

Al Tamimi & Company sets a new precedent in Iraq

The claim involved a dispute between our clients and another Iraqi party under a supply contract subject to foreign arbitration valued at over 400 Million USD. According to Article 25(1) of the Iraqi Civil Code No 40 of 1951 (the “Civil Code”), contractual obligations shall be governed by the law of the state wherein lies the domicile of the contracting parties if they have a common domicile; otherwise, the law of the state within which the contracts were concluded will be applied unless the contracting parties agree otherwise or where it would be revealed from the circumstances that another law was intended to be applied.

In our abovementioned case, the Iraqi counterparty sought to refer the matter to Arbitration, to no avail. Furthermore, and notwithstanding the above, the counterparty filed the claim before the Iraqi courts claiming it had jurisdiction to hear the same. This is as Iraqi jurisprudence had previously been unclear as to the limits of Iraqi courts’ jurisdiction in relation to contracts subject to foreign arbitration; the courts at times finding they have jurisdiction to hear the claim on account of the place for executing the contract notwithstanding agreement to the contrary. However, and in accordance with the abovementioned Article 25(1) of the Civil Code, the Court of Cassation finally affirmed our argument that Iraqi courts do not have jurisdiction to hear such claims.

Additionally, it is important to note that in previous cases, the Iraqi courts used to go with the provision of Article 253 of the Civil Procedures Code No. 83 for the year 1969, which states that a dispute may not be heard by the court if the same was subject to an arbitration agreement between the parties. Furthermore, the Article goes on to state that if one of the parties resorted to the court and the other party did not object to that, then the suit may be heard and the arbitration clause shall be deemed as null and void. If, however, there was an objection by the other party, the court shall then decide to postpone the suit until an arbitral award is issued. In our case, the courts set a new precedent in that the courts decided that it had no jurisdiction to see this case as a result of both parties seeking arbitration before the counterparty sought the Iraqi courts.