

Now that you paid a tax penalty – have you looked at your tax indemnification agreements for recourse?

March 21, 2021

Scene

You are a services or goods provider registered as a taxpayer with the Federal Tax Authority.

You are facing liquidity and cash flow difficulties.

You have customers; you have issued tax invoices, but your invoices are unpaid.

In consequence, due to liquidity issues, you are late in paying your due taxes.

A few weeks or months pass since the end of your tax period until invoices are paid.

You now have the liquidity to pay your taxes, but shortly after, the Federal Tax Authority issues an administrative penalty assessment against you for late payment of taxes.

Late tax payment penalties of 2% immediately, 4% after the first week, and 1% per day, of the value of the unpaid taxes are applied.

Did you draft a comprehensive and enforceable tax penalty indemnification agreement against the late-paying customers to indemnify you against any tax penalties you incurred?

What are tax indemnification agreements against tax penalties?

A tax indemnification agreement against tax penalties (whether standalone or as part of a contract) may grant the taxpayer protection Dirham-for-Dirham for unexpected tax penalties that arise due to a customer's late or non-payment, without necessarily the need for the taxpayer to evidence loss.

The incorporation of a tax indemnification agreement into your standard contracts provides a claim by contract, with proven values, allowing for speedier recovery and enforcement against the customer.

Contracts – in the UAE or otherwise – may generally include a tax respective provision along the lines of the following:

“The First Party agrees to bear any current or future tax or increase to any current or future tax.”

The language of such provision could be in various forms, length, or complexity, but the crux of it usually obligates one of the parties to bear the tax liabilities that arise out of a transaction. However, as a general matter, such provisions do not obligate a party to reimburse another party against tax penalties levied by the Federal Tax Authority.

Administrative tax penalties applied by the Federal Tax Authority against a taxpayer are issued in a 'Notification of Administrative Penalty Assessment' pursuant to Article 21 of the Executive Regulations to the Tax Procedures Law.

In an administrative penalty assessment issued by the Federal Tax Authority, the penalties are applied in an itemized list corresponding to the applicable tax return periods (monthly or quarterly) with details on the formulas used pursuant to Cabinet Resolution No. 40/2017 to calculate the penalties; highlighting the values which have formulated as late penalties.

A statement of account provided by the Federal Tax Authority also itemizes the taxes due and penalties in detailed

chronology.

These details allow the taxpayer to correlate the tax penalties to the tax invoices issued in a respective time period, and subsequently, be able to allocate the late payment penalties to the unpaid tax invoices and the respective clients with the outstanding debts.

Are indemnification payments against tax penalties taxable?

In its public clarification VATP001, the Federal Tax Authority states that predetermined amounts that contractual parties designate during the formation of the agreement for an injured party to collect as compensation upon a specific breach are not considered consideration for a provision of any goods or services but to compensate a party for loss.

Consequently, tax indemnification payments against tax penalties levied by the Federal Tax Authority would arguably fall outside the scope of VAT.

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Two tax dispute resolution committees formed for Dubai (Decree No. 691/2020)

March 21, 2021

Since around September 2020, the tax dispute resolution committee of the Emirate of Dubai has been inoperable (under reformation).

Objections that have been filed since then with the Dubai tax dispute resolution committee had not been decided on.

On 25 November 2020, the UAE Minister of Justice issued Ministerial Decree No. 691/2020 on the Formation of Tax Dispute Resolution Committees for the Emirate of Dubai.

The Decree was recently published in the Official Gazette and orders the formation of two tax dispute resolution committees for the Emirate of Dubai.

The Ministerial Decree is significant because formerly, under Ministerial Decrees No. 109/2019 and 456/2020, the Emirate of Dubai had only one tax dispute resolution committee to hear objections against reconsideration decisions of the Federal Tax Authority.

Since 2018, all taxpayers registered in the Emirate of Dubai would submit their objections to only one committee and the statistics over the past three years reflect a substantial increase of objections that seem to have necessitated expanding the capacities to hear objections:

- 10 objections filed in 2018 (approximately).
- 30 objections filed in 2019 (approximately).
- 160 objections filed in 2020 (approximately).

The two new committees will be assigned objections to decide on based on whether the first numeric of the docket registration number is an odd or even number.

The Ministerial Decree names new chairs (judges) and members (experts), and new general secretaries for the two newly formed tax dispute resolution committees.

Has this happened before and what to expect?

The first tax dispute resolution committee objections were filed on 29 August 2018 with the Ministry of Justice and were a total of five objections addressed to the Dubai tax dispute resolution committee (TDRC).

However, the objections were officially registered upon the formation of the Dubai TDRC on 31 March 2019, and the decisions were issued on 8 April 2019.

In hindsight, one can see that even where objections were filed before the formation of the TDRC, the TDRC formally registered and decided on the objections when it was formed.

However, this is not the only potential outcome for the current objections filed with the Dubai TDRC since September 2020.

In mid-2020, the Federal Courts ruled that if a reconsideration decision is not issued by the FTA within the procedural time-bar, it must be considered an implied rejection triggering the time-bar to challenge the implied rejection (twenty weekdays).

An implied rejection pursuant to Article 84(bis) of the Civil Procedures Law is the general rule that a grievance to an administrative body (in this case the FTA or TDRC) that is not decided upon within the procedural time-bar is to be considered an implied rejection.

This is also supported by Article 33(2)(b) of the Tax Procedures Law which states that challenges against objections that are not decided on may be filed with the Federal Primary Court in case of non-issuance of a decision by the tax dispute resolution committee.

As was the case in 2018 and 2019, the newly formed Dubai tax dispute resolution committees may issue decisions on the backlog of objections that had been registered since September 2020.

On the other hand, the newly formed Dubai tax dispute resolution committees and the Federal Courts may take the position that Article 33(2)(b) of the Tax Procedures Law should have been triggered by those who filed objections and the disputes should have been directed to the Federal Primary Court.

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50 Enforcement Updates Under the New UAE Civil Procedure Regulations

March 21, 2021

A roundup of the 50 most crucial additions, amendments, and deletions to the Civil Procedures Law No. 11 of 1992 that were promulgated pursuant to Cabinet Decision No. 57 of 2018 that came into effect in early 2019:

1. Approving the designation of execution officers instead of representatives and adding the possibility of execution by private companies and offices.
2. Deletion of the description of “provisional” in execution matters, which the judge of execution is competent to adjudicate.
3. Linking the jurisdiction of the execution judge to the court that issued the writ of execution.

4. Granting the execution judge the power to take direct action in the jurisdiction of the courts of the other State or to delegate the execution judge thereof.

5. Expansion of the field of delegation to include explicitly all implementation procedures (instead of provisional procedures and declarations).

6. Explicitly provide for the possibility of electronic delegation.

7. Explicitly stipulate the possibility of combining execution files pending before the execution judges of different courts.

8. Granting the execution judge the power to initiate imprisonment proceedings, even when the debtor's domicile is within the jurisdiction of the courts of the other State.

9. Addition of provision for grievance against the decisions of the execution judge. The decisions of the execution judge shall be subject to appeal in any of the following cases:

a. Order of preference among convicts.

b. Postponement of execution for any reason.

c. To provide the debtor a time limit to pay or install the amount for which it is executed.

d. Acceptance of guarantee.

e. Travel ban.

f. Seize and arrest order.

10. The grievance shall be filed with the President of the Court or his authorized representative within seven days from the day following the date of issuance in respect of the person in whose presence the procedure is issued, and from the date of notification in respect of the person who issued the procedure in his absence, pursuant to a request filed in the

same execution file. Cancellation or amendment of the grievance decision may occur in absentia. The decision of the appeal shall be final and not subject to appeal.

11. Explicitly stating that judgments and orders that are considered writs of the criminal court in restitution, compensation, fines and others, are considered writs of civil rights.

12. To grant the execution judge the competence to order the execution of foreign judgments and orders, within a maximum of three days from the date of submission of the petition, with his order considered as subject to appeal in accordance with the rules and procedures established for the appeal of judgments.

13. Granting the execution judge the power to complete the supporting documents before issuing his decision.

14. Addition of an exclusive description of the non-competence of the courts of the UAE.

15. Granting the execution judge the competence to order the execution of the notarized documents and conciliation minutes approved by the courts in a foreign country, in accordance with the same procedures and conditions for ordering the execution of foreign judgments and orders.

16. Deletion of the term “paper” from the notification provisions to suit e-litigation.

17. Granting the execution judge, prior to the execution of the execution order against the executor against him, the authority to order the provisional seizure of the movable and the real estate and the seizure of the debtor with others, and to inquire about the debtor’s property.

18. Authorization of the execution procedure by breaking the doors or forcibly opening the locks by the executor even if he

is not the court execution representative.

19. Lessening the threshold to prove the presence of a member of the police, to avoid invalidity, even if the police officer did not sign the minutes.

20. Reduction of the period of implementation from third parties to 7 days from the date of the notification, instead of 8 days.

21. Excluding the house (or common share) mortgaged to guarantee a debt arising from its price from the principle that the debtor's home may not be sold.

22. Explicitly stating that no more than a quarter of the wage or salary may be enforced against even if transferred to a bank account.

23. Explicitly stating that funds of embassies and bodies enjoying diplomatic immunity may not be seized (with the condition of reciprocity being present).

24. Addition of the explicit provision for the requirement of thorough evidence justifying the fear of the flight of the debtor or the smuggling of its property, so that it can be adopted as a ground for provisional detention.

25. Addition of the explicit provision to add the case of the worker whose settlement of the entitlements could not be settled, after provisionally assessed by the competent administrative authority, to cases of preventive detention.

26. Addition of the power to conduct the necessary investigation or investigations with the assistance of the competent administrative authorities, to the judge (or court) who adjudicates the request for provisional detention.

27. Adoption of the date of issuance of the attachment order for the validity of the filing of the substantive claim, instead of the date of the attachment.

28. Explicitly stipulate that the detention order may be appealed to the urgent matters judge and before the court hearing the right before filing the attachment.

29. Explicitly stipulating the expiry of the attachment by the issuance of a final ruling rejecting the substantive claim.

30. Explicitly permitting the attachment of the movables or debts of the debtor to others, even if they are subject to dispute.

31. Explicitly stipulating that attachments may be made by electronic or paper minutes.

32. Permitting the sale of movables that have been attached to a specific buyer at the request of the debtor and the consent of the creditor.

33. Adding the authority of the judge of execution to initiate the sale procedures or lifting the seizure of if the creditor fails to proceed with the sale of the seizures within (30) days from the date of seizure.

34. Adding the authority of the judge of execution to reduce the price set to start selling the reserved movables by 5% five times and then selling at an estimated price, when the sale does not take place on the day specified.

35. □□The addition of the use of telecommunications technology in the procedures of auctioning movables.

36. Adoption of notification of the decision of seizure of the property to the competent department of registration of real estate, instead of mandatory transfer of the representative of the execution the day after the issuance of the decision of seizure.

37. Requiring the department where the property is registered to inform the judge of execution directly (without the need to move the delegate in order to obtain an official statement).

38. Reduction of the time limit for declaring the heirs of a right holder to 3 months.
39. Granting the judge the power to request guarantees to defer the sale whenever the debtor had other income in addition to the property's income sufficient to repay the debt in installments within three years.
40. Reduction of the maximum period for estimating the price of the property to 15 days instead of 30 days.
41. Addition of the explicit provision to exclude real estate that foreigners may own in the State in accordance with the laws in force from the condition that real estate may not be sold to non-citizens.
42. Explicitly stipulating that the sale of the property of the bankrupt shall be in accordance with the Bankruptcy Law, with the condition of informing the bankruptcy administration, and the provision of the role of the execution judge in approving it.
43. Explicitly stipulating that partial or total attribution of the execution of the seizure procedures and the sale of the seizures may be made to any natural or legal person in accordance with the rules and procedures that determine the mechanism of their work and for their fees.
44. Cancellation of the obligation to inform the obligor to vacate the property at the time of execution.
45. If the execution is not possible or the execution requires the debtor himself to do so, the execution judge may commit him to a daily fine of not less than AED 1,000 and not more than AED 10,000 to be paid as compensation to the executor. Provided that the total fines of the principal of the debt in force shall not exceed the original enforcement amount.
46. The execution judge shall have the right to cancel the

fine, or part thereof, if the executor is against it.

47. The fine shall apply to the legal representative of the legal person or to any employee who personally obstructs the execution.

48. Explicitly stipulating the imprisonment of the debtor obliged to do or abstain from work.

49. Explicitly stipulating the permissibility of issuing travel bans or imprisonment against a person who refuses to execute a writ of execution issued against a legal person, whether he is a legal representative or otherwise.

50. Adding the removal of a travel ban order after the lapse of three years from the last valid procedure for the implementation of the final judgment of the debt issued by the said travel ban order, without the creditor applying for a continuation of the execution procedures.

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Coronavirus (COVID-19): Emirati and Sharia law on pandemics and hardship events

March 21, 2021

With the disruption to global business and trade due to the Coronavirus pandemic, parties may look to argue hardship

events under the law to alleviate extraneous obligations (such as an extraneous increase of cost in concluding the obligation).

Hardship events are occurrences that result in changing the equilibrium of a contract creating an extreme burden on one of the parties to the contract.

Contracts may provide for provisions that address hardship events, and therein include pandemics as an example of a hardship event – but if parties have entered into a contract that lacks a hardship event provision, can they rely on UAE legislation to argue that the Coronavirus pandemic makes their obligation extraneous and seek remedy from the Courts (or an arbitration tribunal)?

Hardship events are addressed under Article 249 of the UAE Federal Law No. 5/1985 on Civil Transactions.

Notably; pandemics are also addressed in one provision under Emirati law; that is Article 587 of the Civil Transactions Law. Article 587 explicitly addresses pandemics that affect fruit sales, and the obligations on the buyer and seller when the fruits sold are affected by a pandemic.

What is relevant in Article 587 is the Sharia jurisprudence that leads to its drafting before coming into promulgation in 1985, and how that jurisprudence can apply in disputes that occur between parties over hardship events that have occurred or will manifest due to the Coronavirus pandemic.

Article 249 on Hardship Events

Article 249 of the UAE Civil Transactions Law allows that when as a result of general exceptional and unpredictable events, the performance of a contractual obligation, without being impossible, becomes excessively onerous in such a way as to threaten the debtor with exorbitant loss, a judge may reduce the obligation that has become excessive to reasonable limits.

In light of no particular event being referenced or given as an example to qualify as a hardship event in Article 249, or in Article 893 which indirectly addresses force majeure events, it is necessary to rely on other provisions in the law to confirm whether pandemics qualify as hardship events and the strength of such arguments before the judiciary.

Sharia Origin of Article 587 on Pandemics

In the implementation of the directives of the late Sheikh Zayed bin Sultan Al Nahyan (may God have mercy upon him), the founding father of the United Arab Emirates, to apply the provisions of Islamic Sharia in the UAE, the Council of Ministers issued decision No. 50/26 in 1978 to form a supreme committee for Islamic legislation and delegated His Excellency the Minister of Justice to form two subcommittees, one for criminal laws and the other for civil, commercial, maritime and civil procedure laws, in order for these committees to prepare and review laws in accordance with the provisions of Islamic Sharia.

The supreme committee reviewed civil transaction laws, and – for example – theories of individual will as a source of commitment, contracts of adhesion and their origin in Sharia as ‘contracts of trust’, and other theories and principles that became codified in UAE law.

Amongst the matters addressed by the supreme committee, and most relevant to the Coronavirus pandemic, was the theory of hardship events and their origin in Shariah law as ‘pandemic theory’.

The rule of ‘pandemic theory’ finds its basis in Islamic jurisprudence in the principle of ‘excuses’ in the Hanafi jurisprudence and ‘pandemic’ in Maliki and Hanbali jurisprudence with a difference in the provisions and in the fairness between the two parties to the contract and justice in general.

Not only is the codification of hardship events derived from 'pandemic theory' in Sharia law, but scholarly jurisprudence has found that in light of the principle of pandemic theory applying to contractual relations in relation to fruit trade, the same principle can arguably be applied to other contractual transactions such as industry, construction, and general trade contracts where a pandemic causes a hardship event.

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The Business of Influencing in the UAE

March 21, 2021

The ability to influence has been a topic of dialectics for centuries – how the influence was obtained, how it was used, how much of it was at stake. When the topic of influence comes up, we may refer to great writers, composers, or philosophers. But these days the discussion of influence brings about names like Kylie Jenner, Selena Gomez, and The Rock. Influence is more powerful and puissant than ever before and that is solely due to the insurmountable ascent of social media. The social media marketing wave is truly remarkable; a conservative estimate of the new industry falls at around USD 1.28 billion, with brands estimated to spend USD 15.1 billion on influencer campaigns by 2022.

Nonetheless, some influencers fail to do the sole job that

they claim to be proficient in – influencing. In 2018, Luka Sabbat, a self-proclaimed “Creative Entrepreneur exploring all the world has to offer. Stylist, Creative Director, Design Director, Actor, Model, etc” with 2.3 million followers on Instagram, was sued by Snap, Inc. for his failure to ‘influence’. Sabbat had been contracted by Snap, Inc. to promote their line of eyewear by posting three Instagram stories and one Instagram feed post during fashion week in New York, Paris or Milan, along with being photographed wearing the product during Paris or Milan fashion week. Sabbat was sued on the basis that he did not post all of the required material and was not photographed wearing the product. In 2019, Sabbat was sued once more by Konus, a streetwear brand, for failure to participate in a photo shoot for the brand’s look book and failure to share two permanent posts on Instagram with specified tags.

If you are a virtual purveyor, you need to be diligent in how you approach the landscape of influencing. So here the question lies, how is the business of influencers operated and what are the legal ramifications that could be in store for an influencers failure to influence.

In the UAE, there is a procedure for becoming an influencer that is a little bit more complicated than merely posting a photo with some flashy filters. Since 2019, the UAE has established licensing procedures in order to be a professional influencer. Social media influencers have become regulated requiring Federal level licensing with the National Media Counsel (NMC) and domestic licensing in the influencer’s respective Emirate.

For example, the Ras Al Khaimah Economic Zone grants a Social Media Influencer Permit is for influencers or bloggers residing in the UAE. Other economic zones across the UAE that provide social media influencer permits include Dubai Media City, Dubai Studio City, Dubai Production City, or Abu Dhabi’s twofour54.

Depending on the number of followers and the rate of engagement that an influencer has, they will be approached with different business proposals. There are generally two categories that apply to influencers: reach and niche. Reach refers to influencers with large followings, while niche refers to influencers with smaller, more specialized and engaged communities.

A key consideration when it comes to a business engaging with an influencer is the appreciation that the industry is at a very early stage of development, so there will be varying expectations and varying degrees of professionalism. In this context, it is recommended that arrangements with both parties are clearly set out in a suitable agreement, specifying the scope of work, the key performance indicators, nuanced matters such as restrictions and expectations of hashtags, and compliance with NMC guidelines.

For example, the NMC prohibits publishing any advertisements about medications or pharmaceutical products without a special permit from the Ministry of Health and Prevention. In case the influencer is needed to advertise medication or pharmaceutical products; who would be responsible for obtaining said permit? This is particularly relevant with a significant number of influencers in the UAE promoting self-care products (beauty-care, skin-care, etc.).

On the other hand, a key consideration for influencers is taking into account that agreements entered into in their personal capacity may lead to personal liability against them – in other words, failure to comply to their influencer obligations may lead to loss of their personal assets as compensation.

An alternative model that influencers adapt is creating a company that limits liability, of which the influencer may operate through. Although the influencer licensing requirements by NMC remain necessary, influencers would bode

well limiting personal liability by engaging their clients through a limited liability company. This structure is often used by actors and other talent and is referred to as a 'loan out company'. The business established by the social media influencer 'loans out' the influencer themselves to the client.

The influencer would then separate their personal wealth from that of the 'loan out company'; holding separate bank accounts, contract liabilities, and so on.

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UAE Sports Arbitration Centre Kicks Off Operations

March 21, 2021

The Court of Arbitration for Sport ("CAS") is based in Switzerland and is considered the elite international dispute resolution forum for legal disputes relating to sports, including commercial disputes (i.e., issues arising from sponsorship agreements or player contracts) and discipline (i.e., doping, non-compliance with codes of conduct). CAS also acts as an appeals court for decisions made by the arbitration systems of sports organizations or dispute resolution mechanisms, including global associations with disciplinary arms such as FIFA and the International Olympic Committee.

In May 2012, Abu Dhabi hosted the first seat for the Court of

Arbitration for Sport outside Switzerland. Now, Abu Dhabi is home to its own arbitration centre, dubbed the UAE Sports Arbitration Centre (“UAE SAC”) which has been established under the Federal Law No 16 for 2016 issued by His Highness Sheikh Khalifa bin Zayed Al Nahyan.

UAE SAC partly began operations in 2016, but as of June 2020, it has commenced full operations. The UAE SAC is equipped with every facility, which is available for anyone seeking to resolve their disputes related to sports through mediation or arbitration. This significant milestone is a positive development in sport, aiming at spreading a culture of sports mediation or arbitration in the United Arab Emirates.

According to a recent study, Dubai’s burgeoning sports industry now exceeds USD 1.7 billion annually; this accounts for 0.8% of Dubai’s GDP. Of the USD 1.763 billion, USD 670 million originates from overseas markets, which indicates Dubai’s growing importance as a world sporting destination.

The UAE is renowned as a prime emerging sports market and continues to grow and offer a landscape for development. This aptitude across the nation brings vast opportunities and challenges and will most certainly act as a catalyst for sustainable development; with such development requiring a parallel expansion in the legal infrastructure of the sports market.

The UAE SAC will seek to be the answer to the legal challenges in play and assist in the sustainable development of the market. Although the UAE SAC has yet to unveil its rules of arbitration, they will most likely be revealed to the public in the coming weeks. However, looking at the CAS – which the UAE SAC is closely modeled after – we can arguably presume that the standard clause to be inserted into contracts for resolution by the UAE SAC will look like this:

“Any dispute arising from or related to the present contract

will be submitted exclusively to the Sports Arbitration Centre in Abu Dhabi, United Arab Emirates, and resolved definitively in accordance with the [UAE SAC Rules]."

Optional explanatory phrases:

"The Panel will consist of one [or three] arbitrator(s)."

"The language of the arbitration will be..."

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Enforcing Against Horses & Camels in the UAE

March 21, 2021

Enforcement is an issue that frequently arises with plaintiffs in the United Arab Emirates. The difficulties are multi-fold; lack of follow-up by counsel; aggressive asset transfer and concealment by the defendant (i.e. such as real estate transfer to a spouse); queuing behind prior creditors whom have already issued attachment orders on assets; but one crucial factor is knowing where to look for assets.

Horses and camels in the United Arab Emirates can have values in the millions of US dollars and, for example, during the annual Abu Dhabi International Hunting and Equestrian Exhibition, transactions can be in the hundreds of thousands for young camels or horses.

When a favorable judgment is obtained and at the time of enforcement, it may be found that the defendant would have cleared bank accounts and transferred ownership of vehicles and real estate to other parties.

What a defendant may overlook is concealing was their livestock, which is an asset that can be enforced against.

Below we provide a general overview of the enforcement procedures, and a clearer insight into how enforcement procedures against horses or camels would play out, bearing in mind that other livestock such as falcons or sheep can be valuable assets to consider.

General Enforcement Steps

Enforcement orders are administered by the Enforcement Judge (alternatively translated as the 'Execution Judge'). A request is submitted via the online system where the request must include *inter alia* the respective judgment and itemized details of the debt (including items such as costs, etc.), requiring the Judge to notify the debtor and hold a hearing within fifteen working days. The online system is available in Abu Dhabi, Dubai, and Ras Al-Khaimah. The Federal Courts, on the other hand, require over-the-counter applications and follow-up.

Once the Judge is comfortable that notification has concluded successfully, through all the required methods, by courier, digitally, and so on, but the debtor has not attended a hearing, the Judge would liaise with the UAE Identification Authority to confirm whether the debtor is within or outside the UAE. Finally, it is preferable that the creditor requests the Judge to issue a public notification via a daily Arabic newspaper.

With all the above steps concluded, the creditor can begin to apply for enforcement of assets. This process requires the creditor to request the Judge to issue a writ to one or

various entities for the disclosure of assets that the debtor may own as registered in the databases of such entities. The Abu Dhabi Courts, for example, have a predefined list of entities that can disclose such information.

The list, however, is not comprehensive and it is up to the creditor (or more so, the creditor's counsel) to explore other valuable assets and their respective overseeing authorities.

When it comes to livestock, a bespoke request must be made, even if electronically.

Horses

Horses generally have title deeds that are registered with a particular authority such as the Emirates Equestrian Federation, the Emirates Arabian Horse Society, or the UAE Equestrian and Racing Federation.

A writ of inquiry issued to the above entities would result in the disclosure of any registration data of horses owned by the debtor. The details would also include the stables at which a horse is being housed.

Subsequently, a request is made to the Judge to issue a writ of enforcement addressed to the stable to seize the horse(s).

Once the writ is communicated to the stable, the stable will maintain the horse until it is auctioned off through court.

During the period of when the horse is seized and until it is auctioned off, the horse remains maintained and looked after for, and all costs associated with the horse's maintenance are added to the cost order against the debtor.

Camels

As opposed to horse trade, camel trade in the UAE is not as systematic and occurs in a more customary manner.

The reason being is that camels may be prize/breeder camels or race camels, as horses may be prize horses/breeder or racehorses, but a significant portion of camels in the UAE are generally kept on farms as cattle.

Trade of camels occurs on a more customary basis with owners transferring camels without contractual arrangements, and camels being cared for by other private farm owners, as opposed to commercial stables.

These customary transactions make asset tracing of cattle camels somewhat more difficult than for horses, but entities such as the Dubai Camel Racing Club or the Camel Racing Association would hold data with respect to race/prize camels for a creditor to enforce against.

The lack of systemization of camel trade also makes it difficult to quantify the costs associated with maintaining the camel. However, the courts can accept reasonable valuations submitted by parties.

For example, in Federal Supreme Court case no. 320 of 1995, the following ruling was issued:

The facts, as evidenced by the contested judgment and all other documents, indicate that the plaintiff filed the case no. 108 of 1994 before the Federal Court of First Instance in Al Ain to 1) oblige them to pay him an amount of AED 367,500 as the value of the camel, the amounts incurred in feeding and care in addition to the amount of 400 dirhams value of water per month, and the amount of 1,000 dirhams per month as wages of the worker who supervised the camel until the dismissal of the case...3) writing to the Office of the Ruler's Representative in the Eastern Region to commission the "Camel Commission" to inspect the camel and to give an opinion as to whether it is a pure breed race camel...

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First constitutional tax case: why was it rejected and how are constitutional cases litigated in the UAE?

March 21, 2021

Over the years, constitutional appeals have been filed before the Constitutional Circuit of the Federal Supreme Court for a plethora of matters, with the first constitutional judgement having been issued on 29 November 1973.

Most recently – in rough figures – four constitutional appeals were filed in 2019, two in 2018, one in 2017 and 2016, two in 2015, five in 2014, and twelve were filed in 2013.

First Constitutional Tax Case

On 1 March 2020, Emirati news outlets published details about the rejection of a taxpayer's constitutional appeal against the 'pay now, argue later' provision of the Tax Procedures Law.

The constitutional appeal was rejected on a procedural basis. Meaning that the process in filing the constitutional appeal lacked the requirements by law for the Constitutional Circuit of the Federal Supreme Court to accept hearing the

constitutional appeal, so that it can rule on its context.

At around the same time as the tax constitutional case judgement was issued, another Constitutional Circuit judgement regarding the seizure of assets was accepted, and a judgement favourable to the person who filed the constitutional appeal was issued by the Constitutional Circuit.

Why was one rejected and another accepted? And how are constitutional lawsuits in the UAE litigated?

The Constitutional Circuit

Constitutional cases are subject to the jurisdiction of the Constitutional Circuit of the Federal Supreme Court only, which comprises of the Chief Justice, four other judges, and one alternate judge.

The Constitutional Circuit has authority to rule on the constitutionality of federal or local laws or provisions therein, and a judgement of the Constitutional Circuit is final and binding pursuant to the powers granted to it in Article 99 and 100 of the Constitution, and Article 33 of the Federal Supreme Court Law No. 10/1973,

Filing a constitutional case directly before the Constitutional Circuit is a right restricted to the Federal and local government agencies only.

Otherwise, if a private litigant intends on challenging the constitutionality of a law or provision of law, they may only do so during an on-going substantive case.

The litigant must petition the judge, who is overseeing the substantive case, that a law or a provision in the law is unconstitutional and request leave to file a constitutional appeal before the Constitutional Circuit.

If the judge accepts the petition, the judge then stays the proceedings of the substantive case and grants the litigant

leave to file a constitutional appeal before the Constitutional Circuit within a certain time period as set by Article 58 of the Federal Supreme Court Law.

Alternatively, the substantive case judge may of their own accord find that the law or provision is unconstitutional and refer it to the Constitutional Circuit for review.

In any case, the constitutional appeal would not be a subordinate case, but rather a case that is separate from the substantive case because it – the constitutional appeal – deals with a subject that differs from the merits of the substantive case.

The litigant that submits the constitutional appeal then argues their case before the Constitutional Circuit, and the law or provision of law that is being argued as unconstitutional is generally defended by the Federal Public Prosecutor or the State Disputes Department of the Ministry of Justice.

The other litigant(s) of the substantive case, are not a party in the constitutional appeal.

Rejection of the Constitutional Tax Case

According to the news outlets, the constitutional appeal was lodged to argue that the 'pay now, argue later' rule in Article 30(2) of the Tax Procedures Law was unconstitutional on the basis that it deprives taxpayers of the right to petition tax issues before the courts unless the taxes and penalties are paid.

The Federal Public Prosecutor rebutted the constitutional appeal on the basis that the judge overseeing the substantive case had not granted leave for the litigant to file the constitutional appeal.

The Constitutional Circuit accepted the Federal Public

Prosecutor's rebuttal and rejected the constitutional appeal on the basis that it had been filed without evidencing permission from the substantive case judge to do so.

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Qatar Financial Center Tribunal Acknowledges COVID-19 as Hardship Event

March 21, 2021

On 10 August 2020, the Regulatory Tribunal of the Qatar Financial Center issued a decision whereby it recognized COVID-19 as a hardship event in an appeal by a former director (and Senior Executive Function) of a regulated entity against penalties of USD 50,000 for breaches of the AML/CFT and various general regulatory contraventions.

The financial penalty was commuted on grounds of financial hardship and specifically the exceptional situation which the appellant is/was facing due to the COVID-19 pandemic.

The Regulatory Tribunal of the QFC follows English Common Law and is part of the judicial system within an international financial center.

Comparatively, the Abu Dhabi Global Market and the Dubai International Financial Center also operate English Common Law courts and tribunals, with overseeing regulatory bodies such

as the ADGM's Financial Services Regulatory Authority and the DIFC's Dubai Financial Services Authority.

On 12 December 2019, the QFC Regulatory Authority issued its Decision Notice to the appellant that the appellant breached Principles 2 (acting with due skill, care and diligence) and 4 (dealing with the Regulatory Authority in an open and cooperative manner), and that the contraventions fall into two areas:

- AML/CFT contraventions: the QFC Regulatory Authority decided that the procedures were entirely inadequate to properly identify money laundering risks. For example, its risk assessment procedures did not ensure that sources of wealth and sources of funds were properly identified. Many high-risk countries were wrongly rated as lower risk. More generally, the company had not adopted the necessary AML risk assessment and mitigation procedures as is required under the relevant regulatory provisions. Given his senior management position, these regulatory provisions required the appellant to ensure that the company's policies, procedures, systems and controls were adequate. In addition, in July 2014, he was put on notice that there were AML deficiencies. Finally, he personally authorized transactions which should have raised serious questions, and which required substantial additional due diligence.
- General regulatory contraventions: these are based on requirements imposed by the Regulatory Authority, agreed by the company but not properly implemented. The appellant was aware of the requirements and the timescale, and was aware, or should have been aware, of the failures. Many of the concerns related to the company's place within an unusual corporate structure and how to ensure its continued solvency and capital adequacy.

As to the prohibition, the appellant contended that the ban is wholly punitive, extreme and disproportionate. He argued that he had not worked in Qatar since the summer of 2015, and the ban would (effectively) preclude him from finding regulated employment in the UK for a further 3 years.

As to the financial penalty, the appellant argued that he had been unable to find a regulated job in the UK, and lost money investing in the company, so that a USD 50,000 fine is unjust. The appropriate penalty, he submits, is a private warning for his actions, with no ban, and no monetary fine.

The Tribunal found that any prohibition by a recognized financial regulator will inhibit the job prospects of the subject (potentially) anywhere, and certainly in the UK. But that cannot detract from the justification for a prohibition, if otherwise justified. Even accepting that the part which the appellant played was in some respects relatively limited, these matters involved how the firm dealt with AML and capital adequacy, both very significant matters. The Tribunal found that the prohibition imposed is proportionate and fully justified.

The Tribunal was told that the policy of the QFC Regulatory Authority is that it will not (except in exceptional cases) impose a penalty that will lead to bankruptcy. This is in keeping with what the Tribunal understood to be a general principle that a regulatory penalty should not be imposed on an individual which the individual is unable to pay. Sometimes, that principle can be satisfied by allowing payments by instalments. But the commensurate principle is that an individual seeking what amounts to an exceptional dispensation must establish financial hardship by making full and frank financial disclosure of his or her necessary outgoings, and the assets available to meet those outgoings, with copies of supporting documentation.

The Tribunal concluded that the QFC Regulatory Authority in

effect accepts that the appellant is unable to pay the penalty at the present time, and found that in normal circumstances, it might be reasonable to start payments at the end of the year, with a 3 year payment period, as the QFC Regulatory Authority had suggested.

But the Tribunal considered that the present circumstances concerning the appellant are far from normal and that it is not necessary to spell out the effects of the COVID-19 pandemic.

The Tribunal took into account that it is entirely reasonable to suppose that the appellant will find it difficult to obtain employment for the time being, particularly in the financial services industry given the prohibition, and the Tribunal also considered evidence that the appellant's wife is presently unable to obtain employment and that they have a young son.

The Tribunal considered that this is an exceptional case in which financial hardship is established – considering in particular the exceptional effect on him of the COVID-19 pandemic in that regard. The Tribunal found that any period fixed by the Tribunal for time to pay would leave this penalty hanging over the appellant and his family for an unreasonably lengthy time. In the circumstances, the Tribunal decided that the penalty should be commuted in whole.

Case: *Russell v. QFCRA [2020] QIC (RT) 2*

Please [contact us](#) for more details or assistance in this matter.

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UAE Supreme Court extends time limit to challenge decisions of the tax dispute committees

March 21, 2021

In a precedent-setting judgment that Wasel & Wasel acted as counsel on, the UAE Federal Supreme Court ruled on provisions governing notifications of decisions taken by the tax dispute resolution committees, and their effect on the time limitation to challenge such decisions before the Federal Primary Court.

The Supreme Court found that an objection against a tax dispute resolution committee that was filed with the Federal Primary Court almost four months after its issuance, rather than within twenty weekdays, was valid because proper notification of the decision had never taken place.

In December 2020, the Federal Supreme Court issued its judgment ordering that a decision of any of the tax dispute resolution committees does not trigger the time limit to challenge the decision before the Federal Primary Court unless notification of the decision is compliant with the general civil litigation procedures – particularly, Article 7 of the Executive Regulations of the Civil Procedures Law which details how and to whom notification should be made.

The significance of this judgment is that Article 7 of the Executive Regulations of the Civil Procedures Law is located

in Chapter 1 of Book 1 of the Civil Procedures Law, and Book 1 is titled "Litigation before Courts".

As a general matter, the tax dispute resolution committees are administrative committees headed by a judge – but are not courts or judicial agencies.

Hence, for the Supreme Court to apply the provisions of the Civil Procedures Law that govern court notifications to the procedures of the tax dispute resolution committees creates much-awaited clarification as to how and when notifications of decisions by the committees are considered valid and compliant to commence the time limit of twenty weekdays to challenge the decision before the Federal Primary Court.

The Federal Supreme Court found that the time limit only commences once Article 7 of the Executive Regulations of the Civil Procedures Law is fulfilled, and not prior, even if the decision is communicated to the address on record with the tax dispute resolution committee.

Generally, any person may submit an application to the Federal Tax Authority to reconsider any of its decisions issued in connection to him or her, in whole or in part, within twenty weekdays of the aggrieved person being notified of the decision.

Subsequently, if the aggrieved person wishes to contest the FTA's decision on the reconsideration application, the next step would be to submit an objection against the FTA's decision to the tax dispute resolution committees of Abu Dhabi, Dubai or Sharjah, depending on the domicile of the objector.

If the FTA or the objector are unsatisfied with all or part of the tax dispute resolution committee decision, either of them may challenge the decision before the Federal Primary Court within twenty weekdays *"...from the date of notification of the objector thereof"* according to Article 33(1) of the Tax

Procedures Law.

In this landmark judgement, the Federal Supreme Court reasoned that in light of the Tax Procedures Law and its Executive Regulations not specifying to whom the notification should be made, the provisions of Article 7 of the Executive Regulations of the Civil Procedures Law must be relied upon to confirm whether or not notification was made in a procedurally compliant manner to trigger the twenty weekdays for the challenge to be made before the Federal Primary Court.

The judgment is quite significant in light of a significant number of tax disputes being lost by the taxpayers for falling outside the time limit in the course of the following;

- prior judgments by the Federal Primary and Appeals Courts rejecting challenges against decisions of the tax dispute resolution committees for falling outside the time limit;
- rejections by the tax dispute resolution committees of objections against reconsideration decisions for falling outside the time limit; and
- rejections by the FTA of reconsideration applications against FTA decisions for falling outside the time limit.

In this landmark judgment, the challenge against the tax dispute resolution committee decision was brought before the Federal Primary Court four months after the decision had been issued – instead of within twenty weekdays – and both the Federal Primary Court and the Federal Appeals Court rejected the challenge for falling outside the time limit.

The Federal Supreme Court overturned the Federal Appeals and Primary Court judgments, and instead ruled that the time limit to challenge the committee decision had not been triggered until the provisions of Article 7 of the Executive Regulations

of the Civil Procedures Law had been complied with and ordered that the challenge against the committee decision which was filed with the Federal Primary Court four months after the issuance of the committee decision was valid and within the time limit given that the twenty weekday time limit was never triggered due to lack of proper and compliant notification.

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