

Legal Bulletin

Issue 1, 2014



Case Note: Robinson Club GMBH v. Zabeel Investments LLC (CFI 016/2013)

In this recent decision, the DIFC Courts have affirmed that they will not challenge the jurisdiction of special committees established by executive decree, even where matters were within the original jurisdiction of the DIFC Courts. Moreover, parties cannot agree to override the terms of such decrees, either by conduct or express agreement. In the present case, the parties' initial agreement to arbitrate in the DIFC and submit to the DIFC Courts' jurisdiction could not override the terms of the decree which created a special judicial committee to exclusively hear all claims and applications against Zabeel Investments LLC ("Zabeel"). Parties with claims against governmental and quasi-governmental entities should be alert to potential executive decrees in order to properly strategise whilst still observing their compliance of the same.

In the case of Robinson Club GMBH v. Zabeel Investments LLC, the Applicant obtained a favorable arbitration award against Zabeel which it sought to enforce through the DIFC Courts. However, after the commencement of the arbitration but before the award was issued, the Ruler of Dubai on 9 February 2011 and amended further on 22 June 2011, issued a decree establishing the Zabeel Special Judicial Committee (the "Decree"). The Zabeel Special Judicial Committee (the "Committee") was tasked with hearing and settling "any claims and applications raised by or against Zabeel Investment."

Article 3 of the decree further stated that "all Dubai Courts, including DIFC Courts, may not consider or resolve any applications or claims falling under the competence of the Committee as hereby determined. They shall all refrain from hearing all applications submitted to them before the issuance hereof. All such applications or claims are accordingly referred to the Committee."

Upon the Applicant's petition to the DIFC Courts for recognition and enforcement of the arbitration award, it was ordered that case CFI 016/2013 be transferred to the Committee. The Applicant sought to set aside this order but in the DIFC Court judgment that followed, that application was denied. In his judgment, Justice Sir David Steel recognised that the Decree would not prevent a tribunal ruling on the merits of the Applicant's substantive claims against Zabeel, a position he deems "directly analogous to the jurisdiction of the Dubai World Tribunal in relation to arbitration provisions" (see *Hedley International Emirates Contracting LLC v. Nakheel PJSC* (DWT/0017/2011 22 June 2011)). However, Article 3 of the Decree prohibits the DIFC Courts from considering any application or claim falling under the competence of the Committee. For the DIFC Courts, this would include both the hearing of any claims against Zabeel and the issuance of orders compelling the performance of an act. Enforcement of an arbitration award therefore falls within the scope of the Decree and the new Committee is therefore tasked with ratifying or enforcing the award, not the DIFC Courts. ■

Contacts

Dubai

PO Box 9371
Emirates Towers Offices, Level 35
Sheikh Zayed Road
Dubai, UAE
Tel: +971 4 330 3900
Fax: +971 4 330 3800

Contact: Ziyad Hadi
zhadi@afриди-angell.com

Abu Dhabi

PO Box 3961
Al Ghaith Tower, Level 8, Suite 806
Hamdan Street
Abu Dhabi, UAE
Tel: +971 2 627 5134
Fax: +971 2 627 2905

Contact: Gregory Mayew
gmayew@afриди-angell.com

Dubai International Financial Centre

PO Box 9371
Emirates Financial Towers
North Tower, N316
Dubai, UAE
Tel: +971 4 355 1414
Fax: +971 4 330 1400
Contact: Stuart Walker
swalker@afриди-angell.com

Sharjah

PO Box 5925
Al Safa Building, 2nd Floor
Al Boorj Avenue
Sharjah, UAE
Tel: +971 6 568 1062
Fax: +971 6 568 2336

Contact: Bashir Ahmed
bahmed@afриди-angell.com

www.afриди-angell.com

New Enforcement Department of the DIFC Courts

On January 28, 2014 the DIFC Courts Enforcement Department was launched at the DIFC Courts' Registry. The purpose of this new Enforcement Department is to facilitate and enforce judgments and orders within the DIFC and expedite such matters. Therefore, decisions of either the DIFC Courts or from other jurisdictions that require enforcement within the DIFC may now be referred by way of a simple application to the Enforcement Department where it is received by an enforcement officer who will deal with such an application within a time-frame of one to two working days. The usual methods by which a party may seek enforcement under DIFC legislation include, affixing a charge over property; seeking an attachment of assets or earnings; an execution of assets; or the appointment of a receiver. The initiative marks another significant step by the DIFC Courts to mark its global standard, and encourages work towards reciprocity when it comes to the enforcement of its judgments and orders in other jurisdictions. ■

Tobacco Law Update

The implementing regulations of the tobacco law (Executive Regulations of Federal Law No. 15 of 2009 Concerning Tobacco Control) have been issued and are applicable starting January 21, 2014. The regulations clarify and define certain provisions of the tobacco control law.

Key provisions in the Executive Regulations include the imposition of a deadline on tobacco farms and factories to come into compliance with the law, which in Article Five (5), prohibits them from producing plant tobacco for commercial purposes in the UAE. Farms have been given two years and factories ten years to come into compliance. Further, shisha cafes and other businesses falling within the purview of the law are prohibited from operating in residential areas. ■

World Expo 2020 Special Committee

A special committee has been created to prepare for the World Expo 2020. HH Sheikh Mohammed Bin Rashid Al Maktoum, UAE Vice President, Prime Minister and Ruler of Dubai, issued Decree No. (49) of 2014 setting up the World Expo 2020 Preparatory Committee on January 7th, 2013. The decree annuls the previous Decree No. (2) of 2012 relating to setting up the Higher Committee for Hosting World Expo 2020 and any other articles or laws that might contradict with its bylaws.

The Committee's scope includes implementing a strategic plan to prepare for the Expo activities, coordinating with public and private sector bodies, determining the programs for the Expo, and overseeing marketing activities, among

other responsibilities. It is to be led by HH Sheikh Hamdan Bin Mohammed Bin Rashid al Maktoum, the Crown Prince, and chaired by Shaikh Ahmad bin Saeed al Maktoum, President of Dubai Civil Aviation and Chairman and CEO of Emirates Airlines and Group.

While the application of the law to private and public sector bodies can only be determined once the law is published in the Gazette, and once the Committee begins practically applying its mandate, it is anticipated that both the public and private sector will see certain laws, procedures, and policies being applied to their activities as a result of the Committee's recommendations. ■

Changes to the Jurisdictions of Ministries and Powers of Ministers

Certain changes have been made to the existence and composition of certain government departments via Law No. 2 of 2013 Concerning Amendments to Provisions of Law No 1 of 1972 Concerning Jurisdictions of Ministries and Powers of Ministers, issued by HH Sheikh Khalifa Bin Zayed.

First, the Ministry of Foreign Commerce has been dissolved with its powers to be subsumed by the Ministry of Economy. The former Ministry of Foreign Commerce was primarily responsible for the negotiation and execution of foreign commercial treaties (in conjunction with the Ministry of Foreign Affairs), running foreign trade offices, and representing the UAE in international and regional trade organisations. Now, the Ministry of Economy will assume these roles, along with the other responsibilities of the former ministry.

It remains to be seen how the reorganisation will be executed, specifically, whether a new department will be created within the Ministry of Economy to carry out these activities.

Secondly, a new ministry called entitled the Ministry of International Cooperation and Development has been created. Its mandate, generally, is to develop the UAE's foreign aid program and to promote international development. Its scope of activity includes developing policy for foreign aid, building capacity of UAE-based donor organizations, and implementing international development programs.

Examples of UAE-based donor organisations within its scope include the Abu Dhabi Fund for Development, the UAE Red Crescent Authority, and the Mohammed bin Rashid al Maktoum Humanitarian and Charity Establishment. Non-governmental organisations delivering foreign aid also fall under the purview of the Ministry.

The Ministry is also responsible for producing annual Foreign Aid Reports which document UAE foreign aid flows. ■

Afridi & Angell

Founded in 1975, Afridi & Angell is one of the leading and most established full-service law firm in the UAE. We provide comprehensive legal advice and innovative business solutions in banking and finance; corporate and commercial Law; dispute resolution; projects; construction and real estate; employment; energy; project finance; transport; as well as doing business in the UAE and in the DIFC. We advise local and regional clients ranging in size and sophistication from start-ups to some of the region's largest public and private companies, governments and quasi-government institutions. We work extensively with entrepreneurs and investors from the region and beyond, and have attracted numerous international clients looking for the right counsel to protect and expand their interests in the UAE.

Afridi & Angell is the exclusive UAE member of top legal networks and associations, most notably Lex Mundi, the world's leading association of independent law firms.

Comments and opinions contained in the Legal Bulletin provide general information only. They should not be regarded or relied upon as legal advice.

© 2014, Afridi & Angell