

REGISTRATION NOW OPEN

Second Edition - Civil Law Conference

Change of circumstances and the contract in civil law: flexibility or uncertainty?

Pacta sunt servanda: Is the contract always the law of the parties?

25 April 2024

Conference: 09:00 – 17:00

Cocktail Reception: 17:00 – 19:00

Location: ADGM, Abu Dhabi

To secure your place, please email events@arbitra.co.uk

Join us for the second edition of the civil law conference as we delve into the pivotal topics of the theory of *imprévision* and the intervention of the judge in civil law contracts.

Explore the intricate balance between the theory of *pacta sunt servanda* and the authority granted to judges to intervene in specific circumstances in the parties' agreements. Engage with experts and hear comparative approaches with respect to the theory of *imprévision* and the judicial intervention in case of non-performance of the contract by a party.

Law professors, judges and practitioners from the MENA region and other civil law jurisdictions will provide insight into how these topics are implemented in various civil law jurisdictions.

Both civil law and common law professionals, from the private and public sectors, in-house and outside counsel would benefit from and contribute to a comparative discussion on these fundamental concepts. The discussion will be led both on theoretical and practical levels by eminent academics and practitioners.

Co-chaired by Lara Hammoud and Carine Dupeyron.



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Speakers

Linda Fitz-Alan, ADGM

Lara Hammoud, ADNOC // Arbitra

Carine Dupeyron, Darrois Villey Maillot Brochier

Professor Pierre Tercier, Peter & Kim

Professor Najib Hage-Chahine, Hage-Chahine Law Firm

Dr. Pascale Accaoui Lorfing, University of Burgundy, France; Affiliated Professor, ESCP, Paris

Jean-François Tossens, Tossens Goldman Gonne

Ali Aidarous, AlAidarous Advocates

Dr. Ismail Selim, Cairo Regional Centre for International Commercial Arbitration

Nada Sader, Sader Arbitration

Karim Nassif, Nassif Arbitration

Sara Koleilat-Aranjo, Morgan Lewis

Sami Houerbi, Houerbi Law Firm

Richard Bell, Al Tamimi & Co

Jean-Rémi de Maistre, Jus Mundi

Dr. Mireille Taok, Taok ADR

Alain Farhad, Farhad Arbitration

Małgorzata Surdek-Janicka, Surdek Arbitration

Dr. Mahmood Hussain, M&CO Legal

Nadine Debbas, Independent Arbitrator

Nicholas Tse, Alem & Associates

Sana Belaid, Cisco

Dr. Marc Henry, FTMS Avocats

Naomi Briercliffe, Squire Patton Boggs

Anne Hoffmann, Independent Arbitrator

Ali Al Zarooni, Horizons & Co

Joseph Chedrawe, Covington & Burling LLP

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Programme

9h – 9h30 – Welcoming participants

9h30 – 10h

- Welcoming remarks by Linda Fitz-Alan
- Introductory remarks by the Co-Chairs Lara Hammoud and Carine Dupeyron
- Keynote Speech by Professor Pierre Tercier

Morning (10h – 12h45) – The theory of *Imprévision* v. the binding nature of contracts

Session 1: The Theory of *Imprévision* (1h15)

Under the theory of *imprévision*, the judge is permitted to amend the contract during its performance under specific circumstances. In this session, panelists will discuss, among other things, the conditions for finding a situation of *imprévision* as well as the conditions under which the judge can revise a contract as well as the consequences of application of the theory on the contract. Panelists will also address the different approaches of the theory under different legal systems.

- Academic point of view —Presentation by Professor Najib Hage-Chahine
- Comparative approaches of the application of the theory of *imprévision* in different civil jurisdictions

Moderator: Dr. Pascale Accaoui Lorfing

Speakers:

- Jean-François Tossens
- Ali Aidarous
- Dr. Ismail Selim
- Nada Sader

Coffee break (11h15 – 11h45)

Session 2: Practical considerations around the theory of *imprévision*– (1h)

In this session focusing on the practical application of the theory of *imprévision*, panelists, among other topics, will share their experiences with respect to the theory of *imprévision*, in particular within the recent

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global events that may have affected contracts and projects worldwide. The panelists shall also discuss the theory of *imprévision* in comparison with *Force Majeure* and hardship clauses.

Moderator: Carine Dupeyron

Speakers:

- Karim Nassif
- Sara Aranja
- Sami Huerbi
- Richard Bell
- Naomi Briercliffe

Jus Mundi presentation of Jus AI tool by Jean-Rémi de Maistre, – 15 min

Lunch (13h – 14h)

Afternoon (14h – 16h45) – The non-performance of the contract: what can the judge do?

Session 3: *The judge/arbitrator intervention with respect to clauses applicable in the event of non-performance of the contract (1h15)*

The parties are free to anticipate and agree on rights and obligations that would apply in the event the contract is not performed by either party. Clauses such as liquidated damages, limitation of liability, penalty or force majeure reflect the parties' agreement in anticipation of the non-performance of the contract. In this session, the panelists shall address the validity and enforceability of those clauses as well as the extent of intervention granted to judges under different civil jurisdictions and how such intervention may affect the parties' agreement.

- Academic point of view —Presentation by Dr. Marc Henry
- Comparative approaches of the judicial intervention on these clauses

Moderator: Dr. Mireille Taok

Speakers:

- Alain Farhad
- Małgorzata Surdek-Janicka
- Dr. Mahmood Hussain
- Ali Al Zarooni
- Joseph Chedrawe

Coffee break (15h15 – 15h45)

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Session 4: *Practical considerations around the applicability of those types of clauses and the power of intervention of the judge/arbitrator – (1h)*

In this session focusing on the practical application of the clauses applicable in the event of non-performance of the contract by a party, the panellists shall address the elements to consider when negotiating those clauses as well as the types of disputes that they may raise. The panellists shall also share their experiences on courts or arbitral tribunals' intervention or decisions with respect to those clauses.

Moderator: Lara Hammoud

Speakers:

- Nadine Debbas
- Nicholas Tse
- Sana Belaid
- Anne Hoffmann

Cocktail reception (17h – 19h)
