The Legal Characterization of Cryptocurrency and Contractual Authorization Protocols: Analysis of HoneyBadger Enterprises Ltd. v Bue

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The judgment of the King's Bench for Saskatchewan in *HoneyBadger Enterprises Ltd. v Bue*, 2025 SKKB 123, provides salient guidance on the interpretation of payment authorization agreements in the context of cryptocurrency transactions and the allocation of loss following third-party fraud. The decision also engages with the persistent question of the legal classification of digital assets under existing statutory frameworks, particularly concerning contract and tort law.

The matter required the Court to adjudicate a dispute between HoneyBadger Enterprises Ltd. ("HoneyBadger"), a cryptocurrency vendor, and the Defendant, a customer. Both parties were victims of a fraud perpetrated by unknown third parties. The Defendant had established a Pre-Authorized Debit (PAD) Agreement with HoneyBadger. Subsequently, $240,000 CAD was utilized to purchase cryptocurrency, which was transferred to a wallet controlled by the fraudsters. While the Defendant authorized the initial $40,000 in transactions, he had also granted the fraudsters remote access to his computer. The fraudsters utilized this access to initiate the remaining $200,000 in purchases via the Defendant's email account,

without his knowledge. The financial institution reversed the payments, leading HoneyBadger to seek recovery.

The Characterization of Cryptocurrency: Contractual and Tortious Implications

A preliminary issue concerned the applicability of *The Sale of Goods Act (Saskatchewan)* (SOGA). The Defendant contended that the contract for the purchase of cryptocurrency was unenforceable under the statute for want of a written agreement. This required the Court to consider whether cryptocurrency constitutes "goods," defined in the Act as "all chattels personal other than things in action or money."

Richmond J. observed the inherent difficulty in applying historical legislation to novel asset classes [29]. The judgment referenced jurisprudence reflecting judicial caution in this area, including *Copytrack Pte Ltd. v Wall*, 2018 BCSC 1709, where the court declined to characterize cryptocurrency in a summary proceeding, deeming it a complex and undecided question [30].

The characterization of cryptocurrency is material not only to contract law under SOGA but also to the availability of proprietary torts. The Court cited *Ramirez v Ledn Inc.*, 2023 ONSC 3716, where the Ontario Superior Court held that "Bitcoins are intangible property," thereby precluding the application of the tort of conversion [31].

This characterization is significant. The tort of conversion is generally restricted to tangible property (chattels personal or choses in possession). If cryptocurrency is classified as intangible property, potentially as a *chose in action*, it not only limits the availability of certain proprietary torts but also places the asset outside the SOGA definition of "goods," which explicitly excludes "things in action."

In *HoneyBadger*, the Court ultimately circumvented a definitive

classification. Richmond J. held that regardless of whether cryptocurrency is a "good," the statutory defence failed because the transactions were evidenced by sufficient memoranda in writing, namely the email exchanges and the PAD Agreement [32].

Contractual Formation and Authorization Protocols

The central contractual dispute concerned the validity of the two unauthorized transactions totaling $200,000. The Court accepted the evidence that these purchases were initiated by fraudsters impersonating the Defendant [12]. Consequently, there was no objective manifestation of the Defendant's intention to be bound by those specific agreements.

HoneyBadger argued it had followed the agreed procedure, relying on instructions from the Customer's established email address, and therefore the Defendant remained contractually bound. HoneyBadger relied upon *Du v Jameson Bank*, 2017 ONSC 2422, where a bank was found not liable for acting on fraudulent instructions received from a customer's compromised email account.

Richmond J. distinguished *Du* based on the specific contractual terms. In *Du*, the account agreement explicitly authorized the bank to rely on electronic communications purporting to be from the customer and included robust limitation of liability clauses that placed the onus of securing electronic access squarely on the customer [37]. The agreement between HoneyBadger and the Defendant contained no such risk allocation provisions [38].

Conversely, the interpretation of the PAD Agreement proved decisive. Clause 8, addressing sporadic payments, stipulated:

"I/we agree that a password or security code or other signature equivalent will be issued [emphasis added] and will constitute valid authorization…" [24].

The Court found that HoneyBadger's practice of relying solely on incoming emails from the Defendant's address did not satisfy this requirement. The term "issued" implies a positive obligation on the Payee (HoneyBadger) to provide a verification mechanism. An email confirmation originating from the Payor's side does not constitute a security measure "issued" by the Payee [27]. HoneyBadger's reliance on the established pattern of communication did not override the express terms of the PAD Agreement [28].

Allocation of Loss

The case required an adjudication between two victims of fraud. While the Defendant's actions in granting fraudsters access to his computer facilitated the fraud [44], the Court determined that HoneyBadger's non-compliance with Clause 8 was also a direct cause of the loss regarding the unauthorized transactions. Had HoneyBadger implemented the required verification process, the fraud might have been prevented [50].

Applying principles of shared responsibility, the Court distinguished the initial $40,000, which the Defendant actively authorized. Compliance with the PAD verification requirements would not have altered that outcome. For the remaining $200,000, the Court found shared responsibility and apportioned the loss equally [55]. This judgment underscores that vendors must rigorously adhere to the security protocols stipulated in their contractual agreements.

The Characterization of Cryptocurrency in General Transactions

The judgment in *HoneyBadger* necessarily engages with the persistent challenge of characterizing cryptocurrency within established legal frameworks governing commercial transactions. While Richmond J. ultimately circumvented a definitive classification by resolving the SOGA defence on evidentiary grounds [32], the legal nature of digital assets

remains a critical issue in contract and tort law.

The difficulty arises from the application of traditional common law categories of personal property, choses in possession (tangible assets capable of physical possession) and choses in action (intangible rights enforceable only by legal action). Cryptocurrency does not fit neatly within these definitions. It is intangible, yet it does not typically represent a claim against a counterparty, distinguishing it from conventional choses in action like debts.

The characterization is material. In contract law, if cryptocurrency is not classified as a "good", which SOGA defines by excluding "things in action or money" [29], transactions involving its sale are not subject to the statutory implied conditions and warranties regarding title, quality, or fitness for purpose. Parties must instead rely solely on express contractual terms and common law principles governing the transfer of intangibles.

In tort law, the classification dictates the availability of proprietary remedies. As noted in the judgment, citing *Ramirez v Ledn Inc.*, the characterization of Bitcoin as "intangible property" precludes the application of the tort of conversion [31]. Conversion is historically restricted to wrongful interference with tangible chattels. This limits recovery mechanisms in cases of misappropriation, often necessitating reliance on equitable claims such as unjust enrichment or tracing.

In the context of *HoneyBadger*, the cryptocurrency functioned as the subject matter of the sale, akin to a commodity or investment asset, rather than the means of payment (which was fiat currency). The unique features of these assets, specifically their intangibility and the technical irreversibility of transfers once executed on the blockchain [3], heighten the importance of the contractual mechanisms used to facilitate their exchange. The *HoneyBadger* decision

illustrates a pragmatic judicial approach, focusing not on the ontological nature of the asset, but on the interpretation and application of the specific authorization protocols agreed upon by the parties. Absent definitive statutory guidance, the precise terms of the underlying contract remain the primary determinant of risk allocation and liability.

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War Series: The 1930 Lena Goldfields Precedent and the New Geopolitics of Critical Minerals

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The contemporary international order is changing. As the era of globalization yields to a multipolar landscape defined by strategic competition, the control of critical mineral supply chains has emerged as a primary vector of state power. This intensifying struggle, essential for defense capabilities, the energy transition, and technological supremacy, is triggering a sophisticated wave of resource nationalism. Host states are increasingly willing to destabilize established investments and rewrite contracts to secure strategic advantage.

While the technologies dependent on these resources (lithium, cobalt, rare earths) are modern, the political and legal tactics employed to control them are not. The 1930 ad hoc arbitration in *Lena Goldfields, Ltd. v. The Soviet Union* provides a foundational blueprint for understanding how states weaponize their regulatory and security apparatus when economic necessity yields to geopolitical imperatives. Analyzing the Lena dispute offers a crucial framework for navigating the high-stakes conflicts emerging in today's contested resource landscape.

The Concession and the Strategic Pivot

In 1925, during its New Economic Policy (NEP), a period of tactical openness to foreign capital, the Soviet government granted Lena Goldfields, a British company, an extensive concession in Siberia for gold, copper, and other minerals. It was the largest such agreement the USSR had ever entered into.

The dispute's genesis was not a mere commercial disagreement but a fundamental realignment of state strategy. In 1929, the USSR abandoned the NEP and launched the first Five Year Plan, prioritizing rapid industrialization and autarky (economic self-sufficiency). This mandated collectivized state ownership, placing the Soviet apparatus in direct conflict with the private-enterprise foundation of the Lena concession. The state's strategic objectives were now incompatible with foreign control over vital resources.

The state's subsequent actions were a campaign of what is referred to in investment treaty disputes as creeping expropriation. The company faced the withholding of contractually obligated state support, the instigation of labor unrest framed as class warfare, and direct intervention by the state security agency (O.G.P.U.). Key personnel were arrested on charges of espionage and counter-revolutionary activity. Rendered inoperable, Lena Goldfields withdrew its personnel and initiated arbitration in 1930.

The Jurisdictional Contest and the ‘Paper Victory’

The Lena case remains significant for the fundamental jurisdictional conflict it presented. The Soviet Union, asserting absolute sovereignty, boycotted the proceedings and withdrew its appointed arbitrator. The USSR argued that Lena’s cessation of operations constituted a unilateral termination of the entire agreement, thereby nullifying the arbitration clause and the tribunal’s competence.

The tribunal, proceeding *ex parte*, rejected this argument, implicitly affirming the principle of *Kompetenz-Kompetenz*, the power of a tribunal to determine its own jurisdiction. Finding the arbitration clause separable and operative, the tribunal then faced the question of applicable law. Recognizing the impossibility of applying Soviet domestic law, the very instrument of the policy change that caused the breach, the tribunal elevated the dispute to the international level, applying “general principles of law.”

Based on the principle of unjust enrichment, the tribunal awarded Lena Goldfields approximately £13 million in compensation on September 2, 1930. Equal to almost £1.09 billion today in CPI and RPI measures. The Soviet government immediately repudiated the award as a nullity, resulting in a significant “paper victory” for the investor but a complete failure of enforcement.

The Modern Archetype: Resource Warfare in a Multipolar World

The Lena Goldfields fact pattern provides a precise historical archetype for the geopolitical strategies surrounding critical minerals today. The tactics of 1929 are mirrored, albeit often with greater sophistication, in contemporary disputes.

The shift from the NEP to the Five Year Plan parallels the modern shift from maximizing economic efficiency to maximizing strategic control. Today, states view critical minerals not merely as commercial assets but as necessities for national

security. In a multipolar environment, this drives policies aimed at forced localization, mandatory joint ventures with state champions, and the redirection of resources toward geopolitically aligned partners, a dynamic intensified by concepts like “friend-shoring” and strategic decoupling.

The Soviet strategy of rendering the investment valueless through a pattern of conduct, regulatory strangulation, police action, and withholding state performance, remains the classic model of indirect expropriation. Modern iterations involve the unilateral revision of mining codes, the imposition of windfall taxes that destroy project economics, sudden and punitive environmental audits, and seemingly discrete administrative actions that, in aggregate, amount to a constructive taking.

The O.G.P.U. raids illustrate the use of a state’s non-commercial apparatus to achieve a strategic objective. This tactic persists, with investors facing pressure through the detention of personnel, spurious criminal investigations, or the seizure of assets by security or customs agencies, actions often calibrated to force a renegotiation of terms favorable to the host state.

Offtake Agreements and the Battle for Supply Chains

A critical dimension of modern disputes, absent in the Lena era but central today, is the role of offtake agreements. These long-term contracts for the future delivery of minerals are the lifeblood of project finance, securing the massive capital expenditures required for mine development.

Host states now target these agreements as leverage points. By imposing export bans, demanding domestic downstream processing, or introducing new royalties that challenge the viability of the offtake price, states seek to capture a greater share of the value chain. More significantly, these actions can be used to disrupt supply chains vital to rival

powers. An investor may find their offtake commitment, perhaps to a European or American end-user, rendered impossible by a state mandate redirecting output to a different geopolitical bloc. This transforms a bilateral commercial dispute into a geopolitical flashpoint.

The Evolving Remedy and Persistent Risk

The primary distinction between 1930 and today lies not in the state's tactics, but in the investor's remedy, and its limitations. The Lena award proved unenforceable when repudiated by a non-participating sovereign. The modern system of international investment law, characterized by Bilateral Investment Treaties (BITs) and the framework of the International Centre for Settlement of Investment Disputes (ICSID), was designed specifically to prevent such jurisdictional boycotts and enforcement failures.

However, the landscape is shifting again. The legitimacy of the Investor-State Dispute Settlement (ISDS) system is under increasing challenge as geopolitical pressures intensify. States are withdrawing from investment treaties, challenging awards on grounds of national security, and utilizing domestic courts to counter international arbitration rulings.

For businesses navigating this complex terrain, the Lena Goldfields arbitration serves as a stark reminder that in the realm of strategic resources, investments are never purely commercial. They are, inherently, geopolitical positions subject to the shifting imperatives of state power in a contested world order.

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Ex NF v Munneke: A Supreme Court of South Australia Analysis of Private Keys, Insolvency, and the Tracing of Corporate Digital Assets

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The judgment of the Supreme Court of South Australia in *EX NF PTY LTD (IN LIQ) & ANOR v MUNNEKE & ORS* [2025] SASC 165 (2 October 2025) represents a significant and forensically detailed application of orthodox corporate law principles to the distinct evidentiary challenges posed by digital assets. While the case involved the ownership and disposition of Bitcoin (BTC) and Ether (ETH), its true value, particularly for international digital asset disputes and arbitration, is not in the creation of novel "crypto law." Rather, the judgment provides an authoritative framework for insolvency practitioners, creditors, and counsel on how established principles of beneficial ownership, directors' duties, and shareholder ratification are to be applied when corporate assets are held in pseudonymous wallets controlled by a fiduciary. The court's methodical approach demonstrates a refusal to be confounded by the technical nature of the assets, focusing instead on a rigorous, evidence-based analysis of off-chain records, competing narratives, and the objective conduct of the parties to establish title and remedy breaches of duty. This analysis will deconstruct the court's reasoning, focusing on the key takeaways for digital asset

disputes, specifically the court's treatment of provenance over possession, its method for deconstructing "personal investment" claims, the primacy of off-chain financial records, the seamless application of tracing principles, and the critical invalidation of shareholder ratification once a company enters the "zone of insolvency."

A primary challenge in digital asset disputes is the common defense that technical control of a private key is tantamount to legal and beneficial ownership. The *Munneke* judgment provides a clear rebuttal to this presumption, establishing that a court's inquiry will prioritize the *provenance* of the asset over the mere *possession* of the keys. The director, Mr. Munneke, "contended that he…is presumed by law to be the owner of the cryptocurrency" [para 50], a claim supported by his exclusive control of the CoinJar account and the associated private keys [para 135]. The court, however, looked past this technical control to determine the asset's true character at its inception. The foundational finding was that "the bitcoin was purchased in February and August 2014…using Ex NF's funds from the NAB account" [para 798]. The court noted that the CoinJar exchange account "was linked only to the NAB account" [para 798], despite Mr. Munneke's awareness that he could have linked a personal bank account [para 798]. This direct, objective link between the company's fiat funds and the acquisition of the digital asset was the court's starting point and a fact that the director's defenses could not overcome. The director's claim that corporate funds "were used from the NAB account because it was convenient" [para 50] was implicitly rejected in favor of the court's finding that the purchases were, "on their face, company transactions" [para 830]. This demonstrates a clear judicial method: the "on-ramp", the source of the fiat currency used to acquire the asset, will be a paramount consideration in determining beneficial ownership, regardless of whose name is on the exchange account or who controls the subsequent wallet.

From this finding of provenance, the court's analysis then turned to dismantling the director's *post facto* rationalization for the holding. This is a crucial takeaway for the digital asset industry, where the line between corporate treasury and personal holdings is often blurred, particularly in founder-led enterprises. The court was faced with conflicting defenses: Mr. Munneke claimed the crypto was a "family investment" [para 50], possibly for the ZALD Trust [para 156], while Ms. Zaccara, the sole shareholder, "assert[ed] that the cryptocurrency was purchased for the benefit of only Ms Zaccara personally" [para 50]. The court systematically deconstructed these narratives by privileging contemporaneous evidence of *corporate purpose* over subsequent, self-serving claims of *personal investment*. The most compelling piece of evidence was an "unguarded" 2018 email from Mr. Munneke to a broker, written years after the acquisition but before the dispute. In it, Mr. Munneke explained his early involvement with Ethereum: "Bought in at the pre-sale to use it, never expected it to be an investment, just thought it was a cheaper way to get gas for development" [para 806]. The court was "ultimately persuaded that Mr Munneke's email…constitutes an admission" [para 841] that the asset was acquired for a specific business utility, not as a personal investment. This finding was bolstered by other objective evidence of corporate purpose, including the company co-hosting a "Blockchain Hackathon" [para 846] and expert testimony regarding the benefits for a developer to hold ETH at the time [para 112]. The court's finding was decisive: "I am satisfied that the ethereum was purchased by Ex NF in the course of its business for use in its business at some point in the future" [para 845]. This provides a clear test for future disputes, weighting contemporaneous evidence of business utility far more heavily than subsequent, inconsistent claims of personal ownership.

Further cementing the asset's corporate character, the court gave significant weight to the objective, off-chain financial

records. This analysis was twofold. First, the court noted where the company's *own conduct* demonstrated ownership. It was submitted, and the court accepted, that Ex NF had "claim[ed] a tax credit in respect of the cryptocurrency in 2014" [para 400] and, critically, "assum[ed] a GST collection obligation in 2018" [para 431] upon the sale of the ETH to fund the Ward Street property. The respondents' defense that these were simply "mistakes" by the accountants [para 432] was unpersuasive. This objective conduct, recorded in statutory filings, was treated as powerful evidence of the asset's true character. Second, the court's analysis of the company's *failure* to keep proper records for its other transactions demonstrated the director's breach of duty. The court found that contrary to section 286(1) of the *Corporations Act*, Ex NF "did not maintain written financial records that correctly recorded and explained its transactions…and which would enable true and fair financial statements to be prepared and audited" [para 775]. This failure meant the director was incapable of making an informed decision. As Mr. Munneke himself admitted in his s 597 examination, "he did not know in January 2016 whether Ex NF was solvent or insolvent" [para 738]. This dual focus, using the records that *did* exist to establish ownership of the crypto, and the *absence* of records to establish a breach of duty in disposing of it, highlights the central, determinative role that financial accounting plays in digital asset disputes.

Once the court established that the digital assets were the company's property, it had no difficulty applying traditional equitable tracing principles to the asset's subsequent metamorphosis. This is a vital confirmation for liquidators and creditors. The court seamlessly followed the company's ETH, which it found was "the property of Ex NF" [para 850], through its liquidation by the director. It noted the fiat proceeds were deposited into the company's NAB account, and that these specific funds were then "drawn from the NAB account to be paid as settlement monies for the purchase of

Ward Street" [para 25]. The court also noted that the surplus funds from the sale, some $121,988.89, "were retained by Ex NF in the NAB account" [para 816], conduct which the court found was consistent only with corporate ownership. This clean application of tracing, from ETH to fiat in a corporate account, to the acquisition of a real property asset in a third party's name, affirms that these established equitable remedies are perfectly equipped to unwind complex misappropriations, allowing the liquidator to claim the resulting real-world property as a traceable proceed of the company's original digital asset.

The final and most critical legal disposition of the court was its invalidation of the director's primary defense: shareholder ratification. In the digital asset space, which is dominated by closely-held companies, the alignment of the director and sole shareholder often presents a significant hurdle for creditors. The respondents' case relied heavily on this alignment, arguing "that Ms Zaccara, as sole shareholder of Ex NF, agreed, ratified, and acquiesced to the release of Ex NF's funds" [para 54]. The court, however, deployed the established "zone of insolvency" doctrine to neutralize this defense completely. It first established that the *Kinsela* duty, which requires directors to consider creditors' interests, had been enlivened. For the 2015 O'Connell Street transaction, the court found "a 'real and not remote risk of insolvency'" [para 773]. For the 2018 Ward Street transaction, the company was "facing insolvency" [para 863]. The court then articulated the legal consequence by citing *Kinsela v Russell Kinsela Pty Ltd (In Liq)*: "where a company is insolvent the interests of the creditors intrude…It is in a practical sense their assets and not the shareholders' assets that…are under the management of the directors" [para 645].

This finding was fatal to the defense. The court held that the power of the shareholder to ratify the director's self-dealing was extinguished. "shareholders cannot," the court found,

“ratify conduct of directors that is adverse to the interests of creditors in circumstances of doubtful solvency, near insolvency, or the like” [para 801(c)]. This principle was applied to both property transactions. Furthermore, the court invalidated the ratification defense on several other independent grounds. It found the consent was not “informed,” as “Ms Zaccara had no better knowledge of Ex NF’s financial situation…than Mr Munneke did” [para 801(d)]. Specific to the Ward Street transaction, the court identified a fatal contradiction: “no issue of ratification arises…given Ms Zaccara was, she says, unaware that Ex NF ever held cryptocurrency. Therefore, it follows that she was never consenting to Ex NF’s cryptocurrency being deployed” [para 876]. The court also affirmed that ratification is irrelevant for breaches of *statutory* duties, such as sections 180, 181, and 182, which it found the director had breached [para 801(a)]. This systematic rejection of the unanimous consent defense is perhaps the judgment’s most significant contribution, providing a clear path for liquidators to overcome collusive behavior between directors and shareholders in founder-driven companies.

Having defeated the ratification defense, the court found the director’s breaches of duty were plain. He failed to exercise care and diligence (s 180(1)), as a “reasonable director…would not have made a gift of the bulk of Ex NF’s cash…without any idea of Ex NF’s real financial position” [para 800(a)]. He acted for an improper purpose (s 181(1)), admitting the goal was to place an asset “not tied to the success or failure of Ex NF” [para 800(c)]. And he improperly used his position (s 182(1)) [para 800(d)]. The court also summarily rejected the statutory “business judgment rule” defense, as the director had a clear “material personal interest” and had failed to “inform themselves” [para 800(b)]. The transactions were therefore found to be voidable “unreasonable director-related transactions” under section 588FDA [paras 802, 877], allowing the liquidator to recover the assets for the benefit of the

creditors.

In conclusion, the *Munneke* judgment is a powerful illustration of the judiciary's capacity to apply orthodox legal and equitable principles to complex digital asset disputes. It serves as an authoritative guide, confirming that beneficial ownership will be determined by a forensic examination of fiat provenance, corporate purpose, and off-chain financial records, not merely by the control of a private key. Most importantly, it reaffirms the power of the *Kinsela* "zone of insolvency" principle as a critical tool for creditors, demonstrating that shareholder ratification is no defense to the misappropriation of corporate assets when the interests of creditors have been placed at risk. The decision confirms that the established tools of corporate law and equity are robust, fit for purpose, and fully capable of providing remedies for malfeasance in the digital age.

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Employee Liability for Corporate Tax Penalties: A Judicial Analysis of Dubai Court of First Instance Case

No. 309 of 2025

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The introduction of the UAE Corporate Tax regime, effective from June 2023, has established a new and complex compliance landscape for businesses. With this landscape come novel legal questions regarding accountability. A critical issue is the extent to which an employer, having incurred penalties from the Federal Tax Authority (FTA), may successfully recover such losses from an employee whose duties included tax compliance.

The Dubai Court of First Instance, in its judgment for Labour Case No. 309 of 2025, issued on 9 July 2025, provides significant judicial insight into this question. While the primary claim was a standard labour dispute, it was the employer's counterclaim that raised this novel point of law. This article will provide a dispassionate analysis of the court's findings on the counterclaim, focusing on the legal principles and evidentiary thresholds required to establish employee liability for corporate tax penalties.

The Factual and Procedural Context

The case was initiated by an employee (the "Plaintiff") against his employer (the "Defendant") seeking unpaid salary, end-of-service gratuity, payment in lieu of notice, arbitrary dismissal compensation, and other allowances. The dispute centered on the termination of the Plaintiff's employment and his entitlement to various sums, including a disputed bonus allegedly promised.

The Defendant responded by filing a counterclaim (al-da'wa al-mutaqabila), which is the focus of this analysis. The Defendant sought to hold the Plaintiff, who was employed in its accounts department, personally liable for a fine imposed

by the tax authority.

The judgment summarises the counterclaim as follows:

“In the Counterclaim: … b- Obligating the Defendant-in-counterclaim to pay the Plaintiff-in-counterclaim the sum of AED 10,000, which is the fine it paid to the Federal Tax Authority due to the delay of the Defendant-in-counterclaim in registering for the corporate tax system within the timeframe. … [The Defendant] based its counterclaim on the fact that the Defendant-in-counterclaim had caused material damages to the Plaintiff-in-counterclaim, which is the fine it paid to the Federal Tax Authority…”

The employer’s legal argument was, therefore, one of tortious liability (or a harmful act) under the UAE Civil Transactions Law. It contended that the employee’s specific failure, an omission to complete the corporate tax registration on time, was a wrongful act that directly caused the company to suffer a quantifiable financial loss, namely the AED 10,000 FTA penalty.

The Court’s Legal Framework and Reasoning

The Court of First Instance accepted the counterclaim in form but ultimately rejected it on the merits. The judgment provides a clear exposition of the legal test it applied, which was not derived from the Labour Law but from the foundational principles of civil liability for harmful acts.

The Three Elements of Tortious Liability

The court began its analysis by citing the established legal principle that liability for a harmful act requires the claimant (the employer, in this instance) to prove three essential elements:

1. **Fault (The Wrongful Act):** An act or omission committed by the defendant (the employee) that constitutes a

breach of a duty. This act can be intentional (censure) or negligent (negligence).
2. **Damage (The Loss):** A demonstrable loss suffered by the claimant.
3. **Causation:** A direct causal link between the fault and the damage.

The judgment referenced the principles outlined in Article 282 of the UAE Civil Transactions Law, noting that the burden of proof rests entirely on the claimant (the employer) to establish all three elements. A failure to substantiate any one of these pillars results in the collapse of the entire claim.

Application of the Law to the Facts

The court's rejection of the employer's counterclaim was absolute and based on a fundamental failure of evidence. The judgment identified two distinct and fatal flaws in the employer's case.

1. **Failure to Prove Fault and Causation**

The court found that the employer had not provided sufficient evidence to link the employee's specific actions (or omissions) to the penalty. The judgment states:

"…the Defendant [the employer] did not provide any conclusive evidence that the reason for the imposition of the fine it is claiming was solely attributable to the Defendant-in-counterclaim [the employee]…"

This finding is of paramount importance. The court's use of the term "solely attributable" indicates that it was seeking a high standard of proof. It was not sufficient for the employer to simply state that the employee worked in the accounts department. The employer was required to demonstrate, with evidence, that:

- The specific duty of corporate tax registration was formally and clearly delegated to this employee.
- The employee's failure to perform this duty was the direct and proximate cause of the penalty.
- Other factors, such as a lack of management oversight, unclear instructions, systemic failures, or the newness and complexity of the tax law, were not contributing or intervening causes.

By finding that this evidence was absent, the court concluded that the "element of fault is negated."

2. **Failure to Prove the Damage**

In addition to the failure to prove fault, the court noted a more fundamental evidentiary lapse. The employer failed to prove that it had actually suffered the loss it was claiming. The judgment states:

"…as well as the fact that the Defendant [the employer] did not provide any evidence of the damages it incurred or that it had paid the fine it claims to have paid."

This demonstrates a primary failure to meet the burden of proof. To succeed, the employer would have been required to submit, at minimum, the official penalty assessment notice from the Federal Tax Authority and a corresponding proof of payment (such as a bank transfer or receipt). Without proving that a loss was actually incurred, the claim was unsubstantiated in fact, irrespective of the employee's alleged fault.

The court concluded its analysis of the counterclaim by stating:

"The elements of liability thus collapse, and the counterclaim is rendered unfounded in fact and law, and the court rules to reject it…"

Analysis and Implications

The decision in *Case No. 309 of 2025* is a salient reminder of the precise legal and evidentiary standards required to pass liability for regulatory penalties from a corporation to an individual employee.

- **High Evidentiary Burden:** The judgment confirms that such a claim is not a simple matter of set-off. An employer must affirmatively prove its case by meeting the three-part test for civil liability. The court's focus on "solely attributable" fault suggests that any ambiguity in the employee's job description, reporting lines, or delegation of new compliance tasks will likely be fatal to such a claim.
- **Clarity in Delegation is Key:** For an employer to have a prospect of success in a similar future action, it would need to demonstrate a clear and unambiguous assignment of responsibility. This would likely require documentation such as a detailed job description, an internal memo, or a specific written instruction that assigns the task of corporate tax registration (or other filings) to that specific employee, along with the associated deadlines.
- **Proof of Loss is Non-Negotiable:** The court's second finding highlights a basic, but critical, point. A claim for damages must be supported by primary evidence of the loss. An allegation of payment is not proof of payment.

While this is a Court of First Instance judgment, the legal principles it applies are fundamental. The court did not rule that an employee *can never* be held liable for such penalties. Rather, it affirmed that the burden of proving this liability rests entirely with the employer, and this burden requires conclusive evidence of the employee's exclusive fault, the employer's tangible loss, and the direct causal link between the two.

Corporate Implications: Policies for Tax Personnel

The court's findings on the counterclaim offer a critical lesson for corporations navigating new compliance obligations. The judgment implicitly underscores the necessity of robust internal governance. From a corporate viewpoint, this case demonstrates that relying on a general job title, such as "accountant," is insufficient to establish an employee's liability for a specific regulatory failure. The high evidentiary bar set by the court, requiring proof that the penalty was "solely attributable" to the employee, necessitates a formal and precise framework of accountability.

To protect their position, companies must implement detailed policies and procedures. Job descriptions for finance and tax personnel should be clearly drafted, moving beyond general duties to explicitly delineate responsibility for specific statutory deadlines and filings, including Corporate Tax registration, return submission, and payment. This responsibility should be formally communicated and acknowledged in writing. Furthermore, establishing a matrix of responsibility or a compliance calendar that assigns specific tasks to named individuals can serve as critical evidence in any future dispute, demonstrating that the employee was fully aware of their specific obligations.

Internal Controls and Proving Fault

This judgment also highlights the importance of internal controls and oversight. A corporation's ability to prove an employee's sole fault is significantly weakened if its own internal processes are ambiguous or lacking. Implementing a 'four-eyes' or 'maker-checker' principle* for all tax-related submissions is a prudent mitigatory measure. While this may diffuse sole responsibility, its primary corporate benefit is the prevention of the error and penalty in the first place. This layered approval process, coupled with documented training on new legislation, demonstrates that the company has

exercised due care. Should a penalty still arise due to a clear and demonstrable breach of these established, well-communicated procedures, the employer is in a far stronger position to isolate the fault, prove the employee's negligence, and meet the high evidentiary standard for recovery.

*The 'four-eyes' principle, often implemented as a 'maker-checker' system, is a fundamental internal control mechanism used to prevent errors and fraud.

Its core concept is the segregation of duties, meaning no single person has the authority to complete a critical task from start to finish. The process is split into at least two parts:

1. The Maker: This is the first person (the first pair of eyes) who *initiates* a transaction, creates a record, or prepares a task. For example, they might enter a wire transfer into the banking system or draft a tax return.
2. The Checker: This is a second, independent person (the second pair of eyes) who *reviews* and *approves* (or rejects) the maker's work before it is finalized or executed. This checker verifies the accuracy, legitimacy, and compliance of the task.

By requiring two different individuals to complete one process, the company significantly reduces the risk of an accidental mistake (e.g., a typo in a payment amount) or deliberate fraud (e.g., an employee creating and approving a payment to themselves).

Conclusion: Proactive Mitigation in an Evolving Tax Landscape

The judgment in Case No. 309 of 2025 serves as a definitive judicial signal: UAE employers cannot assume that financial liability for corporate tax penalties can be easily delegated or recovered from employees or others. The court has affirmed a high evidentiary threshold, demanding conclusive proof of

sole and direct fault; a standard that generic job descriptions or ambiguous internal hierarchies will fail to meet.

This ruling moves the entire discussion from reactive litigation to proactive mitigation. The sound corporate strategy is to prevent the penalty from ever being imposed. This requires more than standard policies; it demands the implementation of a robust, defensible, and auditable tax governance framework.

At Wasel & Wasel, we focus on comprehensive tax controversy mitigation, advising clients on the specific internal controls and evidential trails necessary to withstand scrutiny. Our experience in the UAE, spanning over 300 distinct tax dispute procedures with a cumulative value exceeding AED 1 billion, provides our clients with an unparalleled perspective on the tax disputes and enforcement issues.

We understand the precise points of failure that lead to penalties and the exact documentation the courts will demand. We invite corporate leadership, in-house counsel, and finance departments to engage with our specialist team to audit, strengthen, and, where necessary, defend their corporate tax positions in this new and exacting regulatory environment.

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Oman Unveils Commercial Space

Framework and Launch Authorization Regime

November 18, 2025

The Oman Civil Aviation Authority ("CAA") has formally published its directive on *Airspace Usage for Launch Vehicle Activities*. The directive provides the requirements for launch vehicle activities conducted within or from the territory of Oman.

Complementing the directive is a six-page application for operators to seeking to perform a space activity in Oman to submit to the Director General of the CAA. With the framework in place and applications ready, this is the optimal opportunity for investors seeking first movers' advantage in a novel jurisdiction with ostensibly clear space ambitions.

The Directive

The directive empowers the Civil Aviation Authority, in coordination with the Ministry of Transport, Communications and Information Technology ("MTCIT"), to manage and control the nation's airspace for launch vehicle operations and ensure the safety and efficiency of civil aviation.

Under the directive, any operator intending to conduct a launch from or within Omani territory must first coordinate with the MTCIT and then apply to the CAA's Director General of Civil Aviation Regulation. The application must be filed no later than 45 working days before the planned launch date. The directive requires the operator to be accompanied by a "subject matter expert" who can brief the CAA on the intended

activity.

The directive requires applicants to disclose detailed mission parameters, including launch windows, vehicle specifications, and deviation mechanisms. Each launch plan must be supported by a WGS-84 map of the launch site, safety buffers, and flight path coordinates. These data points are critical for the CAA's issuance of a Notice to Air Missions ("NOTAM"), the mechanism through which the Authority reserves and manages portions of national airspace during launch operations, discussed further below.

Additionally, the subject matter expert must facilitate to the CAA a hazard identification plan followed by a risk assessment report evaluating severity, probability, and preventive measures. This is to ensure the fitness of the rocket and the safety of the airspace. The directive further mandates meteorological assessments, a "Go/No-Go" weather criterion, and coordination with the CAA for any required meteorological data or equipment.

Given Oman's proximity to other launch-capable states such as the UAE and Saudi Arabia, coordination with adjacent airspace authorities is expected as part of broader air traffic control considerations.

Application Form

At the outset, before the applicant submits their application to the Director General of the CAA's Civil Aviation Regulation. The application form consists of the following thirteen sections:

1. Details of the applicant
2. The case manager at the MTCIT
3. Details of the launch site operator
4. The mission details
5. Mission summary
6. Key flight parameters and performance metrics

7. Vehicle specifications
8. Launch plan
9. Weather requirements
10. Hazard management
11. Details of state coordination
12. Any additional requirements the CAA may require
13. Declaration

To download the application form, click on the following link: Application of Airspace Operation for Space Activities Issue 2 Revision 00.pdf

Next Steps for Investors

With the framework now in force, this presents an opportunity for prudent operators to gain early operational access to a strategically located Gulf jurisdiction, and the opportunity to influence the development of Oman's broader space governance architecture.

Prospective operators should begin compiling the technical, operational, and safety documentation required under the directive for submission to the CAA.

In the interim, Oman will be preparing to open doors to its first-ever commercial spaceport, the Etlaq Spaceport, by 2027. Etlaq is a massive endeavor and will consist of a mission-control facility, warehouses to be used for rocket manufacturing and testing, and a business park to provide operators with a shared infrastructure. Operators who move swiftly may have their application and NOTAM ready just in time for launch from Etlaq.

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BC Court of Appeal Affirms Application of Traditional Contract Law to Bitcoin Loan Agreements

November 18, 2025

The British Columbia Court of Appeal's decision in Tambosso v. Nguyen, 2025 BCCA 338, provides a salient analysis of how established Canadian contract law principles apply to loan agreements involving cryptocurrency. While the judgment was rendered in chambers on a procedural application to extend time for an appeal, the court's reasons offer significant insight into the judicial treatment of digital asset transactions. The analysis, which required a thorough review of the proposed appeal's merits, affirms that the unique characteristics of cryptocurrency do not inherently displace foundational legal doctrines concerning contract formation, interpretation, and remedies.

The dispute arose from a short-term loan of cryptocurrency. The respondent loaned a total of 22 Bitcoin (BTC) to the appellant in September 2021. The loan was documented in two written agreements. The purpose of the loan was to facilitate the appellant's participation in a security protocol called the "Bypass Procedure" with a third party, which he believed would yield significant profits.

The contracts contained critical terms. They stipulated that the appellant was to repay the principal loan of 22 BTC within

48 hours, irrespective of the success or failure of the Bypass Procedure. Furthermore, the agreements expressly provided that the respondent would bear no responsibility for the actions or omissions of any third party involved.

The Bypass Procedure ultimately failed, appearing to be a fraudulent scheme perpetrated by the third party. The appellant did not repay the loan. The respondent commenced a civil claim and was granted summary judgment by the Supreme Court of British Columbia for approximately $1.2 million, representing the value of the 22 BTC, plus interest and costs (*Respondent v. Appellant*, 2024 BCSC 1551). The trial judge found the loan agreements to be valid and enforceable contracts, which the appellant had breached.

The appellant sought to appeal the trial decision. In assessing his application for an extension of time to file his appeal record, the Court of Appeal was required to consider whether the proposed appeal had any prospect of success. The appellant's arguments centered on three primary areas: contract formation, the applicability of certain contractual defenses, and the overarching proposition that the law must adapt to the novel context of cryptocurrency fraud. The Court of Appeal's methodical rejection of these arguments is instructive.

First, on the issue of contract formation, the appellant contended that no valid contracts existed. He argued that minor, un-initialed deletions he made to the first agreement constituted a counter-offer that the respondent never accepted. He further argued the supplementary agreement was invalid because the respondent had not signed it. The Court found these arguments unpersuasive. Justice Iyer affirmed the trial judge's finding that the deletions did not alter the essential terms of the agreement. More significantly, the Court reiterated the established principle that acceptance of an offer can be implied by conduct. The respondent's act of transferring the additional 4 BTC after receiving the

supplementary agreement constituted objective acceptance of its terms, consistent with authorities such as *Saint John Tug Boat Co. Ltd. v. Irving Refinery Ltd.*, [1964] S.C.R. 614.

Second, the Court addressed the appellant's proposed defenses of mistake, frustration, and duress. The appellant argued that both parties were mistaken as to the legitimacy of the Bypass Procedure. He also submitted that its fraudulent nature was an unforeseeable event that frustrated the contract's purpose. The Court found no merit in these positions, concurring with the trial judge that the contracts had explicitly and intentionally allocated the risk of the Bypass Procedure's failure to the appellant. The doctrine of frustration applies only when an unforeseen event makes performance radically different from what was contemplated, not when the contract itself provides for the very contingency that occurred (*Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58). Here, the failure of the third-party venture was the specific risk the appellant agreed to bear.

Regarding duress, the appellant argued that psychological manipulation by the third-party fraudsters nullified his consent to the loan agreements with the respondent. The Court noted that the jurisprudence does not typically support a finding of duress where the alleged coercion is imposed by a third party unknown to the other contracting party. The respondent was not a party to, nor did he take advantage of, the alleged duress.

The most significant aspect of the decision is its treatment of the appellant's submission that established legal doctrines must be interpreted differently for contracts involving cryptocurrency due to the prevalence of sophisticated digital fraud. The Court acknowledged the trial judge's finding that the appellant was likely the victim of a "nefarious scheme." However, it firmly rejected the notion that the subject matter of the contract necessitates a departure from core legal principles.

Justice Iyer concluded: “[A]s [the chambers judge] found, the complexity of cryptocurrency does not mean that all contracts involving cryptocurrency are necessarily complex or that contract law doctrines must change dramatically to respond to them. The Contracts here were straightforward loan agreements, and the judge made no reviewable error in characterizing them as such.”

This statement underscores a crucial point for legal practitioners and participants in the digital asset market. Courts will look to the substance of an agreement, not merely its context. Where parties enter into a conventional legal structure, such as a loan, the transaction will be analyzed through the well-established lens of contract law. The fact that the asset loaned was digital did not transform a simple loan with clear risk allocation into a joint venture or an instrument requiring novel interpretive rules. The decision reinforces the principle of commercial certainty: clearly drafted terms, particularly those allocating risk, will be upheld.

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Leveraging Public Finance for Spaceports: An Analysis of

Recent Amendments for Commercial Space Infrastructure Under IRC § 142

November 18, 2025

The immense capital expenditure required to establish and maintain terrestrial space infrastructure has long represented a significant financial barrier for the commercial space industry. Historically, funding for such ambitious projects has been dependent on direct government contracts or the high-cost capital of venture equity markets. A pivotal change in United States federal tax law, however, has introduced a sophisticated public finance mechanism designed to lower this barrier, fundamentally altering the calculus for investing in the ground-based assets that underpin the space economy. The amendment of Internal Revenue Code § 142 to include spaceports as a class of "exempt facility" for which tax-exempt private activity bonds may be issued marks a strategic integration of the space sector into the mainstream of American infrastructure finance. This legislative action effectively signals a policy determination that private space infrastructure now serves a public purpose akin to airports and docks, meriting access to the same advantageous financing tools.

Legal Framework: The "Exempt Facility Bond"

The legal foundation of this opportunity lies within the concept of the exempt facility bond itself. Section 142 of the U.S. Internal Revenue Code carves out specific exceptions to the general rule that bonds issued to benefit private entities

are taxable. This section enumerates a select list of privately operated or utilized facilities, such as airports, docks, wharves, and mass commuting facilities, which are deemed to provide a significant public benefit. By adding "a spaceport" to this list, the U.S. Congress has enabled state and local governments to issue bonds on behalf of a private enterprise for the purpose of developing space facilities, with the interest paid to bondholders being exempt from federal income tax. This tax exemption translates directly into **lower borrowing costs** for the project, as investors are willing to accept a lower interest rate in exchange for the tax benefit.

Anatomy of a "Qualified Spaceport"

Crucially, the legislation provides a comprehensive and forward-looking definition of what constitutes a "spaceport." This is not limited to the physical launchpad but is crafted to encompass an entire industrial ecosystem. The statute specifies that the term includes fixed assets, equipment, and facilities located at or near a launch or reentry site that serve a range of functions. An analysis of these functions reveals the law's broad intent. The inclusion of facilities for **"manufacturing, assembling, or repairing spacecraft, space cargo, or components thereof"** is particularly significant. It extends the benefit of tax-exempt financing beyond launch service providers to the vital upstream supply chain of hardware manufacturers and component suppliers. This provision directly enables the development of integrated "spaceparks," where design, manufacturing, testing, and launch operations can be co-located to create powerful efficiencies.

Furthermore, the definition covers infrastructure for **"flight control operations,"** acknowledging the critical and costly ground-station and mission-control networks necessary for any space venture. It also explicitly includes facilities for **"transferring crew, spaceflight participants, or space cargo to/from spacecraft,"** a clause that directly addresses the

burgeoning markets for both space tourism and in-space logistics. This statutory breadth ensures that the financing mechanism is not narrowly prescriptive but can adapt to the diverse business models emerging within the commercial space sector.

Structuring the Public-Private Partnership (P3)

A central pillar of this framework is the intricate structure designed to facilitate public-private partnerships while adhering to the tax code's requirement of governmental ownership. To qualify, the financed facilities must be governmentally owned for tax purposes. The law, however, provides a clear and practical **"safe harbor"** that allows a private entity to lease and operate the facility without jeopardizing the bonds' tax-exempt status. This legal architecture is critical, as it allows a public entity, like a port authority or a county economic development corporation, to serve as the issuer and legal owner while a private space company brings its specialized expertise and operational control to the project.

The safe harbor provisions are precise.

1. The lease term granted to the private operator **cannot exceed 80%** of the property's reasonably expected economic life, ensuring the public entity retains a meaningful residual interest in the asset.
2. Any option granted to the private lessee to purchase the facility must be at a price equal to its **fair market value** at the time the option is exercised. This prevents the arrangement from functioning as a disguised installment sale at a pre-arranged, below-market price.
3. The private operator must formally **waive any right to claim federal depreciation deductions or investment tax credits** with respect to the facility. This provision prevents a project from receiving a "double benefit" of both tax-exempt financing and private-owner tax

deductions.

This carefully balanced structure provides a tested and bankable model for allocating risk, responsibility, and reward between public and private partners.

Navigating Federal Entanglement Rules

The legislation also astutely navigates the complex rules regarding federal guarantees. Generally, private activity bonds are ineligible for tax-exempt status if their payment is directly or indirectly guaranteed by the federal government. This rule prevents the federal government from using the municipal bond market to provide backdoor subsidies. However, in the context of spaceports, where federal agencies like NASA and the Department of Defense are often foundational, long-term customers, this prohibition posed a fatal obstacle. A multi-year launch services agreement or facility lease with a federal agency could easily have been interpreted as an impermissible guarantee. The amended code provides a crucial clarification: **payments made by the United States** for the use of a spaceport under ordinary rental or user-fee arrangements **will not be treated as a federal guarantee**. This carve-out is of paramount importance, as it provides the certainty needed for projects anchored by federal contracts to proceed with tax-exempt financing, thereby aligning the tax law with the business realities of the aerospace and defense sectors.

Conclusion: A Strategic Policy Shift

In sum, the inclusion of spaceports under Section 142 is far more than a minor regulatory adjustment. It is a sophisticated piece of financial engineering that creates a clear, legal pathway for channeling lower-cost capital into essential space infrastructure. By leveraging the mature public finance market, this legislation provides a powerful new tool for economic development, enabling states and municipalities to compete for high-tech investment and job creation. For the

commercial space industry, it reduces the cost of capital, a primary constraint on growth. For investors, it creates a novel, tax-advantaged asset class with exposure to a transformative economic frontier. This framework is a deliberate act of industrial policy, designed to accelerate the build-out of a robust domestic space infrastructure and secure American leadership in the commercial space domain.

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Designated Zones and the Burden of Proof: An Analysis of Federal Supreme Court Case 1570/2024 on Excise Tax

November 18, 2025

In a definitive judgment that clarifies the boundaries of criminal liability for tax evasion, the **Federal Supreme Court**, in its session on 5 August 2025, has affirmed the acquittal of individuals accused of evading excise tax amounting to over fifteen million dirhams. The ruling, in Case No. 1570 of 2024, provides a robust analysis of the distinction between the mere possession of untaxed goods within a designated zone and the substantive offence of tax evasion. It reinforces the paramount importance of judicial conviction and the high

threshold of proof required by the prosecution in criminal matters.

The case was brought by the Public Prosecution following the discovery on 9 February 2022 of a substantial quantity of **excise goods**—specifically 1,787,120 units of one product and 32,820 kilograms of another—which did not bear the requisite digital tax stamps. The goods were found in the warehouse of a shipping company. The Prosecution's case was straightforward: the possession of such goods within the territory of the State, without the tax having been paid, constituted a deliberate evasion of a tax that was legally due. After the defendants were acquitted by the Court of First Instance, a decision upheld by the Court of Appeal, the Public Prosecution elevated the matter to the nation's highest court, arguing that the lower courts had erred in law and fact.

At the heart of the final judgment lies a powerful restatement of a core tenet of criminal jurisprudence. The court began its reasoning by affirming the principle that, **"The essence of criminal trials lies in the conviction of the trial judge, based on the evidence presented, regarding the guilt or innocence of the accused."** The judgment makes clear that a court cannot be compelled to adopt a particular piece of evidence. The law vests in the judge the full authority to weigh the probative value of the evidence and to found his judgment upon any proof or presumption with which he is satisfied. Most critically, the court reiterated that **"it is sufficient in criminal trials for the judge to harbour doubt as to the soundness of the accusation in order to acquit."** This principle establishes not a mere technicality, but a formidable barrier that the prosecution's evidence must overcome.

Applying this principle to the facts, the Federal Supreme Court found the prosecution's case to be fundamentally deficient. The judgment adopted the reasoning of the lower court, which had concluded that the evidence **"was inadequate**

to reach the threshold of conviction, having been beset by frailty and weakness and enveloped in such doubt and suspicion that the court could not be satisfied by it." The prosecution's case rested almost entirely on the findings of a tax enforcement officer. This, in the court's view, was insufficient to establish guilt beyond a reasonable doubt.

The court's decision turned on a crucial finding of fact regarding the location and purpose of the seized goods. It drew a sharp and legally significant distinction regarding the warehouse's location in a **"designated zone,"** defined as a fenced area with security controls specifically intended to monitor the movement of excise goods.

The judgment determined that the goods had not been released for consumption into the local market. Instead, they were being stored **"for the purpose of transit, the clearance of their transactions, and their subsequent export out of the country."** This was consistent with the defendant's unwavering denial and his explanation that his company was merely a shipping and logistics agent. The court noted that **"it is legally established that excise goods which are to be exported are exempt from tax, provided they are not released for consumption."** As the goods were seized within a designated zone and destined for an overseas market, they were not yet subject to the excise tax.

In dismissing the Public Prosecution's appeal, the Federal Supreme Court delivered a judgment of significant clarity for businesses engaged in logistics and trade. It confirms that the physical location of goods is paramount. The presence of untaxed excise goods within the secure confines of a designated zone for the purpose of re-export does not, in itself, constitute the crime of tax evasion. The ruling stands as an authoritative statement that the heavy burden of proof in a criminal case remains squarely on the prosecution, and that mere suspicion, however strong, cannot substitute for evidence that removes all reasonable doubt.

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War Series: Arbitration Enforcement Amidst Sovereign Capital Controls

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In the framework of international dispute resolution, the enforcement of arbitral awards often intersects with the sovereign economic policies of the states involved. A particularly complex issue arises when a party seeks to satisfy a monetary award within a jurisdiction where stringent capital controls are in effect, rendering the transfer of funds across borders difficult or impossible. The case of *Iraq Telecom Limited v. IBL Bank S.A.L.*, decided by the United States District Court for the Southern District of New York, provides a significant legal analysis of this very problem, examining how courts in an enforcement jurisdiction weigh the practical impact of such controls when considering a stay of proceedings.

The dispute originated from financing arrangements for Korek Telecom, an Iraqi telecommunications operator. The petitioner, Iraq Telecom, held a subordinated loan position relative to the respondent, IBL Bank of Lebanon. Following the discovery of a previously undisclosed cash collateral arrangement securing IBL’s loan, Iraq Telecom initiated arbitration in

Beirut, Lebanon, pursuant to their Subordination Agreement. An arbitral tribunal ultimately found in favor of Iraq Telecom, concluding that it had been fraudulently induced to enter the agreement. The tribunal issued an award for approximately $3 million in costs and fees and declared the Subordination Agreement to be null and void.

Subsequently, the parties pursued legal action in two different countries. Iraq Telecom petitioned the court in New York to confirm and enforce the award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), seeking to attach IBL's assets in U.S. correspondent bank accounts. Concurrently, IBL initiated an action in Lebanon, the primary jurisdiction, to have the arbitral award annulled. Before the New York court, IBL requested that the confirmation proceedings be stayed pending the outcome of its annulment action in Lebanon.

The central issue for the U.S. court was how to treat IBL's attempt to settle the award within Lebanon's financial system. IBL utilized a "tender and deposit" procedure under Lebanese law, depositing a banker's check for the award amount with a notary public in Beirut. This action's practical effect was conditioned by the severe economic crisis and capital controls operative in Lebanon at the time. The court took note of this context, observing that "under the extraordinary circumstances that currently prevail in Lebanon, banker's checks denominated in foreign currency cannot be readily liquidated into cash at face value by the recipient." Citing the inability to move funds out of the country, Iraq Telecom declined to accept the deposited check as satisfaction of the award.

In deciding whether to grant IBL's request for a stay, the court applied a multi-factor analysis designed to balance the goals of the New York Convention with principles of international comity. The court considered the objective of arbitration as an "expeditious resolution of disputes" and noted the timing of IBL's annulment filing in Lebanon. A

critical component of the court's decision was its assessment of the balance of hardships. It found that Iraq Telecom faced a significant challenge, as the capital controls meant it would "have difficulty obtaining effective payment of the Award within Lebanon and must rely on the Convention's procedures for confirmation and enforcement outside Lebanon." The court also considered the financial condition of IBL in its analysis. By contrast, IBL did not demonstrate a comparable hardship that would result from the immediate confirmation of the award in the United States.

Ultimately, the court denied the stay and proceeded to confirm the award. The decision did not turn on the merits of the Lebanese annulment action but rather on the practical consequences of deferring enforcement. It determined that the goals of the New York Convention, to ensure the effective and prompt enforcement of arbitral awards, would be impeded if a party could compel satisfaction in a jurisdiction where capital controls rendered the award's monetary value inaccessible. The ruling stands as an important precedent, clarifying that courts in secondary jurisdictions may consider the real-world impact of a primary jurisdiction's economic policies and capital controls when exercising their discretion to stay or enforce a foreign arbitral award.

As geopolitical tensions increase and sovereign states predictably implement capital control measures to manage economic stress, award-creditors will increasingly look to solutions that mitigate the risk of trapped funds. The strategic approach seen in this case is likely to become more prevalent. Commercial parties will proactively seek to confirm and enforce arbitral awards in stable financial centers where debtors hold assets, thereby using the robust framework of the New York Convention to bypass the economic barriers erected in a debtor's home jurisdiction. The *Iraq Telecom* decision thus reinforces the Convention's role not merely as a tool for resolving disputes, but as an essential mechanism for

navigating the financial realities of an increasingly fragmented global economy.

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Spain’s EU Law Defence Rejected in Australian Award Ruling

November 18, 2025

In a landmark decision clarifying the relationship between European Union law and public international law obligations, the Federal Court of Australia has delivered a comprehensive judgment in *Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028. Stewart J has ordered the enforcement of four arbitral awards, totalling approximately €500 million, against the Kingdom of Spain, providing a robust affirmation of the integrity of the international investment arbitration system. The judgment navigates a complex intersection of foreign State immunity, treaty interpretation, and the so-called “intra-EU objection” that has been litigated fiercely in courts worldwide.

The proceedings arose from Spain’s alterations to its renewable energy regulatory framework in the early 2010s. Foreign investors, alleging that these changes breached the fair and equitable treatment standard under Article 10 of the

Energy Charter Treaty (ECT), initiated arbitrations under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). Having secured favourable awards from ICSID tribunals, the investors, or their assignees, sought to enforce those awards in Australia under the *International Arbitration Act 1974* (Cth). Spain resisted, mounting a multifaceted defence that struck at the very foundation of its consent to arbitrate.

Spain's primary contention was that it was immune from the Court's jurisdiction pursuant to section 9 of the *Foreign States Immunities Act 1985* (Cth). While the High Court's recent decision in *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl* [2023] HCA 11 held that accession to the ICSID Convention constitutes a waiver of immunity for enforcement proceedings, Spain sought to distinguish the present case. It argued that the High Court's ruling did not govern a situation where the binding status of the awards themselves was in dispute. This challenge to the awards' validity was predicated on the jurisprudence of the Court of Justice of the European Union (CJEU), notably in cases such as *Achmea* and *Komstroy*. Those decisions established that arbitration clauses in investment treaties are incompatible with the foundational treaties of the EU when applied to disputes between an EU Member State and an investor from another Member State. Spain argued that this principle of EU law rendered its offer to arbitrate under the ECT inapplicable to the EU-based investors, meaning no valid arbitration agreement was ever formed. Consequently, the awards were not "binding" under Article 53 of the ICSID Convention, and Spain had not waived its immunity in respect of them.

Stewart J firmly rejected this line of reasoning by returning to the fundamental architecture of the ICSID Convention. His Honour affirmed the widely-held view that the Convention establishes a "self-contained or closed-loop system" for the review and enforcement of awards. The Court found that once an

ICSID tribunal has determined its own jurisdiction and rendered an award, and internal remedies such as annulment have been exhausted, the role of a domestic court in an enforcement proceeding is circumscribed. As the Full Court had previously noted, the sole issue for a competent court under Article 54(2) of the Convention is the presentation of a certified copy of the award. An Australian court cannot look behind the award to re-examine the tribunal's jurisdiction or merits. This principle, the Court reasoned, is central to the Convention's object of providing legal security for international investments by mitigating sovereign risk.

Critically, the judgment addressed the apparent conflict between Spain's obligations under EU law and its duties under the ICSID Convention. Stewart J determined that the primacy of EU law, as articulated by the CJEU, is a rule that operates within the autonomous EU legal order. It does not extinguish Spain's pre-existing obligations under public international law owed to non-EU states such as Australia. As a party to the ICSID Convention, but not the EU treaties, Australia's obligation under Article 54 to recognise and enforce the awards remained unaffected by Spain's "juridical dilemma".

The Court also dismissed Spain's alternative contention that the EU treaties had effected an *inter se* modification of the ICSID Convention among EU Member States. Applying the principles of treaty modification reflected in the Vienna Convention on the Law of Treaties, Stewart J found that the obligations under the ICSID Convention, particularly those concerning the recognition and enforcement of awards, were *erga omnes partes*—owed to all contracting states collectively, not merely bilaterally. Such obligations, which protect the common interest in the stability of the entire investment framework, cannot be modified by a sub-group of parties without affecting the rights of others.

Further, the Court resolved a novel issue concerning the assignment of the awards. In two of the proceedings, the

original award creditors had assigned their rights to Blasket Renewable Investments LLC. Spain argued that the Court lacked power to enforce an award in favour of a non-party to the original arbitration. His Honour rejected this, concluding that the rights under an ICSID award, once given the force of law in Australia, constitute a chose in action capable of assignment. Nothing in the ICSID Convention itself prohibits such an assignment.

The decision in *Blasket* represents a significant contribution to the global jurisprudence on the enforcement of investor-state awards. It confirms that an Australian court will not permit a foreign state to use conflicts within another legal order, however profound, as a shield to resist its clear obligations under public international law as implemented into Australian domestic law. The judgment provides unequivocal support for the principle that the ICSID regime is a self-contained system, reinforcing Australia's status as a reliable and pro-enforcement jurisdiction.

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