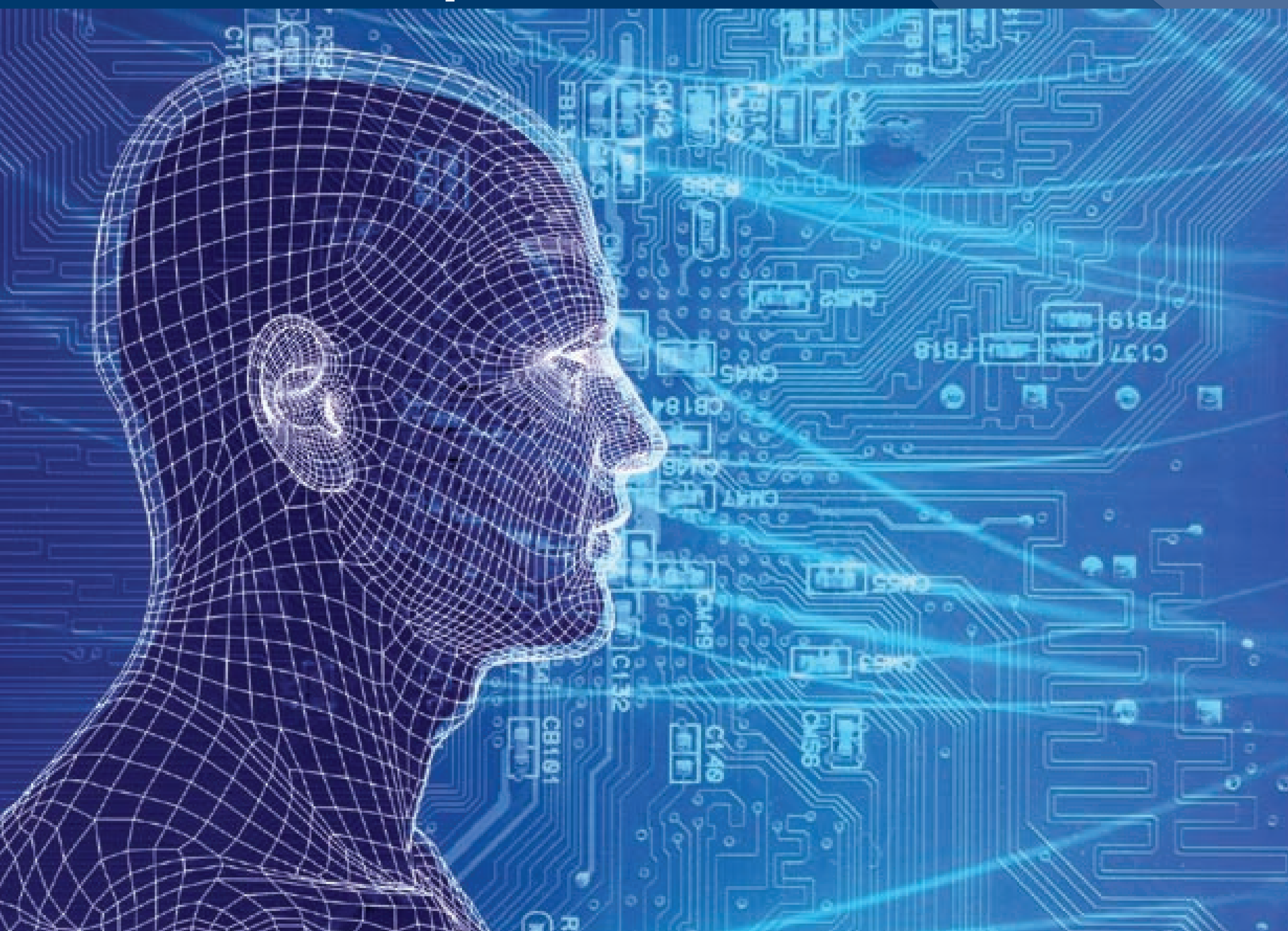
AL TAMIMI
& COMPANY
التـــمـــيـــمـــي
و مـــشـــاركــــوه
Advocates & Legal Consultants
للمحاماة والاستشارات القانونية

Law Update

February 2011 - Issue 237



Fortifying Cyber Presence

New Maritime Law

Labour Relations in the UAE

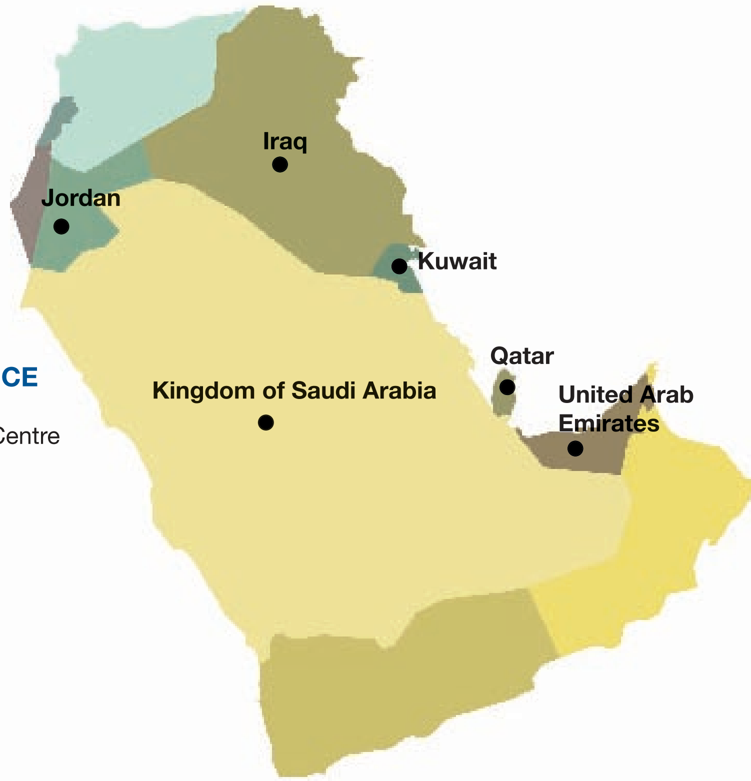
Leasing in the Jebel Ali Free Zone

Free Arbitration Zone in Bahrain

The Law Firm of Choice for the Middle East

Al Tamimi & Company Offices

The Law Firm of Choice for the Middle East



DUBAI - DIFC HEAD OFFICE
6th floor, Building 4 East
Dubai International Financial Centre
Sheikh Zayed Road
PO Box 9275, Dubai, UAE
Tel : +971 4 364 1641
Fax : +971 4 364 1777
info@tamimi.com

DUBAI INTERNET CITY
Building No.5, G 08
PO Box: 500188
Dubai, UAE
Tel: +971 4 391 2444
Fax: +971 4 391 6864
infodic@tamimi.com

BAGHDAD, IRAQ
Al Harthiya
PO Box No: 10014, Code 12921
Baghdad, Iraq
Tel: +962 6 577 7415
Fax: +962 6 577 7425
infoiraq@tamimi.com

AMMAN, JORDAN
PO Box 18055
Amman, Jordan
Zip 11195
Tel: +962 6 577 7415
Fax: +962 6 577 7425
infojordan@tamimi.com

DUBAI World TRADE CENTRE
9th floor, Sheikh Zayed Road
PO Box: 9275
Dubai, UAE
Tel: +971 4 331 7161
Fax: +971 4 331 3089
info@tamimi.com

SHARJAH
Al Reem Plaza
3rd floor, Suite 306,
Khaled Lagoon
PO Box 5099,
Sharjah, UAE
Tel : +971 6 572 7255
Fax : +971 6 572 7258
infosharjah@tamimi.com

RIYADH, KSA
2nd floor, Sky Tower,
(South Tower S.2.A).
King Fahad Rd.
Al Olaia Area
PO Box 300400
Riyadh, KSA
Tel: +966 1 4169 666
Fax: +966 1 4169 555
infoksa@tamimi.com

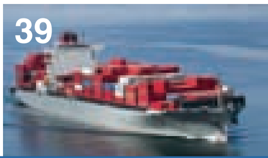
ABU DHABI
Arab Tower, Suite 504
Hamdan Street
PO Box 44046,
Abu Dhabi, UAE
Tel : +971 2 674 4535
Fax : +971 2 676 8762
infoabudhabi@tamimi.com

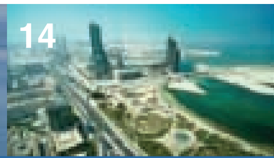
DOHA, QATAR
Adv. Mohammed Al Marri in
association with Al Tamimi & Company
Sheikh Mohammed Bin Suhaim Tower
3rd floor Ras Abou Aboud,
PO Box 23443
Doha, Qatar
Tel: +9744 4572 777
Fax: +9744 436 0921
infoqatar@tamimi.com

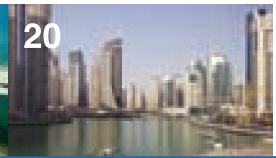
KUWAIT CITY, KUWAIT *
Khaled Ibn Al Waleed Street, Sharq,
Al Dhow Tower,
14th Floor,
PO Box 29551, Safat 13156
Kuwait City, Kuwait
Tel : +965 2 296 6424
Fax : +965 2 246 2253
infokuwait@tamimi.com

* Al Tamimi & Company International Ltd. Provides services in Kuwait through a joint venture with Yaqoub al Munayae. Yaqoub al Munayae is a registered and licensed lawyer under the laws and regulations of Kuwait.

The contents of Law Update are not intended to be a substitute for specific legal advice on individual matters. Reproduction of part or all of the content in any forms is prohibited other than for individual use only and may not be recopied and shared with a third part. The permission to recopy by an individual does not allow for incorporation of material in part or in whole in any work or publication, whether in hard copy, electronic, or any other form, unless specific mention is made to the source, "Law Update published by Al Tamimi & Company", and written permission is granted from marketing@tamimi.com.





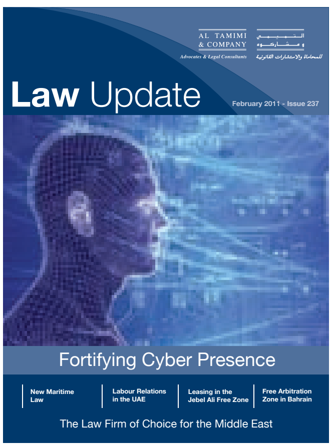


Contents

Our Accolades

Our innovative approach and superior level of expertise has been recognized by numerous industry awards, most recently:

- Banking & Finance Law Firm of the Year 2010, *World Finance Magazine*
- Corporate & Commercial Law Firm of the Year 2010, *World Finance Magazine*
- Maritime Law Firm of the Year 2010, *World Finance Magazine*
- M&A Law Firm of the Year 2010 - Qatar, *Corporate International Magazine*
- Real Estate Law Firm of the Year 2010 - UAE, *Corporate International Magazine*
- Trademark Law Firm of the Year 2010 - Saudi Arabia, *Corporate International Magazine*



In this Issue

Welcome to the February edition of Law Update.

As we move into another year of business, one which I hope will be successful for all our clients and readers, I'd like to point your attention to this months magazine.

We at Al Tamimi & Company are very proud of what we have achieved. We have built a strong business in the Middle East – now spanning 6 countries. Each month we'll be introducing a practice area to you so you can find out more about us. This month, I'm pleased to present the Property team at Al Tamimi led by Lisa Dale in our 'In Focus' section.

We have also highlighted a number of laws in this edition including the new Maritime law which is about to be endorsed. Key changes include allowing complete non-UAE ownership for vessels registered in the UAE. This in itself is exciting for the UAE shipping and associated industries.

Our IT team recently dealt with a domain name dispute between two retailers which we talk about in our article 'Fortifying Cyber Presence" I have no doubt you'll find this a very interesting read.

As always, we very much welcome your feedback or comments and invite you to send these to us by emailing info@tamimi.com.

Husam Hourani
Managing Partner

Editor:
Angela Maglieri

Graphic Designer:
Maya Sawaya

For further information on Law Update please contact:
info@tamimi.com

In Focus - Property

The Property Practice at Al Tamimi & Company

From left to right: Sonia Harvey, Mohammed Kawasmi, Katrine Kofoed, Lisa Dale, Sydene Helwick, Jeremy Scott, Mohammed Kamran Tahir and Tara Marlow.

Al Tamimi & Company's Property Practice provides a comprehensive range of legal services across the Middle East, covering all areas relevant to the property industry. With an initial focus on Dubai, our Property Practice now extends to our Abu Dhabi, Doha, Riyadh, Baghdad, Kuwait and Amman offices. Our regional team of property lawyers has a good mix of western and regional qualifications, contentious and non-contentious experience and bi-lingual capability.

Lisa Dale, our Partner who initially established the Property Practice and continues as its head, is described by Chambers Global as a "star who is respected across the board, and has the ability to read a situation and know exactly how to handle it". She is supported by a number of well-respected, experienced partners and associates.

The success of our Property Practice continues to be recognised globally - having just been awarded Corporate International Magazine's 2010 "Real Estate Firm of the Year UAE".

Lisa Dale "is a star who is respected across the board, and has the ability to read a situation and know exactly how to handle it."

Chambers Global

The breadth and depth of our property team's experience enables us to assist with all aspects of real estate legal practice, including the following:

- Legislative & Regulatory Issues
- Setting up & Licensing Real Estate Businesses
- Financing & Securities
- Real Estate Funds & REITS
- Strata and Mixed Use Schemes
- Land Acquisition & Development, including Joint Ventures
- Property dispute resolution, including Court Litigation and local & international Arbitration
- Commercial Property Transactions
- Hospitality & Leisure Development and Management
- Long-Term Leases - Residential, Commercial & Retail

The success of our Property Practice continues to be recognised globally - having just been awarded Corporate International Magazine's 2010 **"Real Estate Firm of the Year UAE"**.

- Short-Term Tenancies - Residential, Commercial & Retail
- General Landlord and Tenant advice, including litigation and disputes.

Our Expertise

In 2003, Al Tamimi & Company became the first law firm in the GCC region to establish a dedicated Property Practice. We have since continued to lead the field, earning a Band 1 ranking from both Chambers Global and Legal 500. Chambers describes our Property Practice as, "a frontrunner in real estate and construction, with no-nonsense, to-the-point lawyers who have a superb understanding of the issues" whilst Legal 500 states, "with good lawyers and the largest property team in Dubai, Al Tamimi & Company is a star local real estate firm".

We are regularly consulted by the Dubai Land Department and the Real Estate Regulatory Authority (RERA) in Dubai and the Department of Municipal Affairs in Abu Dhabi on the content and drafting of new property laws and regulations. Our central involvement in the development of the legal framework ensures that we are able to give our clients accurate and up-to-date legal advice which is second to none.

In Focus: Jointly Owned Property – Strata

Development work has been a core strength of our Property Practice since its inception. In 2002, we introduced the concepts of the Master Community Declaration and Constitution of Co-Owners Association through our work on the Jumeirah Beach Residence project in Dubai. This form of ownership, management and control for communities and multi-owned buildings quickly became the market norm, not only in Dubai but also in Abu Dhabi, Qatar and the wider GCC region.

After the enactment of Law No. 27 of 2007 on Ownership of Jointly Owned Properties in the Emirate of Dubai (the so-called "Strata Law"), our Property Practice worked closely with the Dubai Land Department and RERA to assist in the shaping and finalisation of the Implementing Directions. These were issued in April 2010 and we have since been at the forefront in working with RERA, our clients and the industry generally to facilitate the understanding and practical implementation of the Directions.

"With good lawyers and the largest property team in Dubai, Al Tamimi & Company is a star local real estate firm."

Legal 500

We developed and delivered the inaugural Jointly Owned Property training module for the Dubai Real Estate Institute. In addition we have hosted seminars, written articles and provided in-house workshops to clients and other interested parties.

As a testament to our dedication and capability in this specialised practice area, we are currently assisting our clients to bring some of Dubai's most complex real estate projects into compliance with the Strata Law and its Directions.

We provide services in Structuring; Documentation; Implementation; Set Up; and Licensing & Regulatory Compliance.

In Focus: Hospitality & Leisure

Given the growth of this industry in the region, Al Tamimi & Company provides a comprehensive range of legal services across the MENA region, covering all areas relevant to the hospitality and leisure industry.

Led by Tara Marlow, the Hospitality and Leisure practice comprises a team of experienced lawyers who work across the entire range of legal disciplines within the firm. Together, they form a specialist industry practice created specifically to cater to all parties involved with the hotel and leisure business. We advise on every type of product, including destination resorts, city hotels, hotels within shopping malls, serviced apartments, conference facilities, nightclubs, golf courses and clubs, marinas and yacht clubs, private member clubs, together with timeshare, fractional ownership and rental pool arrangements – whether they are independent or part of an overall mixed use development.

Our team has in-depth knowledge of the hospitality and leisure industry gained from advising on all manner of hospitality and leisure related issues. The team also draws on the invaluable experience of its members who have previously held in-house general counsel roles within the hotel industry.

We advise on all matters applicable to a hotel/leisure project, whether your interest is as an owner, investor, developer, operator or financier.

Our expertise ranges from site/property acquisition, corporate structuring and long-term strategy planning, project and operational licensing, project finance, equity and debt financing, hotel development, hotel operator appointment (including negotiation of hotel management agreements), day to day operational matters, employment related advice, property refurbishment/renovation, dispute resolution, intellectual property protection and disposal options.

For more information, please contact one of our Property specialists:

Lisa Dale, Partner &
Head of Property
P: +971 4 364 1641
E: l.dale@tamimi.com

Tara Marlow, Head of Property
& Hospitality Abu Dhabi
P: +971 2 674 4535
E: t.marlow@tamimi.com

Law Update
Judgment

Each month Law Update highlights recent significant judgments issued from the local courts in our **Law Update Judgments** feature. Al Tamimi & Company's lawyers translate, simplify and comment on these judgments providing our Law Update readers with an overview which they should find useful and insightful in terms of understanding the workings and developments of the local courts.

If you have any queries relating to the **Law Update Judgments** please contact lawupdate@tamimi.com

Void, Defective or Suspended Contracts

Zafer Sheikh Oghli, Partner
Dispute Resolution

Law Update
Judgment

The ongoing and rapid development of property-focused legislation in the Emirate of Dubai together with the large quantity of property decisions being made by the Dubai Courts, particularly the Court of Cassation, has led to the derision of new legal principles which are intended to guide the operation of the law.

Law No. 13 of 2008 was issued on 14 August 08 and was published in the Official Gazette on 31 August 2008; its date of entry into force.

Article 11 of Law No. 13 of 2008 was amended by Law No. 9 of 2009 (which was issued on 12 April 2009). Further, on 14 February 2010, Executive Council Decision No. 6 of 2010 promulgated the Implementing Regulations to complement Law No. 13 of 2008. The amendments and Implementing Regulations clarify and explain more clearly the correct application of the law and the legislator's intention.

Naturally, prior to the introduction of the amendments and Implementing Regulations, the Dubai Courts were deciding cases. Consequently, court decisions issued after the promulgation of Law No. 13 of 2008 and the formation of property courts in Dubai serve not as a mandatory precedent but as a non-binding guide for the courts, which are compelled to rule based on their understanding of the legal provisions and legislation in force at the time their decisions are rendered. Careful consideration of the relevant laws and decisions is therefore necessary to understand how they are applied.

It is worth noting at this point that the most contested provision in Law No. 13 of 2008 is Article 3, which reads as follows:

- "The Interim Real Estate Register is used to record all disposals of Real Estate Units off plan. Any sale or other disposition that transfers or restricts title or any ancillary rights shall be void if not recorded on that Register
- Any developer who made a sale or other disposition that transferred or restricted title prior to the coming into force of this Law should approach the Department to get it registered in the Real Estate Register or the Interim Real Estate Register, as applicable, within 60 days after the date on which this Law came into force."

A careful reading of this Article reveals two distinct phases:

Phase One: Pre-31 August 2008

Phase Two: Post-31 August 2008

Contracts executed during Phase One are not referred to as void contracts. On the contrary: they are considered valid and effective contracts given that developers are asked to register them within the 60 day deadline mentioned. In essence, Phase One contracts are valid and effective but conditional on registration. Phase Two contracts are void if they are not registered in the Interim Real Estate Register, as explicitly provided in Article 3.

This interpretation was confirmed by Article 3 of Executive Council Decision No. 6 of 2010, which states:

"If the main developer or sub-developer applies to register a legal disposition over the real estate unit after the 60 day deadline stipulated in subsection 2 of Article 3 of the Law, the Department shall proceed as follows:

> Phase One contracts may be registered but subject to a fine if registration is not carried out within the designated 60 day period.

- To register the legal disposition in the Interim Real Estate Register.
- To charge the developer a fine of AED 10,000 (UAE Dirhams Ten Thousand).

Again, Phase One contracts may be registered but subject to a fine if registration is not carried out within the designated 60 day period. Phase One contracts are not void, but are conditional on registration. This approach is further confirmed by Article 210 of the Federal Civil Transactions Code which provides:

- A void contract is one which is unlawful in its essence and form, lacking the elements of a contract or defective in its subject matter or purpose or form as laid down by law for the making of a contract, and such contract shall be of no effect and shall not be capable of being rectified by consent.
- Any interested person may assert nullity and a judge may so rule of his own motion.

- No action for a declaration that a contract is void shall be entertained after 15 years from the date the contract was made, but any interested person may plead nullity of the contract at any time.

A void contract is of no effect and cannot be rectified by consent. Article 3 of Law 13 of 2008 deals with, in respect of Phase One, conditional contracts. At most, unregistered Phase One contracts can be considered defective contracts within the meaning of Articles 211 & 212 of the Civil Transactions Code:

Article 211

- If part of a contract is void the entire contract shall be void unless the subject matter of each part is (separately) specified in which case it shall be void as to the void part, and the remainder shall be valid.
- If part of a contract is dependent upon the grant of consent, then if the consent is given the whole contract will be effective and if the consent is not given only that part will be void together with the consideration therefore, and the remainder of the contract with its consideration will remain valid.

Article 212

- A defective contract is one which is lawful in its essence but not in form, and if the cause of the defect is removed, the contract becomes valid.
- A transfer of ownership under a defective contract shall only be effective if the property itself has been received.
- A defective contract shall only have effect within the scope laid down by the provisions of the law
- Each of the parties to the contract and their heirs shall have the right to cancel the contract after giving notice to the other parties.

On 24 October 2010, the Dubai Court of Cassation in Property Appeal No. 85-10, upheld the decisions of the lower courts which had been issued prior to the implementing regulations and the now settled practice of regarding the 60 days as a regulatory deadline.

"A transfer of ownership under a defective contract shall only be effective if the property itself has been received."

I therefore suggest a fresh look at the issue, given the importance of both distinguishing between a void contract and a suspended or defective contract and recognising the effects of declaring a contract void and ordering it rescinded for non-registration. These questions are of paramount importantance as a court may rescind a contract for genuine reasons to do with the contractual relationship and the performance of contractual obligations, which would give rise to a right to claim damages, whereas according to Article 210 of the UAE Civil Transaction Code, a void contract produces no effect.

The intention of this article is to encourage reflection on how the changing laws of Dubai are applied and to draw attention to the importance of the performance and enforcement of contracts and the exercise of judicial discretion under Article 272 and 273 of the Civil Transactions Code. The promotion of legal discussions in this vital area should be encouraged due to the rapid evolution of legislation and precedents.

Murabaha Contracts

Suzanne Abdallah
Dispute Resolution

Majd Baroudi, Associate
Dispute Resolution

Law Update
Judgment

A commercial action was filed by an individual resident (“the Claimant”) against a PSC company in Dubai (“the Defendant”). The Claimant requested the Court to:

- Order the Defendant to annul a Murabaha contract, concluded on 2 June 2009 and amounting to AED 17,209,775;
- Direct the Defendant to re-pay AED 651,775, representing the first installment of the purchase price stipulated in the Murabaha contract ;
- To direct the Defendant to return the original cheque (dated 14 May 2008) issued for the remaining balance (AED 16,588,000) (Balance) of the purchase price.

> “The Defendant contended that the Claimant signed a finance facility offer, which prescribed that finance installments and profits were to be paid on a bi-annual basis.”

The Claimant expressed his willingness to assign to the Defendant all the shares that had previously been transferred by the Defendant into the Claimant’s account with another company through a finance loan concluded previously on 20 September 2005.

In June 2009, the Defendant submitted a reply memorandum requesting the Court to dismiss the Claimant’s case as the facts presented by the Claimant were not correct. The Defendant followed this by filing a counterclaim on 14 July 2009 wherein it requested the Court to direct the Claimant to pay the Balance plus 9% interest from the due date until full payment.

The basis of the Defendant's counter-claim can be summarized as follows:

In 2005 the Claimant had applied for a finance loan to buy some shares valued at AED 12 million. The Defendant contended that the Claimant signed a finance facility offer, which prescribed that finance installments and profits were to be paid on a bi-annual basis. The Defendant submitted that in light of these conditions it had granted the Claimant the requested finance but that the latter failed to pay the due amount as agreed previously.

> The Claimant requested renewal of the Murabaha contract for another term with the amounts due rescheduled.

The Claimant requested renewal of the Murabaha contract for another term with the amounts due rescheduled. The Defendant accepted the Claimant's request and on 8 May 2007 it renewed the Murabaha contract; granting the Claimant a new payment schedule. Accordingly the Claimant paid the first due installment, amounting to AED 651,775, and issued a cheque for the Balance. The Defendant contended that the Claimant failed to pay the remaining outstanding amount and had instead proceeded and initiated legal proceedings.

As part of its case, in October 2009 the Defendant submitted a settlement agreement ("the Agreement") to the Court which had been previously executed by both parties. The Agreement contained an acknowledgement by the Claimant that he had previously concluded a Murabaha Agreement with the Defendant amounting to AED 16,558,000. The Claimant acknowledged further in this Agreement that the Murabaha Contract expired 11 months prior to execution of the Agreement, and that due to his liquidity problems, had failed to pay the Balance. The Defendant contended that because of his liquidity problems, the Claimant had requested the Defendant to re-schedule payment of the Balance through 16 cheques amounting to AED 1,000,000 each, with the first cheque to be due upon the expiration of one year from the date the Agreement was concluded.

> The Murabaha Contract was not compliant with Islamic principles because it did not specifically identify the goods which were the subject of the Murabaha contract.

Court of First Instance

On 18 November 2009 the Court of First Instance appointed an accountant expert specialized in Islamic Finance to investigate the matter. On 14 February 2010 the Court referred the case to the Special Judicial Committee established by Decree No. 61/2009.

The Special Judicial Committee established by Decree No. 61/2009. On 5 April 2010 the appointed expert submitted his report to the Committee. The expert concluded that the Claimant received an amount of AED 11,879,204.80 out of AED 12M facility limits under the first Murabaha made on 20.09.05 and had received the sum of AED 3,290,774 out of the facility limit granted to him under the Share Sale and Purchase Contract dated 09.02.06.

The Claimant argued the following points before the Committee:

- The Murabaha Contract was an adhesive contract;
- The finance loan obtained by the Claimant was void because it deprived him of the opportunity to manage his shares as the trading activities were carried out by a financial intermediary appointed by the Defendant.
- The Murabaha Contract was not compliant with Islamic principles because it did not specifically identify the goods which were the subject of the Murabaha contract.

  The Claimant argued that one of the requirements of a Murabaha instrument is that the goods purchased by the bank are specified.

In dismissing the Claimant's argument that the Murabaha Contract was a contract of adhesion the Committee outlined the three essential characteristics of such contracts:

- The contract must relate to an essential product or service indispensable to consumers who cannot obtain the essential product or service except by acquiescing to the terms of the contract;
- One of the parties retains a monopoly over the product or service or faces limited competition in supplying the product or service; and
- The supplier of the products or services offers it to consumers on a "take it or leave it" basis where consumers have neither a choice in negotiating the terms nor an opportunity to decline.

> The contract must relate to an essential product or service indispensable to consumers who cannot obtain the essential product or service except by acquiescing to the terms of the contract.

The Committee's determination

The Committee determined that the purchasing and trading of shares did not qualify as essential products indispensable to the Claimant, who was under no obligation to contract with the Defendant in this regard.

The Claimant's argument that he had been deprived of the opportunity to manage his shares was also dismissed by the Committee. The Committee held that the arrangement whereby a third party appointed by the Defendant was responsible for managing the Claimant's shares was not akin to gambling or betting and did not entail harm to the Claimant.

> "The Committee held that the arrangement whereby a third party appointed by the Defendant was responsible for managing the Claimant's shares was not akin to gambling or betting and did not entail harm to the Claimant."

The third defense, which related to the alleged non-compliance with Islamic finance principles of the subject Murabaha was rejected by the Committee. The basis for the rejection was that an Islamic Bank, which concludes a Murabaha with a party, is permitted to charge a percentage on the increase in the price (i.e. the increase in the original price of the merchandise specified in the Murabaha) as compensation for the damages the Bank incurs due to a default in payment. The Committee held that this was in accordance with the Islamic principle of no harm and no reciprocated harm, "la Darar wa la Darar" and would not be considered as Usury (Rebaa) or Tawaruq (cash procurement).

Accordingly, the Committee ordered the Claimant to pay to the Defendant the Balance, plus legal fees. The Committee noted that the Claimant had not, at any stage during the proceedings, actually disputed that the Balance was owed to the Defendant.

The Formalities of an Arbitration Award

Suzanne Abdallah
Dispute Resolution

Law Update
Judgment

Claim and facts of the case

Party A filed a suit before the Dubai Court of First Instance seeking a judgment confirming an arbitration award in which Party B and Party C, a joint venture, were ordered to pay Party A the amount of AED 400,000 plus 9% interest from the due date of 20 July 2003, until full payment in addition. Part B was also awarded the costs of the arbitration.

Party A had sought a judgment against Party B and Party C in relation to a subcontract for the supply and installation of lifts in a Residential Complex in Al Nahda, Sharjah.

Upon completion of the works by Party A, Party B and Party C had refused to pay the final installment payment of AED 400,000 (which represented the amount withheld against maintenance works) without any legal justification. In the first hearing before the Court, Party B pleaded the existence of an arbitration clause in the agreement. Accordingly, Party A amended its case and requested the Court to appoint an arbitrator to conclude the dispute between the parties.

The sole arbitrator's award required Party B and Party C to pay jointly and severally the amount of AED 400,000 together with 9% interest per annum from the due date until full payment to Party A. Further, Parties B & C were required to jointly and severally pay AED 14,000 as arbitration fees.

> "The arbitrators' award shall be passed by a majority and shall be made in writing and accompanied by the dissenting vote."

Accordingly, Party A filed a case with the Dubai Courts seeking to enforce the award. Party B and Party C filed an interlocutory application requesting the Court to invalidate the award/ set aside the award.

Court of First Instance

The Court of first instance ruled in favor of Party A and ratified the arbitral award. Consequently, Parties B & C appealed to the Court of Appeal.

Court of Appeal

In reversing the lower court's decision, the Court of Appeal ruled that the arbitration award should be set aside. Subsequently, Party A appealed to the Court of Cassation.

The Court of Cassation (Date of Judgment 17 November 2009)

Party A argued that the Court of Appeal erred in its decision to overturn the decision of the Court of First Instance. The sole reason proffered by the Court of Appeal was that the arbitrator did not sign each and every page of the arbitral award. Party A referred to Article 212 of the UAE Civil in arguing that one of the essential requirements of an arbitration award is the signature of the arbitrator who has issued the award.

Article 212(5) provides as follows:

"The arbitrators' award shall be passed by a majority and shall be made in writing and accompanied by the dissenting vote. In particular, the award shall contain a copy of the arbitration agreement, a summary of the statements of the parties, their documents, the grounds and context of the award, the date and place of issue and the signatures of the arbitrators. Should one or more arbitrators refuse to sign the award, such refusal shall be stated in the award; provided, however, that the award shall be valid if signed by a majority of the arbitrators."

Article 212(7) provides as follows:

"The award shall be deemed to have been issued from the date of signing the same by the arbitrators."

The Court of Cassation upheld Party A's defense. The Court determined that one of the essential requirements of an arbitration award is the signature, on the award, of the arbitrators who have issued the award. The Court further explained that from a legal point of view; the signature is the only evidence of the existence of the award, which refers to both the ultimate decision and the grounds reached in support of that ultimate decision. The Court of Cassation therefore found that the arbitrators should sign both ultimate decision and the grounds reached in support of that ultimate decision. Crucially, the Court of Cassation held that a failure to do so would render the award invalid.

The Court of Cassation found one exception to this crucial and important rule. Where the grounds or reasoning for the ultimate decision are continued on the same page as the relief ultimately ordered, and the page containing the ultimate relief is signed, that signature shall be deemed to cover the reasoning for the granting of the relief.

If the reasoning and grounds for the ultimate decision and the ultimate decision itself appear on separate pages, then all pages of the award should be signed by all arbitrators. Failing this, such award shall be invalid.

In this case, the final page of the award, which contained the ultimate decision, also contained part of the reasoning for the ultimate decision. The final page was signed; therefore the signature was deemed to cover both the grounds for the ultimate decision and the ultimate decision itself. Importantly, the Court of Cassation ruled that the format of the award complied with Article 212.

The importance of this judgment cannot be underestimated. Many English translations of Article 212 do not outline the peculiarities applicable to the formalities of awards in the detail expressed by the Court of Cassation. To ensure the validity of arbitration proceedings, it is essential that this Article be read and applied in connection with the reasoning of the Court of Cassation.

The Court of Cassation reversed the finding of the Court of Appeal.

Arbitration in the Region

Bahrain – the World's First “Free Arbitration Zone”

Robert Karrar-Lewsley, Senior Associate
Arbitration

The popularity of arbitration in the Middle East continues to grow, and in January 2010 Bahrain's BCDR-AAA became the latest in a number of arbitration centres to open in the region. The BCDR was created in accordance with Bahrain's new Arbitration Law[1], which also created what has been called the world's first “Free Arbitration Zone”.

This article looks at the BCDR, and what the “Free Arbitration Zone” means in practice.

The BCDR

The BCDR is a partnership between the Bahrain Chamber for Dispute Resolution (BCDR) and the American Arbitration Association (AAA), a long-standing and highly respected international arbitration centre. The BCDR is located in Manama, the capital of Bahrain.

The BCDR is in many respects like any other arbitral institution. Its role is not to arbitrate disputes itself, but to provide the administrative and procedural support necessary to enable an independent Tribunal to hear and decide a particular matter. Parties can choose to use the BCDR either before or after a dispute has arisen, provided the agreement to do so is in writing.

The BCDR Rules closely follow those of the AAA. This means users of the BCDR will have the comfort of using a set of rules that have been tried and tested and are of the highest international standards.

With regards to fees, although the administrative fees of the BCDR are modest and fixed according to the amount in dispute, the fees of the arbitrators (which tend to be substantial) are not fixed. Instead, under Article 32 of the Rules, the arbitrators are to be paid a daily or hourly rate based on the size and complexity of the case, and such rate is to be agreed with the parties. If agreement cannot be reached, then the BCDR will determine the appropriate rate. In comparison, many other arbitral institutions in the region (such as DIAC) fix the fees of the arbitrators depending on the amount in dispute. The BCDR approach is not however unique to the region, as the DIFC-LCIA also operates a system whereby arbitrators charge an hourly rate. The DIFC-LCIA specifies that the hourly rate is to be between AED 1,085 – AED 2,525, and although the BCDR gives no such indication, it is expected that its rates will be similar to those of the DIFC-LCIA.

The Free Arbitration Zone

In order to understand what the Free Arbitration Zone is, it is first necessary to understand how arbitral awards are enforced internationally.

Once an arbitral award has been rendered by a Tribunal, the parties are contractually obliged to comply with that award. There will however be occasions where the losing party does not wish to comply, and the winning party must seek to enforce the award in the country where the losing party has assets.

In order to facilitate this enforcement process, a number of states have signed up to the 1958 New York Convention, under which contracting states agree to recognise arbitral awards made in other states, and may only refuse to do so if the losing party shows that one of the following procedural irregularities has occurred:

> “Once an arbitral award has been rendered by a Tribunal, the parties are contractually obliged to comply with that award.”

- The parties to the agreement were, under the law applicable to them, under some incapacity, or the agreement was invalid either under the law applicable to the agreement or under the law of the country where the award was made.

- The losing party was not given proper notice of the appointment of the appointment of the arbitrator, or of the arbitration proceedings, or was otherwise unable to present his case.

- The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.

- The composition of the Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place.

- The award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

The Free Arbitration Zone is relevant to this last ground. Under Article 25 of Bahrain’s new arbitration law, parties to an award that has been issued in Bahrain are not entitled to challenge the award in the Bahraini courts, provided the award is being enforced outside of Bahrain and the parties have agreed in writing that:

- A law other than Bahraini law applies to the dispute.
- The parties will not challenge the award before the courts of Bahrain.
- Any challenge against the award will be before a competent authority in another state.

Bahrain can therefore be said to be a "Free Arbitration Zone" in that its courts will not interfere or set aside an arbitral award made in Bahrain, provided the above conditions have been satisfied. This is a unique approach and one that firmly establishes Bahrain as one of the most arbitration-friendly countries in the region.

However the benefits of the Free Arbitration Zone must not be overstated. Under the New York Convention the fact that an Award has been set aside in the country in which it has been made is only one of a number of factors that may enable a signatory state to refuse to enforce the award. The new law therefore only removes the possibility of a potential ground for non-enforcement from occurring. The Free Arbitration Zone does not guarantee that awards issued in Bahrain will be enforceable oversees (nothing can guarantee this), it only guarantees that the Bahraini Courts will not interfere or set the award aside.

The real benefit of the Free Arbitration Zone is that, instead of having to wait a number of years to determine whether the Bahraini Courts will respect arbitral awards issued in their country, Bahrain has firmly resolved the issue and shown its commitment and support for international arbitration. Parties looking for a venue to conduct an international arbitration in the region and who do not anticipate enforcing the award in Bahrain, now have the option of a venue where they can have complete confidence

"The real benefit of the Free Arbitration Zone is that, instead of having to wait a number of years to determine whether the Bahraini Courts will respect arbitral awards issued in their country, Bahrain has firmly resolved the issue and shown its commitment and support for international arbitration."

that the award will not be set-aside or interfered with by the local courts.

This is important in a region where local courts have been known to set aside arbitral awards for seemingly trivial reasons.

Another benefit is that Bahrain's positive stance towards international arbitration will likely influence other states in the region, all of which are in fierce competition to be seen as the most attractive option for international business. Even if the UAE, Qatar and others do not bring in similar legislation, it is expected that they will want to be seen as just as supportive of international arbitrations by refusing to set aside awards, else they will risk handing the advantage to Bahrain.

"Bahrain's positive stance towards international arbitration will likely influence other states in the region, all of which are in fierce competition to be seen as the most attractive option for international business."

It remains to be seen how successful the BCDR as an arbitration centre will be, but the fact that it exists and has brought with it an innovative approach to international arbitration, means that it has already achieved a substantial amount.

Footnote

[1]Legislative Decree No.30 for the year 2009 with respect to the Bahrain Chamber for Economics, Financial and Investment Dispute Resolution.

Developments in Arbitration

The Revised IBA Rules of Evidence

Robert Karrar-Lewsley, Senior Associate
Arbitration

Parties engaged in arbitration are, broadly speaking, free to decide how evidence is to be taken and handled during the arbitral process. The parties can tailor the rules of evidence to meet the particular requirements of their dispute, rather than having unfamiliar or less efficient rules forced upon them by a court. This flexibility is one of many advantages that arbitration has over court litigation.

Agreeing what the rules of evidence will be in an arbitration can be difficult. If the Tribunal and the parties' respective legal representatives come from different legal backgrounds, they may have differing and sometimes contradictory expectations as to how evidence is to be presented and adduced. This is often the case in arbitrations in the Middle East where common law lawyers from the West and regionally-trained civil law lawyers may be involved in the same case. This presents a risk that time and money will be wasted deciding and arguing over what rules of evidence to apply.

> "The Rules provide mechanisms for the presentation of documents, the management of witnesses of fact, expert witnesses, inspections, as well as the conduct of the evidentiary hearing itself."

A solution to this problem is for the parties to adopt, either as guidelines or as binding rules, the IBA Rules of Evidence[1] ("the IBA Rules"), which are a full set of evidential rules issued by the International Bar Association (an international association of lawyers and lawyer's associations). Although the Rules draw upon both the common law and civil law traditions, it is the common law influence which is most apparent. The Rules provide mechanisms for the presentation of documents, the management of witnesses of fact, expert witnesses, inspections, as well as the conduct of the evidentiary hearing itself. They are designed to supplement whatever other rules may apply (be they imposed by the local law or by the arbitration centre under whose auspices the arbitration is being conducted), and their aim is to ensure an efficient, economical and fair process for the taking of evidence.

The Rules were first issued in 1983 and have proven to be extremely successful, being routinely used in arbitrations around the world. They were revised in 1999, and in May 2010 a further version was issued, having been amended by the IBA Rules of Evidence Review Subcommittee (of which Essam Al Tamimi of this firm is a member).

Since the Rules are widely used in arbitrations in the Middle East, it is important for those involved in arbitrations to be aware that a number of significant changes have been implemented in the May 2010 version. A number of these changes are highlighted and discussed below.

Title

The title of the previous Rules was “The IBA Rules on the Taking of Evidence in International Commercial Arbitration”, but that title has now been revised to remove the word “commercial”. A small change perhaps, but an acknowledgment that these Rules, though originally intended for commercial arbitration, have been and continue to be used in a wide variety of disputes. The title of the Rules now reflects the intention that they are to be used in all manner of arbitrations.

Preamble

The preamble contains general statements as to how the Rules are intended to operate. Although broadly the same as the previous version, the new preamble now states that the taking of evidence shall be conducted in accordance with the principle that the parties “shall act in good faith”. The principle is also reflected in a new paragraph in Article 9 which states that if the Tribunal determines that a party has failed to conduct itself in good faith then this may be taken into account when costs are decided (Article 9.7).

It is not however clear how this positive obligation to act in good faith will be interpreted in practice. For example, although the parties are not obligated to disclose material harmful to their case unless requested, it could be argued that withholding such material is a failure to act in good faith. As with all other aspects of the arbitral process, the parties will need to trust that the Tribunal (which they have chosen) will interpret the Rules and this duty appropriately.

> “The new preamble now states that the taking of evidence shall be conducted in accordance with the principle that the parties “shall act in good faith”.”

The inclusion of this explicit duty is also helpful in stressing to the parties that they are not to abuse the relative informality and privacy of an arbitral hearing by taking anything less than a good faith approach to the taking of evidence.

Confidentiality of Documents

Another important advantage that arbitration has over litigation is that, generally speaking, the parties will agree that documents disclosed during the arbitration will remain confidential and are only to be used in connection with that arbitration.

Parties need to be aware however that the revised Rules explicitly state that this confidentiality will not apply where “disclosure may be required of a Party to fulfill a legal duty, protect or pursue a legal right or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority” (Article 3.13).

> “The parties will agree that documents disclosed during the arbitration will remain confidential and are only to be used in connection with that arbitration.”

This means that a party will likely be deemed to have waived confidentiality for the purposes of those exceptions should the issue be raised before a court. The reference to “bona fide judicial proceedings” is helpful in that it prevents a mischievous party from bringing proceedings in public with the sole aim of breaching confidentiality, but parties will nonetheless want to take care that when they agree to use the IBA Rules on Evidence they are not giving up their right to keep documents confidential any more than they are compelled to under national laws. This may require amending Article 3.13.

Expert Witnesses

Parties will sometimes instruct experts to give evidence on technical issues. Although the party will have paid the expert for his evidence, it is important that the expert remain neutral, as biased evidence is of little assistance to the Tribunal.

In the previous version of the Rules an expert was obliged to declare any present or past relationships he may have with the parties. The revised rules go further and add that the expert must declare any present or past relationships with the parties’ legal advisors and the Tribunal. The expert must also describe the instructions he has received and state that he is independent of the parties, their legal advisors and the Tribunal, regardless of who has instructed him (Article 5.2).

It is hoped that these additional requirements will go some way in ensuring that experts remain independent, and that they do not develop longstanding relationships with particular law firms or companies that may impair their ability to remain neutral.

Witness Conferencing

The rules regarding the evidentiary hearing have been amended in a number of ways, but an interesting development is the explicit reference to the use of "witness conferencing" (Article 8.3(g)).

Witness conferencing is where witnesses who speak to a particular issue are questioned at the same time and in confrontation with each other. This can apply both to expert witnesses and witnesses of fact. This has the benefit of allowing the Tribunal to explore a particular issue whilst directly comparing the conflicting witness evidence. It can be a very effective tool, and one that would not readily be available in court. By explicitly endorsing this method it is hoped that it will become more prevalent.

Privilege

The previous rules acknowledged that there are times when evidence is to be excluded due to legal privilege. However since lawyers from different backgrounds differ as to the circumstances in which legal privilege applies, the revised rules now helpfully set out a list of six factors that the Tribunal may take into account when deciding on this issue (Article 9.3).

One of these factors is the expectations that the parties and their advisors had at the time privilege is said to have arisen (Article 9.3(c)). This general provision will give parties greater confidence that they will not be expected to disclose material which they would expect to be privileged under the legal and ethical rules of their home jurisdictions. This is important since if a party fails to comply with an order from the Tribunal to disclose a document, the Tribunal may make adverse inferences (Article 9.5) and may also conclude that the party has failed in its duty to act in good faith, which would likely have adverse costs consequences (Article 9.7).

Conclusion

The above discussion merely highlights some of the more important changes that have been incorporated in the May 2010 version of the IBA Rules of Evidence. By revising them the IBA has achieved its aim of keeping the Rules modern and practical, ensuring that they will continue to be used in arbitrations for many years to come.

Footnote

[1]www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx

Can Offshore Companies Own Properties in Dubai?

Mohammed Kawasmi, Senior Associate
Property

Law No. 7 of 2006 Concerning Real Property Registration in the Emirate of Dubai ("Law No. 7") regulates foreign ownership in Dubai. Article 4 of Law No. 7 provides that foreign persons may, subject to the approval of the Ruler, be granted the following rights in certain areas:

- The right to acquire freehold ownership of real property without restrictions as to time; and
- The right to acquire a usufruct or leasehold right over real property for a period not exceeding 99 years.

The word "Person" is defined in Law No. 7 as a "natural or legal person". Since offshore companies are legal persons, from a strict legal point of view no restrictions on offshore companies owning real property in Dubai exist pursuant to Law No. 7.

In practice many offshore companies own properties in Dubai, but the Government has been concerned that these may be used as vehicles for money laundering considering that such companies do not have a physical address and it is not easy to track the identity of their shareholders and the source of their money. Some investors prefer to use offshore companies to avoid applying the Shari'a rules in relation to inheritance and to avoid paying the sale registration fee to the Land Department by instead transferring the shares of the offshore company abroad.

> Foreign companies and free zone companies incorporated in the UAE are not affected by the new circular as these companies are not considered to be offshore.

Dubai Government represented by the Land Department and as part of its policy in fighting money laundering issued a circular recently to prohibit offshore companies (except those incorporated in Jebel Ali Free Zone) from owning properties in Dubai. The force of this circular is non-retrospective and will apply solely to new registrations for property ownership at the Land Department from 1st January 2011.

Foreign companies and free zone companies incorporated in the UAE are not affected by the new circular as these companies are not considered to be offshore.

In our opinion investors' concerns about the implementation of Shari'a is due to lack of knowledge of the local Shari'a law since non-muslims can choose not to have Shari'a law apply to their estates by writing a Will or by all beneficiaries agreeing to apply the inheritance law of their own country.

Avoiding Land Department fees is no longer possible because the Land Department has started to record the names of the shareholders on the title deed and any change in shareholding will be treated as a sale of the property, incurring a 2% registration fee.

We set out below the circular issued by the Land Department.

Al Tamimi and Company are registered agents for the purposes of, and can assist clients with establishing, offshore companies in the Jebel Ali Free Zone. Further, our Property Practice can provide all required assistance in registering clients' properties at the Dubai Land Department.

Guidelines for registering Offshore Companies in Dubai

The Land Department is pleased to issue the following guidelines for corporations, individuals, firms and practitioners seeking to register property in the name of offshore companies:

- From January 2011, only those companies formally registered as offshore entities with Jebel Ali Free Zone Authority (JAFZA) alone, will be considered eligible to register their properties with the Land Department.
- The force of these guidelines is non-retrospective. The measures apply solely to new registrations after the approved date.
- Dubai real estate currently registered with the Land Department and held by companies established in other offshore jurisdictions is not affected by the provisions of these guidelines. However, any request made after January 1, 2011 by such entities to register additional real estate with the Department must accord with the requirement for JAFZA registration before it will be considered.
- In order to consider registering the real estate interests of an offshore entity the Department will require the following original documents from such entities:
- Jebel Ali Free Zone-issued Registration Certificate (please attach: Shareholders certificate and Memorandum of Association).
- Separate formal undertaking to notify the Land Department of any change share ownership of the entity.

These guidelines are effective from January 1, 2011.

Leasing in the Jebel Ali Free Zone

Sydene Helwick, Partner
Property

The Jebel Ali Free Zone ("JAFZ") was established under Decree No. (1) of 1985 and is an economic zone located in the Jebel Ali area of Dubai, United Arab Emirates administered by the JAFZ Authority.

> Tenants of office buildings are required to ensure that their offices are physically functional and attended during normal office hours by no later than 60 days from the commencement date of the lease.

Laws applicable to JAFZ Leases

Anyone working or operating in JAFZ, whether an entity permitted to operate within JAFZ or a contractor working for such entity, is governed by the Jebel Ali Free Zone laws, rules and circulars published from time to time. With regards the question of whether Dubai tenancy laws and any other Dubai laws and regulations apply to property leased in JAFZ, the Jebel Ali Free Zone Rules, fourth edition 2005 (the "JAFZ Rules"), Rule 1.6 provides that "*UAE Local Decrees, Regulations and Practices are applicable within the Free Zone unless otherwise prescribed in these rules."*

Therefore Law No. (26) of 2007 (Regulating the Relationship between Landlords and Tenants in the Emirate of Dubai) as amended by Law No. (33) of 2008 applies to all property leased within JAFZ, unless the JAFZ Rules prescribe otherwise.

Tenancy Disputes

With regards adjudication of tenancy disputes, Law No. (15) of 2009 (Regulating the Hearing of Rental Disputes Arising in the Free Zones) at Article 2 provides the following:

"The Rent Committee shall determine rental disputes arising between landlords and tenants of immovable property in the free zones of the Emirate of Dubai, except:

i. where the rent dispute to which any free zone authority in the Emirate of Dubai is a party;

ii. rent disputes arising within the free zones which are under the jurisdiction of special judicial committees or courts."

The JAFZ Authority has not established a special judicial committee or court for the adjudication of tenancy disputes, therefore where the JAFZ Authority is a party to a lease the Dubai Courts will have jurisdiction unless the lease contains an arbitration clause. Where the JAFZ Authority is not a party to the lease the Special Judicial Committee in Dubai established pursuant to Decree No. (2) of 1993 (also known as the 'Rent Committee') shall have jurisdiction to adjudicate the tenancy dispute unless the lease contains an arbitration clause.

JAFZ Rules

We discuss hereunder some of the JAFZ Rules applying to property leased within JAFZ.

Commencement of Business Operations

Tenants are required to commence business operations from their premises within a prescribed period of time as follows:

- Tenants of office buildings are required to ensure that their offices are physically functional and attended during normal office hours by no later than 60 days from the commencement date of the lease.
- Tenants of light industrial units are required to ensure that their units are physically functional and attended during normal office hours by no later than 90 days from the commencement date of the lease.
- Land tenants are required to ensure that their premises are physically functional and attended during normal office hours by no later than 18 months from the commencement date of the lease.

Sub-Leases

Sub-leases may be approved by the JAFZ Authority provided that:

- The sub-lessor is in possession of a valid land lease and has a building which is already completed;
- The sub-lessee is a subsidiary or a sister concern of the sub-lessor with the majority shareholders being common in both companies;
- The activities of the sub-lessee conform with JAFZ Rules regarding health, safety, environment and the Zoning Plan;
- The sub-lessor has sufficient space for the activities of the sub-lessee without jeopardizing the space required for its own activities;
- The sub-lessor undertakes to be fully responsible for the activities of the sub-lessee as far as the terms and conditions of the lease and the Personnel Secondment Agreement are concerned.

There are no limitations on the number of sub-leases, subject to the approval of the JAFZ Authority.

An exception to the above are certain categories of companies that are not allowed to operate as sub-lessees ▶

> Land tenants are required to ensure that their premises are physically functional and attended during normal office hours by no later than 18 months from the commencement date of the lease.

and that are not allowed to sublet part of their premises.

With respect to sub-leases the JAFZ Authority levies a sub-leasing fee of AED 20,000/ per year.

Insurance
Tenants are required to have their premises insured against fire and other perils, in accordance with the terms of their leases.

Where the tenant has erected the premises, the tenant is responsible for arranging the insurance, which shall be in the joint names of the tenant company and the JAFZ Authority. The policy shall be sufficient to cover the replacement costs of the structure, fixtures and fittings.

Where premises have been erected by the JAFZ Authority, the insurance will be arranged by the JAFZ Authority on behalf of the tenant. The insurance shall be in the name of the JAFZ Authority. The tenant shall be required to pay a contribution of the insurance premium in the form of an annual standard charge in line with the JAFZ Authority's tariff.

Where damage is incurred to pre-built premises, the JAFZ Authority requires the tenant to bear the first AED 1,000/ for offices and AED 3,000/ for industrial units and banks. This is to cover the deductible amount which will not be paid by the insurance company.

Insurance of the 'contents' of any premises are at the discretion of tenants. The JAFZ Rules provide that the JAFZ Authority will not be liable for any loss or damage to tenants' contents due to any reason, including theft or natural calamities.

Termination of Lease
On termination of the lease, the tenant is required to settle all outstanding dues, vacate the premises, remove all furnishings and equipment from the premises and restore the premises to its original condition. Any waste material/contaminated soil should be disposed of in accordance with the JAFZ Rules and Dubai Municipality regulations.

"On termination of the lease, the tenant is required to settle all outstanding dues, vacate the premises, remove all furnishings and equipment from the premises and restore the premises to its original condition."

If a tenant abandons goods on the premises, the JAFZ Authority shall issue a notice to the tenant's officially recognized address of the intention to treat such goods as 'abandoned'. A specified date for clearance of the premises will be given in the notification, which shall take into consideration the nature of the goods (e.g. refrigerated, perishable) and hence urgency of removal. If the abandoned goods have not been removed by the due date, the JAFZ Authority will act to remove them without further reference to the tenant. Any costs incurred by the JAFZ Authority in doing so will constitute a claim against the tenant. The JAFZ Authority shall, at its discretion, auction the abandoned goods to expedite clearance of the facility and/ or to recover any outstanding dues.

Mortgage of Properties Constructed in JAFZ

Tenants who have leased land in JAFZ and constructed purpose built facilities can, pursuant to Law No. (1) of 2002 on the Mortgage of Immovable Property in JAFZ, mortgage the premises (excluding the land) as security for a loan.

A register is maintained by the JAFZ Authority to record all mortgages of immovable properties in JAFZ (the "Mortgage Register").

The Contract of Mortgage between the owner ("Mortgagor") and the creditor ("Mortgagee") is recorded in the Mortgage Register together with the following details:

- All the information relating to the immovable property;
- The approximate value of the immovable property and its contents;
- The value of the debt; and
- The identity of the Mortgagee.

The Mortgagee has to be a Central Bank licensed finance company or bank or (after obtaining specific approval from the JAFZ Authority) a branch of category 1 bank located in Dubai International Financial Centre duly licensed by the Dubai International Financial Authority.

The contracting parties should sign the Contract of Mortgage before the Registrar who shall then enter the records of the mortgage in the Mortgage Register.

More than one mortgage may be secured on one immovable property and the records in the Mortgage Register are made according to the dates of registration of the respective mortgages. The priority of the acquired title by virtue of the mortgage is determined according to the order of records in the Mortgage Register.

"If a tenant abandons goods on the premises, the JAFZ Authority shall issue a notice to the tenant's officially recognized address of the intention to treat such goods as 'abandoned'."

The mortgage expires, and the records in the Mortgage Register cancelled, in the following instances:

- At the end of the lease of the land on which the immovable property is erected; or
- Before the end of the lease by agreement of the contracting parties; or
- By final judgment of a competent court.

The following charges are payable by the Mortgagor:

- Mortgage registration fee – 0.12% of the value of debt;
- Amendment of the conditions of mortgage – 0.12% of the value of debt;
- Mortgage cancellation fee – AED 500/.

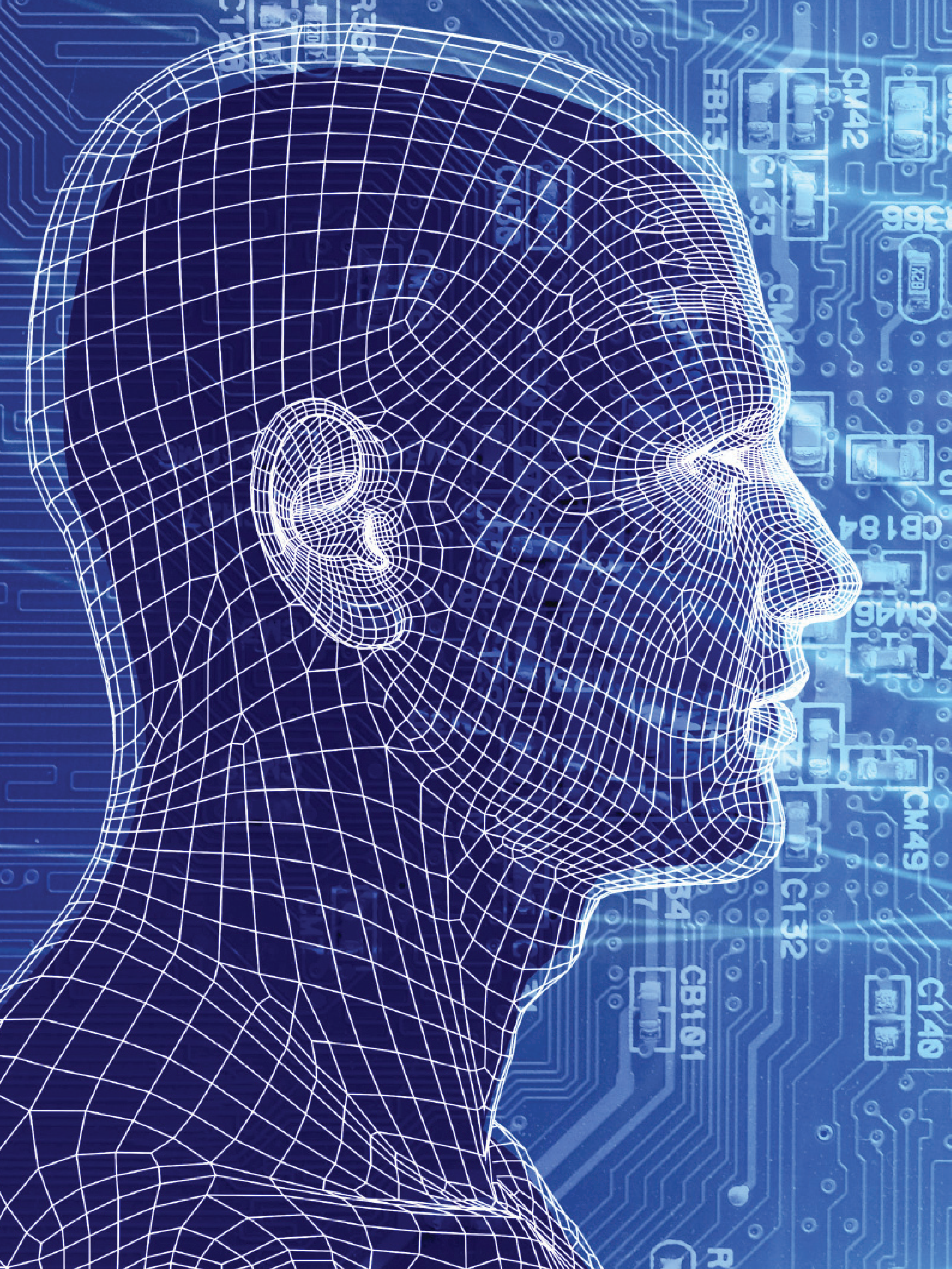
> "More than one mortgage may be secured on one immovable property and the records in the Mortgage Register are made according to the dates of registration of the respective mortgages."

Conclusion

There are various types of premises available for lease in JAFZ and a company has the option of leasing an existing property or constructing its own purpose built facility.

Where a company leases land and constructs its own purpose built facility, the company will be able to mortgage the building pursuant to Law No. (1) of 2002.

Whenever a company is considering leasing premises within JAFZ, the company should take cognizance that there are a number of rules and regulations which govern and supplement the terms of the lease and affect the rights and obligations of the tenant.



Fortifying Cyber Presence

RIVOLI triumphs in wresting www.rivoliwatch.com from a competitor

Stephen Jiew, Senior Associate
Intellectual Property, IT

What
Domain name dispute between 2 retailers.

Who
The Complainant, Rivoli Group LLC, is a well known purveyor of luxury goods in the region particularly in the UAE with a multitude of retail outlets.

The Respondent, Brilliant Watches LLC, is a competitor in the fiercely competitive retail watch market.

The Prize
www.rivoliwatch.com

Why
RIVOLI is the Complainant's house mark, which it has cultivated over decades to become a household name in luxury goods. The Complainant enjoys substantial goodwill and reputation in its RIVOLI mark.

> "The use of RIVOLI in www.rivoliwatch.com is unauthorised and detrimental to the Complainant as it seeks to divert business away from the Complainant and results in brand dilution of its RIVOLI mark."

The use of RIVOLI in www.rivoliwatch.com is unauthorised and detrimental to the Complainant as it seeks to divert business away from the Complainant and results in brand dilution of its RIVOLI mark.

Where
World Intellectual Property Organization ("WIPO') Arbitration and Mediation Centre under the Rules for Uniform Domain Name Dispute Resolution Policy

Facts of the Case
The Respondent had registered the disputed domain name and had been using it by maintaining it such that all internet traffic to the <rivoliwatch.com> domain name is automatically diverted to the <brilliantwatches.com> domain name, an active website which provides extensive information and offers watches for sale including RIVOLI branded watches.

The Complainant has trade mark registrations for RIVOLI in a number of countries and has been using RIVOLI as a trade name since 1976.

The Complainant had finally succeeded in cancelling a trade mark registration for RIVOLI held by a company related to the Respondent following protracted litigation.

The Complainant's Case

The disputed domain name is confusingly similar to marks in which the Complainant has rights, the Respondent has no rights or legitimate interests in use of the disputed domain name and the Respondent's registration and use of the disputed domain name is in bad faith.

The Respondent's Case

The Respondent alleged that they have trade mark registrations for RIVOLI in Pakistan, India, Kuwait and Switzerland and have been selling RIVOLI branded watches since 1994 in multiple markets such as UAE, U.K., Russia, Qatar, Saudi Arabia, Kuwait, Pakistan, Jordan, India and many African countries.

WIPO's Findings

1. The WIPO Panel agreed with the Complainant that the disputed domain name had incorporated its RIVOLI trade mark in its entirety and crucially that the addition of the descriptive term, watch, had actually exacerbated the risk of confusion experienced by internet users because the disputed domain name implies that Respondent is offering the Complainant's goods for sale.

This significant finding underscores the Respondent's lack of bona fides.

2. It was found that the Respondent's use of the disputed domain name cannot be characterised as use in connection with the bona fide offering of goods. The Complainant had argued that the Respondent's conduct in using the domain name to divert internet users to the Respondent's own website, which offers competing watches with full knowledge of the Complainant's name and its trade mark following the lawsuits in which its related company was embroiled in must necessarily lead to the inescapable conclusion that there was no bona fide offering of goods under the disputed domain name.

3. The WIPO Panel found that the disputed domain name was registered and used in bad faith.

The Complainant had vigorously argued that there was no plausible reason why the Respondent would have chosen to use RIVOLI as part of the disputed domain name except to misappropriate the vault of goodwill and reputation, which the Complainant had painstakingly cultivated over decades of use. Quite clearly, www.rivoliwatch.com was not a domain name, which any user would have chosen unless they knew of the RIVOLI trade mark and the custom, which it attracts. The Respondent had manifestly registered the domain name solely for the purpose of attracting users who type in <rivoliwatch.com> in the presumption that they will reach a site operated by the Complainant relating to watches.

It was obvious from the matrix of use with the auto redirect from the disputed domain name to the Respondent's own website, which offers competing watches that the disputed domain name was being used in bad faith.

Accordingly, the WIPO Panel was satisfied that the Complainant had succeeded in proving its case and ordered that the disputed domain name be transferred to the Complainant.

Learnings

Fortifying one's cyber presence has never been more important as an increasing number of users log onto the internet to shop and be entertained especially in the Middle East where internet penetration is set to balloon as indicated by the recent introduction of more available domains such as the Arabic domain names in Saudi Arabia (.alsaudiah), UAE (.emarat), Egypt (.misr), Jordan (.alordon) and Palestine (.falasteen).

It is important to be vigilant in monitoring any unauthorised usage of your intellectual property in cyberspace and to act swiftly and decisively in rooting out the problem. Using the WIPO Arbitration and Mediation Centre as a means to do so has proven highly effective and quick in resolving domain name disputes. The fact that the Complainant has been vigilant in enforcing its rights against offenders in cyberspace was important in shoring up its arguments that any attempt to free ride on its substantial goodwill and reputation was damaging to its brand integrity and likely to cause brand dilution.

This significant case represents yet another decisive victory for the Al Tamimi & Company Domain Name Dispute Resolution practice, part of our award winning IP/IT practice which continues to counsel clients in ensuring that their valuable goodwill and reputation is well protected in cyberspace.

In the celebrated case, which reached the Abu Dhabi Supreme Federal Court, the litigation team headed by senior counsel, Al Tamimi & Company founder & Senior Partner, Essam Al Tamimi, had successfully convinced the court in overturning the Abu Dhabi Federal Court of Appeal's decision to cancel the RIVOLI registration. The decision represented a high water mark for issues concerning use of a trade name and the resultant rights thereto.

Al Tamimi & Company supports WIPO and Dubai SME in 'Training the Trainers' on IP Asset Management

The World Intellectual Property Organisation (WIPO), along with the Mohammad Bin Rashid Establishment for SME Development (an agency of the Dubai Economic Department), recently organised a course entitled 'Training of Trainers Programme on Effective Intellectual Property Management by Small and Medium Enterprises (SMEs) in Dubai'.

Al Tamimi & Company was pleased to support this five-day training programme, the first of its kind in the Arab region. Omar Obeidat, Partner and Head of Department IP/IT, presented on 'IP Law and Administration in the UAE'. Faisal Daudpota, Senior Associate IP/IT, spoke on 'Practical Tips for IP Rights Enforcement in the UAE'. Divya Rajesh, an IP Administrator in our IP/IT team, participated in the programme as a trainee.

Omar Obeidat led the trainees through the laws governing patents, trademarks, designs, copyrights, trade secrets and unfair competition in the UAE. Omar also explained the filing processes, and provided statistical details relating to the registration of various intellectual property rights in the UAE. Interesting case studies were also presented, allowing the trainees to discuss, and better grasp, the presentation content.

Faisal Daudpota broadly introduced IP enforcement options, and then explained in more detail the administrative, civil and criminal enforcement measures that are available in the UAE for patents, designs, copyrights, trade secrets and domain names. The practical tips that Faisal provided also generated a lively discussion amongst the participants.

The programme covered other subjects relating to IP, such as the role of IP in branding, the role of IP in strengthening the competitiveness of SMEs, managing IP in a digital economy, leveraging IP assets through licensing, franchising and merchandising, and basic IP services available from institutions supporting SMEs in Dubai and the UAE.

The programme was designed to create a group of trainers equipped with essential knowledge and skills to provide preliminary IP guidance to entrepreneurs, students and SMEs. Some of the trainees will have the opportunity to be involved in further training through WIPO's 'Train the Trainers' programme.

Al Tamimi & Company Re-Elected to the Board of BPG

Omar Obeidat, Partner and Head of Al Tamimi's IP/IT Department, was re-elected to the Board of Directors of the Brand Owners Protection Group (BPG).

The BPG, the largest anti-counterfeit not for profit organization in the region, held its Annual General Meeting at the Fairmont Hotel on December 15, 2010 and elected its new Board of Directors, consisting of representatives of Al Tamimi & Company, Nestle, Ford, Nissan, BAT, Nokia, and Rouse & Co. During the annual meeting, which was attended by guests from Dubai Customs, Dubai Municipality and Dubai Department of Economic Development, Omar Obeidat gave a presentation to the delegates about the challenging areas in the IP Enforcement arena and addressed, to the officials, the ideas of BPG members in addressing these challenges. The BPG is a group of world leading brand owners and legal consultants who are alarmed at the continuous illicit replication of genuine goods and interested in the enforcement of Intellectual Property Rights. Based in Dubai, the BPG was founded in 2005 and carries out activities throughout the GCC member states and Yemen, and has engaged in many workshops aimed at training Government officers and enforcement agencies on anti-counterfeiting.

Al Tamimi and TECOM work together to promote ICT in the UAE

David Yates, Head of Commercial IP and Technology, and his team have collaborated with business parks Dubai Internet City and Dubai Outsource Zone to produce the first edition of a newsletter "ICT in the UAE". The first edition, issued in two parts, covered the following topics: "IT Outsourcing Governance"; "Best Practice: Latest Issues in Outsourcing Contracts"; "Online Promotional Campaigns: Pitfalls and Permits" and "Cyber Crimes in the UAE". The business parks issued a media release to promote the publication, posted the publication on their websites and are distributing copies to media outlets and business park partners. Anyone who is interested in obtaining a copy can contact David directly at **d.yates@tamimi.com** or you can download the report from **www.tamimi.com**

David and his team are now working on the next edition which will focus on various legal issues arising from e-commerce. ICT is an area of continuing growth throughout the Middle East and Al Tamimi & Company is well placed to provide quality legal services to a broad range of clients in this area. "ICT in the UAE" is to be a regular publication which leverages from our firm's already strong relationship with TECOM business parks, built over a number of years through the continued efforts of Samer Qudah, Partner and Omar Obeidat, Partner and Head of IT/IP among others.

IP Laws and Practice: Developments in Iraq and Yemen

Mohammed Ali, Associate
Intellectual Property, IT

There have been some recent developments in the intellectual property regimes of Iraq and Yemen.

New Trademark Regulations in Iraq

With a view to expediting the registration process for pending trademark applications in Iraq, the Iraqi Trademark Registry has decided that the examination of trademarks will be carried out in chronological order, as opposed to the current random approach to examination. This means that, in terms of examination of trademarks, priority will be given to old applications. As a result of this development, a large number of old trademark applications, which have been pending for years, are expected to be examined and complete the registration formalities shortly.
This may cause some delay in the examination of recently filed trademark applications, but trademark practitioners in the region believe that the Iraqi Trademark Registry will also be able to examine newly filed trademark applications in relatively good time.

New Trademark Law in Yemen

Yemen's new Trademark and Geographical Indications Law, issued on 22 November 2010, will come into force in February 2011, three months after its issuance. The law encompasses new procedures, definitions, provisions and regulations regarding trademarks and geographical indications.

The main features of the new law can be summarized as follows:

- The opposition period for a trademark will be reduced to three months instead of the current six months.
- A grace period of one year will be granted to renew registered trade marks instead of the current three months.
- New provisions will be incorporated regarding the protection of geographical indications.
- Well known trademarks will be protected.
- Tough penalties will be introduced against trademark infringements.

Trademark practitioners throughout the region appreciate that all the new changes are positive and will be beneficial to brand owners.

JTI counterfeit awareness workshop in Germany

In November 2010, Munir Suboh, an associate of the IP/IT Department, along with six senior inspectors of Dubai Customs, travelled to Germany to attend a highly specialized, anti-counterfeiting product recognition workshop. The workshop was organized and sponsored by the Global Quality Assurance Department of Japan Tobacco International Germany GmbH. JTI is a leading world-wide tobacco company that heavily invests in protecting the integrity of its brands and enforcement of its intellectual property rights against counterfeiters.

The key objective of the workshop was to give the participants from Dubai Customs, one of the major IP enforcement agencies in the UAE, specialized training in respect of JTI's brands, and to share with the participants the latest techniques, instruments and investigation methodologies to assist Dubai Customs in distinguishing between genuine and counterfeit cigarettes.

The workshop included a detailed induction into the unique elements of genuine JTI products. The participants received a comprehensive orientation on practical elements that inspectors need to consider when trying to distinguish genuine JTI cigarettes from fakes. They also visited a JTI tobacco factory and observed the manufacturing process on the production lines. The training was concluded with a visit to the JTI Research & Development Centre.

The Dubai Customs inspectors demonstrated a high level of knowledge and experience in IP enforcement. JTI issued certificates to the participants in recognition of their participation in the training workshop, and Dubai Customs presented JTI with a plaque to show its appreciation of the value of the training provided by JTI.

Munir Suboh handles anti-counterfeiting activity in the UAE for JTI and has represented the company in various raids and legal actions. He accompanied the group from Dubai Customs to support the entire event on behalf of JTI.

Telecommunications Head addresses M&A conference in Qatar

At the recent M&A Corporate Finance and Advisory Conference held in Doha, Qatar, Al Tamimi's Head of Telecommunications, Philip Brazeau, addressed M&A professionals and investment bankers on the Mergers and Acquisitions activity taking place in the telecoms sector. In addition to addressing transactions such as the Qtel/Watanyia purchase of 50% of Tunasiana for $1.2bn, Etisalat purchase of 46% of Zain for $11.7bn Philip took the audience through the legal and regulatory intricacies associated with acquisitions in the telecommunications sector such as License requirements, applications for approvals from Telecom Regulators and the exigencies of capital market legislation. Highlighting the importance of intangibles such as intra country relationships, strong balance sheets and regulatory policy, Philip went on to address the promising aspect of future consolidations in the telecoms sector.

Doing Business Seminar - Tokyo, Japan

In light of Al Tamimi & Company's growing and valued client-base in Japan, during the second week of December, 2010 Muhammad Arif Saeed from our KSA office and Steve Bainbridge from out DIFC office visited Tokyo at the invitation of the leading Japanese law firm, Nishimura and Asahi, to present and participate in panel discussions held at a joint seminar at the headquarters of the Japan Bank of International Cooperation (JBIC). The seminar was primarily designed to provide Japanese investors with insight into certain issues to consider when investing in KSA and the UAE.

The seminar was sponsored by JBIC together with the Japan External Trade Organization (JETRO) and the Japan Cooperation Center for the Middle East (JCCME); and, although originally organized for an audience of 150, the seminar was attended by over 190 delegates from key corporate, governmental and institutional entities from across the Japanese business landscape. The half-day seminar concluded with a robust question and answer forum and was followed by an interactive reception that allowed the panel speakers and delegates an opportunity to elaborate on topical legal issues in a more informal atmosphere.

While the seminar event was the focal point of the trip, it was a busy week and there was a full schedule of business development activities ranging from meetings with fellow counsel and clients old, new and prospective as well as audiences with the Director-General for Natural Resources and Energy Policy at the Agency for Natural Resources and Energy and the Vice-Minister for International Affairs at the Ministry of Economy Trade and Industry and a speaking engagement at Waseda University.

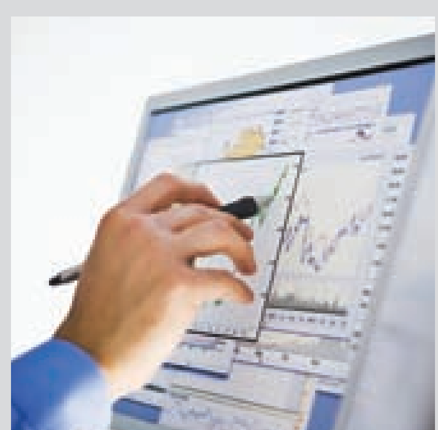
The Resurgence of the IPO

Optimizing and Executing UAE Offerings

Al Tamimi & Company will be hosting a topical seminar examining a range of areas including:

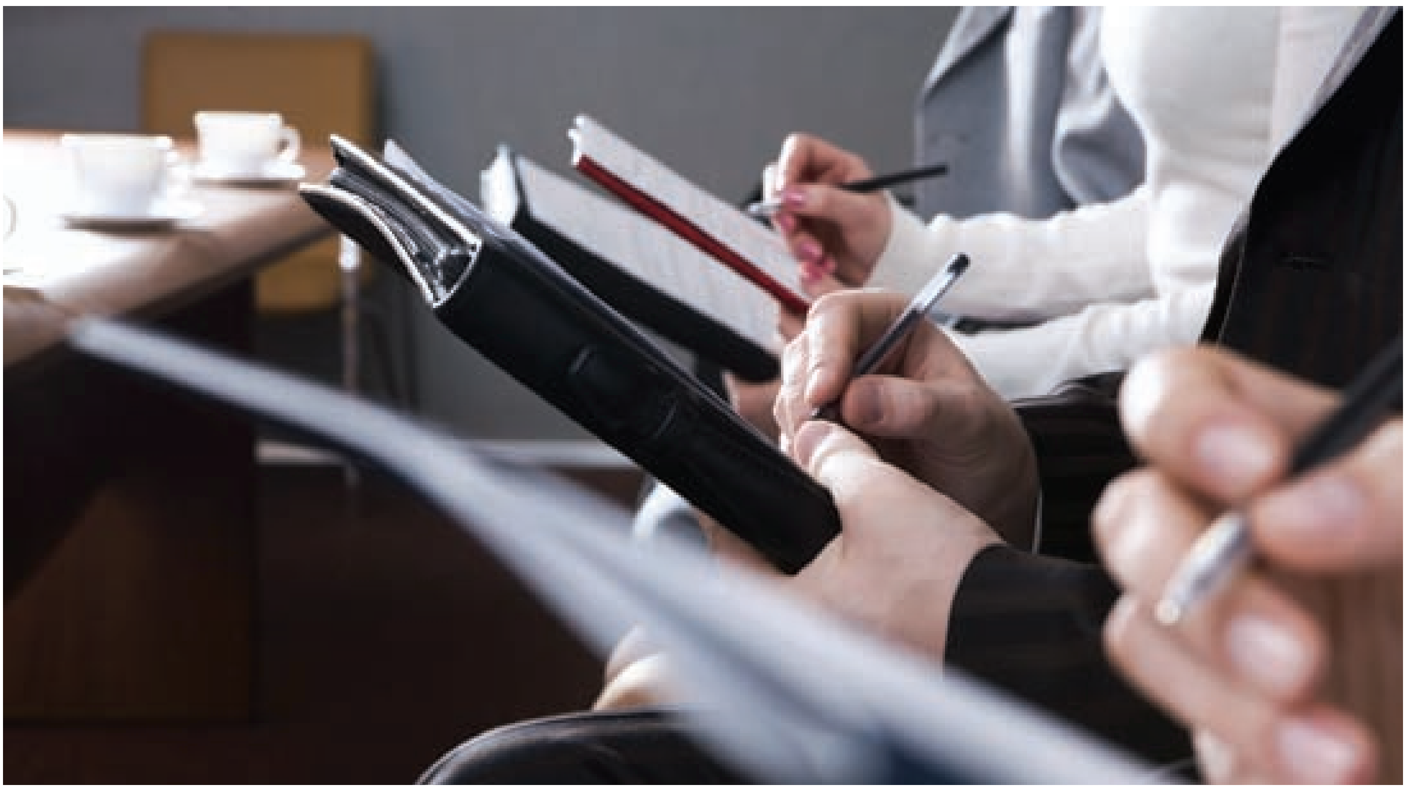
- UAE valuation process.
- Legal Roadmap for offerings
- New offering models for Issuers.
- Challenges for UAE Issuers.
- The SCA regime.

For more information, or to ensure you receive an invitation, please contact **r.falls@tamimi.com**



Summary Winding Up of Jebel Ali Free Zone Offshore Companies Avoiding Delay

Bilal Al Sabbah, Associate
Corporate Commercial



Introduction and Scope of this Article

The unprecedented financial crunch experienced globally has forced many businesses to question their existing corporate structures, and also to consider ways in which these structures can be realigned with minimum cost, which has, in some cases, necessitated winding up group companies.

As offshore companies have often been used in cross-border transactions, they have recently been the subject of winding up with shareholders wanting to do this involving minimum costs.

For offshore companies set up in the Jebel Ali Free Zone Authority ("JAFZA") the preferred mode, in most cases, has been the summary winding up (also called Voluntary Winding up).

In the background of the recent desire to keep group structures to the bare minimum in order to reduce costs, there can be several reasons why shareholders might wish to summarily wind up a JAFZA offshore company. A business may have run its course; the company may be inactive (and therefore not serving any useful purpose); or a shareholder may simply wish to receive his share of its assets. Whatever the reason, one should know that the process of winding up a company is not always a simple one and there are a number of matters that should therefore be considered beforehand, so that everything proceeds smoothly.

This article attempts to describe steps to be taken to summarily wind up a JAFZA offshore company. It is recognized that this Article may not address completely all the questions which may be relevant in this regard as it is intended to provide a quick insight into the subject matter covered: the article is designed as a starting-point for a more detailed and comprehensive consideration of the issues covered herein.

Governing Regulatory Regime

The concept of the offshore was first introduced in Dubai in late 2001 but it took concrete shape on January 15, 2003 when Jebel Ali Free Zone Offshore Companies Regulations 2003 came into force. Jebel Ali Free

Zone Offshore Companies Regulations 2003 (the "Regulations") laid down detailed rules and regulations for offshore companies in JAFZA. The procedure which governs the summary winding up of a Jebel Ali offshore company is set out in Articles 70 to 79 of the Jebel Ali Offshore Regulations 2003.

The Regulations recognize three types of winding up and they are:

- Summary winding up,
- Creditors' winding up which applies after the commencement of a summary winding up, where the directors or the liquidator form the opinion that the offshore company has liabilities which it will be unable to discharge in full within six months after the commencement of the winding up; and
- Winding up by the court under the UAE Commercial Transactions Law No. 18 of 1993 (Volume 5, Bankruptcy and Preventive Composition) and other applicable legislation.

Preconditions for Commencement of Summary Winding up

A process that avoids supervision of court
In case of summary winding up, the entire process is done without court supervision. When the winding up is complete, the relevant documents are filed before the Registrar for obtaining the letter of dissolution.

Circumstances in which a company can be wound up summarily
The Regulations also set out certain circumstances in which a company may be wound up summarily and they are:

- When the offshore company has no assets and no liabilities, or
- The offshore company has assets and no liabilities; or
- The offshore company is able to discharge its liabilities in full within six months after the commencement of the winding up which commences on the passing of shareholder(s) resolution for summary winding up.

Who can wind up the company?
A summary winding up may be done only by the members of the offshore company. Article 18 of the Regulations defined the "Members" term by (1) the incorporators of an offshore company and (2) Every other person who agrees to become a shareholder of an offshore company, and whose name is entered in its register of members.

Statement of Solvency
To commence the procedure an offshore company has to pass the so called Statement of Solvency for Summary Winding up. Article 71(2), which is relevant in this regard states as follows:

"A statement of solvency shall be signed by each of the directors and state that, having made full inquiry into the offshore company's affairs, each of them is satisfied:

- That the offshore company has no assets and no liabilities; or
- That the offshore company has assets and no liabilities; or
- That the offshore company will be able to discharge its liabilities in full within six months after the commencement of the winding up, as the case may be."

Difference between the law and practice
In practice, the Offshore Registrar would normally require that the statement of solvency be signed by all of the shareholders of the offshore company (as opposed to the directors as provided for in the law) or their duly authorized representatives.

Repercussions of summary winding up on directors of company
Whether or not a company's directors are happy to allow their company to be wound up, the process may have very serious consequences for the directors involved. The three main areas that company directors need to be aware of are summarised below:

- Freezing of Company Bank Accounts - Once a Summary Winding up notice is advertised in the newspaper by the registrar, it is assumed that this should be identified by the company's bank. Normally the bank will automatically suspend the company's banking facilities until the winding up is either completed or terminated. Clearly, if banking facilities are suspended, this will make it very difficult to trade and cause serious disruption. There is normally no way to prevent this once a Summary Winding up has been issued.

- Director Investigation - As well as disposing of the company's assets, the liquidator may, under Part 14 of the Regulations, request from the Registrar to appoint inspectors to investigate the affairs of the company and the activities of the company's directors to ensure that they have acted properly and according to their directors duties as prescribed in the Regulations. If the appointed Inspector believes that the directors are guilty of wrongful trading (trading while knowing that the company was insolvent) and pointed out this conclusion in his report to the Registrar, the director in default will be personally responsible for such liabilities of the offshore company as are incurred at the time of his wrongful acts[1]. In addition he might get banned from all current and future directorships for a period of time and he or she might risk being accused of committing an offence[2]. This procedure is commonly known as blacklisting. If blacklisted, a director in default will have to give up all other directorships that he or she currently holds.

- If company directors are found guilty of continuing to allow a business to trade while insolvent or with lack of cooperation with the appointed liquidator, they may become personally liable for committing an offence.

Steps Towards Summary Winding up

First – commencement, statement of solvency and appointment of liquidator
As mentioned above, the offshore company has to pass a Shareholder(s)

Resolution calling for the commencement of the Summary Winding up and shall include:

- A statement of the reason for Winding Up, and
- A statement of Insolvency, and
- A statement that the company is and will continue to be able to discharge or pay, provide for the payment of all claims, debts, liabilities and obligations in full, and
- A statement of the name and address of the appointed liquidator and the remuneration proposed to be paid to the liquidator.

If a statement is delivered that confirms that the offshore company has assets and no liabilities the offshore company shall forthwith proceed to distribute its assets among its members according to their rights. In the event the statement provides that the offshore company will be able to discharge its liabilities in full within six months after the commencement of the winding up, the assets of the offshore company shall be applied in satisfaction of the offshore company's liabilities and, subject to that application, shall be distributed as aforesaid. In both scenarios appearing above, the appointed Liquidator will review all of the company's assets and try to sell them to repay the company's members or creditors as may the case be. The company's assets are sold and the surplus, if any, shall be distributed among the members, the liquidator, having made full inquiry into the offshore company's affairs, shall apply to the Registrar for the business to be dissolved through submitting a statement that he is satisfied that the offshore company has no assets and no liabilities. The company will not be dissolved unless the statement is submitted before the Registrar.

Second – return of originals
All originals which were given to the offshore company by the Registrar must be returned.

Third – liquidators report
The appointed liquidator will need to formulate a liquidation report for the offshore company which will be submitted to the Jebel Ali Free Zone Authority. On the appointment of a liquidator all the powers of the directors cease except so far as the resolution appointing the liquidator or any subsequent resolution otherwise provides and, subject to any such resolution and to Regulation 75, all those powers shall thereafter be exercisable by the liquidator.

Fourth - advertisement
The Registrar upon receipt of the above mentioned documentation will post an advertisement in a public news paper on the expense of the offshore members.

After the collapse of 14 days period from the advertisement date the Registrar will issue a Letter of Dissolution for the offshore company unless reason is shown to the contrary.

Some Relevant Aspects to Summary Winding up

Does the validity of an offshore company effect the commencement of Summary Winding up?
The Regulations are silent in this regard, but the offshore Register has adopted an approach to facilitate the Summary Winding up without extra expenses whereby it would be acceptable to file the winding up Resolution within 6 months of the expiry date, the period of 6 months is based on the fact that offshore companies can benefit from a grace period of 6 months after the commencement of winding up to settle their affairs. In this sense, summary winding up is not possible after 6 months of the expiry of the offshore company.

Termination of Summary Winding up
Where the summary winding up of an offshore company has commenced; the termination of this winding up may only occur by instrument of a shareholder resolution approving the termination of the winding up process and provided that the offshore company has not for the purposes of the winding up distributed any of its assets among its members. In addition, the offshore company must not have received any contribution from any present or past member pursuant to Regulation 100 which requires every present and past member which was a member for less than one year before the commencement of the winding up to contribute to its assets to an amount sufficient for payment of its liabilities arisen after their membership, and the expenses of the winding up.

Distinction Between Winding up" and "Striking off"
The terms "Winding up" and "Striking off" are sometimes erroneously used to mean the same thing. However, they are quite different in their meanings. Winding up is a process whereby all assets of the company are realized and used to pay off the liabilities and members. Striking off of the company takes place after the entire process of winding up is over. Striking off practically ends the corporate existence of the company.

Pursuant to Article 113 of the Regulations the Registrar has been granted authority to strike off a company that he has cause to believe is not in business or operation. This is usually because documents have not been delivered by the company, and in particular because it has not been renewed annually, and because there has not been a response to statutory enquiries sent to the registered office. Notwithstanding the above, it is not a recognized practice in JAZFA Offshore Registration to strike off defunct offshore companies.

Conclusion
Summary winding up is currently being preferred as a way to wind up insolvent JAFZA off shore companies. This procedure is relatively quick, however, cannot be used for disputed debts and, if the offshore company has debts due to it, members of the offshore company should consider all the debt recovery options before proceeding down this path.

Footnotes
[1]See Article 41 of the Offshore Regulations 2003
[2]Article 76 (7) of the Offshore Regulations 2003

New Year's Resolutions

Labour Relations in the UAE

Rebecca Ford, Senior Associate
Employment

The beginning of 2011 has seen a number of new Cabinet and Ministerial Resolutions hitting the headlines as they have wide-ranging effects on labour relations in the UAE. This article provides an overview of the key changes which have been introduced.

Work Permits

There are now five internal work permits which may be provided by the Ministry of Labour to individuals working in the UAE. These were introduced in Cabinet Resolution No. 25 of 2010 concerning Internal Work Permits Applicable in the Ministry of Labour and are considered below.

- Worker Transfer Permit – applicable where a non-national worker is already working in the UAE and is transferred from one organisation to another. For this permit to apply, both organisations should be registered with the Ministry of Labour.

- Temporary Work Permit – issued to a national or non-national who is to be employed on a project or in a role which is not for more than six months in duration.

- Part Time Work Permit – issued to a national or non-national who is recruited for a role where they are to be working less than the normal working hours of full time employees within an organisation, undertaking the same job. Normal working hours for a full time employee are generally 8 hours per day (which is the stated maximum under the UAE Labour Law (UAE Federal Law No. 8 of 1980, as amended)), excluding lunch. A senior Ministry of Labour official has been reported in the press as stating that this new permit shall enable employees to take up a second part-time job, in addition to any full time position they may already undertake. Although the Resolution itself does not expressly make this point, clearly the Ministry of Labour may choose to issue part-time work permits in order to enable them to be used in this way. At present, how part time workers may be treated in respect of the minimum rights under the UAE Labour Law (which currently makes no provision for part time working) is not clear. However, this is an exciting development that will no doubt become clearer in the coming months, as issues arise and are taken to the Ministry of Labour or the Labour Court.

- Work Permit for Personnel Sponsored by their kinship – issued where dependents are recruited by an organisation. This means that expatriates will be able to act as official work sponsors for their dependents. Whilst this is no doubt a welcome development for some, we believe that this does not necessarily enable a spouse to work from home on their own account (in the absence of the necessary approvals and trade licence). In addition, this may lead to employers shifting the cost of the permit fees onto the dependant's spouse, and thus ultimately encourage more women to be directly sponsored by their employer, rather than their spouse.

- Juvenile Persons Work Permit – issued to nationals or non-nationals between the ages of 15 and 18.

Waiver of six-month ban in certain cases

In addition to the introduction of the five internal work permits, Cabinet Resolution No. 25 of 2010 also provides that the Minister of Labour will issue a decision defining worker categories, cases, conditions, controls and standards by which a work permit may be issued for non-nationals without being bound by the standard six-month post employment work ban, which is usually imposed by the Ministry of Labour. In this regard, the Resolution identifies three factors which the Minister of Labour should take into account when providing the decision on the waiver of the six-month ban as follows:

- Cases where an employer has breached their obligations to the employee, or where the employee is not the cause of the termination of the employment. We believe that this factor may have been introduced to address the situation where employees are made redundant, for no fault of their own, due to economic difficulties of the employer. Subject to the decision of the Minister of Labour, this may

mean that such employees would be able to easily transfer to another role, without waiting for the requisite 6-month period.

- The UAE labour market need for employees with higher qualifications, distinguished expertise, and technical specialities. This factor will be helpful in ensuring that those workers with particular skills which are useful to the UAE are not lost by reason of the fact they are unable to work in the UAE for the six-month period and move to another country as a result.

- Setting the time period that the employee must spend with the ex-employer and the categories which may be excluded from this condition.

Classification of Organisations

Prior to the changes implemented by Ministerial Resolution No. 1187 of 2010 on Regulations and Criteria of Classifications of Establishments, employers fell within one of three categories, which were identified with regard to their compliance with Emiratisation and cultural diversity requirements. These categories determined the level of fees payable by employers, as well as the bank guarantees payable on recruitment.

Employers will now be determined as falling within three new classes, with the second class being divided further into three sub-classes. The second class (and its sub-classes) is similar to the three categories previously imposed.

The new “first class” category may be achieved by an organisation, provided that it has complied with certain legal regulations and standards, such as adherence to cultural diversity requirements, commitment to pay wages correctly, provide appropriate labour accommodation, as well as a new Emiratisation requirement. In order to achieve the first class category status, at least 20% of an employer’s workforce must be made up of professionals earning a certain level of remuneration, and UAE nationals must make up at least 15% of the professional levels. UAE nationals must be eligible for a government pension (or pension and social security provided by the relevant Emirate) to form part of the Emiratisation quota under this class.

First class category status can only be awarded by resolution of the Minister of Labour, and banks and insurance companies can only be eligible if they have previously met all Emiratisation quotas prior to 1 January 2011.

The new “third class” category has now been introduced for employers who accumulate certain “black points” (as set out below).

Violations of Labour Relations Regulations

In Ministerial Resolution No. 1187 of 2010 on Regulations and Criteria of Classifications of Establishments, the Ministry of Labour has sought to address certain bad practices and violations which have become prevalent in the recent economic downturn.

The Resolution introduces three categories of violation and depending on their seriousness, imposes "black points", and fines. For serious violations, the imposition of black points may immediately cause an organisation to be downgraded to the third class category, which will affect the requirements imposed upon the organisation, for example, in respect of bank guarantees. Alternatively for less serious violations, black points imposed have a cumulative effect and are maintained for one year on the file of the organisation. If an organisation exceeds 100 black points, within any given year, it may be downgraded to the third class category.

There are 13 violations in the first level and these are where an organisation:

1. Is convicted of recruiting individuals not legally present in the country;
2. Is convicted of trafficking people;
3. Falsifies their Emiratisation compliance;
4. Deliberately provides incorrect information in respect of the wages protection system (WPS), for the purposes of evading or manipulating the regulations relating to the WPS;
5. Recruits juveniles or women in hazardous conditions or which may be harmful to health, in breach of applicable regulations;
6. Closes, suspends or fails to practice its commercial activities without settling the dues of its employees;
7. Fails to pay an employee for 60 days or more;
8. Has employees who sign documents which falsely indicate that they have received their labour entitlements;
9. Provides accommodation to workers which fail to comply with standards contained in applicable regulations;
10. Recruits or allows an individual to work for a third party, without obtaining a work permit from the Ministry of Labour;

"For serious violations, the imposition of black points may immediately cause an organisation to be downgraded to the third class category, which will affect the requirements imposed upon the organisation."

11. Undertakes recruitment, supply or hire of workers, without an appropriate licence from the Ministry of Labour;
12. Does not use, employ, or recruit employees to practice work for a period exceeding two months; and
13. Compels an employee to pay for the expenses of recruitment and employment.

Violations in this first level attract an immediate 100 black point penalty, so that an organisation is automatically downgraded to the third class category and is also fined. The fine in most cases is AED20,000 for each violation or worker in respect of which the organisation is in breach. However, in three instances, the Ministry of Labour has discretion to impose a fine within a range, so that where the violation is as set out in (6) above in the first level, the fine is not less than AED10,000 and not more than AED50,000, and where the violation is as set out in (7) or (8) above in the first level, the fine is not less than AED5,000 and not less than AED50,000.

There are 6 violations in the second category and these are where an organisation:

1. Fails to comply with applicable procedures for the employment of nationals;
2. Fails to comply with any Ministry of Labour summons and related labour affairs, on the dates required by the Ministry of Labour;
3. Fails to take necessary action to register absconded employees;
4. Vexatiously or falsely reports an employee as having absconded;
5. Fails to ensure that applicable employees do not work during any prohibited work period in the summer; and
6. Provides incorrect documents or data to the Ministry of Labour.

There are 4 violations in the third category which are where an organisation:

1. Fails to participate in the WPS;
2. Fails to comply with applicable standards of occupational health and safety, or fails to comply with prescribed procedures, to prevent health and safety risks;
3. Fails to notify the Ministry of Labour regarding work injuries, occupational disease, or death of the worker, resulting from working conditions, within 48 hours of the occurrence of the injury, disease, or death; and
4. Fails to rectify any violation of standards of workers' accommodation within any timeframes set by the Ministry of Labour.

Violations in the second level attract 70 black points, as well as a fine of AED20,000 for each violation or worker in respect of which the organisation is in breach. Violations in the third level attract 50 black points, as well as a fine of AED10,000 for each violation in respect of which the organisation is in breach.

The simultaneous issuance of such wide ranging Resolutions that affect labour relations in the UAE is certainly unprecedented, and with the Ministry of Labour promising that further changes are due to be implemented very soon, the actual effect of all these changes will certainly take time to assess. What is abundantly clear however is that the UAE government seems to be determined to implement changes to the existing systems in place. Whether or not these changes are a precursor to the long-awaited change to, or merely designed to be effected in place of, the UAE Labour Law remains to be seen.

New Maritime Law

Omar Omar, Senior Associate
Maritime, Aviation & Insurance

The New Maritime Law is about to be endorsed. These are very exciting times for the Al Tamimi Maritime, Aviation & Insurance lawyers and indeed, many others, who have been involved with amendments to the law.

When this law is endorsed and published, the UAE shipping and associated industries will be sailing toward new, unlimited horizons.

The change starts with the name, where, as you will have noticed, I referred to the law as the “Maritime Law” instead of the original “Commercial Maritime Law”. There are a number of major amendments to the new law, which include, but are not limited to:

- Allowing complete non-UAE ownership for vessels registered in the UAE.
- Extending the State’s authority to fight drug and human trafficking occurring in foreign vessels with UAE territorial waters.
- Regulating the registration and licensing of pleasure and fishing boats under 10 tons.
- Foreign Vessel operation within UAE special Economic Zones.
- Reducing the quantum required to approve vessel mortgages from 75% to 50%.
- Widening port local authority to detain vessel departure.
- Extending latent defect time bar to include vessel repair as in vessel construction.
- Identifying the debt resulting from vessel sale as a marine debt enabling creditors to arrest the vessel against such debt however; restricting the arrest right only on the vessel itself and not including sister vessels.
- Widening the range of marine debts acceptable to arrest a vessel.
- Deleting the 24 hours execution requirement between notifying the debtor to pay and vessel auction.
- Reducing the vessel auction sessions into one with a possibility of extending to another hearing instead of three. Also, the new law will require the awarded party to deposit 1/3 of the price and expenses immediately after the award and to deposit the rest within 3 days. Currently, the existing law requires full payment the next after the award.
- Including a new clause regarding vessel repair where the shipper/charterer will have the choice to either wait until the repairs are completed or to discharge the cargo and re-ship onto another vessel.
- Including a new section regulating Marine Agents work and operations.
- Adding a new time bar clause regarding bareboat-chartered vessels.

> “The UAE distinguished shipping expertise and infrastructure will gradually establish the UAE as a recognized regional and international registry.”

The proposed amendments to the law are all substantial and important, however, the amendment, which is of particular interest to me, relates to permitting full non-UAE vessel ownership and the authorization to establish an open vessel registry.

Although, we still believe the term “open registry” may not be the most suitable term to describe the UAE ambitions in this regard, we are sure that with the UAE distinguished shipping expertise and infrastructure, this will gradually establish the UAE as a recognized regional and international registry. Furthermore this amendment paves the way for large UAE fleets under other international registered flags to return to where they belong. Such registry procedures will become a beacon, signaling all vessel owners in the region to register their vessels in the first Class A registry in this part of the world.

We know and recognise there is a long road ahead, yet we remain optimistic. There is a need to amend some other associated laws and regulations. There is also a need for upgrade and standardization across many fields and areas within the shipping industry. There is an unresolved amount of determination and resolution necessary to ensure these requirements are met.

Nonetheless, the new Maritime Law is definitely a huge step in the right direction. In a country capable and used to reducing storms to wind in a teacup, we are all confident the UAE will eventually claim its rightful position as an international registry.

Khaled Saqqaf presents in Washington DC at the TRACE Annual Member Forum

Part 2 - October 20, 2010.

TRACE (A leading anti-bribery training and compliance organization) where Khaled Saqqaf, special counsel, Head of the Corporate & Commercial department in both the Jordan & Iraq offices, presented during their Annual Member Forum in Washington D.C.

The title, 'Anti-Corruption Challenges in Iraq & Afghanistan', dealt with the major challenges Iraq faces in combating corruption. In part 1, Khaled presented an overview of the main Iraqi laws and regulations relating to anti-corruption and the steps taken in 2008 to combat corruption (particularly Iraq's accession to the UNCAC), as well as reviewing Iraq's main anti-corruption bodies, and particularly how effective they are in performing their functions.

In part 2, the focus Khaled presented on was the tendering process which dealt with; Public Contracts, Contracting Departments with in the Governments, Financial Requirements, Methods of Contracting, Notice of Tenders and finally the Tender Periods which leads into Final Approval.
The conclusions of the presentation noted that;

OECD conducted a public procurement review on Iraq, Improving Transparency within Government Procurement Procedures in Iraq: OECD Benchmark Report, and found that Iraq's 2004 procurement law and supporting regulations provided extensive provisions adequately dealing with the whole of the procurement process.

However, the following problems were identified:

- Little co-ordination of procurement practices across government organizations, and relatively non-existent co-ordination with Iraq's other anti-corruption agencies
- Lack of transparency in practice.
- Problems relating to sub-contracting (no-accountability).

The Final Recommendations were;

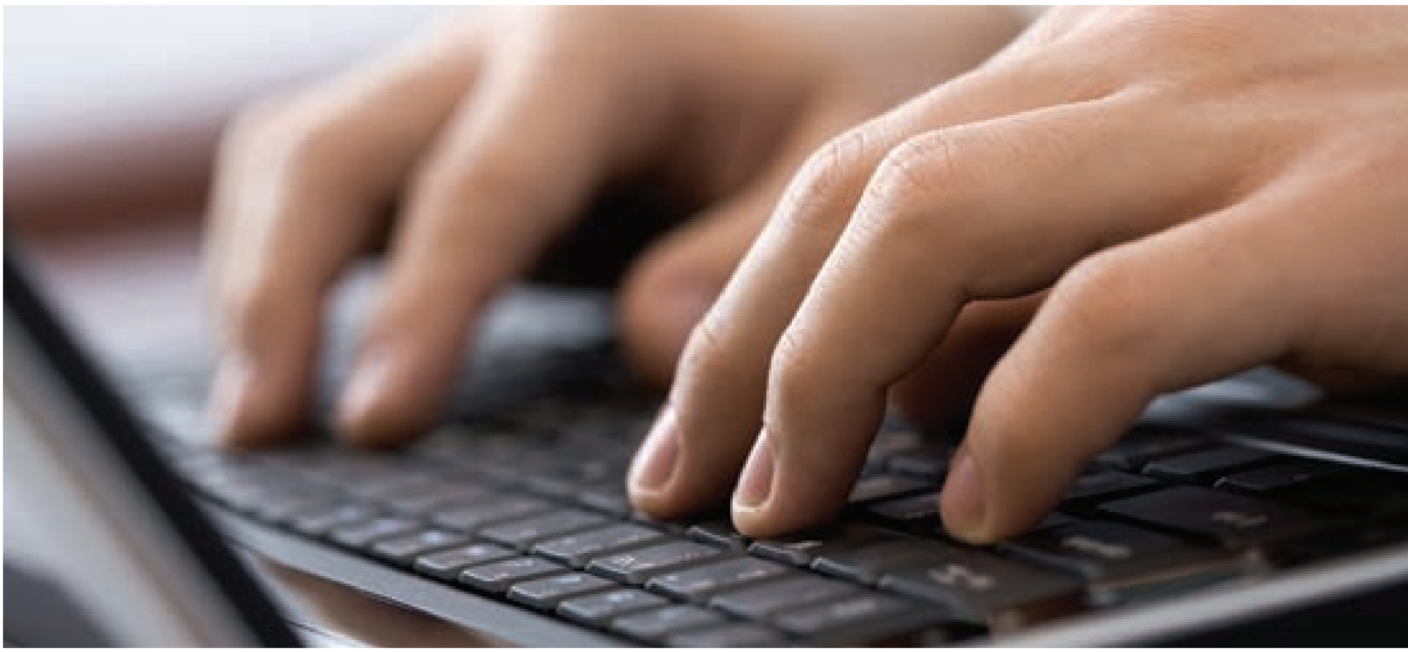
- Encourage and reward the reporting of corruption cases.
- Organize awareness campaigns about the causes of corruption, its negative impacts, and international best practices to combat it.
- Establish an independent committee with federal budget, which should have the competence to scrutinize public procurement contracts, and to initiate proceedings against offenders.

Khaled continued by explaining further relevant legislation, steps taken in 2008 to combat corruption, the establishment of anti-corruption agencies in Iraq, and the Iraqi approach of creating several authorities in charge of combating corruption in Iraq; each with its own individual competences.

For a full copy of both presentations, please contact Khaled Saqqaf at:
k.saqqaf@tamimi.com

Saudi Arabia - New Web Publishing Law

Salah Deeb, Senior Associate
Intellectual Property, IT



Saudi Arabia has recently announced new implementing regulations for web publication (the "Regulations") which will come into force after one month from publication in the official gazette. The Regulation applies to owners (whether Saudi nationals or residents of Saudi Arabia) of web publication means operating from Saudi Arabia and foreign websites that are hosted in Saudi Arabia.

The Regulations regulate 13 types of web publications which are as follows:

- Electronic newspapers;
- Media websites (TV, radio, newspapers, magazines…etc);
- Electronic advertising;
- Websites for displaying audio visual materials;
- Broadcast via mobile phone;
- Broadcast via other means;
- Forums (Montadyat);
- Blogs;
- Personal Websites;
- Mailing groups;
- Electronic archive;
- Chatting rooms; and
- Any form of web publishing that the Ministry of Information and Culture decides to add from time to time.

Types 1-6 are subject to license and types 7-12 along with type 13, are subject to registration with the Ministry of Information and Culture. An applicant for a license must; (a) be a Saudi; (b) be no less than 20 years of age; (c) have high school certificate; (d) hold an appropriate license for the same activity; (e) be of good behavior and conduct; (f) have a specific mail address; (g) specify email address; (h) employ editors in chief who have been approved by the Ministry of Information and Culture; (i) have a domain name. An applicant for registration must; (a) be a Saudi or resident of Saudi Arabia ;(b) be of good behavior and conduct; (c) have a specific mail address; (d) specify email address; (e) have an operational website.

The Regulations specify who is liable for the content published on the web. For example, the editor in chief or his deputy and the author are responsible for the content. Furthermore, the licensee must specify who is responsible for content, otherwise he will be liable. The owner of a personal website is responsible for the content.

A person found to be acting in violation of the Regulations is subject to one of the following penalties:

- Obligatory publishing of corrections;
- Fines;
- Compensation for infringement against private rights;
- Partial blocking;
- Temporary blocking for more than two months; or
- Total blocking.

The Regulations provide a grace period of six months from publication in the official gazette for owners to register and obtain a license.

United Arab Emirates

Ministry of Justice
31st October 2010
40th Year
Issue No. 514
13 Dhu Al Qi'dah 1431

OFFICIAL GAZETTE

	FEDERAL DECREES
81 of 2010	Appointing a director general at the President's Protocol Division
82 of 2010	Establishing the Shamsa bint Suheil Award for Creative Women
	DECISIONS OF THE UAE PRESIDENT
1 of 2010	President of the UAE decision appointing the Board of Trustees of the Shamsa bint Suheil Award for Creative Women
	MINISTERIAL DECISIONS
	• From the Ministry of Environment & Water
609 of 2010	Minister of Environment & Water decision regarding the catching of shallow water migratory fish using enclosures in the Emirate of Dubai
610 of 2010	Minister of Environment & Water decision regarding the catching of shallow water migratory fish using enclosures in the Emirates of Sharjah, Ajman & Umm Al Quwain
611 of 2010	Minister of Environment & Water decision regarding the catching of shallow water migratory fish using enclosures in the Emirate of Ras Al Khaimah
612 of 2010	Minister of Environment & Water decision regarding the catching of shallow water migratory fish using enclosures in the Eastern Region
	• From the Ministry of Social Affairs
427 of 2010	Minister of Social Affairs decision announcing the establishment of Al Reef Cooperative Service Society
428 of 2010	Minister of Social Affairs decision announcing the establishment of Ahmed bin Zayed Foundation for Charity & Humanitarian Works
	• From the Ministry of Justice
1150 of 2010	Minister of Justice decision re child visitation and custody regulations
	• From the Ministry of Economy
358 of 2010	Minister of Economy decision revising the Articles of Association of Noor Takaful Family PJSC

371 of 2010	Minister of Economy decision announcing a revision of the Articles of Association of Gulf Finance Corp PJSC
372 of 2010	Minister of Economy decision announcing the incorporation of Itiqan Real Estate PSC
377 of 2010	Minister of Economy decision approving the guide to procedures for licencing branches and offices of businesses incorporated overseas and in free zones in the UAE
394 of 2010	Minister of Economy decision revising the Articles of Association of Al Sagr National Insurance PSC
395 of 2010	Minister of Economy decision revising the Articles of Association of Dubai Islamic Bank PJSC
400 of 2010	Minister of Economy decision revising the Articles of Association of Ras Al Khaimah Poultry & Feeding PSC
401 of 2010	Minister of Economy decision revising the Articles of Association of Ras Al Khaimah Ceramics PSC
429 of 2010	Minister of Economy decision revising the Articles of Association of International Fish Farming Holding Co. PJSC
	ADMINISTRATIVE DECISIONS
	• From the Securities & Commodities Authority:
43 of 2010	Decision of the Chairman of the Board of Directors of the Securities & Commodities Authority regarding deregistration and cancellation of the licence of Invest One Financial Brokerage
44 of 2010	Decision of the Chairman of the Board of Directors of the Securities & Commodities Authority regarding deregistration and cancellation of the licence of Al Madina Financial Brokers
45 of 2010	Decision of the Chairman of the Board of Directors of the Securities & Commodities Authority revising the brokers regulations
46 of 2010	Decision of the Chairman of the Board of Directors of the Securities & Commodities Authority revising the disclosure and transparency regulations and the regulations concerning the trading, clearing, settlement, transfer and holding of securities
	• From the Federal Authority for Nuclear Regulation:
6 of 2010	Decision of the Chairman of the Board of Directors of the Federal Authority for Nuclear Regulation promulgating the regulation for radiation dose limits and optimisation of radiation protection for nuclear facilities
	ANNOUNCEMENTS
	• From the Ministry of Economy:
	Concerning the application filed by Armorgroup Services Ltd (UK), to delete the registration of their Dubai Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by The Grass Roots Group UK Ltd (UK), to delete the registration of their Dubai Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by Ko Eng Shen Electrical Construction Ltd (South Korea), to delete the registration of their Dubai Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by Dunham-Bush Industries Sdn Bhd (Malaysia), to delete the registration of their Dubai Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by AHI Roofing Ltd (New Zealand), to delete the registration of their Dubai Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by Premium Ingredients S.L. (Spain), to delete the registration of their Dubai Branch from the Register of Foreign Companies at the Ministry

	Concerning the application filed by UEM Construction Sdn Bhd (Malaysia), to delete the registration of their Abu Dhabi Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by Sharekhan Ltd – Abu Dhabi (India), to delete the registration of their Abu Dhabi Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by Wabco Standard Trane BV (Holland), to delete the registration of their Dubai Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by ESQ Australia Pty Ltd (Australia), to delete the registration of their Abu Dhabi Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by Godoman UAE Pty Ltd (Australia), to delete the registration of their Abu Dhabi Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by Trafalgar Technical Services Ltd (UK), to delete the registration of their Dubai Branch from the Register of Foreign Companies at the Ministry
	Concerning the application filed by Samsung Networks Inc. (Korea), to delete the registration of their Abu Dhabi Branch from the Register of Foreign Companies at the Ministry

Partners at Al Tamimi & Company

UNITED ARAB EMIRATES

ESSAM AL TAMIMI
Senior Partner
Arbitration, Banking, Corporate Commercial
e.tamimi@tamimi.com

HUSAM HOURANI
Managing Partner
Head of Banking & Finance
h.hourani@tamimi.com

HASSAN ARAB
Partner
Head of Dispute Resolution
h.arab@tamimi.com

JASSIM M. ABDULLAH
Partner
Dispute Resolution
j.abdullah@tamimi.com

YAZAN AL SAOUDI
Partner
Head of Maritime, Aviation & Insurance/ Dispute Resolution
y.saoudi@tamimi.com

LISA DALE
Partner
Head of Property
L.dale@tamimi.com

HUSSAIN EISA SHIRI
Partner
Dispute Resolution
h.shiri@tamimi.com

OMAR OBEIDAT
Partner
Head of Intellectual Property, IT
o.obeidat@tamimi.com

SAMER QUDAH
Partner
Corporate Commercial
s.qudah@tamimi.com

SAMIR KANTARIA
Partner
Corporate Commercial
s.kantaria@tamimi.com

LYNETTE BROWN
Partner
Banking & Finance
L.brown@tamimi.com

MOHAMMED AK BIK
Partner
Head of Legislation & Drafting
m.bik@tamimi.com

AHMED ALLOUZ
Partner
Dispute Resolution
a.allouz@tamimi.com

BASSEM ZEIN EL DINE
Partner & Head of Dubai World Trade Centre office
Corporate Commercial
b.dine@tamimi.com

EL-AMEIR NOOR
Partner
Dispute Resolution
e.noor@tamimi.com

JAMES MACCALLUM
Partner
Corporate Commercial
j.maccallum@tamimi.com

MOHAMMED MARZOUQI
Partner
Dispute Resolution
m.almarzouqi@tamimi.com

SYDENE HELWICK
Partner
Property
s.helwick@tamimi.com

ZAFER SHEIKH OGHLI
Partner
Head of Sharjah office
Dispute Resolution
z.oghli@tamimi.com

JODY GLENN WAUGH
Partner
Banking & Finance
j.waugh@tamimi.com

KHALID AL HAMRANI
Partner
Special Projects
k.hamrani@tamimi.com

MARCUS WALLMAN
Partner
Corporate Commercial
m.wallman@tamimi.com

MOHAMED KHODEIR
Partner
Corporate Commercial
m.khodeir@tamimi.com

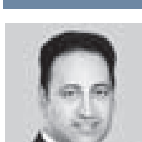
KINGDOM OF SAUDI ARABIA

MUHAMMAD ARIF SAEED
Partner
Corporate Commercial
m.saeed@tamimi.com

DOUGLAS MCBROOM
Partner
Head of Saudi office
d.mcbroom@tamimi.com

ABDULLAH AL TAMIMI
Partner
Head of Litigation - KSA
a.tamimi@tamimi.com

KUWAIT OFFICE



ALEX SALEH
Partner
Head of Kuwait office
Banking & Finance
alex.saleh@tamimi.com

QATAR

JAY FORTIN
Partner
Head of Qatar office
Banking & Finance
j.fortin@tamimi.com

Our People

DUBAI INTERNATIONAL FINANCIAL CENTRE OFFICE

ABIGAIL POWELL
Dispute Resolution
a.powell@tamimi.com

AHMED ALLOUZ
Partner
Dispute Resolution
a.allouz@tamimi.com

AHMAD AL AWAMLEH
Banking & Finance
a.alawamleh@tamimi.com

AHMED HAMAD
Corporate Commercial
a.hamad@tamimi.com

ANGELIQUE WATKINS
Maritime, Aviation & Insurance
a.watkins@tamimi.com

ANITA SIASSIOS
Intellectual Property, IT
a.siassios@tamimi.com

CARLA SALIBA
Corporate Commercial
c.saliba@tamimi.com

CAROLYN JONES
Construction & Engineering
c.jones@tamimi.com

CHERRY TURCAL
Banking & Finance
c.turcal@tamimi.com

CHRIS WEBB
Corporate Commercial
c.webb@tamimi.com

CLAIRE CLUTTERHAM
Arbitration
c.clutterham@tamimi.com

DEAN O'LEARY
Construction & Engineering
d.oleary@tamimi.com

DIVYA ABROL GAMBHIR
Banking & Finance
d.abrol@tamimi.com

EMAN AHMED
Dispute Resolution
e.ahmed@tamimi.com

EMMA SANDLANT
Arbitration
e.sandlant@tamimi.com

ERIC TEO
Construction & Engineering
e.teo@tamimi.com

ESSAM AL TAMIMI
Senior Partner
Dispute Resolution, Banking & Corporate Commercial
e.tamimi@tamimi.com

FAISAL DAUDPOTA
Intellectual Property, IT
f.daudpota@tamimi.com

FATMA MOOSA AL BALOOSHI
Dispute Resolution
f.moosa@tamimi.com

FATMA EL ZEINI
Maritime, Aviation & Insurance
f.zeiny@tamimi.com

FAYEZ KHOURI
Banking & Finance
f.khouri@tamimi.com

FIONA CAMPBELL
Special Projects
f.campbell@tamimi.com

GARY WATTS
Head of Corporate Commercial
g.watts@tamimi.com

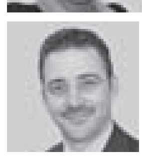
HASSAN ARAB
Partner
Dispute Resolution
h.arab@tamimi.com

HESHAM AL BARBARY
Intellectual Property, IT
h.barbary@tamimi.com

HIAM AL MUHTADI
Dispute Resolution
h.almuhtadi@tamimi.com

HODA BARAKAT
Consultant
Intellectual Property, IT
h.barakat@tamimi.com

HUFRIZ WADIA
Banking & Finance
h.wadia@tamimi.com



HUSAM HOURANI
Managing Partner
Banking & Finance
h.hourani@tamimi.com

HUSSAIN EISA SHIRI
Partner
Dispute Resolution
h.shiri@tamimi.com

IBTISSEM LASSOUED
Special Projects
i.lassoued@tamimi.com

IZABELLA SZADKOWSKA
Corporate Commercial
i.szadkowska@tamimi.com

IZAFANIZ KAMIR
Banking & Finance
i.kamir@tamimi.com

JASSIM M. ABDULLAH
Partner
Dispute Resolution
j.abdullah@tamimi.com

JENNIFER PAGE
Dispute Resolution
j.page@tamimi.com

JEREMY SCOTT
Property
j.scott@tamimi.com

JODY GLENN WAUGH
Partner
Banking & Finance
j.waugh@tamimi.com

JONATHAN BLANEY
Construction & Engineering
j.blaney@tamimi.com

KATRINE KOFOED
Property
k.kofoed@tamimi.com

KAMALJIT DOSANJH
Corporate Commercial
k.dosanjh@tamimi.com

KHALED GAMALELDEEN
Dispute Resolution
k.gamaleldeen@tamimi.com

KHALID AL HAMRANI
Partner
Special Projects
k.hamrani@tamimi.com

LARA ABABNEH
Intellectual Property, IT
L.abaneh@tamimi.com

LISA DALE
Partner
Property
L.dale@tamimi.com

LYNETTE BROWN
Partner
Banking & Finance
L.brown@tamimi.com

MAHMOUD MOSTAFA
Special Projects
m.mostafa@tamimi.com

MAMOON AHMAD KHAN
Banking & Finance
m.khan@tamimi.com

MARCUS WALLMAN
Partner
Corporate Commercial
m.wallman@tamimi.com

MARIAM SABET
Corporate Commercial
m.sabet@tamimi.com

MICHAEL NAROZ
Dispute Resolution
m.naroz@tamimi.com

MOHAMMAD AL MUHTASEB
Dispute Resolution
m.almuhtaseb@tamimi.com

MOHAMED ALI
Intellectual Property, IT
m.ali@tamimi.com

MOHAMED ALI ABOU SAKR
Dispute Resolution
m.sakr@tamimi.com

MOHAMED KHODEIR
Partner
Corporate Commercial
m.khodeir@tamimi.com

MOHAMMED KAWASMI
Property
m.kawasmi@tamimi.com

MOHAMMED KAMRAN TAHIR
Property
m.kamran@tamimi.com

MUNIR SUBOH
Intellectual Property, IT
m.suboh@tamimi.com

NAIEF YAHIA
Dispute Resolution
n.yahia@tamimi.com

NATALIE MORRISON
Corporate Commercial
n.morrison@tamimi.com

NAWAL ABDEL HADI
Corporate Commercial
n.abdelhadi@tamimi.com

NICK O'CONNELL
Intellectual Property, IT
n.oconnell@tamimi.com

NICOLA MILNE
Construction & Engineering
n.milne@tamimi.com

OMAR HEGAZY
Corporate Commercial
o.hegazy@tamimi.com

OMAR OBEIDAT
Partner
Head of Intellectual Property, IT
o.obeidat@tamimi.com

OMAR OMAR
Maritime, Aviation & Insurance
o.omar@tamimi.com

PAUL TURNER
Regional Head of Arbitration
p.turne@tamimi.com

PHILIP BRAZEAU
Regional Head of Telecommunications
p.brazeau@tamimi.com

RAMI ABDELLATIF
Dispute Resolution
r.abdellatif@tamimi.com

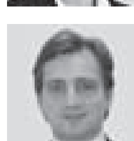
RAMI AL TAL
Maritime, Aviation & Insurance
r.altal@tamimi.com

RANA DIA
Banking & Finance
r.dia@tamimi.com

RASHA AL ARDAH
Intellectual Property, IT
r.alardah@tamimi.com

REBECCA FORD
Corporate Commercial
r.ford@tamimi.com

RITA JABALLAH
Dispute Resolution
r.jaballah@tamimi.com



ROBERT LEWSLEY
Arbitration
r.lewsley@tamimi.com

SAKSHI PURI
Banking & Finance
s.puri@tamimi.com

SAMIR KANTARIA
Partner
Corporate Commercial
s.kantaria@tamimi.com

SARAH FLORER
Banking & Finance
s.florer@tamimi.com

SARAH HASNANI
Corporate Commercial
s.hasnani@tamimi.com

SIRI HASHEM
Maritime, Insurance &
Aviation
s.hashem@tamimi.com

SONIA HARVEY
Property
s.harvey@tamimi.com

STEVEN BAINBRIDGE
Corporate Commercial
s.bainbridge@tamimi.com

STEPHEN JIEW
Intellectual Property, IT
s.jiew@tamimi.com

STEVEN HUNT
Regional Head of
Construction & Engineering
s.hunt@tamimi.com

SUZANNE ABDALLAH
Dispute Resolution
s.abdallah@tamimi.com

SYDENE HELWICK
Partner
Property
s.helwick@tamimi.com

SUZANNE GINGLES
Corporate Commercial
s.gingles@tamimi.com

TAIBA SAEED
Dispute Resolution
t.alsafar@tamimi.com

WILLEM STEENKAMP
Corporate Commercial
w.steenkamp@tamimi.com

YAZAN AL SAOUDI
Partner, Maritime, Aviation &
Insurance/ Dispute
Resolution
y.saoudi@tamimi.com

YUSUF ZAMAN
Corporate Commercial
y.zaman@tamimi.com

YVONNE PAH
Intellectual Property, IT
y.pah@tamimi.com

DUBAI WORLD TRADE CENTRE OFFICE

ALIAA ZAKY
Corporate Commercial
a.zaky@tamimi.com

ANDREW SLEIMAN
Corporate Commercial
a.sleiman@tamimi.com

BASSEM ZEIN EL DINE
Partner, Head of Dubai
World Trade Centre office
Corporate Commercial
b.dine@tamimi.com

BILAL AL SABBAH
Corporate Commercial
b.alsabbah@tamimi.com

EHAB MORCOS
Corporate Commercial
e.morcos@tamimi.com

JOUMANA AZZAM
Corporate Commercial
j.azzam@tamimi.com

RUTA GOTHOSKAR
Corporate Commercial
r.gothoskar@tamimi.com

OMER KHAN
Corporate Commercial
o.khan@tamimi.com

SAMER QUDAH
Partner
Corporate Commercial
s.qudah@tamimi.com

SHERIF RAHMAN
Corporate Commercial
s.rahman@tamimi.com

DUBAI INTERNET CITY

DAVID YATES
Head of Commercial IP
& Technology
d.yates@tamimi.com

NIKKI SCHOORL
Intellectual Property, IT
n.schoorl@tamimi.com

SHARJAH OFFICE

ALI BACHROUCH
Dispute Resolution
a.bachrouch@tamimi.com

AMMAR HAIKAL
Dispute Resolution
a.haikal@tamimi.com

AYOUB GHAZI
Dispute Resolution
a.ghazi@tamimi.com

MAJD BAROUDI
Dispute Resolution
m.baroudi@tamimi.com

ZAFER SHEIKH OGHLI
Partner
Head of Sharjah office
Dispute Resolution
z.oghli@tamimi.com

ABU DHABI OFFICE

AISHA AL MARZOUQI
Dispute Resolution
a.almarzouqi@tamimi.com

AKRAM AHMED AL-BAITI
Dispute Resolution
a.baiti@tamimi.com

AYEN BIAR
Dispute Resolution
a.biar@tamimi.com

AZLIN AHMAD
Banking & Finance
a.azlin@tamimi.com

CHRIS WEBB
Corporate Commercial
c.webb@tamimi.com

EL-AMEIR NOOR
Partner
Dispute Resolution
e.noor@tamimi.com

FERAS AL MOMANI
Legislation & Drafting
f.almomani@tamimi.com

HASSAN EL TAHIR
Legislation & Drafting
h.eltahir@tamimi.com

IBRAHIM TUKAN
Corporate Commercial
i.tukan@tamimi.com

JAMES MACCALLUM
Partner
Head of Corporate
Commercial - Abu Dhabi
j.maccallum@tamimi.com

JAMES WILLIAMS
Construction & Engineering
j.williams@tamimi.com

MAHMOUD ALI HOMIDAT
Dispute Resolution
m.homidat@tamimi.com

MARIE GRACE SEIF
Corporate Commercial
m.seif@tamimi.com

MOHAMMED AK BIK
Partner
Head of Legislation &
Drafting
m.bik@tamimi.com

MOHAMMED MARZOUQI
Partner
Dispute Resolution
m.almarzouqi@tamimi.com

PAUL TURNER
Regional Head of
Arbitration
p.turne@tamimi.com

PHILIP BRAZEAU
Regional Head of
Telecommunications
p.brazeau@tamimi.com

RANA EL HUSSEINI
Legislation & Drafting
r.husseini@tamimi.com

SAIFEDIN M. NAGAR
Litigation, Corporate
Commercial
s.nagar@tamimi.com

STEPHEN FORSTER
Head of Abu Dhabi office
Corporate Commercial
s.forster@tamimi.com

STEVEN HUNT
Regional Head of
Construction & Engineering
s.hunt@tamimi.com

TARA MARLOW
Head of Property and
Hospitality - Abu Dhabi
t.marlow@tamimi.com

TAUFEEK BUSTANI
Dispute Resolution
t.bustani@tamimi.com

WALAA AL QASEM
Corporate Commercial
w.alqasem@tamimi.com

YAZAN AL SAOUDI
Partner, Maritime, Aviation &
Insurance/ Dispute
Resolution
y.saoudi@tamimi.com

ZOE THOMPSON
Corporate Commercial
z.thompson@tamimi.com

QATAR - ASSOCIATE OFFICE: ADV. MOHAMMED AL-MARRI in association with Al Tamimi & Company

AHMAD AL JAAFIR
Corporate Commercial
a.jaafir@tamimi.com

AHMED EL AMOURY
Dispute Resolution
a.amoury@tamimi.com

FRANCESCO LUCENTE
Corporate Commercial
f.lucente@tamimi.com

HANI AL NADDAF
Dispute Resolution
h.alnaddaf@tamimi.com

JAY FORTIN
Partner
Head of Qatar office
Banking & Finance
j.fortin@tamimi.com

KAMAL HAFEZ
Property & Construction
k.hafez@tamimi.com

KARIM SHIYAB
Corporate Commercial
k.shiyab@tamimi.com

MOHAMMED AL MARRI
Dispute Resolution
m.marri@tamimi.com

PAUL TURNER
Regional Head of
Arbitration
p.turne@tamimi.com

PHILIP BRAZEAU
Regional Head of
Telecommunications
p.brazeau@tamimi.com

SARA LISGO
Corporate Commercial
s.lisgo@tamimi.com

SHARIFAH HAMZAH
Corporate Commercial
s.hamzah@tamimi.com

STEFAN JURY
Banking & Finance
s.jury@tamimi.com

STEVEN HUNT
Regional Head of
Construction & Engineering
s.hunt@tamimi.com

WONG YUEN PING
Corporate Commercial
w.yuenping@tamimi.com

IRAQ OFFICE

HADEEL HASSAN
h.hassan@tamimi.com

JAWAD KHALAF
Corporate Commercial
j.khalaf@tamimi.com

KHALED SAQQAF
Head of Iraq office
Corporate Commercial
k.saqqaf@tamimi.com

MODHER MAJEED
m.majeed@tamimi.com

MOZAHEM KHALAF
m.khalaf@tamimi.com

PAUL TURNER
Regional Head of
Arbitration
p.turne@tamimi.com

PHILIP BRAZEAU
Regional Head of
Telecommunications
p.brazeau@tamimi.com

STEVEN HUNT
Regional Head of
Construction & Engineering
s.hunt@tamimi.com

KSA OFFICE

ABDULLAH AL TAMIMI
Partner
Head of Litigation - KSA
a.tamimi@tamimi.com

BANDAR AL HAMIDANI
Dispute Resolution &
Corporate Commercial
b.alhamidani@tamimi.com

DOUGLAS MCBROOM
Partner
Head of Saudi office
d.mcbroom@tamimi.com

FADI DAHER
Corporate Commercial
f.daher@tamimi.com

GLENN LOVELL
Banking & Finance
g.lovell@tamimi.com

HESHAM AL HOMOUD
Corporate Commercial
h.alhoumoud@tamimi.com

MUHAMMAD ARIF SAEED
Partner
Corporate Commercial
m.saeed@tamimi.com

PAUL TURNER
Regional Head of
Arbitration
p.turne@tamimi.com

PHILIP BRAZEAU
Regional Head of
Telecommunications
p.brazeau@tamimi.com

SALAH DEEB
Intellectual Property, IT
s.deeb@tamimi.com

STEVEN HUNT
Regional Head of
Construction & Engineering
s.hunt@tamimi.com

JORDAN OFFICE

ABDALLAH AL FRAIHAT
Dispute Resolution
a.alfraihat@tamimi.com

DANA ABDULJALEEL
Corporate Commercial
d.abduljaleel@tamimi.com

KHALED SAQQAF
Head of Jordan office
Corporate Commercial
k.saqqaf@tamimi.com

PAUL TURNER
Regional Head of
Arbitration
p.turne@tamimi.com

PHILIP BRAZEAU
Regional Head of
Telecommunications
p.brazeau@tamimi.com

SAMER AL ZURIEKAT
Dispute Resolution
s.alzuriekat@tamimi.com

SIRI HASHEM
Maritime, Insurance &
Aviation
s.hashem@tamimi.com

STEVEN HUNT
Regional Head of
Construction & Engineering
s.hunt@tamimi.com

ZAID AL SYOUF
Dispute Resolution
z.alsyouf@tamimi.com

ZEINAH AL NABIH
Corporate Commercial
z.nabih@timimi.com

KUWAIT OFFICE *

ALEX SALEH
Partner
Head of Kuwait officce
Banking & Finance
alex.saleh@tamimi.com

ISLAM ABAZA
Corporate Commercial
i.abaza@tamimi.com

MAITRI DESHMUKH
Banking & Finance
m.deshmukh@tamimi.com

OSSAMA GHAZY
Dispute Resolution
o.ghazy@tamimi.com

PAUL TURNER
Regional Head of
Arbitration
p.turne@tamimi.com

PHILIP BRAZEAU
Regional Head of
Telecommunications
p.brazeau@tamimi.com

PHILIP KOTSIS
Corporate Commercial
p.kotsis@tamimi.com

RAMY SHABANA
Corporate Commercial/
Banking & Finance
r.shabana@tamimi.com

RIZA ISMAIL
Banking & Finance
r.ismail@tamimi.com

STEVEN HUNT
Regional Head of
Construction & Engineering
s.hunt@tamimi.com

WASSIM SASSIA
Corporate Commercial
w.sassia@tamimi.com

YALDA VAHDANI
Corporate Commercial
y.vahdani@tamimi.com

YAQOUB AL MUNAYAE
Joint VenturePartner
Litigation
y.almunayae@tamimi.com

* Al Tamimi & Company International Ltd. provides services in Kuwait through a joint venture with Yaqoub Al Munayae. Yaqoub Al Munayae is a registered and licensed lawyer under the laws and regulations of Kuwait.

Al Tamimi & Company Publications

Available online at: www.tamimi.com

The brochures listed below are all available free of charge on our website. To order any of the books listed please email: info@tamimi.com.

Profiles

Al Tamimi & Company firm profile
Al Tamimi & Company Qatar profile
Qatar- Gateway of Growth
The Family Business Practice

From our "Setting up" series

JAFZA- Establishing Offshore Companies in the Jebel Ali Free Zone
Setting up in Dubai International Financial Centre
Setting up in Dubai Internet City
Setting up in Dubai Media City
Setting up In Knowledge Village

Dispute Resolution

Arbitration: Theory and Practice in the UAE
Dispute Resolution and Litigation in the UAE
Dubai Court Fees (in English and Arabic)
Framework for Litigation in the United Arab Emirates
The Arbitration Practice

Banking & Finance

Banking & Security Law in the UAE
Foreign Investment Law in Qatar
Islamic Finance: A UAE Legal Perspective
Taxation Law in the UAE

Corporate Commercial

Business Structure in Qatar
Commercial Agency in Qatar
Companies under the UAE Commercial Companies Law
Establishing Offshore Companies in Jebel Ali
Inheritance Law in the UAE
International Agreements, Conventions & Protocols signed by the Government of the UAE
Joint Ventures: Theory and Practice in the UAE
Law of Tort in the UAE
Standardisation and Classification in the UAE
The GCC Economic Agreement & Customs Law
The Essential Business Law Guide for Saudi Arabia
UAE Immigration Law

Technology, Media & Telecommunications

Copyright Law
Patents & Designs in the Middle East
Trademark Law
Telecommunications
IT Query- IT Law in the UAE

Maritime, Aviation & Insurance

UAE Shipping Law: Cargo Claims and Other Related Issues
Laws Regulating Insurance in the United Arab Emirates

Property

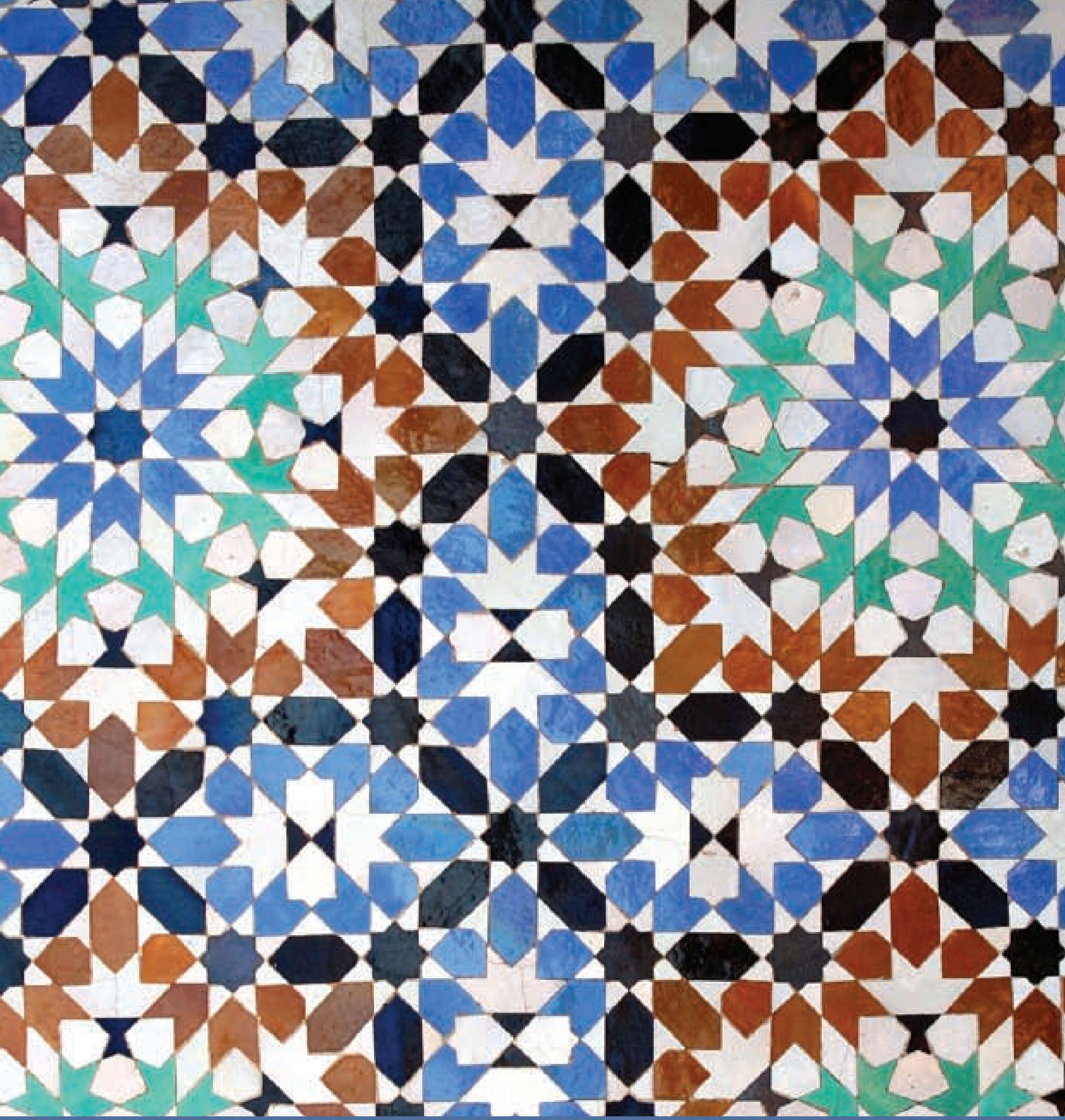
Hospitality & Leisure
Jointly Owned Property - Strata
Property

Law Update

The full back catalogue of Law Update since April 1991
(available by request - please email info@tamimi.com)

List of Books

Setting Up in Dubai - By Essam Al Tamimi - AED 79
Setting Up in the Dubai International Financial Centre - By Al Tamimi & Company's Banking & Finance Department - AED 105
Setting Up in Sharjah - By Essam Al Tamimi - AED 85
Setting Up in Qatar - By Essam Al Tamimi - AED 85
United Arab Emirates Court of Cassation Judgments 1998-2003 - By Essam Al Tamimi & Richard Price - AED 475
The Practical Guide to Litigation and Arbitration in the United Arab Emirates - By Essam Al Tamimi - AED 399
The Practitioner's Guide to Arbitration in the Middle East and North Africa - By Essam Al Tamimi - AED 370
التقاضي امام المحاكم في دولة الامارات العربية المتحدة - By Hassan Arab - AED 75



The Law Firm of Choice for the Middle East

AL TAMIMI & COMPANY

التميمي ومشاركوه

Advocates & Legal Consultants

للمحاماة والاستشارات القانونية

Abu Dhabi | Amman | Baghdad | Doha | Dubai | Kuwait | Riyadh | Sharjah