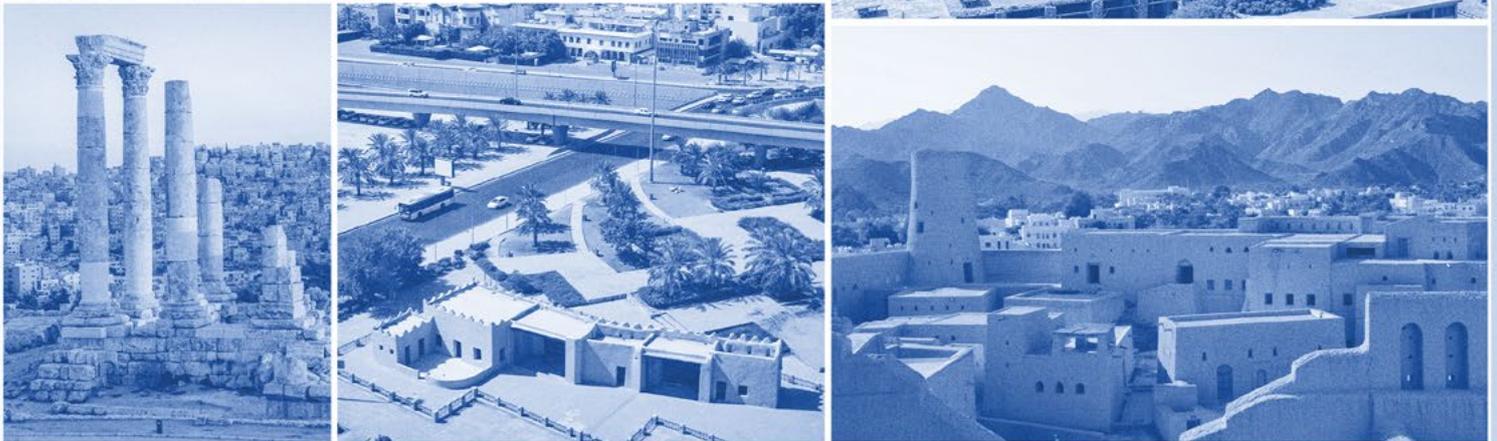


العدالة

AL ADALLA

مجلة التميمي القانونية



UAE

Arbitration Is Founded on the Mutual Consent of the Parties; Therefore, Any Waiver Must Be Equally Explicit and Grounded on the Same Mutual Intent (1/10)	9
The Dubai Court of Cassation Issues a Judgment Affirming Key Principles on International Commercial Arbitration (2/10)	11
Judgment on Costs and Legal Expenses, Including Attorneys' Fees (3/10)	13
Abu Dhabi Court of Cassation Annuls an Arbitral Award for Violating Public Policy (4/10)	15
Landmark Judicial Interpretations of the Seat of Arbitration in the UAE: Insights from the Dubai and Abu Dhabi Courts of Cassation (5/10)	17
UAE Federal Supreme Court Confirms Courts' Jurisdiction Over Evidence Preservation Despite Arbitration Clauses (Judgment No. 262/2025) 6/10	19
Dubai Court of Cassation Affirms Res Judicata in Orders Recognizing and Enforcing Foreign Arbitral Awards (7/10)	21
The UAE's Federal-Local Judicial Principles Unification Authority Settles the Signatures Controversy on All the Pages of the Arbitral Awards (8/10)	23
Dubai Court of Cassation Confirms Jurisdiction and Guarantor Liability in Major Cross-Border Finance Dispute (9/10)	26
Abu Dhabi Cassation Court: That the Abolition of the Arbitration Institution Does Not Invalidate the Arbitration Clause (10/10)	29
The Legislative Evolution in the Regulation of Non-Human Organ Transplantation	32
Criminal Penalties for Serious Medical Errors: What Practitioners Need to Know	35
KSA	
Settlements in Competition Cases in Saudi Arabia: Rules, Challenges, and Opportunities	41
Qatar	
Banking Interest and the Necessity for the "General Assembly of the Court of Cassation" to Intervene to Unify the Legal Principles Issued in This Regard	47

Kuwait

Legislative Gap in the Competition Protection Law Judgment of Unconstitutionality of Article 34, Clause 1	51
Article on the Liability of the Company's Board Members in accordance with Companies Law No. 1 of 2016 AD for Damages resulting from Acts of Fraud or Abuse of Authority, and any Violation of the Law and the Company's Regulations, and for Errors in Management	54
Bahrian	
Bahrain Launches International Commercial Court	57
Oman	
The Liability of the Maritime Carrier for Loss, Damage, and Delay of Goods in Light of the Provisions of the Omani Maritime Law	61
Jordan	
The Centrality of Control in Distinguishing Employees from Contractors Under Jordanian Law: Where is the Line Drawn?	65
Egypt	
Arbitration in Tax Disputes	71
Procedures for Enforcement on Registered Shares in Egypt	74
Iraq	
Liquidation as a Reason for the Expiration of a Company's Legal Personality according to Iraqi Law	79

FOREWORD

Introducing the Second Edition of Al Adalla

This edition of Al Adalla explores the continued evolution of litigation and dispute resolution across the Middle East and North Africa, reflecting the growing sophistication and complexity of disputes arising before courts and arbitral tribunals in the region. Developments in arbitration practice, constitutional rulings, and legislative reform remain central to shaping this landscape.

Judicial decisions examined in this issue highlight the importance of party autonomy and clarity of intention in arbitration agreements, alongside procedural precision in determining the seat of arbitration and the enforceability of arbitral awards. Recent rulings from higher courts further demonstrate the judiciary's approach to public policy considerations, costs and legal fees, and the boundaries of judicial intervention in arbitral proceedings.

Legislative and constitutional developments also feature prominently. Articles in this edition consider the implications of constitutional judgments affecting competition law, gaps arising from legislative invalidation, and evolving statutory frameworks governing areas such as tax disputes, employment classification, and the legal consequences of corporate dissolution. These developments underscore the need for practitioners to reassess legal strategy in light of shifting regulatory and judicial interpretations.

Commercial disputes continue to drive significant litigation activity across the region. This issue addresses enforcement against registered shares, banking interest principles, maritime carriers' liability under carriage of goods contracts, and the personal liability of board members for mismanagement. Together, these topics illustrate the increasing scrutiny applied to commercial conduct, corporate governance, and financial arrangements.

Sector-specific disputes are also receiving heightened attention. Contributions examine the legislative evolution of non-human organ transplantation, the criminal liability associated with serious medical errors, and settlement mechanisms under competition law regimes. These matters reflect the increasingly technical and regulated nature of disputes emerging within healthcare, maritime, and competition-sensitive sectors.

As cross-border transactions and multi-jurisdictional arrangements continue to expand, the need for consistent legal interpretation and effective dispute resolution mechanisms has never been greater. The articles in this edition provide practical analysis and insight to assist businesses, legal practitioners, and stakeholders in navigating an increasingly complex disputes environment.



Dr. Hassan Arab
Partner, Regional Head
of Dispute Resolution
h.arab@tamimi.com

Arbitration is Founded on The Mutual Consent of The Parties; Therefore, Any Waiver Must Be Equally Explicit and Grounded on The Same Mutual Intent (1/10)



Dr. Hassan Arab
Partner, Regional Head of
Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi
Associate,
Private Client Services
h.almehairi@tamimi.com



Dina Assar
Knowledge Lawyer,
Dispute Resolution
d.assar@tamimi.com

The Dubai Court of Cassation issued an important judgment emphasizing a fundamental principle: arbitration, as a method of dispute resolution mechanism, is founded on legislative recognition and parties' mutual agreement to adopt it, thereby waiving recourse to the default mechanism of litigation before state courts. The principle of party autonomy is a cornerstone of arbitration, determining its very existence. Arbitration cannot be established without the parties' mutual consent, which is achieved through offer and acceptance (i.e., parties' consent), along with their legal capacity and the legislature's recognition of arbitration as a valid method of dispute settlement. Accordingly, any waiver of an arbitration clause must also be based on mutual consent; one party alone cannot unilaterally declare or decide to waive the arbitration clause.

This principle was clearly reflected in the Dubai Court of Cassation judgment in Appeal No. 618 of 2023, Commercial, issued on 26 October 2023. The court held that when there are two agreements between the parties – an original agreement, such as the main construction contract, and a subsequent agreement, such as a subcontract – the parties' agreement in the subsequent contract to submit disputes to court jurisdiction does not constitute an implied waiver of the arbitration clause found in the original contract, specially in the absence of any express language which

clearly indicates the parties' intention to waive arbitration¹. Moreover, each contract has a distinct subject matter, allowing the disputes to be segmented so that the subject of one contract does not affect the other.

This judgment is among the jurisprudential decisions that support arbitration, clearly demonstrating the judiciary's respect for party autonomy in choosing the mechanism(s) for resolving their disputes – be it arbitration, litigation, or both. As the judgment explains, where the agreements

between the parties differ as to the dispute resolution method, selecting both mechanisms in different contracts does not render arbitration subordinate or invalid. In such a case, the later agreement to litigate does not nullify the arbitration clause in the original contract.

UNITED ARAB EMIRATES



Endnotes

1. In Commercial Appeal No. 618 of 2023, dated on 26 October 2023, the Court held that although a party may expressly or implicitly waive reliance on an arbitration clause, an implied waiver requires a clear act or procedural step that unmistakably demonstrates an intention to abandon such clause and to relinquish the right to invoke it, leaving no room for doubt as to the party's will to waive the arbitration agreement. The determination of whether such waiver exists or is negated falls within the discretion of the court of first instance, by virtue of its authority to assess the evidence, indications, and documents submitted to it and to weigh them collectively. The Court of Cassation will not interfere with such assessment where the judgment is based on sound reasons supported by the record, sufficient to sustain it, and leading to the conclusion reached.

The Dubai Court of Cassation Issues a Judgment Affirming Key Principles on International Commercial Arbitration (2/10)



Dr. Hassan Arab
Partner, Regional Head of
Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi
Associate,
Private Client Services
h.almehairi@tamimi.com



Dina Assar
Knowledge Lawyer,
Dispute Resolution
d.assar@tamimi.com

The Dubai Court of Cassation issued its judgment in Commercial Cassation Appeal No. 1406 of 2023, Commercial Appeal, dated 28 November 2023. In this judgment, the Court emphasized several core principles regarding international commercial arbitration and reaffirmed the UAE judiciary's pro-arbitration stance, including:

- Freedom of parties to determine procedural rules:** The Parties are free to agree on the procedural rules that govern any existing arbitration proceedings arising or to arise between them.
- Waiver of objections not raised before the arbitral tribunal:** A party may not raise a plea or objection before the court hearing the annulment action if it was possible to raise and assert it earlier before the arbitral tribunal. Otherwise, it shall be deemed a waiver of that objection.
- Arbitral Tribunal's authority to appoint experts:** The arbitral tribunal has full authority to appoint an expert or experts to examine specific issues necessary for resolving the dispute before it. The tribunal may consult with the parties and present them with a draft of the expert's terms of reference to ensure the expert fulfills their role appropriately.
- No requirement for an expert to take an Oath:** If the arbitral tribunal appoints an expert to perform their duties in accordance with the terms of reference assigned to them, the expert is not required to take an oath prior to commencing the task. This is true even if the tribunal later relies on the expert's opinion in its award, so long as the procedural rules agreed upon by the parties do not mandate that the expert must take an oath before undertaking their assignment. Furthermore, this requirement does not contradict any mandatory rule or public policy in the United Arab Emirates.
- The Dubai Court of Cassation appears to have intended to distinguish between two scenarios:**
 - The first scenario** is when the expert report is submitted by one of the parties to the arbitration. In such a case, the expert is considered a witness presented by the party relying on the report. Therefore, if the arbitral tribunal wishes to use that report as evidence, the expert must take an oath, especially if the applicable law deems the administration of an oath to a witness as a mandatory rule related to public policy.

- **The second scenario** is when the arbitral tribunal itself appoints the expert, and the rules of the arbitral institution do not require the expert to take an oath. In this case, administering an oath is not necessary, and the tribunal may rely on the expert report as evidence in the proceedings without obligating the expert to take an oath before commencing their assignment.



Judgment on Costs and Legal Expenses, Including Attorneys' Fees (3/10)



Dr. Hassan Arab
Partner, Regional Head of
Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi
Associate,
Private Client Services
h.almehairi@tamimi.com



Dina Assar
Knowledge Lawyer,
Dispute Resolution
d.assar@tamimi.com

The Dubai Court of Cassation issued a judgment in Commercial Cassation Appeal No. 821 of 2023 on 05 February 2024¹, in which it upheld the Court of Appeal's partial annulment of an arbitral award—specifically in the part related to legal fees (attorneys' fees). The annulment was based on the reasoning that the arbitration clause did not grant the arbitral tribunal the authority to award legal fees for the parties' legal representatives, unless there is:

- A legislative provision authorizing such awards,
- An express provision in the rules governing the arbitration, or
- A clear agreement between the parties—either in the arbitration clause or submission agreement—grants the tribunal this authority.

And notably, the arbitration in question was conducted under the rules of the International Chamber of Commerce (ICC). While the ICC rules provide the tribunal with the authority to award costs, expenses, and legal fees, the Court held that the absence of an explicit provision (i.e., specific mention of legal representatives' fees) was insufficient to grant the tribunal such authority. The Court interpretation was based on Article 46(1) of Federal Law No. 6 of 2018 on Arbitration².

However, the Dubai Court of Cassation later departed from this strict interpretation in two subsequent rulings:

1. One case involved arbitration under the Dubai International Arbitration Centre (DIAC) Rules, where the Court found that these rules explicitly empower the tribunal to award legal costs, including attorneys' fees³.
2. In a more recent ruling in Commercial Cassation Appeal No. 7 of 2024 (annulment of an arbitral award) dated 18 April 2024, the Court reaffirmed the same principle—this time in the context of the ICC Rules.

Conclusion:

This subsequent approach of the Dubai Court of Cassation reflects the judiciary's orientation toward supporting the international commercial arbitration framework by establishing principles that are supportive of, and consistent with, international best practices. These principles, along with other arbitration-friendly principles, also reflect the direction of the United Arab Emirates and the Emirate of Dubai toward supporting arbitration both legislatively and judicially, with the aim of making the UAE an international destination and preferred choice as a leading legal seat for the resolution of international disputes, particularly international commercial arbitration.

In conclusion, the judgments of the Dubai Court of Cassation demonstrate a clear development in judicial reasoning toward strengthening the arbitration framework in the United Arab Emirates. After initially adopting a restrictive interpretation of the arbitral tribunal's authority to award legal fees, the Court later affirmed the tribunal's power to do so under both the Dubai

International Arbitration Centre (DIAC) Rules and the International Chamber of Commerce (ICC) Rules. This shift reflects a more arbitration-friendly approach, aligned with international practices, and confirms Dubai's position as a leading and reliable global seat of arbitration, offering clarity, stability, and confidence to the parties involved.

Endnotes

1. It is established in this Court's jurisprudence that fees, expenses, and legal costs are not imposed on or charged to any party to arbitration except pursuant to a provision derived from law, whether a statutory text, general legal principles, or where expressly and clearly stipulated in the arbitration agreement, given that arbitration is a consensual form of adjudication in which the arbitrator derives their authority from the arbitration clause contained in the agreement concluded between the two parties.

2. Article 38(1) and (3)–(5):

(1) The costs of the arbitration shall include the fees and expenses of the arbitrators, the administrative expenses of the International Chamber of Commerce as determined by the Court in accordance with the scales in force at the time the arbitration is commenced, as well as the fees and expenses of any experts appointed by the arbitral tribunal, and the reasonable legal and other costs incurred by the parties for the purposes of the arbitration. (5) In making decisions relating to costs, the arbitral tribunal may take into account any circumstances it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

3. In Commercial Appeal No. 1497 of 2024, dated on 6 February 2025, the Dubai Court of Cassation held as follows:

The provision of Article 36(1) of the Rules of the Dubai International Arbitration Centre, under the heading "Costs of Arbitration," which states that "the costs of arbitration shall include, inter alia, the registration fees in accordance with the Rules, the Centre's administrative fees, the fees and expenses of the arbitral tribunal, experts—whether appointed by the parties or by the arbitral tribunal—the fees of legal representatives and any expenses incurred by them, in addition to the costs of any other party as assessed and determined by the arbitral tribunal," demonstrates, in accordance with the settled principles of statutory interpretation, that the DIAC Arbitration Rules have clearly identified and detailed the costs of arbitration that the arbitral tribunal is entitled to award and include in the arbitral award. These costs expressly include the fees of the legal representatives of the parties to the arbitration, meaning that the arbitral tribunal has the authority to determine the costs of the parties' legal representatives, namely attorneys' fees, in their capacity as the legal representatives of the parties before the tribunal.

"As it was established, without dispute between the parties, that they had agreed to apply the DIAC Arbitration Rules to the arbitral dispute forming the subject of the proceedings, and had agreed that the provisions of those Rules would govern the arbitral dispute under challenge, and since the Rules confer upon the arbitral tribunal the authority to award the fees of the parties' legal representatives and to determine such fees at its discretion, the actions of the arbitral tribunal that rendered the challenged award—being legally empowered to determine the request—are firmly grounded in law. Accordingly, the challenge is devoid of legal basis and must be dismissed".

Abu Dhabi Court of Cassation Annuls an Arbitral Award for Violating Public Policy (4/10)



Dr. Hassan Arab
Partner, Regional Head of
Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi
Associate,
Private Client Services
h.almehairi@tamimi.com



Dina Assar
Knowledge Lawyer,
Dispute Resolution
d.assar@tamimi.com

The concept of public policy is variable and not fixed. It is a broad and flexible notion that often lacks a single, clear definition. What may be considered contrary to public policy in one country might not be so in another. Even within a single country, what is deemed a violation of domestic public policy does not necessarily equate to a breach of international public policy.

In general, determining whether an issue violates public policy is subject to the discretion and oversight of the judiciary in the country exercising control. It is the national court that sets the standards and criteria for whether something falls within a public policy violation.

It's important to note that a public policy violation may sometimes arise from procedural irregularities—such as breaching a mandatory procedural rule. For example, if an arbitral tribunal fails to have witnesses take an oath, and the law of the arbitral seat considers such an oath a mandatory rule, then neglecting that step may constitute a public policy violation.

Alternatively, the subject matter of the dispute itself may violate public policy—such as if the contract's subject is illegal or immoral in the country where enforcement of the award is sought. Examples include contracts for the distribution of obscene films or the establishment of illicit venues, in violation of public morality in the state where enforcement is sought. Or if the matter in dispute is non-arbitrable under national law and cannot be adjudicated other than exclusively by national courts—such as bankruptcy, criminal law, or family matters.

In this context, the Abu Dhabi Court of Cassation⁷ issued a ruling annulling an arbitral award because the dispute in question fell outside the jurisdiction of

the arbitral tribunal. Instead, the jurisdiction belonged exclusively to the Bankruptcy Court, which had already issued a final judgment on the matter, rendering it res judicata (i.e., the issue could not be re-litigated by the arbitral tribunal). The ruling explained:

"The challenged arbitral award contradicts Article 156(1) of the Financial Restructuring and Bankruptcy Law, which prohibits, following a declaration of bankruptcy, the initiation or continuation of lawsuits against the debtor. This is a mandatory provision tied to public policy, as it governs the right of access to courts and regulates how disputes must be brought before the judiciary, including the required procedures.

Public policy is a fundamental standard that must be respected in all legal actions and decisions, as it relates to the overarching public interest and the social, political, economic, and moral foundations upon which the state is built.

Once a bankruptcy declaration is issued, the bankrupt party is legally stripped of authority over their assets and may not initiate or pursue litigation concerning them, to protect the rights of the creditors. Only precautionary actions that benefit the creditors and do not harm their rights—or that involve property not subject to bankruptcy restrictions—may be undertaken.

Likewise, no creditor is permitted to take individual legal action against the bankrupt party to secure a personal advantage, circumventing the collective nature of bankruptcy proceedings. This is to prevent a race among creditors to seize the debtor's assets, which could lead to unfair outcomes. This stay continues until the bankruptcy proceedings conclude and the bankrupt's assets are liquidated.

The arbitration award, therefore, violates the public policy established by the Bankruptcy Law, particularly regarding collective liquidation and the exclusive jurisdiction of the Bankruptcy Court. This is a matter the court examining the request for annulment must raise on its own initiative. Since the court below failed to do so and rejected the appellant's request to annul the award despite its clear breach of

public policy, its ruling is legally flawed and must be overturned.”

Conclusion:

In light of the Abu Dhabi Court of Cassation's decision, the case confirms that the UAE judiciary will not hesitate to set aside an arbitral award when the tribunal ventures into matters that the law reserves exclusively for state courts—most notably bankruptcy proceedings. By characterising Article 156 (1) of the Financial Restructuring and Bankruptcy Law the Court affirms two key principles: (i) the collective nature of insolvency, which forbids individual claims or parallel dispute-resolution mechanisms once bankruptcy is declared; and (ii) the obligation to comply with court-ordered stays, which serve to protect creditors and preserving the unity of the debtor's estate. Accordingly, any arbitral award rendered in defiance of such rules will be nullified, even if the parties had previously agreed to arbitration, thereby reaffirming the supremacy of public policy over party autonomy.

Endnotes

¹In Commercial Appeal No. 1154 of 2024, dated on 16 December 2024, the Court held that once a judgment declaring the debtor bankrupt is issued, all disputes relating to the debtor's debts fall within the exclusive jurisdiction of the Bankruptcy Court. This includes disputes that were previously subject to arbitration agreements. Consequently, the arbitration clause is rendered ineffective, and recourse to arbitration in respect of such disputes is no longer permissible. Any continuation of arbitration proceedings after the issuance of the bankruptcy judgment constitutes a violation of public order and necessitates the annulment of any arbitral award rendered in this regard, in deference to the principle of the unity of the bankruptcy estate and the exclusive subject-matter jurisdiction of the Bankruptcy Court.

Landmark Judicial Interpretations of the Seat of Arbitration in the UAE: Insights from the Dubai and Abu Dhabi Courts of Cassation (5/10)



Dr. Hassan Arab
Partner, Regional Head of
Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi
Associate,
Private Client Services
h.almehairi@tamimi.com



Dina Assar
Knowledge Lawyer,
Dispute Resolution
d.assar@tamimi.com

The Dubai Court of Cassation issued a significant and distinguished ruling in support of international arbitration¹. This judgment addressed several important issues that arbitration practitioners have long awaited judicial interpretation on, especially concerning procedural legal concepts related to arbitration in a manner consistent with international standards and practices. A key topic discussed was the concept of the “Seat of Arbitration.” The court elaborated in detail on this concept, distinguishing between the seat as a physical location for holding arbitration sessions or conducting certain procedures—such as witness hearings or tribunal deliberations—and the seat as a legal concept, i.e., the legal domicile of the arbitration and the consequences of selecting a particular seat as the legal base of the arbitration.

When Dubai is chosen as the legal seat of arbitration, it does not necessarily require the arbitral tribunal to hold hearings or deliberations in Dubai itself. The legal seat is primarily linked to the procedural law governing the arbitration and identifies the courts that have supervisory jurisdiction, including authority to assist the tribunal in procedural matters or to hear annulment claims against the arbitral award.

Furthermore, if the parties agree that Dubai is the legal seat, it does not matter if the

arbitral institution agreed upon by the parties has its headquarters in a location different from the legal seat—because assuming that the institution's location defines the arbitration seat is an inaccurate and misleading interpretation. This misunderstanding led both Dubai and Abu Dhabi courts to previously conflate the physical location of arbitration with the legal seat. I.e. if the arbitration institution, whose rules the parties have agreed to subject their arbitration dispute to, has its headquarters in a specific place different from

the legal seat of arbitration, so that it is said that the location of the institution's headquarters is the place of arbitration, this concept is not accurate and has led to the courts of Dubai and the courts of Abu Dhabi falling into confusion as a result of mixing between the concept of the place of arbitration as a physical location at times, and as a concept and idea connected to the legal seat and the consequences that follow from that, as we mentioned previously.

For instance, Dubai courts, during the existence of the DIFC-LCIA arbitration institution (based in the DIFC), has revealed the distinction between the physical place and legal seat of arbitration when parties agreed the application of the rules of the DIFC-LCIA arbitration institution, where Dubai courts used to decline jurisdiction over recognition or annulment proceedings for awards issued under DIFC-LCIA rules, even if the arbitration agreement stipulated Dubai as the seat. They argued that because the institution to subject the case to its rules was based in the DIFC, jurisdiction fell to the DIFC Courts. This was a clear misinterpretation of the legal seat versus the physical venue.

Abu Dhabi courts similarly erred when they declined jurisdiction over a case to ratify an arbitral award issued under the ICC Rules, despite the parties having agreed that Abu Dhabi was the legal seat. The court held that, because the ICC had a representative office in the Abu Dhabi Global Market (ADGM), jurisdiction over the arbitration award lay with the ADGM Courts.

Finally, in a recent ruling by the Abu Dhabi Court of Cassation, the court rejected an appeal brought before it regarding the annulment of an arbitral award subject to the rules of the International Chamber of Commerce (ICC)², where the court upheld the Court of Appeal's judgment that it lacked jurisdiction to hear the annulment action on the basis that the arbitration agreement did not specify the place of arbitration (Seat of Arbitration), and therefore the authority to

determine the place shifted to the arbitral tribunal, given that the parties agreed to subject their arbitration dispute to the rules of the International Chamber of Commerce (ICC). Accordingly, the rules grant the tribunal the authority to determine the place as the legal seat of arbitration in the absence of an agreement specifying the place of arbitration, and there was nothing improper in the tribunal's choice of Paris as the place of arbitration.

To summarise, Abu Dhabi courts appear to have applied two approaches in ICC arbitrations: (i) where the parties designate Abu Dhabi as the legal seat, some decisions have treated jurisdiction as lying with the ADGM Courts on the basis of the ICC's representative office in the ADGM; and (ii) where the tribunal designates a foreign

seat under the ICC Rules (in the absence of party specification), Abu Dhabi courts decline jurisdiction in favour of the courts at the seat, as in the case referenced above.

Endnotes

1. In Commercial Appeal No. 756 of 2024, decided on 19 November 2024, the Court held that there is no necessary connection between the legal seat of arbitration—as a purely legal concept—and the actual geographical location where arbitral hearings are conducted, as the latter produces no legal effect. Likewise, there is no relationship between arbitral institutions and their rules and the determination of the court having jurisdiction to hear an annulment action, which is determined solely by reference to the legal seat of arbitration. Accordingly, no weight whatsoever is to be given to the location of the arbitral institution when determining the court competent to hear an annulment action; rather, decisive consideration is given to what the parties have expressly agreed upon when selecting the legal seat of arbitration.

2. In Commercial Appeal No. 1305 of 2024, the Court noted that Article 1 of the Arbitration Law defines the "court" referred to in the provisions of the Law as the federal or local court of appeal agreed upon by the parties, or the court within whose territorial jurisdiction the arbitration is conducted. As the parties had not agreed—either in the arbitration agreement or in any subsequent agreement—on the court competent to hear an action for annulment, the competent court is the court within whose territorial jurisdiction the arbitration took place. Consequently, jurisdiction to hear the annulment action falls, as a matter of subject-matter jurisdiction, within the courts of Abu Dhabi, pursuant to Article 1 of the Arbitration Law referred to above.

"Given that the arbitration agreements contained in the original contracts did not specify the place of arbitration, the arbitrator exercised his authority to determine it in accordance with the rules of the International Chamber of Commerce, as also provided under Article 28 of the Arbitration Law. Accordingly, the arbitrator issued a decision designating Paris as the seat of arbitration, where the arbitration proceedings were conducted until the arbitral award—forming the subject of the annulment action—was rendered in Paris."

UAE Federal Supreme Court Confirms Courts' Jurisdiction Over Evidence Preservation Despite Arbitration Clauses (Judgment No. 262/2025) 6/10



Dr. Hassan Arab
Partner, Regional Head of
Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi
Associate,
Private Client Services
h.almehairi@tamimi.com



Dina Assar
Knowledge Lawyer,
Dispute Resolution
d.assar@tamimi.com

Introduction

The Federal Supreme Court, in its judgment issued on 13 May 2025 in Commercial Cassation No. 262 of 2025, confirmed an important principle governing the relationship between arbitration agreements and the jurisdiction of UAE courts over precautionary proceedings instituted for the preservation of evidence such as action for determination of facts.

The Court held that an Action for Determination of Facts is, by nature, a protective (conservatory) action falling within the courts' general and original jurisdiction unless the parties agree otherwise. This is notwithstanding that, under Article 21 of Federal Law No. 6 of 2018 on Arbitration, an arbitral tribunal may—on a party's request or on its own initiative—order interim or precautionary measures as it deems appropriate.

The Court further clarified that where an arbitration clause does not specifically grant arbitrators the authority to order interim/urgent or precautionary measures, the courts remain

competent to hear such applications. The mere existence of an arbitration agreement does not prevent a party from resorting to the courts for evidence-preservation measures. On this basis, the Supreme Court overturned the judgments of the lower courts, which had dismissed the action due to the arbitration clause and confirmed that the Court of First Instance was competent to hear the Determination of Facts action.

Background of the Dispute

The dispute arose from a maritime charter agreement under which the claimant chartered a vessel for the carriage of cargo. Upon the vessel's arrival at the port of discharge, unloading was

refused by port authorities due to alleged non-compliance with safety and security requirements. As a consequence, the cargo sale contract was cancelled, causing financial losses to the claimant.

Fearing that material facts relating to the vessel's condition might dissipate or become impossible to prove, the claimant filed an action seeking the appointment of a maritime expert to establish the factual condition of the vessel, its compliance with safety requirements, alleged contractual breaches, and the resulting damages. Notably, the claimant submitted the action exclusively as a

“A Determination of Facts action is a precautionary proceeding designed to preserve material facts that are at risk of being lost, thereby ensuring their availability for a future substantive dispute.”

Determination of Facts action, without advancing any claims relating to the merits of the dispute.

Procedural History and the Supreme Court’s Ruling

The Court of First Instance dismissed the action on the ground that the parties were bound by an arbitration clause. This decision was upheld by the Court of Appeal. Upon cassation, however, the Federal Supreme Court overturned the appealed judgment and held that the judgment was contrary to the correct application of law.

The Court held that the lower courts erred in law by characterising the action as falling within the scope of the arbitration clause, notwithstanding its purely conservatory nature. Consequently, the Supreme Court ruled that the Court of First Instance was competent to hear the action and remitted the case pursuant to Article (168) of Federal Decree-Law No. (42) of 2022 on Civil Procedures.

The Court’s Reasoning

The Supreme Court’s reasoning centered on the proper characterization of the action for determining jurisdiction. The Court underscored the principle that the nature of an action and the corresponding court competence are defined by the claimant’s final requests. Since the claimant’s sole request was for the appointment of an expert to document and preserve facts, the action was categorized as a protective, not a merits-based, dispute. A Determination of Facts action is a precautionary proceeding designed to preserve material facts that are at risk of being lost, thereby ensuring their availability for a future substantive dispute, whether in litigation or arbitration.

The judgment further clarified that the courts’ general jurisdiction over interim or conservatory powers persists unless a contract or a specific submission agreement to arbitration explicitly assigns these powers to arbitrators.

A general agreement to arbitrate disputes concerning contract interpretation or performance does not, on its own, strip the courts of their power to grant conservatory relief. In this instance, the contract’s arbitration clause did not delegate power over interim measures, leading the Court to conclude that the trial court was competent to hear the case.

Conclusion

This Judgment restores doctrinal clarity by confirming that arbitration clauses cannot be expansively interpreted to bar precautionary judicial intervention. It reinforces the principle that UAE courts remain guardians of evidentiary preservation unless expressly divested of such authority. The judgment affirms the role of the judiciary in safeguarding and preserving evidence pending the determination of the merits of the dispute, whether before the courts or arbitral tribunals.

Dubai Court of Cassation Affirms Res Judicata in Orders Recognizing and Enforcing Foreign Arbitral Awards (7/10)



Dr. Hassan Arab
Partner, Regional Head of
Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi
Associate,
Private Client Services
h.almehairi@tamimi.com



Dina Assar
Knowledge Lawyer,
Dispute Resolution
d.assar@tamimi.com

Introduction:

In its judgment in Cassation No. 428 of 2025 Commercial, issued on 15 May 2025, the Dubai Court of Cassation confirmed the finality of foreign arbitral award recognition in the UAE. The Court affirmed that once a decision has been issued on the foreign arbitral award through a final court judgment under the New York Convention, that decision holds the authority of *res judicata*.

Based on that, a party cannot initiate a new substantive dispute to challenge the award’s validity or enforceability by raising arguments that could have been raised, or were raised and decided, in the recognition and enforcement proceedings. This judgment reinforces the UAE’s commitment to the New York Convention and strengthens the legal certainty surrounding the enforcement of foreign arbitral awards.

Overview on the Dispute:

The dispute arose out of two aircraft lease agreements and the related guarantee contracts. The Appellant entered into two guarantee agreements in favour of the First Respondent, guaranteeing the obligations of a company in 2007.

Following the adverse impact of the global financial crisis on the aviation sector, the parties reached a settlement arrangement in 2010 providing for the termination of both lease agreements, the delivery of the aircraft to the First Respondent’s agent, and the payment of a specified amount.

Subsequently, the First Respondent obtained a foreign arbitral award issued by the International Court of Arbitration of the International Chamber of Commerce against both the Appellant in his personal capacity and the company he represented, dated on 17 January 2014. The rights arising from this award were later assigned to the Second Respondent pursuant to an assignment of rights dated on 25 October 2020.

On the basis of that assignment, the Second Respondent commenced enforcement proceedings in Dubai, seeking to recover an amount exceeding AED 84.8 million from the Appellant and the company he represented.

The core of the present case lies in the fact that the foreign arbitral award had already been subject to recognition and enforcement proceedings in the UAE. Accordingly, the UAE courts had conclusively recognized the validity of the foreign arbitral award and its enforceability in the UAE.

Res Judicata Prevails in Attempts to Re-Challenge Foreign Award Enforcement:

Notwithstanding the issuance of final judicial rulings previously acknowledging the foreign arbitral award and granting it an enforcement order, the appellant subsequently instituted a new substantive execution challenge before the Dubai Court of First Instance (Commercial Execution), seeking to suspend the enforcement proceedings and annul the decision granting enforcement of the foreign arbitral award. The Execution Court dismissed the claim, and its judgment was upheld on appeal.

The appellant then filed a cassation appeal, alleging that the appealed judgment contravened the law and was flawed in its application, violated the New York Convention, asserted that the foreign arbitral award was unenforceable under U.S. law, contravened public order, and challenged the validity of the assignment of rights and the calculation of interest.

The Dubai Court of Cassation dismissed the appeal, affirming that, pursuant to Article 87 of the Law of Evidence in Civil and Commercial Transactions of 2022, judgments that have acquired the authority of res judicata constitute conclusive proof as to the rights decided therein. Accordingly, no evidence may be admitted to rebut this presumption by re-litigating a dispute that has already been adjudicated, save through the legally prescribed methods of appeal against judgments.



“Accordingly, a party cannot initiate a new substantive dispute to challenge the award’s validity or enforceability by raising arguments that could have been raised, or were raised and decided, in the recognition and enforcement proceedings.”

The Court’s Reasoning:

The Court of Cassation’s reasoning was grounded in the legal principle of res judicata.

The Court confirmed that the prior judicial proceedings, which culminated in a final cassation judgment in 2021, had already affirmed the validity of the arbitral award and its enforceability pursuant to the New York Convention. The Court further explained that the United Arab Emirates’ accession to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, by virtue of Federal Decree No. 43 of 2006, renders the Convention binding legislation and enforceable domestic law within the UAE. Accordingly, courts are required to apply its provisions to all disputes relating to the enforcement of foreign arbitral awards in accordance with the applicable procedural rules, and a request for recognition or enforcement may not be refused unless one of the

exhaustively listed grounds set out in Article V of the Convention is established.

Since the foreign arbitral award had already been examined in light of these criteria and was the subject of a final judicial ruling that satisfied all its legal requirements, its validity and enforceability were conclusively established. In light of this, the Court concluded that the appellant’s initiation of a new substantive execution challenge amounted to an impermissible appeal against a final judgment vested with the authority of res judicata and was therefore inadmissible.

The UAE’s Federal-Local Judicial Principles Unification Authority Settles the Signatures Controversy on All the Pages of the Arbitral Awards (8/10)



Dr. Hassan Arab
Partner, Regional Head of Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi
Associate, Private Client Services
h.almehairi@tamimi.com



Dina Assar
Knowledge Lawyer, Dispute Resolution
d.assar@tamimi.com

On 4 August 2025 the Federal-Local Judicial Principles Unification Authority issued its landmark Decision No. (1) of 2025, finally harmonising conflicting precedents emanating from the higher courts of the United Arab Emirates on a deceptively simple–yet frequently fatal–procedural question which is: must an arbitral award be signed by arbitrators on all the pages of the Arbitral Award, or is a signature on the final page sufficient for the award’s validity and enforcement? The decision unified divergent “conflicting principles” of the UAE’s higher courts, aligned practice with international standards, and helped curb purely formal objections that may obstruct enforcement of arbitral awards.

For arbitration users the answer matters enormously. As the requirement to sign all pages of an arbitral award becomes the first procedural ground relied upon when the opposing party seeks to annul or obstruct/delay its enforcement. Divergent rulings from the Dubai Court of Cassation, the Abu Dhabi Court of Cassation, and the Ras Al-Khaimah Court of Cassation produced genuine legal uncertainty and encouraged tactical challenges inconsistent with the UAE courts’ general pro-arbitration direction. The Authority’s carefully reasoned decision restores predictability, aligns UAE practice with international

norms, and underscores the commercial imperative of limiting technical objections that delay the finality of arbitral determinations.

Background: Doctrinal Divide

Article 141 of the Federal Arbitration Law No. 16 of 2018 sets out the formal contents of an arbitral award. It refers to the “signature of the arbitrator who rendered the award” but does not prescribe that every page of the award to be signed.

Despite that lack of clarity and textual economy, the Dubai Court of Cassation developed a strict formalist doctrine, most recently

crystallised in Civil Cassation No. 403/2020 (judgment of 13 November 2020). Dubai held that the absence of the arbitrators’ signatures on every page rendered the award void ab initio: the tribunal’s signature constituted “the sole documentary foundation that proves the arbitrators’ intent.” In Dubai’s view, an unsigned page could not be deemed part of the dispositive award and therefore failed the public-order threshold for enforcement. More recently, Dubai courts were granting parties an opportunity to return to the arbitral tribunal after issuance of the award to remedy this procedural

issue by signing all pages, so that the award would not be vulnerable to annulment.

The Ras Al-Khaimah Court of Cassation and, in multiple precedents, the Abu Dhabi Court of Cassation, adopted the opposite stance. In Civil Cassation No. 5/2024 (judgment of 21 May 2024) Ras Al-Khaimah concluded that a signature on the final page satisfied the statute. Requiring signatures on every page would, it reasoned, import into arbitration the formalities of ordinary civil judgments, contradict the legislative purpose of providing an expedited alternative to court litigation, and risk unreasonably frustrating enforcement.

Jurisdiction of the Unification Authority

Article 15 of Federal Law No. 10 of 2019 on the Organisation of Judicial Relations between Federal and Local Judiciaries empowers the Federal-Local Judicial Principles Unification Authority to resolve conflicts between “final principles” issued by any of the State’s higher courts. The Public Prosecutor, as well as the presidents of those courts, may trigger the Authority’s jurisdiction.

Acting on that mandate, the Federal Public Prosecutor filed Petition No. (1) of 2025 on 26 March 2025. The panel, chaired by His Excellency Judge Mohammed Hamad Al-Badi (President of the Federal Supreme Court) and comprising eight senior judges from across the federation, convened at the Federal Supreme Court’s seat in Abu Dhabi and deliberated extensively on



“An arbitral award is valid, enforceable, and compliant with Article (41) of the Federal Arbitration Law when it bears the signatures of all arbitrators on the final page of the written award.”

the competing doctrines before delivering its judgment on 4 August 2025.

The Authority’s Ruling

The Authority endorsed the more liberal Ras Al-Khaimah line of authority and overruled the Dubai doctrine. In unequivocal terms, it held:

1. An arbitral award is valid, enforceable, and compliant with Article (41) of the Federal Arbitration Law when it bears the signatures of all arbitrators (or the majority, where applicable) on the final page of the written award.
2. There is no statutory requirement that the signatures appear on each individual page.
3. A failure to sign every page does not amount to a ground for annulment under Article (53) of the Federal Arbitration Law, nor does it constitute a breach of UAE public order within the meaning of Article (4) of the New York Convention.

In reaching this conclusion the Authority reasoned as follows

- **Legislative Text and Purpose** – Neither Article (41) of the Federal Arbitration Law nor any provision of the Civil Procedures Law expressly demands multiple signatures. Imposing such a requirement would violate the principle that no formalities may be invented by judicial interpretation in the absence of explicit legislative command.
- **International Harmonisation** – The New York Convention, incorporated into UAE domestic law by Federal Decree No. (43) of 2006, does not mandate multi-page signatures. Most leading arbitral seats recognise a single signature block. Aligning the UAE standard with that practice furthers the Convention’s pro-enforcement bias and reinforces the UAE’s position as a forum attractive for international arbitration.
- **Public-Order Considerations** – A missing signature on internal pages does

not impair the parties’ procedural rights, the transparency of the award, or the verifiability of the tribunal’s conclusions. Accordingly, it cannot implicate the narrow concept of UAE public order.

- **Principle of Pro-Arbitration Efficiency** – Arbitration was designed to avoid the technical traps that characterise ordinary civil procedure. There is no place for importing court-judgment formalities into arbitration. An unduly formalistic approach invites dilatory tactics, burdens the judiciary, and erodes confidence in the arbitral process.

Looking Ahead

The Authority’s intervention exemplifies the utility of a central mechanism to reconcile divergent judicial views in a federal system that houses multiple autonomous cassation courts. Its choice to privilege efficiency over excessive formalism signals a judiciary increasingly attuned to commercial realities and international expectations.

While the signature dispute has been settled, practitioners should anticipate further petitions where federal and local precedents collide—particularly in areas such as the limitation periods for award enforcement, the scope of arbitrability, and the standards for impartiality challenges. The Authority’s latest decision provides a compelling reference model: interpret the Arbitration Law purposively to achieve its objectives, invoke the spirit of the New York Convention, and avoid formalities that obstruct

the swift enforcement of contractual obligations.



Dubai Court of Cassation Confirms Jurisdiction and Guarantor Liability in Major Cross-Border Finance Dispute (9/10)



Dr. Hassan Arab

Partner, Regional Head of Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi

Associate, Private Client Services
h.almehairi@tamimi.com



Dina Assar

Knowledge Lawyer, Dispute Resolution
d.assar@tamimi.com

Introduction

The Dubai Court of Cassation has issued a significant judgment confirming the UAE courts' mandatory jurisdiction over defendants domiciled in the UAE, rejecting attempts to divert proceedings to foreign courts or arbitration when the party invoking those provisions is a non-signatory. The Court also reaffirmed the independence and enforceability of personal guarantees notwithstanding foreign insolvency proceedings, and it upheld a substantial monetary award against the guarantor. The appeal was dismissed in full, and the lower courts' orders were affirmed.

Background

The dispute arose from two cross-border acquisition structures financed by the creditor and supported by personal guarantees from the appellant. The first related to a 2009 shareholders' agreement; the second to a 2011 shareholders' agreement. In both transactions, the appellant issued written guarantees securing the borrower's obligations. The guarantees were drafted as continuing obligations, intended to cover the ultimate residual balance after any recoveries from the primary obligor.

Following payment defaults and a 27 September 2022 Dutch bankruptcy judgment against the borrower, partial distributions were made in the insolvency; however, a substantial balance remained outstanding. The creditor commenced proceedings in Dubai to recover the unpaid balance under the guarantees. The court of first instance appointed an expert to reconcile the accounts and quantify the shortfall, after which judgment was entered for the creditor. The Court of Appeal affirmed. The guarantor then brought a cassation appeal challenging jurisdiction, applicable law, arbitrability, the effect of foreign insolvency, and quantum. That appeal has now been dismissed.

The Court's reasoning

Mandatory jurisdiction of UAE courts despite foreign forum clauses:

The guarantor relied on forum-selection clauses in the 2009 and 2011 agreements designating the courts of England and Alberta, Canada. He further argued that the transactions were negotiated and performed abroad, and thus should not be heard in Dubai. The Cassation Court rejected these contentions. It reiterated the foundational principle of UAE civil procedure that proceedings may be brought before UAE courts when the defendant is domiciled or resident in the UAE. Where jurisdiction is grounded on

such mandatory connecting factors, a contractual clause purporting to confer jurisdiction on a foreign court cannot divest the UAE courts of their competence. The Court therefore confirmed the Dubai courts' jurisdiction over the claim against the UAE-domiciled guarantor and treated the foreign forum clauses as ineffective to the extent they conflicted with mandatory rules.

Proof of foreign Law:

The Court emphasized that a party seeking the application of foreign law bears the burden of putting the precise legal texts before the court, supported by a complete and reliable Arabic translation. Mere references to foreign concepts or excerpts from secondary sources are insufficient. If the relevant foreign provisions are not produced in full, the court may apply UAE law. Here,

the guarantor's submissions did not satisfy that standard, which undermined the defenses predicated on non-UAE law.

Non-Signatory cannot invoke an Arbitration Clause:

To defeat court jurisdiction, the guarantor invoked an arbitration clause contained in a separate agreement that provided for arbitration under the Netherlands Arbitration Institute rules. The Cassation Court applied the principle of contractual relativity: arbitration is strictly consensual and binds only those who have agreed to it. A person who is not a party to the arbitration agreement cannot rely on it to compel arbitration or to oust the courts' jurisdiction. Because the guarantor did not sign the agreement containing the arbitration clause, he could not deploy that clause to resist the creditor's claim under the guarantees.

Foreign insolvency does not bar proceedings against a guarantor:

The guarantor argued that the borrower's Dutch bankruptcy vested exclusive jurisdiction in the foreign court and precluded parallel proceedings in Dubai. The Court disagreed. It characterized bankruptcy as a status proceeding that organizes collective enforcement against the debtor's estate; it does not absorb all disputes arising from related contracts. The personal guarantee is an independent obligation running from guarantor to creditor. Accordingly, the creditor may pursue the guarantor for any shortfall remaining after insolvency distributions. The Court referred to Article 1089 of the Civil Transactions Law to clarify that the creditor should lodge its claim in the bankruptcy to preserve recourse against



the guarantor to the extent delay could cause harm; however, that procedural duty does not bar a separate action on the guarantee.

Other defenses rejected:

The Court disposed of the remaining defenses in clear terms. First, it rejected the time-bar argument associated with Article 1092, holding that the guarantees were framed as continuing guarantees that capture the final outstanding balance rather than discrete periodic debts. Second, it rejected the contention that a good-faith negotiation step was a condition precedent to litigation, reiterating that substantive rights do not lapse absent a specific legal basis. Third, it dismissed the attempt to invalidate the guarantees based on the guarantor's alleged inability to pay, noting that capacity and solvency are assessed at the time the guarantee is granted and that monetary obligations are generally enforceable by payment of value.

Reliance on expert evidence:

The Court also upheld the lower courts' reliance on the court-appointed expert's accounting analysis. The expert reconciled the financing streams, applied the contractual interest provisions, and deducted amounts realized in the Dutch insolvency to determine the residual debt. The Cassation Court found that evaluation of such technical evidence lies within the trial courts' discretionary fact-finding authority and that the expert's conclusions were reasoned and supported by underlying documents.

The Outcome:

The Court of Cassation dismissed the appeal and affirmed the orders requiring the guarantor to pay USD 96,706,986 (or AED equivalent at the time of enforcement), plus 5% per annum interest from judicial demand until full payment, together with costs, AED 2,000 advocate's fees, and confiscation of the security deposit. The Court's disposition aligns with the lower courts' findings on liability and quantum.

Why this decision matters

This ruling provides clear guidance for cross-border finance disputes involving UAE-based guarantors. It strengthens jurisdictional certainty by confirming the primacy of UAE courts' mandatory jurisdiction over locally domiciled defendants, it limits the ability of non-signatories to leverage arbitration clauses in separate contracts, and it clarifies that foreign bankruptcy does not extinguish a guarantor's independent liability. It also underscores the practical burdens of invoking foreign law in UAE proceedings and the continuing nature of well-drafted guarantees.

Abu Dhabi Cassation Court: That the Abolition of the Arbitration Institution Does Not Invalidate the Arbitration Clause (10/10)



Dr. Hassan Arab

Partner, Regional Head of Dispute Resolution
h.arab@tamimi.com



Hend Al Mehairi

Associate, Private Client Services
h.almehairi@tamimi.com



Dina Assar

Knowledge Lawyer, Dispute Resolution
d.assar@tamimi.com

Introduction:

The Abu Dhabi Court of Cassation's judgment in Case No. 586 of 2024 affirms a clear pro-arbitration stance on two recurring issues: (1) the continued enforceability of arbitration clauses referring disputes to Dubai arbitration institutions abolished under Decree No. 34 of 2021; and (2) the scope of LLC managers' authority to agree to arbitration. The Court rejected the appellants' challenges to jurisdiction and authority, upheld the lower courts' dismissal for lack of jurisdiction in favour of arbitration, and ordered the appellants to pay costs. The decision clarifies the transitional mechanics following Decree 34/2021 and reiterates that LLC managers have full authority to enter into agreements containing arbitration clauses unless their authority is expressly restricted.

Factual Background and Procedural Posture

The dispute arose from investment management relationships involving equity transactions, commissions, and alleged unauthorized disposals of securities. Two companies sued before the Abu Dhabi Commercial Court seeking expert appointment to quantify the highest value reached by specified shares after the first defendant allegedly sold them without authorization, to determine missed profits and "opportunity loss," and to reconcile and refund allegedly excessive

commissions deducted by both defendants since 2018. They sought price-differential damages between the alleged unauthorized sale prices and subsequent peak valuations, plus interest and further compensation against the second defendant for lost investment opportunities.

The claimants alleged that in 2018, funds were transferred for investment and instructions were given in June 2019 to purchase a basket of shares, but that, during 2018, the first defendant

sold the claimant's shares without knowledge or consent, causing loss as the shares later appreciated materially, while substantial commissions were deducted beyond what was due. The defendants raised an arbitration objection, and the court of first instance and the Court of First Instance dismissed the action as inadmissible / declined jurisdiction due to the arbitration agreement.



“Unless restricted by the company’s incorporation documents or internal regulations, an LLC manager holds full powers to manage the company and bind it, including the capacity to agree to arbitration.”

On appeal, the Court of Appeal affirmed the dismissal in chambers on 8 May 2024. The claimants petitioned for cassation. The Cassation Court found the petition admissible for consideration, received briefs from the defendants seeking rejection, and, after deliberation, delivered its decision on 8 July 2024.

The Arbitration Agreements and Decree No. 34 of 2021

Three portfolio management agreements were central. The first, dated 23 January 2018 between the first claimant and the first defendant, contained a clause referring disputes—including issues of validity, breach, or termination—to arbitration under the DIFC-LCIA rules, with three arbitrators, seat at the DIFC, and proceedings in English.

Two further non-discretionary portfolio management agreements, both dated 7 December 2021—one between the first claimant and the second defendant, and the other between the second

claimant and the second defendant—replicated materially identical arbitration language, referring disputes to arbitration under the rules of the DIFC-LCIA with three arbitrators, seat at the DIFC, and English language.

The claimants argued that Decree No. 34 of 2021 abolished the DIFC Arbitration Center and the DIFC-LCIA, rendering the designated forum and rules inoperative and the arbitration agreement impossible to perform, especially for the two agreements concluded after the Decree’s effective date. They contended that such post-Decree clauses were void and that, for reasons of indivisibility, the entire dispute should proceed before the courts.

The Court rejected these arguments by giving effect to Article 6(a) of Decree No. 34 of 2021, which validates agreements to arbitrate with abolished institutions as of the Decree’s effective date and substitutes the Dubai International

Arbitration Centre (DIAC) for those institutions in administering disputes under such clauses, unless parties agree otherwise. The Court held that agreements pre-dating the Decree, as well as those concluded after its entry into force, remain valid and effective, with DIAC stepping into the designated institution’s role. Consequently, the arbitration clauses remained enforceable despite institutional changes.

The reasoning is anchored in a fundamental principle: party consent to arbitration is paramount; institutional identity is secondary where the legislative framework provides a seamless substitution mechanism. The Court emphasized that the parties’ intention in resorting to arbitrate persisted, and the Decree supplies the administrative bridge to effectuate that intention through DIAC’s assumption of the predecessor institution’s functions.

Authority to Agree to Arbitration

The appellants further contended that the signatories lacked the special authority required to bind the claimant companies to arbitration clauses, arguing the company documents did not delegate such authority and that neither the CEO nor the manager possessed a specific mandate to arbitrate.

The Court grounded its analysis in Article 83 of Federal Law No. 2 of 2015 on Commercial Companies, confirming that, unless restricted by the company’s incorporation documents or internal regulations, an LLC manager holds full powers to manage the company

and bind it, including the capacity to agree to arbitration, provided that the signatory’s representative capacity is disclosed. The Court also reiterated that determining whether the requisite authority exists is a fact-intensive inquiry for the trial court, which retains wide latitude to interpret contract terms and weigh the evidence, such matters are not subject to the review of the Court of Cassation. Accordingly, the judgment was rendered dismissing the appeal, upholding the appealed judgment, and ordering the appellants to pay the fees and costs.



The Legislative Evolution in the Regulation of Non-Human Organ Transplantation



Mohammed Al-Marzouqi
Partner, Co-Head of Dispute Resolution
m.almarzouqi@tamimi.com



Dr. Omar Al-Azawe
Of Counsel, Dispute Resolution
o.alazawe@tamimi.com

Introduction

The Federal Decree-Law No. (15) of 2025, promulgated on 1 October 2025 and effective from 1 January 2026, introduces substantial amendments to Federal Decree-Law No. (25) of 2023 concerning the donation and transplantation of human organs and tissues (the “Decree-Law”). The amendments align the legal framework with rapid scientific and technological advances in transplantation and further the Decree-Law’s objective of enabling innovative solutions for the excision, transfer, and transplantation of organs and tissues. The most consequential changes modify Articles (18) and (25) to regulate the emerging field of non-human organs and tissues.

Change to the Title of the Decree-Law

To reflect its expanded scope, the title of the Decree-Law is revised from “Concerning the Donation and Transplantation of Human Organs and Tissues” to “Concerning the Donation and Transplantation of Organs and Tissues.” This change necessitates corresponding updates to institutional names. For example, “The National Centre for the Donation and Transplantation of Human Organs and Tissues” becomes “The National Centre for the Donation and Transplantation of Organs and Tissues.”

Substantive Amendments to Article (18)

From Limited Regulation to a Comprehensive Framework

Under the prior law issued in 2003, Article (18), titled “Non-Human Tissues,” governed only the excision and transfer of non-human

tissues and imposed limited controls. Those controls required, among other things, a specialist physician’s confirmation that non-human tissue transplantation was the most suitable treatment; verification of safety, origin, and disease-free status; confirmation of compatibility with the patient; and disclosure to the patient of all potential and certain health outcomes.

In 2025, Article (18) is retitled “Non-Human Organs and Non-Human Tissues,” signifying a comprehensive expansion of regulatory scope. The amendment defines a non-human organ as a collection of non-human tissues or structures that perform one or more specific functions when transplanted into the human body. It recognises two principal categories:

Animal Organ

An organ or tissue obtained from a living animal—whether naturally produced, genetically modified, or biologically cultivated—and transplanted into the human body for therapeutic purposes. This definition reflects openness to contemporary techniques in cross-species organ transplantation, including xenotransplantation.

Manufactured Organ

An artificial construct produced through techniques such as three-dimensional bioprinting, tissue engineering, or other advanced technologies approved by the Ministry or the Health Authority. These organs are designed to perform vital functions and are not derived from living human or animal tissues. The explicit recognition of manufactured organs marks a legislative first,

creating a clear pathway for the adoption of modern biotechnologies.

Strict Conditions and Controls

The amendment permits the transfer and transplantation of non-human organs and tissues into the human body subject to detailed conditions and controls, to be further specified by Cabinet decision, and anchored by the following regulatory pillars:

Medical Controls

Transplantation of a non-human organ or tissue must be the most appropriate treatment for the patient, as confirmed by a specialist physician. All non-human organs and tissues used in transplantation must undergo approved clinical and laboratory testing to demonstrate medical efficacy and biological safety according to Ministry-approved standards. Licensed facilities and specialist physicians must verify safety, confirm source, ensure the materials are disease-free, and complete all necessary procedural steps. Biological compatibility with the patient must be established based on Ministry-approved scientific and accepted medical standards prior to transplantation.

Licensing Controls

It is prohibited to excise or transplant any animal organ without a licence from the Ministry or the Health Authority. Health facilities must obtain a licence specifying the type and source of any non-human organ used in transplantation. Entities that manufacture non-



“The amendment permitted the transfer and transplantation of non-human organs and non-human tissues into the human body, in accordance with the prescribed conditions and regulations.”

human organs or tissues must be licensed by the Health Authority and approved by the relevant State authorities. Only duly licensed specialist physicians may perform transplantation procedures involving non-human materials.

Biological Safety Controls

The use of non-human organs or tissues from animal species that are not medically approved, or that have undergone genetic modifications or biological processing without proper authorisation, is prohibited.

Informed Consent

The specialist physician must inform the patient or legal representative of all potential and certain health outcomes prior to the operation and secure written consent using the National Centre’s approved form.

Special Committee Approval

Completion of donation and transplantation procedures requires prior approval from a special committee. The Minister or Head of the Health

Authority, as applicable, will determine the committee’s composition and procedures in coordination with the National Centre for Organ and Tissue Donation and Transplantation.

Healthcare Obligations, Oversight, and National Database

Licensed health facilities must provide comprehensive healthcare to recipients before, during, and after the transplantation of a non-human organ (or part thereof) or non-human tissue, including all necessary examinations and treatments post-transplantation. Health authorities and other competent regulators must conduct periodic inspections of both health facilities and manufacturing entities.

A national database will be established at the National Centre to register every non-human organ used in transplantation. For manufactured organs, the database must include data on the manufacturing entity, biological composition, clinical trial results, and

other information specified by the National Centre. The National Centre must document all stages of each transplantation, monitor potential effects, evaluate efficacy and safety, and review outcomes and medical reports.

Transfer Regulation and Procedural Guidance

The Cabinet is tasked with setting substantive controls for the transfer of non-human organs, parts thereof, and non-human tissues between health facilities within the State, as well as procedures for transfers to and from the State. These controls will be issued upon the Minister of Health and Prevention's proposal and after coordination with health authorities and other relevant bodies. The Ministry must also issue procedural guides and technical forms necessary to implement Article (18), and update them periodically to reflect medical and scientific developments.

Amendments to Article (25) - Penalties

Under the former 2023 text, Article (25) provided imprisonment and a fine of AED 100,000 to AED 2 million for three categories of violations: operating a private health facility for excision or transplantation of human organs or tissues without a licence; a physician performing such procedures without a licence; and excising an organ or tissue from a living person without complying with Article (7).

In 2025, a fourth paragraph is added to penalise violations of Clause (2) of Article (18), which addresses non-human organs and tissues, with

imprisonment and a fine of AED 100,000 to AED 2 million, or either penalty. The inclusion of the phrase "or either of these two penalties" expressly grants the judiciary discretion to impose imprisonment, a fine, or both, tailored to the circumstances of the offence.

Anticipated Outcomes

The amendments are designed to keep pace with medical innovation—particularly three-dimensional bioprinting, tissue engineering, and xenotransplantation—while broadening therapeutic options and shortening waiting times by enabling three transplantation pathways: human, animal, and manufactured organs. The framework strengthens patient safety and regulatory oversight through rigorous licensing, testing, compatibility verification, informed consent, and comprehensive pre- and post-procedural care. It further establishes a robust national follow-up and evaluation system through the mandated database, which will support evidence-based policy and clinical improvement. Legal deterrence is enhanced by extending criminal liability to violations of the non-human transplantation controls.

Beyond immediate clinical benefits, the amendments are expected to foster research and development, stimulate investment in bioprinting and tissue engineering, support the growth of a domestic advanced-therapies ecosystem, and attract international manufacturers to the State's regulated market.

Recommendations for Implementation

To ensure effective implementation, the issuance of Executive Regulations and related executive decisions should be prioritised. Clear, standardised criteria for clinical and laboratory testing, approved animal species, and permitted genetic modifications should be established by the competent health authorities. Specialised committees should be formed to evaluate licensing applications in accordance with applicable legislation. An integrated digital platform for the national database should be developed in alignment with the State's digital policy. Training for physicians and medical personnel on new technologies, along with unified treatment protocols, will be central to patient safety. Finally, comprehensive public awareness initiatives—developed in coordination with law enforcement and religious authorities—will be essential to address ethical and Shariah-related considerations and to build informed societal trust in the evolving transplantation landscape.

Criminal Penalties for Serious Medical Errors: What Practitioners Need to Know



Mohammed Al-Marzouqi

Partner, Co-Head of Dispute Resolution
m.almarzouqi@tamimi.com



Dr. Omar Al-Azawe

Of Counsel,
Dispute Resolution
o.alazawe@tamimi.com

Introduction

The Medical Liability Law has advanced the UAE's approach to medical negligence by limiting criminal liability to cases of gross medical error and by introducing procedural safeguards at the investigation stages. However, the continued availability of imprisonment for certain categories of medical error, coupled with imprecise criteria for "gross" negligence and limited grievance safeguards, risks chilling clinical practice, deterring talent, and encouraging procedural abuse. Targeted legislative refinement to Article 34 – paired with clearer standards, enhanced civil compensation and strengthened procedural guarantees – would better balance patient protection, public interest, and the realities of complex, clinical decision-making.

Current legal framework

Federal Decree-Law No. 4 of 2016 Concerning Medical Liability ("**Medical Liability Law**"), represents a marked improvement over the prior regime (Federal Law No. 10 of 2008), particularly with regard to holding doctors accountable for medical errors. One of these developments is that doctors may not be arrested or remanded in custody during investigations until the final medical report has been received from the competent health authority confirming the existence of gross medical negligence, in accordance with Article 34 of the current law. However, these positive developments do not preclude the review of certain provisions of the current law with a view to further improvement.

Article 34 defines the consequences of gross medical error. Where gross error is established, courts

may impose imprisonment of up to one year and/or a fine up to AED 200,000. If the gross error results in death, imprisonment up to two years and/or a fine up to AED 500,000 may be imposed. Where the conduct occurs under the influence of alcohol or drugs, the penalty escalates to imprisonment up to two years and a fine up to AED 1 million.

Article 5 of Cabinet Decision No. 40 of 2019 concerning the executive regulations of Federal Decree-Law No. 4 of 2016 provides the criteria for considering a medical error to be a gross medical error:

1. Unpardonable unfamiliarity with the well-established medical standards according to the level and specialization of professional practitioner.
2. Adopting a medically unrecognized method.
3. Unjustified deviation from medical standards and rules for practicing the profession.
4. The doctor is under the influence of alcohol, drugs, or psychotropic substances.
5. Gross negligence or clear lack of perception upon taking well-established medical actions; e.g. leaving medical equipment in the patient's body, giving him/her an overdose of medicine, failure to operate a medical device during or after the surgical operations, resuscitation or childbirth, failure to give the patient medically appropriate medicine, or any other act classified as gross negligence.
6. Practicing the profession deliberately beyond the scope of specialization or clinical privileges

conferred upon the doctor under the professional license.

- The doctor's use of diagnostic or therapeutic means, with no prior practice or training, and without medical supervision.

The old law did not recognise professional negligence as grounds for criminal liability, but left it to the courts to determine whether criminal liability had been established, which opened the door to a huge number of criminal complaints against doctors. However, the current law has made significant progress and limits criminal liability to gross medical negligence only. The legislator's approach in this matter was to distinguish between degrees of medical error in terms of simple and expected negligence and gross negligence in the doctor's adherence to the accepted procedures in the case presented to him.

Strengths and gaps in the current approach

The shift to a gross-negligence threshold reflects international trends distinguishing expected, simple, or non-culpable error from egregious departures from accepted practice. The gatekeeping function of expert committees prior to custodial measures also mitigates reputational risks during the investigative phase. Nonetheless, three structural gaps remain:

Retention of custodial penalties for categories of gross negligence that fall short of intentional reckless conduct

First, the retention of the penalty of imprisonment may be viewed by

professionals in the field as inconsistent with comparative legislation, which often confines itself to punishing the doctor administratively/disciplinarily with a fine or the suspension or withdrawal of their licence, in addition to civil compensation.

Article 34 of the current Medical Liability Law, provides:

“Whoever proved to have committed a gross medical error as set forth herein shall be punished with imprisonment for a period of not more than one year and / a the fine of not more than AED two hundred thousand.

The penalty shall be the imprisonment for not more than two years and / or a fine of not more than AED five hundred thousand if the gross medical error results in the death of any person.

The penalty shall be the imprisonment for not more than two years and a fine of not more than AED one million if the crime referred to the first paragraph of this Article under the influence of alcohol or drugs.”

Based on Article 34 above, the competent criminal courts shall have the authority to impose criminal penalties on doctors whenever they are proven to have committed gross medical negligence, with varying degrees of punishment depending on the aggravating circumstances.

We believe that punishing a doctor with imprisonment for committing a serious medical error may be justified and acceptable in some cases,

such as when the doctor practises under the influence of alcohol or drugs, or works without a licence, which is a flagrant deviation from medical principles and rules in the practice of the profession. However, imprisonment may not be justified in other cases involving unjustified deviation or gross ignorance of medical principles, which places the doctor under psychological pressure and negatively affects his work and his ability to make sound and effective decisions in treating the patient.

Unclear criteria for gross medical negligence

Second, the definitional criteria for “gross” negligence invites inconsistent application. Some of the criteria mentioned are vague and not precisely defined, leaving room for interpretation by medical committees and the court. Some of them are also flexible in terms of wording, such as: (unjustified deviation from medical principles and rules or gross ignorance of medical principles). Therefore, they may not warrant criminalisation and the ensuing prison sentence, even if they result in the death of the patient. Imprisoning doctors and subjecting them to legal proceedings similar to what criminals and outlaws are subjected to, including criminal investigations and prosecution by the public prosecutor, is not commensurate with the medical profession and has many negative consequences. The most important of which are as follows:

- Qualified doctors will be reluctant to work in the country for fear of criminal prosecution.

- An increase in the cost of professional medical insurance for doctors.
- Increased psychological pressure on health sector workers.
- Duplication of punishment for the same medical error, where the doctor is punished more than once for the same error, sometimes as a criminal punishment and other times as a disciplinary punishment before disciplinary committees, including fines or licence revocation, in addition to financial compensation as a result of civil claims.

- Limiting the development of medicine locally, due to the restrictions imposed on the doctor to deviate from international medical norms in the case presented to him.

Grievance procedures and the need to take into account the overlapping causes of the patient's death:

The third gap relates to committee findings which lacks sufficient safeguards to ensure due process. If a death is associated with gross medical negligence, the Higher Committee for Medical Liability often assumes that the gross medical negligence itself was the cause of death, whereas

reaching this conclusion is not clear in all cases of death. The patient's age, the nature of their illness, their delay in undergoing a particular medical procedure, or the delay in obtaining the consent of the patient's family for surgical intervention at the appropriate time, etc., may all be interrelated factors that contributed to the patient's death, and these are matters that must be taken into account by the competent committees through clear legislation that requires these committees in such cases to state whether the death was a direct result of gross medical negligence and to demonstrate this in the report in a clear and





“The competent criminal courts have the authority to impose criminal penalties on doctors when they are found to have committed serious medical malpractice.”

scientific manner. If several other causes and factors are involved, it is not appropriate to attribute the death solely to gross medical negligence.

Providing the necessary guarantees in terms of grievance procedures:

Pursuant to Article 3 of its founding resolution No. 14 of 2020, the Higher Committee for Medical Liability has the authority to uphold the decision of the Medical Liability Committee and may reject, amend or revoke the appeal.

Therefore, describing the doctor’s professional conduct as gross medical negligence may require better procedural safeguards. Although the doctor against whom the complaint is filed has the right to appeal the decisions of the Medical Liability Committee by submitting an appeal to the Higher Committee for Medical Liability, this right may be difficult to exercise in some cases, given that the Higher Committee has broad powers to amend the findings of the Medical Liability Committees without returning the file to those committees. Among such cases is that of a doctor who

was not originally a party to the findings of the Medical Liability Committee’s report, but whom the Higher Committee, while considering the appeal, found to be seriously negligent for his participation in the case. The case of a doctor who was not originally a party to the findings of the Medical Liability Committee’s report, but whom the Higher Committee, while considering the appeal, found to have committed a serious error by participating with the medical staff at a certain stage of the healthcare provided to the patient, thereby allowing for criminal prosecution. The decision of the Higher Committee is final and cannot be appealed, as this doctor did not have the opportunity to appeal the report of the medical liability committee because he was not originally a party to it.

Practical implications for healthcare providers and institutions

The risk of criminal prosecution- even if ultimately resolved without imprisonment- carries operational and strategic consequences. Qualified practitioners may be

deterred from practice in the jurisdiction, increasing pressure on recruitment and retention. Often, the heirs of a deceased patient realise the psychological pressure that filing criminal complaints with the public prosecutor’s office places on the doctor who committed the serious error, and the danger this poses to his professional future and the reputation of the health facility to which he belongs. This prompts some of them to abuse these procedures to pressure the doctor and the healthcare facility into reaching an amicable settlement for amounts that may exceed the compensation that could be obtained in court, in an effort by the doctor and the healthcare facility to avoid the serious damage that could be inflicted on them.

Proposals and recommendations:

The above-mentioned issues can be addressed through a number of proposals, including the following:

- Adopting a middle ground between completely abolishing criminal punishment and maintaining imprisonment is the best option, by imposing only fines in addition to increasing the compensation rates currently applied in civil cases, while maintaining or tightening disciplinary sanctions.
- Reconsidering criminal penalties by amending the aforementioned Article 34, as follows:
 1. Excluding criminal penalties (imprisonment and fines) for serious

medical errors, as long as they do not result in the death of the patient or permanent total disability.

2. Limiting penalties to fines in cases of serious medical errors that result in the death of the patient or permanent total disability.
3. Increasing civil compensation in line with international standards in exchange for abolishing imprisonment.
4. Retaining imprisonment and fines, or one of these two penalties, in cases of aggravated serious negligence and establishing precise criteria for this, such as practising the profession while intoxicated or other cases that warrant aggravated penalties, such as practising medicine without a licence from the competent authorities, or gross negligence.

Another recommendation would be to strengthen procedural protections in committee review. It is recommended to review the grievance procedures before the Higher Committee for Medical Liability to provide more guarantees for doctors and requiring it to return the file to the Medical Liability Committee for reconsideration in specific cases, such as:

- If the Higher Committee finds in the complaint file that the medical error should be described as serious at a time when the error had not been proven before the Medical Liability Committee.

- If the doctor is unable to appeal before the Medical Liability Committee because he was not a party to the report or complaint or was not found guilty of any medical error by the Medical Liability Committee.

The implementation of the “rule that the appellant shall not be harmed by his appeal” is explicitly stated in the procedures for appealing against the decisions of the Medical Liability Committee, when the doctor (without the patient’s appeal) appeals against a non-serious medical error before the Higher Medical Liability Committee, and a serious medical error is imposed on him.

Conclusion

The Medical Liability Law has meaningfully narrowed criminal exposure by tying it to gross negligence and by embedding expert review before custodial measures. Yet, preserving imprisonment for ill-defined categories of gross error risks disproportionate penal responses to complex, good-faith clinical judgments. Refining Article 34 to confine imprisonment to aggravated misconduct, clarifying gross-negligence criteria, enhancing civil compensation and fortifying procedural safeguards would better align the law with comparative practice and protect patient rights.

Settlements in Competition Cases in Saudi Arabia: Rules, Challenges, and Opportunities



Mohammed Negm
Partner,
Dispute Resolution
m.negm@tamimi.com

Competition cases in Saudi Arabia represent a critical regulatory touchpoint for the business environment. The **Saudi Competition Law** (the “**Law**”) aims to safeguard market fairness and compel economic entities to engage in legitimate competition. Through the **General Authority for Competition (“GAC”)**, enforcement has gained traction—not only through the imposition of fines but also via the adoption of settlement and reconciliation mechanisms.

In recent years, settlements have emerged as a strategic maneuver. They enable establishments to rapidly resolve violations, mitigate financial exposure, and circumvent protracted litigation. Simultaneously, these settlements grant GAC the flexibility to enforce regulations while protecting consumer interests. Consequently, a settlement is no longer merely an alternative procedural route; it is a pragmatic opportunity for companies to rectify their standing, safeguard their reputation, and fortify internal compliance frameworks.

This article examines the regulatory framework governing settlements in Saudi competition cases. It subsequently analyzes the primary legal, economic, social, and ethical challenges, highlighting the **opportunities** that this mechanism offers to both corporations and the national economy.

The Regulatory (Legal) Framework for Settlements in the Saudi Competition Law

Statutory Basis for Settlement and Reconciliation

The Saudi legislator integrated the settlement option into the 2019 Competition Law to modernize enforcement tools. Article 23 stipulates that the GAC Board of Directors may elect not to

refer an offending entity to the Adjudication Committee if that entity proactively provides evidence revealing its partners in the violation. The Board is also empowered to accept a settlement from the violator. This establishes two exceptional pathways distinct from standard punitive measures: Reconciliation (**Leniency**) for those who expose their co-conspirators, and Settlement for those negotiating to rectify their status.

The **GAC’s Executive Regulations** detail the controls for these tracks. Under the regulations, an offending establishment may apply for reconciliation if it participated in anti-competitive agreements and discloses its partners. It may also request a

settlement if its violation is proven. The Board reviews such applications and may accept either, whether before or after the initiation of investigation procedures, or even after referral to the Committee, provided a final adjudication has not yet been issued.

Criteria for Accepting Settlement Requests

The Executive Regulations impose strict conditions for settlement approval. The applicant must explicitly admit to the violation and cooperate fully during the review process. A mandatory prerequisite is the payment of a settlement amount determined by the Board. This payment functions as a voluntary, mitigated fine paid to avert lengthy proceedings.

SAUDI ARABIA



“Settlements in Saudi competition law are not a mere fallback; they are a sophisticated tool balancing regulatory enforcement with business continuity. They offer a strategic off-ramp from litigation, fostering a culture of compliance while protecting the national economy.”

Crucially, this does not absolve the entity of civil liability. Paying the settlement amount does not prejudice the GAC Board’s right to order the entity to compensate affected parties. Article 25 of the Law affirms the right of any aggrieved party to claim compensation before the competent court. Furthermore, GAC may compel the establishment to implement specific undertakings, such as adopting compliance programs or modifying future commercial behavior.

Once the Board approves a settlement, criminal proceedings regarding the specific violation cease. The case is closed without criminal conviction or public naming in the media. However, GAC retains the right to revoke the settlement and refer the entity to the judiciary if it breaches the settlement terms or fails to compensate victims as mandated.

Distinguishing Fines, Settlements, and Reconciliation

To contextualize settlements, one must contrast them with traditional fines and leniency programs:

- **Fines:** The primary penalty upon judicial confirmation of a violation. Imposed by the Adjudication Committee, fines can reach 10% of total annual sales of the relevant product, or 10 million SAR if sales are incalculable. In severe cases, fines may triple the illicit gains. Penalties often include publication of the verdict at the offender’s expense, daily fines, or facility closure. Fines aim for general deterrence but involve lengthy litigation where the burden of proof lies with GAC.

- **Settlements:** Voluntary agreements resolving the case swiftly in exchange for mitigated terms. The entity admits guilt, pays a negotiated amount (often lower than the potential fine), and commits to corrective measures. In return, criminal prosecution stops. This ensures speed and relative confidentiality, limiting reputational damage. However, the obligation to compensate victims remains. Settlements serve as a pragmatic compromise, achieving moderate deterrence without prolonged legal conflict.

- **Exemptions (Reconciliation/Leniency):** A specialized tool to unearth secret cartels. GAC grants full immunity from penalties to the first entity that self-reports illegal agreements and discloses involved parties. This entity faces no fines and avoids referral to the Committee, provided they supply evidence implicating co-conspirators. This mechanism destabilizes cartels by incentivizing betrayal among colluders. Despite its power, uptake is low—only three entities received full exemption between 2023 and 2024. This suggests a fear of admission consequences or a lack of awareness regarding the program’s benefits.

Legal Challenges

While settlements accelerate dispute resolution, they face significant legal hurdles in the Saudi context. The primary obstacle is the offender’s apprehension regarding civil liability. An

implicit or explicit admission of guilt during settlement or leniency applications can serve as evidence in private damages claims.

Article 25 empowers affected parties to sue for damages resulting from anti-competitive practices. Violators fear that admitting guilt to secure a settlement opens the floodgates for compensation claims that could exceed the settlement amount itself. For instance, admitting to price-fixing could trigger exorbitant claims from competitors or consumers. Since the Executive Regulations often require victim compensation as a settlement term, the admission of liability is formalized.

This creates a complex calculus: the offender must weigh the benefit of closing the criminal case against the risk of civil exposure. The lack of explicit legal provisions protecting settlement admissions from being used in private litigation complicates this decision. Many entities may prefer to gamble on a “not guilty” plea before the Committee rather than hand over a signed confession usable by civil claimants.

Economic Challenges

Economic entanglements further complicate the decision to settle. In many antitrust scenarios—such as price-fixing or market allocation—the violators share deep commercial ties. They may be partners in other investments, share supply chains, or belong to the same trade blocs.

One party initiating a settlement or leniency

request inevitably harms its partners, exposing them to penalties. If the reporting entity relies economically on these partners, the backlash can be severe—joint ventures may dissolve, and supply lines may be cut. The offending entity faces a dilemma: maintain silence and bear joint liability to preserve business networks, or disclose the violation to secure a settlement, thereby burning bridges and losing future cooperative advantages.

Social Challenges

Saudi Arabia’s unique social fabric presents distinct challenges. The business landscape is dominated by family-owned conglomerates and kinship-based networks. Family businesses contribute approximately 66% of the private sector’s GDP. Consequently, competitors in a specific sector are often relatives or members of the same tribe.

When a violation involves multiple parties, the co-conspirators are frequently linked by strong social bonds. An individual offender faces a difficult choice: seek a settlement and implicate others, risking family estrangement and tribal censure, or remain silent. Socially, exposing relatives is often viewed as betrayal or disloyalty. Tribal traditions prioritize group solidarity, and deviating from this norm invites social ostracization.

This conflict between legal compliance and social obligation dampens the motivation to cooperate with GAC. Many prefer collective silence and legal confrontation over individual salvation at the expense of the group. However,

this culture is shifting. Growing legal awareness is fostering the realization that protecting market competition serves the public interest. Nevertheless, GAC must continue its awareness campaigns to demonstrate that legal adherence protects society and the economy, reinforcing rather than contradicting authentic social values.

Practical Opportunities for Settlements

Despite these challenges, settlements offer substantial value to both companies and the Regulator:

- **Mitigation of Financial and Procedural Costs:** Settlements reduce the immediate financial hit compared to maximum fines and eliminate legal defense costs.
- **Reputation Management:** Resolving disputes quickly and confidentially avoids the stigma of public sanctions and court verdicts.
- **Regulatory Relationship Building:** Proactive settlement signals a willingness to cooperate, potentially improving future dealings with GAC.
- **Compliance Reinforcement:** Settlements often mandate the creation of robust internal compliance programs, improving long-term corporate governance.
- **Market Stability:** Bypassing prolonged litigation resolves uncertainty quickly, boosting investor confidence.

Conclusion and Recommendations

The settlement system in Saudi competition cases offers a viable path forward, yet its potential is restrained by complex challenges. To maximize effectiveness, we propose the following:

- Issue Comprehensive Settlement Guidelines:** GAC should publish a detailed procedural guide. This document must transparently outline settlement steps, confidentiality protocols, victim compensation mechanisms, and the handling of evidence. Clarity will reduce the ambiguity that currently deters applicants. Enhanced incentives, such as greater fine reductions or information protection, should be considered.
- Balance Speed with Rights:** Settlements must not compromise the rights of aggrieved parties. GAC must ensure that the drive to close cases does not sideline victim compensation. Furthermore, settlements must not be a loophole for offenders to escape without behavioral change; mandatory compliance programs are essential.
- Cultivate a Culture of Self-Compliance:** Prevention is superior to remediation. Companies must invest in proactive compliance programs to prevent violations initially. GAC's workshops and community engagement are vital in shifting the business culture toward fair competition, minimizing the need for settlements or litigation.

Settlements in Saudi competition law are not a mere fallback; they are a sophisticated tool balancing regulatory enforcement with business continuity. They offer a strategic off-ramp from litigation, fostering a culture of compliance while protecting the national economy. By refining the regulatory framework and addressing social and legal friction points, Saudi Arabia can leverage settlements to enhance market efficiency and consumer welfare.



Banking Interest and the Necessity for the “General Assembly of the Court of Cassation” to Intervene to Unify the Legal Principles Issued in This Regard



AbdulKarim AlSoud
Senior Associate,
Dispute Resolution
a.alsoud@tamimi.com

It is well-known in all countries of the world that the banking sector, both conventional and Islamic, constitutes the backbone of the economy in all other economic sectors, by providing financing services for various local and international investments, as well as providing services for transferring investment returns and their tools (funds), and it is at the same time a commercial investment sector that aims to achieve profit.

Given the importance of this sector, all countries worldwide (including the State of Qatar) have been keen to create a legislative environment that ensures its stability and continuity by establishing a legal basis for the income generated by the banking sector as a major investment sector, which primarily relies on banking interest imposed by banks on their customers through loan agreements or banking facilities alike.

Regarding banking interest and given the absence of a decisive legal text in the Qatari Commercial Law governing the subject of “banking interest,” it is necessary to refer to Qatar Central Bank Law No. 13 of 2012, which regulated banking operations, including those related to banking interest. Article 70 of this law stipulates that the interest rates agreed upon in contracts concluded between banks and their clients shall apply to both parties, whether during the loan term, upon rescheduling, or even after the borrower defaults and ceases payment. In the absence of an agreement on a specific interest rate, the interest rates determined and announced by the Qatar Central Bank from time to time shall apply, as Article 70 of the law states the following:

The Bank shall control returns and interest rates and the conditions for granting loans and accepting deposits in the various financial institutions.

The interest rate or yield determined by the Bank shall apply to performing or rescheduled credit facilities, unless otherwise agreed between the lending financial institutions and their customers at another price.

Despite the clarity of the text in the previous Qatar Central Bank Law No. 33 of 2006 and the current Law No. 13 of 2012, which allow the application of agreed interest rates in facility and loan contracts, **Qatari courts still, to date, adopt a conservative view in some of their rulings**

regarding the application of interest, which has led to contradictory judicial decisions in this regard!!

Until 2010, Qatari courts, in most of their rulings, used to order the borrower to pay the principal amount of the loan, but they would refuse to rule on the interest agreed upon in the loan contract. This approach was based on the provisions of Article 568 of the Civil Code, which states the following:

“If a benefit in excess of securing the lender’s right has been stipulated in the loan contract, the stipulation shall be void and the contract shall be valid.”



“The conflict in the rulings of the subject matter courts regarding the application of bank interest, and the Court of Cassation’s endorsement of these rulings despite their contradiction, necessitates the intervention of the “General Assembly of the Court of Cassation” to unify the legal principles governing bank interest.”

In 2010, the Qatari Court of Cassation issued a judgment affirming the right of banks to apply the interest rates agreed upon in the contract, but it distinguished between two types of interest: “**contractual/ interest**” and “**default interest**”. According to the court’s definition, and based on this ruling, Qatari courts began ruling in favor of banks for the principal amount of the loan along with the accrued interest on the loan until the date of the judicial claim (filing the lawsuit). As for the claim for interest for the period subsequent to the judicial claim until full payment, the courts used to adapt it as a claim for compensation for delay in payment, and instead of ruling with interest according to the agreed percentage in the loan contract until the date of full payment, the courts used to rule with a lump sum that the courts called compensation

for damages on the basis of tort liability and not on the basis of contractual liability.

In 2020, the Qatari Court of Cassation issued a very important ruling, deciding that the calculation of interest – whether contractual/compensatory or late payment interest – must be in accordance with what is agreed upon in the loan contract. It affirmed that the approach taken by the courts, considering the request for interest on credit facilities as a request for compensation for the unlawful act of non-payment and delayed payment, is an incorrect approach and is considered a deficiency in the judgment if the two parties had agreed in writing in the loan contract on determining the amount of interest and how it is calculated. The Court of Cassation elaborated that

the Qatari legislator has allocated specific provisions for both contractual liability and tort liability, each independent of the other, thereby expressing its desire to establish a defined scope for the provisions of each type of liability. It further stated that adopting tort liability in the context of a contractual relationship would, in fact, undermine the contract’s provisions regarding liability for non-performance, thus infringing upon its binding force.

(Appeal No. 171/2020 dated 16/06/2020)

After the establishment of the Investment and Trade Court in Qatar under Law No. 21 of 2021, and despite the fact that this law does not include any new provisions related to bank interest, some circuits of the Court of First Instance and the Court of Appeal in the Investment Court have already begun issuing judgments obliging the defaulting borrower to pay the bank the principal amount of the **loan granted, in addition to the agreed interest, both “contractual interest” and “default interest,” according to the agreed rates from the date of the judicial claim until the date of full payment loan granted**, in addition to the agreed interest, both “**contractual interest**” and “**default interest**”, according to the agreed rates from the date of the judicial claim until the date of full payment. It is noteworthy that the Qatari Court of Cassation has upheld the validity and correctness of these judgments.

(Appeal No. 713/2024 – Civil Cassation Session 22/08/2024)

(Appeal No. 1873/2024 – Civil Cassation Session 31/12/2024)

However, despite this clear trend of the Court of Cassation, some other circuits insisted on issuing their judgments according to the previous trends of the traditional civil court, as they insist that claiming agreed interest is in fact a claim for compensation for delay in payment. In order to justify their non-compliance with the Cassation judgments mentioned in the previous paragraph, these circuits state in the merits of their judgments that they take the agreed percentage in contracts as contractual and late interest as “a criterion for estimating the value of compensation,” and as a result, these courts insisted on ruling with a lump sum compensation, instead of ruling in favor of the bank with interest until full payment.

It is noteworthy that the Qatari Court of Cassation has also supported this approach taken by some appellate circuits in the Investment Court, as it decided to reject the appeals filed against it.

(Appeal Judgment No. 30/2024 dated 14/10/2024)

(Appeal No. 1846/2024 – Civil Cassation Session 24/12/2024)

In terms of the outcome, there are **now two prominent directives within the investment court circuits**: the first states that interest, in both its contractual and late payment forms, must be awarded until full payment on the basis of contractual liability; the second states

that compensation must be awarded on the basis of tort liability, with the agreed interest rate used as a criterion for estimating the value of this compensation. **Both directives, despite their contradiction, have been upheld by final judgments issued by the Court of Cassation. Both directives, despite their contradiction, have been upheld by final judgments issued by the Court of Cassation.**

In light of this conflict in judgments issued by the Investment Court and upheld by the Court of Cassation, the role of the “General Authority of the Court of Cassation” emerges, to which the Qatari legislator, pursuant to the provisions of Article 9 of Judicial Authority Law No. 8 of 2023, entrusted the task of establishing and unifying legal principles. It has become very necessary to unify the conflicting judgments of the Qatari Court of Cassation regarding banking interest, with the aim of achieving swift justice based on the idea of achieving justice quickly while ensuring that judgments are stable and consistent. It is no secret that the contradiction or lack of clarity in the judgments of the Court of Cassation, even in only detailed matters, is the biggest reason for the contradiction and conflict in the judgments of lower courts.

Legislative Gap in the Competition Protection Law Judgment of Unconstitutionality of Article 34, Clause 1



Mohamed Abouaki
Associate (Consultant),
Dispute Resolution
m.abouaki@tamimi.com

Introduction

The Kuwaiti legislature issued Competition Protection Law No. 72 of 2020 with the aim of protecting the Kuwaiti market from practices that negatively affect competitiveness in the Kuwaiti market, such as agreements and interference in determining the size of a particular market or its prices. Believing in the pivotal role of this law, the legislator has included a

provision that allows the Disciplinary Board of the Competition Protection Authority to impose financial penalties on companies that commit any of the violations listed in Articles 5 to 8, including, for example, entering into agreements to fix product prices, divide the market, or stabilise production quantities, and undertaking any action that would disrupt, restrict, or prevent competition in the Kuwaiti market. The legislator has specified these financial penalties in clause (1) of Article (34), stipulating that they shall not exceed 10% of the total revenue achieved by the offending company during the previous financial year.

The wording of this article has caused several problems in its practical application, prompting a number of interested parties to challenge the constitutionality of this specific clause, which was reviewed by the

Constitutional Court and ruled unconstitutional as detailed below.

Constitutional Court ruling

The plaintiffs filed a direct appeal challenging the constitutionality of clause (1) of Article 34 of the Kuwaiti Competition Protection Law on the grounds that the penalty is disproportionate to the violation, as it imposes a financial penalty of 10% of the value of the previous fiscal year's revenues. The revenue generated during the financial year may be the result of the violation or the result of legitimate commercial operations, and therefore it is not reasonable to punish the violating company for all of its activities, both those that violate the law and those that do not. In addition, the aforementioned clause is ambiguous and difficult to apply if the violating company has suffered losses and has not generated any revenue. Finally, the aforementioned clause

does not specify precisely which previous financial year is meant: is it the financial year preceding the material element of the offence, or the financial year preceding the issuance of the disciplinary council's decision?

Based on the foregoing, the Constitutional Court concluded in its ruling No. 5 of 2023, issued on 5 February 2025, that: "The unconstitutionality of clause (1) of Article (34) of Law No. (72) of 2020 on the protection of competition insofar as it imposes financial penalties not exceeding ten per cent (10%) of the total value of the revenue achieved by the person concerned during the previous financial year in the event of a violation of the provisions of Articles (5), (6), (7) and (8) of this law, and rejected the appeal with regard to the remaining articles challenged."

“If the legislator issues a new article to avoid the constitutional flaw in Article 34(1) and it enters into force, it will apply to agreements that were made prior to the entry into force of the law and continued until its entry into force”

Impact of the ruling

The legislator has given legal authority and specificity to the rulings of the Constitutional Court, due to the importance of its role in monitoring laws and ensuring their validity under the constitution accepted by the State of Kuwait, its government and its people. Therefore, the rulings of the Constitutional Court in general, and the aforementioned ruling in particular, are binding on all, meaning that they are binding on all bodies, institutions, and courts at various levels, including the Disciplinary Council and the Competition Protection Authority, in accordance with Article 1 of Law No. 14 of 1973 on the establishment of the Constitutional Court. This is in addition to the effect of the ruling, which is binding on all bodies and courts to take the necessary measures to apply the aforementioned ruling of the Constitutional Court to existing disputes and matters, and even to settle their effects with regard to the past, as expressly stipulated in Article 6 of the aforementioned law.

The Kuwaiti Court of Cassation has upheld and emphasised the two aforementioned rules in numerous rulings, repeatedly ordering various courts to implement the rulings of the Constitutional Court in cases before them at the time of the ruling, as well as to annul administrative decisions based on articles that have been ruled unconstitutional, even with retroactive effect. These include Appeal No. 93 of 2009, Administrative, in the session of 2 November 2010, and Appeal No. 529 of 2004, Administrative, in the session of 19 December 2006.

Legislative vacuum

Perhaps the most significant effect of the Constitutional Court's ruling mentioned above is the legislative vacuum it has left behind, which has abolished the penalties for violating Articles 5 to 8 of the Competition Protection Law. Since the aforementioned ruling was handed down, Article 34(1) has become null and void, and its unconstitutionality applies to cases currently being heard and investigations

conducted at the time of the ruling, as well as retroactively to rulings that have been issued and penalties that have been decided by the Disciplinary Council. In addition to the contemporary and retroactive effects of the ruling that we discussed when talking about the effect of the ruling, there is also a future effect, which is the absence of penalties in the event of violation of Articles 5 to 8 of the Competition Protection Law.

However, it must be taken into account that the violations stipulated in the aforementioned articles are of the nature of continuing offences, in which the state of illegality continues and its effects are renewed throughout the period of the agreement stipulated in Articles 5 to 8 (.). Therefore, if the legislator issues a new article to avoid the constitutional flaw in Article 34(1) and it enters into force, it will apply to agreements that were made prior to the entry into force of the law and continued until its entry into force. This is not affected by the argument that criminal laws do not have retroactive effect, in accordance with the constitutional rule set out in Article 179 of the Constitution, because the material effects of the offence are renewed, as we have already mentioned.

Conclusion

Constitutional Court Ruling No. 5 of 2023, dated 5/2/2025, which ruled that Article 34(1) of the Competition Protection Law is unconstitutional, has retroactive and contemporary effects that necessitate the withdrawal of the ruling's effect on administrative decisions prior to and contemporary with the ruling issued by the Disciplinary Council, as well as judicial rulings pending to annul the aforementioned decisions. In addition to the future effect represented by the legislative vacuum in the absence of financial penalties for violating

Articles 5 to 8 of the law, while a new article replacing the article ruled unconstitutional will apply to violations that began before the new article came into force and continued until its entry into force.



Article on the Liability of the Company's Board Members in accordance with Companies Law No. 1 of 2016 AD for Damages resulting from Acts of Fraud or Abuse of Authority, and any Violation of the Law and the Company's Regulations, and for Errors in Management



Mohamed Tawfik
Senior Associate,
Dispute Resolution,
m.tawfik@tamimi.com

It is legally established, in accordance with Article 188 of Companies Law No. 1 of 2016, which states that: Each shareholder, whether a natural or legal person, may appoint their representatives to the company's board of directors in proportion to their shareholding, etc. These representatives shall have the same rights and duties as elected members. These representatives shall have the same rights and duties as elected members. The shareholder shall be liable for the acts of his representatives towards the company, its creditors, and its shareholders.

It is legally stipulated, in accordance with Article (201) of the Companies Law mentioned above, that:

"The Chairman and members of the Board of Directors are responsible towards the company, shareholders, and others for all acts of fraud, abuse of power, every violation of the law and the company's regulations, and for mismanagement... etc."

Article (202) of the same law also stipulates that:

"The liability stipulated in the preceding article shall be either personal liability incurred by a specific member or joint liability among all members of the board of directors... etc."

Article No. 204 of the same law also stipulates that:

Each shareholder may individually file a liability lawsuit on behalf of the company if the company does not file it. In this case, the company must be sued to be awarded compensation if necessary.

"A shareholder may file a personal claim for compensation if the error caused him damage, and any condition in the company's contract that stipulates otherwise is null and void."

The foregoing makes it clear that the chairman and members of the company's board of directors are legally

responsible – before the company, shareholders, and third parties – for any acts they commit that constitute a violation of the provisions of the law or the company's articles of association, and for errors in management. Their responsibility here is personal, and therefore, anyone harmed by such acts has the right to claim compensation from them for the damages incurred. This responsibility applies to all members of the board of directors, regardless of their title, whether chairman of the board, elected member, or a member representing a legal entity shareholder in the company, as the legislator has equalized the rights and obligations

of elected members and shareholder members. No member is exempt from this responsibility unless they prove that they did not participate in the erroneous acts of the board of directors.



"Each shareholder may individually file a liability lawsuit on behalf of the company if the company does not file it. In this case, the company must be sued to be awarded compensation if necessary."

This is evident from the explicit text in Article 188 of the aforementioned Companies Law, which made the shareholder responsible for the actions of the member representing them in the management. This is another additional guarantee for the benefit of the company, its creditors, and its shareholders, so that if this representative makes a mistake in management,

the shareholder who appointed them will be jointly responsible with them for the errors committed by this member. This does not mean that responsibility transfers from the board member and becomes limited to the shareholder represented by this member, nor does the latter become exempt from responsibility because they receive orders from the shareholder, as that member can resign from representing this shareholder if the latter asks them to commit an error or fraud in management that harms the company in which they are a shareholder. Even if the shareholder who appointed them obligated them to a general policy to be pursued in the company's management, the member must implement this policy within a correct legal framework that achieves the interests of the rest of the other shareholders, because in the end, they are responsible for managing the company as an entity that includes all shareholders, and not just for the interests of the shareholder member they represent. If the representative member deviates from that framework and commits illegal acts that constitute an error in management or a violation of the law or the company's articles of association, they shall be jointly liable with the legal entity shareholder they represent for those acts and for compensation for the damages resulting therefrom to the company in which they are a shareholder, its creditors, and its shareholders. Only the member who proves non-participation in the erroneous acts of the board of directors is exempt from that responsibility.

Bahrain Launches International Commercial Court



Noor Al Rayes

Partner, Head of Dispute Resolution - Bahrain
n.alrayes@tamimi.com



Bradley Price

Senior Associate, Dispute Resolution,
b.price@tamimi.com



Fatema Sarhan

Senior Associate, Dispute Resolution,
f.sarhan@tamimi.com

Launch of the New Court

After the introduction of its law in 2024 (Royal Decree No. (9) of 2024) (the “**BICC Law**”), the Bahrain International Commercial Court (the “**BICC**”) officially launched on the 5th of November to hear international commercial disputes. The BICC introduces a unique and dynamic framework between Bahrain and Singapore for resolving cross-border commercial disputes.

Features of the BICC

One of the main features of the BICC is its innovative appellate mechanism. Unless the parties object, BICC judgements are appealed to the International Committee of the Singapore International Commercial Court (the “**SICC**”).

Alternatively, parties may opt to appeal judgements to the BICC’s own appellate body. This arrangement establishes global standards for the BICC within the region by providing access to the trusted expertise of the SICC, whilst ensuring legal consistency for businesses operating across jurisdictions. The International Committee of the SICC comprises judges from both the SICC and the BICC to ensure an effective appellate framework.

Subject to party consent, the BICC has jurisdiction over international commercial disputes. Under the BICC Law, a dispute is considered international if:

- a party’s headquarters is located outside Bahrain;
- a significant part of the contract performance occurs outside Bahrain; or
- the subject matter of the dispute is situated outside Bahrain.

A dispute is considered commercial if its subject matter relates to relationships of a commercial nature, including but not limited to:

- supply of goods or services;

- distribution agreements;
- investment and financing;
- banking transactions;
- insurance;
- franchising agreements; and
- joint ventures.

The BICC further attracts international disputes by allowing proceedings to be conducted in English and Arabic, non-Bahraini counsel representation and the application of foreign laws. Judgments issued under the BICC shall be considered as judgments issued by a competent authority in the Kingdom and shall be subject to immediate enforcement without the need for guarantees.

BAHRAIN

Interaction with the BDCR

Bahrain previously established Bahrain Chamber for Dispute Resolution (“**BDCR**”) which has mandatory jurisdiction over disputes with a claim amount exceeding BHD 500,000 (app. USD 1.3 million), of commercial nature and with one of the parties being a financial

institution licensed by the Central Bank of Bahrain or a commercial company as defined under Bahraini law.

It is expected that the BDCR will operate alongside the BICC with a slight overlap in the jurisdiction for a limited number of claims. It is currently unclear how this

overlap will be facilitated between the two Courts, as we await more regulations to come out and for judgments regarding this matter.

Below is a comparison between the BICC and the BDCR.

	BDCR	BICC
Establishment Legislation	Legislative Decree No. 30 of 2009.	Royal Decree No. 9 of 2024.
Jurisdiction	Mandatory if dispute meets certain thresholds (amount > BHD 500,000) and parties are of certain types (financial institution, commercial companies) and dispute is of a commercial type.	Based on party consent. Either: (1) parties agree in writing to submit their dispute to BICC, or (2) one party files and the other accepts BICC’s jurisdiction explicitly or implicitly.
Language	Cases can be managed and decided in either Arabic or English; parties may choose English under specific conditions.	Proceedings can either be in English and Arabic, if certain requirements are satisfied.
Arbitration and Mediation Centre.	Has arbitration/mediation rules and centre.	Does not have arbitration/mediation rules or centre. Only allows disputes of arbitration-related matters (provisional measures, appointment/disqualification of arbitrators, annulment or recognition of arbitration decisions)
Leadership	Chairman Mr. Ali Abdulla Al Aradi and Chief Executive Officer Mr. Ahmed Husain.	President Jan Paulsson and Deputy President Christopher Greenwood KC.
Appeal	BCDR Court judgments are not appealable but may be challenged before the Bahraini Court of Cassation for annulment on limited grounds.	Appeals go to the International Committee of the Singapore International Commercial Court (SICC), unless parties agree for appeal to be heard by BICC’s Appellate Body.
Legal Representation	Non-Bahraini lawyers may represent parties provided they have joint power of attorney with a Bahraini lawyer authorised to practise before the Court of Cassation.	Non-Bahraini attorneys may represent parties in conjunction with a Bahraini attorney in Arabic disputes; non-Bahraini attorneys may represent parties alone in non-Arabic disputes.

BICC Ambitious Future

The establishment of the BICC represents a significant milestone in Bahrain’s ambition to position itself as a leading international dispute resolution hub in the Middle East. By combining innovative features—including bilingual proceedings, the acceptance of foreign law, and a unique appellate partnership with the SICC—the BICC offers international businesses a compelling alternative forum for resolving cross-border commercial disputes.

Certain practical questions remain to be addressed as the BICC begins operations. The jurisdictional overlap with the existing BDCR requires clarification through forthcoming regulations or judicial decisions to ensure predictability for potential users. Additionally, the Court’s success will ultimately depend on its ability to attract high-quality cases, build a strong body of jurisprudence, and demonstrate efficiency in case management and decision-making.



The Liability of the Maritime Carrier for Loss, Damage, and Delay of Goods in Light of the Provisions of the Omani Maritime Law



Mahmoud Mabrouk
Senior Associate,
Dispute Resolution
m.mabrouk@tamimi.com

The issue of maritime carrier liability is one of the most important topics in maritime law in general, and one of the most prominent issues raised by the contract of carriage of goods by sea in particular. This contract creates a fundamental obligation on the carrier to transport and deliver the goods to the consignee free from any damage or loss, and at the place and time specified in the contract. Since this obligation is one of the obligations borne by the carrier as a result, not as a means, any breach of it entails legal liability when damage occurs, whether the error is issued by the carrier himself or by one of his subordinates.

Therefore, the maritime carrier is liable for any damage to the transported goods whenever loss, damage, or delay in delivery occurs, considering that the purpose of the transportation contract is to deliver the goods to the consignee in the agreed manner and time. The importance of studying this liability stems from the fact that it touches upon the core of commercial maritime activity, which is one of the fundamental pillars of the national economy and international exchange. The Omani legislator has given special attention to this matter,

and the Maritime Law has set precise provisions that balance the rights of the carrier, the shipper, and the consignee.

In this article, we will address the most important cases of maritime carrier liability as regulated by Omani maritime law, through two main sections: the first will deal with the carrier's liability in the event of loss of or damage to goods, then the second will present its liability in the event of delay in their delivery, leading to a conclusion that highlights the results drawn from this legislative regulation.

First: The liability of the maritime carrier in case of loss of or damage to goods

The sea carrier is obligated, by virtue of the contract of carriage, to deliver the goods to the consignee in the same condition in which they were received from the shipper or their agent, and in the quantity specified in the bill of lading. Article 206 of the Omani Maritime Law stipulates that the carrier shall be liable for the loss of or damage to the goods if such loss or damage occurs during the period between his receipt of the goods at the port of loading and their delivery at the port of discharge to the consignee.

Consequently, the carrier is liable for any total or partial loss of goods, as well as for any damage affecting them, whether in whole or in part, including shortages in weight or quantity, unless the shortage results from the natural "route deficit" that affects certain types of goods during transit. This deficit is estimated according to the nature of the goods; if they are liquids, a part of them may evaporate due to weather factors, and if they are grains, a small amount may leak during shipping or unloading operations.

“Paragraph 2 of Article 212 stipulates that the carrier’s liability for delay is estimated at an amount equivalent to two and a half times the freight charges due for the delayed goods, provided that it does not exceed the maximum compensation for loss or damage.”

The law did not specify a particular means to prove this incapacity, leaving the trial judge full discretion to determine the appropriate means of proof in light of the circumstances of the incident. The bill of lading may contain reservations made by the carrier regarding the condition, quantity, or weight of the goods. In this case, it is presumed that the shortage or damage predates the carrier’s receipt of the goods, and the burden of proving otherwise falls on the consignee. However, if the bill of lading does not mention the quantity of goods at all, the carrier is not liable for any shortage, on the grounds that he received them as they were when shipped, unless the consignee proves that the quantity shipped was greater than the quantity delivered to him, and he has all legally established means of proof for that.

However, if the bill of lading is “clean,” meaning free of remarks or reservations, it is considered prima facie evidence that the carrier received the goods in the

condition stated therein, and the carrier’s liability for any loss or damage occurring during the execution of the contract of carriage arises without the need to prove its fault. He shall not be relieved of liability unless he proves that the loss or damage arose from a defect in the goods, an act of God, or the shipper’s own fault.

The Maritime Law, in Article 207, addressed the case of goods being considered lost, stating that if the goods are not delivered within thirty days from the expiration of the delivery period specified in Article 208, they shall be deemed to have been lost. This means that a long delay in delivery is considered a legal destruction of the goods.

The legislator also obliged the consignee to notify the carrier in writing in the event of loss or damage to the goods, specifying precise deadlines that must be adhered to. If the loss or damage is apparent, the consignee must notify the carrier within two working days from the date of receipt

of the goods, otherwise it shall be presumed that they were delivered in good condition as stated in the bill of lading, unless proven otherwise. However, if the damage is not apparent, notification may be given within fifteen days from the date of delivery. These provisions are stipulated in Article 217 of the Maritime Law, which established a simple presumption of sound condition of the goods when no notification is given, and this presumption can be rebutted by all means of proof.

Jurisprudence has noted that the text of Article (217) did not explicitly distinguish between apparent and non-apparent damage regarding the presumption. Therefore, a large part of jurisprudence and the judiciary has tended to apply the same ruling in both cases, in consideration of the fairness of the legal positions of both parties.

However, the Omani legislator exempted the consignee from submitting the notification in the event of an inspection of the goods in the presence of the carrier or his representative upon delivery, where their condition is proven by an official report, thus eliminating the need for a written notification. This was stipulated in the third paragraph of Article (217), which clarified that conducting the inspection in the presence of both parties obviates the need for notification.

As for the assessment of compensation, the first paragraph of Article 212 of the Maritime Law specified a precise criterion for determining the carrier’s liability for the destruction, damage, or loss of goods,

stating that the value of compensation shall not exceed 500 Omani Rials for each package or shipping unit, or 5 Omani Rials for each kilogram of the total weight of the goods, whichever is higher. The legislator also considered that packages or shipping units collected in containers are considered a separate package or unit when compensating for them in the event of the container’s destruction, provided that the bill of lading states the number of packages or units inside the container. However, if this is not mentioned, the container is considered a single package. If the container is provided by the shipper, it is counted as a package for him, but if it is provided by the carrier, it is not counted for compensation.

Second: The liability of the maritime carrier in case of delay in delivering the goods

The maritime carrier is also liable for delay in delivering the goods to the consignee, whether or not the delivery date is specified in the bill of lading. If the deadline was specified in the bill of lading and the carrier failed to adhere to it, then the carrier is directly liable for the delay. However, if the time limit is not specified, the carrier’s liability shall be assessed according to the custom regarding the type of goods, the nature of the carriage, and the circumstances of the sea voyage.

Article 208 of the Maritime Law clearly addressed this situation, stating that the carrier is responsible for delay in delivering goods at the port of discharge, and is considered delayed if the goods are not delivered

within the agreed-upon time or within the time a normal carrier would deliver them under similar circumstances when no agreement exists. The article also obliges the shipper to notify the carrier in writing of the delay within 30 days from the date of delivery, and the failure to notify results in the forfeiture of the shipper’s right to claim any compensation for the delay.

As for the estimation of compensation in case of delay, paragraph 2 of Article (212) of the Maritime Law stipulates that the carrier’s liability shall be limited to an amount equivalent to two and a half times the freight due for the delayed goods, provided that this compensation does not exceed the maximum limit stated in paragraph 1 of the same article. This regulation reflects the precision of the Omani legislator in achieving a balance between

protecting the interests of the shipper on the one hand, and not burdening the carrier with unlimited liability on the other.

Conclusion

It is clear from an interpretation of the texts of the Omani Maritime Law that the legislator has established precise regulations for the liability of the maritime carrier, achieving a balance between the interests of both the shipper and the carrier, and ensuring the stability of international maritime transactions. It established the carrier’s liability for the loss, damage, or delayed delivery of goods, with precise controls for proving this liability and specific deadlines for notification, as well as setting a ceiling for compensation to prevent exaggeration and maintain fair commercial dealings.



The Centrality of Control in Distinguishing Employees from Contractors Under Jordanian Law: Where is the Line Drawn?



Raneem Asad
Senior Associate,
Dispute Resolution
r.asad@tamimi.com



Loai Albeeshawi
Senior Associate,
Dispute Resolution
l.albeeshawi@tamimi.com

A doctrinal line in Jordanian law locates the boundary between employment and contracting in the element of control, which the jurisprudence terms “*taba’iyya*” (subordination). While both the employment contract and a contract for works contemplate the performance of work for remuneration, the legal character of the relationship turns on whether the putative worker performs under the employer’s “*taba’iyya*”. Although the doctrine establishes the boundary, where to draw the line remains uncertain, creating difficulties for both corporations and workers evaluating pertinent statutory protections, economic risks, and regulatory burdens. With the proliferation of remote work and the international outsourcing of labour, achieving coherence in the doctrine of control become increasingly salient.

In this article, we build upon our recent experiences litigating the matter in Jordanian courts to shed light upon the doctrine and its applications through, firstly, setting out the statutory framework, secondly, analysing the judicial articulation of subordination, and, third, addressing practical implications for structuring cross-border and remote engagements.

Statutory Framework

At the outset, the Jordanian Civil Code characterizes the employment contract as one under which a person undertakes to perform work for the benefit of another “under his supervision or management” in return for a wage. The Civil Code expressly specifies that if

the worker is “not restricted from working for someone other than the employer” or “if no specific time has been fixed for the performance of the work,” then it is not an employment relationship.

The Labour Law further defines an employee as every person “who performs a job for wages and is subordinate to the employer and at his service.” Article 2 of the Labour Law further defines the employment contract as a(n) “oral or written, explicit or implicit, agreement under which the worker undertakes to work for the employer under his supervision and management in return for a wage.”

Separately, the Civil Code defines a “*muqawala*” (contract for works) as an agreement by which one party undertakes to make something or perform work in return for consideration from the other.

This textual juxtaposition thus delineates the statutory contours of two distinct nominate contracts and poses the interpretive question that the jurisprudence must resolve: how, in practice, the boundary between conducting work as a putative employee, who benefits from the Labour Law’s protections, or independent contractor is to be drawn.



“In muqawala, the recipient’s oversight concerns delivery of the agreed ‘result’, while in employment, the employer dictates the method of ‘performance’ extending beyond oversight over completion to comprehensive control over how work is performed.”

Case Law and Doctrine: Control at the Courts

The Doctrinal Test: Subordination as the Decisive Criterion

At the outset, the Jordanian courts have consistently held that the factual reality overrides contractual nomenclature in the classification of the relationship. Accordingly, the courts rely upon documentary and testimonial evidence in order to examine whether the practical application of a contract – irrespective of its label – has a sufficient degree of control to qualify it as an employment contract.

While the Civil Code prescribes distinguishing factors, such as whether a worker is time-bound or is restricted from working for third parties, the Jordanian courts have recognized that operational realities of work do not always lend to a clear distinction on these bases. Rather, the cautioning that confusion often arises because both employment and *muqawala*

entail performance of work for remuneration, the courts have established that the distinction turns on the extent and degree of subordination.

In assessing whether a putative worker is an employee or independent contractor, the courts have affirmed the centrality of control over performance, not result, as the decisive factor that characterizes the legal relationship. In *muqawala*, the recipient’s oversight concerns delivery of the agreed ‘result’, while in employment, the employer dictates the method of ‘performance’ extending beyond oversight over completion to comprehensive control over how work is performed.

In this way, the court jurisprudence has established a consistent and fact-based test that the subordination required for an employment relationship must extend to the ‘how’ and not merely the ‘what’ of performance, and the courts

will look to the practical reality of the relationship in applying this threshold.

Indicative Factors from Leading Cases

The jurisprudence of the courts has predominantly indicated if the putative employer directs the manner of performance and integrates the worker into its managerial structure, employment is the likely characterisation. However, if the provider retains autonomy in execution and the recipient’s oversight is confined to verifying results against agreed specifications, the relationship is probably a *muqawala*.

In making this assessment, the following factors have been commonly considered by the courts:

- **Supervision of method versus result:** whether the putative employer dictates the manner, sequence, tools, and methods of work, as opposed to verifying outputs.
- **Exclusivity:** whether the worker may serve other clients concurrently or is restricted from doing so.
- **Fixed time:** whether there are fixed hours, attendance requirements, or prescribed availability windows.
- **Discretion over resources:** whether the worker can engage people or resources at his/her own account and bear associated costs.
- **Remuneration structure:** whether compensation is time-based and continuous (typical of employment) or project/

result-based with the worker bearing operational risk (typical of *muqawala*).

- **Organisational integration:** the extent to which the worker is embedded in the recipient’s managerial hierarchy and bound by its day-to-day directives.

These indicia, while not determinative, are often assessed by Jordanian courts to operationalise the subordination test in practice.

Illustrative Case Law: How Courts Apply the Test

While the legal test and its underpinning indicative factors have been framed by the courts, application has become increasingly nuanced in practice. Case law illustrates how the courts pivot on operational realities when weighing the indicia of control against features of independence.

For example, in its Decision No. (2795/2000), the Court of Cassation found that the claimant was not bound to the defendant by a relationship of subordination as “*he performed maintenance of the pool belonging to the defendant at times he deemed fit; he had no fixed working hours; the defendant did not supervise or monitor his work; and he worked for other persons in the same trade.*” Here, the court did not rely on testimonial evidence from the parties to reach this finding, but rather on documentary evidence that revealed the surrounding circumstances of the work.

In similar vein, in its Decision No. (2590/1999), the Court of Cassation determined, on the basis of the evidence presented to it, that the putative employee did not work under the supervision and consistent monitoring of the putative employer. The evidence established that the worker was not bound to fixed hours, that he was assigned tasks on varied bases for different costs, that he employed personnel at his own expense to complete tasks, and that he had the freedom to perform work for third parties. Accordingly, the absence of managerial control over the manner of performance coupled with project-based remuneration led to a finding that the worker was not an employee.

Courts have also been faced with ‘supervision’ clauses in contacts, which dictate delivery schedules, geographical scope, deliverable specifications, or quality assurance mechanisms. Courts have inquired as to the operational reality in order to distinguish whether the clauses and their application govern the result or, instead, impose prescriptive control over methods and execution that embody subordination.

For example, in its Decision No. (1276/2020), the Court of Cassation recognized that there is a significant degree of “*overlap in the elements*” of work as an employee or contractor, explaining that:

“*Despite the various criteria that have been proposed to distinguish between the two, the decisive and principal criterion remains the element of subordination: if the worker operates under the employer’s supervision*

and direction, the contractor operates in freedom and independence and away from such supervision and direction. Care and precision must be exercised in using the element of subordination to distinguish between the two contracts, as the concept of subordination has evolved to encompass organisational subordination even where technical subordination is absent.” (Emphasis added.)

Looking beyond the terms of the contract, the court found that the evidence presented and heard in the case was examined to find that there was not a sufficient degree of subordination in the parties’ relationship. This is because, despite the contract containing clauses regarding adherence to distribution times, defining the geographic scope of distribution, and other comprehensive specifications, these elements were necessary to obtain the *result* that was intended. They were not, according to the court, applied as a method to control the way that the worker performed the distribution and, thus, did not cross the requisite doctrinal threshold.

This illustrates the margin of judicial discretion when weighing the facts and the will of the parties to ascertain the nature of the legal relationship, particularly in light of the concept of organisational subordination.

Finally, the courts have articulated a functional test for the attenuation of subordination. In its Decisions No. 1215/2008 and 1039/2012, the courts found that where oversight and direction diminish to the point that the putative employer lacks

sufficient authority to impose meaningful control, subordination collapses and with it the employment characterisation.

The courts have cited to different evidentiary factors to reach this finding, which include lessened episodic reporting, the absence of performance protocols, and the allocation of greater liberty for the worker to structure work and assume operational risks.

This application by the courts is a reminder that the test of subordination can evolve and attenuate based on operational realities.

Practical and Forward-Looking Implications

Remote work implications

This doctrine assumes particular importance in the remote-work setting. As the Jordanian legal framework is underdeveloped in relation to remote work, there can be an increased ambiguity when construing workers under such arrangements as employees or contractors.

It is thus important for corporations and workers alike to identify, document, and consistently implement the boundaries of control they intend to exercise, ensuring that remote arrangements do not inadvertently replicate the hallmarks of subordination. While remote arrangements often require output milestones, protocols, and communication methods, these are unlikely to amount to subordination without extensive direction over how tasks are executed. Conversely, if the recipient prescribes the worker's daily methods, tools, schedule, availability windows, and sequencing of tasks, the

subordination element may be satisfied even in the absence of physical co-location.

In this regard, multinational practitioners should account for the control doctrine when structuring Jordan-facing engagements. Drafting should clarify the provider's discretion over methods and personnel, the permissibility of concurrent work, and whether performance is defined by deliverables rather than procedures. Where the intent is a *muqawala*, avoiding exclusivity obligations, fixed attendance, and prescriptive process control reduces re-characterisation risk.

Conversely, where the business reality requires close direction over daily work, exclusivity, and integration into the recipient's operations, the structure ought to align with and account for the protections provided under the Labour Law.

Organisational subordination

In this context, the distinction between technical and organisational subordination is a helpful tool. Technical subordination concerns the employer's control over the methods and techniques of the work. Organisational subordination concerns the

worker's integration into the recipient's managerial and administrative structures, including adherence to internal policies, reporting lines, and strategic directives. As the Jordanian court jurisprudence shows, organisational integration can indicate the capacity to direct performance for the purpose of finding an employment relationship. Accordingly, corporations should be careful in drawing the lines between generalised policy compliance and more comprehensive integration that could be construed as organisational subordination.

Practice over form

In litigation, misclassification analysis is rooted in evidence, not contractual formality. Even where a contract is styled as a *muqawala*, courts will pierce to the substance if, in practice, the putative employer directs how work is done, imposes attendance and working-time controls, prohibits outside work, and exercises ongoing, detailed supervision. The more the facts demonstrate day-to-day direction of tasks, the stronger the case for employment and the application of the Labour Law.

Concluding Remarks

Pulling the threads together, Jordanian law is doctrinally clear that the decisive line between employee and contractor is the presence or absence of subordination: control over the how, not merely the what. However, there is increasing ambiguity as to where the line is drawn, as case law seeks to draw it through a fact-intensive lens that assesses operational reality. As the economy digitizes and work detaches from place, the practical indicators of control will evolve, but the legal doctrine remains. It is therefore ever more important for organisations and workers alike to align such practical indicators with an awareness of the threshold of control to ensure that the legal characterisation under Jordanian law aligns with the parties' commercial intentions and operational practices.



Arbitration in Tax Disputes



Abdelrahman Gomaa
Legal Director,
Dispute Resolution
ab.gomaa@tamimi.com



Lobna Kassem
Senior Associate,
Dispute Resolution
l.kassem@tamimi.com

Resorting to arbitration as an effective mean of dispute resolution highlights the importance of researching issues that may be subject to arbitration but are not commonly explored due to the widespread misconception that they are not arbitrable. Clarifying this ambiguity may pave the way for it to become another source of arbitration disputes. Among these issues is arbitration in tax disputes.

What comes to mind when the term “tax disputes” is stated is that they are disputes that arise between private law individuals and the tax authority regarding the determination of the tax base or its collection, and thus they are stigmatized as not being arbitrable. This is an issue that needs further elaboration and which will be addressed in the present article.

Arbitrability of tax disputes:

The prevailing position is that arbitration is not permissible in tax disputes because arbitration is based on a contractual relationship between the two parties, whereas the relationship between the tax administration and the taxpayer is a regulatory relationship based on the rule of law rather than a contractual basis. In addition, the tax authority is provided with public authority powers that enable it to achieve the interest of the public treasury; therefore, the arbitration agreement is considered a waiver by the state of its powers and privileges granted to it under tax legislation.

In addition to public authority considerations, tax disputes related to the basis of the taxpayer's obligation to pay tax are matters in which conciliation is not permissible, as they are obligations related

to public order, and therefore not arbitrable. This is based on Article 11 of the Egyptian Arbitration Law No. 27 of 1994, which stipulates that “[a]rbitration may only be agreed upon by a natural or legal person who has the right to dispose of their rights, and arbitration is not permissible in matters where reconciliation is not allowed.” Article (551) of the Egyptian Civil Code further states that “[i]t is not permissible to reconcile in matters related to personal status or public order...”

There are those who disagreed with the prevailing opinion that arbitration is not permissible in tax disputes, and they saw the necessity of distinguishing between a tax dispute relating to the taxpayer's obligation to pay tax, in which reconciliation is not permissible, and a dispute over the amount that the taxpayer must pay as tax, which is a dispute over a tax debt similar to other debt disputes in which

reconciliation is permissible, and therefore arbitration is also permissible. The advocates of this view believe that as long as reconciliation is permissible for state financial disputes in general, it is permissible in tax disputes, considering that they relate to a financial right.

The advocates of this view supported their argument by stating that the Egyptian legislator permitted reconciliation in customs evasion crimes, as Article (124) of the Egyptian Customs Law stipulates that the General Director of Customs may reconcile during the consideration of the case or after its judgment, as appropriate, and in this case, all or part of the goods may be returned after paying the due taxes on them, unless they are the prohibited types.

Moreover, the Egyptian legislator, in Article (54) of the Sales Tax Law, permitted the Minister or his authorized representative to reconcile in smuggling crimes before the issuance of a judgment, in exchange for paying the due tax, additional tax, and compensation equal to twice the tax. This results in the judgment of the termination of the case by reconciliation, the suspension of litigation procedures, and the suspension of the execution of criminal penalties, whether financial penalties or penalties restricting freedom.

In this context, this view holds that as long as the legislator has permitted reconciliation in criminal cases initiated in instances of tax evasion, then civil tax disputes whether under the jurisdiction of ordinary or administrative courts, can also be settled, and therefore arbitration is permissible, whether the subject of the dispute is a disagreement over the taxpayer's obligation to pay tax or a disagreement over the amount of tax, as long as the administration and the taxpayer can directly agree on it.

We agree with the prevailing opinion that tax disputes arising between the taxpayer and the tax authority regarding the tax base are not subject to arbitration because they relate to public order (), as the possibility of reconciliation in tax disputes is established for investment considerations, but it does not remove the public order nature of these disputes.

The prevailing view in most countries is that arbitration is not permissible in tax disputes arising between



“The assertion that arbitration is permissible in tax disputes does not mean overlooking the special nature of tax disputes or the mandatory nature of tax legal rules. The legality of resorting to tax arbitration is limited to not exceeding public order rules by respecting the mandatory rules represented by tax law.”

the tax authority and the taxpayer, with the exception of the United States of America, which permits arbitration in tax disputes with the tax authority, in accordance with Article 124 of the Tax Judiciary Legislation issued in 1990. The tax judiciary can appoint one or more arbitrators upon a joint request from the tax administration and taxpayers.

The foregoing was regarding tax disputes that arise between the taxpayer and the tax authority. As for tax disputes that may arise between contractors regarding financial rights caused by taxes, especially with regard to the tax that one party to the contract is obliged to deduct from the other party, such as the withholding tax stipulated in Article 56 of the Income Tax Law or value-added tax. These disputes are arbitrable without dispute.

Arbitration and the Mandatory Nature of Tax Legal Rules:

Agreeing to arbitration in disputes relating to financial rights arising from tax disputes between private law individuals does not mean overlooking the special nature of tax disputes or the mandatory nature of tax legal rules. The legality of resorting to tax arbitration is limited to not exceeding public order rules by respecting the mandatory rules represented by tax law and not exceeding the principle of the parties' autonomy to the tax dispute regarding the subject of the tax dispute under arbitration. Given the special nature of tax disputes, several considerations must be taken into account when resorting to arbitration to settle disputes related to financial rights arising from tax disputes.

The application of tax law to the dispute must be observed, as tax law has an independent nature and is distinguished from other branches of law. It should be noted that arbitration in tax disputes differs relatively from arbitration in general, as arbitration is a voluntary agreement to which the will of the parties freely directs, and the parties usually agree to define the scope of arbitration in terms of the matters it covers, the applicable law, and the arbitration procedures, which is known as the principle of the parties' autonomy guaranteed in Article 39 of the Egyptian Arbitration Law.

Given the nature of tax disputes and the fact that tax laws are mandatory and relate to public order, the failure to apply tax law may result in the annulment of the arbitration award for violating public order. This legitimizes and provides a guarantee for the application of tax law when resorting to arbitration to settle disputes related to financial rights arising from tax, which ensures that resorting to arbitration does not conflict with strict guarantees against any violation of these mandatory rules.

In addition, it is necessary to include an explicit provision in the arbitration clause stating that the financial rights arising from tax disputes shall be subject to arbitration between the parties to the contract. This is due to the fact that omitting this inclusion may raise a dispute about the extent to which the arbitration clause covers those rights. It may be argued that the financial rights arising from the tax

derive their source from the law and not from the contract, and therefore the general provision for the submission of any dispute arising from the contract to arbitration may not cover those rights. However, if they are considered an integral part of the financial effects of the contract, they fall within the scope of the arbitration clause without requiring a special provision.

Based on the foregoing, it is clear that there is nothing to prevent resorting to arbitration to settle tax amounts disputes that may arise between private law individuals, especially since the nature of this dispute is characterized its connection to the investment context. Tax disputes often arise in the context of investment activities whose profits or transactions are subject to tax levies. Therefore, settling these disputes requires an effective mechanism that considers the economic, commercial, and investment dimensions characterizing this type of dispute. In this context, arbitration is a suitable mean for resolving tax disputes, due to its essential advantages, most notably speed in resolution, confidentiality in procedures, and flexibility in application, all of which are factors consistent with the nature of tax disputes and contribute to enhancing the investment climate and providing confidence to investors.

Procedures for Enforcement on Registered Shares in Egypt



Abdelrahman Gomaa
Legal Director,
Dispute Resolution
ab.gomaa@tamimi.com



Zeyad Abd Elkader
Associate,
Dispute Resolution
z.elkader@tamimi.com



Yasmine Salama
Knowledge Lawyer,
Dispute Resolution
y.salama@tamimi.com

Despite the critical importance of enforcing judgments on registered shares, Egyptian law has only addressed the topic in Articles (399) and (400) of the Egyptian Civil and Commercial Procedure Law No. 13 of 1968 (the “ECCP Law”). This minimal reference essentially defers to the rules governing the seizure of a debtor’s property held by a third party, as well as the rules for selling shares established by the Capital Market Authority. This deferral has led to some ambiguity in the detailed procedures that must be followed for compulsory enforcement on registered shares. This article, therefore, aims to discuss these procedures, with a specific focus on the practical aspects.

The Egyptian legislator has established the same rules for the seizure of registered shares as those for the seizure of a debtor’s property held by a third party. According to Article (399) of the ECCP Law, the seizure of these shares also includes the seizure of their fruits, interests, and any amounts due up to the day of sale. This part of the procedure is clear and straightforward, as the procedures for the seizure of a debtor’s property held by a third party are well-defined in the Code of Civil Procedure.

Accordingly, the garnishee is obliged to file a report within fifteen days from the day following the date of his announcement of the seizure of the debtor with a third party, provided that the report is deposited in the registry of the clerk of the

magistrate court to which the garnishee belongs, provided that the report includes the amount of the debt, its cause, and the reasons for its expiration, if it has expired, and shows all the seizures signed under his hand, and deposits the documents supporting the report or certified copies thereof, and if the seizure has movables in the garnishee’s possession he shall attach to the report a detailed statement thereof as stipulated in the fifth paragraph of Article (328) and Article (339) of the ECCP Law.

If the garnishee fails to submit the declaration of indebtedness within the period specified in Article (339) of the law, or if the garnishee’s declaration is found to be contrary to the truth, or if they conceal the documents required to be

deposited to confirm the declaration, the legislator grants the attaching creditor the right to collect their debt from the garnishee. This can be done through a lawsuit based on an enforcement order in which the creditor demands that the garnishee be compelled to pay the debt on behalf of the debtor, as stipulated in Article (343) of the ECCP Law.

The attachment of a debtor’s assets held by a third party requires notifying the debtor within eight days. This notification must be made using the same attachment document that was served to the garnishee. The debtor must be served within the eight days following the service on the garnishee, plus any additional time for distance as specified in the ECCP Law. Failure to comply



“The legislator has granted the attachment of registered securities (shares and bonds) the same procedures as those used for the attachment of a debtor’s property held by a third party. Moreover, special provisions regarding the mechanism of attachment and sale have been added, specifically in Articles 399 and 400 of the Civil and Commercial Procedure Code.”

with these legal procedures results in a penalty: namely, the attachment is considered null and void, as stipulated in Article (332) of the ECCP Law.

The preceding procedures constitute the attachment of shares. Like other forms of attachment of a debtor’s property held by a third party, the process for registered shares begins with a precautionary attachment and concludes with a sale. The sale of registered shares is the part addressed by Article (400) of the ECCP Law. The following points specify who is responsible for the sale but does not go into the detailed procedures. It requires the attaching creditor to submit an application to the enforcement judge to issue an order appointing a bank, broker, or financial agent to sell the shares owned by the

debtor. The enforcement judge then issues this order, outlining the necessary procedures for advertising, executing the sale, and notifying the authorities legally responsible for monitoring and supervising the sale process.

Thus, it can be said that Article (400) of the ECCP Law implicitly refers to the procedures for selling registered shares followed by brokers. These procedures vary depending on the type of registered share, as the process for selling shares listed on the stock exchange differs from that for unlisted shares. We will detail this in the following two sections.

First: Procedures for Selling Registered Securities Listed on the Stock Exchange

The listing and trading of financial securities on the stock exchange are governed by the rules established by the Board of Directors of the Financial Regulatory Authority (the “FRA”). Transactions involving listed securities must be conducted through a licensed brokerage firm. After a listed financial security has been seized, a date is set for its sale, the sale must take place on the stock exchange, in the presence of the bailiff (representing the public authority) and the brokerage firm appointed by the enforcement judge. The judge will set the specific day and time for the sale of the seized shares.

Subsequently, on the designated day at the stock exchange, the creditor submits a request to the bailiff to complete the enforcement. Based on this request, the bailiff proceeds with a public sale, with the assistance of the appointed brokerage firm, while observing the procedures stipulated in the Capital Market Law No. 95 of 1992 and its executive regulations.

The brokerage firm is responsible for executing the order issued from the enforcement bailiff by setting the sale price (trading price) for the seized shares. This price must be the last price at which a transaction was executed, in accordance with the legal procedures outlined in Article (97/1) of the Executive Regulations of the Capital Market Law. Moreover, the brokerage firm must publicly announce the sale on the trading board for at least half an hour before the sale is executed.

Upon the completion of the sale, the enforcement bailiff draws up a deed of sale, including all the sale procedures, any objections or obstacles encountered, and the actions taken, the final sale price, and the name and signature of the person to whom the sale was awarded, or their representative, in accordance with Article (391) of the ECCP Law.

Furthermore, the enforcement bailiff must cease the sale of shares if the proceeds from the sale of only a portion of the shares are sufficient to cover the debt and expenses, as stipulated by the legislator in Article (390) of the ECCP Law. The bailiff stops the sale by notifying the brokerage firm to halt the sale of the remaining shares. This cessation of the sale removes the effect of the attachment on the unsold financial securities, and the debtor regains the right to dispose of them.

Consequently, once the sale of the seized financial securities is complete, and the price is immediately paid by the purchasing brokerage firm on behalf of its client, the ownership of the sold securities is transferred to the buyer. For securities issued by a joint-stock company, the brokerage firm must notify the stock exchange of the sale to have it recorded on the same day. Stakeholders may be given a copy of the registration according to the system in effect at the stock exchange, as per Article (98) of the Executive Regulations of the Capital Market Law. Thus, this registration transfers the ownership of the registered financial security, as per Article (100/1) of the Executive Regulations.

Second: Procedures for Selling Nominal Securities Not Listed on the Stock Exchange

Concerning the sale of shares not listed on a stock exchange must be conducted through a brokerage firm. This provision also applies to other non-listed, negotiable financial securities. Since the Capital Market Law and its executive regulations do not specify the procedures for trading unlisted financial securities, the Civil Procedures Law governs the sale of these securities as movable assets. This must be done while also complying with the requirement in Article (400) of the ECCP Law and the Executive Regulations of the Capital Market Law to utilize a broker.

On the designated day and place for the sale of seized, unlisted financial securities, the bailiff begins the public auction if the attaching creditor requests the sale. Otherwise, the bailiff will cancel the sale. Since Article (400) of the ECCP Law states that the enforcement judge—upon a request from the creditor—appoints a broker to conduct the sale, the bailiff coordinates with the appointed broker to sell the unlisted registered financial securities. They must follow the provisions of the ECCP Law while also considering the unique nature of registered financial securities compared to other movable assets.

The auction starts with the bailiff calling out the seized items, and bidding begins at the par value of the financial security. The bailiff is not bound by a specific price that must be reached for the

security being sold; rather, they award the sale to the highest bidder.

When the auction is awarded, the bailiff prepares a deed of sale that includes all the same details mentioned for the sale of listed financial securities. In this case, the successful bidder must pay the price immediately, as stipulated in Article (389/1) of the Civil Procedures Law. Failure to do so requires a resale at the bidder's expense, regardless of the price. The rules for ceasing the sale—when the proceeds are sufficient to satisfy the rights of the attaching creditors—also apply to the sale of unlisted financial securities, as do the rules for attaching the proceeds held by the bailiff.

As soon as the auction is awarded to a purchasing brokerage firm on behalf of one of its clients and the price is paid immediately, ownership is transferred to the auction buyer, provided the securities were owned by the debtor and the attachment and sale procedures were formally and substantively valid. However, the sale must be announced on the stock exchange according to the rules set by the decisions of the Capital Market Authority. The purchasing brokerage firm must notify the stock exchange of the transaction through which the ownership of the sold securities was transferred so that the stock exchange can record it, as required by Article (99/1) of the Executive Regulations.

In conclusion, we have reviewed the procedures outlined in the Civil Procedures Law for handling financial securities, from their attachment and the garnishee's declaration of indebtedness to the commencement of enforcement procedures, the appointment of a brokerage firm, and the final sale. It is important in this regard to seek legal advice on the enforcement procedure to avoid any unnecessary delays/procedures in the process.



Liquidation as a Reason for the Expiration of a Company's Legal Personality according to Iraqi Law



Ali Talib Fezea
Associate,
Dispute Resolution
a.fezea@tamimi.com

In the dynamic world of business, the lifecycle of companies is not without beginnings and endings. Just as companies are established with capital and ambitions, they may also face circumstances that lead to their legal termination. The legal personality of companies represents the cornerstone of economic and legal life, as it grants commercial entities an independent existence that entitles them to enjoy rights and bear obligations. However, this legal personality, like that of a natural person, is not eternal, but is subject to extinction when the reasons that created it cease to exist. The expiration of legal personality is a legal end to the company's life, which has very important implications for shareholders, creditors, and the economy as a whole. Most legislations regulate this termination through a number of stated reasons and cases, foremost among them being the liquidation process, which represents the actual legal mechanism for terminating the legal personality of the company.

Among the cases of dissolution recognized by Iraqi legislation, particularly in the amended Iraqi Companies Law No. 21 of 1997, "liquidation" stands out as one of the most important, practical, and complex reasons. It constitutes the final stage in the life of a company, where its assets are liquidated, its debts are settled, and any remaining assets are distributed to the rights holders. Liquidation constitutes the legal framework regulating the conclusion of a company's activities.

This article aims to review the role of liquidation as a case of the expiration of a company's legal personality in Iraqi law. We will discuss the concept of liquidation and its importance, the reasons that lead to it, the stages it goes through, and

how this process constitutes the legal guarantee for officially and orderly declaring the death of a company, protecting the rights of all relevant parties.

Concept of liquidation:

The legal concept of liquidation means dissolving the company, eliminating its legal personality, and settling the rights and obligations incurred by the company before its liquidation decision, within legal procedures that allow creditors and others to obtain their rights, resulting in the termination of the company's actual existence.

Liquidation, therefore, is the legal mechanism regulating the termination of a company's life, the sale of its assets, the settlement of its debts, and the distribution of remaining

assets to rights holders (shareholders or partners). It is considered the final stage in the legal entity's life. The legal personality of a company does not cease upon the decision to dissolve it; rather, it remains an expired legal entity (in liquidation) until the liquidation process is completed.

The liquidation process may have main objectives that can be summarized as follows:

- **Asset Realization:** Converting all company assets (real estate, machinery, stocks, receivables) into cash (financial liquidity).
- **Payment of obligations:** using these funds to pay the company's debts to creditors according to the law.

- **Distribution of the remainder:** Distribution of the remaining funds to shareholders or partners in proportion to their shares.
- **Final De-registration:** After all these procedures are completed, the company is de-registered from the commercial register, at which point its legal personality is finally extinguished and it ceases to exist legally.

Liquidation is divided into two types according to its causes (which will be explained later). It may be voluntary liquidation by a decision of the General Assembly composed of shareholders, where the General Assembly, upon fulfilling the legal quorum for convening (majority of shareholders), can decide, by a majority of the votes of those present, to liquidate the company and appoint a liquidator to carry out the liquidation procedures. Or it may be compulsory liquidation when any of the reasons specified by law for mandatory liquidation occur.

Liquidation differs from other cases of the expiration of the company's legal personality, as in Iraqi law, which are merger, transformation, and union. According to the text of paragraph four/147 of the law, the merger or transformation of a company leads to the expiration of its personality. A merger is a contract between two or more companies where one or more companies unite with another company, resulting in the dissolution of their personality and the transfer of their assets, liabilities, and debts to the other company.

The merger process involves a company, called the joining company, joining another company, called the acquiring company. This results in the dissolution of the joining company's personality, while the acquiring company retains its legal personality, provided that it amends its contract and documents to conform to its new status. This is the most common situation in practice, where a strong company with greater economic importance takes over a less important company.

Or the merger may be by combining two or more companies to form a new entity with a new legal personality that differs from the entities that originally established it.

As for conversion, it is a change in the type of company to another type, and its purpose is to change the legal form of the company in a way that allows partners to develop and grow the company. Article 153 of the Law restricted conversion with specific conditions:

First: A joint-stock company may not be converted into a limited liability company, a partnership, or an individual enterprise, nor may a limited liability company be converted into a partnership.

Secondly, a limited liability company or a partnership may not be converted into a sole proprietorship unless the number of its members decreases to one partner.

Third – A joint stock company, limited liability company, partnership, or individual enterprise may not be converted into a simple company.

In both cases of merger and transformation, the decision is taken by the General Assembly of the company.

Thus, the most important difference is that liquidation terminates the legal personality, while merger, amalgamation, and conversion preserve the company's legal personality or transform it into another entity, which means the continuity of activity, obligations, and rights in one way or another.

Reasons for liquidation:

Liquidation is not merely the shareholders' desire to terminate their partnership and the existing commercial relationship; rather, liquidation may have reasons determined by law for regulatory or economic purposes. Among the reasons stipulated by the current law are:

1. The company has not commenced its operations despite two years having passed since its establishment without a legitimate excuse
2. The company ceases to carry out its activity for a continuous period exceeding two years without a legitimate excuse
3. The company's completion of the project for which it was established, or the impossibility of its implementation
4. The company losing 75% of its nominal capital without taking the legally required measures.

5. by a decision of the General Assembly of the company.

Therefore, these reasons (1-4) relate to regulatory matters established by law to control the context of economic life and business for companies. It is not practically justifiable for a company to cease operations or not engage in its activity for two years, or to complete the project for which it was established and remain in its current state. Therefore, the law stipulated these reasons to allow for greater effectiveness in controlling the activity of companies in the market. If these reasons are met, the dissolution terminates the legal entity's life, and its liquidation ensues.

the above reasons can be relied upon in justifying the liquidation decision.

Liquidation stages

The liquidation goes through procedural and executive stages. The procedural stages include the general assembly's decision to liquidate, the Companies Registrar's approval, the issuance of its decision to liquidate, and obtaining the necessary approvals. As for the executive duties, they are represented by the legal and accounting duties performed by the liquidator, as he inventories assets and debts, sells existing assets if any, collects debts, pays creditors' debts, distributes the remainder, and prepares the final account.

effects that changed the legal nature of the company's personality in an effort to terminate the personality and completely dissolve the company. The question here is about the company's ability to conclude deals or agreements or dispose of funds, and whether it is eligible to conclude contracts and bear obligations or exercise all its powers, and whether the authorized manager remains able to express the will of the company's legal personality?

The answer is that the text of Article 163 of the law is clear in its ruling, as it states: "The company shall, upon being notified of the liquidation decision, cease to make any change in its membership and to incur any new obligation, and its activity shall continue to the extent necessary to fulfill its obligations as required by the liquidation process." This means that the company's existence and legal entity are limited to completing the liquidation process and fulfilling the obligations and rights incurred by it, and any financial transaction or contract will be subject to nullification. Furthermore, the authorized manager's mission ends from the date of his notification of the liquidation decision, and all powers he enjoyed are transferred to the liquidator appointed by the Registrar of Companies (the department supervising the implementation of liquidation provisions). Therefore, the legal status of the company during the liquidation process is a special status dictated by the legal and commercial nature of the company, a status in which the Registrar of Companies Department, in order to preserve the rights of third parties and

“The ultimate goal of regulating liquidation is to protect economic stability and ensure the rights of all parties.”

It should be noted that the occurrence of the above cases does not automatically entail the expiration of the personality without going through the procedures stipulated by law, as Article 158 of the Companies Law indicated (if one of the reasons stipulated in the paragraphs occurs.. The General Assembly recommended liquidating the company.. etc.) As a result, the decision of the General Assembly/General Authority of the company to liquidate the company is required and necessary, but one of

and the legal status of the company during liquidation and its effects.

After the decision of the Registrar of Companies to place the company under liquidation in accordance with the provisions of Article 160 of the law, the legal status of the company changes. Although it retains its legal personality, it is not fully maintained, but only to the extent that allows the completion of the liquidation process. This is because the decision of the company's general assembly to liquidate the company has arranged some legal

the integrity of commercial transactions, supervises the liquidation procedures and the decisions they require to enable the company, which is close to its dissolution and expiry, to fulfill obligations, return rights, and settle all its affairs. This is a situation in which the Registrar of Companies Department, which created the company's legal personality, has the upper hand in controlling the company's actions through the process carried out by the liquidator.

Special cases of liquidation

There are special cases for liquidation concerning banks under the Banking Law No. 94 of 2004, where Article 68 thereof stipulated two types of liquidation: either based on a decision by the bank's owners or compulsory liquidation based on a decision by the Central Bank of Iraq, as follows:

- by a decision of the bank: The law authorized the shareholders or owners to decide to dissolve and liquidate the bank, provided that the Central Bank of Iraq approves it to ensure the protection of depositors' funds.
- The Central Bank has the authority to revoke the license of any bank if it violates the laws or becomes financially distressed, in accordance with the provisions of Article 13.
- Serious financial insolvency or bankruptcy if it is found that the bank is unable to meet its obligations, the Central Bank intervenes and decides on compulsory liquidation to protect confidence in the banking system in accordance with the bankruptcy provisions of the Banking Law.

Finally, liquidation represents the legal mechanism for ending the life of a legal entity, whether it is a company or a bank. The Iraqi legislator has addressed this issue with a balance between the interests of partners and creditors on the one hand, and the general economic interest on the other, especially in the banking sector, which is considered the lifeblood of the economy. The ultimate goal of regulating liquidation remains to protect economic stability and ensure the rights of all parties.





2nd EDITION

BUSINESS DEVELOPMENT & MARKETING

Shahida Khalid

Head of Business Development

sha.khalid@tamimi.com

Shriya Sanjeev

Senior Brand Manager

s.sanjeev@tamimi.com

DESIGN

Anas Mansour

Senior Graphic Designer

a.mansour@tamimi.com

For more information:

info@tamimi.com

www.tamimi.com

The contents of Al Adalla are not intended to be a substitute for specific legal advice on any individual matters. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except for individual use and other non-commercial uses permitted by copyright law. The permission to recopy by an individual does not allow for incorporation of the material in part or in whole of any work or publication, whether in hard copy, electronic or any other form, unless specific mention is made to the source, "Al Adalla published by Al Tamimi & Company," and written permission is granted by the firm. For more information, please contact us.

Al Tamimi & Company © 2026

التميمي و مستشاركوه
AL TAMIMI & CO.

العدالة

AL ADALLA

مجلة التميمي القانونية

