

Attachment To Case

Name: JOYCE, Matthew James  
Case Type: Arrest  
Post: Dubai

Note: Any attachments greater than 3000K in size will not be replicated between posts.

Summary : Brief from David Binns to James Larsen 13062012 for FM's call to UAE FM  
Attachment : CONSULAR-IN-CONFIDENCE

**Matthew Joyce and Marcus Lee**

I know that you are aware of this case and of our close interest in it

- including through representations by my predecessors, Mr Smith and Mr Rudd

I wanted to bring to your attention a significant new development

- a court in Australia has been considering a number of issues that are effectively the same as issues before the Dubai court – related to Mr Joyce's alleged role in the Sunland company's purchase of land in Dubai in 2007.

- On 8 June, this court ruled against the claims that Sunland had made against Mr Joyce

In making this ruling, the judge said Sunland executives had been unreliable as witnesses

- I understand that those Australian witnesses provided similar evidence to the prosecutor in Dubai. They then recanted key aspects of that evidence, about Mr Joyce, under cross examination in Australia.

The Australian Government is not, of course, in a position to make assertions about the conclusions the Dubai Court should draw from these developments

- but the Australian court outcome seems highly relevant.

- our Ambassador has sought to ensure key officials in Dubai are aware of the outcome in Victoria.

I understand Mr Joyce's lawyers are seeking to have the

Dubai court consider the outcome in Victoria.

- Given the significance of this development, I hope that this will be the case.

The verdict in Dubai is currently set for Sunday 17 June. Is there a risk the court may not have enough time to consider these latest developments in Australia?

- In view of the seriousness of the possible penalties – including lengthy gaol sentences – that might be involved, I would be interested to know whether a deferral of the verdict has been considered – to allow the court to properly consider the developments in Victoria.

33(a)(iii)

#### Background

33(a)(iii)

Mr Joyce and Mr Leo were arrested (jointly) in Dubai on 25 January 2009. Joyce was then working as a senior executive in a local state-owned property company. He is alleged to have falsely informed an Australian company, Sunland, that another Australian, Angus Reed, had purchased a 'hold' on a block of waterfront land in Dubai. Sunland subsequently paid \$14 million to acquire these rights to the land. s 22 1(a)(ii), 47 F(1)

They were formally charged with a series of commercial offences, including fraud, on 22 July 2009. They had their first court hearing in September 2009. They were gaol'd for about nine months before being granted bail. Little progress was made in a series of court hearings through 2009 and 2010 as a result of absences of key prosecution witnesses.

The Sunland company took civil action in the Victorian Supreme Court against Joyce (in absentia), Reed and others (not Leo), who they said had duped them into buying rights to the land in Dubai that Reed did not own. In addition, Sunland associated itself with the criminal case in Dubai as a civil claimant against Joyce. (In January 2012 Sunland withdrew from the Dubai proceedings.)

David Brown, Chief Executive Sunland's Middle East operations, gave crucial evidence against Joyce in Dubai. Brown recanted this account of events under cross examination in Victoria. His testimony was translated and submitted to the court in Dubai subsequently. Joyce sought to have Brown summoned to reappear as a witness in Dubai - this did not proceed, apparently because he is no longer in Dubai.

Joyce's lawyers have argued in Victoria that Sunland's allegations against Joyce (in both Dubai and Australia) have been motivated by a desire to avoid suspicions they had sought to pay a bribe and to mollify their shareholders after the losses Sunland incurred in the collapse of the Dubai property market in 2008.

On 8 June, the Victorian judge (Croft) ruled emphatically against Sunland's case against Joyce and Reed. He said 'Sunland's case fails in all respects and will be dismissed.'

s 22 1(a)(ii)

He said the key Sunland witnesses had been unreliable. In the view of Joyce and his lawyers, this ruling shows the allegations in Dubai are baseless.

#### Requests for Australian representations

Joyce has for some time been seeking high level representations to the Ruler of Dubai/ Prime Minister of UAE, HH Sheikh Mohammed Bin Rashid Al-Maktoum.

s 33(a)(iii)

s 33(a)(iii), 33(b)

During a visit in April 2012, the Governor General raised the matter with the Ruler of Dubai.

33(a)(iii)

s 22 1(a)(ii), 47 F(1)

s 22 1(a)(ii), 47 F(1)

**Consular assistance/ previous ministerial representations**

The Government has provided extensive support to Mr Joyce and Mr Lee and their families. Consular officers have attended almost all of Mr Joyce's and Mr Lee's court hearings.

A number of representations have been made at ministerial level over the last three years. Senior DFAT officials raised the case with UAE counterparts in bilateral consular talks on 22 February 2012. Past representations have focused on our concerns about the time the case was taking and welfare issues affecting the two men and their families.

The former Minister for Foreign Affairs, Mr Rudd, raised the case with the UAE Foreign Minister on 21 February 2012. Prior to this, he raised the case with the Foreign Minister on 9 June 2011. Mr Smith, as then Minister for Foreign Affairs, raised this case with his UAE Ministerial counterparts on six occasions - with Sheikh Abdullah, on 10 February 2009, 23 March 2009, 22 April 2010, 5 February 2010 and 16 July 2010 and with the UAE Minister of State for Foreign Affairs, Dr Anwar Gargash, on 15 July 2009. As Defence Minister, Mr Smith again raised the case with FM Abdullah during a visit in April this year.

### **Australians Matthew Joyce and Marcus Lee on trial in the Dubai Criminal Court**

Matthew Joyce was Managing Director of Dubai Waterfront. Marcus Lee was Director, Commercial Operations. Both men were arrested in January 2009 on allegations that in 2007 they fraudulently obtained a commission of AED 44.1 million in relation to the purchase of a plot of land by buyer Sunland, a listed Australian company. The plot was part of the Dubai Waterfront development and was owned by Nakheel.

Both men were imprisoned, including for periods of solitary confinement. They were charged in July 2009. They were released on bail in October 2009. The bail conditions were that they each had to provide AED 1 million to the court, as well as their passport, the passport of another expatriate (in practice this has meant their wives' passports), and the passport of an Emirati citizen. Both men were also not allowed to work. Since September 2009 until now (a period of three years) there have been 32 hearings in the Dubai Criminal Court of First Instance. Many of the hearings were adjourned due to the non attendance of key prosecution witnesses.

Sunland initiated parallel civil proceedings in Dubai and in Australia (in the Victorian Supreme Court) against a number of parties, including Matthew Joyce (but not Marcus Lee). Some of the witnesses for Sunland in the Australian case also gave evidence for the prosecution in Dubai. In January 2012 the judge in Australia issued orders for Sunland to cease its action in the civil case in Dubai. In June 2012 the judge dismissed the civil case brought by Sunland, finding that it had "failed in all respects". Relevant documents and transcripts from the Australian case have been provided to the court in Dubai by Mr Joyce's lawyers.

Sunland has written to Marcus Lee stating that it had no claim against him in either the Australian and Dubai proceedings. This letter was submitted in evidence in the Dubai Criminal Court.

On 15 April 2012 final submissions were made by the defendants in Dubai. On 15 July 2012 the Dubai Criminal Court was due to deliver its verdict. At that hearing, the judge decided to refer the case back to the prosecution. The judge ruled that the public prosecutor may decide that there were not enough grounds to proceed with a trial or it may request a trial. If the prosecutor requested a trial, it must be heard before a new set of judges. Three days later, on 18 July 2012, the prosecution re-submitted the charges against the defendants. A new court hearing has been set for Thursday 20 September.

In Australia on 14 September, the Victorian Supreme Court further ruled that Sunland had commenced and continued the present proceedings in wilful disregard of known facts and law and also for an ulterior purpose. Consequently, the judge found more than an ample basis to warrant the making of a special costs order against Sunland in favour of the defendants.

The length of the trial in Dubai and the bail conditions have led the Australian Government to raise this case on numerous occasions with UAE counterparts. Prime Minister Julia Gillard wrote to HH The Ruler of Dubai in June 2012 about this case. Governor-General HE Quentin Bryce raised the case with HH The Ruler of Dubai in person in April 2012 during her State Visit to the UAE. Current Foreign Minister Bob Carr has raised the case with UAE Foreign Minister HH Sheikh Abdullah on three occasions this year. Representations have previously been made by former Foreign Ministers Stephen Smith and Kevin Rudd. The current Australian Ambassador to the UAE has raised the case with Mr Mohammed Al Shaibani in four separate meetings this year.

The Australian Government is concerned about the welfare of its citizens, including families, in this case. After more than three and a half years since their initial arrest in January 2009, there is a prospect that the case will now start afresh in the Dubai Criminal Court of First Instance, with a new panel of judges who may choose to recall previous witnesses and review all the evidence presented in the court from the beginning. It is unclear how much additional time may be required to finalise the case.

While not commenting on the substantive aspects of the case or seeking to intervene in the judicial process, the Australian Government has respectfully requested that the outcome of the civil case proceedings in Australia and Sunland's letter in respect of Marcus Lee be given due consideration by the Dubai Criminal Court.

The Australian Government also respectfully requests that due to the length of this case and the financial hardship it has caused the defendants, that the relevant Dubai authorities consider relaxing the bail conditions.

~~CONSULAR IN CONFIDENCE~~

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Consular -- Matthew Joyce and Marcus Lee

#### Talking Points

Note that a judgement is expected in the Dubai Court on 20 May in the case of Matthew Joyce and Marcus Lee

Australian public interest in the outcome will be high.

Understand that both the prosecution and the defendants have rights of appeal

— regardless of the verdict tomorrow, the case may continue for a further period.

Should the legal process continue, the Australian Government will certainly continue to provide consular support.

In that event, would hope that bail would be available and that conditions would be less onerous than has been the case to date.

— In particular that both spouses could retain their passports, and that the requirement to surrender a UAE citizen's passport could also be waived.

Concerned about the impact that the protracted case (four years and 46 court hearings) have already had and on Mr Joyce and Mr Lee and their families.

#### Background

Matthew Joyce and Marcus Lee were arrested in Dubai in January 2009. They s 22 1(a)(ii), 47 F(1)

were formally charged with a series of commercial offences related to a property deal on 22 July 2009.

The property transaction at the centre of the case was the sale in 2007 of a block of land in Dubai ('D-17') by a Dubai state-owned company. (Dubai Waterfront Ltd, a subsidiary of Nakheel.) Joyce, Lee and Brearley were working for Nakheel.

The initial charges against them as listed on the Dubai Public Prosecutor's website were: disclosing secrets (related to work); decisions made regarding public money for personal interest and benefit; fraudulent acts to steal money belonging to others; and being a member of a group to commit criminal acts.

The central allegation is that Joyce told the Australian company, Sunland, that another Australian, Angus Reed, had a 'hold' on the land which he was willing to sell for \$14 million. Reed was paid this amount and Joyce allegedly received around \$6 million for his role. Joyce was accused of using his position in Nakheel to assist in a fraud. (This account of the events is strongly denied.) s 22 1(a)(ii), 47 F(1)

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Sunland was initially accused of complicity in the supposed fraud. Sunland executives were detained. Sunland executives subsequently became witnesses for the prosecution, asserting they were duped by Joyce and Reed. Sunland became a civil party to the prosecution in Dubai. It also initiated legal action in Australia against Joyce and Reed s 22 1(a)(ii), 47 F(1)

#### Dubai trial process

Bail was set on 20 October 2009: Joyce and Lee had to surrender their passports, s 47 F(1), and 1 million Dirham (approximately A\$312,000) as cash surety. s 47 F(1)

The trial process proceeded slowly through 2010 as key witnesses for the prosecution repeatedly failed to appear. Forty six (46) hearings have taken place since the trial processes began in 2010. On 15 July 2012 the judge informed the court that he had made no decision in the case and would ask the prosecutor to re-assess the evidence. On 18 July renewed charges were laid by the Dubai Public Prosecutor (DPP). The charges appear to be almost identical to the previous ones, with more detail elaborated on some issues.

A court-appointed expert submitted his report on the case on 15 April 2013. The report analyses the issues in the case but makes no clear recommendations as to the verdict.

s 22 1(a)(ii), 47 F(1)

#### Australian 'Sunland' case

Sunland brought a civil case in the Victorian Supreme Court against Joyce and others for their alleged role in the same Dubai transaction. Sunland alleged that Joyce had falsely suggested Mr Reed has rights to the property that had been sold to Sunland, and that Sunland had been duped into paying \$14 million for these rights. s 22 1(a)(ii), 47 F(1)

On 8 June 2012, the judge in Victoria (Justice Croft) ruled that Sunland's case had failed in all respects and was dismissed. s 22 1(a)(ii)

On 14 September 2012, Justice Croft found against Sunland on the matter of costs and made further critical remarks on Sunland's actions. He said that Sunland had initiated legal action against Joyce and the others for an 'ulterior purpose', i.e. to avoid being prosecuted in Dubai.



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Defence lawyers for Matthew Joyce submitted relevant documents and transcripts from the Australian case to the court in Dubai.

#### Consular Assistance/Ministerial Representations

Consular officers have attended all but one of Mr Joyce's and Mr Lee's court hearings.

A number of high level representations have been made over the last four years, including to draw attention to the findings of the Victorian Supreme Court. The Prime Minister telephoned the Ruler of Dubai in February 2013 to discuss the case.

The Government has also requested that due to the length of this case and the financial hardship it has caused the defendants, that the relevant Dubai authorities consider relaxing the bail conditions.

s 22 1(a)(ii)

#### Chronology

Date	Event	Comment
22 January 2009	• Charged with a series of commercial offences including fraud.	
26 January 2009	• Arrested in Dubai.	
10 February 2009	• Then Foreign Minister Smith raises the case with UAE Foreign Minister.	• Concerned about detention, request for consideration of bail.
4, 15 and 19 March	• HOM raises case with UAE senior officials.	• Concerned about detention, request for consideration of

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**Joyce, Matthew and Lee, Marcus (Dubai: Arrest)**

*What consular assistance is being provided to Mr Joyce and Mr Lee?*

- The Government has provided extensive support to Mr Joyce and Mr Lee since they were charged with commercial offences, including fraud, in 2009.
- Representations have been made to UAE authorities on a number of occasions, including at ministerial level, particularly to register concerns about the length of the legal process and welfare issues affecting the two men and their families.
- Senator Carr most recently raised the case on 31 July with UAE Foreign Minister Abdullah during a visit to Dubai.
- On 13 September, our Ambassador to the United Arab Emirates, reiterated the Government's concerns during a meeting with the Director General of the Dubai Ruler's Court.
- Consular officials attended the first hearing of the new trial on 20 September. (A new trial commenced following the decision of the previous trial judge to return the case to prosecutors on 15 July. Renewed charges were laid on 18 July.)
- The next court hearing is on 18 October. Consular officials will attend.
- Our Embassy in the UAE is maintaining close and regular contact with both men and their families, most recently 3 October. There has been contact with the men or their families on 107 occasions over the last six months.

*If asked: Doesn't the verdict in the Victorian Supreme Court in the Sunland case on 8 June, and the subsequent awarding of costs against Sunland on 14 September, prove Matthew Joyce is innocent?*

Mr Joyce's lawyer has raised these developments in court in Dubai.

- The Australian Government (including Senator Carr) has drawn the

Victorian Court's findings to the attention of UAE authorities on several occasions.

- The decision to award costs against the Sunland company has also been brought to the attention of relevant Dubai officials by our Ambassador.
- It is for the Dubai court to draw its own conclusions from the legal proceedings in Australia. The Government cannot make assertions about the relevance of those developments.

#### Background

Mr Matthew Joyce and Mr Marcus Lee were arrested in Dubai on 25 January 2009. They s 22 1(a)(ii), 47 F(1)

were formally charged with a series of commercial offences related to a property deal, including fraud, on 22 July 2009. Bail was set on 20 October 2009; the men had to surrender their passports; s 47 F(1)

and 1 million Dirham (approximately A\$312,000) as cash surety. s 22 1(a)(ii)

The trial process proceeded very slowly as key witnesses for the prosecution repeatedly failed to appear. On 15 July 2012 the judge informed the court that he had made no decision in the case and would ask the prosecutor to re-assess the evidence. On 18 July renewed charges were laid by the Dubai Public Prosecutor (DPP). The charges

appear to be almost identical to the previous ones, with more detail elaborated on some issues.

At the court hearing on 20 September, new judges were appointed. The head judge advised that the documentation of the previous court would be kept as a reference in case needed, and the hearing would be regarded as the first in the trial. Mr Joyce's lawyer, Mr Al Shaali, brought the outcome of the Sunland court case in Australia (see below) to the attention of the judge. Al Shaali also sought to summon 15 witnesses for the defence, including three from Australia.

The judge asked the Public Prosecutor to prepare a summary based on the previous evidence and the information given by Mr Al Shaali and to deliver the report to the judge by 6 October. The judge scheduled the next hearing for 18 October.

#### Consular Assistance/Ministerial Representations

The Government has provided extensive support to Mr Joyce and Mr Lee and their families. Consular officers have attended all but one of Mr Joyce's and Mr Lee's court hearings. A number of high level representations have been made over the last three years.

Following the 8 June outcome of the civil case brought against Joyce and others by Sunland in Australia (see below), s 22 1(a)(ii), 47 F(1)  
the Australian Government has made

a number of representations to request that these matters be given due consideration by the Dubai Criminal Court. The Government has also requested that due to the length of this case and the financial hardship it has caused the defendants, that the relevant Dubai authorities consider relaxing the bail conditions.

On 2 October, HOM Abu Dhabi and Consul-General Dubai met with Dubai Public Prosecution to draw attention to ongoing concerns about the length of the case and to high level representations made recently. They also highlighted that the differences in respective legal process, whereby a case can be returned to the Prosecutor after an inconclusive 3 year trial, raises concerns in Australia.

s 33(b)

On 13 September, our Ambassador to the United Arab Emirates met with Mohammed Al Shaibani, Director General of the Ruler's Court in Dubai.

s 33(b)

The summary, which included reference to the findings of the Victorian Supreme Court (including assertions by the judge that Sunland had pursued the case against Joyce and others for ulterior purposes) was provided to Mr Al Shaibani on 19 September.

On 31 July 2012, Senator Carr raised the case with his UAE counterpart, HH Sheikh Abdullah, asking that the matter be handled expeditiously following the renewal of charges.

s 22 1(a)(ii), 47 F(1)

s 22 1(a)(ii)

On 15 June, the Prime Minister wrote to the Ruler of Dubai, drawing his attention to the outcome of the Victorian Supreme Court case, s 33(a)(iii) s 33(a)(iii)

On 13 June, Senator Carr raised the matter with the UAE Foreign Minister, to draw attention to the Victorian Supreme Court outcome and to seek time for this to be considered.

On 24 April 2012, the Governor General raised the case with the UAE Prime Minister (who is also Ruler of Dubai).

On 12 April 2012, Minister for Defence, Mr Smith raised the case with the UAE Foreign Minister.

#### Due Process

While delays in the trial process have been lengthy, it cannot be asserted that Joyce and Lee have not received due process under local law. It is also relevant that some of the delays have been instigated by Mr Joyce's defence, to allow information from the Australian court case to be used in the UAE case.

Mr Joyce and his supporters in Australia have claimed that his defence in the first trial was curtailed because the court refused to allow some defence witnesses. In practice, the key individuals were in Australia and very unlikely to return.

#### Relevance of Australian 'Sunland' case

Sunland brought a civil case in the Victorian Supreme Court against Joyce and others for their alleged role in the same Dubai transaction. Sunland alleged that Joyce had falsely suggested Mr Reed has rights to the property that had been sold to Sunland, and that Sunland had been duped into paying \$14 million for these rights. s 22 1(a)(ii), 47 F(1)

During cross examination of Sunland executive, David Brown, he appeared to recant crucial evidence he had given in Dubai about Matthew Joyce's role. On 8 June 2012, the judge in Victoria ruled that Sunland's case had failed in all respects and was dismissed. s 22 1(a)(ii)

On 14 September, the judge in Victoria found against Sunland on the matter of costs and made further critical remarks on Sunland's actions.

s 22 1(a)(ii)

s 22 1(a)(ii)

Defence lawyers for Matthew Joyce have submitted relevant documents and transcripts from the Australian case to the court in Dubai. Our Ambassador, Foreign Minister and the Prime Minister, have drawn this material to the attention of Dubai officials, including the Ruler of Dubai and the UAE Foreign Minister.



s 22 1(a)(ii)

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