In a recent judgment discussing the admissibility of a counter claim to a case filed by a government entity, the Dubai Court of Cassation has ruled on 3/9/2024 that it is not mandatory to exhaust the procedures stipulated in the Dubai Law No. 3/1996 as amended “Government Claims”” which oblige a person who wants to sue a government entity to notify the Legal Affair Department of the claim in detail, the LAD is to refer the claim to the concerned government entity to allow it the opportunity to amicably resolve the dispute, and if an amicable settlement is not reached the claimant will be allowed to resort to the relevant court and file the claim.

The case is originally filed by a government entity against a European technology application company (Defendant), in its response to the claim petition, the defendant has raised a counter claim which was declared inadmissible by the court of first instance, the court grounded its judgment on the fact that the defendant- counter claimant has not exhausted the procedures of notifying the Legal Affair Department before filing the counter claim.

The Appeal Court has upheld the judgment and the defendant- counter claimant has filed an appeal by way of cassation in which the recent judgment is issued. In its recent judgment the court of cassation has nullified the judgments of the lower courts and ruled the admissibility of the counter claim despite the absence of a notification required by Law No. 3/1996.

The court of cassation, adopting the argument of the appellant invoked Article 13 of the Civil Procedures Law which stipulates: -

“”1. *The procedure shall be invalid if such invalidity is explicitly provided for in the law, or if the underlying procedure involves any essential defect or shortcoming due to which the purpose of the procedure cannot be achieved.*

*2. In all cases, the invalidity shall not be decided despite being provided for in the law, if the purpose of the underlying procedure is achieved.*””

The court, relying on Article 13 above quoted ruled that the significance of notifying the Legal Affairs Department before resorting to court is to give the government entity the opportunity to amicably resolve the dispute, that the filing of the original case by the government entity and the seizure of the case by the court, negate the required notification of its value as the possibility to amicably settle the dispute does not exist and there fore it is not required to exhaust the said procedure because the filing of the government entity of the original case clearly reflects its determination not to resolve the dispute amicably

The court of cassation declared the counter claim admissible and referred it to the appeal court to decide the subject.

The appellant is represented by Haider Bin Haider Advocates and Legal Consultants

(The judgment is attached)