

Enabling reproduction: IVF legislation in the Kingdom of Bahrain

Raj Pahuja - Head of Corporate Commercial - Bahrain - Corporate / Mergers and Acquisitions / Capital Markets / Commercial
- Manama

November 2017

Assisted reproductive ('AR') technologies, including in vitro fertilization ('IVF') to overcome infertility, are now widely available across the Middle East.

Since the 1980s, IVF and other forms of AR technologies have rapidly globalised and have become more readily available in the region. Today, the Middle East is host to a booming and high-tech AR industry. Egypt alone boasts more than fifty IVF clinics and Turkey tops the list with more than one hundred clinics. The United Arab Emirates ('UAE') is home to more than a dozen IVF centers, including two supported by the UAE government. This is due, in part, to the enthusiastic reception that these technologies have received from Islamic religious authorities, which have ruled for medical developments to overcome human suffering and inability. Islam is known for being pronatalist with its promotion of birth and family creation, and inspiring the pursuit of medicine and science for peaceful means. The emergence of new AR has also led to increased bioethical discussions regarding how these technologies should be used.

In keeping up with demand for assisted reproductive services and the development of AR technologies, the Kingdom of Bahrain enacted Law No. 26 2017 On Using Medical Techniques That Assist In Intrauterine Insemination ('IUI') and In Vitro Fertilization ('IUI-IVF Law'), which sets out clear regulations on the use of IVF and IUI techniques.

Since its breakthrough with the birth of the world's first test-tube baby, Louise Brown in 1978, there has been rapid development of AR related to IVF, which includes:

- intracytoplasmic sperm injection ('ICSI') to overcome male infertility;
- intrauterine insemination;
- test-tube babies;
- third-party reproductive assistance (with donor eggs, sperm, and embryos) to overcome problems of poor gamete quality;
- gestational surrogacy to help women who are unable to carry a pregnancy in their own uterus;
- cryopreservation (freezing) and storage of unused sperm, embryos, eggs, and now ovaries;
- mitochondrial transfer from a healthy human egg to the diseased egg of another woman;
- preimplantation genetic diagnosis ('PGD') to determine whether embryos have genetic defects, to select embryos of a specific sex, or to select embryos that can grow into 'savior siblings' through the donation of their umbilical cord blood; and
- human embryonic stem cell ('hESC') research on unused embryos for the purposes of therapeutic intervention.

Do's and Don'ts

The IUI-IVF Law has permitted the use of the first three AR technologies described above and has left the scope of adopting other AR technologies to the determination of the National Health Regulatory Authority

('NHRA'). The NHRA is required to carry out specialised studies and consider the opinions of leading consultants in the field and the Supreme Council for Islamic Affairs ('SCIA') prior to permitting any further AR technologies.

There are a few considerations to bear in mind when opting for an AR technology in Bahrain. Article 6 of the IUI-IVF Law states that AR technologies are only available to married couples. The couple would also need to be screened for infectious disease and the express consent of both the husband and wife would need to be obtained in opting for an approved procedure under the IUI-IVF Law. The licensed physician is then required to maintain a record containing relevant data and procedures taken in relation to a couple's use of AR technologies.

Under the IUI-IVF Law, the AR technologies that are applied requires the sperm and eggs from the consenting married couple to be used. Ethical considerations played a large part in the drafting of the IUI-IVF Law as only certain AR practices are permitted. Wherever there is a risk that the use of an AR technology may pose serious harm or damage to the wife's life or wellbeing, the AR practice will not be permitted.

Under the IUI-IVF Law, the use of third-party donors is prohibited (Article 7 Section B), whether they are donating sperm, eggs, embryos, or uteruses, as in surrogacy. The use of a third party is considered tantamount to adultery. Therefore, all forms of surrogacy are forbidden (Article 7 Section F). Human reproductive cloning en masse and precisely for the creation of a cloned child — who would theoretically be the genetic twin of the cloning parent — is also forbidden (Article 7 Section C). The contravention of any section of Article 7 bears a prison sentence and a fine accordingly.

Article 7 of the IUI-IVF Law contains some exceptions for the use of procedures that are generally prohibited under the IUI-IVF Law. For example, The selective reduction of fetuses through termination is only permitted in order to save the mother's life and after the approval of three medical consultants, of whom one is employed by a public hospital, in addition to the mother or whoever is acting under her capacity. In the absence of meeting such requirements, such a procedure would be considered an abortion and punishable under the Bahrain Penal Code.

Another exception is the genetic selection of offspring characteristics when symptoms of inherited or rare diseases are found.

Preservation

For both spouses willing to preserve ova, sperms and tissues for future fertilisation, Article 8 of the IUI-IVF Law permits their storage for a period of up to 10 years, and up to five years for embryos, in accordance to NHRA safety and quality standards. Spouses can request the destruction of their own gametes following storage, with mutual consent of the spouses required for the destruction of a stored embryo. Stored gametes die with their proprietors, and the termination of the marriage through divorce or death of a spouse would mean that the embryo would need to be destroyed.

Cryobanks and the transaction of donor sperm and eggs, for purposes other than the storage of gametes relating to consenting married couples, are prohibited and storage facilities that are found in contravention of this will be ordered to close and its directors would be liable to face imprisonment and a fine

The IUI-IVF Law sets an essential framework for IVF and IUI providers in Bahrain and regulates an industry that is increasing in popularity in Bahrain.