

**In the Name of Allah, Most Gracious, Most Merciful**

**On Behalf of His Highness Sheikh Mohammed bin Rashid Al Maktoum -  
Ruler of Dubai**

**First Instance Chamber – Seventeenth First Instance Chamber**

**Date of Judgment : 09/08/2020**

**Judicial Panel : J/ Abdulaziz Abdulrahman Ali Abdullah**

**Anwahey**

**(President)**

**Mr. Ahmed Mohamed Ahmed Idris**

**(Member)**

**Mr. Khaled Mohamed Nour Mohamed Saleh**

**(Member)**

**Secretary : Ahmed Mohammed Al Marzouki**

**In principal Case No. 02/04865/2020, Residential – 2020 – Rentals**

**And combined Case No. 02/05184/2020, Residential – 2020 – Rentals**

**Issued the following judgment**

**After perusal to the documents, hearing the pleadings and legal  
deliberation:**

<b>Plaintiff:</b>	•	<b>Capacity:</b>	<b>Lessee</b>
<b>Defendant:</b>	•	<b>Capacity:</b>	<b>Lessor</b>
<b>Date of registering principal case:</b>	<b>10/06/2020</b>		
<b>Date of registering combined case:</b>	<b>2020</b>		

<b>Information of leased property:</b>	○ ●
<b>Lease Term:</b>	01/04/2018 to 30/06/2024
<b>Rental Value:</b>	AED 75660000
<b>Principal Case</b>	
<b>Plaintiff requests</b>	<p>Obligating the Defendant to:</p> <ul style="list-style-type: none"> <li>○ Terminate a valid lease</li> <li>○ Claim for rental cheque</li> <li>○ Refund of deposit</li> <li>○ Charging the Defendant with expenses and fees</li> </ul>
<b>Reason for the case</b>	<p>Based on the following:</p> <ul style="list-style-type: none"> <li>○ Obligating the Defendant to terminate the rental relationship before the end of the rental period due to Covid-19. The UAE decided to suspend travel, leading cutting off tourism, which affected the Plaintiff's economic situation, leaving no other option but to terminate the contract. The Plaintiff also tried to terminate the contract amicably, but such attempts were unsuccessful;</li> <li>○ Obligating the Defendant to hand over cheques Nos. 000007 and 000008, totaling a sum of AED 12,600,000 for the third rental year, starting as on 01/07/2020 and ending on 30/06/2021, as well as cheques No. 000009 and 000010, totaling a sum of AED 12,600,000 for the fourth rental year starting as on 01/07/2021 and ending on 30/06/2022;</li> <li>○ Obligating the Defendant to return the deposit of AED 825000 that has been previously received by the Defendant</li> <li>○ Obligating the Defendant to pay the fees and charges.</li> </ul>

<b>Plaintiff's exhibits</b>	<p>The Plaintiff has submitted a docket that comprised the following:</p> <ul style="list-style-type: none"> <li>- A copy of the paper statement of claim.</li> <li>- A copy of the rental contract signed and concluded by and between the parties to the lawsuit for the period as of April 1, 2018 to June 30, 2024 in consideration of an annual sum of AED 12610000.</li> <li>- A photocopy of a financial report that belongs to the Plaintiff.</li> <li>- A photocopy of a letter addressed by the Plaintiff to the Department of Tourism and Commerce Marketing (DTCM) on March 30, 2020 that infers the reduction of hospitality services.</li> <li>- A photocopy of a letter addressed by the Plaintiff to Dubai Municipality on March 30, 2020 that infers the reduction of hospitality services.</li> <li>- Photocopies of 14 cheques of a total sum of AED 76485000 drawn on Emirates National Bank of Dubai (NBD).</li> <li>- A copy of a legal notice served by the Plaintiff to the Defendant regarding the Plaintiff's wish to terminate the rental relation.</li> <li>- A photocopy of an e-mail addressed by the Plaintiff to the Defendant indicating the wish to terminate the rental relation.</li> </ul>
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	<ul style="list-style-type: none"> <li>- A photocopy of an e-mail issued by the Defendant to the Plaintiff on May 14, 2020 indicating objection and rejection of the termination of rental relation before the expiration of the contract.</li> <li>- Photocopies of (98) cancelations of residence visas in the state.</li> </ul>
<b>Joined lawsuit</b>	
<b>Plaintiff's motions</b>	<p>Ruling to obligate the Defendant to:</p> <ul style="list-style-type: none"> <li>• Appoint an expert; and</li> <li>• Pay the fees and charges.</li> </ul>
<b>Ground of lawsuit</b>	<p>On the basis :</p> <ul style="list-style-type: none"> <li>• Appointing an expert in order to investigate the obligations on each party and the losses that are inflicted on both of them due to the spread of Coronavirus disease (COVID-19) and the temporary suspension regarding contract rescission or continuance until expiration; to know if the hotels that the Defendant runs are in actual operation or not; to know the number of employees thereat and their residences; to reckon the losses ensuing the request on contract rescission that expires on June 30, 2024 in order to attain balance between the litigating parties. This is due to the fact that the Defendant's obligation to guarantee the harm is a legal contractual obligation,</li> </ul>

	<p>whose elements must be determined in a balanced manner before disposing the rescission motion.</p> <ul style="list-style-type: none"> <li>• To obligate the Defendant to pay the fees and charges</li> </ul>
<b>Plaintiff's exhibits</b>	<p>The Plaintiff has submitted a docket that comprised the following:</p> <ul style="list-style-type: none"> <li>- A copy of the paper statement of claim.</li> <li>- A copy of the rental contract signed and concluded by and between the parties to the lawsuit.</li> <li>- A copy of the mortgage contract of the rented property subject hereof in favor of Emirates National Bank of Dubai (NBD).</li> <li>- A copy of a certificate issued by Emirates National Bank of Dubai (NBD) that indicates the loan amount of AED 467500000 by which the Defendant is indebted.</li> </ul>
	Hearings for the two lawsuits deliberation
<b>Committee's hearings</b>	<p>The lawsuit was deliberated as shown in court proceedings. In the hearing dated June 22, 2020, the Plaintiff and Defendant's legal counsels duly appeared before court (through video call) and the Committee has recognized them after showing their identity cards and powers of attorney. The Defendant's legal counsel submitted a memo in which he originally pleaded the non-admittance of the lawsuit for</p>

	<p>being prematurely instituted and in the alternative the dismissal of the lawsuit for lack of <i>prima facie</i> (evidence). The submitted memo indicated that the term of the contract is (4) years and unpaid (3) months and that the contract commences as of July 1, 2018 and not on April 1, 2018 and that the Plaintiff owns many hotels, hotel apartments and suites and it still provides services to the residents therein. It is not the party that benefits from the rented because it lodges the staff of these hotels and apartments in the rented property, accordingly the losses claimed in the present lawsuit. Furthermore, the spread of Coronavirus disease (COVID-19) that caused suspension of travel and low guest number in the hotel has nothing to do with the rented, because the rented is not the hotel, it is the lodge of the staff of these hotels and this staff still occupies the rented until the present date. In addition, the Plaintiff's letter to the Municipality and the Department of Tourism on reducing operation at the hotels affiliated to it was only on a temporary basis and for a term of (3) months. Further, the financial report submitted on the lack of income is incorrect because it does not include all the hotels affiliated thereto, on the contrary, the report has included profits regarding the closure period that are more and better than the term that precedes this closure. In addition, the current circumstances are good and there is no closure of the hotels. This is evidenced by the fact</p>
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	<p>that the decisions issued by the State on the re-opening of all business operations. Further, the Defendant, the owner of the rented, has incurred harm due to the failure of the Plaintiff to pay the rent, since the rented was constructed by a bank finance that is mortgaged at the Land Department. The Defendant is under the obligation of paying monthly premiums to the bank, accordingly the rental relation may not be terminated for the mere reason that one of the parties harm. This is due to the fact that rescission is a harm to the other party, consequently the rent of the rented is the sole source for the payment of the bank obligations, in addition to the other obligations including charges, maintenance, salaries, marketing ...etc. Accordingly, the Defendant rejects the lawsuit by two pleas, the first: the non-admittance of the lawsuit for being prematurely instituted, because the Plaintiff has failed to conduct discussions and reach an amicable solution; since this contract has included in Article 10/c “The parties hereby agree to conduct discussion regarding any dispute in good faith and only after conducting this discussion that the dispute is referred to Rental Dispute Center”. This means that the Plaintiff shall not be entitled to institute this lawsuit directly without conducting this discussion. In addition, the Plaintiff has not duly served a notice to the Defendant in accordance with the prerequisites of Articles 13, 14 and 25 of Rental Law. The Second plea is: the dismissal of</p>
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	<p>the lawsuit due to lack of prima facie (evidence), due to the non-fulfillment of the force majeure theory or the exceptional circumstances on the rental relation, particularly in the present lawsuit since Article 273 of Civil Transactions Law stipulates that “In bilaterally binding contracts, in case a force majeure, that makes the performance of the obligation impossible, occurs, the dependent obligation expires and the contract is rescinded <i>sua sponte</i>. If the impossibility is partial, the obligation corresponding to the impossible part expires and this rule applies to spatial impossibility in continuing contracts. In these two cases, a creditor may terminate the contract dependent on debtor’s knowledge”. This indicates that Coronavirus disease (COVID-19) pandemic is a partial impossibility and not impossible. It was provisionally moved for the appointment of an expert for investigating the obligations of the parties and the losses inflicted on them both due to the spread of Coronavirus disease (COVID-19) and the temporary suspension on contract rescission or continuance until the expiration thereof; knowing whether the hotels that the Defendant runs operate or not; knowing the number of employees at the Defendant and their residence places; reckoning the harms arising due to the rescission request of the contract that expires on June 30, 2024 in order to attain the balance between the parties. The Defendant’s obligation to guarantee the harm is a legal contractual obligation and the</p>
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	<p>elements thereof must be determined in a balanced manner before disposing on the rescission motion.</p> <p>In the hearing dated June 30, 2020, the Committee decided to refer the lawsuit to the expert in order to show the business operation in which the rented is used by the Tenant; show whether the operation of the rented was negatively impacted due to Coronavirus disease (COVID-19) pandemic, show the impact and its ratio in comparison to the term of the corresponding and the term for which the impact has lasted; show whether this impact has completely lapsed or not; show whether the Landlord has conducted any preparation works in the rented property as requested by the Tenant before the commencement of the rental or not; show whether the Landlord will acquire any benefit from same in case the Tenant leaves the rented; show the price thereof and the consumption percentage in accordance with the performance date; whether the Plaintiff has obtained a grace period from paying the rent upon the contract commencement, the cause, value and term thereof; to show the losses that the Plaintiff has incurred in case it continued renting the rented and the cause of same.</p> <p>In the hearing dated July 12, 2020, the Counter Plaintiff submitted a memo moving for the impleader of litigants in the Lawsuit: ●, due to the presence of sub-leasing relation</p>
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	<p>between the Counter Defendant and the two intervened litigants.</p> <p>In the hearing dated July 19, 2020, the expert deposited his report that was addressed by the litigating parties, and accordingly the Committee decided to schedule the lawsuit for the pronouncement of the award.</p>
<b>Award Legal ground</b>	<p>-It is legally well-established that the agreement of the parties to follow certain procedures in order to solve – amicably- whatever dispute that may arise between them on the performance of a certain act – does not prevent them from resorting directly to court since court is the owner of the general jurisdiction in disposing disputes, considering that the fact that when a party resorts directly to court, this is a presumption that no amicable solution or settlement was reached. On March 11, 2008 in Objection for Cassation No. 14/ 2008 – commercial.</p> <p>-It is legally established as per the judicial precedents of the Court of Cassation that the wording of Article (94) of Civil Procedures Law – as per this court – it is conditioned for the admittance of the Defendant’s motion on impleading a third party as new litigant in the lawsuit that it claims that it has a right to recourse with this particular claimed right against the third party requested to be impleaded. There must be an association between the subject of this motion and the original motion by the existence of a close relation between</p>

	<p>the two motions that renders it necessary for the administration of justice that the two are disposed simultaneously. The impermissibility of the impleader motion ensues if the subject of the motion resides upon an independent contractual relation between the Defendant (party moving for impleader) and the party requested to be impleaded. Further, suing a third party, even if it is based on the litigant's motion, yet it is subject to the authority of the court of merits that must decide on the fulfillment of the impleader conditions, if it is shown that they are non-existent – it rules the admittance of the impleader. (Objection for Cassation 430 of 2002 – rights, hearing dated March 3, 2003)</p> <p>-It is legally established according to judicial precedents of the Court of Cassation that the mission of court in the determination of fact lawsuit is deemed completed upon the appointment of an expert and the submission of a report on same and the submission of remarks tackling this report by the parties, then Court lets the litigants exchanging arguments on the origin of the right subject of the dispute upon deliberating the substantive lawsuit that the competent parties may institute because the judgment in this lawsuits does not dispose litigation, accordingly a judge does not have any jurisdiction while deciding on it in attaining substantive objections that the litigants raise against the expert's report.</p>
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	<p>The expert shall leave this for the supervision of the court of merits since this report is merely one of the evidence on which a litigant resides in the defense thereof before the court of merits that may adopt it if it finds it trustworthy or dismiss it and appoints an expert in the lawsuit, even if Court appoints this expert to perform the same mission that the expert appointed in the determination of fact lawsuit. (Objection for Cassation No. 157 of 2007 – civil objection – hearing dated November 11, 2007)</p> <p>-Court may adopt the expert's report supported by grounds therein whenever it deems it convincing and without being obligated to remit the commission to the expert so long as Court finds in the expert's report that it adopted and in the rest of the lawsuit papers and documents what suffices to form the firm belief thereof on valid grounds that are rooted in the papers and without a need for addressing the litigants' objections nor following them in all the aspects of defense thereof, since the fact that Court adopted the report of the expert it appointed indicates that Court has not found in these objections what is worthy of reply more than what is included in the report and so long as the expert has tackled the dispute between the parties and reached a valid conclusion that was correctly proven by valid grounds and on condition that this may not be deemed disposition on the part of the expert of a legal matter so long as Court has duly tackled this and</p>
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	<p>expressed an opinion on same. (Objection for Cassation No. 266 of 2008 commercial, hearing of March 17, 2009.</p> <p>-Article 783 of Civil Transactions Law provides that a Tenant may terminate a contract in the two following cases:</p> <p>1- If performing the contract involves causing harm to a person or funds or any follower thereof in benefitting from the rented property. 2- If something that impedes the contract performance occurs.</p> <p>-Since Article (249) of this Law provides that if non-foreseeable general exceptional incidents occur leading to if not the impossibility but the difficulty of performing the contractual obligation for the debtor such that the debtor is threatened by grave losses, a judge, according to the circumstances and after weighing between the interest of the parties, may adjust the difficult obligation to reasonable limit if justice so dictates and it shall be deemed invalid any agreement contrary to this.</p> <p>-It is also legally established as per the judicial precedents of the Court of Cassation that Article (94) of Civil Procedures Law – indicates that the Plaintiff shall be entitled, at any state of lawsuit before the Court of First Instance, to implead in the litigation laid before Court, any party whose impleader is invalid ever since the institution of this lawsuit and to move for obligating the impleaded party to fulfill the rights to which</p>
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	<p>it is entitled and that are related to the subject of the same lawsuit addressed to the Defendant therein. In case the Plaintiff submits a motion on this to Court and Court orders the Plaintiff to serve a legal notice on the litigant to be impleaded and this litigant was duly served to be sentenced against by the motions addressed thereto by the Plaintiff, hence the procedures are conducted validly if this party is impleaded as litigant in the lawsuit. In this case, the Plaintiff is not obligated to follow the procedures that are customary for the institution of a lawsuit that are prescribed in Article 42 of this Law, which are depositing a statement of claim at the process servers' department before serving the party to be impleaded with the motions therein. Legislators do not obligate the Plaintiff to do so in accordance with the first clause of Article 94, there is no ground for any entitlement to any independent fee so long as the motions addressed against the impleaded litigant included a judgment against them severally along with the Defendant to pay to the Plaintiff the same amount for which the fee is paid up upon the institution of the initial lawsuit. (Rule No. 328 issued in Issue No. 16 of 2005 – rights, page no. 2040 dated December 17, 2005 in the Objection for Cassation No. 501 of 2004 – commercial)</p>
<p><b>Application of law on the motions</b></p>	<p>Based on the aforementioned:</p> <ul style="list-style-type: none"> <li>-The Committee paves the way on the plea expressed by the Defendant on the non-admittance of the lawsuit for being</li> </ul>

	<p>prematurely instituted due to the presence of an article in the contract that indicates resorting to amicable solutions before Court in case a dispute arises. This plea is refutable since – in addition to the fact that the Plaintiff has sent a notice requesting the contract termination on April 30, 2020 and another notice on May 18, 2020 - this agreement does not prevent the parties from resorting directly to court deeming that court is the owner of general jurisdiction in disposing disputes and considering that the Plaintiff resorting directly to Court is a presumption on the fact that no amicable solution or settlement was reached.</p> <p>-On the Defendant motion on impleading • suites as litigants in the lawsuit under the pretext that they are sub-tenants from the Plaintiff, since legal legislators, even if they permit the litigating parties to implead new litigants in the lawsuit, yet this is conditioned upon the fact that the party to be impleaded is a party that may be sued in the lawsuit upon its institution moving for motions included in a sentence against this impleaded party. Since the parties requested to be impleaded have no contractual relation to the Defendant, in addition the relation that the Defendant claims is merely among the parties requested to be impleaded and the Plaintiff, hence the impleader motion is inadmissible and the Committee rules this without a need to refer to this in the operative part.</p>
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	<p><u>-On the main Lawsuit No. 4865/ 2020:</u></p> <p>-Since the Plaintiff has instituted a lawsuit in which it has moved for the rescission of the rental relation, subject of this lawsuit. This is on the basis that there is a general exceptional emergency circumstance that was unforeseeable due to the spread of Coronavirus disease (COVID-19) pandemic and the precautionary procedures set by the State. This rendered the continuance in performing the rental contract, if not impossible, very difficult for the Plaintiff and that the continuance of performing this contract would cause the Plaintiff to incur grave harm to its funds. This is on the ground that the Plaintiff has rented the rented property subject of this lawsuit for the purpose of accommodating its staff and the staff of other hotels as well. The Plaintiff has closed the hotel due to this pandemic and accordingly the staff thereof residing in the rented property was dismissed. Further, the other hotels have not sent their staff to reside in the rented property. It has addressed a notice to the Defendant moving for the contract rescission, yet the Defendant has submitted the payable rental cheques due for the fatigue term to Court to get it collected. Since it is evident in the expert's report that the Committee finds it trustworthy and deems the reasons thereof supplementary to the grounds of this award for including valid grounds and sound reasons that naturally lead to the conclusion it reached that the rented property subject of</p>
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	<p>this lawsuit is being exploited by the Plaintiff in accommodating the workers and employees of ● and the Plaintiff has been negatively impacted during the crisis of Coronavirus disease (COVID-19) spread since the Plaintiff has closed the hotel in which the employees work. In addition, in case the Plaintiff continues occupying the rented property in the current period, it is possible that it encounters losses represented in operational losses equivalent at least the rental sum that the Plaintiff will pay to the Defendant.</p> <p>-Based on the aforementioned and since it is evident that the Plaintiff does not acquire benefit from the rented property in the purpose for which it rented it due to the spread of Coronavirus disease (COVID-19) pandemic and the precautionary decisions in the State. This pandemic has led to hotel closure in which the staff for whom the rented property was rented to accommodate. The appointed expert has proven that the continuance of the rental relation causes the Plaintiff to incur grave harm represented in that the continuance of the Plaintiff in occupying the rented property leads to operational losses that are equivalent at least to the rental amount to be paid to the Defendant, therefore based on the aforementioned, the Plaintiff's motion on terminating the rental relation is substantiated de facto and de jure, hence the Committee grants the Plaintiff the motion thereof, proviso that the legal</p>
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	<p>effect of the rescission shall be applied as of the discontinuance of the rental amount as of the date the award is issued unless the Defendant challenges the award since this involves weighing the interests of the two parties and setting the burdening obligation to the reasonable limit as shall be stated in the operative part.</p> <p>-Regarding the Plaintiff's motion to obligate the Defendant to return the aforementioned rental cheques, since it is evident in the lawsuit papers that the Plaintiff has handed these cheques to the Defendant for the contract term. Since the rental amount in consideration of exploiting the rented property and since the Committee has reached a conclusion in the aforementioned award to rescind the rental relation. Since this rescission re-institutes the contracting parties to their states before contracting so long as this contract is a term contract and it is attained in the lawsuit , hence the effect of the rescission shall be as of the award date, hence the Plaintiff is entitled to recover the payable rental cheques for the term that follows the rescission date , stated in detail in the statement of claim, or their sum in case cashed and this is ruled by the Committee as shall be stated in the operative part.</p> <p>-Regarding the motion on obligating the Defendant to refund the rental security deposit previously received upon the contract commencement, since it is legally established in accordance with Article 20 of the aforementioned Law</p>
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	<p>“Upon concluding a rental contract, a landlord may obtain from the Tenant a security deposit to guarantee the maintenance of the property upon the expiration of the contract term, proviso that the Landlord shall refund this security deposit or the amount lingering from same to the Tenant upon the contract expiration”. This indicates that the security deposit is refundable upon the expiration of the rental relation. Since the rental relation does not expire except by handing over the rented property by the Tenant to the Landlord. It was not proven to the Committee that the Defendant has been handed over the rented property subject of this lawsuit, in order to check it and verify that it is clear and free of any actual harms, hence the Committee rules the non-admittance of this motion for being prematurely expressed, and Committee rules same as shall be stated in the operative part.</p> <p>-Regarding the lawsuit expenses including charges, the Committee rules to obligate the Defendant to pay a convenient part thereof by invoking Article 55, 56 and 57 of the Civil Procedures Law Regulations.</p> <p>-<u>On the joined Lawsuit No. 5184 /2020 :</u></p> <p>-Regarding the present lawsuit and in which the Plaintiff's motion therein were limited to moving for the appointment of an expert and it has shown the duties to be investigated by the expert and it was ruled to appoint an expert and he was</p>
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	<p>ordered to perform these duties and he actually deposited the report and the Plaintiff's motion therein were not changed, hence the lawsuit is deemed expired since the Committee's commission in the determination of fact lawsuit is deemed expired by the appointment of an expert and the deposit of his report and the submission of the litigants' remarks thereon. The Committee is not entitled to investigate the objections raised against this report, hence the Committee rules the abatement of the lawsuit as shall be stated in the operative part.</p> <p>Regarding the lawsuit expenses including all charges, Committee rules to obligate the Plaintiff to pay same by invoking Articles 55, 56 and 57 of the Civil Procedures Law Regulations.</p>
<b>Litigants presence and absence</b>	Committee rules in <i>presentia to</i>
	<b>Main Lawsuit 02/04865/2020 – Residential</b>
	<ul style="list-style-type: none"> <li>• Terminate the lease, subject of the case, as of the date on which the Plaintiff hands over the leased property to the Defendant as vacant, free and clear of people;</li> <li>• Obligating the Defendant to return to the Plaintiff the rental fees it has received (in cash or by a cheque) for the period following the date of handing over the leased property;</li> </ul>

	<ul style="list-style-type: none"> <li>• Dismiss the claim for the deposit for being pre-maturely raised;</li> <li>• Obligating the Defendant with an adequate sum as expenses.</li> </ul>
	<b>Combined case No. 02/05184/2020, Residential</b>
	<ul style="list-style-type: none"> <li>• End of the case, charging the Plaintiff with fees and expenses of the case.</li> </ul>

**Signatures at the end of each page:**

**Committee Member     Ahmad M. A. Edrees**

**//Signed//**

**Committee Head             Abdul-Aziz Abdul-Rahman Ali Abdullah Anohy**

**//Signed//**

**Committee Member     Khaled M. Nour M. Saleh Kermestajy**

**//Signed//**