

Cryptocurrencies, Islamic Fintech in International Commercial Arbitration: Prospects and Challenges

17th November 2022, Dubai Arbitration Week



Cryptocurrencies, Islamic Fintech in International Commercial Arbitration: Prospects and Challenges

Moderator
Karim J Nassif
Principal at Nassif Arbitration

Speaker
Dr. Amel Makhoulouf
Independent Counsel, Research Associate,
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Speaker
Prof. Dr. Martin Lau
Barrister, Professor of Law,
SOAS University of London

Speaker
Sarah Malik
CEO and International Disputes Counsel,
SOL International Ltd

Speaker
Johanne Cox
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November 17, 2022
Waldorf Astoria, DIFC, Dubai
09:00 - 11:45

The Middle East market has shown a significant hike in the crypto related investments. Given the novel nature of the area, the disputes are imminent. Join our panel discussion aimed at highlighting and discussing the various issues surrounding a crypto-related dispute.

As Cryptocurrency gains more traction globally, many legal issues arise at the national level. In the Middle East and North Africa (MENA) region, while some countries battle to define the legal framework in which cryptocurrency operates, others gradually integrate it into their very own markets.

Amongst the debatable questions recently asked were some related to the legality of intangible assets in Islamic law¹, the concept of money in Islam, the permissibility of cryptocurrency in Islam, the arbitrability of Islamic cryptocurrency disputes, the enforceability of arbitral awards in cryptocurrency disputes, and the interaction between Islamic law and concepts of public policy in the Arab Middle East.

On 17th November 2022, such questions were deconstructed by both Prof Dr Martin Lau and Dr Amel Makhoulouf (SOAS, University of London). During her presentation, Dr Makhoulouf first

¹ Resolution No. 43 (5/5) on moral rights, IIFA.

addressed the issue of the permissibility of FinTech and crypto, stating that both are *per se* neither *ḥalāl* nor *ḥarām*. Then, Prof Dr Martin Lau explored the concept of public policy in international arbitration in the MENA region, and the linkages between public policy and Islam, referring to article 1 (e) of the Geneva Convention 1927, article V(2)(b) of the New York Convention, articles 2, 37 and 53(2)(b) of the UAE Federal Law No. 6 of 2018 on Arbitration, and the UNCITRAL 1985 Model Law on International Commercial Arbitration.

In addition, Dr Makhlouf examined recent cases rendered against cryptocurrencies in both Greece and China, and addressed the enforcement issues of arbitral awards in countries like Algeria, Morocco, Libya and Egypt where cryptocurrency is strictly banned.

Finally, both Professor Lau and Dr Makhlouf stressed on the importance of such panels in discussing the most recent legal scopes for the ever-changing MENA Region, thanking the Organising Committee of the Dubai Arbitration Week, Dr Mahmoud Hussein (Founding Partner, Mahmood Hussain Law firm), Mr Hafidh Thani (Managing Partner, Mahmood Hussain Law firm), the distinguished panelists, i.e. Ms Sarah Malik (CEO & International Disputes Counsel at SOL International Ltd), Ms Johanne Cox (Head of International Arbitration at Shoosmiths), Mr Karim Nassif (Principal at Nassif Arbitration), and the wide audience which contributed eagerly to the debate.

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