Shariah rules and crypto disputes: UAE court judgment and official Fatwa invalidate cryptocurrency transaction

May 4, 2023

Brief

"Bitcoin is a digital currency that does not meet the legal and Sharia criteria that make it a currency subject to the rulings of dealing with official legal currencies recognized internationally. It also lacks the Sharia controls that make it a commodity capable of being exchanged for other commodities."

In a dispute over OneCoin cryptocurrency, a UAE court (Ras Al-Khaimah Primary Court) ordered the invalidation and rescindment of a cryptocurrency sale contract on the basis that the cryptocurrency transacted (OneCoin) was not a recognized currency or commodity in violation of Shariah rules and the Civil Transactions Law.

Reference to Fatwa No. 89043

The Court referenced Fatwa No. 89043 issued by the General Authority for Islamic Affairs and Endowments in 2018 which addressed Bitcoin and cryptocurrencies in general. The Fatwa addressed the status of Bitcoin in that it did not possess the necessary specifications to make it a tradable currency, like the approved currencies that are traded worldwide. And that it also lacks the necessary legal requirements to be considered a commodity for exchange with other commodities. The following

is the Fatwa content quoted by the Court in its reasoning:

“Firstly, defining Bitcoin: Those who call Bitcoin a currency describe it as a virtual, intangible electronic currency with no physical existence. These currencies, with their varying types, methods of access, and acquisition, have been widespread and known for several years. Among the most famous are Ethereum, Dash, Ripple, Litecoin, and Ethereum Classic, all of which are digital currencies, each with its characteristics, features, and ways of processing and generation. The purpose of resorting to such currencies is that they are decentralized, allowing individuals to control them, providing them with a high degree of privacy and confidentiality, and they cannot be tracked because they do not rely on official institutions and intermediary financial entities like banks. As they are not linked to any financial institution, they have no real assets or balances, are not protected by any financial regulations or laws, and are not subject to any regulatory authority. This has been one of the reasons for their exposure to massive increases or sharp declines, and in addition to all this: the unawareness of who is behind the promotion of this virtual currency makes it susceptible to damage and loss of value in the face of any sudden changes. For this reason, no country in the world, including the United Arab Emirates, has recognized Bitcoin as legal tender.

Secondly, the Sharia criteria considered in currencies: In the previous paragraph, we provided a description that clarifies the reality of this currency in its current state. In this paragraph, we mention the most important Sharia requirement for considering anything as currency, which is: state adoption, meaning that it should be issued by the state. This is what the scholars express as minting or striking coins. This is explained as follows: The adoption of monetary currencies is considered a special function of the state in Sharia. The state alone has the right to issue coins,

according to the adopted laws and regulations. This is explicitly stated in the texts of scholars, whether for metallic money – like gold dinars or silver dirhams – which have intrinsic value and were prevalent in the past, or for credit currencies that rely on the power of the law and do not have intrinsic value, such as paper currencies, which have become prevalent worldwide.

In conclusion, Bitcoin is a digital currency that does not meet the legal and Sharia criteria that make it a currency subject to the rulings of dealing with official legal currencies recognized internationally. It also lacks the Sharia controls that make it a commodity capable of being exchanged for other commodities. Therefore, it is not permissible to deal with Bitcoin or other electronic currencies that do not meet the recognized Sharia and legal criteria, as dealing with them leads to unsound consequences, whether for the individuals involved, the financial markets, or the entire community, and whether we consider it cash or a commodity, the ruling encompasses both cases."

(United Arab Emirates – General Authority for Islamic Affairs and Endowments, Fatwa No. 89043 dated 30/1/2018)

Invalidity of a cryptocurrency contract

In its reasoning in Primary Court case no. 87/2020 (Ras Al-Khaimah), the Court applied the statutes, case law, and legislative commentary, that govern the validity of contracts under the Civil Transactions Law. The following are extracts from the respective judgment.

"According to the provisions of Articles 125, 129, and 141 of the Civil Transactions Law, a contract is the binding commitment issued by one of the parties by accepting the other party's offer and their mutual agreement in a way that establishes its effect on the subject matter and results in the obligation of each party to fulfill what is required of

them to the other party. For a contract to be concluded, both parties must agree on the essential elements of the obligation and on the other legitimate conditions that indicate their essentiality, and the subject matter of the contract must be something possible, specific, or determinable and permissible to deal with. (Federal Supreme Court – Civil and Commercial Judgments – Appeal No. 226 of the year 25 Judicial – Civil and Commercial Circuit – dated 2006-03-14 Technical Office 28 Part 1 Page 525)

Article 202 of the Civil Transactions Law stipulates the possibility of having a future thing as the subject matter for counterbalances if the uncertainty is eliminated. The explanatory memorandum clarified the meaning of uncertainty as the inability to deliver, based on the statements of Ibn Al-Qayyim, which can be summarized in that there is nothing in the Book of Allah or the Sunnah of His Messenger (peace be upon him) that indicates that a contract on something non-existent is not permissible, and to what is mentioned in the Sunnah of the prohibition of selling some non-existent things as in his saying (peace be upon him) "Do not sell what you do not have". The reason is not non-existence, but uncertainty due to the inability to deliver. (Emirate of Abu Dhabi – Court of Cassation – Civil and Commercial Judgments – Appeal No. 286 of the year 2014 Judicial – Commercial Circuit – dated 2014-06-03 Technical Office 8 Part 3 Page 942)

In accordance with Article 210 of the Civil Transactions Law, an invalid contract is one that is not legitimate in its essence and is described as having a defect in its pillar, subject matter, purpose, or the purpose imposed by law for its conclusion, and it has no effect and is not subject to ratification, and anyone with an interest may invoke its invalidity. The court may rule on it by itself, as the invalid contract has no legal existence, like a contract. (Federal Supreme Court – Civil and Commercial Judgments – Appeal No. 284 of the year 25 Judicial – Sharia – dated 2004-01-27

Technical Office 26 Part 1 Page 240)”

Court finding

The Court ultimately found that:

“The sale of the cryptocurrency is not real and therefore not valid for trading. It does not meet the necessary criteria to be considered a tradable currency, particularly the requirement of being recognized by the state. Moreover, it cannot be considered a tradable commodity due to its lack of essential conditions, such as its existence and eligibility for trading. It is something that has not been proven to have actual existence or real value, and its ownership cannot be transferred, its value cannot be determined, nor can it be traded in any legitimate form.

As a result, the sales contract lacks the necessary legal conditions that must be present in any contract, such as the subject matter of the contract being possible, specific, or identifiable, and permissible for trading. In the case of a sales contract, specifically, the item sold must exist, be specific or identifiable, and eligible for trading. Furthermore, the cryptocurrency lacks the legitimate conditions that make it suitable for trading, as it is neither a tradable currency nor a commodity that can be exchanged, given that the state has not recognized it as a currency. It is also tainted with uncertainty due to the inability to deliver it.

Consequently, the contract that forms the basis of the claim is flawed, and is considered illegitimate in its essence and description. It has no effect, and the court has the authority to rule its invalidity on its own, in accordance with Article 210 of the Civil Transactions Law.”

When are crypto transactions legal?

Notwithstanding the quotation of the Fatwa used by the Court,

the complete text of Fatwa No. 89043 ultimately concludes as follows:

“It should be noted that this ruling applies specifically to these currencies that are the subject of the question at this time and are still beyond the control of responsible authorities. However, if a decision is made to regulate and adopt them and place them under a supervisory umbrella by those authorities, so that they meet the criteria that make them a legal currency, used in transactions between countries, then the ruling on dealing with them would take the same ruling as dealing with officially recognized currencies.”

The Fatwa, which states that dealing with cryptocurrencies such as Bitcoin is not permissible unless they meet the Shariah and legal criteria and are regulated by responsible authorities, can be considered compliant with manifest the Dubai Financial Services Authority (DFSA)’s recognition of certain cryptocurrencies.

The DFSA is the independent regulatory authority responsible for overseeing and regulating financial and ancillary services conducted in or from the Dubai International Financial Centre (DIFC).

The DFSA recognizes financial services and activities involving Crypto Tokens in two ways: (1) if the Crypto Token is included in the initial list published by the DFSA (Bitcoin, Ethereum, and Litecoin), or (2) if an application for recognition of a specific Crypto Token is submitted and approved by the DFSA. As per the DFSA’s notice of November 2022, Bitcoin (BTC), Ethereum (ETH), and Litecoin (LTC) are recognized Crypto Tokens.

The jurisdiction of the DFSA is within the DIFC, which is a special economic zone within Dubai. As a result, the DFSA’s recognition of specific cryptocurrencies and its regulation of related financial services may be considered to only apply

within the DIFC. This creates potential risks and uncertainties for cryptocurrency transactions conducted in other Emirates or outside the DIFC in Dubai.

In another example on a Federal level, the Central Bank of the UAE took the position in December 2020 that it is presently "not recognizing crypto assets as legal tender in the UAE, such assets are not recognized by the Central Bank as a means of payment and can only be used as assets for investment with a potential high risk".

Takeaway

The Central Bank, the Securities and Commodities Authority, the Financial Services Regulatory Authority and the Abu Dhabi Global Market, the Dubai Financial Services Authority and the Dubai International Financial Centre, the Virtual Asset Regulatory Authority, and even prosecutive authorities via anti-money laundering regulations have identified and defined cryptocurrencies and virtual assets in one way or another.

Notwithstanding, if a transaction turns contentious, there is an onus (on whichever party) to evidence that the cryptocurrency (or virtual asset) subject of the transaction fulfills legal and – potentially – Sharia criteria.

The laws and provisions are essentially static, until they are tested before the courts, and their application becomes dynamic, granting clarity over their actual application.

If a cryptocurrency is not recognized by the overseeing UAE authorities, transactions involving such cryptocurrencies may be deemed invalid pursuant to Fatwa No. 89043 and the Civil Transactions Law.

And this would apply to consideration or perception of the disputed cryptocurrency as either currency or commodity.

It is essential for individuals and businesses to be aware of

the legal status of the cryptocurrencies they are dealing with in light of the position of the UAE courts and consider the potential risks before engaging in transactions involving unrecognized cryptocurrencies.

And in caution against giving in to the escapism of crypto craze without adequate due diligence:

“There is a wisdom that is woe; but there is a woe that is madness. And there is a Catskill eagle in some souls that can alike dive down into the blackest gorges, and soar out of them again and become invisible in the sunny spaces. And even if he forever flies within the gorge, that gorge is in the mountains; so that even in his lowest swoop the mountain eagle is still higher than other birds upon the plain, even though they soar.” (Herman Melville, Moby Dick)

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UAE Federal Court rules no penalties on voluntary disclosures related to unintentional tax errors

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Overview

The taxpayer filed its tax return with incorrect amounts by mistakenly calculating the tax rate at a different value than the standard rate of 5%, resulting in an incorrect tax amount.

The taxpayer submitted a voluntary disclosure to correct the error, and the Federal Tax Authority imposed a penalty for the difference between the incorrect and correct tax amounts.

The Federal Primary Court, adjudicating the dispute, ruled that what the taxpayer did in the original form of submitting the voluntary disclosure subject to the contested tax is nothing more than a correction of the error it made when calculating the tax imposed on it for its activity at a different rate instead of the standard rate of 5%, and it is not a voluntary disclosure of errors in the value of the tax return or tax assessment, for which the penalties prescribed in Cabinet Resolution No. 40/2017 and its amendments are due, and therefore the imposition of penalties loses its legal basis.

The Court reasoned that the voluntary disclosure subject of this dispute, is merely a correction of an "unintentional error in calculating the tax". Instead of using a 5% rate, the company mistakenly applied a different rate in the tax return.

The judgment confirms that this voluntary disclosure is not a "disclosure of errors in the tax return or assessment", which would warrant penalties as per Cabinet Decision No. 40/2017 and its amendments.

As a result, the Federal Primary Court found that the imposition of penalties lacks a valid legal basis.

Significance

This judgment comes as a relief to taxpayers in the UAE because it provides a more lenient interpretation of the tax regulations and reduces the likelihood of penalties for honest mistakes. By differentiating between an "unintentional error

in calculating the tax" and "a voluntary disclosure of errors in the tax return or assessment" the Court ruling essentially provides taxpayers with a more forgiving approach to correcting their tax filings.

In the given ruling, the Federal Primary Court treats the voluntary disclosure submitted by the taxpayer as a correction of an unintentional error rather than a voluntary disclosure of errors in the tax return or assessment. This interpretation has significant implications for taxpayers in terms of reduced penalties.

According to Cabinet Decision No. 40/2017 and its amendments, penalties can be imposed on taxpayers for errors in tax returns or assessments. By treating certain voluntary disclosures as a correction of an unintentional error, the court effectively eliminates the legal basis for imposing such penalties.

Overall, the judgment is a relief to UAE taxpayers because it offers a more favorable interpretation of the tax regulations, reduces the likelihood of penalties for unintentional errors, and encourages voluntary disclosure and correction of such errors.

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UAE cryptocurrency mining

disputes: Dubai Court judgment sheds light on Bitcoin mining investment issues

May 4, 2023

Introduction

A recent judgment by the Dubai Appeals Court following a series of civil suits and criminal complaints has shed light on pitfalls and best practices when faced with disputes arising from cryptocurrency mining investments and when litigated before the UAE courts.

This case involved a complicated series of litigation including multiple civil disputes before the Dubai Courts at various levels, criminal complaints, and various investments.

This article explores the principal claims and remedies, with a focus on the complexities surrounding cryptocurrency mining and the legal ramifications when volatility is attached to such investments.

Case

Claims of misrepresentation and inflated fees in a cryptocurrency mining investment

The plaintiff claimed that they had invested USD 300,000 in a cryptocurrency mining device through a partnership, which was held for over four months before the device was purchased.

And that the defendants had admitted that the initial price of

the device was USD 1,200,000 with the partnership share of the plaintiff at 25%.

The plaintiff also alleged that it was later discovered that the actual price of the device was USD 1,100,000 and the defendants had charged a commission of USD 220,000. As a result, the final price of the device was USD 880,000 and the actual partnership share of the plaintiff in the partnership owning the cryptocurrency mining device should have been 34%.

Inequitable distribution of Bitcoin earnings

The court sided with the plaintiff that the losses suffered were further exacerbated by the distribution of Bitcoin earnings based on the original partnership share of 25%, rather than the corrected share of 34% which led to the plaintiff receiving a lower value of USD 175,000.

Fluctuating Bitcoin value and delayed transactions

The plaintiff also argued another issue that contributed to their losses was the decline in the value of Bitcoin from USD 19,000 to USD 6,000 over the seven-month period during which the second defendant refused to transfer the cryptocurrency to the account of the plaintiff. Consequently, the plaintiff argued that the total amount they should have received was estimated at about USD 1,900,000 in relation to the Bitcoin mining device investment.

Lack of legal ownership and regulatory compliance

The court also noted that the plaintiff was not registered as the owner of a 34% share of the mining device, with the entirety of the ownership retained by the second defendant. Additionally, the plaintiff argued that the defendants were operating without a license from the Securities and Commodities Authority to engage in investment management activities.

Lack of Information on the mining device production

It was evidenced to the court that 66.21021 Bitcoins were transferred to the wallet of the plaintiff during the period from 27 September 2017 to 31 October 2018.

However, experts appointed by the court were not provided with data on the production capacity of the cryptocurrency mining and the number of Bitcoins produced during that period to verify the correctness of the Bitcoins transferred to the plaintiff, nor were the experts provided with information on Bitcoin distributions that had occurred after 31 October 2018.

Dispute over investment and rising mining costs

The investment was reportedly halted due to disputes between the parties and rising mining costs. This led the plaintiff and the defendants to suspend operations until the end of 2021 to decide whether to resume operations, sell the assets, or liquidate the project. The fate of the cryptocurrency mining device was not disclosed, and no evidence was provided to indicate that the device ceased operations on 31 October 2018.

Bitcoin wallet and losses

The plaintiff sold their Bitcoin wallet on the same date it was received. The total value of the Bitcoins sold amounted to USD 499,961.89.

The first defendant held the Bitcoin profits of the plaintiff for the period from October 2017 to February 2018, totaling five months.

The court found that the Bitcoin transfers to the plaintiff resumed on 17 March 2018, with the delayed payments resulting in a decrease in Bitcoin value and losses of USD 92,676.01 for the plaintiff.

Takeaways

Drawing upon the details of this case, we outline strategies and tactics to increase the efficacy of cryptocurrency mining claims and what pitfalls to avoid when litigating cryptocurrency mining investments before the courts in the UAE:

- Ensure transparency in crypto-mining investment agreements including accurate device prices, commission fees, and ownership percentages.
- Establish a fair and well-documented distribution of cryptocurrency earnings based on accurate ownership percentages and agreed-upon terms.
- Cryptocurrency value fluctuations can significantly impact investments. To minimize potential disputes arising from these fluctuations, parties should agree on strategies to mitigate their effects, such as setting predefined conditions for the transfer of assets or establishing a mechanism to address delays in transactions.
- Ensure that the ownership of mining devices and other assets is properly registered and compliant with local regulations and that parties engaging have the necessary licenses from relevant authorities.
- Justify hashrate and mining power guarantees. Disputes can arise if the mining company guarantees a certain hashrate or mining power but fails to deliver, especially if the reasons for underperformance are not clear or considered acceptable.
- When pursuing a cryptocurrency mining claim, it is crucial to have complete and accurate data on the production of the mining device and the amounts produced during the relevant period. This helps in verifying the correctness of the cryptocurrency distributions made to the involved parties. If the mining company has control over which mining pool to join, disputes can arise if investors believe the chosen pool is not providing optimal returns.

- In the event of rising mining costs, it is important to have a predefined plan in place to address such issues. The plan could involve suspending operations, selling assets, or liquidating the project, but should be transparent and agreed upon by all parties. Establishing a clear course of action in advance can help prevent additional losses and further disputes.

Cryptocurrency disputes can be highly complex and require specialized knowledge. It is essential to engage dispute counsel who have expertise in blockchain and digital asset disputes. Including various experiences, our team has advised on NFT disputes in the UAE and abroad, in litigation and arbitration, digital asset multi-jurisdictional fraud, and assisted in drafting new technology sovereign conventions.

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No tax penalties without Federal Tax Authority public clarification – rules the Dubai tax dispute resolution committee

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In various decisions issued by the (second) Tax Dispute Resolution Committee of Dubai, the Committee ordered that tax obligations that are not explicitly provided for in the legislation do not create a tax obligation on the taxpayers until a public clarification is issued by the Federal Tax Authority.

Disputes

Three separate disputes were heard in 2023 by the (second) Tax Dispute Resolution Committee of Dubai on whether penalties should be applied to taxpayers against matters that are not explicitly clear in the legislation – but were instead clarified by the Federal Tax Authority via public clarification.

The FTA ordered the taxpayers to voluntarily disclose certain liabilities.

The FTA instructed the taxpayers that the tax legislation required certain tax liabilities to be disclosed by the taxpayers.

The taxpayers argued that the tax legislation did not explicitly require disclosing said liabilities.

The position of the FTA was that irrespective of whether the taxpayer had read the legislation in a particular manner – the understanding of the taxpayer should have been as that of the FTA.

The FTA also relied on a public clarification that it had issued in mid-2022 to justify its position.

The taxpayers complied with the FTA instructions and filed voluntary disclosures throughout the year 2022.

The FTA applied the tax liabilities in addition to tax penalties against voluntary disclosure filings and late payments.

The taxpayers disputed the taxes and penalties before the Tax Dispute Resolution Committee.

Decision

The Tax Dispute Resolution Committee issued similar findings in the three disputes as follows:

- The tax legislation does not explicitly require the disclosure that the FTA had instructed the taxpayers to make.
- The position on how the tax legislation should be applied by the FTA was unknown to the taxpayer as it was derived from the specific legislative interpretation by the FTA.
- The interpretation of the tax liabilities by the FTA only became known to the taxpayers via the public clarification issued by the FTA.
- The taxpayers cannot be penalized for tax liabilities that dominantly arise from a public clarification issued by the FTA if such tax liabilities are not explicitly provided for in the tax legislation.

The Committee ordered the cancellation of all penalties up to the date of issuance of the public clarification by the FTA.

Takeaway

A substantial number of tax disputes in the UAE arise from differences in interpretation of the tax legislation – whether value-added tax legislation, excise tax legislation, or in due course, corporate income tax laws.

The decisions issued by the (second) Tax Dispute Resolution Committee of Dubai provide solace to taxpayers who are faced with penalty liabilities dating back to October 2017 or January 2018 for interpretations of tax legislation that differ from the interpretation by the FTA.

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New instruments announced by Dubai Courts to expedite and support enforcement of judgments and arbitration awards

May 4, 2023

On 22 February 2023, Dubai unveiled a new strategic plan that is set to further advance its judicial system towards a world-class model for efficiency and service excellence. The benefits that will be derived by litigants in Dubai, especially those with high-value claims, cross-jurisdictional disputes, arbitration matters, and litigants with potentially insolvent debtors are significant.

The first major development in the strategic plan is the **Privatisation of Execution Procedures**. Aligned with the procedures of Civil Law No. (42) of 2022, the Dubai Courts will issue a decision to license private companies to provide judgment execution services. By allowing private companies to participate in the execution of judgments, the speed and efficiency of the process are expected to increase significantly. Moreover, to address market competition,

private companies may provide innovative approaches to enforcement, which can lead to the development of new technologies and processes that improve the efficiency and effectiveness of enforcement actions.

Under the new plan, litigants with high-value claims will benefit from an advanced judicial system that exceeds global benchmarks for speed, efficiency, and service excellence. The new initiatives will expedite the execution of judgments and redesign processes to enforce court judgments, making it easier for judgment creditors to recover their assets. The **Electronic Writ of Execution Seal** initiative, for example, will facilitate the enforcement of court judgments and potentially arbitration awards through an electronic seal, making the process more efficient and less time-consuming. This can be particularly useful in cases where the judgment debtor is difficult to locate or where assets are spread across multiple jurisdictions.

Cross-jurisdictional disputes can be a challenge, but with the new initiatives, litigants in Dubai can expect an easier and more efficient process. The new plan includes the **Smart Requests** initiative, which aims to streamline the Writ of Execution procedures, making the process more transparent and easier to track. This will reduce delays and ensure that the judicial system runs smoothly.

Litigants involved in collection claims will also benefit from the new initiatives, especially those relating to recognition and enforcement. The **Disclosure Platform** initiative, for example, will enable all authorities and officials involved in the execution of a ruling to be notified about the funds and assets of judgment debtors. This will allow officials to track and recover assets, helping to ensure that the judicial system operates at peak efficiency more easily.

Litigants with potentially insolvent debtors can also expect to benefit from the new initiatives. The **Sale Notification**

System initiative creates a system for notifying officials in charge of the execution of a judgment about items confiscated as part of a ruling so that they can be sold within a specified time frame. This initiative will ensure that assets are sold in a timely manner, and that judgment creditors receive the compensation they are owed.

Furthermore, the integration with the **Ministry of Interior** will ensure that rulings are enforced with the help of police and security departments. This initiative will ensure that enforcement is efficient and transparent, helping to protect the rights of all parties involved in a case. This can be particularly beneficial for foreign investors and litigants who may be concerned about the enforceability of their rights in a foreign jurisdiction and can increase compliance with court orders and help prevent further disputes from arising.

In conclusion, the new strategic plan announced by Dubai Courts is set to benefit litigants in Dubai, especially those with high-value claims, cross-jurisdictional disputes, arbitration matters, litigants with potentially insolvent debtors, and will support procedures for recognition and enforcement of judgments and arbitration awards.

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UAE High Court finds ICC ADGM

office subjects Abu Dhabi seated ICC arbitrations to the jurisdiction of the ADGM Courts

May 4, 2023

Brief

Two parties to a construction contract agreed that all disputes would be subject to the International Chamber of Commerce Rules of Arbitration and for the arbitration to be seated in Abu Dhabi.

The arbitration award was challenged by one of the parties before the Abu Dhabi Appeals Court.

The Abu Dhabi Appeals Court found it had no jurisdiction and that jurisdiction was exclusive to the Abu Dhabi Global Market Courts.

The reasoning of the Abu Dhabi Appeals Court was that:

- the arbitration was subject to the ICC Rules which resulted in,
- the arbitration proceedings being subject to the ICC representative office in the ADGM,
- and as the ICC representative office in the ADGM is considered an ADGM establishment,
- then the ADGM Courts have exclusive jurisdiction to consider challenges to the arbitration award.

Petition

The party petitioning the Abu Dhabi Cassation Court argued substantively presenting a myriad of grounds addressing the UAE Federal Arbitration Law, the ADGM respective laws, and the New York Convention. The arguments of the petitioner were as follows:

- That the parties expressly agreed to settle disputes between them in accordance with the ICC Rules, provided that the procedures and place of arbitration are in the Emirate of Abu Dhabi, without allocating the spatial scope in the Emirate of Abu Dhabi, and that applying the ICC Rules does not make that ICC or any of its branches a place for arbitration because it violates the contract between the two parties.
- That the ICC having a representative office in the ADGM does not mean that the two parties have agreed that the seat of arbitration is this representative office as they agreed in the contract to subject arbitration and its procedures to the laws of the UAE, they also agreed that the Emirate of Abu Dhabi as the place for arbitration, and in accordance with Articles 1 and 2/1 of UAE Federal Arbitration Law No. 6/2018, the Abu Dhabi Appeals Court is the competent forum to adjudicate challenges against the arbitration award.
- That it was not mentioned in the arbitration award that it was issued by the ICC in its capacity as a local court in the ADGM or in its capacity as a local court in the Emirate of Abu Dhabi, and neither in the award nor in the contract was there agreement to apply the rules of the ADGM or the Arbitration Regulations of the ADGM.
- That the arbitration award was not issued in the name of The Ruler of the Emirate (Abu Dhabi) as required by Article 13/2 of ADGM Law No. 4/2013, and it was not issued by judges as required by Article 13/1 of said ADGM Law, nor by the representative office of the ICC located in the ADGM, but rather by the Secretariat of the International Court of Arbitration affiliated with

the ICC, nor did the ICC representative office in the ADGM notify the parties of the arbitration award, but the notification was rather conducted by the Secretariat.

- That assuming that the ADGM Courts are competent to hear challenges against the arbitration award, this causes a judicial vacuum because the Court of First Instance in the ADGM has no jurisdiction to hear the case and its jurisdiction is exclusively in accordance with the text of Article 7/13 of ADGM No. 4/2013.
- That neither the ADGM, nor any of the ADGM authorities, nor any of the ADGM establishments were party to the arbitration, and the contract was not concluded, completed, or executed, in whole or in part, and the incident was not completed in whole or in part in the ADGM, and the award is not an appeal against a decision or a procedure issued by any of the ADGM authorities.
- That the ADGM Courts apply the civil and commercial laws of the ADGM, specifically English laws, not the laws of the UAE, and the Abu Dhabi Appeals Court judgment violated the New York Convention, which requires under its Article Three the recognitions of arbitral awards as binding and enforceable in accordance with the rules of procedure of the territory where the award is relied upon, and para. (e) of Article V of the Convention prohibited those territories from refusing to recognize a foreign award or refusing to enforce it, and thus the Convention linked foreign awards to the legal system of the country that it was issued and in respect of the invalidity of arbitration awards and as the award is issued in the Emirate of Abu Dhabi, the Abu Dhabi Courts have exclusive jurisdiction to hear challenges against an award issued in the Emirate of Abu Dhabi and outside the ADGM.

Disposition of the Abu Dhabi Cassation Court

The petitioner filed their petition before the Abu Dhabi Cassation Court on 29 December 2022 and the Court issued its judgment on 18 January 2023 rejecting the petition and upholding the finding of the Abu Dhabi Appeals Court on the following legislative grounds:

- Article 18/1 of the UAE Federal Arbitration Law applies which states that: “The jurisdiction to examine the arbitration matters referred by the present Law to the competent Court shall be according to the applicable procedural laws in the State, and they shall, solely, have the power until all arbitration proceedings are terminated.”
- Article 1 of the UAE Federal Arbitration Law defines the ‘Court’ as: “The federal or local Appeal Court agreed by all Parties or which the Arbitration is carried out within its area of jurisdiction.”
- Article 1 of ADGM Law No. 4/2013 defines ‘ADGM Establishments’ as: “Any company, branch, representative office, establishment entity, or project registered or licensed to operate or conduct any activity within the ADGM by any of the ADGM authorities according to the provisions of this law or the ADGM regulations or the executive resolutions including the licensed financial ADGM Establishments.”
- Article 13/1 of ADGM Law No. 4/2013 states that: “The ADGM Courts shall be of two degrees, first instance (formed of a single judge) and appeal (formed of three judges). Without prejudice to the provisions of this law and the ADGM Regulations, the ADGM Courts shall be considered as courts of the Emirate, with jurisdiction over disputes and matters in accordance with the provisions of this law and the ADGM Regulations.”
- Article 13/7/d of ADGM Law No. 4/2013 states that: “The Court of First Instance and shall have exclusive jurisdiction to consider and decide on matters according to the following … Any request, claim or dispute which

the ADGM Courts have the jurisdiction to consider under the ADGM Regulations."

- Article 13/10 of ADGM Law No. 4/2013 states that: "The Court of Appeal shall have exclusive jurisdiction to consider and decide on appeals made against the judgments or orders issued by the Court of First Instance."
- Article 13/11 of ADGM Law No. 4/2013 states that: "Judgments of the Court of Appeal are final and may not be challenged by any method of appeal."

Relying on these provisions, the disposition of the Abu Dhabi Cassation Court was:

- All disputes arising from or in connection with the contract are to be finally decided by arbitration subject to the ICC Rules, the laws of the UAE, and seated in the Emirate of Abu Dhabi.
- There was no dispute between the parties that the ICC opened its fifth branch in Abu Dhabi during the arbitration procedures and before the issuance of the arbitration award.
- The ICC branch in the ADGM is considered a representative office of the ICC, and an ADGM establishment, and hence the place of arbitration is the ADGM subject to ADGM Law No. 4/2013.

Conclusively, the Abu Dhabi Cassation Court upheld the Appeals Court finding that the ADGM Courts have exclusive jurisdiction over challenges against the arbitration award because the arbitration agreement was subject to the ICC Rules and seated in Abu Dhabi, because the ICC representative office in the ADGM is considered an ADGM establishment.

Significance of this judgment and takeaways

The judgment is a high court judgment. The Abu Dhabi Cassation Court is the highest level of court proceedings in the Emirate

of Abu Dhabi.

The judgment does not carry the status of stare decisis, and a conflicting judgment could be issued by the Abu Dhabi Cassation Court in the future.

However, for the time being, and given the expediency in which the Cassation Court issued its judgment in less than a month from the date the petition was filed, it appears the Cassation Court has taken a relatively resolute position on this matter.

By subjecting all arbitrations seated in Abu Dhabi and subject to the ICC Rules to the ADGM Courts, parties to such arbitration agreements need to consider the following:

- Review existing contracts and consider future dispute clause language to ensure that the parties choose which courts will have jurisdiction over the arbitration proceedings.
- Parties to an arbitration agreement can utilize the ADGM Courts for procedures outlined in the UAE Federal Arbitration Law, even where the ADGM is not the seat of arbitration, so long as the ICC Rules are agreed to be the rules of arbitration.
- Parties may utilize the ADGM Courts for various procedural powers under the UAE Federal Arbitration Law, even if the parties have no connection with the ADGM, as long as the arbitration agreement applies the ICC Rules and for the arbitration to be seated in the Emirate of Abu Dhabi, such as the following:
- Issuance of interim or precautionary measures under Article 18/2 of the UAE Federal Arbitration Law.
- Ruling on the jurisdiction of the arbitration tribunal under Article 19/2 of the UAE Federal Arbitration Law.
- Enforcement of interim orders and awards granted by the arbitration tribunal under Article 21/4 of the UAE Federal Arbitration Law.
- Seek the assistance of the ADGM Courts in taking

evidence during arbitration proceedings under Article 36/1 of the UAE Federal Arbitration Law.
- Amendment of the fees and costs assessed by the arbitration tribunal under Article 46/2 of the UAE Federal Arbitration Law.
- Challenging an arbitration award under Article 53 of the UAE Federal Arbitration Law.

Looking forward, the ratio decidendi of the Abu Dhabi Cassation Court may apply across the UAE, including before the Dubai Cassation Court and the Federal Supreme Court.

Because the reasoning relies on the provisions of the UAE Federal Arbitration Law which applies on a Federal level across the UAE.

Hence the analysis that the ICC representative office encapsulates arbitrations seated in Abu Dhabi to the ADGM, may also arguably apply to arbitrations seated elsewhere in the UAE.

This increases the necessity for parties with arbitrations seated in the UAE to agree on the courts that would have jurisdiction over the arbitration procedures, and not just rely on agreement on the seat of arbitration as an indicator.

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Corporate income tax disputes

under the new UAE Federal Decree-Law No. 47/2022 on the Taxation of Corporations and Businesses

May 4, 2023

The new UAE law on taxation of corporate ("Corporate Tax Law") and business income was promulgated on 03 October 2022 and applies to tax periods commencing on or after 01 June 2023.

The Corporate Tax Law does not define its own dispute procedure system.

The Corporate Tax Law is subject to the Tax Procedures Law (Federal Decree-Law No. 7/2017).

The Tax Procedures Law regulates tax disputes through a five-tiered system: reconsiderations with the Federal Tax Authority, objections with the tax disputes resolution committees, and litigation before the Federal Primary Court, the Federal Appeals Court, and the Federal Supreme Court.

Here, we look at the top five prior tax-related judgments that would carry over to corporate tax disputes under the Corporate Tax Law.

1. No tax penalties on payment delays caused by the tax authority.

The Federal Primary Court has ruled that:

the obligations of the taxpayer to make tax payments on time and the procedural nature of the law are undeniable,

however, that does not produce an effect unless the way to implement the procedures is in accordance with what falls within the obligations of the Federal Tax Authority,

and if this is prevented by the Tax Authority without cause on the part of the taxpayer, there is no liability on the taxpayer that requires the imposition of penalties.

2. No tax penalties for re-submission of correct tax returns.

The Federal Supreme Court has ruled that:

"…it is decided that tax procedures are not an end in themselves, but rather a means to achieve the goal of the lawgiver in collecting the legally due tax. Allegedly, the tax returns made under the wrong procedure that were subsequently corrected were not taken into account. Rather, the FTA's right to collect the fine decided by the legislator on the wrong procedure only recedes, without this right going beyond that by imposing other fines for a tax collected on the date specified by the law, even under the aforementioned procedure."

3. No disputes available without tax or penalty liabilities:

The Federal Supreme Court has found that private clarifications are not disputable decisions until such clarification results in actual tax or penalties being applied to the disputing taxpayer.

In other words, if a decision by the Federal Tax Authority does not create a tax or penalty liability, it may not be disputed under the Tax Procedures Law.

4. No joint liability for tax evasion without laws validating the conviction.

The Federal Supreme Court overturned a judgment against a

party found to be an accomplice to a tax evasion crime on the basis that joint liability requires explicit provisioning in the law:

"…the Appeals Court's finding that the mere presence of the goods in the second accused's warehouse is considered participation with the first accused in evading the tax as stipulated in the laws of the State, without indicating the laws criminalizing the act and validating conviction, stigmatizes the judgment for insufficient causation, and breaches the [second accused's] right of defense, which requires it to be quashed."

5. Time limits related to tax disputes.

The Federal Supreme Court ruled that the time limits related to tax disputes do not necessarily commence when notification is issued – but rather require evidence of the receipt and fulfillment of knowledge of the taxpayer of that decision and its contents.

Takeaway

As the Federal Courts consider a wider array of complex tax disputes, taxpayers would benefit from the guidance of the courts on general matters, such as those listed above – but also on more industry-specific matters such as those affecting the insurance industry, manufacturing, construction, and real estate.

As taxpayers begin planning for compliance with the Corporate Tax Law, it is necessary to understand the position of the courts and tax dispute resolution committees on substantive and technical issues.

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Dubai High Court denies enforcement of arbitration award against foreign party (Article III of the New York Convention)

May 4, 2023

The Dubai Cassation Court, the highest tier of court litigation in the Emirate of Dubai, recently rendered judgment rejecting enforcement of an arbitration award against a foreign award debtor on the basis that the debtor does not have a domicile in the United Arab Emirates.

Furthermore, the Dubai Cassation Court provided an interpretation of Article III of the New York Convention in finding that its purpose is that enforcement of an award should be conducted "…*in accordance with the rules of procedures applicable in the territory of enforcement with the adoption of the easiest procedures, and the exclusion of the more onerous procedures…*".

The Dubai Cassation Court did not adopt the latter part of Article III which continues to state, "*than are imposed on the recognition or enforcement of domestic arbitral awards*", developing an interpretation of Article III to consider its second sentence requiring application of easy and non-onerous procedural rules, instead of requiring application of procedural rules that are not more onerous than those that

apply to the enforcement of domestic arbitration awards.

The arbitration award:

The arbitration award was issued by the London Court of International Arbitration.

The award debtor is a foreign entity and has no domicile in the United Arab Emirates.

However, the award debtor owned shares in companies established and domiciled in the United Arab Emirates.

The award creditor applied for recognition and enforcement of the award before the Dubai Courts against the shares of the United Arab Emirates companies owned by the foreign award debtor.

The enforcement judge rejected the application on the basis that the Dubai Courts have no jurisdiction to enforce an arbitration award against a foreign party.

The award creditor challenged the finding through the courts, up to and in petitioning the Dubai Cassation Court.

The Dubai Cassation Court considered the following arguments made by the award creditor:

- Pursuant to the principle of voluntary – legislative – compliance with the accession of the United Arab Emirates and the United Kingdom to the Convention on the Recognition of Foreign Arbitral Awards (New York Convention) ratified by Federal Decree No. 43/2006, the rules of jurisdiction contained in the Federal Civil Procedures Law do not apply to the enforcement of foreign arbitral awards, considering that both the United Kingdom and the United Arab Emirates have acceded to the Convention on the Recognition of Foreign Arbitral Awards of 1958 (New York Convention) and implicitly accepted their jurisdiction to consider the application

for the enforcement of foreign arbitral awards and are obligated to recognize and order their enforcement in accordance with the terms contained in the Convention.

- It is evidenced within the contract in dispute and within the arbitration award that the award debtor is the owner of shares of two companies registered in the United Arab Emirates.
- The parties to the arbitration agreed to the sale and purchase of the shares owned by the award debtor in those two companies.
- The legislator deviated from the general principle of domicile jurisdiction, allowing the creditors of a shareholder in a limited liability company to execute against the shares of a debtor shareholder by selling the shares and collecting the debts from the proceeds of the sale in accordance with Article 20 of the Federal Commercial Companies Law.

The Dubai Cassation Court rejected the petition for the following reasons:

- The text of Article III of the New York Convention of 1958 indicates that enforcement takes place in accordance with the rules of procedures followed in the territory of enforcement, with the adoption of the easiest procedures and the exclusion of the more onerous procedures.
- This matter is not limited to the general procedural law, which is the Federal Civil Procedures Law and its executive regulations, but rather includes any procedural rules for litigation and the implementation of its provisions contained in any other law that regulates these procedures, and to say otherwise is allocation without provision.
- And that it is established – in the jurisprudence of the Dubai Cassation Court – that the issue of sovereign or qualitative jurisdiction is one of the issues related to

public policy and is considered to exist in any litigation and always before the court, which the court must address it on its own accord, even if none of the litigants raise the issue.

- It is also decided – in the jurisprudence of the Dubai Cassation Court – that the company of any kind – with the exception of the joint venture company – has a legal personality and a financial liability independent of the liabilities of its shareholders, and it has the capacity to sue as a plaintiff or defendant, independently of its shareholders.
- The jurisdiction of the Dubai Courts in the enforcement of the arbitration award is not affected by the request to enforce against the shares of the award debtor in the two companies domiciled in Dubai (in the United Arab Emirates) as the arbitral award required to be enforced does not include an order against the two companies, in addition to the absence of any other rulings against them, and therefore they are not considered a party to the instrument (the arbitration award) required to be enforced.
- For the competence of the enforcement judge in the Dubai Courts to recognize (apply exequatur) and enforce a foreign award, the domicile of the award debtor against whom enforcement is requested must be within the State jurisdiction of the Dubai Courts whilst in this case the award debtor is domiciled in a foreign State.

Article III of the New York Convention

The Dubai Cassation Court cited part of Article III and supplemented its quotation with an interpretive addition to the provision while omitting the application of the latter part of Article III.

Article III of the New York Convention states:

“Each Contracting State shall recognize arbitral awards as

binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards."

Article III is generally understood to require that State courts treat enforcement of foreign arbitration awards in the same manner as enforcement of domestic arbitration awards.

The Dubai Cassation Court provided an interpretation of Article III of the New York Convention in finding that its purpose is that enforcement of an award should be conducted "…*in accordance with the rules of procedures applicable in the territory of enforcement with the adoption of the easiest procedures, and the exclusion of the more onerous procedures…*".

In coming to its disposition, the Dubai Cassation Court did not adopt the latter part of Article III which continues to state, "*than are imposed on the recognition or enforcement of domestic arbitral awards*".

The travaux préparatoires are the official documents recording negotiations, drafting, and discussions during the process of creating a treaty. The travaux préparatoires can be consulted and taken into consideration when interpreting treaties.

According to the New York Convention travaux préparatoires, the rule under Article III of the Convention limits the Contracting States' discretion to determine the rules of procedure applicable to the recognition and enforcement of foreign arbitral awards in their territories.

The purpose of this limitation, which has been referred to as the "national treatment" or "non-discrimination" rule, is to

prevent national courts from imposing “unduly complicated enforcement procedures” and insurmountable procedural hurdles at the recognition and enforcement stage.

The second sentence of Article III prevents Contracting States from discriminating against foreign arbitral awards, whilst nothing prevents Contracting States from imposing conditions to the recognition and enforcement of foreign arbitral awards that are less onerous than those imposed on domestic awards.

The Dubai Cassation Court did not adopt the latter part of Article III which continues to state, “*than are imposed on the recognition or enforcement of domestic arbitral awards*”, developing an interpretation of Article III to consider its second sentence requiring application of easy and non-onerous procedural rules, instead of requiring application of procedural rules that are not more onerous than those that apply to the enforcement of domestic arbitration awards.

Contrastingly, awards issued in the UAE against foreign parties are enforceable by the Dubai Courts, which renders this novel interpretation of Article III a complex new paradigm for parties to consider when enforcing in the UAE.

Enforcement against shares (assets)

The award creditor relied on Article 20 of the Federal Commercial Companies Law which does indeed permit creditors to take action against shares. Quoted as follows:

“Article 20 – Execution against anything in lieu of the share

1- Personal creditors of a shareholder may not recover their rights out of the share of the debtor shareholder in the capital of the company. However, they may claim their rights from the share of the debtor in the profits of the company. If the company is terminated, the rights of the creditors shall be paid from the shares of the shareholder in the remaining assets thereof upon conclusion of the liquidation.

2- If the contribution of a shareholder in the company consists of shares, then the creditors thereof may, in addition to the rights set out in Clause 1 of the present Article, file a lawsuit before the competent court to sell these shares and subsequently recover their debts out of the sale proceeds."

Notwithstanding, the Dubai Cassation Court found that this right under Article 20 of the Federal Commercial Companies Law does not manifest in part because the arbitral award does not include an order against the two companies, in addition to the absence of any other rulings against them, and therefore they are not considered a party to the instrument (the arbitration award) required to be enforced.

The finding by the Dubai Cassation Court raises the risk of extending to other assets as well that are not named in an arbitration award.

In the same vein, the arbitration award in this dispute related to the sale and purchase of the shares in the companies domiciled in the United Arab Emirates.

Whilst the Dubai Cassation Court relied on Article 21 of the Federal Civil Procedures Law, this Article 21 does nevertheless state that the Courts shall have jurisdiction if "*the action is concerned with an obligation concluded, executed, or its execution was conditioned in the state or related with a contract required to be authenticated therein*".

Deductively, the Dubai Cassation Court appears to apply more weight to whether in fact the award debtor is domiciled in the country or not, irrespective of the underlying agreement.

Takeaway and alternatives

The judgment creates two substantial considerations for award creditors seeking enforcement of a foreign arbitral award in the United Arab Emirates:

1. If the award debtor is not domiciled in the United Arab Emirates, the Courts may refuse recognition and enforcement of the award.
2. If the award debtor assets are not named in the award, the Courts may refuse enforcement action against said assets.

Either of these risks may manifest independently, or in compound with each other.

Alternatively, arbitration award creditors can seek recognition and enforcement through other court systems in the United Arab Emirates that operate under different laws and regulations, those being the Abu Dhabi Global Market Courts which operate pursuant to English law, and the Dubai International Financial Courts which operate pursuant to common law, and each their respective independent rules and statutes.

The ADGM and DIFC Courts also provide parties with the ability to apply for Mareva Injunctions (i.e., worldwide freezing orders) even if the parties have no nexus with or assets in the ADGM or the DIFC in support of enforcement of foreign arbitration awards.

How we can assist

Wasel & Wasel has assisted domestic and international arbitration award debtors and creditors in the enforcement and set aside of arbitration awards before the various courts in the UAE (including the Dubai Courts and the DIFC Courts) on matters collectively exceeding USD 500,000,000. Our team has also acted on Mareva Injunction and Norwich Pharmacal Orders issued by the DIFC Courts, or issued abroad and enforced domestically in the United Arab Emirates, in relation to court judgments and arbitration awards.

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UAE Federal Court rules no tax penalties on payment delays caused by the tax authority

May 4, 2023

Brief

It was evidenced before the Federal Primary Court that the taxpayer had informed the Federal Tax Authority of an obstacle in the online tax filing portal that prevented the taxpayer from being able to file their tax returns.

The taxpayer continuously requested resolve of the issues since early 2018 until mid-2021.

The issue was finally resolved by the Tax Authority in 2021 and the taxpayer was able to file their returns and make tax payments after that date.

The Federal Tax Authority applied penalties retrospectively on the taxpayer for (i) late filing of tax returns and (ii) late payment of taxes.

Arguments

The taxpayer argued that Article 25(1)(i) permits the application of penalties in case the "…taxable person fails to settle the tax defined as the payable tax in the tax return that has been submitted or the tax assessment notified thereto within the period set forth under the tax law".

And since the payable tax never manifested because of the inability to file a tax return, nor by way of an audit, no tax had become payable.

The taxpayer argued that the Payment User Guide of November 2018 indicates that the filing of tax returns and payment of taxes are sequential procedures.

In that payment of the tax is a subsequent stage to accepting the tax return.

That is only after accepting the tax return, the taxpayer must pay the tax due, otherwise the Federal Tax Authority may implement penalties.

However, where the taxpayer does not have the opportunity to submit the tax return due to the fault of the Authority, without cause on the part of the taxpayer, the subsequent stage of paying the tax cannot be triggered.

In other words, the unencumbered submission of the tax return is a pre-condition for payment of the tax.

Judgment

The Federal Primary Court ruled that:

- the obligations of the taxpayer to make tax payments on time and the procedural nature of the law are undeniable,
- however, that does not produce an effect unless the way to implement the procedures is in accordance with what falls within the obligations of the Federal Tax Authority,

- and if this is prevented by the Tax Authority without cause on the part of the taxpayer, there is no liability on the taxpayer that requires the imposition of penalties.

Wasel & Wasel was counsel on this matter.

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Significant judgment by Dubai Court orders payment of damages in cryptocurrency instead of fiat currency

May 4, 2023

In a dispute over investment in Dash cryptocurrency, one of the more well-known and established altcoin cryptocurrencies, the Dubai Primary Court ordered payment to the plaintiff in Dash (as opposed to in Dirhams, US Dollars, or UK Pounds).

This is one of the first cases in the UAE where the court orders compensation in cryptocurrency as opposed to fiat currency providing substantial considerations for how disputes over cryptocurrency transactions should be managed.

Background

The plaintiff purchased 6000 Dash from the defendant for the amount of USD 540,000, on the promise that the defendant would invest the cryptocurrency for a return of 3% per week.

The defendant failed to pay the plaintiff the investment return, or the principal investment, despite multiple demands by the plaintiff.

The plaintiff sued before the Dubai Primary Court for USD 1,009,800 being the value of the Dash coins at the time plus the agreed upon returns of 3% per week.

Dubai Primary Court judgment

The Court ruled in favor of the plaintiff awarding the 6000 Dash instead of the amount of USD 1,009,800 claimed by the plaintiff.

Although the transaction agreement was evidenced and established, the Court did not award a monetary value in fiat currency on the basis that the plaintiff did not evidence the true market value of the Dash that was being claimed.

This is the first known case where a UAE court awards damages in cryptocurrency only, without identifying any fiat currency as a value to such cryptocurrency in the award.

The Court ordered in its judgment disposition:

“Obligating the defendant to return to the plaintiff an amount of (6000 Dash Cryptocurrency) to the electronic address of the plaintiff’s wallet.”

The Court based its reasoning on the Federal Commercial Transactions Law as follows:

“The meaning of the provisions of Articles 76, 77, 88, 90 of the Commercial Transactions Law is that if the debt arises from a commercial business and relates to a sum of money of known amount at the time the obligation arises and the debtor

is late in paying it, then the creditor has the right to demand interest on it as compensation for delay, and this interest applies from the maturity date of this debt, and is calculated according to the price agreed upon in the contract concluded between the two parties. If no interest rate is specified in the contract, it is calculated according to the prevailing market price at the time of dealing, provided that it does not exceed 12% annually until the full payment.

…

The contract concluded between the two parties did not include a reference to any website whereby the unit price of the [crypto] currency will be calculated and therefore the benefits resulting from it cannot be estimated due to the lack of knowledge of its price in the market as it changes daily."

Takeaway

This is a significant judgment for those engaged in the digital asset economy in the UAE to account for; (i) at the time of contracting; (ii) at the time a dispute arises; (iii) and in strategizing the most appropriate relief to seek from the courts or arbitration tribunals to maximize return.

Should parties wish to recover their cryptocurrency in fiat currency at the time of making a claim, it is crucial to:

- At the time of contracting specify how the value of cryptocurrency will be determined and based on which references.
- Post-contracting, at the time of dispute, disputants should provide an expert/technical report on the true market value of the cryptocurrency using credible reference points.

On the other hand, should a plaintiff expect the value of the cryptocurrency to rise, this judgment provides grounds to make claims and request compensation in the cryptocurrency that was

traded/invested as opposed to a monetary value.

If the price of the cryptocurrency is expected to increase, it may be beneficial to request the courts to grant relief in the form of the cryptocurrency as opposed to the monetary value.

This is because if the court awards relief in the monetary value of the cryptocurrency (as opposed to awarding the cryptocurrency itself) the value of the fiat currency in the judgment would be set at the date of the judgment and generally remain so during appeal and enforcement.

Appeals and enforcement could take months or years.

During which time the value of the cryptocurrency could increase in folds.

However, if the judgment awards a party in cryptocurrency instead of fiat currency, that cryptocurrency value would continue to increase as the parties go through appeal and enforcement procedures.

And the winning party would be able to enforce at the then-current price of the cryptocurrency (at enforcement), as opposed to the price at the time of the initial judgment.

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