

# LEX TALK

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**BSB** LEGAL  
CONSULTANTS  
**DUBAI**

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# ABOUT

BSB Legal Consultants pursues excellence in yielding a wide spectrum of alternatives that caters to the legal requirements of an individual. We are a full service law firm which provides for services to local as well as international clients. We have progressively augmented our services and the expertise in the field of legal services and are now one of the leading law firm of United Arab Emirates. We at BSB Legal, furnishes far-reaching representation on a catalog of legal services that are inclusive of not only the commercial law like merger and acquisitions, real estate, intellectual property law, private equity, employment and labor, taxation, licensing and registration, business setups etc, but also of family or personal laws.

Our team of Corporate Lawyers in Dubai are the experts of global legal sphere who are proficient in handling matters of international jurisdiction. Owing to their skills and experience, they are well capable of discharging high standard services along with practical bespoke legal advises to our clients.

## **Why we are different?**

What makes us stand apart from the rest, is our utmost involvement and approach with respect to initiation of communication and building of relationship with our clients. Our dealing are much liberal, which allows the client to have tailored and straight-forward solutions for their legal dilemmas.

Our legal professionals are dedicated and passionate about their field of law and the work they undertake. They incessantly strive to enhance their knowledge by sharing expertise and ideologies. Our team of litigation lawyers in Ras Al Khaimah are always encouraged to have lateral thinking and resolve intricate legal matters with fresh perspective.

We at BSB Legal, focuses on virtuous and professional responsibility towards clients as well as the employees or lawyers of the company. Our law firm invests considerable amount of time and resources in predicting and resolving legal or corporate issues of our clients which has assisted us in maintaining a healthy and long-lasting relation with out clientele.

# CHANGING ARBITRATION LANDSCAPE IN DUBAI



## Introduction

As a landmark change in the arbitration landscape in Dubai, the Ruler of Dubai abolished the Emirates Maritime Arbitration Centre (EMAC) and DIFC Arbitration Institute (the DAI), With the pronouncement of Decree 34 of 2021. The right and obligations of the aforementioned institutions shall be transferred to the Dubai International Arbitration Centre (DIAC).

The DAI was established in the year 2004 to promote an alternative dispute resolution (ADR) mechanism in the country. Even in the year 2008, it entered into an agreement with the LCIA for the establishment of the DIFC-LCIA Arbitration Centre. However, with this new decree, DIFC-LCIA will cease to exist.

Now, at this juncture, an important question arises – What would happen to those arbitration agreements having DIFC or LCIA as the governing institutions of the arbitration to adjudicate any dispute arising out of the contract.

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## Impact of the decree

As per the decree, if the parties have selected DIFC as the seat of arbitration, the DIFC courts shall have jurisdiction to entertain all the disputes and determine the procedure and challenges concerning the arbitral award. If the parties failed to determine the seat, the DIFC shall be the default seat. Now, with the abolishment of DIFC, a court of arbitration will be established within the DIAC to conduct overall supervision of all such cases, including determination of arbitration rules, the appointment of tribunals, and fixation of costs between the parties.

The arbitration proceedings that have already been incepted in the DIFC or LCIA shall continue as per their normal course of action under the supervision of the DIAC. It is important that the arbitration shall be governed by the existing rules and there shall not be any material changes in the rules concerning procedural aspects of the case. In all the cases, where the DIFC-LCIA is the arbitration institution and the Tribunal is yet to be constituted, DIAC shall replace the DIFC-LCIA for the purpose of determining the disputes between the parties.

This decree also raised a couple of important questions, such as how to determine the cost and interest while issuing an arbitral award as the DIAC rules and the DIFC-LCIA rules are completely in contrast with each other. DIAC determines the fee on an ad valorem scale whereas the DIFC-LCIA was adopting the hourly rate model of LCIA.

### Conclusion

In the opinion of our lawyers, the main objective of this decree is to highlight DIAC as a premier Arbitration Institution in the world. The earlier cases running in the DIAC-LCIA shall be transferred to the DIAC and it will supervise the same. It is again highlighted that the rules and procedures as determined earlier will not be affected by this decree.

# FUNDAMENTAL CHANGES ANNOUNCED IN DIAC ARBITRATION RULES



In Dubai, some key changes have been introduced in the arbitration regime to offer more flexibility and efficiency. Arbitration is the most widely sought alternative dispute resolution mechanism across the globe. The Dubai International Arbitration Center (DIAC) is a prominent arbitral institution having its own rules and regulations. Recently, the Federal Decree No. (34) of 2021 has made notable changes in the arbitral institutions in Dubai.

Some major changes include the abolishment of Emirates Maritime Arbitration Centre, 3-tier organization of DIAC, encouragement toward conciliation, etc. In this article, we will discuss the key changes introduced by this new law with the help of our best arbitration lawyers of UAE.

## What does this new law offer?

The IP law does not provide for the establishment of a separate DIFC registry as it does not want to put an additional burden on the IP owners to get it registered again at DIFC. Thus, any IP right (copyright, trademark, patent, etc) which is registered in UAE shall be automatically enforceable in DIFC. The new law is in harmony with the existing Federal law governing IP rights in the country.



## 01. Organization of DIAC

With this new law, the organization of DIAC is divided into 3 levels :

- Administrative body
- Arbitration courts
- Board of Directors

The board of directors will act in supervisory capacity and perform their duties to attain the goals of DIAC.

As pointed out by our top arbitration lawyers of Dubai, the arbitration court will not only replace the earlier executive committee but also supervise the ADR services rendered by the DIAC, such as appointment of arbitrators, mediators, etc. The court shall convene minimum 1 meeting within 60 days. The court will review the draft award before the pronouncement, manage the expense of the tribunal, and ensure compliance with other procedural requirements

The administration body is entrusted with the responsibility to supervise the day to day functioning of the DIAC.

## 02. Organization of DIAC

The new law provides for a conciliation mechanism with an objective of amicable dispute settlement between the parties. The conciliation proceedings will be conducted in accordance with the rules of DIAC

Article 3 of the New law provides that a single conciliator is appointed by the arbitration court for the settlement of disputes between the parties. The conciliator must ensure that both the parties shall be given adequate opportunity to present their case along with the supportive documentary evidence.

Our best arbitration lawyers of UAE have pointed out that the time period of conciliation proceedings is 2 months, which can be extended after obtaining consent from both the parties. If no settlement is reached between the parties, the proceedings shall be terminated forthwith without affecting the merits of the case.

## 03. Expedited proceedings

To save the precious time of both the parties, the new law provides for a concept of expedited hearing. As per Article 32, the expedited hearing shall take place in the following circumstances-

- When the claim and the counterclaim in the dispute is less than or equal to AED 1,000,000;

- When the parties express their willingness of expedited hearing in writing;
- When the court feels that it is essential to protect the ends of justice by expedited hearing in certain exceptional circumstances.

The expedited proceedings must be completed within 3 months from the date of appointment of arbitrator. However, the parties need to pay the full cost of arbitration in advance.

## Other highlights of the new Law

- The new law also offers an alternative arbitral appointment process offering more autonomy to the parties;
- It also provides for the mechanism of appointment of emergency arbitrators in accordance with Article 2 of new rules;
- As per Article 8, the tribunal can consolidate the arbitral proceedings wherein there are multiple Claimants and Respondents emanating from the same case.

## Other highlights of the new Law

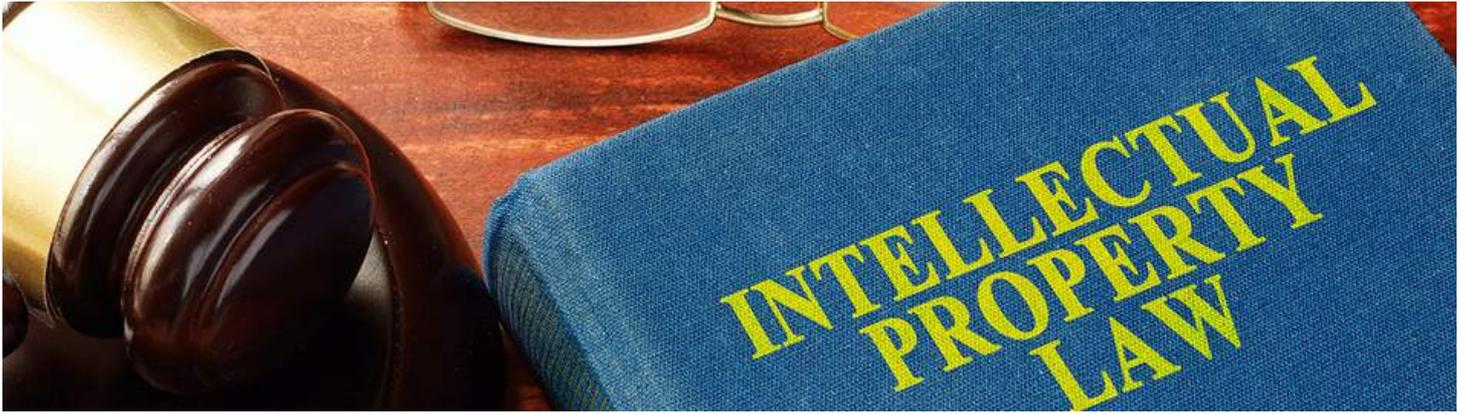
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- As per Article 8, the tribunal can consolidate the arbitral proceedings wherein there are multiple Claimants and Respondents emanating from the same case.

### Conclusion

With the introduction of this new law, some fundamental changes have been introduced to strengthen this widely sought dispute resolution mechanism. This amendment aligns with the international standard set by the International Chamber of Commerce (ICC) and LCIA. However, if you want to know further, you can contact one of our best arbitration lawyers of Dubai.

BSB legal is a specialized arbitration law firm of UAE. Our best lawyers will assist you in obtaining, execution and challenge of award. To get more information, kindly contact one of our best lawyers in UAE.

# IP LAWS ISSUED IN DIFC



To encourage innovation and the protection of creativity, Dubai International Financial Centre (DIFC) has comprehensive intellectual property laws. The principal legislation pertaining to intellectual property rights is Law No. (14) of 2019 (DIFC IP Law) which aims to cater to the growing business need. It is interesting to note that the IP Law was introduced after the establishment of the Dubai Future District, which is considered as largest innovation area in the world. The DIFC law regulates patents, industrial designs, utility certificates, trade names, trade secrets, etc. In this article, we will highlight some of the key aspects of the DIFC IP law.

## **1. Recognition of the IP rights registered in the UAE**

The IP law does not provide for the establishment of a separate DIFC registry as it does not want to put an additional burden on the IP owners to get it registered again at DIFC. Thus, any IP right (copyright, trademark, patent, etc) which is registered in UAE shall be automatically enforceable in DIFC. The new law is in harmony with the existing Federal law governing IP rights in the country.

## **2. IP ownership in the employment relationship**

The IP law does not provide for the establishment of a separate DIFC registry as it does not want to put an additional burden on the IP owners to get it registered again at DIFC. Thus, any IP right (copyright, trademark, patent, etc) which is registered in UAE shall be automatically enforceable in DIFC. The new law is in harmony with the existing Federal law governing IP rights in the country.

### **3. Well known trademarks and trademark license**

To classify a trademark as a 'well-known trademark', the new law has set out new criteria which were lacking in the UAE Federal law governing IP. The criteria include: (1) the degree of knowledge; (2) the duration and extent to which this trademark applies; (3) the area of use; (4) the record of successful enforcement of rights; and (5) the commercial value associated with the trademark. The new law regulates trademark licensing and any use by the licensee against the provision of this Law will be considered an infringement. It is important to note that the licensee has been vested with the right to take necessary legal actions against third-party infringements.

### **4. Trade names**

In IP jurisprudence, one of the most common conflicts arises between trademarks and trade names. It occurs because there are separate registers for both trademarks and trade names and there is no suitable mechanism to cross-check the data feed in both the registers. Even in the UAE Federal Law, there is no concrete provision solving this issue. The DIFC IP law has resolved this conflict by allowing legal actions against a trade name that is considered to conflict with a trademark and vice-versa.

### **5. Patent infringement test**

The DIFC IP law has spelled out a list of acts that shall be considered the infringements of a registered patent. Like a trademark, there are some criteria to determine whether a violation has occurred or not. For instance - the infringement of one claim granted under the patent will be considered an infringement of the patent.

## 6. Trade secrets

It is the first law that has addressed the issue of trade secrets in the Emirate.

The term trade secret will include all of the following-

- The information contained in Schedule 1 of the law;
- The information involving actual or potential economic value which may be used by others to gain unjust economic benefits;
- The person is lawfully in control of some valuable information and has taken reasonable steps to keep such information secret.

## 7. Penalties and DIFC Courts

The jurisdiction to adjudicate the IP-related cases is conferred to DIFC Courts as per Article 68 (2) of the IP law. Article 67 empowers an aggrieved person to approach the court to seek damages against the unlawful infringement.

### Conclusion

The DIFC IP law is a comprehensive legislation that is drafted keeping in mind the best international practices. It has detailed provisions pertaining to trademark, copyright, and patent infringement. Further, it has enumerated well-codified criteria to ascertain well-known trademarks and trade secrets. The DIFC Courts are given the power to adjudicate the dispute and to prevent infringement, there are strict penalties along with other punitive measures.

# NEW VISA RULES ANNOUNCED IN UAE

Recently, UAE government has made big headlines by introducing groundbreaking rules relating to visas and immigration policy. These rules include a longer visit visa for tourists, a 10-year golden visa scheme, and new provisions for obtaining long-term residency. The aforesaid rules will be the executive regulations of the Federal Decree-Law on Entry and Residence of Foreigners.



In this article, we will discuss the major highlights of the new regulations with the help of our **best lawyers of Dubai**.

## What does this new law offer?

In the opinion of our top lawyers of Dubai, the new regulations have detailed provisions regarding the creation of new visas. Further, it also provides much needed machinery to approve other kinds of visa, which were already announced by the government, such as Golden visa residency system. Though the details regarding golden visa were rolled out in the public domain about 18 months ago, they got legal status only after this regulation.

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## 1. Golden visa

With the golden visa, the government is planning to attract more skilled and efficient professionals in the field of science and technology. The brightest mind from all over the world will reside in the country, and subsequently, will play a major role in economic development. To promote investment, wealthy investors and entrepreneurs are eligible to secure a golden visa. Considering the benefits, the expats would be highly interested to make UAE as their home country.

## 2. Green visa

This type of visa caters to the needs of people belonging to middle income brackets, such as skilled workers, freelancers, and self-employed individual. Talking about eligibility criteria, our best lawyers of Dubai has highlighted that the interested person must have a minimum monthly salary of AED 15000 and a bachelor degree in law, science and technology.

## 2. Family sponsorship

Prior to the executive regulations, it was provided that the parents were allowed to sponsor their children until they were 25 instead of 18 years. In the new rules, the parents can sponsor their disabled child into adulthood. However, parents are vested with the right to sponsor their unmarried daughter at any age.

### Conclusion

The executive regulations are a welcome step in the direction of creating a knowledge economy, as it aims to attract bright and tech-savvy minds with new visa schemes. Our best lawyers of Dubai have suggested that the employees will be eligible for a golden visa, if they are nominated by persons who are already holding that visa. You are strongly advisable to take the assistance of best lawyers of Dubai to reduce future hassles.

BSB legal is a specialized law firm of Dubai. Our best lawyers will assist you in visa applications, obtaining regulatory approvals, and other advisory work. To know more information, kindly contact one of our immigration lawyers in UAE. You can email us at [info@bsb.legal](mailto:info@bsb.legal) or call +971 5 016 05046.

# UAE ANNOUNCED UNEMPLOYMENT WAGES FOR EMIRATI & RESIDENTS



In a ground-breaking move, the UAE government has introduced a 'social support program' under which the people who have lost their jobs will get a cash payment every month. In this program, every employee will contribute to an insurance company initiative, and in return, he will get 60 percent of their salary to meet the basic expenses after getting

unemployed. This scheme applies to both Emirati and foreign employees working in the private and public sectors. In this news article, we will discuss the major highlights of this new scheme with the help of our best employment lawyers of UAE.

## **What does this new social security scheme offer?**

This scheme is introduced by the Minister of Human Resources and Emiratisation, UAE. In the opinion of our best lawyers of UAE, the main objective of this scheme is to provide much-needed financial assistance during the unemployment period. This scheme will provide vital protection to employees by giving them a security blanket for the future.

With regard to the procedural requirements of the scheme, it is pointed out by our top employment lawyer of Dubai that every employee is required to contribute some part of their salary to an insurance company initiative. The employees will be offered a wide range of insurance packages at economical prices.



The main highlight of this new scheme is that if a person loses his job, he will be provided with 60% of his salary each month or up to AED 20,000 (whichever is lower). However, it is specifically pointed out by our best lawyers of UAE that this support is not for an indefinite period, and in case you will fail to find a job within a reasonable time frame, then this financial support will end. In UAE, salary is paid on a lump sum basis every month, including basic pay, housing, and transport. Urging the global pandemic and the subsequent lockdown, many people lost their jobs without having any other source of earning money.

This scheme demonstrates the ambitious vision for the citizens and the residents. After the introduction of this scheme, economic resilience will improve considerably with increasing productivity. This scheme will further help to retain the best global talent in the private and the public sector.

## **Conclusion**

UAE has emerged as tier-one jurisdiction of this world for all the matters relating to labor welfare and the protection of employees. It is important to note that this scheme will not only benefit the employees but the employer will also be able to recruit and attract the best talent of the globe. This scheme will come into force from January 2023. To get more such information regarding employment law, you can contact one of our best employment lawyers of UAE.

BSB legal is a specialized employment law firm of Dubai. Our best lawyers will assist you in making applications, litigation, and other advisory work. To know more information, kindly contact one of our best lawyers in the UAE. You can email us at [info@bsb.legal](mailto:info@bsb.legal) or call +971 5 016 05046

# TIMESHARE IN DUBAI: KNOW WHAT THE LAW SAYS

Dubai is one of the widely sought global tourist destinations having numerous timeshare schemes and projects. A timeshare is a type of vacation property with a shared ownership model. In Dubai, there was a stringent need to regulate this industry for a very long time. The Ruler of Dubai passed Law No. (14) of 2020 (Dubai Timeshare Law) to govern and regulate this industry. In this article, we will discuss some key features of the timeshare law in Dubai.



## What is a timeshare?

In the opinion of our lawyers, though there can be different kinds of schemes or projects, timeshare mainly involves properties in hotels or resorts with either of the following-

- Multiple purchasers buying use rights over a specific unit, which is typically known as a timeshare contract;
- Purchaser acquiring points that can be exchanged with the right of use of the properties which may be located in different countries. This is known as a points contract.

The timeshare is different from the fractional ownership as in the former the investor not only acquires period usage rights but also gets an undivided share in the ownership of the property. It is an unsaid truth that both timeshare and fractional ownership are much more economically viable in comparison to second homeownership. It is interesting to note that specific laws and regulations to govern fractional ownership in Dubai may be released in the near future. For holidaymakers, timeshare offers a more flexible option as it can be applied to vacation resorts, villas, and apartments.

One of the major highlights of Dubai's timeshare law is that it does not contain provisions relating to fractional ownership and it makes a clear demarcation between the timeshare contract and points contract.

## **What is a timeshare?**

Dubai timeshare law has threefold objectives which are as follows-

- To govern and regulate the timeshare industry in accordance with the settled and the best international practices;
- To encourage tourism and boost the real estate sector of the Emirate;
- To protect the interest of the consumers.

The timeshare law applies to the owners, managers, and developers who own, manage or advertise the timeshare property in Dubai. Further, it applies to all the free zones and investment areas, including the DIAC.

## **The increasing role of DTCM**

As per the law, the Department of Tourism and Commerce Marketing (DTCM) is the regulatory and the licensing authority, which shall be responsible for the issuance of a mandatory license to the entities involved in selling timeshare products. It will coordinate with the Dubai Land Department for the registration of timeshare use rights. It is also given the power to handle complaints arising out of any timeshare contract. It will maintain a database of all the licensed entities.

## Mandatory contractual provisions in a timeshare contract

The law has prescribed certain essential terms and conditions that must be incorporated in a timeshare contract or a point contract, which are as follows-

- The contract must be in writing while having the signatures of both parties. It must contain the name of the parties and the place where the contract is executed;
- The contract must explicitly state the terms and the financial consideration involved in the contract;
- In the contract, the purchaser must be given a cooling-off period of 10 days from the date when the purchaser received the signed copy of the contract;
- The subject matter of the contract must be such a unit that has been duly approved by the DTCM.

**DTCM Approved!**

### Conclusion

The timeshare law of Dubai encompasses comprehensive provisions setting the rights and liabilities of all the relevant stakeholders involved. In case of any dispute, Dubai Courts have the jurisdiction to entertain them. The Courts can also take punitive measures against the violators by imposing fines or cancelling the license of the company.

# INCREASING COURTS' INTERVENTION IN ARBITRATION

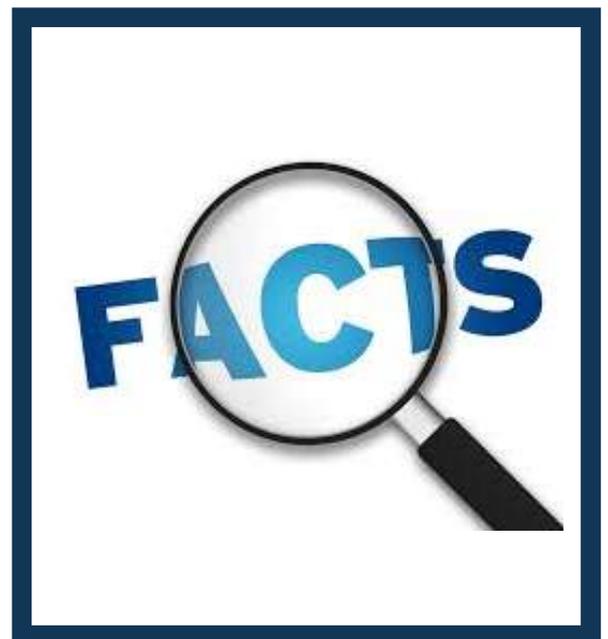


Arbitration has emerged as one of the most preferred forms of dispute resolution mechanism in UAE as almost all commercial contracts have an arbitration clause to adjudicate their dispute. The essence of arbitration lies in parties' autonomy and minimal court intervention. To facilitate the same, Federal Law No. (6) of 2018 (UAE Arbitration Law) provides that the court will not have jurisdiction to entertain a claim brought before it if the parties have a valid arbitration agreement in existence.

However, this fundamental principle of arbitration is recently disregarded in a couple of recent judicial pronouncements, particularly where the case is filed against a number of defendants, and some of them are not a party to the arbitration agreement. In this case analysis, we will discuss how the courts have stepped in even in the presence of a valid arbitration agreement.

## **Facts of the case**

In this case, the developer had a consultancy agreement with a consultancy firm (engineer) having an arbitration clause in the agreement. After a few years of the completion of the project, a fire erupted causing huge losses to the developer. The developer got the amount of insurance, but the insurer initiated legal proceedings against three engineers and three contractors (a total of 6) with the claim amount exceeding AED 1 billion.



Against the said proceedings, the engineer invoked the arbitration clause in the agreement and challenged the jurisdiction of the Court. The Court of First Instance (CFI) rejected the plea of the engineer by holding that the arbitration clause is invalid and there is no need to dismiss the case on the basis of an arbitration clause. The engineer challenged the decision of the CFI before the Court of Appeal (COA), which again dismissed the appeal on the ground that the arbitration clause could come into play if the case would have been limited to only the parties of the arbitration agreement. Here, some of the parties have concluded arbitration agreements while others have not.

## **The decision of the Court of Cassation**

Thereafter, the engineer challenged the decision of the COA before the Court of Cassation (COC). The COC also dismissed the claim while adopting the same reasoning adduced by the COA. It further added that the proceedings in the present case are initiated under the Civil Transactions Law which imposes joint liability on contractors and engineers. Thus, they all have to be heard before a single forum to ensure the proper administration of justice.



## **Analysis of the Decision**

The decision not to divide the case raises serious concerns about the effectiveness of the arbitration mechanism in the country. It can be looked upon as a loophole wherein even if a single party belonging to the dispute is not a part of the arbitration agreement, the entire machinery of arbitration would collapse and lose its essence. This approach is in complete violation of Article 8(1) of UAE Arbitration law and the freedom of contract principle. In arbitral jurisprudence, it is expected that the courts should intervene only in extraordinary circumstances to meet the ends of justice. The courts should give due regard to the sanctity of the arbitration agreement before reaching such a sweeping conclusion.

## 1. What is the process of filing for bankruptcy in case of business failure in UAE?

Failure of businesses is a common phenomenon in UAE and winding up the business becomes a viable option to mitigate further losses. In UAE, the Federal Law No. (9) of 2016 (UAE Bankruptcy Law) governs the process of liquidation or bankruptcy within the country. Article 67 of the Law provides that if you are not able to pay the debts of your creditors, you can apply for bankruptcy. Though there is a provision to restructure the debt and revive the company, you can opt for bankruptcy wherein the liquidation would take place at a fair value. During the process, the assets of the companies will be sold out to cover the liabilities of the debtor. Alternatively, you can approach the court under Article 68 of the Law which provides that if the debtor fails to make the payment for more than 30 days from the due date on account of poor financial condition, he can apply to the court for commencement of bankruptcy proceedings. If the court approves your application, all the execution proceedings against your company shall be suspended a trustee shall be appointed to administer the proceedings. The trustee so appointed needs to prepare a report in accordance with Article 96 of UAE Bankruptcy Law. If you are a sole proprietor, you can file for individual insolvency as per the provisions of Federal Decree-Law No. (19) of 2019.

## 2. What are the grounds to challenge an arbitral award in UAE?

The essence of the arbitration is the issuance of a binding arbitral award by the Tribunal. However, there are some grounds on which you can challenge an arbitral award in the country. Article 53(1) of Federal Law No. (06) of 2018 (UAE Arbitration Law) lists the grounds on which you can challenge the award, which is as follows-

- When no valid arbitration agreement exists between the parties or the agreement has become void in accordance with the law chosen by the parties;
- The parties to the arbitration agreement are not legally compatible to enter into such an agreement;
- When an individual does not have the legal capacity to dispose of the disputed right under the law governing his or her capacity;

- The award was not premised on the law chosen by the parties;
- The appointment of the arbitrator or the constitution of the Tribunal was not in accordance with the UAE Arbitration law;
- The award was affected by severe procedural irregularities;
- The award was not issued within a specified time frame;
- The Arbitrator rendered such an award which goes against the scope of the arbitration agreement.

In addition to the aforesaid, Article 53(2) provides that the court can set aside an award when it is against the public policy of the country. It is very important to note that the award cannot be challenged on merits as per UAE Arbitration Law.

### **3. Do the freelancers cover in the latest corporate tax law introduced in the country?**

Recently, in a ground-breaking move, the UAE government announced a corporate tax in the country from the financial year 2023. This new law applies to all businesses and commercial activities. Further, it applies to the individuals carrying out professional activities in the country. Thus, an important question arises about whether the freelancers would be subject to this new corporate tax? The corporate tax will be levied on a taxable income above AED 375,000 which means if your annual earning is less than the said amount, you are not required to pay the corporate tax. So, it can be inferred that if a freelancer is earning a taxable income (above AED 375,000) he will be subject to this new law and required to pay the tax. The rate of taxation shall be 9% on the amount exceeding the threshold of AED 375000.

However, if you are working on a job as a freelancer and earning employment income, you will be exempted from the payment of tax.

### **4. Can you claim overtime while working from home?**

This global pandemic and the subsequent lockdown have introduced us to a virtual world providing a work from home (WFH) model. Since you are using a laptop from the drawing-room, it is observed that some employees are working for more than 14-15 hours per day. Now, an important question arises whether an employee can claim payment for this overtime work?

For all the mainland companies operating in the UAE, the Federal Decree-Law No. (33) of 2021 (UAE Employment Law) and the requirements of Cabinet Resolution No. (1) of 2022 are applicable. The provision regarding overtime work is provided under Article 19(2) of the UAE employment law. As per the said Article, if an employee works for additional hours exceeding

the ordinary working hours, it will be treated as overtime work, and the employee shall be paid his basic pay along with a supplement of at least 25% of that pay. However, the right to claim overtime payment is not absolute, and it is subject to some exceptions. For instance- if you are employed as a manager or your work involves technical specifications, you may not be entitled to receive the overtime pay, even though you work for additional hours. Further, Article 15(4) of the Cabinet Resolution No.1 of 2022 on Employment Relations provides for a list of persons, who shall be excluded from the purview of overtime payment. It includes-

- Chairmen and members of the board of directors.
- People who are acting in a supervisory capacity, such as field managers or nodal officers. Under this category, it is important that the excluded person must have some employees working under his direction or supervision.
- Workers constituting the crew of naval vessels and enjoying special conditions of service
- People engaged in such technical work which is necessary to continue through various shifts. However, the average working hours per week should not exceed 56 hours.
- People engaged in temporary projects with a short deadline.

## **5. What is a non-compete clause in a contract?**

A non-compete clause is a contractual provision that intends to protect an employer's business by limiting the activities of its employees after the termination of the employment contract. The main purpose of such a clause is to refrain the company's ex-employees from competing or working with the competitors of the company.

Article 127 of the UAE Employment Law enables a company to impose a post-termination restriction in the form of a non-compete clause. It is important to note that this clause can only be used to protect the company's commercial and legitimate business interests. This clause can't be used in a wide sense, and it must be specific with regards to the time, place, and nature of restrictions placed under the clause.

In case of breach of a non-compete clause, the remedies are limited for the aggrieved employer. In the UAE, injunctive relief is not an available remedy before the labour court. So, if an employee breaches the restrictions and starts working for its employees, the employer can't restrict him through direct injunctive order. The main remedy that is resorted by the employers is claiming monetary damages.

## 6. How can a foreigner buy a property in UAE?

Having a property in Dubai is not less than a dream. It is one of the prime locations across the globe which is widely sought by the investors owing to the competitive property prices, high rental yields, etc. The foreign nationals can purchase property in UAE on a freehold basis. However, they can buy the property only in certain designated areas. UAE has designated specific areas for foreign ownership as freehold. It is pertinent to note that all the foreigners and expatriates can acquire freehold property. The buyer will have complete access to the property without any restriction or leasehold right for a period of 99 years. You must possess valid identity proof, such as a passport for buying a property.

Article 3 of Regulation No. (3) of 2006 demarcates the freehold area wherein the foreigners can buy a property. The Land Department is vested with the responsibility of issuing the title deeds. Interestingly, there is no maximum age limit for buying a property in the country. It is important that all the developers need to register the off-plan property in the interim register, which is maintained by the Land Department.

## 7. What are the kinds of damages you can get after the breach of a contract in the UAE?

The term damages refer to the compensation paid to the aggrieved party to make good the losses arising out of the breach of contract. There is a significant difference between the term damage and damages as the former is related to any injury suffered by a party whereas the latter is about the compensation. In UAE civil and commercial law, the following types of damages are awarded:

- Direct damages;
- Consequential damages;
- Loss of income;
- Loss of opportunity;
- Moral damage

In all civil and contractual matters, the courts generally award direct damages. However, when the amount of compensation is not clear, it shall be assessed by the court in accordance with Article 389 of the UAE Civil Code. Apart from direct damages, the court also grants consequential damages where huge losses have been incurred to the aggrieved party. The courts are also competent to award loss of profit. The concept of moral damages is provided under Article 293 of the UAE Civil Code which is provided when the liberty, dignity, and reputation of the person are affected. Many times, the contract between the parties also stipulates the amount of damage, which is also enforceable in the UAE.

## **8. What are the legal provisions governing harassment in UAE?**

The term harassment refers to conduct or the commission of such an act that aims to disturb, threaten or put a fear in the mind of a person. There can be various types of harassment, such as physical harassment, psychological harassment, sexual harassment, etc. Out of all such forms of harassment, sexual harassment is the most prominent one, which is elaborately dealt with in the Federal Law No (3) of 1987 (UAE Penal Code).

Article 358 of the Penal code provides that if a person commits an indecent and disgraceful act, he shall be punished with an imprisonment of 6 months. Moreover, if such an act was directed toward a boy or girl below the age of 15 years, the punishment shall be for a period of 1 year. Article 359 states that if a person attempts to disgrace a woman in public, he shall be punished with a fine of AED 10000 and an imprisonment of 1 year.

As per Article 361, if a person seduces a person publicly, the punishment shall be an imprisonment term of 6 months and a fine of AED 5000. Against such incidents of sexual harassment, the victim can lodge a complaint at the nearest police station. The scope of Article 359 is quite wide and a man can also institute a complaint against sexual harassment.

## **9. What is the punishment for misusing Power of Attorney by a partner of joint property?**

The power of attorney is a legal document that empowers a designated person to take a decision on behalf of the principal. It is mainly used with respect to the properties and other such dealings. The misuse of power of attorney is a crime as per Article 404 of the Federal Law No 3 of 1987 (UAE Penal Code). This Article states that whoever uses any immovable property with an objective to prejudice the interest of the rightful owner, shall be punished with detention and a fine.

The language of the Article clearly states that if the partner of a joint property receives something for his personal benefits while prejudicing the rights of other partners, it shall be punishable with a fine and detention. However, it is important to note that the criminal intent of the accused cannot be limited to his conduct and it requires other corroborative evidence in this regard.

If some grave misuse hasn't happened till now, you are requested to cancel this power of attorney before the notary public in the presence of 2 witnesses. Further, you need to write 'revoke' in large bold letters on the power of attorney.

## **10. Is it mandatory to issue legal notice before initiating legal proceedings in UAE?**

Sending a legal notice is one of the first steps before initiating proceedings against a person. It acts as an ultimatum that is served to notify the other party that if he goes against the demand in the notice, suitable legal actions will initiate against him.

Sending a legal notice is not mandatory in each and every case. However, before initiating a civil case, the Code requires that the other party is served with a legal notice before knocking on the doors of the court. The notice depicts the intention of the sender that the legal proceedings are on the verge to get started. Further, the reply to the notice also highlights the intention of the other party.

In the following circumstances, sending a legal notice is mandatory:

- Violation of employment contract;
- Case of sexual harassment at the workplace;
- Violation of HR policies of UAE companies;
- Disputes concerning unpaid salary or early termination of the contract;
- Case of cheque bounce;
- Disputes relating to real estate properties;
- Personal issues, such as inheritance, child custody, divorce, etc.

In criminal cases, the requirement of sending a notice to the accused is not required.



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