



Vinson & Elkins

2025

# Middle East International Dispute Resolution Compendium



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# Introduction

Following a year of major changes in the legal and arbitral landscape, 2024 continued to see notable legal developments, particularly in the United Arab Emirates and the Kingdom of Saudi Arabia – two of the region's most dynamic legal and business hubs. We have closely followed these changes, and are pleased to present our Annual Middle East International Dispute Resolution Compendium. This latest edition covers key updates, including:

- The Establishment of a New Judicial Authority in the Emirate of Dubai
- Key UAE Onshore Court Decisions
- Key DIFC and ADGM Court Decisions
- Amendments to the Law on the Application of Civil Commercial Laws in the DIFC
- Saudi Arabia's New Investment Law

These legal developments have been largely positive, with the most notable including the Dubai Court of Cassation's rulings on tribunals' authority to award legal fees and the validity of unilateral arbitration clauses, the DIFC Court of Appeal's decision reversing its earlier ruling in *Sandra Holding*, clarifications on the source and interpretation of DIFC Law, and the introduction of Saudi Arabia's New Investment Law.



# Highlights & Trends





# UAE

Arbitration continues to be a preferred dispute resolution mechanism, supported by a modern legal framework and an increasingly pro-arbitration judiciary. The Dubai International Arbitration Centre (DIAC) recorded 355 cases in 2023, a 4.4% increase from 2022, with construction and real estate disputes comprising 59% of the cases.

The Dubai Court of Cassation has reinforced its arbitration stance by finally recognising tribunals' power to award legal fees under the ICC Rules. In 2024, UAE onshore Courts remained committed to upholding the validity of arbitration agreements against tactical challenges and providing clarity on a number of arbitration principles, reflecting the courts' ambition to align with international practices.

Meanwhile, the Abu Dhabi International Arbitration Centre (arbitrateAD) – established in 2023 to replace ADCCAC – is widely regarded as a significant improvement. With strong judicial support, new arbitration-friendly legislation, and institutional expansion, the UAE continues to position itself as a leading global arbitration hub.

# Saudi Arabia

Saudi Arabia continues its efforts to enhance its arbitration framework, aligning with Vision 2030 and reinforcing investor confidence. The New Investment Law strengthens protections for foreign investors and recognises arbitration as a key dispute resolution mechanism.

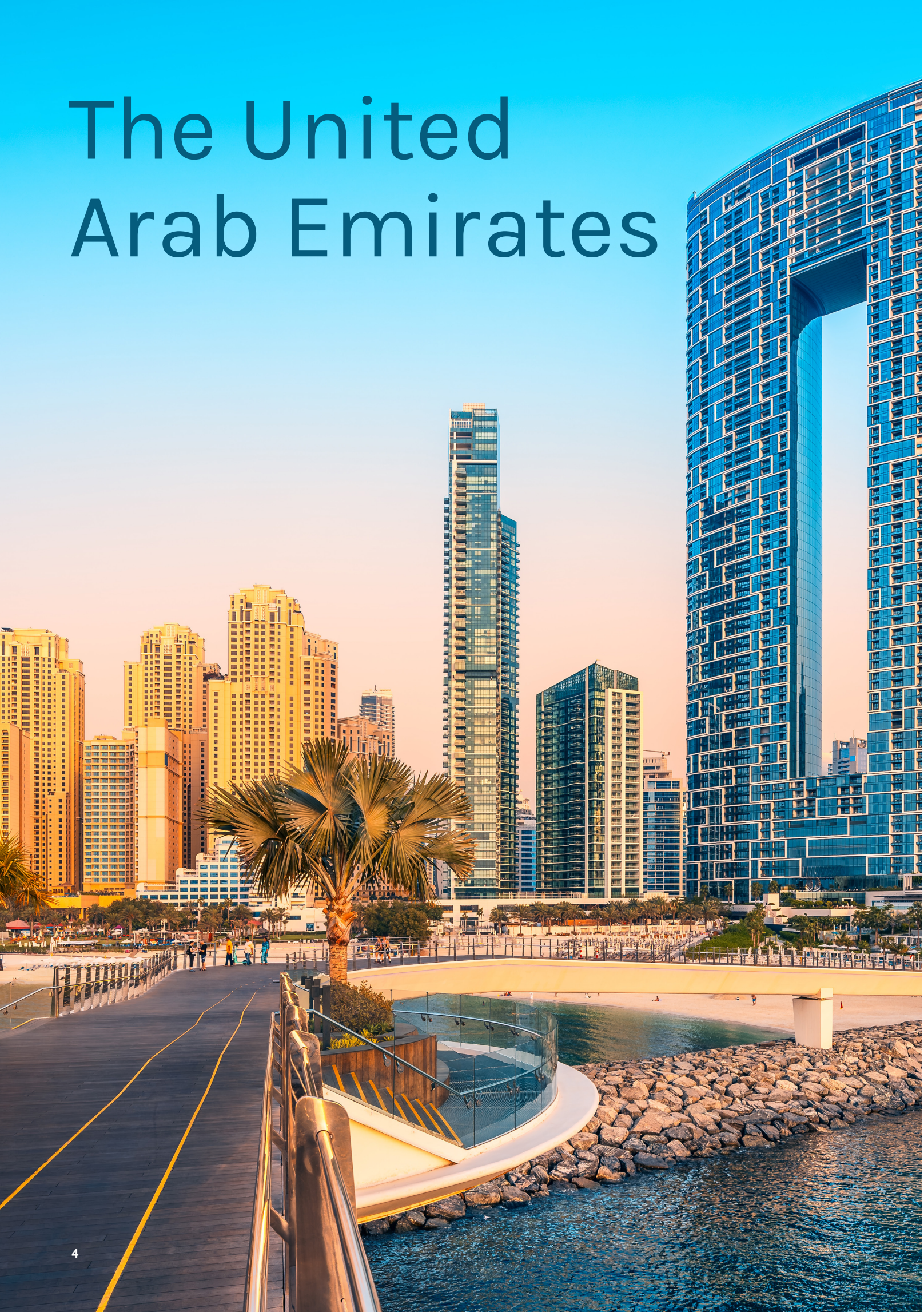
The revamped Saudi Center for Commercial Arbitration (SCCA) Rules, which came into force in May 2023, align with international best practices and introduce procedural safeguards, including the mandatory review of arbitral awards before issuance, improving enforceability.

In recent years, the Kingdom has also made significant efforts to improve its enforcement regime, resulting in a growing number of awards being recognised since the enactment of the Arbitration Law (2012) and the Enforcement Law (2013). Between 2021 and March 2024 alone, the total value of local awards successfully enforced topped USD 800 million, while foreign awards reached USD 400 million. During the same period, appellate courts upheld 90% of more than 4,000 challenged arbitral awards.

Challenges remain, particularly regarding Saudi public policy and Shariah law compliance: broad interpretations of public policy exceptions continue to create uncertainty, especially on interest, consequential loss, or loss of chance. However, enforcement courts have increasingly been willing to partially enforce awards even in cases of non-compliance.



# The United Arab Emirates





# Key Onshore Court Decisions in 2024

In 2024, the arbitration landscape in the UAE was shaped by significant decisions, addressing issues ranging from unilateral arbitration clauses to the application of the “without prejudice” principle. Below, we analyse some of these key decisions and their implications.

## Dubai Court of Cassation Decision in Case No. 735/2024 of 29 October 2024 – Unilateral Arbitration Clauses

In its decision, the Dubai Court of Cassation (the “DCC”) addressed the validity of arbitration clauses granting one party exclusive discretion to choose between arbitration or litigation.

A dispute arose between a subcontractor and a main contractor regarding unpaid dues. The contract included a “unilateral” arbitration clause providing that:

*“...the dispute shall be referred either to (a) arbitration at the Dubai Chamber of Commerce or (b) to the local court in the United Arab Emirates, as determined solely by the contractor”*

Despite the unilateral arbitration clause allowing only the main contractor to choose the dispute resolution forum, the subcontractor initiated proceedings before the Dubai Court of First Instance (the “CFI”).

The main contractor contested the Court’s jurisdiction on the basis of the arbitration clause, but the CFI rejected its application. The main contractor appealed to the Dubai Court of Appeal (the “DCA”), which upheld the lower court’s decision. On further appeal to the DCC, the main contractor argued that the clause should be enforced, as it granted exclusive discretion to the main contractor to determine the forum.

The DCC dismissed the appeal, holding that unilateral arbitration clauses do not constitute valid and binding arbitration agreements. By offering a choice between litigation and arbitration, the agreement failed to meet the requirements of a clear and unequivocal arbitration clause, which was necessary to deprive the courts of their jurisdiction. The DCC also held that by granting one party sole discretion, the clause also undermined fairness and party equality.

Parties ought to ensure that arbitration clauses are clear, unequivocal, and mutually binding, as unilateral clauses granting one party exclusive discretion to choose between arbitration or litigation risk being deemed invalid by UAE courts, potentially leaving disputes subject to court jurisdiction.

## Dubai Court of Cassation Decision in Case No. 756/2024 of 19 November 2024 – A Tribunals’ power to award legal fees

In a pivotal ruling in Case No. 756/2024, the Dubai Court of Cassation (the “DCC”) affirmed that arbitral tribunals acting under the ICC Rules may award legal fees to parties, even where such recoverability is not expressly outlined in the arbitration agreement. This decision marks a notable shift from earlier approaches, where recoverability was often limited, and aligns Dubai’s arbitration framework more closely with international practices.

The case arose from a dispute concerning the interpretation of Article 38(1) of the ICC Rules, which defines arbitration costs to include reasonable legal and other costs incurred by the parties. Historically, the Dubai Courts have interpreted arbitration agreements and rules narrowly, holding that legal fees could only be awarded if explicitly provided.

For instance, in February 2024, the Dubai Court of Cassation upheld the Dubai Court of Appeal’s partial annulment of an ICC arbitration award in Case No. 821 of 2023 (Commercial), setting aside the Tribunal’s award of legal costs. The Court found that Article 38(1) of the ICC Rules, applicable in both the 2017 and 2021 versions, did not explicitly authorise tribunals to award costs for parties’ legal representation, despite the clear wording of Article 38(1) (i.e. “...reasonable legal and other costs incurred by the parties for the arbitration”). This created uncertainty and increased financial risks for parties seeking to recover their expenses in arbitration proceedings.

The DCC has now clarified that Article 38(1) of the ICC Rules unambiguously permits the recovery of legal fees, acknowledging that the provision explicitly refers to “reasonable legal and other costs incurred.” The Court further emphasised that this interpretation aligns with international arbitration standards and the consistent application of ICC guidance, which recognises legal fees as part of recoverable arbitration costs.

This is a welcome ruling, providing greater certainty and clarity for parties regarding recovery of legal costs.



# Dubai Court of Cassation Decision in Case No. 606/2024 of 15 October 2024 – Clarifications on key principles of UAE Arbitration Law

This case involved a challenge by an employer against a DIAC arbitral award ordering it to pay damages and return a performance bond to the contractor. The Appellant challenged the award before the Dubai Court of Appeal, citing multiple grounds for annulment, including alleged breaches of the UAE Arbitration Law (Federal Law No. 6/2018 as amended by Federal Decree-Law No. 15/2023) and improper tribunal conduct. On appeal, the Dubai Court of Cassation upheld the Court of Appeal’s decision to dismiss the challenge, providing clarifications on a number of procedural matters, the most significant of which are considered below.

## Arbitrator Appointments & Application of Article 10

The Appellant argued that the Tribunal Chairman’s concurrent appointment to the DIAC’s regulatory bodies invalidated the award under Article 10 of the UAE Arbitration Law, which came into effect in September 2023.

Article 10 prohibits the appointment of a sole arbitrator or the chairman of a tribunal where such person also serves on the board of directors, board of trustees, or other bodies of the arbitral institution managing the arbitration. These rules can be departed only under specific conditions.

The Court rejected the Appellant’s argument, holding that the provision did not have retrospective effect and, as a result, did not apply in circumstances where the Tribunal Chairman’s appointment had occurred in February 2023, thus before the new provision’s enactment date. The Court also noted that the Appellant’s failure to raise this objection during the arbitration proceedings as required by Article 15(1) of the Arbitration Law constituted a waiver for the purposes of Article 25 of the UAE Arbitration Law, underscoring the importance of parties raising procedural issues promptly.

## Procedural Autonomy & IBA Guidelines

The Appellant alleged that the Tribunal improperly relied on the IBA Guidelines to remove their legal representative. The Court rejected this argument, holding that the Tribunal acted within its powers to exercise discretion in addressing potential conflicts of interest under international arbitration norms, including the IBA Guidelines. The Court also found that, in any event, the Appellant had subsequently appointed another legal representative and continued with the proceedings, thereby waiving its right to object.

This decision reinforces the procedural robustness of the UAE Arbitration Law, particularly in upholding arbitrator appointments, majority decisions, and procedural autonomy. In particular, it underscores the importance of raising procedural objections in a timely fashion.





## Abu Dhabi Court of Cassation Decision in Case No. 166/2024 of 4 March 2024 – *Limited grounds for challenging an award*

This case concerned an appeal to annul an arbitration award issued in an arbitration under the auspices of the Abu Dhabi Centre for Conciliation and Commercial Arbitration. The award dismissed the claim due to the statute of limitations, which the Appellant argued violated public order.

The Appellant contended that the Respondent had implicitly waived the right to invoke the statute of limitations by previously contesting the merits of the dispute. They also argued that the Tribunal had misapplied legal provisions, including Articles 481, 484, and 485 of Federal Law No. 5/1985, which address legitimate excuses and judicial actions that interrupt limitation periods.

The Abu Dhabi Court of Cassation dismissed the appeal, holding that the reasons for nullity cited by the Appellant did not align with the exhaustive grounds for annulment under Article 53 of Federal Law No. 6/2018 on Arbitration. The Court emphasised that it could not reassess the Tribunal's substantive decisions, as claims of misinterpretation or misapplication of the law fell outside the scope of judicial review in annulment cases.

The Court further clarified that rulings on the statute of limitations are not matters of public order unless explicitly stated by law. As the Appellant failed to demonstrate any of the enumerated grounds for annulment, the arbitration award was upheld.

This decision reaffirms the limited scope of judicial intervention in arbitration under UAE law, underscoring that Courts may only annul awards on specific statutory grounds and cannot revisit the merits of the tribunal's findings. The appeal was dismissed, with the Appellant ordered to pay costs and legal fees.







## Dubai Court of Cassation Decision in Case No. 968/2024 of 17 October 2024 – *Validity of arbitration agreement and waiver of right to arbitrate*

In Case No. 634 of 2024, the Dubai Court of Cassation upheld the dismissal of the Appellant's court proceedings, affirming the validity of the arbitration clause in the parties' contract.

The Appellant (a contractor) had commenced court proceedings against the Respondent (the employer) claiming unpaid sums and interest for interior decoration work performed (as confirmed by a project completion certificate issued by a local authority).

However, the Respondent had successfully argued before the Commercial Court of First Instance – and, on further appeal by the Appellant, before the Court of Appeal – that the dispute was to be dismissed due to the parties' agreement to arbitrate, as recorded in their contract.

On appeal before the Dubai Court of Cassation, the Appellant argued that:

- the arbitration clause lacked legal certainty, as it cross-referred to an annex that lacked specifics on arbitration rules, the arbitrator, the arbitration location, and governing law. The Appellant also claimed the Dubai International Arbitration Centre (DIAC) rejected an earlier arbitration filing due to the clause's ambiguity; and
- in any event, the Respondent had waived its right to arbitrate by filing a case with the Amicable Settlement Centre to appoint an expert. The Appellant asserted this amounted to substantive litigation, inconsistent with reliance on arbitration

The Court rejected both of these arguments.

As to the first argument, the Court emphasised that under Article 8(1) of Federal Law No. 6/2018 (UAE Arbitration Law), arbitration agreements are enforceable unless their performance is absolutely impossible. Referring to Article 129(b) of Federal Law No. 5/1985 (UAE Civil Code), the Court held that impossibility must be factual or legal, not based on administrative or procedural hurdles. Further, as per Article II of the New York Convention (1958), unenforceability arises only when an arbitration clause is so unclear that it prevents effective arbitration or references a non-existent institution, which was not the case here.

Regarding waiver, the Court determined that the Respondent's expert appointment request was procedural in nature and did not constitute substantive litigation. Additionally, the rejection of the Appellant's arbitration filing by the DIAC was deemed irrelevant, as the reasons for rejection (e.g. non-payment of fees) were unclear and could not invalidate the clause.



## Dubai Court of Cassation Decision in Case No. 486/2024 of 22 October 2024 – Upholding the principle of “without prejudice”

The Dubai Court of Cassation has, for the first time, recognised the principle of “without prejudice” in the UAE onshore courts, a concept well-established in common law jurisdictions but previously unacknowledged under UAE law.

This was a commercial dispute in Dubai, where the plaintiff accused the defendant of failing to transfer an agreed amount of USDT cryptocurrency after receiving a cash payment for the USDT from the plaintiff.

Expert verification identified a shortfall in the payment from the defendant to the plaintiff, based on witness testimonies, but the defendant disputed the Expert’s findings.

After consideration, a court-appointed Expert Committee, relying on the defendant’s admissions, determined a smaller amount was due to the plaintiff compared to that concluded by the first expert.

As such, the plaintiff appealed to the Court of Appeal, arguing, amongst other things, that the Court of First Instance (the lowest court in Dubai) had failed to properly evaluate all of the available evidence which included WhatsApp messages during the settlement discussions in

which the defendant allegedly admitted to owing the higher amount (i.e. the full amount it had claimed) to the plaintiff.

However, in a judgement issued on 3 April 2024 (in Case No. 31/2024), the Court of Appeal upheld the lower court’s judgement.

The decision of the Court of Appeal was also upheld by the Court of Cassation on 22 October 2024 (in Case No. 486/2024). In its judgment, the Court of Cassation ruled *“statements made during unsuccessful negotiations, which do not lead to a settlement, cannot be used as evidence or admissions, as they are made without prejudice to the rights of the party and are protected by legal immunity from being considered as evidence in court.”* (emphasis added).

Although the ruling does not establish a binding precedent, it marks a significant step towards the recognition of the “without prejudice” principle under UAE law.

This is expected to encourage more open and honest settlement negotiations between parties, a step toward further aligning the UAE’s position with international standards.





# Dubai Establishes New Judicial Authority



On 18 April 2024, the Ruler of Dubai, His Highness Sheikh Mohammed bin Rashid Al Maktoum, issued Decree No. 29 of 2024, establishing the “Judicial Authority for Resolving Jurisdictional Conflicts between the DIFC Courts and Judicial Authorities in the Emirate of Dubai” (the “New Judicial Authority”). This body replaces the former Joint Judicial Committee (JJC) (the “Old Judicial Authority”), which was established in 2016 under Decree No. 19 of 2016.

The New Judicial Authority introduces significant changes designed to streamline the resolution of jurisdictional disputes in Dubai, providing greater legal clarity and predictability for litigants.

## Background

The Old Judicial Authority was established in 2016 to address conflicts that arose between the DIFC Courts and the onshore Dubai Courts, such as in the context of parallel proceedings.

Article 7 of Dubai Law No. 13/2016 (“Judicial Authority Law”) introduced a system of mutual enforcement of judgments between the DIFC Courts and onshore Dubai Courts, but issues emerged as there was no supervisory judicial body to oversee and resolve jurisdictional disputes between these two systems, which operate under different legal frameworks (civil law for onshore courts and common law for DIFC Courts).

The Old Judicial Authority was established under Decree No. 19 of 2016 to serve as a single point of resolution for such conflicts, with its role including:

- resolving disputes over which judicial body had jurisdiction in a given case; and
- determining enforceability in situations where conflicting judgments were issued by both the DIFC and Dubai Courts regarding the same matter.



## Scope & Role of the New Judicial Authority

The New Judicial Authority has a more expansive mandate than its predecessor. It addresses jurisdictional conflicts not only between the DIFC Courts and the Dubai Courts but also between the DIFC Courts and other “Judicial Bodies.” This newly defined term includes the Dubai Courts, the Rental Disputes Resolution Centre, judicial committees formed by decree or decision of the Ruler or the Chairman, and any other bodies deemed judicial authorities in Dubai.

Key responsibilities of the New Judicial Authority include:

- Determining the competent judicial forum for claims where jurisdictional conflicts arise; and
- Resolving conflicts where contradictory judgments have been issued by different judicial bodies regarding the same dispute.

Notably, the New Judicial Authority focuses solely on adjudicating jurisdictional issues, removing its prior advisory and rule-making responsibilities.

## Binding Precedents

A major innovation introduced by Decree No. 29 of 2024 is the adoption of a precedent-based system. Under Article 9(c), decisions of the New Judicial Authority will establish binding judicial principles applicable to all Judicial Bodies, including the DIFC Courts. These principles will serve as precedents for resolving future jurisdictional disputes, fostering consistency in decision-making. Judgments issued in contravention of such principles can be appealed on that basis.

## Procedures and Timelines

The New Judicial Authority will decide jurisdictional conflicts upon application by litigants. Pending resolution, proceedings in the conflicting jurisdictions are automatically stayed, including related enforcement actions. Limitation periods are also suspended during this time.

While the previous decree prescribed a 30-day deadline for issuing decisions, the new Decree No. 29 of 2024 does not specify a timeframe for decisions, creating potential uncertainty. However, it mandates that decisions on stay applications must be issued within 14 days of service, ensuring a degree of procedural efficiency.

## Composition of New Judicial Authority

The New Judicial Authority comprises the Chief Justice of the Dubai Court of Cassation (serving as Chairman), the Deputy Chief Justice of the DIFC Courts (serving as Deputy Chairman), and three judges from both the onshore Dubai and DIFC Courts. Unlike the previous framework, the two DIFC Court judges are no longer required to come from the Court of First Instance and the Court of Appeal, respectively.

## Conclusion

The establishment of the New Judicial Authority marks a significant step forward in Dubai’s efforts to streamline the resolution of jurisdictional disputes. By introducing binding precedents and expanding the scope of its jurisdiction, the New Judicial Authority aims to enhance consistency, transparency, and predictability in Dubai’s judicial framework. However, the absence of specific timelines for decisions and the broader scope of jurisdiction could create challenges in managing caseloads and avoiding delays. Litigants should remain mindful of these developments and stay informed of the evolving jurisprudence established by the New Judicial Authority.



# Key DIFC & ADGM Court Decisions in 2024

In 2024, the offshore courts of the UAE – the DIFC and ADGM – delivered a series of impactful decisions that continue to shape the arbitration landscape within their jurisdictions. This section analyses some of these rulings and explores their significance for parties choosing to arbitrate or enforce in these internationally recognised financial free zones.



## Carmon Reestrutura-Engenharia e Serviços Técnicos Especiais, (SU) LDA v Antonio Joao Catete Lopes Cuenda (2024) DIFC CA 003 – Jurisdiction to issue worldwide freezing order

The DIFC Court of Appeal has overruled its earlier decision in *Sandra Holding Ltd v Al Saleh* [2023] DIFC CA 00, confirming that the DIFC Courts have jurisdiction to issue worldwide freezing orders (“WFOs”) in support of foreign proceedings, even without a legal nexus to the DIFC.

The appeal arose after Carmon alleged misappropriation of USD 20 million, with funds transferred to UAE bank accounts. A WFO was initially granted by the DIFC Courts but later set aside following *Sandra Holding*, which held that such orders required a connection to the DIFC under the Judicial Authority Law (“JAL”). In overturning *Sandra Holding*, the Court found this restrictive interpretation legally flawed, emphasising that requiring a nexus would undermine the Courts’ ability to prevent asset dissipation and enforce foreign judgments.

The Court ruled that its statutory jurisdiction to enforce foreign judgments inherently includes the power to issue interim relief like WFOs, even in cases where no current connection exists to the DIFC or its laws. This decision aligns DIFC jurisprudence with international practices, reflecting its role in supporting transnational trade.

By confirming the absence of a legal nexus requirement, the decision offers greater protection for potential judgment creditors. While the Court reiterated the importance of discretion and judicial comity, parties can now seek relief with greater confidence, reinforcing the DIFC Courts’ reputation in international dispute resolution.



## DIFC-LCIA Arbitration Agreements – The saga continues...

The effect of the abolition of the DIFC-LCIA and its replacement with the DIAC by way of Decree No. 34 of 2021 (the “Decree”) on the validity of arbitration agreements referencing DIFC-LCIA continues to be debated before UAE as well as foreign courts, highlighting inconsistent approaches.

### **DIFC Court upholds validity of DIFC-LCIA arbitration agreement in *Narciso v Nash* (ARB 009/2024)**

In *Narciso v Nash*, a dispute arose between the main contractor, Narciso, and the subcontractor, Nash, over a residential project in Sharjah. The parties had agreed to resolve disputes under the DIFC-LCIA Rules, with the DIFC as the arbitration seat and UAE law as the governing law. Following Narciso’s termination of the subcontract, Nash initiated proceedings in the Sharjah Court, prompting Narciso to seek an interim anti-suit injunction from the DIFC Court.

On 20 May 2024, the DIFC Court granted the injunction, preventing Nash from continuing the Sharjah proceedings. Nash subsequently sought to discharge the injunction, arguing that the arbitration agreement was invalid under the Decree, which abolished the DIFC-LCIA, and that the DIFC Court lacked jurisdiction.

The DIFC Court dismissed Nash’s application and upheld the injunction, holding that:

- the DIFC Court had jurisdiction as the agreed arbitration seat, making it the supervisory court
- the arbitration agreement was valid under DIFC law, and the Decree preserved party autonomy, allowing disputes to proceed under DIAC or another institution
- the anti-suit injunction was justified to enforce the arbitration agreement and prevent breaches by pursuing Sharjah litigation

The “onshore courts” have adopted the same approach on this issue as seen above in *Nash*. For example, *v Abu Dhabi Commercial Court of Appeal* (in Case No. 449/2024 dated 24 April 2024) affirmed a lower court’s finding that a DIFC-LCIA arbitration clause, which had been included in a 2015 contract, remained valid and enforceable despite the Decree.







## Foreign courts

Both the decisions discussed above underscore the UAE courts' commitment to upholding arbitration agreements, even under the now-defunct DIFC-LCIA framework. This notwithstanding, to date, at least three foreign courts have taken a different approach from their UAE counterparties, creating uncertainty for enforcement of DIFC-LCIA arbitration agreement outside the UAE.

### Singapore

In *DFL vs DFM* [2024] SGHC 71, the High Court of Singapore enforced a provisional award rendered pursuant to a DIFC-LCIA arbitration agreement on the ground that the Respondent had submitted to the Tribunal's jurisdiction. However, it accepted the Respondent's argument that such an agreement had been frustrated by the abolition of the DIFC-LCIA.

The dispute arose from a 2018 settlement agreement that specified the DIFC-LCIA Rules with London as the arbitration seat. Following the abolition of the DIFC-LCIA under the Decree, the Claimant commenced arbitration at the DIAC under its rules. In November 2022, the Tribunal granted interim relief, including a proprietary injunction and a freezing order.

The Respondent sought to resist enforcement of the provisional award, arguing that the arbitration was conducted under the DIAC Rules, contrary to the original agreement, and that a pending jurisdictional objection in the arbitration rendered enforcement inappropriate.

Justice Chua Lee Ming upheld the enforcement of the provisional award as he found that the Respondent had submitted to the Tribunal's jurisdiction during the interim relief application. By contesting the application on its merits without raising jurisdictional objections, the Respondent had demonstrated an *"unequivocal, clear and consistent intention to submit to the tribunal's jurisdiction"*.

However, citing Gary Born's treatise on International Commercial Arbitration, Chua also stated that it would be a "stretch" to say that the parties had intended to accept arbitration administered by the DIAC, noting "significant differences" between the DIFC-LCIA Rules and those of the DIAC, which meant that a DIAC arbitration would be "fundamentally at odds" with the parties' intentions. Accordingly, had the Respondent not submitted to the Tribunal's jurisdiction by contesting the merits of the application, it appears that the Court may have come to a different conclusion.



## Cayman Islands

In *Mr Nasser Sulaiman H M Al-Haidar vs Mr Jetty Venkata Uma Maheshwara Rao* [FSD 328 of 2022], the Grand Court of the Cayman Islands found that the defendant was estopped from challenging the jurisdiction of the Tribunal due to its failure to raise a jurisdictional challenge before the Tribunal. However, although the Court did not address the issue of whether the DIFC-LCIA arbitration agreement had been frustrated by the Decree, it referred to Justice Chua's obiter comments in *DFL vs DFM* (2024) (discussed above) without any criticism, suggesting agreement with the Singapore High Court's conclusion.

## Louisiana, US

In the case of *Baker Hughes Saudi Arabia Co. v Dynamic Industries*, the first foreign case to have tackled this issue, the United States District Court of Eastern District of Louisiana also held that an arbitration clause referring disputes to arbitration under the DIFC-LCIA Rules was rendered invalid by the Decree. In this case the Court reasoned that *"Whatever the similarity the DIAC may have with the DIFC-LCIA, it not the same forum in which the parties agreed to arbitrate"*, and that neither US courts nor the Dubai government had the power to order proceedings to take place in another forum without the parties' consent.

It is worth highlighting that on 27 January 2025 the US Court of Appeals for the Fifth Circuit has quashed this ruling. In its judgement, it held that the District Court had erred in *"refusing to compel arbitration consistent with the terms of the subcontract"* and, as a threshold matter, that forum non *conveniens* was not an appropriate doctrine to apply here. The three-judge bench ruled that *"it is clear that the DIFC-LCIA is not the exclusive forum contemplated under the subcontract"* and that the Parties' intentions were to *"arbitrate generally"*. As such, it remanded the case to the lower courts for further consideration on whether the DIFC-LCIA rules could be applied by another forum.





## Neal v Nadir [2024], DIFC 001/2024 – DIFC Courts’ Power to Enforce Interim Measures

In *Neal v Nadir* [2024] DIFC A 001, the DIFC Court of Appeal clarified that interim measures granted by foreign-seated arbitral tribunals, when issued as awards, are enforceable in the DIFC under Articles 42 and 43 of the DIFC Arbitration Law (DIFC Law No. 1/2008).

The case concerned an interim award issued by a Tribunal seated in London under the DIAC Arbitration Rules. The Respondent, Nadir, opposed enforcement, arguing that Articles 42 and 43 applied only to final awards, while interim measures could only be enforced under Article 24(2), which requires the arbitration seat to be in the DIFC. The Claimant contended that the law’s use of the term “award” encompasses both final and interim awards, irrespective of the seat.

The Court of Appeal upheld the Court of First Instance’s decision, confirming that interim awards fall within the

meaning of “award” under the DIFC Arbitration Law. The Court emphasised that enforceability depends on an award’s binding nature, not its finality. It held that Articles 42 and 43 provide a mechanism for enforcing interim and final awards alike, regardless of the arbitration seat.

The Court distinguished between Article 24(2), which applies exclusively to DIFC-seated arbitrations, and Articles 42 and 43, which allow for broader enforcement of awards issued outside the DIFC. However, the Court clarified that procedural orders, unless issued as awards, would not qualify for enforcement.

This judgment reinforces the DIFC’s status as a pro-arbitration jurisdiction, providing parties with a reliable framework to enforce both interim and final awards, whether the arbitration is seated within or outside the DIFC.

## Nihan v (1) Nicholas (2) Niaz [2024], DIFC 012/2024 – Arbitrability & public policy grounds for challenging enforcement

In a significant decision, the DIFC Court of Appeal addressed the interplay between arbitrability and public policy under DIFC Law No. 1/2008.

The case arose from an arbitration award concerning a shareholder dispute in Nu’aimaan, a UAE-based company, where the Tribunal ordered two shareholders to purchase the shares of the third for AED 47.5 million. The Appellants sought to block enforcement in the DIFC on grounds that share transfer disputes were non-arbitrable under UAE law and enforcement would violate UAE public policy.

The dispute centered on breaches of a Shareholders Agreement (SHA) and a Memorandum of Association (MoA), both of which included arbitration clauses incorporating the ICC Rules. The arbitration was seated in the DIFC. Despite the Tribunal’s award, the losing parties failed to comply and argued before the DIFC Courts that the dispute’s subject matter - share transfers requiring registration - was non-arbitrable under UAE law. The Appellants also claimed that enforcement would violate UAE public policy concerning ownership and the circulation of wealth.

At the heart of the case was the interpretation of Article 44(1)(b) of DIFC Law No. 1/2008, which permits courts to refuse enforcement if:

- the dispute is non-arbitrable under DIFC law; or
- enforcement is contrary to UAE public policy.

The Appellants conflated these distinct grounds, claiming that non-arbitrability under UAE law also invalidated enforcement under DIFC law. The Court rejected this argument, emphasising that arbitrability is governed exclusively by DIFC law, while enforcement must be assessed separately under UAE public policy standards.

The Court dismissed the appeal, affirming that share disputes were arbitrable under DIFC law. It also found no evidence that enforcement would fundamentally offend UAE public policy.

Importantly, the Court highlighted that the DIFC’s legal framework is intentionally independent of UAE federal laws, consistent with the UAE’s policy of allowing Free Zones like the DIFC to operate under distinct legal regimes.

This decision reinforces the DIFC’s unique legal framework and autonomy in handling arbitration disputes, underscoring its role as an arbitration-friendly jurisdiction.



# DIFC Clarifies Source & Interpretation of DIFC Law

On 14 November 2024, the Dubai International Financial Centre Authority (the “DIFCA”) enacted important amendments to DIFC Law on the Application of Civil Commercial Laws in DIFC (the “Amended Application Law”) which came into force on 21 November 2024. These changes aim to resolve uncertainties regarding the source and interpretation of DIFC law following the decision in *The Industrial Group Limited v Abdelazim El Sheikh El Fadil Hamid* [2022] DIFC CA 005/006.



## Background

The DIFC Court of Appeal's decision in *The Industrial Group Limited v Abdelazim El Sheikh El Fadil Hamid* in 2022 put into question longstanding assumptions regarding the application of English common law principles to DIFC laws. In particular, the Court:

- observed that though DIFC Courts are common law courts with the power to interpret and develop DIFC law incrementally, the basis of their jurisdiction and of DIFC law is, nonetheless, *statutory*
- accordingly, it held that it is not open to the DIFC Courts to incorporate principles and causes of action falling outside DIFC statutes – in this case, the English torts of defamation and malicious prosecution – into DIFC law. The Court took the view that this would amount to “*impermissible judicial legislation*”
- considered that the source of DIFC law was not confined to the law of England and Wales, noting that, for example, the DIFC Contract Law is based on the UNIDROIT Principles of International Commercial Contracts. A significant consequence of the Court's findings is that it is doubtful whether common law can be employed as an interpretative aid for DIFC statutes of a non-common law origin.

To address the uncertainty caused by the Court's findings, the Amended Application Law addresses two core issues: (1) the “Source of Law” issue, clarifying the extent to which English common law influences DIFC law, and (2) the “Interpretation” issue, providing guidance on the interpretation of DIFC statutes.





### **Article 8A: Clarifying the Source of Law**

A new Article 8A of the Application Law confirms that DIFC law is rooted in DIFC statutes and their judicial interpretations. However, it allows courts to adopt principles from English common law where these are “*appropriate in the circumstances*” and not expressly or impliedly excluded by a DIFC statute. This ensures that statutory provisions prevail in cases of inconsistency but permits the use of English common law to fill legal gaps.

While the term “*appropriate in the circumstances*” remains undefined, the DIFCA expects the courts to refine its application through case law over time. To reflect this shift, wording previously referencing the supplementary role of English common law in Article 8(2)(e) of the Application Law has been deleted.

### **Article 8B: Flexibility in Interpretation**

The new Article 8B enables courts and arbitrators to interpret DIFC statutes using principles from common law jurisdictions while recognising that DIFC laws are often derived from diverse sources. For example, DIFC Contract Law draws on the UNIDROIT Principles, while DIFC Arbitration Law reflects the UNCITRAL Model Law. Courts may also consider analogous principles from non-common law systems where relevant. This flexibility ensures that statutory interpretation aligns with the DIFC’s hybrid legal framework.

### **Conclusion**

The Proposed Amendment Law is a welcome step in addressing the legal ambiguities stemming from the *Industrial Group* decision. However, it remains to be seen how readily DIFC courts will incorporate English common law principles into DIFC law under Article 8A and how the application of various legal systems will influence the interpretation of DIFC laws over time.





# The Kingdom of Saudi Arabia



# Saudi Arabia's New Investment Law

Saudi Arabia has introduced a new Investment Law (Royal Decree No. M19/1446) (the “New Investment Law”), published on 11 August 2024, to replace the Foreign Investment Law of 2000 (Royal Decree No. M/1/1421) (the “Old Investment Law”). Coming into effect on 7 February 2025, the law, which will be supplemented by implementing regulations<sup>1</sup>, reflects the Kingdom’s ongoing efforts under Vision 2030 to modernise its investment framework, enhance the ease of doing business, and create an environment that is attractive to both local and foreign investors.



## Scope

The New Investment Law extends to both local and foreign investors, in contrast to the Old Investment Law which only applied to foreign investors, reinforcing the principle of competitive neutrality. It governs key aspects of the investment lifecycle, such as establishment, management, and exit from investments.

<sup>1</sup> As at the date of going to print, the issuance of the implementing regulations has not been announced.



## Enhances Protections

The New Investment Law aims, among other things, “to develop and enhance the competitiveness of the investment environment in the Kingdom” (Article 2) and introduces enhanced protections to safeguard investors’ rights, including (Article 4):

- Freedom to invest subject to Articles 8 and 9 (see next section)
- Right of foreign investors to be treated equally to local investors
- Right to be treated fairly and justly
- Protection from confiscation, except by a “final judicial ruling or for public interest, in accordance with legal procedures, and in return for a fair compensation”
- Right to transfer profits, proceeds from sales or liquidation, and other funds in and out of the Kingdom without delay
- Right to manage, dispose of, and own property necessary for their investments
- Protection of intellectual property and trade secrets

Additionally, the law introduces a framework for granting investment incentives, such as tax exemptions and regulatory benefits, based on transparent eligibility criteria, the specifics of which will be outlined in the forthcoming implementing regulations.

## Limitations

The law allows investments by foreign investors in all sectors, except for those listed as in the forthcoming “Excluded Activities” list, to be developed by the relevant authorities (Article 8). However, foreign investors may seek approval from the Ministry of Investment to invest in restricted sectors, providing a degree of flexibility.

Article 9 gives the Ministry of Investment the right to suspend any foreign investment “for the purpose of protecting national security”, but provides that any suspension must be based on “objective grounds” and be “consistent with the Kingdom’s obligations under international agreements to which it is a party, and is in accordance with the procedures specified in the [implementing regulations]”.

## Dispute Resolution

The law expands options for resolving disputes, including those with public authorities, by allowing parties to agree to resolve their disputes through alternative dispute resolutions methods, including arbitration, mediation, and conciliation (Article 10).

This represents a notable departure from previous restrictions, which required disputes with public authorities to be resolved exclusively through the courts (Article 13 of the Old Investment Law).

## Investment Courts

Though not expressly contemplated by the New Investment Law, it is worth noting that, as discussed in more detail in section “What to Expect in 2025” of this compendium, in 2025, Saudi Arabia is expected to introduce specialised investment courts as part of its Vision 2030 framework. We anticipate that, once established, these courts are likely to be designated as the “competent courts” for the purposes of the New Investment Law with the aim of enhancing dispute resolution before the local courts.

## Conclusion

The New Investment Law represents a step forward in Saudi Arabia’s efforts to create a competitive and transparent investment environment by introducing enhanced protections and promoting equality of treatment. The new framework’s success, however, will hinge on the extent to which the law’s provisions are enforced in practice.







## Looking Ahead

# What To Expect In 2025

## *UAE – Expansion of Common Law Beyond the DIFC*

The government of Dubai appears to be considering implementing a common law framework across all of the Emirate's free zone jurisdictions, effectively expanding the application of English common law in the region beyond the DIFC. The initiative aligns with Dubai's wider ambitions, as set out in the Dubai Economic Agenda D33, aiming to position Dubai among the top three global economic hubs in the world.

The Dubai government launched a consultation towards the end of 2023, that was open for public input, offering two potential systems: one hybrid system and a standalone system. Under the hybrid system, the DIFC Courts would be responsible for adjudicating and overseeing disputes, but UAE law would apply by default, except with regards to procedural and evidentiary rules in respect of which DIFC laws and rules would take precedence. The standalone system, on the other hand, would entail extending the entire legal framework of DIFC laws to selected free zones, with DIFC courts handling all respective disputes unless the parties expressly opt for a different dispute resolution forum.

It remains unclear when (or if) either of the systems are to be implemented, but businesses currently operating in the Dubai's free zones should pay close attention to any development in this area of legal reform.

## *Saudi Arabia – Establishment Of Specialised Investment Courts*

In 2025, Saudi Arabia is expected to introduce specialised investment courts as part of its Vision 2030 framework. Planned under the supervision of the Ministry of Investment and the Federation of Saudi Chambers, the initiative is designed to improve the efficiency and reliability of investment-related dispute resolution.

The first courts are set to be established in key cities such as Riyadh, Jeddah, and the Eastern Province by the end of 2025, following a phased implementation plan. This will involve conducting legal studies, analysing judicial needs, and training judges specifically for investment disputes.

The proposed investment courts aim to achieve several objectives, including reducing the time required to resolve disputes, which currently takes an average of 12 months, by up to 50%. Additionally, they are intended to provide a transparent and streamlined legal process, aligning Saudi Arabia's judicial framework with international best practices. By addressing investor concerns and providing a predictable legal framework, the courts are anticipated to play a key role in facilitating major projects such as NEOM and the Red Sea development, while also attracting foreign investment in priority sectors like renewable energy, technology, and tourism.

While the proposed establishment of specialised investment courts in Saudi Arabia is a welcome development, several key unknowns remain. Details regarding the procedural rules these courts will adopt, the scope of their jurisdiction, and how these courts will interact with existing judicial bodies and arbitral tribunals have yet to be clarified.





# United Arab Emirates – Select Experience

## A STATE-OWNED ENTITY

Terms confidential

In arbitration proceedings against a provider of technology services. The dispute concerned the scope and quality of the services provided, losses arising from non-performance, and entitlement to further payments for the alleged breaches.

## THE CLAIMANT

Terms confidential

In DIAC arbitration proceedings in a dispute concerning the non-payment of sums due under an assignment agreement.

## A PRIVATE HOSPITAL AND CLINICS OPERATOR

Terms confidential

In a dispute with a services provider arising out of the termination of an agreement to provide RCM services across its network of hospitals and clinics in Dubai.

## ONE OF THE WORLD'S LARGEST TECH COMPANIES

Terms confidential

In relation to a dispute with a GCC government entity following the termination of a services agreement for the design and implementation of software for a major airport services provider.

## A UAE DISTRIBUTOR

US \$40 million

In ICC arbitration proceedings initiated by a Korean company with regards to distribution contracts for consumer goods in West Africa. The dispute was worth circa US\$40m.

## AN ITALIAN LUXURY RETAIL BRAND

Terms confidential

In ADGM Court proceedings following its termination of a franchise agreement covering Abu Dhabi. This was the first case before the ADGM Courts.

## AN INVESTMENT BANK

Terms confidential

In DIFC-LCIA arbitration proceedings in respect of claims of fraudulent misrepresentation. The matter also involved injunctive and ancillary proceedings in the DIFC Courts and the local courts in Sharjah, and counterclaims for breaches of promissory notes and the shareholders' agreement.

## MULTIPLE RESPONDENTS

Terms confidential

In ICC proceedings brought by purchasers of shares in a wastewater treatment plant in the GCC. The dispute concerned allegations of breach of warranties relating to purported contamination.

## AN INVESTMENT BANK

Terms confidential

In DIFC counterclaims for breaches of a suite of shareholder agreements. DIFC-LCIA arbitration proceedings in respect of claims of fraudulent misrepresentation made by a shareholder. The proceedings involved counterclaims for breaches of a suite of shareholder agreements.



### **A CONTRACTOR**

Multi-billion-dollar

On a multi-billion-dollar dirham claim in DIAC arbitration proceedings in regard to a high-profile mixed-use development in Dubai.

### **AN EMPLOYER**

Terms confidential

In ad-hoc arbitration proceedings in respect of claims made by a contractor in relation to a major international airport project in the GCC.

### **AN EMPLOYER**

Multi-billion-dollar

In a multi-billion-dollar dirham claim in DIAC arbitration proceedings; the matter related to a major infrastructure project in the Middle East.

### **A VERTICAL TRANSPORTATION CONTRACTOR**

Terms confidential

In DIAC administered arbitration proceedings in a dispute concerning the non-payment of invoices and allegations relating to level of maintenance following the termination of service agreements for a major infrastructure project in Dubai.

### **INTERNATIONAL CONTRACTOR**

Terms confidential

ICC arbitration relating to a high profile multi-billion metro project in the Middle East, one of the biggest infrastructure projects in the world. The dispute arises under multiple works contracts and concerns various elements of the overall works, including bridges, viaducts and the underground metro stations.

### **THE EMPLOYER**

Terms confidential

In DIAC Arbitration proceedings it instigated against a consultant for defective design of the chilled water system and structures. This related to an iconic water park in the UAE.

### **A SUBCONTRACTOR**

AED200 million

In DIAC arbitration proceedings in relation to a AED200m dispute against the main contractor following termination; the project related to a mixed-use development in Dubai comprising of a mall, residences and a hotel.

### **A MEP SUBCONTRACTOR**

AED100 million

In DIAC arbitration proceedings in respect of claims worth circa AED100m made by the contractor following the termination of a subcontract including allegations of defects and seeking an indemnity for damages allegedly incurred by the contractor at main contract level. The project was a major mixed-use development in Dubai including a mall, office tower and a hotel.

### **A VERTICAL TRANSPORTATION CONTRACTOR**

Terms confidential

In DIAC administered arbitration proceedings in a dispute concerning the non-payment of invoices and allegations relating to level of maintenance following the termination of service contracts for a major infrastructure project in Dubai.

### **A MEP SUBCONTRACTOR**

Terms confidential

In DIAC arbitration proceedings in relation to a final account dispute with the main contractor. The project was a medical facility in the UAE. The dispute concerned entitlement to variations, extension of time and prolongation costs.

### **LEADING TURKISH EPC CONTRACTOR**

US\$750 million

Arbitration proceedings concerning outstanding payments owed in relation to a US\$750 million road transport construction project in the Middle East.



# Qatar – Select Experience



## AN EPC CONTRACTOR

Terms confidential

On issues arising out of the iconic sharq crossing project connecting the airport to the pearl, which was ultimately abandoned.

## THE MAIN CONTRACTOR

Terms confidential

In relation to a series of disputes involving a rail project in Qatar. This included multiple arbitration proceedings.

## AN EMPLOYER

Terms confidential

In LCIA arbitration proceedings relating to a dispute concerning the refurbishment of an offshore oil production facility in Qatar. The major issues were entitlement and cost of variations, whether an EOT was due and prolongation costs.

## A SUBCONTRACTOR

Terms confidential

On its rights and entitlements following termination of its subcontract by a multinational JV main contractor on a rail project in Qatar on the grounds of an alleged force majeure event.

## A EUROPEAN SUBCONTRACTOR

Terms confidential

In a dispute relating to entitlement to extensions of time and prolongation costs with an Asian EPC contractor in respect of a substation for an independent water and power plant in Qatar.

## A MAJOR INTERNATIONAL CONSULTANCY

Terms confidential

In court proceedings in respect of unpaid invoices for consultancy services relating to the design of a tower in Doha.





#### **A EUROPEAN CONTRACTOR**

Terms confidential

On its claims for an extension of time and prolongation costs in relation to a major infrastructure project in Doha, Qatar.

#### **AN ASIAN CONTRACTOR**

Terms confidential

Acting as project counsel advising on contract negotiations for the main contract and ancillary documents with the employer and agreements with its JV partners. We subsequently advised them on issues which arose during the course of the project. The project was a multi-billion dollar infrastructure project in Doha.

#### **AN INTERNATIONAL CONSTRUCTION COMPANY**

Terms confidential

In a breach of contract case involving a services contract, stemming from a high profile multi-billion dollar construction project in Qatar.

#### **AN EMPLOYER**

Terms confidential

Advising an Employer on claims made by a contractor for an extension of time and prolongation costs. The project was an educational facility.

#### **AN ASIAN CONTRACTOR**

Terms confidential

On the terms of an EPC contract with the owner in respect of an onshore LNG facilities project in Qatar.



# Saudi Arabia – Select Experience



## FLUOR

Terms confidential

ICC arbitral proceedings on behalf of an EPCM contractor arising out of Sadara's world-class petrochemical complex at Jubail, Saudi Arabia, including issues relating to non-payment of invoices, delays, and the quality of engineering, procurement, and construction management services.

## MULTIPLE RESPONDENTS

US\$175 million

In ICC proceedings, defending claims by multiple claimants including a major Saudi private equity fund totalling USD175 million in relation to a put option over shares and rent payments under commercial leases in Dubai used for a school. Issues included the applicability of Shariah law or English law and public policy.

## A MAJOR INTERNATIONAL CONSULTANCY

Terms confidential

In relation to a dispute with its consortium partners arising from the development, operation and maintenance of an airport in Saudi Arabia.

## GERMAN FAÇADE SPECIALIST

US\$100 million

Representing a German façade specialist in a ICC arbitration against a main contractor regarding an architecturally designed research facility in the Kingdom of Saudi Arabia.

## AN INVESTMENT VEHICLE OF A PRIVATE EQUITY CLIENT

Terms confidential

On a dispute between the owners and franchisee of two fast food brands (one in the pizza industry, the other the burger market). These disputes have involved court proceedings in the UAE, along with related proceedings in the Kingdom of Saudi Arabia and an arbitration in the United States.

## AN ASIAN EPC CONTRACTOR

Terms confidential

In respect of a claim brought by one of its subcontractors that it procured a breach of an agreement with one of its suppliers. The project related to a gas processing plant in Saudi Arabia.





### **A KOREAN CONTRACTOR**

Terms confidential

In respect of substantial claims brought in respect of a major infrastructure project in Saudi Arabia. The governing law was Saudi law and the exercise involved an extensive review of Shariah law principles.

### **LEADING TURKISH EPC CONTRACTOR**

US\$750 million

Arbitration proceedings concerning outstanding payments owed in relation to a US\$750 million road transport construction project in the Middle East.

### **AN INTERNATIONAL CONSTRUCTION AND ENGINEERING COMPANY**

Terms confidential

In a claim relating to an ethylene plant in Saudi Arabia.

### **FAMILY CONGLOMERATE**

Terms confidential

In DIAC arbitration proceedings in a dispute concerning alleged payments due under a purported master murabaha agreement; issues included allegations of fraud and unjust enrichment.

### **MULTIPLE RESPONDENTS**

Terms confidential

In ICC proceedings brought by purchasers of shares in a wastewater treatment plant in the GCC; the dispute concerned allegations of breach of warranties relating to purported contamination.



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