



Hogan
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Compendium of Middle East
International Arbitration
Developments in 2017



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Introduction

The last 12 months have seen a number of important developments in the field of international arbitration in the Middle East. We have been keeping a careful eye on those developments and have updated you throughout the whole year with our client alerts.

In this handbook, we present a summary and recap of the key developments of 2017 on which we reported, namely:

- The New Qatar Arbitration Law
- The adoption of the Implementing Regulations of the 2012 Arbitration Law in the Kingdom of Saudi Arabia
- The opening of a representative office by the ICC in the Abu Dhabi Global Market
- The launch of a new division within the DIFC Courts – the Technology and Construction Division
- The New DIAC Arbitration Rules 2018
- A closer look at the Judicial Tribunal and its key decisions of 2017.

The developments on the whole have been positive with the most significant being the introduction of the New Qatar Arbitration Law and clarification about the 2012 Arbitration Law in the Kingdom of Saudi Arabia.

It is anticipated that 2018 will continue to see changes to the dispute resolution landscape to make it a more arbitration friendly and certain environment. In particular, it is anticipated that the UAE will enact a new arbitration law.



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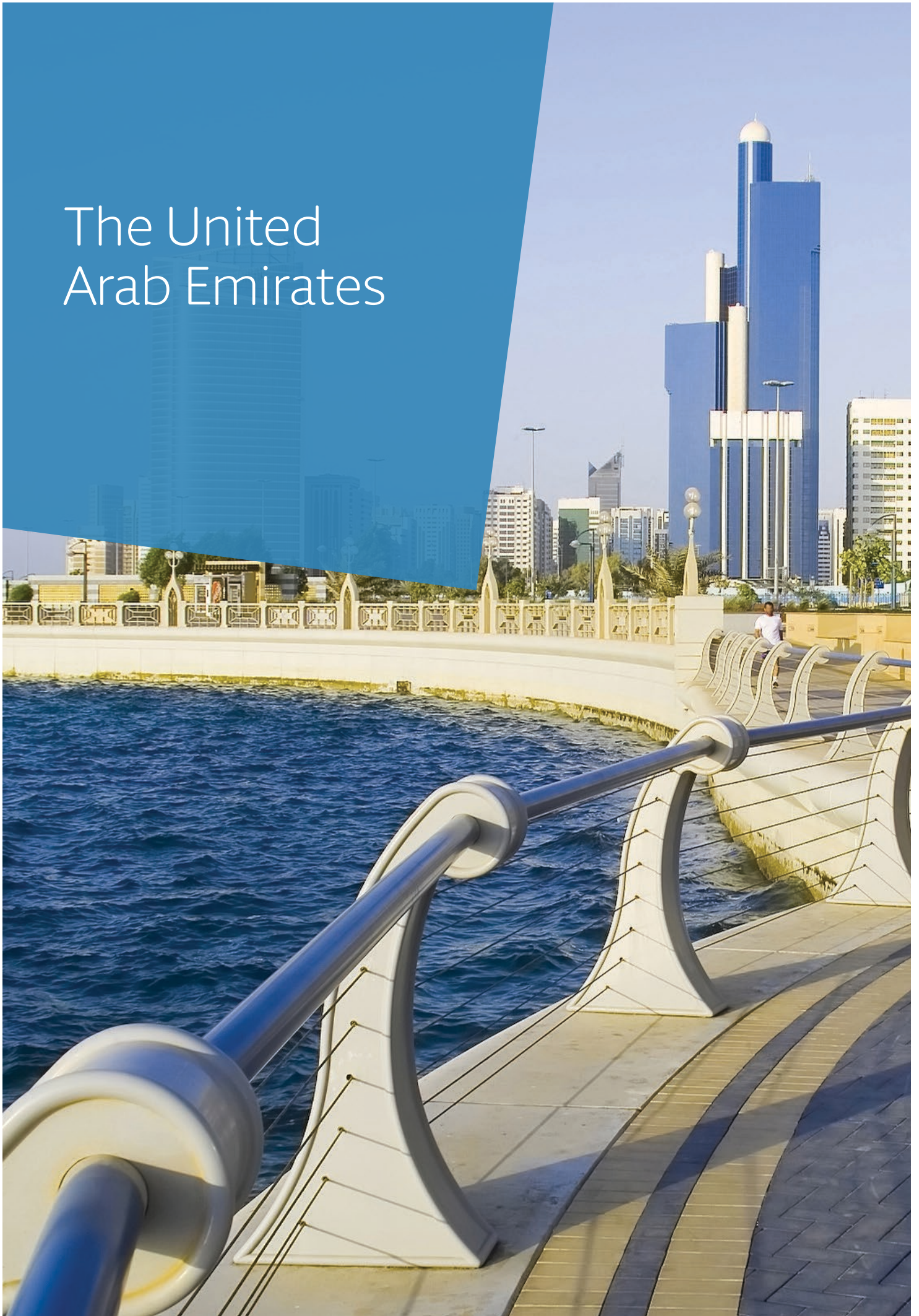
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The United Arab Emirates



A new division within the DIFC Courts, the Technology and Construction Division

The DIFC Courts, last week, published Part 56 (Technology and Construction Division) of the Court Rules ("**Part 56**") marking the launch of the Court's new division - the Technology and Construction Division ("**TCD**"). This follows a consultation period with the region's legal community on the proposals in which Hogan Lovells participated.

What is the TCD?

The TCD offers a further choice of forum for the resolution of "**issues or questions which are technically complex**" ("**TCD Claims**") and draws on specialist judges steeped in construction and engineering disputes experience. In addition, a new set of specific rules to fast-track the resolution of such disputes have been introduced.

The services provided by the TCD are broadly equivalent to those offered by the Technology & Construction Courts of England & Wales ("**TCC**"), which have been used to hear complex cases in these sectors since the late 1990s.

A non-exhaustive list of potential TCD Claims is provided in Rule 56.3 of Part 56. As such, provided parties opt in, the TCD will have jurisdiction to hear **inter alia**:

- building, construction and engineering disputes;
- claims by and against architects, engineers, surveyors, accountants and other specialised advisers relating to the services they provide;
- claims by and against DIFC or any DIFC body relating to the development of land or construction of buildings;
- claims relating to the design, supply and/or installation of computers, computer software and related network and IT systems and services; and
- challenges to decisions of arbitrators in construction and engineering disputes.

Who can use the TCD?

The TCD will not only have jurisdiction to hear DIFC-related cases but parties outside of the DIFC (and indeed the UAE) will also be able to submit their dispute to the jurisdiction of the TCD by either including a dispute resolution clause to that effect in their contract or by electing by mutual consent to use the TCD to resolve a dispute which has already arisen.

How does it differ from the English TCC?

Generally, Part 56 follows the English law Practice Direction 60 (Technology and Construction Court Claims) ("**PD 60**") except for the following main divergences which we summarise below:

Why choose the TCD?

Until now, arbitration has been the preferred forum for the resolution of complex disputes within the construction industry in Dubai and the wider region, not least because it allows the parties to choose the decision-makers and ensure that the tribunal has the appropriate expertise and will be able to grasp the key issues and make decisions accordingly. Arbitration can, however, be challenging in this region, especially towards the end of the process as enforcement of arbitral awards can be complicated and time consuming.

Hogan Lovells partner Nabeel Ikram, who conducted the first ever construction case which went to trial in the DIFC Courts (and where his client succeeded with all its claims) and who has also advised on a number of other projects within the DIFC, comments:

"This is an exciting development. From my first-hand experience, I can confirm the DIFC Court was extremely adept at handling a complex, technical construction case as far back as 2008. The addition of a specialist division will only bolster the DIFC Court's credibility and vision as a world-class centre for dispute resolution."

Factors to take into account when drafting the dispute resolution clause which should comprise the parties' choice of forum - whether arbitration or the court system – include speed, cost, reliability, ease of enforcement/execution, and confidentiality of proceedings. We are, of course, very happy to advise on these issues.

The New DIAC Arbitration Rules 2018

The most prominent development during Dubai Arbitration Week 2017 last week was the announcement from the Dubai International Arbitration Centre (the "DIAC") that they will soon release and enact the new DIAC Arbitration Rules 2018 (the "Proposed New Rules"). The Proposed New Rules have not yet been published and no draft has been circulated as of yet, though excerpts were outlined.

We set out below our initial thoughts on the main outlined changes of the Proposed New Rules.

Main outlined changes of the Proposed New Rules

Default seat	<ul style="list-style-type: none"> – Unless parties agree otherwise, the default seat of the DIAC arbitrations will be the Dubai International Financial Centre ("DIFC"). The curial law would therefore be DIFC Law No. 1 of 2008 as amended (the "DIFC Arbitration Law"), rather than the arbitration chapter of Federal Law No. 11 of 1992 (the "UAE Civil Procedure Code" or "CPC"). The implication of this change is potentially two-fold: first, enforcement of DIAC arbitral awards in the DIFC Courts would potentially be more straightforward and save time and costs. Secondly, parties would have recourse to a wider range of interim relief supported by the DIFC Courts under the DIFC Arbitration Law.
No need to sign the award in Dubai	<ul style="list-style-type: none"> – Article 212(4) of the CPC has been widely interpreted and recognised as requiring arbitrators to render the award within the UAE, with signing of the award physically taking place in the UAE. The Proposed New Rules expressly permit arbitrators to sign awards outside the UAE. Although the Proposed New Rules will be issued by Decree thus having force of law (as is the case with the current DIAC Arbitration Rules 2007), in the hierarchy of laws, the CPC would still have supremacy over the Decree, raising doubts over the compatibility of this proposed provision.
Power to sanction counsel?	<ul style="list-style-type: none"> – The Proposed New Rules include a section on the Tribunal's power to sanction the parties and/or counsel in case of misconduct by counsel, and provides a non-exhaustive list of examples of such misconduct. If such a power of the Tribunal includes the power to sanction counsel (as opposed to parties), this raises the issue of whether the Tribunal has the jurisdiction over counsel to take any steps to comply with the sanctions.
Expedited proceedings	<ul style="list-style-type: none"> – A party can, either by agreement or application to the DIAC Executive Committee, request that the arbitration be dealt with on an expedited basis. This applies to cases where the amount in dispute is less than AED2 million. The expedited arbitration would be decided by a sole arbitrator and on the basis of written submissions only, with shortened deadlines being imposed on the parties and a final award being issued within three months of referral under this procedure.
Legal fees and third party funding	<ul style="list-style-type: none"> – The Proposed New Rules make it clear that parties' legal fees (i.e. lawyer and expert fees) will be recoverable. Previously, legal fees were not considered recoverable on the basis of the Dubai Court of Cassation's decision in Case No. 282/2012, which decided that a Tribunal did not have the power to award legal fees in the absence of any express agreement by the parties to recover such fees. The Proposed New Rules also expressly recognise that parties' legal fees can be financed by way of third party funding.





ICC opens in the Abu Dhabi Global Market

The International Chamber of Commerce ("ICC") has announced that it will open a new representative office in the Abu Dhabi Global Market ("ADGM"), Abu Dhabi's financial freezone located in the Al Maryah Island, which began operating in 2014. The new representative office (the "ADGM Representative Office") is expected to open for business in January 2018.

The ICC is a reputable and leading international arbitral institution with its headquarters in Paris. The ADGM Representative Office will be the ICC's third representative office worldwide – joining Shanghai and Sao Paulo – in addition to the ICC's case management offices in Hong Kong and New York. Notably, this will be the ICC's first office in the Middle East and is a reflection of the increasing recourse to international arbitration in the region.

The opening of the ADGM Representative Office will likely compete with the DIFC-LCIA, the offshore arbitration centre established in Abu Dhabi's neighbouring Emirate of Dubai as well as "onshore" institutions such as the ADCCAC and the DIAC. However, it remains to be seen whether the ADGM Representative Office will become a popular choice for arbitration. The question of enforcement of arbitral awards will likely play an important role in that regard, though the choice of the seat is the more relevant factor for enforcement. It will also be interesting to see if Abu Dhabi state-owned entities opt to choose the ADGM Representative Office for their dispute resolution clauses in contracts which otherwise have no nexus to the ADGM.

We outline below some of the key characteristics of the ADGM:

Characteristics of the ADGM

Arbitration Regulations

- The ADGM's Arbitration Regulations 2015 are modelled on the UNCITRAL Model Law ("**Model Law**"), which is internationally recognised and widely used by many States as the basis of their own arbitration law.
- There are some departures from the Model Law to account for regional considerations, which will likely make it an even more attractive forum for resolving disputes in the region. These include:
 - **Confidentiality and privacy:** There is limited scope for the disclosure of the existence of arbitration proceedings and the award. There is a requirement that court proceedings related to arbitration be held in closed court; and
 - **Challenging enforcement of awards:** Parties can agree in advance to dispense of or limit their right to bring an action to set aside an arbitral award, making the award final and not subject to any appeal, thereby reducing the involvement of the courts. However, if a party seeks to enforce the award in the ADGM Courts, the other party could still challenge the validity of the award based upon the grounds specified in the ADGM's Arbitration Regulations 2015.

English common law

- The ADGM directly adopts English common law (including the principles of equity), as well as a defined list of certain statutes in force in England by reference. It is important to note that not all English statutes apply as ADGM law – only those which have been expressly adopted.
- The English Arbitration Act 1996 has not been adopted and does not apply. Instead, the ADGM Arbitration Regulations 2015 referred to above are applicable.
- The ADGM has its own Court Procedure Rules ("**CPR**") and Regulations. The CPR deals with applications to the court, including applications for the enforcement of an arbitral award.



A closer look at the Judicial Tribunal and its key decisions of 2017

The Joint Judicial Committee (the "**Judicial Tribunal**"/"JT") was established by the Government of Dubai Decree No. 19 of 2016 issued on 9 June 2016 (the "**Decree**"). The JT comprises a seven member panel made up of four judges from the "onshore" Dubai Courts and three from the DIFC Courts. Its mandate is to review and resolve "conflicts of jurisdiction" between the DIFC Courts and the Dubai Courts.

We provide a review of the JT's key decisions since its launch the first of which (*Daman Real Capital Partners Company LLC v Oger Dubai LLC*) was issued in November 2016 and called into question the use of the DIFC Courts as a conduit jurisdiction.

Since this landmark decision, a number of decisions were made by the JT in 2017 and a definite jurisprudence has emerged.

We have classified the key decisions into three categories:

- the JT's decisions giving guidance as to what is a "*conflict of jurisdiction*";
- the decisions relating to the enforcement of domestic Dubai arbitral award; and
- the decisions relating to the enforcement of foreign arbitral awards and judgments.

A "conflict of jurisdiction"

The JT is tasked with reviewing and resolving "*conflicts of jurisdiction*" between the DIFC Courts and the "onshore" Dubai Courts. In a series of decisions, the JT gave more guidance as to what is the scope of its powers and what is a "*conflict of jurisdiction*".

Investment Group Private LTC v Standard Chartered Bank

The application related to proceedings before the DIFC Courts during which Investment Group Private ("**IGP**") had conceded to the DIFC Court's jurisdiction but then argued the Sharjah Courts would be a more appropriate forum.

IGP, thereafter, initiated proceedings before the Dubai Court of First Instance and contended that the DIFC Courts were not competent to hear the case initiated by Standard Chartered Bank ("**SCB**"). The Dubai Courts, both at first instance and appeal levels, dismissed the case on the grounds that IGP conceded to the DIFC Court's jurisdiction and could not withdraw such a concession.

IGP, then, filed an application before the JT seeking the JT to order that the "onshore" Dubai Courts had jurisdiction to hear the dispute between them and SCB and that the DIFC Courts were not competent to entertain the case.

The JT dismissed the case and concluded that the DIFC Courts should entertain the case as having conceded to the jurisdiction of the DIFC Courts IGP should be bound by such a concession. This decision was based on the concession rather than a principle.

Following the JT's decision, in the resumed DIFC proceedings, IGP filed a counterclaim, which the DIFC Court allowed subject to certain conditions, including payment of an outstanding costs order and discontinuance of the proceedings before the Union Supreme Court. IGP refused to withdraw its petition before the Union Court and filed a new application to the JT, seeking an order from the JT that the DIFC Court be compelled to accept the counterclaims without condition.

The JT dismissed the case on the basis that there was no conflict of jurisdiction and held that it "is not tasked with dictating the procedures or decision of the Dubai Courts or DIFC courts, and is only authorised to make a determination of the competent court when a conflict of jurisdiction arises".

Gulf Navigation Holding PJSC v DNB Bank ASA

The application related to the recognition of a foreign judgment issued by the Commercial Court in London.

Gulf Navigation Holdings ("**GNH**") filed an application before the JT requesting the JT to annul the decision of the DIFC Court recognising the foreign judgment.

The JT dismissed the application on the basis that the DIFC Courts had issued a final and conclusive decision; there were no parallel proceedings in the "onshore" Dubai Courts and, as such, no conflict of jurisdiction.

Marine Logistics Solutions LLC and another v Wadi Woraya LLC and others

The application related to enforcement of a London-seated arbitral award under the New York Convention before the DIFC Courts.

Marine Logistics filed the application to the JT, seeking an order from the JT determining which of the "onshore" Dubai or DIFC Courts were competent to make a determination on the validity of the arbitral award.

The JT dismissed the case on the basis that there were no parallel proceedings in the "onshore" Dubai Courts and, as such, no conflict of jurisdiction. Enforcement proceedings had only been initiated before the DIFC Courts.

In two later cases, the JT clarified that parallel proceedings need to be substantive for a conflict of jurisdiction to arise.

In the above decisions, the JT made it clear that its mandate is limited to making a determination on the competent court when there is a "*conflict of jurisdiction*". A conflict of jurisdiction exists when there are parallel proceedings before the onshore "onshore" Dubai Courts and the DIFC Courts provided the two sets of proceedings are substantive (i.e. not relating to execution or injunctive relief).

Enforcement of Domestic Arbitral Awards

The second category of decisions relate to the question of which court is competent to make a determination on the validity of a domestic arbitral award when enforcement is sought both before the DIFC and the "onshore" Dubai Courts.

Daman Real Capital Partners Company LLC v Oger Dubai LLC

Daman filed the application to the JT, seeking an order from the JT determining which of the "onshore" Dubai or DIFC Courts was competent to make a determination on the validity of a DIAC administered arbitral award.

The JT identified and confirmed the existence of a "*conflict of jurisdiction*" in this case between the DIFC Courts and the "onshore" Dubai Courts as enforcement proceedings had been brought before the DIFC Courts and, in parallel, annulment proceedings were filed before the "onshore" Dubai Courts and were still pending.



Although there was a clear connection with the DIFC as the Respondent and the project in question were based in the DIFC, the JT concluded that the "onshore" Dubai Court was the competent Court to make a determination on the validity of the arbitral award, and the DIFC Courts should cease from "*entertaining the case*".

The three DIFC Judges sitting on the JT dissented from the part of the ruling that the DIFC Court should refrain from entertaining the case.

Dubai Water Front LLC v Chenshan Liu

Dubai Waterfront filed an application to the JT, seeking an order from the JT determining which of the "onshore" Dubai or DIFC Courts were competent to make a determination on the validity of a DIAC arbitral award following the issuance by the DIFC Court of First Instance of a decision recognising the said arbitral award.

The JT identified and confirmed the existence of a "*conflict of jurisdiction*" in this case between the DIFC Courts and the "onshore" Dubai Courts as enforcement proceedings had been brought before the DIFC Courts and, in parallel, annulment proceedings were filed before the "onshore" Dubai Courts and were still pending.

Despite the DIFC Court of First Instance decision to recognise the arbitral award, the JT followed Daman, ordering that the "onshore" Dubai Courts were competent and the DIFC Courts should "*cease from entertaining*" the matter because "*the case should be decided by one of the two courts and not by both of them*". It is assumed in this case there was no nexus with the DIFC in terms of seat, governing law, location of the assets or the location of the Respondent. In light of the Daman decision, it came as little surprise that the JT reached this decision. A similar approach was taken in *Ramadan Mousa Mishmish v Sweet Homes Real Estate LLC* where the claimant had again attempted to use the DIFC Courts as a "*conduit jurisdiction*" to enforce a domestic Dubai arbitral award.

Again, the three DIFC Judges dissented.

From the above decisions, it seems clear that attempts to use the DIFC Courts as a conduit jurisdiction will ultimately fail as the "onshore" Dubai Courts appear to be considered to have the "*general jurisdiction*" when it comes to the enforcement of domestic arbitral awards even when the case - like in Daman - has a clear connection with the DIFC.

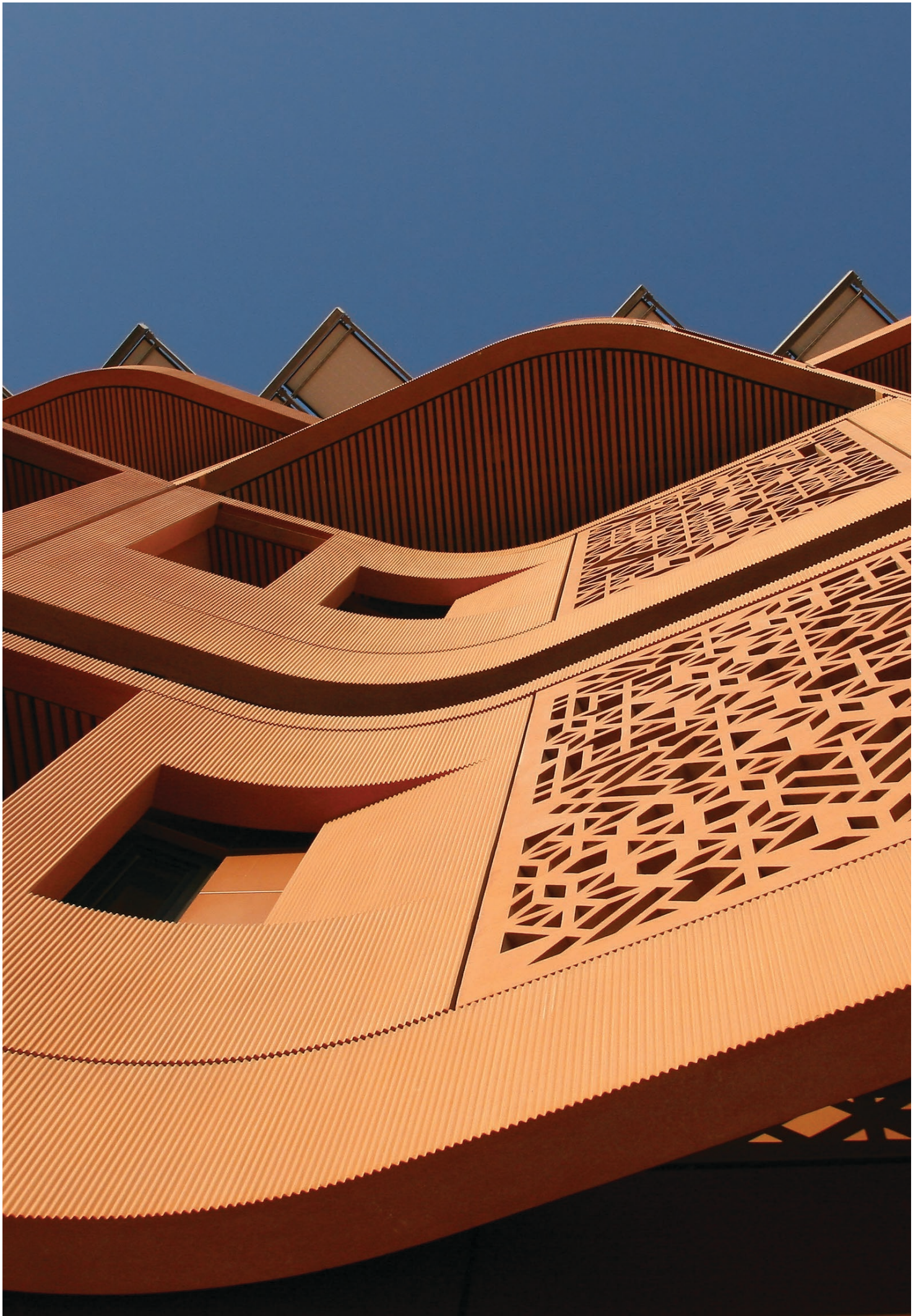
Enforcement of Foreign Arbitral Awards and Foreign Judgment

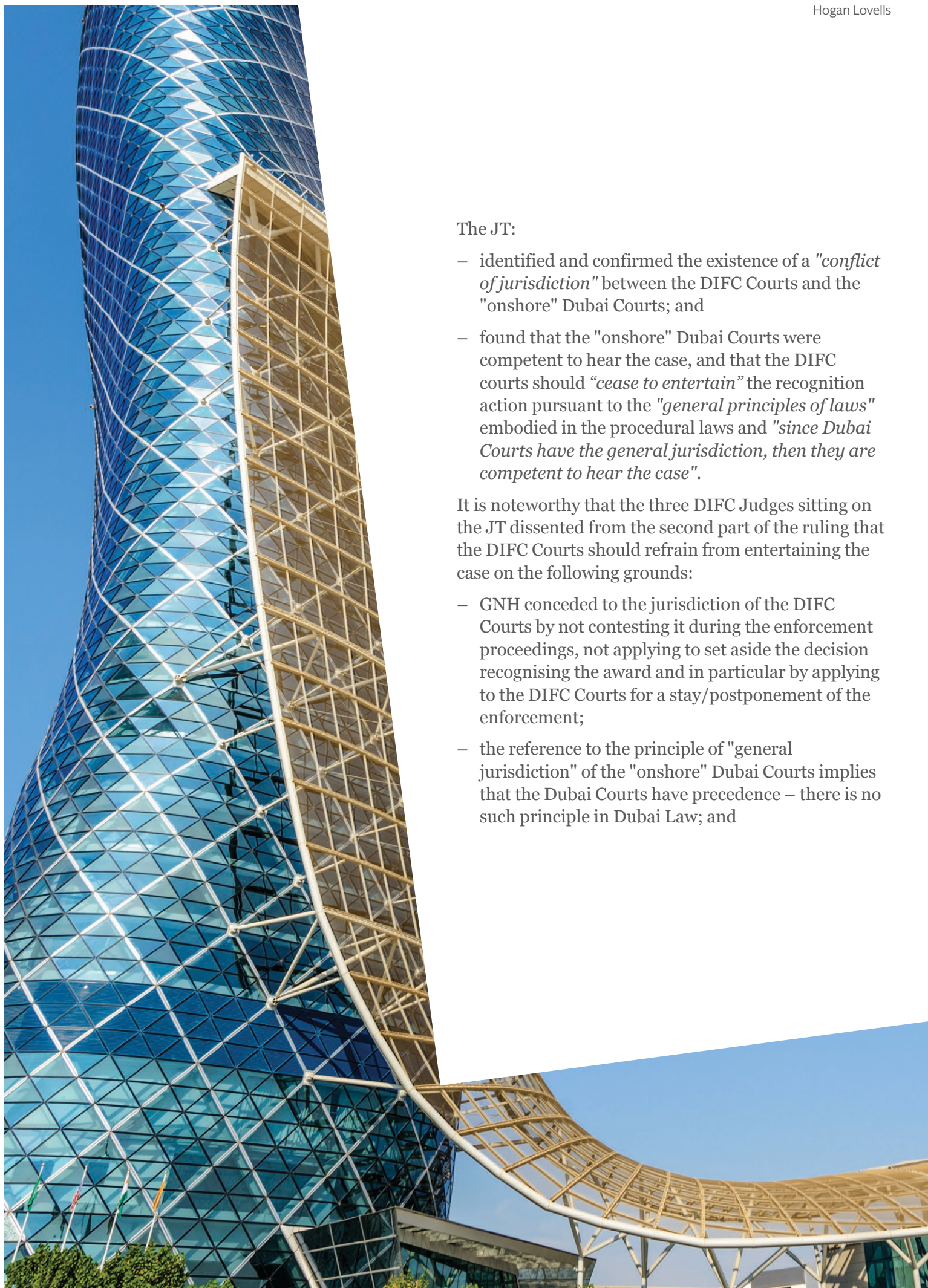
There were three decisions in which the JT considered cases relating to the enforcement of foreign arbitral awards and judgments: *Marine Logistics Solutions LLC and another v Wadi Woraya LLC and others*, *Gulf Navigation Holding PJSC v DNB Bank ASA*, *Gulf Navigation Holding P.S.C v Jinhai Heavy Industry Co. Limited (Formerly Zhoushan Junhaiwan Shipyard Co., Ltd.)*, and *Emirates Trading Agency LLC v Bocimar International N.V.*.

However, only in one of the aforementioned decisions (*Gulf Navigation Holding P.S.C (GNH) v Jinhai Heavy Industry Co. Limited (Formerly Zhoushan Junhaiwan Shipyard Co., Ltd.) (Jinhai)*), did the JT find there was a conflict of jurisdiction which it needed to resolve.

Jinhai related to the enforcement of a foreign arbitral award via the New York Convention (the seat was London). The governing law was English law.

In response to the DIFC Court application to recognise the award filed by Jinhai, GNH filed an application to the Dubai Centre for the Amicable Settlement of Disputes (which is a part of the "onshore" Dubai Courts) seeking appointment of an Expert to examine the issues even though they had already been decided in the arbitration.





The JT:

- identified and confirmed the existence of a "*conflict of jurisdiction*" between the DIFC Courts and the "onshore" Dubai Courts; and
- found that the "onshore" Dubai Courts were competent to hear the case, and that the DIFC courts should "*cease to entertain*" the recognition action pursuant to the "*general principles of laws*" embodied in the procedural laws and "*since Dubai Courts have the general jurisdiction, then they are competent to hear the case*".

It is noteworthy that the three DIFC Judges sitting on the JT dissented from the second part of the ruling that the DIFC Courts should refrain from entertaining the case on the following grounds:

- GNH conceded to the jurisdiction of the DIFC Courts by not contesting it during the enforcement proceedings, not applying to set aside the decision recognising the award and in particular by applying to the DIFC Courts for a stay/postponement of the enforcement;
- the reference to the principle of "general jurisdiction" of the "onshore" Dubai Courts implies that the Dubai Courts have precedence – there is no such principle in Dubai Law; and

- the statement that "this case is not similar to cases in which the courts apply the provisions of the New York Convention 1958 because the two courts are in one Emirate, viz. Dubai Emirate" is an incorrect statement of international law. The New York Convention allows an award to be enforced in different parts of a country.

Common trends

A number of points of principle or guidelines have emerged:

- In order to rely on the JT to make a finding on a conflict of jurisdiction, it is necessary for there to be substantive parallel proceedings in both the DIFC Courts and the "onshore" Dubai Courts.
- An acceptance of the DIFC or "onshore" Dubai Court's jurisdiction should prevent a party from subsequently being able to rely on the JT to dispute that court's jurisdiction.
- Where an arbitral award has no nexus with the DIFC (i.e. seat, governing law, location of a project/ transaction, location of assets, location of party) it seems clear the successful party in the arbitration will not be able to use the DIFC Courts as a "conduit jurisdiction" to execute the award in onshore Dubai.
- The *Daman* case would suggest that even when a respondent, its assets, and the subject-matter of the dispute is based in the DIFC, the DIFC Courts do not have jurisdiction to ratify the award if there are parallel proceedings in the "onshore" Dubai Courts seeking its nullification. However, it remains to be seen whether this will set a general principle or if *Daman* is a case that should be viewed on its own facts and circumstances.
- The *Jinhai* case would suggest it is possible to thwart enforcement of a foreign arbitral award pursuant to the New York Convention via the DIFC Courts for execution in onshore Dubai simply by starting substantive proceedings in the "onshore" Dubai Courts. This is even if the subject matter of the dispute has been determined by the arbitral tribunal.
- It has to be assumed that where the seat or governing law of an arbitration clause provides for DIFC law and a party seeks ratification of that award by the DIFC Courts for subsequent enforcement in onshore Dubai there will be no issues with the DIFC Courts assuming jurisdiction. However, as far as we are aware this proposition has not yet been tested before the JT. The references in some of the JT decisions to "*the general jurisdiction of the Dubai Courts having precedence*" may give rise to arguments to the contrary.



Qatar



New Qatar Arbitration Law

On 16 February 2017, Qatar adopted a new arbitration law (Law No. 2 of 2017) promulgating the Law of Arbitration in Civil and Commercial Matters (the "**Qatar Arbitration Law**"). This supersedes the arbitration chapter contained in Qatar's Code of Civil and Commercial Procedure and is largely based on the UNCITRAL Model Law, which is internationally recognised and widely used by many States as the basis of their own arbitration law.

We look at the Qatar Arbitration Law's key characteristics, some regional peculiarities and the impact of the Qatar Arbitration Law on the dispute resolution landscape in Qatar and the wider GCC region.

Key characteristics at a glance

Scope of application	<ul style="list-style-type: none"> – The Qatar Arbitration Law will be applicable with immediate effect to arbitrations underway as at the date of it coming into force (i.e. 30 days from publication in the Official Gazette on 13 March 2017). – It applies to both domestic and international arbitrations seated in Qatar.
Arbitration Agreement	<p>Article 7 of the Qatar Arbitration Law sets out the requirements for a valid arbitration agreement, namely:</p> <ul style="list-style-type: none"> – legal capacity of a person to enter into the agreement; – agreement must be in writing; and – it must not necessarily be signed by the parties, so long as there is a record of transmission between the parties.
Tribunal	<ul style="list-style-type: none"> – The default position is that the Arbitral Tribunal will be composed of three arbitrators, unless the parties agree otherwise. – There are no requirements as to the nationality of the arbitrators. – The Tribunal has jurisdiction to rule as to the extent of its own competence on issues presented before it. – Arbitrators must be selected from a list of accredited arbitrators entered in the Arbitrators Register with the Ministry of Justice. – An arbitrator can be held liable if he or she acts in bad faith, collusion or gross negligence.
Interim Measures	<ul style="list-style-type: none"> – The Tribunal has the power to grant a number of non-exhaustive interim measures and issue preliminary orders. – The Qatari Courts are required to enforce interim measures granted by a Tribunal, unless this violates Qatari law or contravenes public policy.
Challenging an Arbitral Award	<ul style="list-style-type: none"> – The Tribunal is not required to provide reasons for its award, unless this is specified by the parties. – The timeframe for correcting or amending the Award is significantly shorter than that provided for under the Model Law (7 days from the date of receipt of the Award as opposed to 30 days). – The Award can only be appealed for nullification before the competent Qatari Court and the Qatar Arbitration Law sets out limited grounds for nullification largely based on the Model Law. – Again, the timeframe for appealing the Award is shorter under the Qatar Arbitration Law (1 month as compared to 3 months under the Model Law).

Regional considerations

The Competent Court and the Other Authority	<ul style="list-style-type: none"> – Parties can elect either the Qatar Court of Appeal or the QFC Court of First Instance as the "Competent Court", the authority with the relevant supervisory powers. – Parties can also appoint an "Other Authority", namely a permanent arbitration centre whose role is to discharge certain support and supervisory duties over the arbitration.
Witnesses	<ul style="list-style-type: none"> – Witnesses are no longer required to testify an oath in arbitral proceedings.
Powers of Attorney	<ul style="list-style-type: none"> – Legal representatives may be required to provide proof that they are authorised to act on behalf of a party.
List of Arbitrators approved by the Ministry of Justice	<ul style="list-style-type: none"> – Arbitrators must be selected from a list of candidates accredited by the Qatari Ministry of Justice.

Future of Qatar's dispute resolution landscape

The Qatar Arbitration Law is a positive development for Qatar, which is in line with its efforts to become a more "**arbitration friendly**" jurisdiction in the region.

This should certainly encourage parties in Qatar – both foreign and domestic – to resolve their disputes out of court; as well as increase the attractiveness of Qatar as a place to conduct your disputes in the region.

Time will tell whether other jurisdictions in the region will follow suit by issuing their own standalone

arbitration law with a view to providing parties, arbitrators and courts more guidance, particularly with regards to enforcement.

For a more detailed analysis, please visit our Website <https://www.hoganlovells.com/publications/new-qatar-arbitration-law>





The Kingdom of Saudi Arabia



The Kingdom of Saudi Arabia's Implementing Regulations of the 2012 Arbitration Law enter into force

On 22 May 2017, the Kingdom of Saudi Arabia passed the Implementing Regulations of the 2012 Arbitration Law ("Implementing Regulations"). These regulations came into force on 9 June 2017 after publication in the Saudi Gazette of the Saudi Cabinet Decision No. 541/1438 approving the Implementing Regulations.

This is a significant development for dispute resolution in the Kingdom of Saudi Arabia as the Implementing Regulations bolster the 2012 Arbitration Law ("Law") by clarifying many of its provisions.

We outline below the key provisions of the Implementing Regulations:

Implementing Regulations

Competent Court (Article 2)	<ul style="list-style-type: none"> – The Implementing Regulations clarify that the Competent Court referred to in the Law as the authority tasked with the supervision of arbitrations is the Appeal Court.
Summons (Article 3)	<ul style="list-style-type: none"> – While historically summons to arbitration had to be served in person in Saudi, the Implementing Regulations expressly provide that these can now be served electronically (i.e. by e-mail, text messages etc.).
Appointment of Sole Arbitrator (Article 10)	<ul style="list-style-type: none"> – Article 15 of the Law provides that if the parties fail to agree on the appointment of a Sole Arbitrator, "the competent court shall appoint that arbitrator". – The Implementing Regulations clarify that such appointment shall be made within fifteen days from the date of submission of the request to the Competent Court (i.e the Appeal Court).
Intervention and Joinder (Article 13)	<ul style="list-style-type: none"> – Although the Law does not contemplate the possibility of intervention or joinder of a third party, the Implementing Regulations provide that the arbitral tribunal "may" agree to the intervention or joinder of a third party in the arbitration proceedings. Joinder will, however, only be possible if the parties to the arbitration and the third party to be joined consent to it.
Challenges to Arbitral Awards (Article 17)	<ul style="list-style-type: none"> – The Law provides that challenges to Arbitral Awards are to be submitted to the Competent Court without defining such term. The Implementing Regulations clarify the position by referring to the Appeal Court as the competent court to hear challenges to Arbitral Awards. – Article 51 of the Law provides that if the Competent Court (i.e the Appeal Court) recognises the award, it will order its enforcement and its decision will be final and non-appealable. Article 51, further, provides that if the Competent Court (i.e. the Appeal Court) decides to set aside the award, its decision can be appealed within thirty days following the date of notification of the decision. – The Implementing Regulations clarify that an appeal against the Appeal Court's decision to set aside an award must be submitted directly to the Supreme Court.

The passing of the Implementing Regulations remove a degree of uncertainty that was surrounding the 2012 Arbitration Law. Five years after the adoption of the Law, the Implementing Regulations should help to further pave the way towards the development of an arbitration friendly environment in the Kingdom of Saudi Arabia.

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