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June/July 2022

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A BRAVER NEW WORLD

Last month the most frequently reviewed laws on the Lexis Middle East online service included Dubai Law No. 9/2022 On the Regulation of Digital Services Providers in the Emirate of Dubai (which we cover in the Contract Watch Column), and Dubai Law No. 4/2022 Regulating Virtual Assets in Dubai - both of which had recently been issued. Dubai Law No. 4/2022 is a law on virtual assets which is a term which covers a whole range of areas including cryptocurrencies such as Bitcoin and non-fungible tokens (NFTs), basically digital assets that represents real-world objects such as art, music, in-game items and videos. These are areas seen by some as offering great opportunities for both innovation and financial gain - but by others as a business area which operates in a dangerous unregulated wild west style market where only the brave or foolish should venture. With COVID, hopefully now behind us businesses and governments are looking to build back better. Perhaps therefore, it is not surprising that the Dubai government which has made it clear for some time now, how eager it is to support new industries of this type and encourage local innovation in these markets, also wants to become a legislative pioneer in this area. As a result, we have also decided in this issue to take a closer look at Dubai Law No. 4/2022 and what it means for those interested in providing these types of services within the Emirate.

We also take a brief look at the approach other jurisdictions and regulators have to this area both within the UAE and the broader GCC. In Dubai a new licensing regime and regulator has been put in place which hopefully will be seen as a positive development for more nervous investors and may also lead to them making braver investment decisions. In addition, with a new regulator in place, it is likely Dubai Law No. 4/2022 will just be the start of a host of new laws and regulations on this and related subjects.

Claire Melvin - Editor

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THE VIRTUAL HORIZON

Dubai surprised many businesses earlier this year when it issued a new Virtual Assets Law. Dr Laura Voda, Of Counsel at Fichte Legal, examines this law's most significant provisions and what could be next in this area in the UAE and other parts of the GCC.

“Dubai Law No. 4/2022 Regulating Virtual Assets in Dubai, which was issued on 28 February 2022 and came into force on 11 March 2022, is a landmark piece of legislation and could put Dubai in pole position compared to other jurisdictions, when it comes to virtual assets,” states Dr Laura Voda. “Under this Law, a new Dubai Virtual Assets Regulatory Authority is established, affiliated with the Dubai World Trade Centre (DWTC) Authority; the Authority will serve as a hub for companies looking to operate in the virtual assets sector.”

“Having a legislative framework in place in this area, as well as other advantages such as the UAE taxation regime, makes the country an attractive jurisdiction for transactions of this type, going forward.”

WHAT ARE VIRTUAL ASSETS?

“Dubai Law No. 4/2022 defines virtual assets as, ‘A digital representation of the value that can be digitally traded or transferred, or can be used as an instrument for exchange, payment or investment purposes, including Virtual Tokens, and any digital representation of any other value specified by the Authority in this regard’. Under the Law, virtual assets include cryptocurrencies like Bitcoin

and Ethereum, as well as Non-fungible Tokens (also known as NFTs),” Dr Laura Voda explains. “Cryptocurrencies are digital currencies which are secured by cryptography and based on Blockchain technology rather than by a centralised authority like banks. NFTs are tokens which can be used to represent ownership of unique items such as art or collectibles. As they are unique, they cannot be replicated, which means these tokens can only have one official owner at a time. Therefore, they differ from cryptocurrencies which are identical to each other and therefore can be traded and serve as a medium for commercial transactions.”

“However, it is important to note virtual assets do not include digital representations of fiat currencies, securities and other financial assets,” Dr Laura Voda states.

“Currently, virtual asset permits are limited to offering products and services to pre-qualified investors and professional financial service providers,” Dr Laura Voda continues. “Permits granted by the Authority will be limited in scope and will be rigorously monitored before being issued to the retail sector.”

“In addition, it will not be possible for one of these permits to be assigned to any other entity unless the Authority’s approval has first been obtained,” Dr Laura Voda continues.



Dr Laura Voda
Of Counsel
Fichte Legal



“The Authority will have a range of powers including the power to stop issuing permits, suspend activities of any virtual asset service provider, suspend any dealing in virtual assets for public interest reasons and regulate virtual asset dealing in Dubai.”

WHO AND WHAT DOES THE LAW APPLY TO?

“Dubai Law No. 4/2022 applies to virtual asset services provided across Dubai,” Dr Laura Voda states, “This includes services in the free zones, except for the DIFC. However, it does not apply at a Federal UAE level.”

“It means all entities operating in Dubai and conducting activities covered under this new Law must only do so with authorisation of the regulator. Entities interested in obtaining a virtual asset licence under Dubai Law No. 4/2022 must also establish a corporate presence in Dubai and obtain a commercial business licence from the relevant commercial licencing authority in Dubai, by incorporating as one of the approved legal forms of business.”

“However, the entity does have the option to set up their business either in the mainland Dubai or in any free zone that licenses the activities prescribed by the new Law,” Dr Laura Voda notes. “Although, it should also be noted that approval from the relevant regulator, free zone or the mainland, is a

RELATED LEGISLATION

Article 13 of Dubai Law No. 4/2022

The Authority may not engage in any business or activities or contribute to any projects which will lead to a conflict of interest or affect its performance of the competencies entrusted to it under the Law, or acquire or issue Virtual Assets.

(Source: Lexis Middle East Law)

precondition to obtaining the licence to operate from the Virtual Assets Regulatory Authority.”

WHAT ACTIVITIES WILL NEED A PERMIT?

“Provision of Virtual Asset Platform operation, management services and provision of services of exchange between Virtual Assets and fiat currencies, will need to have a permit under Dubai Law No. 4/2022,” Dr Laura Voda states.

“A permit will also be needed to provide exchange services between one or more form(s) of Virtual Assets, to provide Virtual Asset transfer services or Virtual Asset custody, management or control services.”

“In addition, a permit under this law will be needed for those who wish to provide Virtual Asset Portfolios services or services which involve offering and trading in Virtual Tokens,” Dr Laura Voda continues.

“In this context, the most significant change is that invariably, strict compliance and licensing are needed to

RELATED STORY

Dubai: Virtual Assets Regulatory Authority Becomes First Regulator to Debut in Metaverse

2022-05-04_3

Dubai's Virtual Assets Regulatory Authority has announced it is entering the Metaverse. They become the first regulator globally to do so. They are doing so by establishing a Metaverse HQ in The Sandbox.

carry out transactions relating to digital assets," Dr Laura Voda adds. "It means any listed activity can only be carried out with a permit from the regulator and therefore activities carried without such a permit are banned."

"In addition, an investor may consider the other incentives the UAE provides to the business community, like the taxation regime. Income, capital gains, dividends are not taxed in the UAE and these aspects may make a difference in making the UAE a good choice in this respect," Dr Laura Voda explains.

PREVIOUS STEPS

"Prior to Dubai Law No. 4/2022's enactment, the UAE Government had

taken various steps indicating their interest in promoting the use of digital currencies and virtual assets in a regulated environment," Dr Laura Voda continues.

"For example, the DWTC Authority has signed a cooperation agreement with the UAE Federal Securities and Commodities Authority to regulate crypto assets in the DWTC and expand the scope of licenses in DWTC. In addition, a similar agreement has been signed by the Securities and Commodities Authority with the Dubai Multi Commodities Centre (DMCC) and Dubai Airport Free Zone Authority (DAFZA)."

ELSEWHERE IN THE UAE

"There have been other developments in this area," Dr Laura Voda states. "For example, the ADGM took the lead and in 2017 issued the Guidance on Regulation of Initial Coin/Token Offerings and Virtual Currencies which was followed in 2018 by Guidance on Regulation of Crypto Asset Activities in the Global Market."

"The ADGM was also one of the first jurisdictions to regulate spot virtual asset activities, including those undertaken by multilateral trading facilities, brokers, custodians, asset managers and other intermediaries. Since then, the ADGM's Financial Services Regulatory Authority has also been licensing various relevant businesses, including crypto exchanges or custody service providers."

"The UAE Federal Securities and Commodities Authority has also issued Securities and Commodities Authority Decision No. 23/RM/2020 Concerning Crypto Assets Activities Regulation and Securities and Commodities Authority Decision No. 11/2021 Concerning Guidance for Crypto Asset Regulations which provides detailed guidance on the rules applicable to various activities categorised based on the type of investor which is involved," Dr Laura Voda states.

"The aim of this 2020 Regulation is to codify the offering, issuing, listing and trading of crypto assets and related financial activities in the UAE.

Licensing applications which relate to crypto assets are classified into Exchange, Fundraising Platform Operator, Custody services and Brokerage, and there are minimum capital requirements for each category."

"In this context the definition of crypto assets in the Decision is more specific," Dr Laura Voda continues.

"While a Crypto asset is defined as a 'record within an electronic network or distribution database functioning as a medium for exchange, storage of value, unit of account, representation of ownership, economic rights, or right of access or utility of any kind, when capable of being transferred electronically', the Decision further regulates the possibility that a Crypto asset can be offered as security for commercial transactions."

"A similar approach can be found in the ADGM's framework, regulating Crypto assets, digital securities, Derivatives and Collective Investment Funds of Crypto or even utility tokens," Dr Laura Voda states.

"This suggests market intermediaries and market operators dealing in these Derivatives and Collective Investment Funds will need to be licensed or approved by the ADGM Financial Services Regulatory Authority as Financial Service Provider Holders in these cases," Dr Laura Voda states.

"In addition, in March 2022, the DFSA published a Consultation on the Regulation of Crypto Assets, which is a positive development in the DIFC."

"KIRKLABB, another free zone in Dubai, has also provided investors with an option to pay for their visas and licence fees in digital currencies, including Bitcoin, Ethereum and Tether."

ELSEWHERE IN THE GCC

"Across the GCC, the approach being taken has varied," states Dr Laura Voda.

"Some countries like Qatar have opted for an outright ban on cryptocurrency trading as it violates the country's anti money laundering legislative framework."

"While in Saudi Arabia there is a ban on banks processing transactions involving cryptocurrencies, but no major penalties or actions have been imposed or taken against individuals who have traded in digital assets."

"An NFT marketplace has also been established there to showcase digitally tradeable art. Meanwhile in Bahrain Binance has been awarded a crypto-asset service provider license, and a similar permit was issued to them in Dubai."

WHAT'S LIKELY TO HAPPEN NEXT?

"The wheels have been set in motion for growth of this sector," states Dr Laura Voda. "We may see more developments across the UAE and in other GCC countries. Meanwhile in Dubai, with a new regulator in place, we can expect further implementing decisions on areas likes licensing, associated fees and charges," Dr Laura Voda concludes.

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LEGAL ROUND-UP

COVERING RECENT KEY LEGAL DEVELOPMENTS – REGION-WIDE

UAE

EMIRATISATION CHANGE



The UAE Cabinet has adopted a new approach to increase Emiratisation rates in the private sector by a minimum of 2% annually for skilled occupations within companies of more than 50 employees, with the aim to reach 10% by 2026. All private sector companies that support the hiring and training of Emirati citizens will be eligible for financial benefits, including an 80% reduction in Ministry of Human Resources and Emiratisation (MOHRE) service fees. From January 2023, it is expected that every private sector business that does not comply with the 2% rule will be fined 6,000 AED per month for every Emirati citizen vacancy which has not been filled.

LEAVE FOR PART-TIMERS



The Human Resources and Emiratisation Ministry (MOHRE) has confirmed part-time employees are entitled to annual leave based on their actual number of working hours. Leave levels are based on the total number of working hours, once calculated as full working days divided by the number of working days a year multiplied by the number of annual leave days prescribed by law. The minimum leave is five working days a year. When calculating leave part of a day is considered to be a full day.

SAUDI ARABIA

INTELLECTUAL PROPERTY CHANGES



The Deputy Chief Executive of IP policy and collaboration at Saudi Arabia's Authority for Intellectual Property has announced a new strategy in this area which is part of the plan to promote knowledge-based economic activities within Saudi's economic diversification plans in Vision 2030. Changes include the aim to reduce the average time taken for a patent registration from 24 to 36 months to one year. A National Network of Intellectual

Property Support Centres has also been launched together with the World Intellectual Property Organisation (WIPO).

BAN ON OLD TRUCKS



The Saudi Transport General Authority has announced a ban on lorries over 20 years old from operating in the Kingdom. Companies licensed to operate trucks in Saudi Arabia can now only use trucks there which have had no more than 20 years' operational usage from their date of manufacture. Companies using vehicles made in or before 2001 will have three years to comply with the new rules. In April 2022, the authority also announced that from 5 May 2022, lorries weighing more than 3.5 tonnes which had been manufactured more than five years ago, would be banned from entering the kingdom. The Public Transport Authority has also launched an initiative to support those who transport goods in the Kingdom meet these new requirements.

OMAN

E-PAYMENT SERVICES



Oman has issued Oman Ministerial Decision No. 386/2022 on the provision of e-payment services to consumers. Commercial institutions and companies which operate activities detailed in the Decision's Annex are to provide e-payment service to all consumers. Those who violate this law first receive a warning and they are then obliged to provide these service in under 20 days. After that they are fined 100 Riyals.

QATAR

EMPLOYMENT CONTRACT SERVICE UPGRADE



Qatar's Labour Ministry has upgraded the employment contract authentication e-service. The service allows contracts to be checked

automatically within minutes once a contract authentication request is completed. The new automated contract auditing service includes all employment contracts. However, employment contracts for specialist professions which require auditing of professional certificates are not covered. To use the contract authentication service, a company must have a smart card to verify the relevant official can access the service via the National Authentication System, and a valid bank payment card to pay fees via the payment gateway on the Hukoomi website. They must also complete data registration for the employee and the employer. A copy of the contract extracted from the system is printed in Arabic and the employee's language and then signed by the two parties to the contractual relationship. The contract is then re-uploaded provided it is the signed copy with the additional attachments.

NEW WIRELESS LICENCES



Qatar's Communications Regulatory Authority (CRA) has issued a Class Licence which will allow the use of Radio Local Area Network (RLAN) devices over the 5925 to 6425 MHz range of the 6 GHz band which is 5925 to 7125 MHz.

Commercially this is known as the Wireless Local Area Network (Wi-Fi 6E). The licence will enable any one to possess, use, operate, install and use wireless devices without having to apply for this Class Licence. Licensees will also be able to import and operate wireless devices in Qatar and use the frequency(s) or the frequency band(s) assigned in the licence.

BAHRAIN

COMMERCIAL REGISTRY



Bahrain Decree Law No.27/2015 on the Commercial Registry has been amended following the issue of Bahrain Law No. 9/2022.

As a result the definition of

“Concerned Department’ in this law has been changed to ‘the department having competence of making registrations and annotations for the merchants who are subject to this Law, or Bahrain Bourse Company with respect to the annotations made for Public and Closed Joint Stock Companies’.

KUWAIT

REPORT WEIGHT DIFFERENCES

 The Commerce Ministry Consumer Protection Department has called on Kuwaiti consumers to report any difference between the weight printed on a package and the actual weight of any commodity. Consumers should report the difference in weight to the consumer protection offices which can be found in all governorates.

They can also send a video of the products being weighed to the consumer protection department emergency number, Tel: 55135135. Where a difference in weight is found the company will be penalized. They will be fined and may be referred to the prosecution authorities. According to the law, sellers of commodities should match what is printed on the product’s packaging or its invoice.

IP CONCERN CHANGE

 Kuwait has been removed from the Office of the United States Trade Representative ‘Watch List’ which is a list of countries which US officials believe are weak in enforcing intellectual property rules. The US agency had noted, that the Kuwaiti Ministry of Commerce and Industry and the Copyright Office had both created online portals for streamlining the submission of trademark and copyright violation reports.

Kuwait has also increased engagement and transparency through meetings of the United States-Kuwait Trade and Investment Framework Agreement (TIFA) Intellectual Property Working Group. In addition, Saudi Arabia which was previously on this list has also now been removed from it.

EGYPT

FOOD DISPOSAL LAW CONSIDERED

 Egypt’s House of Representatives is currently considering a new draft food waste law. The aim of the law is to regulate the disposal of food which is still edible and encourage it to be redistributed, recycled and donated instead. Those who waste edible food will be fined between 100,000 and 500,000 Egyptian Pounds.

The disposal of unsold food by retailers will be illegal and this food will have to be donated. Under the law, a national programme on this area will also be established by the Egyptian Food Safety Authority and the Social Solidarity Ministry.

JORDAN

CREDIT ENQUIRY AND OTHER BANK FEES

 The Jordanian Central Bank has asked banks which operate there to stop charging fees when they assess or reassess their client’s credit status and their financial capabilities.

The Central Bank has also told banks operating in the Kingdom to stop collecting fees for querying loans, rescheduling debt and moving from one bank to another. This requirement applies whether or not the request to grant facilities to the client was finally approved or rejected.

MOROCCO

MINIMUM WAGE INCREASED

 The Moroccan Government has signed a collective agreement with the Employer’s Union and other major unions to increase the minimum wage which applies to employees working in both the private and public sector. The agreement states that the minimum wage will be increased by 10% over a two year period in the industry, trade and services sectors.

However, this agreement does not include workers in the agricultural sector. Previously, the minimum wage in Morocco was set at 2,638 Dirhams.

REGULATORY ROUND-UP

UAE: The Ministry of Finance is reviewing service fees payable to Federal entities and Federal Government entities..

Qatar: The new Investment and Trade Court in Qatar has begun operating and will cover settling commercial disputes, including commercial contract and banking operations disputes...

Oman: A new technical chart to ensure safety and quality of products imported into Oman will be introduced from June...

Bahrain: The Information Systems Department of the Industry, Commerce and Tourism Ministry has launched a programme to support Bahraini businesses interested in carrying out exports via electronic trading...

Dubai: Dubai Healthcare City Authority is launching an incentive package for Emirati entrepreneurs, including rent reductions...

Saudi Arabia: The General Transport Authority has clarified that non-Saudi vehicles can transport loads from outside Saudi to a specific destination city or back to their country of origin if they have a permit but not between Saudi cities..

Qatar: The Qatar Labour Ministry has warned employers inspectors will visit sites to check employers are using devices to measure wind speeds and stop cranes operating when wind speeds exceed permissible limits...

Sharjah: Sharjah Executive Council Decision No. 13/2022 has been issued to regulate tourist guides operating there....

Saudi Arabia: The Human Resources and Social Development Ministry is considering amendments to the Labour Law which would lead to a two day weekend for private sector employees...

Abu Dhabi: Abu Dhabi’s Securities Exchange is allowing investors with a national investor number in other Securities and Commodities Authority Emirati financial markets to trade shares there....

Oman: Oman Sultani Decree No. 29/2022 has ratified a maritime transport cooperation agreement between Oman and Iran...

Kuwait: The Central Bank has asked local banks to stop charging fees for local electronic transfers..

Kuwait: Municipal authorities have announced a crackdown against illegal billboards. Fines for illegal and unsightly advertisements will start at 100 Dinars per advert.

LAW MONITOR

RECENT LEGAL DEVELOPMENTS IN THE GCC

UAE - HEALTH AND SAFETY



Cabinet Decision No. 33/2022 which covers work injuries and occupational diseases has been issued. The law covers the reporting procedures which must be followed when a work injury or occupational disease occurs. There is also a provision on the investigations which should take place when this happens. The appendices to the law includes a list of different types of occupational disease and the type of work which can cause it, and the assessment for compensation in the case of permanent total and permanent partial disability.

OMAN - LEGAL PROFESSION



Oman Ministerial Decision No. 34/2022 has detailed a new code of conduct and ethics for the legal profession in Oman. The code covers a variety of areas including the general duties of lawyers and specific duties related to legal consultancy work. Also covered is, their relationship with colleagues and clients, and relationships with the judiciary, witnesses, experts and litigants.

GAZETTE WATCH

UAE Official Gazette No. 726 of 2022 – This Gazette includes Ministerial Decision No. 203/2022 on identifying high risk facilities.

Sharjah Official Gazette No. 2 of 2022 – This Gazette includes Sharjah Emiri Decree No. 10/2022 on the establishment of the Department of Agriculture, Livestock and Fisheries in Sharjah.

Dubai Official Gazette No. 569 of 2022 – This Gazette includes Dubai Administrative Decision No. 109/2022 on regulation of maintenance work licensing.

Saudi Arabia Official Gazette No. 4923 – This Gazette includes Saudi Arabia Ministerial Decision No. 758/1443 on the approval of the rules and mechanism of work of committees considering requests for ownership of modified real estate.

Qatar Official Gazette No. 3 of 2022 – This Gazette includes Qatar Ministerial Decision No. 2/2022 on distinctive labels to be put on excise goods.

Oman Official Gazette No. 1441 of 2022 – This Gazette includes Oman Ministerial Decision No. 75/2022 which has amended the Tourism Law Implementing Regulation.

Kuwait Official Gazette No. 1682 of 2022 – This Gazette includes Kuwait Decision No. 69/2022 On the regulation on protecting the rights of users of communications and information technology services.

Bahrain Official Gazette No. 3602 of 2022 – This Gazette includes Bahrain Decision No. 3/2022 amending Bahrain Decision No. 2/2022 on the stages for implementing the Law of Special Mark on Selective Commodities (Cigarettes).

(Source: Lexis Middle East Law Official Gazette Index)

QATAR - INSURANCE



Qatar Law No. 22/2021 came into force on 4 May 2022. It confirms healthcare services are provided to Qatari nationals in Public Health Facilities at no cost. Health insurance is now compulsory for expatriates and visitors to Qatar. Entry visas and residence permits will not be issued and/or renewed without providing proof that the individual has healthcare insurance in place. Employers must pay premiums for essential healthcare insurance for their employees and their family members who reside in Qatar. Fines for violating this law range from 30,000 to 500,000 Riyals.

SAUDI ARABIA - IMMIGRATION



The Saudi Cabinet has approved a Premium Residency Law. Under the law those who pay a specific one off fee to obtain a permanent residency permit will be entitled to obtain a range of benefits. The same benefits will be available to those who pay annually to receive a temporary residence permit. It will not be necessary for an applicant to be resident in Saudi in order to apply for this type of residence permit.



FEATURED DEVELOPMENT

Darcy White, PwC Oman Tax & Legal Services Leader & Gaurav Kapoor, Director - Tax Reporting & Strategy Leader for Oman, PwC Middle East take a look at recent amendments to the Implementing Regulations to Oman's Foreign Capital Investment Law.

Oman Ministerial Decision No. 306/2022 which was recently issued has amended certain Articles in the Implementing Regulations to the Foreign Capital Investment Law, Oman Ministerial Decision No. 72/2020. The amendments have been introduced as part of a series of steps which are currently being taken by the Omani Government to improve the business climate there and help make it a more attractive place for foreign investors to come and invest in. It is hoped too this will ultimately help to achieve Oman's economic development goals which form part of Oman's Vision 2040.

The aim of these changes appears to have been to improve the legislative framework of the Foreign Capital Investment Law in a way which enables and enhances potential foreign investment opportunities to arise and prosper. They highlight the role of individuals, establishments, and companies, in promoting and attracting foreign investments in Oman. They also see changes to some of the rules relating to foreign investment licence and permit applications.

For example, Article 5 of Oman Ministerial Decision No. 72/2020 has been replaced with a new Article which provides that the Ministry of Commerce,

Industry and Investment Promotion (MOCIIP) will authorise individuals, establishments and companies, both inside and outside Oman, to promote investment opportunities and attract foreign investors there. They will be able to encourage them to invest in Oman, in line with certain rules which are to be specified in another Ministerial Decision.

This change is likely to create large potential opportunities for foreign investors as it will extend the role they can take in promoting and attracting foreign investment, an area which in the past was limited to governmental bodies.

In addition, Article 7 of Oman Ministerial Decision No. 72/2020 has been replaced and the amended Article now states only offices which have been authorised by MOCIIP will be able to review these applications. Although once again another Ministerial Decision is to be issued to regulate the procedures and rules which will be related to these offices and the obligations they will have which will include a due diligence obligation to examine these applications, associated information, and supporting documents for accuracy, ensuring the timely completion of applications, and that information provided is held confidentially.

BAHRAIN - MARITIME



Bahrain Law No. 10/2022 On Promulgating the Maritime Law has been issued. This major code has 388 provisions and covers areas including maritime insurance, transport and maritime trade, sea ports and ship and marine navigation.

KUWAIT - DISABLED RIGHTS



Regulations have been issued in the form of Kuwait Administrative Decision No. 340/2022 on Kuwait Law No. 8/2010 on the rights of people with disabilities. The main law covers areas including rehabilitation and employment of disabled people and their use of private vehicles designed for public use. It also includes provisions on the working hours of employees with disabilities or employees who take care of a child or spouse with a moderate to severe disabilities.

TAX AND FINANCE ROUND-UP

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UAE

CORPORATION TAX IN THE FREEZONES

 Following the announcement in January that a Federal Corporate Tax could be levied on tax years starting on or after 1 June 2023 a public consultation was launched on the subject which ended on 20 May 2022. The consultation has provided details on a number of areas, including the treatment of freezone companies. A Free Zone Person can benefit from a 0% rate on income earned from transactions with businesses outside of the UAE, or from trading with businesses located in any other Free Zone. The 0% rate may also apply to income from certain regulated financial services directed at foreign markets. A Free Zone Person with a branch in mainland UAE will be taxed at the regular rate on its mainland sourced income but will benefit from the 0% rate on their other income. If they transact with mainland UAE but do not have a mainland branch, they can continue to benefit from the 0% rate if their income from mainland UAE is limited to 'passive' income', which includes interest, royalties, dividends and capital gains from owning shares in mainland UAE companies. The 0% regime will also apply to transactions between Free Zone Persons and their group companies located in mainland UAE. However, payments made to the Free Zone Person by a mainland group company will not be deductible expenses. A Free Zone Person located in a Designated Zone for Value Added Tax (VAT) purposes can benefit from the 0% rate on income from the sale of goods to UAE mainland businesses that are the importer of record of those goods, but any other mainland sourced income will disqualify a Free Zone Person from the 0% regime for all their income. A Freezone Person will be able at any time to make an irrevocable election to be subject to the regular Corporate Tax rate. It has also been stated that it is not intended that businesses will have to restate their balance sheet on entering into the CT regime. Instead, a taxable person's opening balance sheet for corporate tax purposes

would generally be their closing balance sheet for financial reporting purposes for the period that ended immediately before their first tax period began.

ADGM

DEFI DISCUSSION

 The ADGM's Financial Services Regulatory Authority (FSRA), has issued a discussion paper on decentralised finance (DeFi). DeFi protocols use blockchain-based technology and smart contracts to record financial transactions and transfer funds. They aim to improve efficiency in markets by reducing reliance on traditional financial institutions. The FSRA wants to focus on transparency when deciding whether to recognise a DeFi protocol, including the track record of their controller, how governance decisions are made and the technology underpinning the protocol. Any future regulatory framework will not allow anonymous participants in DeFi protocols.

The regulator wants the option to approve specific DeFi protocols, which will be held to a higher standard than recognised protocols. The FSRA is likely to require firms engaging in DeFi activities to provide additional disclosures to their customers, such as explaining the risks associated with DeFi in clear, easily understandable language.

SAUDI ARABIA

OBJECTION GUIDE

 The Zakat, Tax and Customs Authority (ZATCA) has issued new guidance on the procedure for filing objections.

The Guide covers objections involving all types of Saudi taxes, except for Customs issues. It deals with ZATCA's internal dispute procedure but does not comprehensively cover disputes which have been taken to the General Secretariat of Zakat, Tax and Customs' Committees. The Guide also has a list

of specific cases where the Authority is expected to share information with the taxpayer. It is stated taxpayers have the right to object to an Authority 'decision' and the term 'decision' is interpreted in a broad sense, so is not limited to assessments and penalties and cover registration refusals, refusals of licenses (for Excise Tax), and refund refusals.

VAT ON USED CARS

 The Saudi Zakat, Tax and Customs Authority (ZATCA) has stated those selling used cars will have to pay VAT if the cars are sold from a showroom or if they are registered for the VAT system. Those selling used cars but who are not registered for VAT and are not carrying out commercial activity are not subject to VAT.

In addition, ZATCA has clarified the position when buying and bringing in cars from abroad into Saudi Arabia, following a query from someone who was about to bring in a car from Bahrain into Saudi Arabia.

The first condition in doing so is that cars manufactured before 2017 cannot be brought into the country.

In addition, any vehicle purchased abroad must comply with Saudi specifications and standards, including fuel economy standards. Information on a car's specifications can be confirmed with the Saudi Standards, Metrology and Quality Organisation.

Customs duties of 5% will also be levied on the value of the vehicle. While a VAT rate of 15% will be levied on the total value of the vehicle.

QATAR

CUSTOMS AND SPORTS

 The General Authority for Customs in Qatar has launched a special Sports Event Management System. The system which is part of the Al-Nadeeb customs clearance system will be a special customs platform for sporting events, including the World Cup.

BAHRAIN

CROWDFUNDING RULES

 The Bahrain Central Bank has set new rules on crowdfunding based activities, following a comprehensive review of the existing regulations.

They include rules on both equity and financing-based crowdfunding. The new regulations detail principles governing the conduct of operations by a crowdfunding platform, and rules on platform offers and disclosures.

Methods for avoiding conflicts of interest are also included as are the rules on segregating client money from platform operators to ensure safe operation of the activity.

DIGITAL STAMP SCHEME

 Bahrain's National Bureau for Revenue has launched a Digital Stamps Scheme as part of measures to ensure excise tax implementation there. The Scheme will track excise goods from manufacture to consumption through digital stamps, which will contain security features and codes. Using the stamps it will be possible for the authorities to identify product details and limit attempts to smuggle excise goods into Bahrain. The stamps on goods will be scanned at entry points to Bahrain to ensure product authenticity. Excise taxpayers who import tobacco products and their relevant supply chain organisations from production to when products are released onto the local Bahraini market, are part of the first phase of the stamps' rollout. Further phases involving other excise product types will be rolled out going forward.

OMAN

FINANCIAL CONSUMER PROTECTION FRAMEWORK

 Oman's Central Bank (CBO) has issued a Financial Consumer Protection Regulatory Framework for licensed banks, and finance and leasing Companies (FLCs) there.

The framework covers five areas which include disclosure and

TAX TREATY UPDATE

UAE: The UAE and India have signed a Comprehensive Partnership Agreement. Over the next five to 10 years zero tariff access for Indian products to the UAE will increase to 97% of UAE tariff lines.

Oman: Oman and India had held talks on a bilateral protocol on Investment and Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

transparency, fair treatment and business conduct, data protection and privacy, provision of dispute resolution mechanisms and provision of financial education and financial capability. It details the format and manner of disclosure in advertising and sales materials, and disclosures of terms and conditions. It requires specific information on product risks, conflict of interests and key fact statements. There are also requirements for contract notes and statements, and notifications of changes to rates, terms and conditions. In addition, there are requirements on unfair terms and conditions, unfair practices, sales practices and considerations of product suitability. Customer data must also be lawfully collected, used, and held securely.

VAT ZERO RATE AND SHOPS

 The Oman Consumer Protection Authority has instructed all shops to provide lists of all zero rate VAT items. It has been stated shops should clearly label or mark all items which are taxed at 0% for VAT purposes.

TURKEY

TAX LAW AMENDMENT

 Turkey Law No. 7394/2022 On Certain Amendments to Utilisation of Immovable Properties Belonging to the Treasury and to the Law on Certain Amendments to Value Added Tax Law and to the Law on Amendments to Certain Laws and Statutory Decrees has been issued bringing in a number of significant changes to Turkish tax legislation. These include an increase on the upper limit of prison sentences for tax fraud crimes to five years for crimes which had an upper

limit of three years, and to eight years for those which had an upper limit of five years. In addition, various temporary VAT amendments have been introduced. For example, a VAT exemption has been introduced for goods and service deliveries for construction work which is within the scope of investment incentive certificates which are related to the manufacturing industry and tourism. This particular exemption will remain in place until 31 December 2025.

EGYPT

INCOME TAX AMENDMENTS

 The Egyptian Finance Minister, has confirmed that amendments to the Income Tax Law, have been approved by the Council of Ministers and referred to the Parliament. The changes include increasing the personal tax exemption limit from 9,000 to 15,000 Egyptian Pounds. They also include providing an incentive for individuals to request electronic invoices and receipts, and for those who report cases of tax evasion.

VAT AND STAMP DUTY

 Egypt Law No. 3/2022 has been issued amending the VAT Law and Stamp Duty Tax Law there. The Law includes new and multiple tax exemptions targeted at vital services which affect the lives of Egyptian nationals and sectors which support industrial and economic growth. Amendments to the VAT Law include granting goods or services exported by projects in economic zones of a special nature abroad, or imported into them, with a change in tax treatment in order to encourage investment in these zones of a special nature, by not charging VAT on goods or services imported for these projects.



BLOWING THE CORPORATE WHISTLE

The Dubai Financial Services Authority (DFSA) has recently introduced a regulatory regime to promote and improve whistleblowing protection for individuals and DFSA regulated establishments. **Thenji Moyo** from Gateley LLP (Dubai) considers the latest developments around blowing the corporate whistle.

“Whistleblowing or highlighting a wrongdoing in the workplace is an important tool when it comes to combating unethical behaviour or corporate crime, and can also be particularly helpful in preventing corporate fraud and corruption,” Thenji Moyo states.

“A strong whistleblowing culture also helps to promote transparency, raises ethical standards and minimises losses in terms of legal costs and financial penalties, while also helping to protect corporate reputations and create a safer working environment for all employees.”

“Under the DFSA whistleblowing Regime (Regime), a whistleblower is an individual who reports or reveals information about an activity due to a ‘reasonable suspicion’ that a regulatory entity be that their employees, officers or agents has or might have contravened DFSA Regulations or committed a financial crime, including money laundering or fraud,” Thenji continues.

“Often a wrongdoing is known or uncovered by employees in the workplace, but because of the fear of retaliation whether in the form of discrimination, bullying, harassment or victimisation, the individuals who have uncovered it, are reluctant to then report it,” Thenji adds.



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WHAT'S CHANGED?

"In recent years levels of whistleblowing protection has been rapidly increasing in the UAE," Thenji states. "For example, Article 64 of DIFC Law No. 7/2018 the (DIFC Operating Law), sets out whistleblower protection in the DIFC for those who report possible or actual contraventions of that law, its regulations or any law administered by the DIFC registrar and places an obligation to disclose wrongdoing and provides protection for the whistleblower from suffering a detriment such as being dismissed from their employment," Thenji adds.

"However, protection under the Operating Law was limited, so in order to improve the whistleblowing culture, deter wrongdoing and provide better protection, in the last 12 months, the DFSA has embarked on extensive public consultations on whistleblowing measures," Thenji continues.

"On 7 April 2022, the new DFSA Whistleblowing Regime came into force. As a result, changes have now also been made to the DIFC Regulatory Law, DIFC Law No. 1/2004 which improve the legal protection granted to whistleblowers who report suspected misconduct such as irregularities, financial crimes and miscarriages of justice in DFSA regulated entities, externally to their auditor, to the DFSA or a law enforcement agency," Thenji states.

"In addition, under this new Regime, DFSA entities must put in place effective policies and procedures to support these requirements. This means DFSA regulated entities have to incorporate and provide procedures for reporting contraventions and also improve the protection they provide to whistleblowers," Thenji adds.

PROTECTED DISCLOSURE

"A good whistleblowing environment will be one which fosters and encourages employees to raise serious concerns, in a safe environment without fear of reprisals because adequate protections are in place," Thenji states.

"However, it should be noted in order for a disclosure to be protected under this Regime, the whistleblower must have a 'reasonable suspicion' that a regulatory entity be it, their employees, officers or agents have or might have contravened the law, DFSA rules and regulations or have committed a financial crime including money laundering or fraud," Thenji adds.



Thenji Moyo
Legal Director
and Head of
Employment
Gateley UK LLP
(DMCC Branch)

"Under this Regime, a whistleblower can make that disclosure internally or directly to the DFSA even if an internal report has not been made."

"The DFSA has also created a special email address which is whistle@dfsa.ae, for these reports," Thenji adds.

"The DFSA will treat all disclosures confidentially and access to the information in the DFSA will be limited to required specialist experts."

THE TEST

"The test for a protected whistleblowing disclosure is an objective one, based on reasonable suspicion."

"The disclosure must satisfy the good faith and reasonableness test in order to qualify as a valid disclosure warranting whistleblower protection," Thenji states.

"There are cases where disclosures are found to be illegitimate or made for malicious reasons such as personal vendettas or a general grievance."

"Therefore, the individual making the disclosure must be sure the disclosure has been made honestly and in good faith," Thenji continues.

"As a result, an individual who is considering making a whistleblowing disclosure should look at the evidence they have to support their report and think about whether their disclosure meets the test," Thenji adds.

"Potential whistleblowers should also note that the DFSA will not provide any legal advice or guidance as part of the process."

"The DFSA aims to handle disclosures quickly and has set a target of 28 days to respond to them from when the disclosure is made."

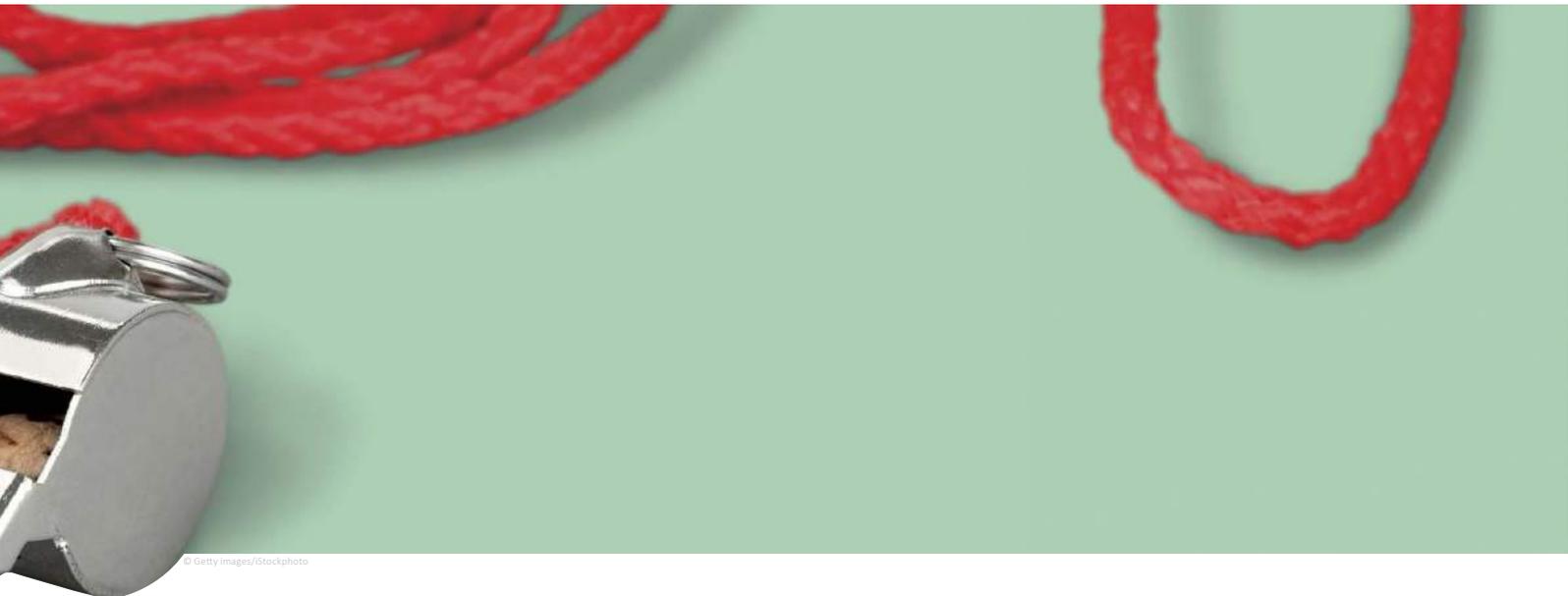
"Those making a disclosure may also receive further requests for information to help the regulator reach an initial assessment."

RELATED LEGISLATION

Article 68A(1) of DIFC Law No. 1/2004

A person who makes a disclosure of information specified in Article 68A(2) to a person specified in Article 68A(3) is entitled to the relevant protection.

(Source: Lexis Middle East Law)



REGULATED ENTITIES

“An individual making a disclosure will want reassurance at that time that the report will not negatively impact their career or current position,” Thenji states.

“Therefore, it is important that the regulated entity gains the trust and confidence of all its employees, offices and agents, to ensure they have sufficient reassurance that there is a strong and safe ‘speak up’ culture,” Thenji adds.

“As a result of the introduction of this new Regime, DFSA entities should also take immediate steps to review and update their internal policies and procedures in this area to ensure internal arrangements are in place to promote safe disclosure, and there are effective procedures in place to deal with any whistleblowing reports. They should also ensure that all employees are aware of these policies and procedures,” Thenji states. “They should make sure policies and procedures on this area are accessible and measures have been put in place to protect the whistleblower’s identity and confidentiality. They should also ensure there are measures to protect whistleblowers from retaliation, detriment, victimisation and discrimination and they have procedures to deal with conflicts of interest. All employees will also need to be trained and educated on these revised internal policies and procedures so they are fully understood and a transparent environment is fostered,” Thenji states.

“A clear well written policy will set the corporate standard. In addition, updating a current whistleblowing policy can provide a good opportunity to retrain and refresh all employees on the expected corporate culture. It will also help protect the entity if there are any malicious disclosures as there will be clear guidelines on how disclosures are managed in the organisation,” Thenji notes. “Regulated entities should consider various ways of promoting transparency and an overall whistleblowing culture. However, the selected mechanisms also need to align with the

Regime and the nature of the business and its sector.”

“In practice various corporate initiatives tend to be used to promote whistleblowing culture. These include creating special lines which employees can call anonymously to report irregularities or financial crimes, creation of suggestion boxes in various locations around the business where employees can anonymously drop off a report, use of a special whistleblowing email addresses or the appointment a ‘whistleblower champion’, who is usually an independent employee or officer of the entity who manages whistleblowing reports,” Thenji adds. “Such initiatives can go a long way to ensuring a robust process is in place.”

WHAT SHOULD REGULATED ENTITIES DO?

“As with any new Regime, it will also be important for the regulator to review the impact of these new provisions and measure their effectiveness,” Thenji Moyo adds.

“Therefore, the DSFA has stated they will monitor and review compliance of the Regime and assess its impact on the whistleblowing culture. In mid-2023 the DFSA intend to carry out an implementation review and are likely to increase the scope of the Regime and bring in tighter controls if the impact of these changes brought in by the Regime has been minimal. Therefore, DFSA regulated entities should be taking immediate steps to review their existing procedures in light of the recent changes. Looking forward, it is also likely more stringent whistleblowing legislation could be brought in, in the near future across the whole UAE and not just in the specific contexts we have seen to date with the DIFC Operating law and this new DFSA regime.”

RELATED STORY

UAE’s new whistleblowing regime ‘significant and positive’ step for employees

2022-04-21_17

New whistleblower regulations launched by the Dubai Financial Services Authority (DFSA), the financial regulator in the DIFC, will ‘bolster’ protections for employees operating in the DIFC, and encourage ‘an environment of transparency and accountability’.

CASE FOCUS

Case No The Industrial Group Ltd v Abdelazim El Shikh El Fadil Hamid, DIFC 029/2018 on 6 April 2022
Jurisdiction DIFC
Court DIFC Court of First Instance
Recommended by Outer Temple Chambers

WHAT HAPPENED?

Mr El Fadil Hamid (the employee) was the finance director of The Industrial Group Ltd (TIG). Initially, he had a good relationship with the company's chairman whom the Court found dominated its affairs. As part of that relationship, the employee often paid the chairman's personal expenses from his own bank account, on the understanding that in due course he would receive reimbursements for these payments from the company and in due course arranged for payment of them to himself.

In January 2018, the employee decided he wanted to retire and the parties' relationship then deteriorated dramatically. The employee gave 90 days' notice of his resignation on 29 April 2018. However, on 8 May, he was summarily dismissed for alleged misconduct for procuring the reimbursement payments. DIFC Court proceedings were commenced by both parties. TIG claimed that Group funds had been dishonestly transferred to the employee's personal bank account. At the same time TIG made a complaint to the Dubai Police. The employee claimed he had been wrongly dismissed and therefore was entitled to an end of service gratuity which TIG refused to pay together with damages for abuse of process and malicious prosecution.

TIG's police complaint resulted in the employee's passport being confiscated, other severe adverse consequences and an extensive review of the relevant documents by a Dubai Court expert, who concluded the employee was entitled to the reimbursement payments which had been made to him. That aspect of the DIFC Court proceedings was determined in the employee's favour before trial so the remaining issues were the employee's counterclaims against TIG.

WHAT WAS DECIDED?

The test for lawfulness of summary dismissal specified in Article 59A of DIFC Law No. 4/2005 (the

previous Employment Law and now found in Article 63(1) of DIFC Law No. 2/2019) is a two stage test. The first is whether 'the conduct of one party warrants termination' and replicates this aspect of the common law test for summary dismissal. The second is 'whether a reasonable employer would have terminated the employment on that ground' and is an objective test unrelated to the beliefs or understanding of the relevant employer. This differs from this aspect of the applicable common law test ('whether a reasonable employer could have terminated the employment on that ground').

The DIFC Courts held that although there was a technical breach of the company's authorisation policy (some of the payments made to the employee had not been specifically approved in writing by the Chairman), as there were physical documents establishing the entitlements to payment in the possession of TIG from January 2018 the first stage of the test was not satisfied and even if it had been, the second stage of the test was also not met:

What a reasonable employer in the same position as TIG would not have done would be to proceed in the same way as TIG did. TIG had unfairly developed a hostile and unbalanced case against the employee and had deliberately excluded him from the process of review of his claims with the aim not only of dismissing him summarily but also of having his passport confiscated by pursuing a criminal complaint against him that he was guilty of embezzlement ending with his conviction for that crime.

As a result, the summary termination was not lawful, and the employee was entitled to his end of service gratuity. As this had not been paid within the prescribed time, he was also entitled to the penalty then provided in the Employment Law which by the time the case was determined was over 7.5 million AED.

The torts of abuse of process and malicious prosecution torts are not the subject of comparable provisions in the DIFC Law of Obligations (DIFC Law No. 5/2005).

Given the findings of fact, it seems likely that the elements of these causes of action were made out under English law.

TIG argued DIFC Law No. 5/2005 operated as a code and as a result precluded these claims. The

employee argued that, as the DIFC Courts were courts of common law and there was no specific DIFC Law which precluded the actionability of these torts in the DIFC, they ought to be regarded as actionable there.

The Court concluded that these causes of action were not actionable in the DIFC because the waterfall provision in Article 8(2) of DIFC Law No. 3/2004 (the DIFC Law on the Application of Civil and Commercial Laws in the DIFC) had the effect that it was the DIFC law which applied as the jurisdiction most closely connected to the facts and people involved. The absence of recognition of either tort in DIFC Law No. 5/2005 was accordingly fatal to this aspect of the employee's case.

If this view is correct, one consequence is that if the case were to arise in the Abu Dhabi Global Market (ADGM), whose Courts apply the law of England and Wales more generally, the result would be different. The discussion of the issue in the reasons for judgment suggests that in the Court's view this aspect of the case was not as fully argued as it might have been. In particular, DIFC Laws like the Law of Contract (DIFC Law No. 6/2004) have generally not been regarded as codes, but as setting out the general rules in respect of which elucidation has frequently been obtained by reference to the laws of England and Wales.

The very existence of the DIFC Courts and their inherent right to control abuse of process may well provide a basis for an argument that such conduct was actionable as well as subject to formal disciplinary processes. It is understood that the decision may be appealed. If it is, no doubt this aspect of the matter will be more fully explored.

WHY'S IT SIGNIFICANT?

The decision highlights two significant aspects of DIFC law. The first is the need for employers, if considering summary termination of employment, to carefully review their proposed action not only from the standpoint of their own assessment of the position, but also from the likely standpoint of objective third parties.

This includes proceeding fairly and being seen to do so, as this will be the standard applied by the Court if the matter comes before it. The second is that to the extent DIFC Law No. 5/2005 does not provide for a tort known to the common law, unless this decision is varied on appeal, that tort will not be actionable in the DIFC Courts.

Case No **Société Générale De Banque Au Liban S.A.L and Bank Audi S.A.L, QB-2020-003992, 7-11, 14-16, 25 February 2022**

Jurisdiction **UK & Lebanon**

Court **UK High Court of Justice, Queen's Bench Division**

Recommended by **Bryan Cave Leighton Paisner LLP**

WHAT HAPPENED?

Lebanon was plunged into an economic crisis in October 2019 and this prompted Lebanese banks to unilaterally introduce restrictions on their customers in an attempt to prevent money from being sent abroad by depositors.

These restrictions effectively amounted to exchange controls. The controls limited these customers' ability to transfer their money out of their own accounts in Lebanese banks.

Vatche Manoukian, was a dual national of both Lebanon and the UK who was one of those depositors who was impacted by the Lebanese banks' introduction of de facto capital controls.

He sought orders of specific performance requiring the banks to effect international transfers to him of his funds and he also alleged there had been preferential treatment of other depositors in order to allege bad faith and abuse of rights by Société Générale De Banque Au Liban SAL.

The proceedings were then issued in late 2020.

Mr Manoukian won his case against two Lebanon-based banks, Société Générale De Banque Au Liban SAL (which is Lebanon's largest bank) and Bank Audi S.A.L.

The banks were ordered by the court to transfer his personal funds out of Lebanon.

After an earlier initial decision, the full judgment was handed down by Mr Justice Picken on 25 March 2022 in favour of Mr. Manoukian. .

WHAT WAS DECIDED?

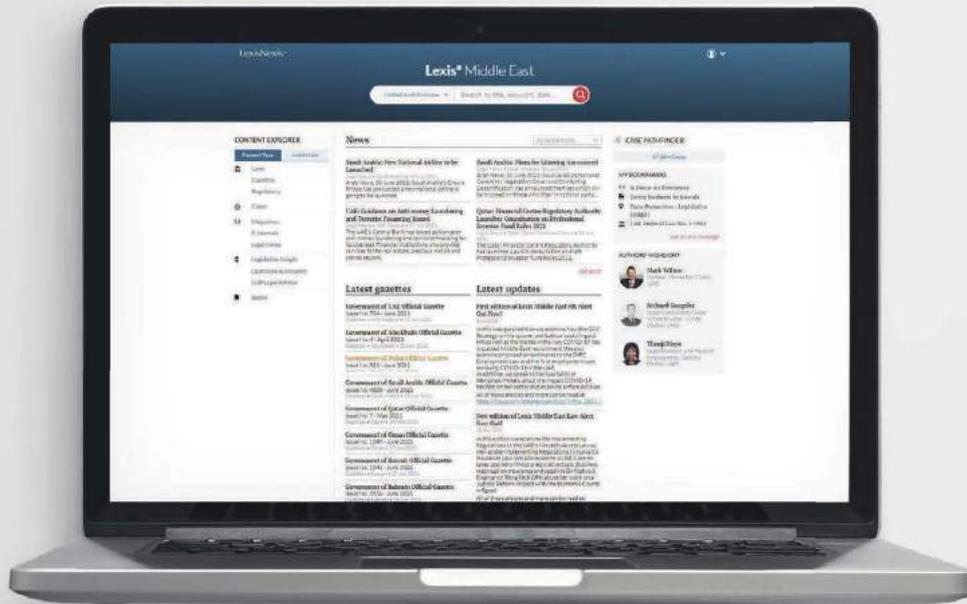
The banks have been ordered by the court to transfer the depositor's personal funds out of Lebanon.

The Court held Mr Manoukian had a right to an international transfer, entitling him to orders for specific performance against the two banks. The finding was based on the terms of the contracts and the wider issue of Lebanese banking custom which was incorporated into the contracts under the Lebanese Civil Code.

The banks used Lebanon's uncertain financial climate in their argument and claimed they were entitled to refuse to make the requested transfer given Lebanon's economic crisis. The court considered the context but ultimately dismissed the banks' pleas that they were under no obligation to make the transfer, either contractually or as a matter of Lebanese customary law. The Banks are currently seeking permission to appeal.

WHY IT'S SIGNIFICANT?

This decision is the first fully reasoned merits decision in any jurisdiction outside of Lebanon on this subject. It holds, banking customers have a right to an international transfer as a matter of Lebanese law (subject to the contract the customer has with the banks). It is likely this decision will be viewed with significant interest by the whole Lebanese diaspora and in particular where an individual in the UK and other jurisdictions has deposits in Lebanese banks.



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LEGAL COUNSEL – ENERGY



Evolution and renewal

Sara Al Abdawani, Legal Counsel at Oman Shell discusses her and her company's role in local energy diversification.

ABOUT YOU

After graduating as one of the top five IB students in Oman, I was fortunate to receive a full scholarship to follow my passion to study law. After studying at Warwick University and University College London, I opted for a career as an inhouse lawyer so I could work in organisations which have an impact on society. I am lucky to have been able to develop in areas which are close to my own values and to also help organisations which want to support Oman's infrastructure, environment and economy. I began my legal career in the public sector at the Ministry of Legal Affairs as part of the Directorate of Contracts and International Agreements which included time as Acting Head of the Contracts Department. I then moved into the private sector where my roles included Head of Compliance at Standard Chartered Bank-Oman and Legal Advisor at Haya Water before joining Oman Shell as Legal Counsel. This has given me a lot of experience in ethics and compliance, arbitration, negotiations, trade union matters and infrastructure projects.

YOUR CURRENT ROLE

Oman Shell is a subsidiary of Shell plc which was founded in 1907 as a result of the merger of the Royal Dutch Petroleum Company and the Shell Transport and Trading Company. The company has operations in 99 countries and a workforce of approximately 86,000 worldwide. It is active in every area of the oil and gas industry, including exploration, production, refining, transport, distribution and marketing, petrochemicals, power generation and trading. We produce approximately 3.7 million barrels of oil a day and have around 44,000 service stations worldwide.

I currently work as Legal Counsel supporting Upstream Conventional Oil and Gas. My responsibilities include providing legal opinions to all the departments, giving advice to management, reviewing contracts, policies and other documents, negotiating agreements and providing legal support and opinions to project teams. I also actively support Oman Shell in its diversity and inclusion, ethics and compliance and energy transition goals. I am an Executive Member of Shell's Oman Women's Network which aims to foster diversity and inclusion and provides women across three oil and gas companies in Oman with guidance, mentoring and provides a safe environment to speak up and share experiences. I am also a member of the Ethics and Compliance Committee which aims to ensure the organisation is fully compliant by identifying gaps and raising overall awareness through training on



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anti-bribery and corruption, anti-trust, trade compliance, data privacy, anti-money laundering, intellectual property and disclosure rules. I am also a member of the FEL Hub in Oman which brings together people across the organisation who are interested in supporting the acceleration of energy transition by driving forward projects and organising events, in line with Oman's Vision 2040.

YOUR INDUSTRY

The energy sector is evolving globally and is no longer only focused on oil and gas. There is a big shift towards renewable energy. In Oman there has also been a greater focus on renewable energy projects such as electricity generation by solar and wind power. However, while hydrocarbon sources of energy are regulated in Oman under the Oil and Gas Law (Oman Sultani Decree No. 8/2011), the renewable energy sector here is still primarily governed by the Electricity Sector Law (Oman Sultani Decree No. 78/2004) which is the only Law which governs energy generation in Oman.

This could pose a challenge as a new ecosystem needs to be built in Oman to support successful energy transition. This includes looking into other energy sources such as hydrogen and building infrastructure for the supply and use of this energy. This will need to include power stations and the use of electric vehicles. Other energy sector areas which also need to be considered include carbon capture and storage, which will support and accelerate the transition to zero emissions. Having said this, in Oman, we are seeing the importance of driving change in this area and focussing on creating these regulations and the supporting infrastructure. The Oman Vision 2040 is also looking into diversification from oil and gas and at sources of sustainable energy. This local drive towards energy diversification, sustainability

PRACTITIONER PERSPECTIVE



Charles Dolphin
Senior Associate
CMS Oman

Charles Dolphin, Senior Associate at CMS Oman examines how the development of green energy in Oman is being supported by legal change and new projects.

The Omani Government, in common with other GCC Governments, has set itself ambitious targets for green energy production. The most recent is that 16% of Oman’s electricity generation will come from green energy sources by 2025 and 30% by 2030. Oman’s Vision 2040

has also set preserving environmental sustainability, including using sustainable sources of energy, as one of its main pillars. Supporting these targets, the Authority for Public Services Regulation (APSR) announced on 14 March 2022 that Oman would be taking a clean break from new gas-based power generation investments for the foreseeable future, in line with its commitment to harnessing renewables in order to increase their share in meeting national energy requirements. In Oman, the impetus for developing green energy comes from the very top, as the Sultan issued a Royal Directive in March 2022 which ordered a new general directorate for clean energy and hydrogen power to be created within the Energy and Minerals Ministry and a new company to be established to develop the clean energy and hydrogen sector there. Although, this new company’s remit is still unclear, it is expected to lead on direct Government investment in the sector. The Sultan has also directed relevant Government authorities to prioritise the preparation of regulations which will govern the clean energy and hydrogen sector.

In addition, Oman has stepped up its procurement of utility scale renewable energy projects. The Oman Power and Water Procurement Company (OPWP) awarded the Ibri II Solar IPP, to a consortium led by ACWA Power, and it began commercial operations in January 2022. In addition, a further OPWP solar IPP, Manah Solar I, which has a capacity of 500MW, is currently going through its procurement process.

OPWP’s Wind IPP 2025, which has a capacity of around 100 MW, is also expected to be established in Jaalan Bani Bu Ali within the Main Interconnected System. Wind 2025 may also include a much larger project, which has been sized at 300 MW and is planned in Duqm. OPWP and Oman Environmental Service Holding Company (be’ah) also signed a cooperation agreement in

March 2022 to proceed with the procurement of the much-awaited waste-to-energy plant in Barka, Oman.

Building off the success of Petroleum Development Oman (PDO)’s first utility scale solar IPP, the 100MW Amin IPP, that company is now also procuring a 100 MW capacity wind farm, Riyah IPP and a 100 MW peak ac capacity based solar project with battery storage IPP (which will see 30MW continuously supplied during the night) called North Solar Storage IPP, which are both expected to be in commercial operation in 2023. However, it is not just utility scale projects which are contributing to the increases in green energy in Oman. APSR, has also recognised the desire of individual homeowners and businesses to contribute to the growth of green energy there and, has also launched the Sahim initiative.

This aims to provide innovative solutions in green energy production by allowing residents to install solar systems on the roofs of their homes and to use the electricity generated as well as being compensated for any excess electrical energy they produce. Sahim 2 aims to drive wide-scale deployment of small (3-5KWp) grid connected PV systems for up to 30% of residential premises in Oman. It is important to note that under the Law for the Regulation and Privatisation of the Electricity and Related Water Sector (Oman Sultani Decree No. 78/2004 as amended), anyone undertaking electricity generation, transmission, distribution and/or supply must have a licence or a licence exemption from APSR to do so. Even in the cases of self-supply of up to 25MW a licence exemption is required, which contains conditions.

However, there is currently no distinct Oman legislation governing green energy and Oman Sultani Decree No. 78/2004 does not differentiate between conventional electricity generation and renewable energy generation. As OPWP is the monopoly purchaser of electricity in Oman, when it comes to private-to-private green energy generation and supply, the buyer/offtaker needs to have either a licence or licence exemption from APSR in order to purchase the power output. Green energy has the potential to be a huge growth area in Oman where a significant increase in green energy production, is expected not only from OPWP procured IPPs but also from individual consumers using roof-top solar and larger industrial and commercial entities who are constructing renewable plants for purpose of self-supply.

and decreasing net emissions is also in line with Shell’s Powering Progress strategy. This strategy is what guides our efforts, investments and business decisions. It also sets out our intention to accelerate the transition of our business to net-zero emissions. This strategy is designed to create value for our shareholders, customers and the wider society. Our main goals include powering our progress by providing more and cleaner energy solutions. In order to support this transition in Oman, Oman Shell has been working on several solar projects, including the Solar to School Project which has led to the installation

of solar plants in 25 schools across Oman. In addition, earlier this year during Sustainability Week, we announced our 6th Gift to the Nation, which was a Green Hydrogen for Mobility Project. This will see us providing Hydrogen cars for use at Oman airports, partly in order to enable the public to see this technology in action. The project will include the development of hydrogen production units powered by photovoltaic solar plants that will be installed at different fuelling units related to the project. We also hope to continue supporting the energy transition by looking into other renewable energy opportunities.

MOVERS AND SHAKERS

A ROUND-UP OF THE TOP APPOINTMENTS AND PROMOTIONS

In association with

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THE NEW SILK ROAD

Tom Calvert has joined Al Tamimi & Company as a Partner and will lead the firm's corporate commercial practice in Iraq.

In addition, Calvert is to lead Al Tamimi's China Group and will advise Chinese companies operating in the region on the full range of legal issues they face.

Calvert is to be based in Al Tamimi's Dubai office but he will split his time between working in the UAE and working in Iraq.

Prior to this recent move, Calvert worked for a number of leading US and magic circle law firms in Europe and Asia where he acted on transactions in multiple countries. He has over 15 years of international legal experience.

JACK THE LAD

Jack Hardman has been promoted to Partner at Clifford Chance where he will boost the firm's M&A, Tech and Regulatory practices in the Middle East. Hardman will be based in the firm's Dubai office and split his time between advising on tech, M&A and regulatory transactions for clients in the region and globally. He will also lead the firm's Tier 1 financial regulatory and fintech practices in the region. He first joined the firm as a trainee in 2009 and spent three years in the London Financial Institutions Group after qualification, before relocating to Clifford Chance's Dubai office. He also has a Chartered Financial Analyst qualification from the CFA Institute.

Hardman has recently advised the Creditors of NMC Healthcare on their groundbreaking USD 7 billion financial restructuring and played a key role in advising on the bank merger between Al Khaliji Commercial Bank and Masraf Al Rayan, which was the first ever public company statutory merger in Qatar.



renewables sector in the region.

He is currently leading strategic mandates to deliver efficiency and sustainability in the region's water sector.

In addition, DLA Piper's Dubai-based projects lawyer, **Mona Hammadi** has also been promoted to the role of Legal Director. Mona advises on the development and project financing of major infrastructure projects across the region and in particular has specialist in-depth understanding of the Saudi Arabian energy and utilities sectors. Five Associates from across the region who work at DLA Piper have also been promoted to Senior Associate.

ALL SEEING SHAUN

Over at the International Holding company, **BEEAH Shaun Johnson** has been promoted to Group General Counsel.

Johnson will oversee the BEEAH legal team's and extensive roster of external counsel to ensure global best practices are implemented in the organisation and across the Group's multiple businesses and joint ventures. He will also provide legal guidance to ensure compliance with all relevant policies, including those which relate to governance and ethics and applicable local, regional and international laws.

Johnson will act as counsel to the BEEAH Group CEO and the CEOs of all its subsidiaries and ventures to enable sustainable and profitable operations while mitigating risk across the BEEAH Group. Part of his remit will be to navigate partnerships which facilitate



the effective realisation of projects across the waste management, recycling, renewable energy, environmental consulting, digital technology, healthcare, education and sustainable transportation sectors.

Johnson qualified in Australia in the late 1990s and began his career at various international law firms, including Ashursts in Melbourne and Freshfields Bruckhaus Deringer in London. In 2005, he began working as an inhouse counsel for entities in the public and private sectors. Prior to working at BEEAH, he spent six years in Riyadh where he was General Counsel for the Vision Invest PPP Unit (formerly ACWA Holding) and then served as Vice President of Miahona, the group's water utilities subsidiary. In his new role, he will report to the Group CEO of BEEAH, Khaled Al Huraimel.

SUSTAINABILITY MADE SIMPLE

Sonali Siriwardena has been appointed as Simmons & Simmons' first global head of ESG. **Sonali** joined the firm in April and is based in its London office. Previously she worked at Morgan Stanley where she was based for over a decade, in both legal and business



THE NEW GOLD RUSH

Adam Haque has been promoted to Partner at DLA Piper.

Haque will be based in the firm's Dubai office where he will be a key member of the broader finance, projects and restructuring team. He has over seven years' experience in the region.

In the past, Haque has advised Governments and developers, as well as local and international lenders on various first-of-its-kind utility and infrastructure projects and has been a key contributor to the growth of the



OTHER CHANGES

BonelliErede and Zahaf & Partners: These two firms have launched an exclusive cooperation arrangement in Libya which will allow BonelliErede to expand its presence there.

Eversheds Sutherland: Steven Henderson has joined Eversheds Sutherland as Head of Real Estate (Middle East). Previously he worked at Baker McKenzie Habib Al Mulla. He has 16 years' experience in the region and has advised on local and international matters.

I MOVERS AND SHAKERS I

roles. Most recently she was Morgan Stanley Investment Management's head of sustainability regulation and policy and was responsible for the firm's Sustainable Investing Policy for its fund ranges and their response to global ESG-related policy consultations, including the implementation of ESG regulation.

She will be responsible for the continued development of Simmons & Simmons' ESG practice.

UNRIVALLED KNOWLEDGE

Graham Lovett has joined Akin Gump as a Partner in their Dubai office. Previously, **Lovett, who is one of the leading disputes practitioners in Dubai** worked at Gibson Dunn.



Lovett has extensive commercial litigation and international arbitration experience covering multiple and various sectors and types of disputes. He handles complex, sensitive disputes involving joint ventures, shareholders, banking and finance, and fraud, as well as more technical matters involving high-end infrastructure disputes, project work, and energy disputes.

He regularly represents clients before the DIFC Courts. In October 2021, Dubai's Ruler appointed him as a Director of the board of the recently expanded Dubai International Arbitration Centre (DIAC) where he serves as the only non-Emirati board director.

He is joined at Akin Gump by Senior Counsel, **Ryan Whelan** and Associates **Michael Stewart** and **Sophia Cafoor-Camps**.

THE TIMES THEY ARE A CHANGING

Jawad Ali has retired from King & Spalding and has stepped down as the Managing Partner of the firm's Middle East offices.



Ali has now been succeeded by **Nabil Issa**, who will act as the Managing Partner for the firm's Abu Dhabi, Dubai and Riyadh (affiliate) offices.

Issa's work focuses on Sharia-compliant funds, joint ventures, foreign investment, private equity, privatisations, venture capital,

healthcare and real estate industry transactions. He is particularly well known for his development of an innovative Sharia-compliant CMA fund and investment structures for real estate and private equity investments in Saudi Arabia, the UAE and the wider GCC region.

PROMOTIONS, PROMOTIONS, PROMOTIONS

Nic Henrikson has been promoted to Partner in Addleshaw Goddard's Oman office.



Henrikson first joined the firm in December 2017.

He works on a range of cross border matters but focuses on arbitration, litigation and insurance. In the past, he has acted for various policyholders following cyber security breaches and ransomware attacks.

He also advises on contentious and non-contentious construction issues. He has been appointed to advise a number of financial institutions, including Bank Muscat, Emirates NBD and HSBC's Omani subsidiary.

TO LITIGATE OR NOT TO LITIGATE

Nabeel Ikram has joined Vinson & Elkins as a Partner in their global complex commercial litigation practice.



Ikram is a leading authority on engineering and construction matters across the Middle East and while he is best known for his disputes practice, he also acts as project counsel, assisting clients with risk management.

He joins Vinson & Elkins from Hogan Lovells where his practice focused on advising clients as they navigated contentious engineering and construction matters.

He is highly experienced in arbitration under a variety of rules, including DIAC, ICC, DIFC-LCIA and ad-hoc arbitrations. He conducted

the first construction case before the DIFC Courts and has also successfully represented clients on some of the largest and most complicated disputes in the Middle East.

CHECK THE SMALL PRINT



Matt Shanahan has joined Norton Rose Fulbright as a Partner in its financial services regulatory practice in the Middle East.

Shanahan will be based in the firm's Dubai office. He previously worked at Clyde & Co, where he was a Partner and Head of the Middle East regulatory practice.

He has 18 years' experience of financial services regulation, including 13 years in the UAE and has also worked as a regulator at the UK Financial Services Authority and the DFSA.

He is an experienced financial services partner who advises on both contentious and non-contentious financial services matters. His direct regulator experience means he can also advise clients on the likely behaviour of regulators.

ALL ABOARD

Abdullah Mutawi is going to join Taylor Wessing's Middle East and North Africa corporate department this summer.

Mutawi who is an experienced corporate lawyer will be based in the firm's Dubai office.

He is currently head of Al Tamimi's corporate and commercial department and leads the M&A and venture capital & emerging companies practices.

He has over 25 years' experience in corporate law and has practiced in both London and the Middle East.

In the past he worked as a Partner at Trowers & Hamlin from 2005 to 2015. In addition, he has worked at both Norton Rose Fulbright and Hill Dickinson.

SEND US YOUR NEWS

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



LEXISNEXIS EVENT CALENDAR

UPCOMING AND RECENT EVENTS FROM AURIFER AND LEXIS

UPCOMING EVENTS

MANAGING WITHHOLDING TAXES TRAINING

26 May 2022

This event will look at how businesses can mitigate the adverse impacts of withholding taxes from both a contractual point of view and from the perspective of potentially applicable double tax treaties. It will discuss how relief from withholding taxes can be obtained and what strategies tax payers could develop. The event is aimed at both finance managers managing taxes and legal counsel who have to review agreements from a tax perspective. It is hosted by Thomas Vanhee. For more information contact lovely@aurifer.tax.

FROM BRICKS TO BYTES

September (exact date TBC)

Aurifer will host an e-commerce seminar and webinar along with partners which will give practical guidance on how to take your bricks and mortar shop forward. It will be hosted by Nirav Rajput and Thomas Vanhee. For more information contact lovely@aurifer.tax.

RECENT EVENTS

AN UPDATE ON CORPORATE TAX IN THE UAE

11 May 2022

This webinar discussed the public consultation document published by the UAE Finance Ministry and revealed the outline of the UAE Corporate Income Tax regime. It was hosted by Thomas Vanhee and Nils Vanhassel. For more information contact lovely@aurifer.tax.

RECENT LEXISNEXIS EVENTS

LEADERSHIP FOR WOMEN IN THE 21ST CENTURY

10 to 31 May 2022

LexisNexis Middle East and Beyond Billable Hours hosted a four-part online training course focusing on Leadership for Women in the 21st Century.



Experts considered leadership in the 21st century, emotional intelligence, relationship management, self-management and social awareness. For details go to <https://www.lexis.ae/events/leadership-for-women-in-the-21stcentury-online-training>.

IP WEBINAR SERIES

September, December 2021 and March 2022

LexisNexis Middle East and D&C Legal Services have now hosted three webinars exploring trending legal topics in the Middle East and GCC.

The first webinar held in September 2021 was on Growing and Protecting Your Brand in the Middle East and GCC. It provided attendees with guidance on how to grow their brands and protect them from improper use. Aurore Deeb, Senior Associate at D&C Legal Services, considered topics including opposition, the trademark registration process, legal actions for infringement and unfair competition.

The second webinar which was held in December 2021 covered intellectual property, social media, and Google Ads.

This time Rana Moustafa, Associate at D&C Legal Services provided insights

into the interconnection between social media and intellectual property.

Topics covered included digital policies on social media platforms, Google Ads and keywords advertising.

The third and final webinar in this series was then held in March 2022 and covered Global Legal Protection of Geographical Indications.

During this webinar, Geographical Indications and their international legal protection was discussed. Nasser Messaïke, Associate at D&C Legal Services, explored Geographical Indications (or GI) in their entirety, including security and enforcement issues.

Our training and events programme in the Middle East delivers a cost effective solution tailored to the specific needs of the legal community in the region, delivered by leading experts who are practising professionals; ensuring participants are fully conversant with the latest issues and legislation as well as their implications on business and practice. View our Middle East training programme at: www.lexis.ae/training-events.

AVATARS MEET ARBITRATORS

Abdulla Wasel of Wasel & Wasel Arbitrator Services Inc. examines the key issues for arbitration in the digital world following the rise and rise of the Metaverse.



Abdulla Wasel
Director of
Operations
Wasel & Wasel
Arbitrator
Services Inc.

The Metaverse is a virtual reality world where users can interact, game and experience things as they would in the real world. In this digital world, you can be who you want, and when you want. There are not even any general rules governing the adoption of human form online, as in the digital world you can have multiple identities, or even no identity at all.

Perhaps this all-encompassing digital life is not that far-fetched. Many of us already spend more time working online than we do in offline. Will we also soon be able to, or possibly be obliged to, legally recognise our digital identities as equal to, or even more important than, our physical identities. However, if the ultimate plan is to transpose society into the Metaverse, several elements are needed to ensure this new digital society has a fighting chance, and this starts with developing a legal backbone for it.

IDENTITY IN ARBITRATION

If in the future arbitral events and proceedings were entirely digital, would participants be expected to use their real or legal names? Or will people's avatars be required to use at least some characteristics of their physical selves in a digital arbitration?

Recently, the world's first virtual reality gathering was hosted for practitioners in the international arbitration community, at which a majority of the attendees agreed they would be hesitant about nominating an arbitrator if they had only met their virtual avatar.

In addition, under current practice an arbitrator must identify themselves by their real name in procedural orders and awards. However, the question is as we venture into the Metaverse, is an arbitrator's 'real' identity becoming less relevant?

Currently the parties are also generally required to disclose the 'real' names and their and their counsel's physical addresses at the start of the proceedings. Several arbitral institutes, including the ICC, LCIA, HKIAC and ICDR even go so far as to make this an obligation in their arbitration rules.

However, the academic Dusko Martić has published a proposal for 'Blind Arbitration' in which he sets out a system where arbitrators are only selected based on criteria such as subject-matter expertise, and not names or reputations.

We have also seen 'Blockchain Arbitration', being pioneered by applications such as the Kleros arbitration service which uses a network of anonymous human 'jurors' on the Blockchain, who are randomly selected based on the amount they stake to be selected. The higher the amount, the greater their chance of random selection. In this system, anyone can be a juror.

In addition, some online arbitration rules allow parties to remain anonymous, such as the UK Jurisdiction Taskforce's Digital Dispute Resolution Rules which were published in April 2021. However, while these Rules allow the parties to remain generally anonymous in relation to one another, the parties must still 'provide details and evidence of their identity to the reasonable satisfaction of the tribunal'. Such details are typically required in order to comply with anti-money laundering laws and/or sanctions rules. In addition, even where there are rights to anonymity, between parties, the tribunal may still disclose details of identities if this is 'necessary for the fair resolution of the dispute, for the enforcement of any decision or award, for the protection of the tribunal's own interests, or if required by any law or regulation or court order'.

In addition, where identities are unknown, there could be enforcement problems if digital assets are held by anonymous digital identities. In such cases, tribunals would have limited power to compel third-party crypto exchanges to act. Some parties may revert to the courts for an order to 'compel crypto exchanges to provide details of their customers, where there are anonymous accounts, or to freeze accounts of an unknown party who could be the holder of the crypto wallet'.

Ultimately, as the Metaverse continues to grow, digital identities are likely to become more in harmony with our real identities, which will undoubtedly trigger a huge number of legal and procedural questions for the international arbitration community to answer.

ARBITRATOR SPOTLIGHT



SHOURABH BANERJEE

YOU HAVE OPERATED IN THREE DIFFERENT JURISDICTIONS – THE UK, SINGAPORE, AND INDIA. WHAT DEVELOPMENTS AND TRENDS ARE YOU SEEING IN THESE JURISDICTIONS THAT SETS THEM APART FROM EACH ANOTHER?



The world of global Intellectual property has changed dramatically due to changes in the global economic and business ecosystem, as a result of the digital revolution.

Global IP conventions, regulations, directives and statutes in the UK, EU, India and Singapore, have changed multiple times and there has been a whole host of case authorities reflecting this change in areas such as IPR domains, trademarks, copyright, designs and patents, so there is now a cohesive framework which appreciates novelty, innovation and sustainable growth for the whole economy. However, each jurisdiction comes with its own inherently distinctive socio-cultural and geo-political factors which need to be considered independently. A classic example of this is the post Brexit- UK and EU where the entire IPR regime for trademarks, designs and patents has seen some major changes. Similarly, India is building on its statutory standpoint and now issuing stiff penalties and injunctions against offenders in IP matters. Here most of the cases have related to information dissemination through IT and Digital media platforms. Another change we are seeing is that ADR (arbitration and mediation) has now become an inevitable part of commercial agreements and dispute resolution in all jurisdictions including Singapore.

YOU SERVE AS THE ADVISOR TO THE INDIAN MINISTRY OF ELECTRONICS & IT – WHAT ARE THE BIGGEST CHALLENGES WHEN RESEARCHING NEW TECHNOLOGY FOR PATENT APPLICATIONS?

One of the main aspects of a patent search is the strategic intent of the industry specific client (such as in the semiconductor or electronics sector), and it is this which defines the scope of searching patent literature covering technology specific patents across jurisdictions. The patent databases, e.g. Patentscope and Google patents (both paid and free) and their differing functionality also has a bearing on authentic search results.

For example, novelty searches have a distinctly

different implication from an invalidity search which requires a broader spectrum of patent literature to be searched covering both granted and published patent applications.

The inference drawn by the researcher on the technological novelty also has an implication for the search results derived. Patent licensing requires a different research skill set.

AS SOCIETY MOVES INTO WEB 3.0 AND THE METAVERSE, WHAT PROTECTIONS DO YOU THINK NEED TO BE IMPLEMENTED TO PROTECT DIGITAL RIGHTS?

Digital transformation and its impact on the business ecosystem is huge. Block chain is overhauling financial transaction models and aiding Fintech patents on the one hand and while we have Non-fungible token (NFT) designs creating ripples in the digital assets industry which are impacting retail, fast moving consumer goods (FMCG), contemporary art designs, food and the automobile industry as these sectors create a spectrum of virtual assets which are finding their feet with global consumers on the other hand. Recent trademark enforcement matters in various jurisdictions including the US and UK are signs of imminent amendments in the requisite statutes to accommodate NFT designs as a product and the metaverse as a marketplace. It is a transition which is a fascinating one for a IPR practitioner and academic.

Shourabh Banerjee is an independent arbitrator with Wasel & Wasel Arbitrator Services Inc, and a highly sought after IPR Consultant who serves as the Senior IPR Consultant for Blake Morgan LLP in the UK and as the Advisor to the India Ministry of Electronics & IT on the India Semiconductor Mission. He is a Guest Lecturer in the Faculty of Law at University of Strasbourg specialising in Trademarks & Brand Management. He also contributes to numerous IP Panels including the IP Business Academy, CEIPI (University of Strasbourg), National University of Juridical Sciences (NUJS), West Bengal, India and is a member of the Chartered Institute of Arbitrators, London.

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ARBITRATION CASE FOCUS

RECENT KEY ARBITRATION CASES

Case No Hub Street Equipment Pty Ltd v Energy City Qatar Holding Company, [2021] FCAFC 110, 25 June 2021

Jurisdiction Australia

Court Federal Court of Australia

Recommended by Wasel & Wasel Arbitrator Services Inc

WHAT DID THIS CASE INVOLVE?

Energy City Qatar Holding Company (ECQ) and Hub Street Equipment Pty Ltd (Hub) entered into a contract. Hub agreed to supply and install street light equipment and accessories in Doha, Qatar. After making an advance payment to Hub, ECQ decided not to proceed with the contract and sought to recover its advance payment, but Hub failed to repay it.

The contract was subject to the jurisdiction of Qatar and the language of the contract was English. It stated arbitration was the dispute resolution mechanism. Under the arbitration agreement, the clause stated that any dispute would be referred to a three-member tribunal. One member was to be appointed by each party within 45 days of that party receiving a notice of the commencement of arbitration and the third member was to be mutually chosen by the first two appointees. If a decision on the third member could not be reached by the party appointees within 28 days, the appointment of the third arbitrator was then to be referred to a competent Qatari court.

However, ECQ did not provide Hub with any notice under the agreement on the appointment of their arbitrator. Instead, they approached a court in Qatar and obtained orders for the appointment of a three-member tribunal from that court. Although Hub had received notice on numerous occasions that these proceedings were taking place, they refused to participate in them. The arbitration tribunal then issued an award in favour of ECQ and required Hub to repay the money which had been advanced as well as compensation and costs. ECQ then applied to the Federal Court of Australia, on the basis that Hub was an Australian incorporated company which had assets in Australia, for enforcement of that award under Section 8(3) of the International Arbitration Act 1974 (Cth). It was argued the composition of the tribunal was not in line with the arbitration agreement between the parties and there had been a failure to conduct the arbitration in English which was a fundamental departure from the agreed procedure for the arbitration. It was stated this was a matter which should be considered in exercising the discretion to enforce the award.

WHAT DID THE COURT DECIDE?

The judge held that the Qatari court had proceeded on a misapprehension as to fact. The court had been advised, or had understood, that Hub was notified of the appointment of the arbitrator by ECQ and had

failed to respond to the notice. Therefore, the Qatari court had appointed the arbitral tribunal on that basis. However, this was not the case.

ECQ had not in fact followed the agreed procedure for the appointment of the arbitrators. Instead they had reverted to the court prematurely seeking the appointment of the arbitral tribunal without notifying Hub and without giving them the opportunity to make their own appointment of an arbitrator to the arbitral tribunal.

ECQ's conduct in obtaining an appointment from the Qatari court established that the appointment of the arbitral tribunal was completed in a way which was contrary to the procedures provided for in the arbitration agreement.

Having found that Hub had established a ground for refusing enforcement under Section 8(5)(e) of the International Arbitration Act 1974, the Federal Court of Australia went on to consider whether the award should be enforced nonetheless in the exercise of discretion.

Hub argued that the consideration that the tribunal was prematurely constituted by the Qatari Court and that the arbitration proceedings had been conducted in Arabic rather than in English as the language of the contract, were strong reasons which indicated the court lacked discretion to enforce this award. However, the Australian court found that the fact that the arbitration proceedings had been conducted in Arabic created no prejudice for Hub as they did not participate in the arbitration. Had this been the only matter relevant to the exercise of the discretion, the court would have enforced the award despite any irregularity. However, different considerations applied to the departure from the procedure for appointment of the arbitral tribunal required by the arbitration clause. The court found that the fact the composition of the arbitral tribunal was not in line with the agreement of the parties was a matter which it said 'strikes at the very heart of the tribunal's jurisdiction'. It was a matter described as fundamental and it provided sufficient grounds for the court not to exercise the discretion to enforce the award. The Federal Court of Australia overturned the decision and refused to enforce the award.

WHAT DOES THIS SHOW?

This decision illustrates the importance of strict compliance with the content of arbitration agreements, particularly in regions where local courts may be prepared to take a flexible approach to arbitration procedures. Despite the courts in most jurisdictions which are signatories to the New York Convention being reluctant to refuse enforcement of arbitral awards, any non-compliance with an arbitration agreement runs the risk of encountering difficulties in subsequent enforcement proceedings.

TAKE BACK CONTROL

ACCESS ARBITRATORS | JOIN ARBITRATORS



A CANADIAN CORPORATION

Digital service considerations



© Getty Images/Stockphoto

In light of the recent developments in the growing tech space and global digitalisation, the UAE which has been a front-runner in regulating and supporting the Web3, NFT and Crypto community by setting up a Virtual Asset Regulatory Authority, has also issued a new law, Dubai Law No. 9/2022 regulating the provision of digital services in Dubai. This Law aims to regulate this new evolving digital era in Dubai. It requires Government, public bodies, judicial entities and private companies to provide digital services to users, enhancing the digital standard across the Emirate. Entities in Dubai are expected to comply with this Law within and no later than a year after its implementation.

DIGITAL SERVICES

Dubai Law No. 9/2022 defines digital services as any Government, judicial or non-Government services provided to customers through websites, smart applications and other media channels through which digital services are made available. It applies throughout the Emirate and its free zones, including the DIFC and details the conditions and standards for providing digital services including the adoption

of digital identities to offer subscription-based digital services, cybersecurity requirements and standards approved by the Dubai Electronic Security Centre (DESC).

CONDITIONS

There are 27 conditions, rules and standards which must be observed by Government entities, judicial authorities and non-Government entities in Dubai. These include providing customer accessibility in obtaining technical support through digital channels, use of electronic digital identity registration, electronic security requirements, developing a plan for the implementation of digital services approved by the Dubai Digital Authority and standards on providing feedback and comments services for customers. It also covers conditions which are approved by the Dubai Department of Finance on implementing financial and electronic payments solutions and requires policies which are adopted if there is an interruption of digital services. Dubai Law No. 9/2022 requires digital services to be accessible, with no additional inconvenience, to all customers, including all people with disabilities. It also requires accessibility to be provided to customers who are unable to use digital channels by providing options to assist them to request and use the services at no additional fee. All digital service provisions also need to be in Arabic, English and any other language considered essential for the business, business operation and their customers. To support the continuous development and implementation of digital services, customers also have obligations and responsibilities and need to

adhere to terms and conditions set by the digital service providers by having to update information submitted to them. Customers who fail to comply with an entity's terms and conditions are held accountable for misuse and failure to adhere, which will render the digital service provider free from liability. Subject to approval, entities can outsource provision of their digital services to private or public entities to offer the necessary systems, software and digital channels to provide their digital services or manage and operate the systems and software.

NEXT STEPS

The Dubai Digital Authority's Director General and the General Secretariat of the Executive Council will be issuing further technical requirements to implement this Law and it is currently unclear what this will mean for those who already provide digital services to customers.

However, digital service providers who already have these or similar services in place may need to modify or adjust their current services in order to comply with Dubai Law No.9/2022 once further directions have been issued.

It is clear that Dubai Law No. 9/2022 has the general intention to reshape Dubai's digital offering at the entire Emirate level, as this Law is not directed at a specific sector or otherwise limited in scope, but is rather applied in a blanket way.

We will have to wait until the implementing regulations are issued to fully understand how this digital transformation will be executed.

To ensure compliance, affected entities may wish to consider waiting for the necessary implementation regulations before making any changes to their policies and procedures.



Contributor
Nicola Rayment
Consultant Counsel, SOL International

Opportunities in the Middle East with Jameson Legal

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

Dubai

In-House Commercial Construction Solicitor, Engineering Consultancy

We are currently working on an excellent in-house opportunity for a lawyer who specialises in construction to join an international engineering consultancy that provides project management for some of the world's most unique infrastructure projects. The work will be international with a focus on large scale developments across the Middle East. Applicants must have at least 2 years' experience with construction projects in the Gulf either in-house or private practice.

Reference: RPG-IL-12545

Riyadh

Legal Counsel, Renowned International Manufacturer

Our client is a renowned, international manufacturer and a leader in its field. They are looking to hire a Legal Manager to advise on their interests in Saudi Arabia and act as their most senior lawyer in the country. Applicants will need a minimum of 8 years' experience gained working for international law firms and/or the legal team of an international company, with at least 3 years' experience in the ground in Saudi Arabia. Applicants will ideally be qualified to practice law in Saudi Arabia but lawyers qualified in other jurisdictions will be considered.

Reference: JRS-IM-12391

Qatar

Competition and Compliance Senior Counsel, Energy Company

This role is at the forefront of the company's drive into new areas and is one of the most exciting roles in the Gulf at present. Based in Qatar, the role will focus on anti-trust, competition, trading compliance and market abuse. Applicants must have at least 10 years' PQE and be qualified in the UK, US, Australia, New Zealand or an EU jurisdiction.

Reference: IJR-IM-12592

Qatar

General Counsel, Investment Company

One of Qatar's leading investment companies is looking to hire a General Counsel to manage a small team of lawyers and work closely with the CEO to manage the existing assets of the company and expand the interests of the company. Applicants must have at least 10 years' PQE with extensive experience in M&A and general commercial law, with in-house experience gained in a similar investment company.

Reference: IJR-IM-12188

Abu Dhabi

Corporate General Counsel, Major Subsidiary

This is an incredible opportunity to join an economic entity that promotes new ventures in sectors of national importance based in Abu Dhabi. As General Counsel for a major subsidiary in the group, you will be working closely with the CEO to manage and develop the interests of the group in a key strategic role. Applicants must have at least 10 years' PQE with an emphasis on corporate transactions and will ideally have in-house experience at a senior level obtained in the IT/tech sector.

Reference: IJR-IM-12463

Saudi Arabia

Third Party Risk Management Lead

This is an opportunity to lead the Third Party Risk and Compliance programmes across one of the fastest growing entities globally across a wide range of business activities. You will be involved in setting up and designing the Third Party Risk programme, and growing the team needed to deliver the programme. Applicants need experience of developing and implementing risk management programmes in global organisations, with robust knowledge of technology, risks, architectures and related tools, as well as an understanding of compliance (ABAC, Sanctions, Anti-Trust, Human Rights etc.) laws, regulations, and risks.

Reference: MBP-PL-12608

Dubai

HighQ Implementation Consultant, Legal Software (Contract Role)

Our client is looking for an implementation consultant for a 3-6 month contract in Dubai, with opportunity for extension. The successful candidate will be responsible for guiding new clients through the implementation of legal applications specifically focussed on HighQ and ensuring that all commitments for the client are met.

Reference: DLK-PM-12644

Qatar

Commodities Compliance Officer, Trading Business

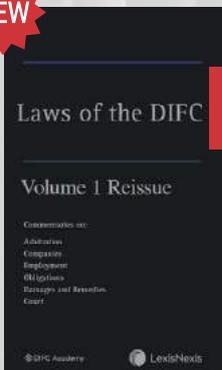
This is an opportunity to lead the trading compliance function within a major energy company in a broad role encompassing advisory, monitoring, and trade surveillance. Applicants will need to have experience advising and implementing applicable firm business conduct standards, and monitoring compliance to policies, rules, and regulations such as MiFid, REMIT, EMIR, MAR and Dodd Frank as well as AML, Market Abuse, sanctions that are applicable to the Trading Business.

Reference: MBP-IM-12638

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.

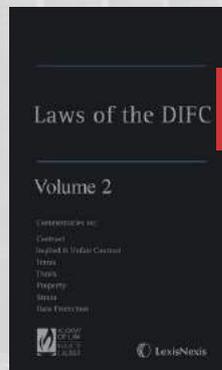
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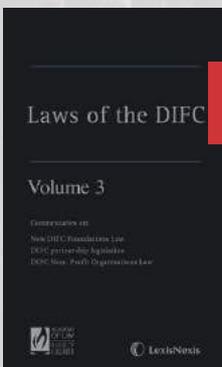
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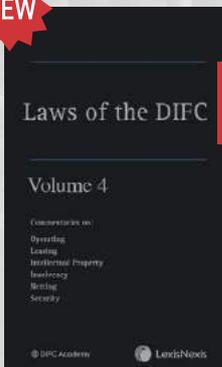
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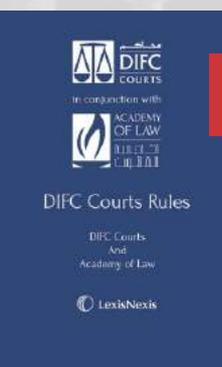
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