the dynamics of the panel and being able to ‘read the room’ is crucial. Within the panel, identify the key influencer, who may not necessarily be the chairperson. For example, in disputes where local law holds sway, an arbitrator who has a background in local law will exert influence. Also choose a local law expert who has good relationship with the arbitrator. In technical disputes, the arbitrator with the relevant technical expertise will tend to dominate deliberations.



Sadique Mohd
Arbitration Lead,
Al Aidarous

Arbitration Clauses



The use of arbitration as the agreed dispute resolution forum, rather than litigation in the courts, is common practice in UAE construction contracts. The UAE courts have long been ‘pro-arbitration’ where it can be shown that the parties have agreed to arbitration and have properly incorporated that agreement into a clear and complete contractual dispute clause.

Two recent Dubai Court of Cassation judgments (DCC Case No. 618/2023 and DCC Case No. 828/2023) have shown that commitment to arbitration but have also provided a timely reminder to legal practitioners and their clients of the importance of ensuring they take care when drafting the arbitration clause.

CHECKLISTS

It can help to take a ‘checklist’ approach when drafting compliant and sustainable arbitration clauses. As a minimum the clause should address the following points and practical considerations – the seat and law of the arbitration; the language of the arbitration; the arbitration rules and the number of arbitrators.

These elements are acknowledged and recognised in both standard and bespoke contract forms and are also found in the suggested model arbitration clauses of most, if not all, arbitral institutions and their rules.

However, these two recent

Dubai Court of Cassation cases have potentially given some additional advice on the practical points on the scope or extent of what an arbitration clause should cover, specifically its applicability to additional documents or agreements which might come into existence during the lifetime of a project, and whether these subsequent documents or agreements can be seen as an extension of the original contractual arrangements, or related to them, or if they should be viewed instead as new and separate contracts which have not been covered by the original arbitration clause.

FUTURE DEVELOPMENTS

In order to assess those types of situations, it is important to first examine the precise wording of any such additional documents (and any dispute clauses which are contained within them).

This is key to understanding how that wording may be interpreted if it is challenged. It is important to agree and draft the scope and extent of the original arbitration clause in such a way that it covers all future eventualities intended. Often, in the rush to sign off a construction contract, and any subsequent agreements made during the work, insufficient time or attention is given to ensuring the dispute clause is accurately and clearly drafted and incorporated.

In fact the arbitration clause is often left until last when the ‘honeymoon period’ and the excitement of the pending contractual award overtakes due process and careful thought on what will happen if things do go wrong later. In these two recent cases, a combination of a subcontract, a letter of acceptance (with arbitration clauses in them), several subsequently agreed purchase orders for variations and an addendum (without arbitration clauses in them)

were considered by the courts. If all the relevant documents originally and subsequently put in place had been clear and consistent, there would have been no legal challenge and nothing for the courts to decide. However, they were not and a lengthy and expensive series of court decisions were required to resolve the dispute between the parties on the scope and extent of arbitration.

It is important both when contractual agreements are drafted initially for construction projects, and when new agreements are recorded on subsequent contractual agreements that what is being said in the arbitration clauses is checked to ensure consistency and completeness. Using wording that is similar to that which is already widely known from the FIDIC agreements, can help avoid pitfalls – for example, that any dispute or difference of any kind whatsoever in connection with or arising out of the contract or the execution of the work is to be arbitrated, is usually seen as wide enough to cover any subsequent addenda or purchase orders there may be for additional work. However, in order to take a ‘belt and braces’ approach, parties might also consider either expressly stating in those subsequent documents that arbitration also applies equally to them in the same terms as in the original contract, or extending the original dispute clause wording to make it clear that arbitration will also cover any additional work, subsequent agreements or addenda which are in any way related to the work under the contract. Ensuring this level of clarity and taking a comprehensive approach at the contract drafting stage should go a long way to ensuring the parties do not find themselves later embroiled in a dispute in court about what was, or was not, intended to be within the scope of the arbitration process that was agreed under the original contract.



Contributor

Paul Taylor, Managing Partner,
Eversheds Sutherland

Opportunities in the Middle East with Jameson Legal

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Ref: AHS-IM-15255

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Ref: MBP-IM-15336

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.

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