

After Almost Three Decades of Strictly Upholding “Back-to-Back” Clauses, the Abu Dhabi Court of Cassation Provides a Reprieve

June 24, 2026

For nearly thirty years, the “back-to-back” or “pay-when-paid” clause has been a standard method for allocating risk in UAE construction contracts. Historically, UAE courts have upheld these provisions as binding conditional obligations, protecting main contractors but often leaving subcontractors with limited legal options during upstream insolvency. However, a recent ruling by the Abu Dhabi Court of Cassation, **Judgment No. 386 of 2026 (Commercial)**, issued on 18 June 2026, has shifted this approach, providing subcontractors with a notable reprieve.

By establishing a clear legal framework that allows subcontractors to bypass back-to-back clauses when upstream payment becomes demonstrably impossible, the Court has offered a practical solution for parties facing indefinite payment delays. At **Wasel & Wasel**, we analyze the implications of this judgment, tracing its historical context, examining the Court’s precise legal reasoning, and detailing the new standards that construction professionals should consider.

The Historic Approach of UAE Courts

Over the past three decades, UAE courts have generally declined to bypass back-to-back clauses. Under the UAE Civil Transactions Law (the “Civil Code”), specifically Articles 420

to 427, contractual obligations can be made subject to a “suspensive condition” (*Shart Waqif*).

Relying on the legal principle that agreements must be honored (*pacta sunt servanda*), courts consistently interpreted “pay-when-paid” clauses as valid suspensive conditions. Consequently, if a subcontractor filed a claim for payment before the upstream entity had paid the main contractor, UAE courts would routinely dismiss the lawsuit for being filed “prematurely.”

Courts rarely inquired into whether the upstream payment would ever actually materialize. This strict adherence meant subcontractors often faced indefinite delays, bearing the credit risk of a project’s failure without a clear path to recover their dues.

The Factual Background of Judgment No. 386 of 2026

The dispute involved a subcontractor (the Respondent) seeking to recover a 10% retention sum, amounting to AED 2,078,742.93, from a main contractor (the Appellant).

Clause 11 of their subcontract contained an explicit back-to-back provision. It stated that the release of the retention monies was contingent upon the Appellant receiving its own retention funds from the principal contractor.

The project eventually encountered severe financial issues. The principal contractor was terminated and later entered formal bankruptcy proceedings in Dubai. The subcontractor had previously filed a lawsuit in 2024 to recover its dues, but the court applied traditional precedent and dismissed the claim as “premature” because the back-to-back condition remained unfulfilled.

The situation changed when the bankruptcy trustee issued the

final, consolidated list of commercial creditors for the principal contractor. Crucially, the Appellant was **not** included on this list. Recognizing that the Appellant would not receive the upstream funds, the subcontractor refiled its lawsuit.

The Legal Development: The “Impossibility Test”

The Abu Dhabi Court of Cassation ruled in favor of the subcontractor. In its reasoning, the Court established what can be termed an “impossibility test” for bypassing back-to-back clauses.

The Court held that while a back-to-back clause is a valid suspensive condition, it cannot delay payment indefinitely if the condition becomes factually or legally impossible to fulfill. Establishing this legal boundary, the Court noted:

“However, in the event it is proven that the suspensive condition is incapable of being fulfilled, the effect of the suspension lapses, and the creditor is entitled to demand immediate payment from the debtor, as long as the debtor did not stipulate to the creditor that it would not lapse, and the debt remains an obligation owed by them, rendering the condition impossible to occur due to the expiration and cessation of the suspended obligation owed by the owner in favor of the debtor.”

Applying this principle directly to the facts of the case, the Court reasoned that the finalization of the principal contractor’s bankruptcy proceedings, without the Appellant listed as a recognized creditor, created this legal impossibility:

“Consequently, it has become impossible for the employer [...] to pay the Appellant’s dues, as the creditors to whom the

funds [...] are to be distributed have been confined under the proceedings of that lawsuit, which renders the suspensive condition relied upon by the Appellant incapable of being fulfilled. Thus, the effect of the suspension lapses, and the Respondent is entitled to demand immediate payment from the Appellant in the present.”

Clarifying Procedural Rules: Addressing *Res Judicata*

The judgment also provided practical procedural clarity. The Appellant attempted to block the lawsuit by arguing *res judicata*, the principle that a matter has already been judged. They claimed that because the subcontractor’s identical lawsuit was dismissed in 2024, the matter was legally settled and could not be litigated again.

The Court of Cassation addressed this defense by explaining the legal nature of a “premature” dismissal under UAE procedural law:

“Ruling that a claim is inadmissible for being filed prematurely means that the claimed right has not fulfilled a specific condition, or that the time for claiming it has not yet arrived. Therefore, the reality of a judgment of inadmissibility is merely a postponement of filing the lawsuit until its conditions are complete. Once those conditions are fulfilled, the claimant has the right to file the lawsuit anew and claim the very right that was never substantively adjudicated.”

Because the first judgment did not rule on the underlying debt itself, but merely paused the claim while the suspensive condition was still theoretically possible, the subcontractor retained the right to refile once the condition became legally impossible to fulfill.

Strategic Takeaways for the Construction Sector

Judgment No. 386 of 2026 represents a significant development in UAE construction law, balancing freedom of contract with commercial realities after a three-decade precedent.

- **For Subcontractors:** You are not necessarily expected to wait indefinitely for upstream solvency. If you can gather concrete evidence that the upstream flow of funds has been permanently cut off (such as through finalized insolvency proceedings or definitive exclusion from official creditor lists), the courts may set aside the back-to-back condition and enforce your right to payment.
- **For Main Contractors:** A back-to-back clause should not be treated as a passive defense. If an upstream party goes bankrupt, you have a proactive legal duty to pursue your claims and register your debts. In this case, the Appellant's failure to secure its status on the final bankruptcy creditor list was the key factor the Court used to declare the condition "impossible." Failing to preserve your upstream rights may result in you having to pay your downstream supply chain from your own funds.

*At **Wasel & Wasel**, our construction and dispute resolution practices remain at the forefront of the UAE's evolving legal landscape. Whether you are managing supply chain disputes, navigating insolvency proceedings, or assessing conditional payment clauses, our team provides practical, precedent-backed counsel.*

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The Advocate Next Door Podcast: Mahmoud Abuwaseel on the Future of Crypto Dispute Resolution

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In a recent episode of *The Advocate Next Door*, Mahmoud Abuwaseel, Partner at Wasel & Wasel, joined hosts Kelby Ballena and Margarita Rosa Arango to discuss the intersection of cryptocurrency, cross-border fraud, and dispute resolution. With the UAE serving as a global hub for digital asset adoption, Mahmoud shares exclusive insights into the region's crypto litigation landscape and introduces his latest book, *UAE Crypto Litigation*; a first-of-its-kind resource for understanding how local courts are adjudicating complex digital asset disputes. Listen to the podcast at [this link](#) and read the full transcript of their conversation below.

Kelby Ballena: Have you tried these on like a video call?

Mahmoud Abuwaseel: Well, I have, but I would have to have the entire thing connected and then from here go into a video call. But I have, and it sounds amazing, but the problem with really good audio is that whoever doesn't have it, it sounds terrible.

Margarita Rosa Arango: How are you? Nice to meet you.

Mahmoud Abuwaseel: It's a pleasure to meet you.

Margarita Rosa Arango: Margarita.

Mahmoud Abuwasel: Hello. I was just enthralled by the crispness of the sound. I've never heard myself...

Margarita Rosa Arango: Please tell me that you have it.

Kelby Ballena: I, I...

Margarita Rosa Arango: We're trying to be professionals here.

Kelby Ballena: I don't know if you've ever been on a phone call where the audio is bad or you can't hear them and after a while you, it gets frustrating.

Margarita Rosa Arango: You just stop trying.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: You do.

Margarita Rosa Arango: Okay.

Kelby Ballena: Okay. So we're just checking levels, making sure you're okay.

Margarita Rosa Arango: Yes, I am.

Kelby Ballena: Okay. Perfect. Thank you. All right, so we'll go ahead and start.

Margarita Rosa Arango: Sure. Yes.

Kelby Ballena: Perfect.

Introduction & Guest Welcome

Kelby Ballena: All right, welcome back to another episode of **The Advocate Next Door**. My name is Kelby Ballena. We have a very special guest... and I'm here with my wonderful co-host.

Margarita Rosa Arango: Hello everybody. Welcome back to the show. My name is Margarita Arango.

Kelby Ballena: In the audience today, we have Mahmoud Abuwasel. Am I saying your name correctly? Am I pronouncing...

Mahmoud Abuwasel: Yes. Yes.

Kelby Ballena: So right now you're a partner at Wasel & Wasel.

Mahmoud Abuwasel: That's correct.

Kelby Ballena: You handle a lot of litigation, you're an arbitrator, you've been an expert witness, and you're in many different fields, but one of the fascinating areas that you're a thought leader in is cryptocurrency. Now, for a general audience who may not have any idea what cryptocurrency is because not everybody does have a crypto account or even realizes what this is, how would you kind of explain cryptocurrencies?

Understanding Cryptocurrency & Bitcoin

Mahmoud Abuwasel: As a firm, we decided to focus on crypto disputes 5, 6 years ago when crypto became mainstream. And the reason is that we saw a lot of talk in the market by industry professionals on the crypto industry and where it's going and so on, with no clear government guidance. This is back in 2020, 2021.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: Even before COVID even. And I thought well that, that is unforeseeable. But what's foreseeable is the disputes, right? What forums they will be held in and the issues people will be looking at, what the evidence trail will likely facilitate or need to facilitate, and so on. I mean look, I can tell you, my exposure to crypto, back in 2012, 2013, I was messing around on the dark web.

Kelby Ballena: As we all like to do at night.

Mahmoud Abuwasel: And I'm seeing all this stuff happening. And

I'm thinking how are these people transacting? And Bitcoin kept coming up. What the hell is this? What's Bitcoin? And I think after a few weeks of, you know, dark web it got too strange, too fast. I never used it again.

Margarita Rosa Arango: Too scary.

Mahmoud Abuwase1: Yeah, I mean it's just it's not natural to look at daily. Or anytime. But then I looked into Bitcoin and I started looking at mining capabilities and hash rates mean and all that. And I ordered a mining rig end of 2013. I was supposed to get it in a month or two. And it ended up getting delayed and I got it in mid 2014 and by that time, operating it would have been at a loss because the hash rates increased. I don't know if this makes any sense. But the more Bitcoin is mined, the more facilities you need to mine it so that it's worthwhile. Because the hash rates increase. And that company that sold me the miner back then was closed by the Federal Trade Commission.

Kelby Ballena: Okay.

Mahmoud Abuwase1: They were shut down. Because I guess a lot of people complained they weren't sending out their products in time. It was like 6, 7 months late.

Kelby Ballena: So the way I understand it then, Bitcoin is a type of cryptocurrency. It's one of... but you were talking about mining it. So is it like gold that has a value?

Mahmoud Abuwase1: The value of cryptocurrency increases with more transactions taking place because when you transact, the crypto doesn't move from A to B like on a bus. It dissolves in the sender's control and then a new set is created in the recipient's control. And so the more transactions, the more codes are created, let's say.

Kelby Ballena: Okay.

Mahmoud Abuwase1: As opposed to gold where if you're trading gold on paper, maybe some similarity there. But the crux of a gold trade would be me giving you gold and you giving me its amount, right?

Kelby Ballena: Yeah.

Mahmoud Abuwase1: And also for gold, geopolitics plays a part there and with respect to who protects the gold as opposed to crypto where that question is not so clear, who protects the crypto, right?

Kelby Ballena: That's true because it's not locked away.

Mahmoud Abuwase1: Well it's not so much protecting it and fencing it, but protecting its value. So there's a story during the Roman Empire, the Indus region in modern day India, would manufacture their gold and stamp it with the then current Roman emperor's visage. And the interesting question is well why would they do that? Because it's the same gold, it's the same value.

Kelby Ballena: Yeah. Why wouldn't you use your own...

Mahmoud Abuwase1: Well the reason was, is the value isn't so much inherent in the critical mineral itself. It's inherent in being able to protect its supply chain and flow and so on. Right. And so gold with the visage of the current empire at the time may be more stable, may have more continuity, and so would be more reliable for circulation. Now that question is a much more difficult question with crypto.

Kelby Ballena: Yeah.

Mahmoud Abuwase1: Who can protect its circulation and so on. And then you say, well, we don't need to protect its circulation because the whole point of it is that it's decentralized. Right, it's outside the banking system. It's outside any centralized system of control or protection. And

that's where the disputes get complicated.

The Complexities of Crypto Litigation

Kelby Ballena: Yeah, so that was my next question then this is where crypto litigation happens or dispute happens.

Mahmoud Abuwaseel: Well that's where they get difficult to navigate by methods of standard practice because you're taking this item from supposedly outside the ecosystem and you want to bring it into the ecosystem to resolve your dispute, right? You want to bring it into the courts or into the arbitration forums and you want to utilize whatever legislation you want to utilize, the litigation act, the civil procedures law, the arbitration law, whatever it is. And then you get a judgment and you want to utilize the enforcement systems and the bank systems and so on to collect what you're owed. And so it's really interesting to see how different forums around the world have addressed many, many questions. There's been a recent judgment out of the UK in respect of servicing a party through NFT.

Kelby Ballena: Like giving service or like servicing them like court summons?

Mahmoud Abuwaseel: Like a court summons.

Kelby Ballena: Yes. Via NFT?

Mahmoud Abuwaseel: Yes.

Kelby Ballena: Wow. I'm trying to imagine what that must be like. Okay.

Mahmoud Abuwaseel: You wouldn't manifest these questions until you're put into a situation, right? You're put into a situation while you're pursuing a dispute and you look at all the options and suddenly the Overton Window expands and you have these new options coming from this system that's been historically outside the standard ecosystem.

Discussing the Book: UAE Crypto Litigation

Kelby Ballena: So turning then to a book that just has been released, you wrote a book **UAE Crypto Litigation**. What was your inspiration to put this book together?

Mahmoud Abuwasel: Well, we've been covering crypto judgments from different jurisdictions since, like I said, when we started working on this five, six years ago, or when we started investing into crypto dispute practice. And the UAE, the United Arab Emirates, particularly Dubai and Abu Dhabi and their financial free zones, the Dubai International Financial Centre and the Abu Dhabi Global Market, they've had an exponential adoption of cryptocurrency. And right now the UAE is at the latest statistics, we're at 32 or 33% adoption rate. The highest in the world.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: Almost double or more than double of the United States. And so there's a lot of economic activity that ends up in the courts with a lot of interesting questions. And every time we've covered a particular item, a development in the courts or so on, a lot of times it goes viral or has more viewership and interest than some of the other items that we're covering. And so you have this jurisdiction that acts as a sort of gap analysis, as a case study for other jurisdictions to look at. But the information isn't that accessible. Either language wise or because you need to have the law research tools. Your general person, your layman does not have.

Kelby Ballena: Right.

Mahmoud Abuwasel: And so is there enough information out there that it could be read intelligibly as a whole? And so the first thing I did was I took out all the crypto judgments I can find, not all, but let's say 90%. And the really difficult part was seeing if that information could be parameterized

into a particular journey for someone looking at the information or whether it's haphazard; is the only way to read it in a silo, each information item has to be read on its own or can it be read in a holistic manner? And that's really what took a lot of work is structuring the information for someone reading these, and ended up with over 100 judgments, but the difficult part was whether someone reading these 100 plus judgments can do so in a way where if they go from start to finish, they have a holistic view of a particular journey.

And then the question is well what is that journey? And the journey, for being thematic for the book is the litigation journey, right?

First you want to characterize what you're bartering, what you're trading with.

Then you want to characterize the underlying agreement, right? I bartered this or I traded this, is it actually an agreement? Is there an agreement at all? Is it a partnership agreement, a management agreement, an investment agreement?

And then looking at the appropriate forum, then looking at liability, establishing who could be liable and then the evidence to establish that liability.

And then enforcement and collection, and then if there's any fraud and so on.

And so that made sense and the judgments and the subject matter and the court rationale and so on could be distributed in a way that it's the life cycle of a dispute, you journey through the dispute through these chapters and so you could read it holistically in that manner. But then there was another problem. The first problem is can you read this as a journey, right?

Kelby Ballena: Yeah.

Mahmoud Abuwaseel: You want to read a book, you want to go from start to finish. The second problem was well if you don't, what if you don't want to? Right? You got 600 pages here. You're a busy professional. Maybe you don't have time to sit down and read...

Margarita Rosa Arango: As much as we would want to. Everyone wants to, but you know...

Mahmoud Abuwaseel: Yes. Time is a finite resource. And so well maybe they want to use this as a resource model, right? And so is there enough variation in the issues brought to courts and the courts rationale and so on that it could be topically variable enough that you would look at it for different sets of problems and then it would be worth the money to buy. Because you may buy it and put it on the shelf, not read it immediately and say, there's enough there that I can have this on the shelf for a year or two or three and refer to it every now and then because there's enough topical variation in there. And so if you go through the chapter titles you'll get an idea of how everything's in there.

Margarita Rosa Arango: But that will make it very helpful for students and professionals. Like for you to be able to have this source where you can get everything you need from, you know, that makes it easier to teach a class, to learn... I mean either students that want to learn about crypto or professors that want to teach about crypto and don't have cases or might need ideas.

Kelby Ballena: Or even a lawyer. I mean you should you should hear some of these chapters. We have like the burden of proof for wallet ownership. There's already so many questions I would have there on what enforcing unlicensed management agreements, theft, innovation in crypto trading. I mean you're going into very interesting topics and cases. Coercion and robbery using crypto assets.

Margarita Rosa Arango: Cases that are also not easy to find.

Kelby Ballena: I think this would be relevant and helpful to us. I would like to know malicious prosecution in mining disputes. That'd be really fascinating to know more about all of these topics. So I think there's a lot of great areas, a lot of great things that you've covered in this book so I hope that some people find something that they're actually interested in. And not only that like learn a little bit more about this type of litigation because up until I had met you, I didn't even know there was crypto litigation that was out there.

Mahmoud Abuwasel: It's a growing market. Many disputes are resolved in arbitration.

Kelby Ballena: Are most of these disputes though in the UAE or are other countries handling these kind of disputes?

Mahmoud Abuwasel: Oh well no, they're all over. I mean Singapore, Hong Kong, London. The UAE is unique because of the high adoption rate.

Kelby Ballena: Okay.

Margarita Rosa Arango: And that's why you chose the UAE for your book?

Mahmoud Abuwasel: Well, that's one of the reasons, right? The other reason is if someone else wanted to look at the information, then it's not as accessible because of the language barrier or the usual tools. Like I mean if you have a Westlaw subscription in the US, you can easily expand it to include the UK. You can easily expand it to include Australia, right? Westlaw may not do that for UAE court judgments. They're issued differently. LexisNexis has a system. Now I'm promoting others. But, but the point is, it's a different resource database and they're even better ones that are grassroots from the country or the region for that

information. So for the outsider, even if you're a practitioner on the outside, it's not as easy to extract the information. And then there's the actual subjective understanding of these judgments. This is civil law jurisdiction and so you need to understand the predisposition of the adjudicator, of the judge. When reading the judgment, dozens or hundreds of pages long, there's a philosophical explanation to the rationale. And these are civil law based on the statutes. So you need to know what the statutes mean. To know what the statutes mean, you need to know the legislator's legislative intent behind the statutes and so on. So you need also to have that market experience to be able to translate the information for the average reader.

Margarita Rosa Arango: That's very interesting. Because he's translating civil law, UAE civil law to common law. That makes it easier for people who are commonly working in common law to get access to that information.

Kelby Ballena: Yeah. Yeah, I think I see some great value in it. Um so congratulations on releasing this book.

Mahmoud Abuwasel: Thank you.

Kelby Ballena: I'm sure it's going to be very useful.

Career Background & Technology

Margarita Rosa Arango: When you were younger, what did you want to be? A lawyer?

Mahmoud Abuwasel: I don't, I can't remember. I don't think I... I thought things would work themselves out.

Margarita Rosa Arango: Sometimes it's even better not to have a plan. Let life go its course.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: Yeah, I mean I had fun, I was having a good

time and things would work out. I did well in school, right? I did well.

Kelby Ballena: You went to school in Canada?

Mahmoud Abuwase1: Oh different places.

Kelby Ballena: Yeah.

Mahmoud Abuwase1: But when I started practicing, I had a good feel for TMT at the time. I don't know if that's still the common practice area name. Technology, media, telecommunications. I think now it's a lot more diverse. Now you have AI practice areas and Web 3.0 practice areas and so on. But 15 years ago TMT did a lot of work, did work for Snapchat, for Amazon, for unique things like geolocation and geotagging and all the social media apps.

Margarita Rosa Arango: So you've always been very involved with technology?

Mahmoud Abuwase1: At the time, I wasn't a decision maker, but I had a feel for this. I would bill good hours and clients were happy and so I did more of that work.

Tracing Crypto Frauds & "Pig Butchering"

Margarita Rosa Arango: My understanding is that crypto, it's untraceable. Then if it's untraceable, how do you claim, like how do you know who to pay what it's owed?

Mahmoud Abuwase1: If you want to talk about arbitration, traceability wouldn't overlap with arbitration. Right. If you know who you're suing, because you have an arbitration agreement, then it's about proving your right. The traceability issue comes in scam, fraud, cross-border crime. Traceability in an arbitration dispute, there could be a situation where you are a user of one of the large exchanges and by virtue of being a user, you have an arbitration agreement. And aside from that fact, separately, you get

scammed from someone completely unrelated. But then you trace the funds and coincidentally they're at the exchange that you are a user of, right? And so I imagine that would be a situation where there would be an overlap between scam and tracing and arbitration. Whether that situation would fall within the arbitration agreement, that's a different question. It's a fantastic question because you've identified the two sort of verticals in crypto disputes. One is quasi crime, right? Scams and fraud. And now in the US, the nomenclature for what's happening is pig butchering.

Margarita Rosa Arango: That's a terrible name.

Mahmoud Abuwaseel: It's used by the judges and the courts. I have judgments that say pig butchering.

Kelby Ballena: Really? Pig butchering?

Mahmoud Abuwaseel: Yeah.

Kelby Ballena: Interesting.

Mahmoud Abuwaseel: That's in the judgments. Everyone knows what the judge is talking about. What it is is when a victim is lured into making a minor investment and then they get a little bit back, they make a little bit more, they get a little bit more back and so on. So someone is asked to, told if you put a thousand, it's a great investment. They put a thousand, they get 2000 back. Then they say, well, you did it, it was great. You put 5,000, they put 5, they get 10 back. And then they're told, well, how about you put 50? Right? They put 50 and the money disappears. And it's done, and it's done through different mediums. I've got one of these cases in the book by the way, in the UAE, the United Arab Emirates. A case that happened in that sense where someone is told send money through WhatsApp and then do a YouTube tutorial, pay for it this much and then invest money here. And usually the end platform is some sort of fraud website, right? It's a website that looks completely legitimate and so on, but the money goes

into a black hole and the asset never shows up again. So there's a lot of that happening. There are a lot of victims making their claims, winning their claims, because the defendants never show up. And the crypto technical experts who we work with a lot are able to trace those funds and find where they landed and at which exchange.

Kelby Ballena: Like a bank?

Mahmoud Abuwasel: No. It's like crypto.com or Binance. So these are exchanges.

Margarita Rosa Arango: Yes, yes, yes, yes.

Mahmoud Abuwasel: Binance has like 300 million users. It's like, it's like the stock market exchange, but for crypto.

Margarita Rosa Arango: Yes, exactly. Exactly.

Mahmoud Abuwasel: But anyway, the crypto is traced and it's found at a particular exchange or somewhere else. And an American judge in whatever district issues a judgment and says this victim has been scammed of a million dollars and we know the assets have landed here at this exchange or this company and you're instructed to either hold them in a constructive trust is established or to return the money. But the entity that's received the crypto assets, they're not in the US. They're somewhere abroad. And that's where a lot of the difficulty is in the cross border stuff. Now I haven't seen an ISDS claim related to crypto so far.

Margarita Rosa Arango: No, I haven't heard about it.

Kelby Ballena: I think it's never too late.

Margarita Rosa Arango: Yeah, well, I'm sure we will. We will find eventually.

Kelby Ballena: Yeah, I think so too.

Margarita Rosa Arango: Yeah. This crypto topic makes me think a lot. I have a lot of questions. I'm definitely reading your book by the way.

Navigating International Treaties

Kelby Ballena: Yeah. But I'm thinking, do you think there's any BIT that talks about crypto or understands crypto per se as an investment? I haven't seen one.

Mahmoud Abuwaseel: They're making their way into tax treaties.

Margarita Rosa Arango: Ah, you see? Interesting.

Mahmoud Abuwaseel: Information sharing or double taxation and so on, you will find language coming up more and more that addresses digital assets. Governments are looking at how they tax digital assets, whether it's crypto or whether it's NFTs or whichever. And so a lot of treaties are being renegotiated. As you know. Right. Netherlands is renegotiating everything. India as well.

Margarita Rosa Arango: Yes.

Mahmoud Abuwaseel: And so language is making its way into, from a tax perspective. Right. Not, not so much, not so much as a standard investment protocol, but investment perspectives, cover everything. But from a tax perspective, they are trying to identify or governments are trying to identify digital assets within the tax framework.

Advice for Students

Kelby Ballena: Generally, what advice would you give students who are interested in crypto litigation?

Mahmoud Abuwaseel: The vernacular around the crypto industry is very noisy and the language is not very sophisticated most of the time. And so I would advise students to watch hearings, read transcripts and judgments from common law jurisdictions,

London, the DIFC. That's the Dubai International Financial Centre. Their hearings are recorded and students can watch them. There was a recent five-day hearing in which my book was referenced. A student has five days worth of hearings where they can watch these very senior English barristers, King's Counsel, advocate before a very intelligent judge. And you can see there the vernacular being used in the crypto industry. It's very serious, very sophisticated. And that should be what populates a student's mind. As a student, that should be what populates your mind to help you create an inner monologue or an introspect towards the crypto industry. So that when you speak of it or think of it, you do so in a serious and intelligible manner. So there are live recorded hearings, there are transcripts, you have all the court set transcripts here. The judgments and so on. And from the common law jurisdictions as well, across the board. That should be the resource model. And because the discussions are advocacy, everyone's philosophizing. You bring your own philosophy into it, the judges bring their own philosophy into it, and so on. But what that does is for a student, it helps them create their own frame of reference. Not parrot what is being said or written or so on. But when that's the resource to an extent, it helps a student to develop their own unique perspective on things. To have their own voice and from there have their own clients and their own business and so on.

Kelby Ballena: Which case in your book would you say that someone like me who is new to crypto can read and have a good understanding on how crypto disputes work?

Mahmoud Abuwasel: If there was an answer to that question, the book would be one case. Right? There are seven years worth of cases here. Right? And so you're looking at the evolutionary life cycle. And we're still in the evolutionary life cycle. But then there are things that are topical. I mean now, there's a case where someone tried to get out of a crypto deal because of the Russia Ukraine war. And now we have much more

severe geopolitical instability. And so we have some foresight into, well if you have some crypto transaction taking place and it's disrupted, what do you expect the court to say? What's your evidentiary threshold? How do you have standing? What grounds can you rely on and so on? So things are topical. And it could be either a macroeconomic issue that's topical or it could be micro. Just in your industry or in your particular service line and so on.

Conclusion & Where to Find the Book

Kelby Ballena: That's great. So anyone who's interested in the book, where could they actually find your book now?

Mahmoud Abuwasel: It's available on uaecryptolitigation.com and you can see a preview of the book. See a couple of chapters, you can order it, access the companion podcast for the book through the website as well. We have quizzes that will be available soon. And the purchase or delivery is available worldwide.

Margarita Rosa Arango: Thank you so much for coming Mahmoud. It was a pleasure to have you.

Kelby Ballena: Thank you for being a raw voice at this podcast.

Mahmoud Abuwasel: You're very welcome. Thank you.

Kelby Ballena: Thank you.

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Contractor Withholding Your Tax Invoice? How UAE Courts Are Protecting Tax Refunds (Abu Dhabi Cassation Judgment No. 289 of 2026)

June 24, 2026

In the evolving legal landscape of the United Arab Emirates (UAE), the intersection between commercial construction disputes and tax compliance presents unique challenges for property owners. Often, contractors withhold essential documentation, particularly tax invoices, as leverage during payment disputes. However, these invoices are strictly required by the Federal Tax Authority (FTA) for taxpayers seeking Value Added Tax (VAT) refunds. A landmark ruling by the Abu Dhabi Court of Cassation in **Judgment No. 289 of 2026 (Commercial)**, issued on April 14, 2026, provides a masterclass on how UAE courts utilize the civil doctrine of specific performance to mandate the delivery of tax invoices, empowering taxpayers to strictly comply with FTA regulations.

The Factual Matrix and The Court's Ruling

The dispute in Judgment No. 289 of 2026 arose from a construction contract for a residential villa. The contractor (the Respondent) initiated a lawsuit against the project owner (the First Defendant), the financing bank (the Appellant), and the consultant.

The Court summarized the facts, noting that the contractor sought the remaining value of the project works and compensation after a breakdown in the relationship:

("By virtue of a contracting contract dated 20/07/2020 for the construction, completion, and maintenance of a residential villa... against a lump sum of 2,000,000 dirhams... however, following the connection of electricity... the first defendant, the employer, took possession of the villa and lived in it, and prevented the respondent's workers from entering the site to complete the remaining works and final finishes, in addition to retaining equipment, machinery, and cables belonging to the respondent inside the villa.")

During the proceedings, an engineering expert was appointed. Crucially, the expert assessed not only the financial dues but also the documentation necessary for tax compliance. The Court of Cassation highlighted this vital finding:

("The supervising judge appointed an engineering expert who deposited a report concluding that the remaining amount for the respondent is 360,577 dirhams... and that it is incumbent upon the contractor (the respondent) to deliver to the first defendant (the owner) the tax invoices in the amount of 85,577 dirhams so that he can recover the value-added tax.")

Recognizing the statutory necessity of these documents, the Court applied the principle of specific performance, upholding the lower court's ruling which strictly ordered:

("Compelling the respondent to deliver to the first defendant (the owner) all invoices and documents related to the project...")

The FTA's Position on Holding Compliant Tax Invoices

The project owner's demand for the tax invoices via a court order highlights the uncompromising administrative position of the Federal Tax Authority (FTA). Under UAE Federal Decree-Law No. 8 of 2017 on Value Added Tax, recovering input tax or claiming a refund, such as the special scheme for UAE Nationals building new residences under Article 61, is strictly conditional upon the taxpayer holding a valid,

compliant tax invoice.

The FTA operates on strict documentary compliance. It mandates that a tax invoice must meet all rigorous requirements set out in Article 59 of the Executive Regulations (e.g., displaying the words “Tax Invoice,” the supplier’s Tax Registration Number, a description of the goods or services, and the exact tax amount). A mere bank transfer receipt, a payment certificate, a contract, or even a court-appointed expert’s report establishing that VAT was paid is legally insufficient for the FTA.

Because the FTA acts as a strict gatekeeper, withholding refunds if compliant invoices are absent, a contractor’s refusal to issue or hand over a tax invoice causes direct, quantifiable financial harm. In this case, the owner stood to lose 85,577 AED in VAT refunds solely due to the lack of compliant invoices. Consequently, taxpayers must rely on specific performance to force counterparties to produce these mandatory documents.

Legal Principles Applied by the Court

The judgment is rich in its application of procedural and substantive legal principles. Beyond specific performance, the Court of Cassation addressed **Capacity or Legal Standing**.

The financing bank appealed the judgment, arguing it lacked capacity as it was merely a funder:

(“That its role was limited to financing the project only, without there being any direct or indirect relationship with the respondent...”)

The Court decisively rejected this, laying out a foundational legal principle regarding capacity:

(“A lawsuit is the right to resort to the judiciary to protect a claimed right or legal position; hence, substantive capacity

must exist for both parties... Capacity is met in the defendant if the right claimed in the lawsuit exists against him, considering him a concerned party and responsible for it if the plaintiff's entitlement is proven.")

Furthermore, the bank argued it could not disburse funds without the owner's written instructions. The Court established the vital principle of **Judicial Supremacy over Contractual Restraints**, stating:

("And that the judgment issued by the court to liquidate the account serves in place of the owner's written instructions and supersedes them, rendering unnecessary the existence of written instructions from the owner to the appellant to disburse the respondent's dues...")

Conclusion

Abu Dhabi Court of Cassation Judgment No. 289 of 2026 serves as an essential precedent for taxpayers navigating the intersection of contract law and VAT compliance. By affirming the order for specific performance to hand over tax invoices, the court recognized the functional reality of UAE tax law: without the physical tax invoice, the statutory right to a VAT refund is nullified. This judgment safeguards taxpayers, ensuring that the withholding of tax documentation cannot be weaponized in commercial disputes.

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Navigating Downstream Corporate Tax Liability in the UAE: An Analysis of Dubai Court of First Instance Judgment No. 1188 of 2025

June 24, 2026

Introduction

The introduction of the UAE Corporate Tax regime via Federal Decree-Law No. 47 of 2022 has fundamentally shifted the commercial landscape in the region. As businesses adapt to the new regulatory environment, a critical legal question has emerged: to what extent can a company unilaterally pass its corporate tax liabilities downstream to independent contractors, agents, or service providers? A recent judgment from the Dubai Court of First Instance (Case No. 1188 of 2025) provides vital clarity on this issue. By decisively ruling against unilateral tax deductions, the Court established clear tests and boundaries for corporate tax liability distribution, setting an essential precedent for future commercial disputes.

Overview of the Facts

The dispute arose from a real estate brokerage relationship. The Plaintiff, an independent real estate agent, successfully brokered the sale of a property unit for a total transaction value of AED 1,638,947. According to the agreement between the Plaintiff and the Defendant, a real estate brokerage company, the total 6% sales commission was to be split, with the Plaintiff receiving an 80% share, amounting to AED 78,669.47.

However, upon final settlement, the Defendant company remitted

only AED 71,589.22 to the Plaintiff, withholding a balance of AED 7,080.25. When the Plaintiff demanded the outstanding amount, the Defendant justified the withholding by claiming the deduction was necessary to cover its Corporate Tax and Value Added Tax (VAT) liabilities. Following unsuccessful attempts to resolve the matter amicably, the Plaintiff initiated legal proceedings to claim the withheld balance plus a statutory delay interest of 5%.

The Legal Arguments and Laws Cited

In its defense, the Defendant company relied heavily on the nascent tax legislation, specifically citing Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (referencing Articles 1, 2, 3, 11, and 12) and the applicable UAE Value Added Tax legislation (cited in the pleadings as Law No. 18 of 2022). The company argued that because taxes are imposed on corporate income and revenues at respective rates of 9% and 5%, the proportionate burden of these taxes should naturally be deducted from the commission paid out to the agent who generated that revenue.

The Court evaluated this premise by rooting its analysis in the UAE Civil Transactions Law. Citing the Law of Evidence (Article 1), which dictates that the burden of proof lies with the claimant, the Court examined the contractual nexus between the parties. It heavily referenced Article 243(2) of the Civil Transactions Law, which mandates that each contracting party must fulfill what the contract obliges them to do, and Article 246, which requires contracts to be executed in good faith and in accordance with their explicit terms. Furthermore, the Court invoked Article 272(1), emphasizing that if one party fails to perform their contractual obligations, the other party has the right to demand execution.

The Court's Tests for Downstream Tax Liability

Upon reviewing the findings of a court-appointed accounting

expert, the Court laid down a definitive framework, effectively establishing key tests, to determine the ability or inability of a corporate entity to impose tax liabilities downstream onto service providers:

1. **The Statutory Burden Test (Who bears the legal incidence?):** The Court affirmed that the statutory burden of Corporate Tax and VAT inherently falls upon the taxable corporate entity that registers the revenue; in this case, the Defendant company. The legal framework establishes that the tax burden is placed on the company itself, rather than being an automatic obligation of the downstream service provider or commission earner. Absent any other legal or contractual mechanism, the entity legally defined as the taxable person under the prevailing tax laws must bear its own tax costs.
2. **The Express Contractual Agreement Test (Is there explicit consent?):** To shift or deduct this statutory tax burden from a downstream party's remuneration, the Court established a strict evidentiary threshold. There must be an express, written agreement between the parties authorizing such a deduction. The Court categorically stated that without a written contract explicitly permitting the company to deduct statutory taxes from the agent's commission, any such deduction is legally baseless and unsupported by documentary evidence. Because the Defendant could not produce a written agreement authorizing the tax deduction, the Court deemed the unilateral "tax sharing" an unlawful breach of contract.

Judgment and Strategic Implications

Applying these tests, the Court ruled in favor of the Plaintiff, ordering the Defendant to pay the withheld AED 7,080.25. Additionally, reflecting updated judicial precedent

from a 2021 directive of the General Assembly of the Dubai Court of Cassation, the Court awarded a 5% legal interest rate on the owed amount from the date of the judicial claim until full settlement, and ordered the Defendant to bear all legal fees and expenses.

This judgment serves as a strict warning to corporations in the UAE. Companies cannot use the introduction of Corporate Tax as a unilateral excuse to reduce payouts to contractors, freelancers, or agents. If a business intends to share its tax burden or calculate commissions on a post-tax basis, this mechanism must be explicitly drafted into written agreements. Moving forward, businesses should urgently audit and revise their independent contractor and brokerage agreements to ensure tax liability allocations are clearly defined, mutually agreed upon, and fully compliant with UAE contract law.

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UAE Crypto Litigation: When War Doesn't Excuse Crypto Losses – A Dubai Court Judgment on Force Majeure, War, and the 2026 Iran War

June 24, 2026

The following is an excerpted analysis of topics discussed in the book '[UAE Crypto Litigation](http://www.uaecryptolitigation.com)', a treatise on the judicial evolution of digital asset disputes in the United Arab Emirates, [available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

In the immediate aftermath of a geopolitical shock, such as the escalating conflict involving Iran, a frantic period of market panic and informal crisis management sometimes occurs. It is not uncommon that asset managers and OTC brokers trade WhatsApp messages with anxious clients, cite global instability, and may freeze withdrawals to avoid unforeseen losses. For the investor or legal practitioner, these crisis-driven communications present a complex contractual challenge: when does wartime market volatility excuse non-performance under the doctrine of *force majeure*, and when is it superseded by an informal guarantee?

The UAE courts have adopted a rigorous stance on this issue, prioritizing the specific substance of the parties' communications over sweeping macroeconomic excuses. While traditional commercial contracts might readily invoke wartime disruption as an act of God, the digital asset sector faces a different legal reality. A landmark judgment from the Dubai Court of Appeal (Case No. 406 of 2023) provides a definitive blueprint for how the judiciary approaches geopolitical market instability. In a dispute involving a massive informal digital currency investment, the defendant failed to return investor funds following a severe market crash. Attempting to shield himself from liability, the defendant invoked *force majeure*, attributing the impossibility of performance to the extreme market volatility precipitated by the outbreak of the Russian-Ukrainian war; a defense mirrors the potential arguments of citing the Iran conflict.

However, the courts are nuanced when a party has made absolute promises outside of a formalized risk allocation structure. The true battleground in such disputes is rarely the macroeconomic impact of the conflict, but rather the

defendant's own digital breadcrumbs. In assessing the aforementioned case, the court relied heavily on a court-appointed expert's forensic analysis of the parties' emails and messaging apps to pierce the veil of the informal arrangement. The evidentiary record revealed that the defendant had aggressively induced the claimants, affirming in writing that the investment was "100% guaranteed" and that the principal could be recovered "immediately upon request." The defendant tried to sever his liability by pointing to a global conflict, hoping the court would ignore his own unqualified assurances.

The court refused to allow this *force majeure* defense. It held that by explicitly guaranteeing the return of funds "at any time," the defendant had contractually assumed the risk of market volatility. Extreme price fluctuation, even when catalyzed by a major regional war, is an inherent and foreseeable feature of cryptocurrency markets; not an unforeseeable external event. Consequently, the burden of the market crash remained entirely on the defendant, transforming what might have been a speculative investment into an unconditional debt obligation. This serves as a stark warning to market participants and informal asset managers: you cannot weaponize the theater of war to excuse market losses if your communications vacate clear contractual exclusions have already guaranteed the preservation of your investors' principal.

For a detailed guide on managing force majeure claims, implementing objective "Market Disruption Event" clauses, and navigating VARA's strict prohibitions on guaranteed returns, [see more in the contractual risk analysis in 'UAE Crypto Litigation'](#).

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The 2026 Iran War, Tax Audits, and Force Majeure: The UAE Supreme Court's Standard for Force Majeure in Tax Audits and Liabilities

June 24, 2026

The outbreak of the Iran War on 28 February 2026 has abruptly plunged the Middle East into profound operational disruption. Consequently, corporate boards operating within the United Arab Emirates are instinctively looking to the doctrine of *force majeure* and emergency circumstances (*thuroof tari'a*) as legal shields. Having acted in over 300 UAE tax dispute procedures, one of the most pressing questions we are now receiving is whether the friction of Iran War legally diminish underlying tax liabilities, excuse administrative penalties, or suspend Federal Tax Authority (FTA) audit procedures.

To answer this purely as a matter of law, we must detach from the immediate fog of conflict and examine the definitive jurisprudence of the UAE Federal Supreme Court. The seminal

judgment in Cassation No. 958 of 2025 (Administrative) provides the exact legal architecture. In that dispute, the systemic crisis in question was the COVID-19 pandemic. By transposing the Court's rationale regarding the pandemic onto the 2026 conflict, we find a resolute and unyielding framework of administrative tax law.

The Statutory Accrual of Tax Liability

A question taxpayers make during wartime is whether the disruption of their administrative capabilities lawfully postpones their underlying tax liabilities. The Supreme Court systematically dismantled this assumption, establishing that the legal character of a tax debt operates entirely independently of the operational environment.

The Court ruled that tax obligations are rigidly attached to the statutory transaction date, irrespective of the taxpayer's ability to seamlessly file declarations during a crisis:

"The legislator did not make the acquisition of the status of 'payable tax' contingent upon the tax return, but rather bestowed this status upon the tax whose payment date has arrived."

Therefore, as far as matters stand, the geopolitical landscape does not alter the realization of a statutory tax point. Even if the Iran War prevents the timely filing of an administrative return, the underlying liability is not practically paused or legally dissolved. The war does not suspend statutory accrual.

Force Majeure: Transposing Covid-19 to the 2026 Conflict

During the COVID-19 pandemic, taxpayers attempted to utilize the global emergency as a *force majeure* event to excuse administrative delays, avoid late penalties, and invalidate tax assessments. In the petition for Cassation No. 958 of 2025, the UAE Federal Supreme Court considered *force majeure*

in regard to tax audits. They highlighted a three-year audit delay, noting that the FTA itself admitted its operations were hindered by COVID-19.

In light of the legal maxim that “a party cannot benefit from its own mistake” the Supreme Court considered whether the FTA could not lawfully impose incremental “time-based penalties” while the government’s own pandemic-related disruptions stalled the audit process. Furthermore, the Supreme Court considered whether the FTA’s crisis-induced delay caused a compensable “loss of opportunity” to mitigate penalties under favorable Cabinet Decisions issued to provide relief during the pandemic.

Today, businesses are considering whether this exact legal theory would apply to the 2026 Iran War, and whether regional hostilities inherently frustrate audit procedures, trigger mutual *force majeure* exemptions, and legally dissolve the imposition of administrative fines.

The Federal Supreme Court, however, addressed the premise that a systemic crisis suspends tax obligations or shifts the legal burden. Addressing the attempt to use the pandemic to excuse compliance failures, the Supreme Court laid down a formidable standard that directly governs our current wartime reality:

“...its admission of its ...-month delay places the burden of proof upon it despite the Corona pandemic that passed over everyone (the Appellant and the Administrative Authority).”

The Rationale: Crises That “Pass Over Everyone”

The jurisprudential rationale here is profound. Because a systemic crisis, whether a global health emergency like COVID-19 or the 2026 Iran War, impacts both the private sector and the state apparatus equally, its mere existence does not grant the taxpayer blanket legal immunity.

The fact that the crisis “passed over everyone” means the

foundational rules of administrative litigation remain intact. The Court made it clear that a shared macroeconomic shock does not reverse the burden of proof:

“The burden of proof in an administrative dispute does not deviate in its origin, and as a general rule, from others, as the principle is that the creditor must prove the obligation and the debtor must prove getting rid of it...”

Taxpayers cannot use general claims of *force majeure* as a shield against statutory tax audits or potential government disruptions. To successfully challenge an FTA assessment during this conflict, general appeals to wartime hardship are legally insufficient; taxpayers must rely on pristine documentary evidence demonstrating exactly how the war rendered specific compliance materially impossible.

Conclusion

Does the 2026 Iran War diminish or dissolve UAE tax liabilities or audit procedures? The unequivocal legal answer from the UAE Supreme Court is not in a blanket manner. Guided by the rationale in Cassation No. 958 of 2025, the judiciary does not recognize systemic, shared crises as a *force majeure* that extinguishes tax debts or shifts the burden of proof. The machinery of UAE tax law does not halt for war. Taxpayers whose tax audits or liabilities are affected by the war must provide direct evidence, grounds, and standing to causation and nexus in approaching the FTA, the tax disputes resolution committees, or the courts.

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UAE Crypto Litigation: The “Man in the Middle” and the Duty of Delivery

June 24, 2026

The following is an excerpted analysis of topics discussed in the book [UAE Crypto Litigation](http://www.uaecryptolitigation.com), a treatise on the judicial evolution of digital asset disputes in the United Arab Emirates, [available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

A defining feature of blockchain transactions is their irreversibility. If an asset is sent to the wrong address, there is no central authority to reverse the transaction. This technical reality creates complex legal questions when a transaction is intercepted or misdirected by a malicious third party; a “Man in the Middle” attack. In China, the US, and the UK, courts have often placed strict liability on OTC desks to verify the identity of the recipient. The UAE courts, applying general principles of contract law, have allocated this risk strictly against the seller in the context of delivery obligations.

The Dubai Court of Appeal recently analysed a dispute arising from a Peer-to-Peer (P2P) sale of USDT. The buyer had paid for the assets, and the seller transferred the USDT to a wallet address provided by a third-party intermediary who was facilitating the deal. The intermediary, upon verifying the transfer, vanished with access to that wallet, leaving the buyer empty-handed.

The court held the seller liable for the buyer’s loss. It established a high standard for the duty of delivery, ruling that the obligation to deliver sold goods is not met by merely dispatching them to a provided address. The seller must ensure

the successful *receipt* of the assets into the buyer's effective control. By relying on an untrusted intermediary's instructions without verifying the wallet's ownership with the buyer directly, the seller assumed the risk of fraud.

This judgment reinforces the "perfect tender" rule in the context of digital assets. It serves as a caution to OTC traders who rely on brokers on platforms like Telegram. The legal duty is result-oriented: the contract is only performed when the buyer has the tokens, not when the seller has sent them. If the intermediary provides a fraudulent address, the party sending the funds bears the loss.

To navigate the risks of P2P transactions and intermediary liability, see more in [‘UAE Crypto Litigation’ book publication available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

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UAE Crypto Litigation: Specific Performance and the Return of the Asset In Specie

June 24, 2026

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When a debtor defaults on a loan of 10 Bitcoin, or an employer fails to pay a salary denominated in tokens, what is the appropriate remedy? In the United States, the bankruptcy proceedings of entities like *Celsius* and *FTX* have famously “dollarized” claims as of the petition date, often locking creditors into losses at the bottom of the market. The UAE courts, however, are increasingly adopting a property-law approach that favors *specific performance*, ordering the return of the asset itself, rather than its fiat equivalent.

This shift is evident in a landmark decision by the Dubai Court of First Instance regarding a private loan of 16 Bitcoin. When the borrower defaulted, the court did not engage in a complex valuation exercise to convert the Bitcoin to Dirhams; a process fraught with difficulty given the asset’s intraday volatility. Instead, it ordered the defendant to return 16 Bitcoin *in specie* to the claimant. This implicitly recognizes the digital asset not merely as a value-reference, but as a distinct class of property capable of direct restitution, akin to the specific delivery of chattels in English law.

This principle has even extended to employment disputes. In a novel judgment, a Dubai court ordered an employer to pay outstanding wages in “Ecowatt tokens,” as strictly stipulated in the employment contract. By enforcing the delivery of the specific token, the court upheld the sanctity of the contract’s currency clause.

However, judicial pragmatism dictates a fallback position. Where the specific asset cannot be returned, such as in cases of fraud where the tokens have been dissipated, the Dubai Court of Cassation has established a critical valuation rule. Monetary compensation must be calculated based on the market value at the time of the *judgment*, not the time of the breach. This forward-looking valuation ensures that a fraudster cannot profit from the market’s appreciation during the delays of litigation, ensuring the victim is made economically whole in

current terms.

To understand the strategic implications of seeking specific performance versus monetary damages, see more in [‘UAE Crypto Litigation’ book publication available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

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UAE Crypto Litigation: WhatsApp and the Unsigned Contract

June 24, 2026

The following is an excerpted analysis of topics discussed in the book [UAE Crypto Litigation](http://www.uaecryptolitigation.com), a treatise on the judicial evolution of digital asset disputes in the United Arab Emirates, [available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

In the fast-paced environment of crypto-trading, formal contracts are frequently neglected in favor of instant messaging. Deals worth millions are struck via WhatsApp, Telegram, or WeChat, often with little more than a “thumbs up” emoji to signify assent. When these informal arrangements collapse, the UAE courts are tasked with a forensic inquiry: can a string of text messages constitute a binding commercial contract? The answer, as revealed by recent appellate judgments, depends entirely on the content of the messages and

the value of the claim.

The UAE approach offers an interesting parallel to the “parol evidence rule” in US contract law or the statutory requirements for writing in the UK’s Law of Property (Miscellaneous Provisions) Act. Generally, the UAE Law of Evidence requires written proof for obligations exceeding a certain value. However, the courts have adapted to the digital age by accepting electronic correspondence as a “commencement of proof in writing,” provided it is sufficiently clear.

In a striking example of this flexibility, the Dubai Court of First Instance enforced a multi-million dollar liability based almost exclusively on WhatsApp messages. While the initial oral agreement was unprovable, the defendant’s subsequent messages, in which he explicitly acknowledged the debt and promised repayment, were treated as a binding extra-judicial admission. Here, the informality of the medium did not negate the clarity of the confession.

However, there is a limit to this indulgence. The Abu Dhabi Court of Appeal recently drew a hard line in a case involving an alleged five-million-dollar investment. The claimant attempted to reconstruct complex contractual terms from a series of WhatsApp exchanges. The court dismissed the claim, finding that while messages can prove a debt, they are often too fragmented and ambiguous to establish the nuanced terms of a partnership or a high-value investment mandate. Unlike the Chinese courts, which have developed specific protocols for verifying blockchain and WeChat evidence, the UAE courts apply a traditional lens to new media: if the messages do not clearly define the “meeting of minds” on all essential terms, they cannot substitute for a formal contract.

Furthermore, the courts are wary of “unsigned contracts” circulated via email. In another Dubai case, a claimant relied on an unsigned draft contract and screenshots. The court dismissed the claim, reinforcing that an unexecuted document

has no evidentiary value unless corroborated by decisive conduct or admissions. The message to the market is clear: while digital chat logs can save a claim by proving an admission of debt, they are a poor substitute for a signed agreement when trying to prove the complex terms of a venture.

For a practical guide on preserving digital evidence and understanding its weight in court, see more in the evidentiary chapters of [‘UAE Crypto Litigation’ book publication available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

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The Cost of Clarity: Inside Binance’s 2026 Terms and the New Dispute Resolution Regime

June 24, 2026

Effective January 5, 2026, the global cryptocurrency landscape has shifted with Binance’s transition to a fully regulated structure within the Abu Dhabi Global Market (ADGM), in the United Arab Emirates. In this article we analyze the legal implications of this restructuring for investors. We examine the transition from the ambiguous “Binance Operators” to the specific “Nest” entities, and the material shift from Hong Kong arbitration to a rigorous International Chamber of Commerce (ICC) framework seated in the ADGM.

Part I: The Structural Shift – From “Operators” to “Nest”

To understand the current legal standing of an investor, one must distinguish the new structure from the old.

1.1 The Legacy Issue: “Binance Operators”

Under previous Terms of Use (2017-2025), users contracted with “Binance Operators,” defined broadly as “all parties that run Binance.” This structure presented significant challenges regarding transparency and jurisdiction.

In *Lochan v. Binance Holdings Limited*, 2023 ONSC 6714, the Ontario Superior Court found this definition problematic, noting it obscured the identity of the true counterparty. This opacity was not merely a matter of private contract interpretation but was judicially recognized as a defining feature of the platform’s operations. In the United States, the ‘Court Findings of Fact’ consented to by the defendants in *Commodity Futures Trading Commission v. Zhao et al.* explicitly characterized the model as “Binance’s reliance on a maze of corporate entities to operate the Binance platform...designed to obscure the ownership, control, and location of the Binance platform” (2023 WL 10448932 (N.D. Ill. 2023)).

For the investor, this “maze” created a significant informational deficit, contributing to judicial findings of unconscionability by making it difficult to identify the proper defendant or the location of assets. Justice Morgan of the Ontario Superior Court summarized this as follows: “Binance, as the party that designed and whose professionals drafted the contract, engineered the arrangement to take advantage of the complexity that was hidden behind the superficially benign appearance of an arbitration clause. The inequality of information... resulted from this informational deficit was at a maximum.”

1.2 The New Regime: The “Nest” Ecosystem

The 2026 Terms of Use replace this obscurity with three distinct ADGM-licensed entities (in Abu Dhabi, the United Arab Emirates). Identifying the correct defendant is now a prerequisite for any valid legal claim.

- Nest Exchange Limited (Recognized Investment Exchange): Operates the matching engine. Crucially, it generally does not hold client assets. Claims regarding system outages or matching errors should fall here.
- Nest Clearing and Custody Limited (Recognized Clearing House): This is the custodian of digital assets and the central counterparty for derivatives. It is subject to strict requirements under ADGM Rules. Claims regarding frozen assets, withdrawals, or insolvency are expected to be directed here.
- Nest Trading Limited (Broker-Dealer): This entity is the principal counterparty for “off-exchange” services. When users utilize swaps or OTC trading, they should be trading against Nest Trading Limited’s proprietary inventory, not against other users on the exchange. Claims regarding pricing fairness in these specific products should be directed here.

Investors can no longer sue a generic brand. Liability is segregated. For example, a claim for lost assets filed against the Exchange entity, rather than the Custody entity, risks dismissal for lack of standing.

Part II: The New Dispute Resolution Mechanism (Clause 37)

The most critical update for investors is Clause 37 of the 2026 Terms, which mandates arbitration under the ICC Rules seated in the ADGM. The text imposes strict procedural parameters that fundamentally alter the economics of dispute resolution.

2.1 Analysis of the Arbitration Agreement

- Mandatory Three-Member Tribunal (Clause 37.2): “The

tribunal shall consist of three (3) arbitrators to be appointed in accordance with the ICC Rules.”

- **Exclusion of Expedited Rules (Clause 37.5):** *“The parties expressly agree that the Expedited Procedure Rules shall not apply.”*
- **Seat of Arbitration:** The ADGM.
- **Exclusive Jurisdiction:** The parties irrevocably waive the jurisdiction of all other courts, including the UAE onshore courts.

2.2 Comparative Analysis: HKIAC vs. ICC Rules

The shift from the previous regime (often HKIAC default rules) to this specific ICC framework creates a sophisticated, higher cost environment.

Feature	HKIAC Administered Rules (Typical Previous Mechanism)	ICC Rules (2026 Terms, Clause 37)	Legal Implication for the Investor
Number of Arbitrators	Defaults to one or three. For smaller claims, a sole arbitrator is standard practice to control costs.	Clause 37.2 mandates a tribunal of three arbitrators for <i>all</i> disputes.	The claimant must advance fees for three arbitrators. This creates a higher financial floor that may exceed the value of retail claims.

Expedited Procedure	Accelerated procedures available for amounts under ~USD 3M, resulting in faster resolution and lower fees.	Clause 37.5 expressly disapplies the Expedited Procedure Rules.	Even low-value disputes must undergo the full, standard ICC arbitration process, extending timelines and increasing legal fees.
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2.3 Assessing Access to Justice In Lochan, the court found the cost of arbitration prohibitive for average consumers. The new Clause 37 arguably exacerbates this barrier by mandating three arbitrators and excluding expedited options. While the “Nest” entities provide a clear legal nexus to the ADGM (curing the “no connection” defect of Hong Kong), the procedural costs may render low-value claims economically irrational to pursue individually.

Part III: Regulatory Protections & Governing Law

3.1 Governing Law: English Common Law

The Terms are governed by ADGM Law, which directly incorporates English Common Law. This offers investors certainty regarding property rights; citing precedents like *AA v Persons Unknown & Ors, Re Bitcoin* [2019] EWHC 3556 (Comm), where Bryan J concluded “I consider that cryptoassets such as Bitcoin are property”, and contract interpretation, removing the unpredictability of offshore jurisdictions. Being constituted as property under English law applied in the ADGM, cryptoassets held by Binance may be subject to proprietary injunctions.

3.2 Consumer Protection Regulations 2025

Investors have a new layer of defense outside of arbitration. The ADGM’s Consumer Protection Regulations prohibit “unfair

terms” and allow users to file complaints directly with the ADGM Regulator (FSRA). This public enforcement mechanism provides a potentially cost-free avenue for grievance resolution that was absent in the “Binance Operators” era.

Part IV: Cross-Border Enforcement

For an investor, a legal victory is only as good as the ability to collect assets. The ADGM structure provides two distinct pathways for enforcement.

4.1 The New York Convention (International Enforcement)

An award issued under Clause 37 is an ADGM arbitral award. Because the UAE is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), this award is recognized and enforceable in over 170 countries (including the US, UK, Australia, and Canada). A prevailing investor takes the award to a local court in the defendant’s jurisdiction. The court enforces it as a local judgment, subject only to narrow procedural defenses.

4.2 Recognition by ADGM Courts (Asset Seizure)

Since the assets may be held by Nest Clearing within the ADGM, the most direct route is expected to be local enforcement in the ADGM. An investor cannot simply “execute” the arbitral award. They must apply to the ADGM Court of First Instance for ratification. Once the Court recognizes the award as a judgment, the investor can utilize ADGM enforcement mechanisms (e.g., attachment of bank accounts) to seize assets from the Custodian.

4.3 The Defensive Shield

Investors should be wary of ignoring Clause 37 to sue in their home jurisdiction. If a default judgment is obtained abroad in breach of the arbitration agreement, the ADGM Court, applying

English private international law, will likely refuse to recognize that foreign judgment. This effectively insulates the assets held in the ADGM from rogue foreign litigation.

Conclusion

Binance's transition to the ADGM represents the regulatory certainty of the "Nest" ecosystem, but at the cost of a potentially more expensive dispute resolution process. For the investor, the path to recovery is now clearer, yet it requires correctly identifying the liable "Nest" entity and navigating a mandatory three-arbitrator tribunal. To succeed in this environment, investors must possess both subject matter command and local proficiency. The author, Mahmoud Abuwasel, is a Harvard graduate, solicitor, and qualified arbitrator who has litigated in the ADGM and is routinely instructed in high-stakes crypto-asset mandates. He combines deep technical expertise in liquidation and custody disputes with the procedural rigor required for success in arbitration and ADGM matters, and is the author of the upcoming book 'UAE Crypto Litigation'. In this sophisticated regulatory environment, retaining services with dual fluency in blockchain mechanics, arbitration, and litigation is the decisive factor in converting a valid claim into a realized recovery.

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