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AL TAMIMI & CO.

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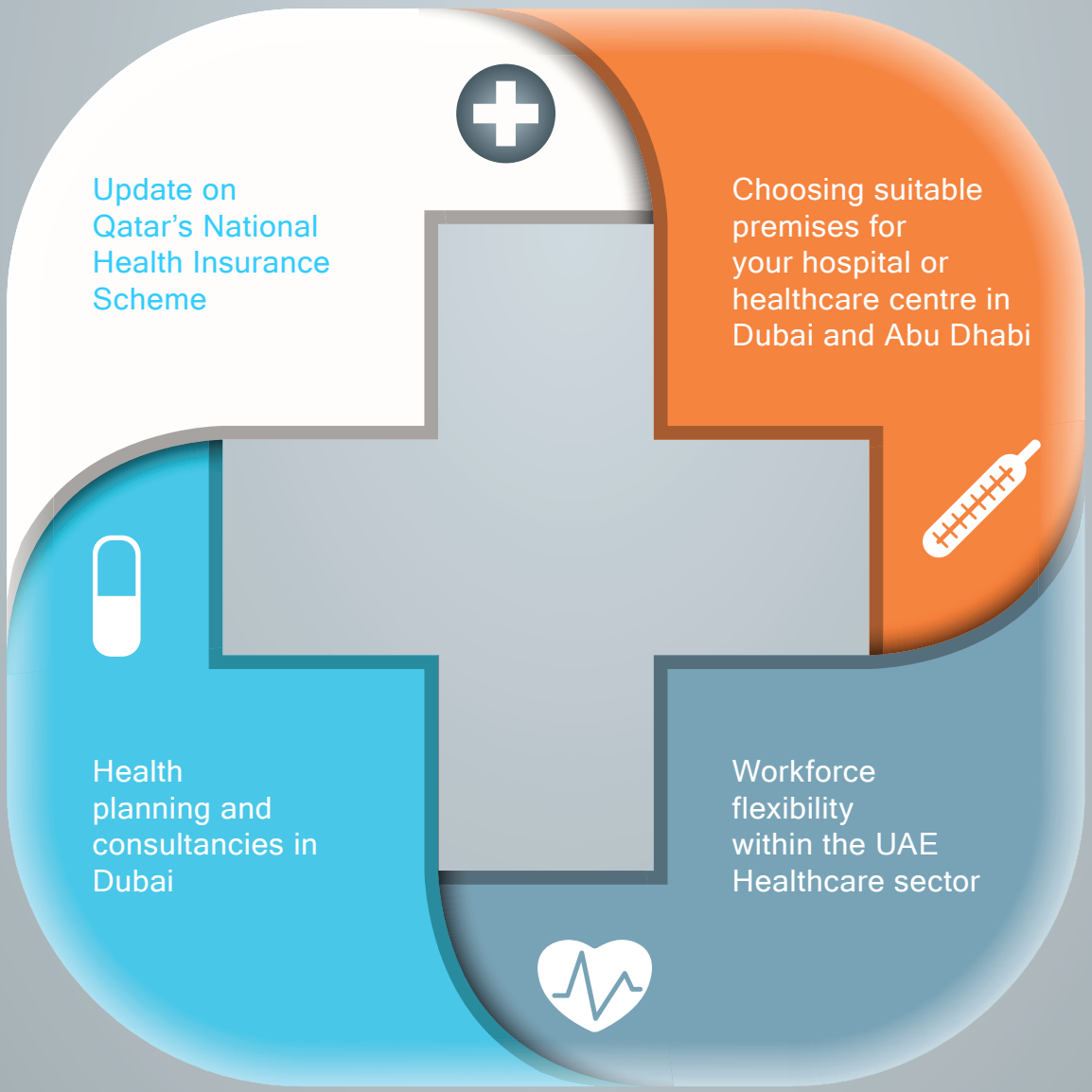
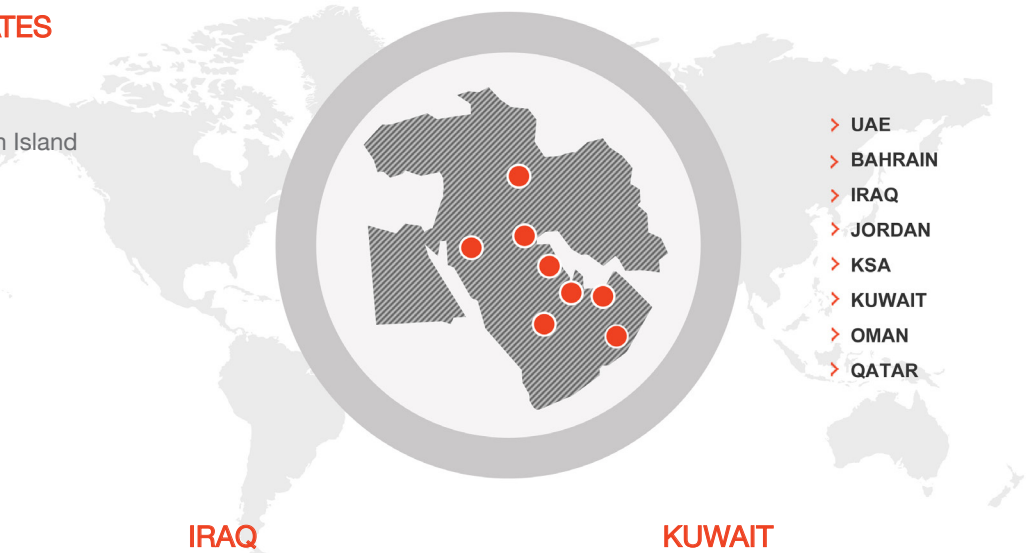
# LAW UPDATE

LATEST LEGAL NEWS AND DEVELOPMENTS




## INCENTIVE PAYMENTS IN THE HEALTHCARE SECTOR:

A regional and UAE overview

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# Doing business in Dubai

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# IN THIS ISSUE

Welcome to the November issue of *Law Update* – a special edition which focuses on issues relating to Healthcare, a burgeoning industry across the Middle East. In fact, economic forecasts predict that healthcare expenditure in the GCC will reach $44bn by 2015 and $60bn by 2025.

Healthcare issues span across many practice areas including corporate commercial, dispute resolution, regulatory, technology, employment, insurance, intellectual property, property and construction. Al Tamimi provides comprehensive legal services to all those involved in the healthcare industry with a dedicated practice group formed to work with clients in this area.

Striking the balance between commercial interests and quality care is an issue faced by many countries and this month we examine some of aspects of this. For example, Qatar's National Health Insurance scheme is being rolled out, providing comprehensive insurance coverage to all Qatari nationals for all of their basic healthcare needs as well as expatriates and visitors. You can read about this on page 26.

We examine the ways in which victims of medical malpractice can pursue complaints against healthcare professionals and hospitals including through the relevant regulators, the courts or the police. These insights are on page 8.

We also look at how the UAE employment system protects and advances the interests of employers within the Healthcare system, to employ skilled medical specialists. The balance between commercial interests and job security can be challenging however, great strides are being made. This article is on page 14.

One vital consideration for hospitals and healthcare centres are finding suitable premises – something that is regulated across the region. On page 18 we summarise the regulations in Dubai and Abu Dhabi and consider the implications for healthcare providers. However, premises may soon be less relevant as advances in technology make telemedicine, including remote diagnosis and treatment, more mainstream. See page 36 for more detail.

I do hope you enjoy this month's read and as always, please do get in touch if there's any way I can assist you.

Till next month,

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# **Law** Update Judgments

*Law Update Judgments* aim to highlight recent significant judgments issued by the local courts in the Middle East. Our lawyers translate, summarise and comment on these judgments to provide our readers with an insightful overview of decisions which are contributing to developments in the law.

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

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## THE IMPORTANCE OF A SIGNED ARBITRAL AGREEMENT IN THE UAE

Parties sometimes overlook formalities when finalizing their agreements. To the casual observer, such formalities may seem minor and insignificant, but they may have a serious impact on the enforceability of the contract.

This article discusses a recent judgment highlighting the importance of the parties' signature to an arbitral agreement and the problems that may occur where the contract seeks to incorporate terms by reference to a separate document which has not been signed.

CASE FACTS

The Claimant entered into a Sale and Purchase Agreement ("SPA") with the Defendant to purchase a residential unit that was to be handed over in December 2012.

The SPA was composed of two parts: the first part was referred to as the "Signed Particulars" and the second part was referred to as "Standard Terms and Conditions". The first part was signed by the parties, whereas the second part - which included the arbitration clause - was not signed.

In early 2012, the Claimant initiated proceedings against the Defendant before the Abu Dhabi Court of First Instance. The Claimant sought a refund on the basis that the Defendant had not commenced construction and would inevitably fail to deliver the unit by the end of the year.

COURT OF FIRST INSTANCE

The Defendant objected to the Court's jurisdiction and requested that the dispute be referred to arbitration. The Defendant argued that:

1. In the first part of the SPA - that was signed by the parties - there is a clause stating that the Claimant has read and received the full Standard Terms and Conditions, which formed an integral part of the entire agreement. The arbitration clause had therefore been incorporated by reference.

2. No objection was made by the Claimant nor did it deny the Defendant's argument that there was an existing arbitration clause. In fact, the Claimant submitted a closing statement

requesting the appointment of a sole arbitrator in line with the provisions of the SPA (although this was submitted after the Court had closed the hearing).

The Court however did not accept this. The Court found that the second part of the SPA had no binding effect because it had not been signed, and consequently there was no proof that the parties had agreed to refer any disputes to arbitration.

The Defendant appealed the preliminary judgment to the Court of Appeal. However the Court of Appeal also rejected the Defendant's arguments and upheld the judgment issued by the Court of First Instance. The Court of Appeal elaborated more in its reasoning as to why the arbitration clause was not valid. It further explained the effect of not having a document signed by the parties:

1. Invalidity of the arbitration clause for lack of signatures, in line with article 203 of the CPL

The Court of Appeal found that:

a. Article 203 of the UAE Civil Procedure Law requires the arbitration agreement to be in writing, which includes a requirement that it be signed.

b. There was no proof that the parties agreed to arbitration. Any acknowledgment made by the Claimant to the second part of the SPA was made with regards to a document that has no binding effect and so the acknowledgment has no effect as well. The rationale behind this view was the lack of signatures in the second part of the SPA.

It is worth mentioning that a similar judgment was issued by the Dubai Cassation Court in February 2014, with the slight difference being that the second part of the SPA had been initialled by the parties. In that case the Court did not deem this as sufficient proof, stating that full signatures of the parties are needed, and not only initials (please refer to Al Tamimi's Law Update issue of July/August 2014 - Article by Mohammad Al Muhtaseb and Marwa Al Mahdy).

2. The second part of the SPA is not binding for lack of signature, in line with article 11 of the Federal Evidence Law

The Court of Appeal stated in its judgment that:

> *"…as it is a mutual agreement between the parties, it should have been signed… signature is its only condition to serve as full proof to evidence the agreement and make it binding... In this regard, article 11 of the Evidence Law states that a customary document shall be considered to originate from the person signing it provided he does not explicitly deny any handwriting, signature, seal or fingerprint pertaining to him."*

Although the judgment is not clear, the above quote suggests the Court found support for its decision from Article 11 of the Evidence Law . The second part had not been signed, and so cannot be said to originate from the Claimant, as per Article 11 of the Evidence Law.

We believe that the underlying issue is not the signature per se, but rather a question of evidence. The key issue is whether the parties agreed to the content of the second part or not, irrespective of having the document signed. There are other means to prove that that a party consented to an agreement. For example, an electronic signature would serve as a sufficient proof as per the UAE Electronic Transactions and Commerce Law. Another example is where the other party simply decides to acknowledge the truth before the court that he has previously agreed to the content of that agreement.

There are rulings in other cases that have upheld arbitration clauses incorporated by reference (please see Al Tamimi's Law Update issue of June 2013 - Article by Ahmad Ghoneim and Omar Khodeir). For example, in Abu Dhabi Court of Cassation case 462/2002, the Court held that:

> *"It is sufficient in a construction contract to make a referral, so that in case a dispute arises between the client and the contractor in respect of the construction contract, it becomes resolved through the general conditions of construction (FIDIC). This means that the parties agreed to arbitration in respect of all the disputes arising out of the obligations stated in said contract without the need to refer to the details of such condition, where the referral to it is sufficient…"*

Curiously, when the merits of the case were decided by the Court of Cassation it was held that the Defendant had a right to extend the handover date for a period of 18 months as stated in the second part of the SPA - the section which the Court had earlier found had no binding effect for lack of signatures.

CONCLUSION

Whilst the courts have previously held that in certain circumstances arbitration agreements can be incorporated by reference, in light of this recent case parties would be well advised to nonetheless sign the page containing the arbitration agreement in full to avoid any doubt that it has been agreed.

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# LIABILITY OF RESTAURANTS FOR SERVING FOOD CONTAMINATED WITH BUGS AND INSECTS

INTRODUCTION

This article is a review of a recent UAE court judgement where a lawsuit that was brought by a customer ("Plaintiff"), against a company that develops and operates the trade mark of a well known restaurant in the Middle East including the UAE ("First Defendant"). The company that owns the trade mark was also a party to the proceedings which is located in USA ("Second Defendant"), where the Plaintiff was served food contaminated with bugs and insects by the First Defendant. The judgment of the Court of First Instance was issued in favour of the First and Second Defendants (together "Defendants"). Al Tamimi & Company represented the Second Defendant in these proceedings.

BACKGROUND

In 2009 the Second Defendant granted a license to the First Defendant to develop and operate its restaurants in the Middle East including the UAE, pursuant to a Master License Agreement.

On 10 June, 2013, the Plaintiff and his colleague visited one of the First Defendant's restaurants to have their lunch. They ordered several food items from the menu, one of which contained lettuce and while eating the food, they found bugs and insects in the lettuce. The Plaintiff quickly filed a complaint to Dubai Municipality claiming that the restaurant served them with contaminated food. The Food Control Department of Dubai Municipality inspected the restaurant and issued a report, which confirmed that the lettuce contained bugs and insects due to not washing the same properly.

THE NATURE OF THE CLAIM

The Plaintiff brought an action before Dubai Court of First Instance against the Defendants seeking damages in the sum of AED 250,000. The Plaintiff claimed that he suffered serious moral damages as well as diarrhoea and vomiting due to eating food contaminated with bugs and insects at the First Defendant's restaurant (which is controlled and supervised by the Second Defendant). The Plaintiff claimed that the First Defendant is subordinate to the Second Defendant.

The Plaintiff provided the Court with copies of four photos that show the insects and bugs are in the food and a copy of an email that was sent by Dubai Municipality thanking the Plaintiff for filing his complaint to Dubai Municipality regarding the contaminated food.

The Plaintiff based his claim in tort and relied on the following Articles of the Civil Transactions Law:

Article 282 which provides:

"Any harm done to another shall render the actor, even though not a person of discretion, liable to make good the harm."

Article 292 which provides:

"In all cases the compensation shall be assessed on the basis of the amount of harm suffered by the victim, together with loss of profit, provided that that is a natural result of the harmful act". However, the Plaintiff relies on Article 313(b) to include the Second Defendant into the claim. This article provides:

"(a) No person shall be liable for the act of another person, but nevertheless the judge may, upon the application of an injured party and in the event that in his opinion there is justification for taking that course, render any of the following persons liable as the case may be to satisfy any amount awarded against a person who has caused the harm:

(b) any person who has actual control, by way of supervision and direction, over a person who has caused the damage, notwithstanding that he may not have had a free choice, if the act causing harm was committed by a person subordinate to him in or by reason of the execution of his duty."

The Plaintiff asked the Court to bind the Defendants to jointly pay the sum of AED 250,000 for monetary and moral damages that he suffered due to eating contaminated food. In addition, the Plaintiff claimed interest on the claimed amount at a rate of 12% from the date of claim until a full payment is made, as well as all legal expenses and fees.

The Arguments of the Defendants:

The Second Defendant argued that since it does not operate in Dubai and it had granted a license to the First Defendant to develop and operate its trade mark restaurants in the Middle East including the UAE, the Second Defendant has no legal capacity to be sued in this claim. Moreover, the Second Defendant does not control or supervise the First Defendant and, the First Defendant is not subordinate to the Second Defendant. Furthermore, the Plaintiff did not submit any evidence proving that the First Defendant is controlled and supervised by the Second Defendant. Therefore, Article 313(b) of the Civil Procedures Law does not have any applicability in this case, so it should be dismissed for lack of legal personality against the Second Defendant. It is worth mentioning that the First Defendant confirmed to the Court that it has been using the trade mark of the Second Defendant.

The Defendants denied all the supporting documents that were submitted by the Plaintiff to the Court, on the basis that they were photocopies and not the originals and such documents do not have evidential value according to Article 45 of the Civil Procedures Law.

The Defendants argued substantively that, since the Plaintiff based his claim in tort and not a contractual relationship, he should prove to the Court that the Defendants committed a harmful act resulting in damages to him. However, the Plaintiff did not submit to the Court any evidence proving that he suffered any damages, diarrhoea and/or vomiting due to the food he ate at the restaurant. Furthermore, even if the Plaintiff submits to the Court evidence to prove that there were insects in the food, such evidence does not prove any harmful act committed by the Defendants. Also such evidence does not prove that the Plaintiff suffered damage. Therefore, the Defendants argued that the case should be dismissed for lack of evidence.

THE COURT OF FIRST INSTANCE

The Court of First Instance found that the Second Defendant has no capacity to be sued in this case, as the Plaintiff did not provide the Court with any evidence to prove that the First Defendant is the representative or agent of the Second Defendant. Therefore, the Court dismissed the case against the Second Defendant.

Also the Court ruled that according to Article 1 of the Civil Procedures Law and the legal precedents, the Plaintiff should prove his claim. However, the Plaintiff did not submit to the Court any evidence that proves that the food he ate at the First Defendant's restaurant caused him to suffer damage. Also, all the documents that were submitted by the Plaintiff were photocopies and the Defendants denied them, thereby they have no weight of evidence.

Accordingly, the Court decided to dismiss the case for lack of evidence.

COMMENT

It can be said that even if a restaurant serves its customers contaminated food with bugs and insects, the restaurant will not be liable to compensate the customers for serving such food, unless the customer proves to the Court that they suffered from damages.

It is worth mentioning that the Plaintiff has filed an appeal to challenge the Court of First Instance's judgement.

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# MEDICAL EXPERT EVIDENCE IN UAE CRIMINAL PROSECUTIONS

In the UAE, victims of medical malpractice can pursue complaints against healthcare professionals and hospitals in three different ways:

1. Filing a medical complaint at the appropriate healthcare authority.
2. Filing a civil case before the UAE court.
3. Filing a criminal complaint before the police or public prosecution.

These options can be pursued at the same time or sequentially, although proceedings before the criminal court will usually stay any civil case. Whichever option is chosen expert medical evidence will be needed, but filing a criminal complaint is the only option which is driven not by the victim, but by the state (i.e. the state prosecutor, who is responsible for deciding whether charges are laid). The purpose of this article is to provide an overview of the options available to victims, with a particular focus on the special role expert medical evidence has in criminal prosecutions.

## COMPLAINTS BEFORE THE HEALTHCARE AUTHORITIES

The Dubai Health Authority, the Dubai Healthcare City Authority and Abu Dhabi Health Authority (the "Healthcare Authorities") are the health regulators responsible for reviewing medical complaints against healthcare providers and medical practioners in Dubai and Abu Dhabi. The Dubai Health Authority deals with medical complaints against healthcare providers and medical practioners in the public and private sectors in Dubai, whilst the Dubai Healthcare City Authority is responsible for investigating medical complaints against healthcare professionals and hospitals within the healthcare city only. The Abu Dhabi Health Authority investigates medical complaints against healthcare providers and professionals in the Emirate of Abu Dhabi.

Medical complaints before the Healthcare Authorities can be filed by patients, their families or someone acting on behalf of the patient (provided that the patient's consent is obtained). The Healthcare Authorities will investigate the complaint and determine whether or not a healthcare professional committed any medical errors. The objective of the Healthcare Authorities' investigation of medical complaints is to ensure patients receive the best quality of healthcare and deter physicians from committing the same medical errors in the care and treatment of patients.

The Healthcare Authorities will investigate complaints and assess whether or not the appropriate medical professional standards were met. If a physician is found to be negligent, the Healthcare Authorities are empowered to take the following disciplinary actions:

1. Reprimand the healthcare professional or institution.
2. Impose further training for the physician and supervision by another licensed healthcare professional.
3. Suspend the physician and hospital's license (temporarily or permanently depending on the nature of the medical error/s).
4. Fine the healthcare institution.

THE HIGHER COMMITTEE FOR MEDICAL LIABILITY

The Higher Committee for Medical Liability, located at the Ministry of Health in Dubai is the supreme committee of medical experts in the UAE (the "Supreme Committee"). It was established under Cabinet Resolution No. 6 of 2012 to provide its technical opinion in medical malpractice cases. The Committee members indentified in the Resolution are consultant physicians from different medical specialties.

The Resolution also required the Supreme Committee to abide by the same standards that apply to court experts pursuant to the UAE Civil Procedure Law (Federal Law No. 11 of 1992) to ensure healthcare professionals and institutions are given the rights granted to defendants under UAE Law. The Supreme Committee is responsible for investigating medical malpractice cases upon the request of the public prosecutor and the UAE courts (the "Judicial Authorities"), and the Healthcare Authorities in the UAE.
Healthcare professionals and institutions that are subjected to legal proceedings for malpractice also have the right to request the Higher Committee to review and investigate medical claims filed by patients, provided that the permission of the court or public prosecution is obtained.

CIVIL CLAIMS

Patients approach the civil courts to claim monetary compensation against healthcare providers and professionals for material, moral and psychological damages. There are no precedents on the figures awarded by the courts in medical malpractice claims. The amounts vary from case to case and in the discretion of the judge, who assesses the level of damages suffered by a patient following a review of the evidence, which usually includes an expert medical report.

CRIMINAL CASES

Unlike the common practice in the West, doctors in the UAE can be subjected to criminal liability and convictions for professional negligence under the UAE Penal Code (Federal Law No. 3 of 1987). This can result in a prison sentence of at least one year and/or a financial penalty not exceeding AED 10,000 depending on the extent of harm suffered by a patient. If the injury results in permanent disability a prison sentence of two years may be applied (see articles 342 and 343 of UAE Penal Code). If there are aggravating circumstances (such as the involvement of alcohol or narcotics) the maximum available prison term increases to five years.

The fines imposed by the criminal court are payable to the UAE government. They are not compensation for the victim, nor do they indicate the level of compensation to be afforded to the victim in any civil claim.

LIABILITY OF HEALTHCARE PROFESSIONALS

The duty of a doctor under the UAE Medical Liability Law (Federal Law No. 10 of 2008) is not to achieve an end result (i.e. to cure or to guarantee a successful operation) but to use the degree of care and skill that is expected of the average qualified practitioner taking into account the customary standards of the profession and accepted scientific principles.

The Medical Liability Law (article 14) provides other instances where doctors will not be held liable for medical negligence:

1. If the damage was sustained due to the action of the patient (i.e. refusing to receive treatment, failing to follow the medical instructions provided by persons supervising the patient's treatment or due to an external cause).
2. If the physician followed a certain medical method which, although not the generally accepted method, there will be no liability if the method followed recognized medical principles.
3. If the medical side effects and complications are known in the medical practice.

In addition, article 53 of the Penal Code also provides that there is no crime if the act is committed in accordance with the scientific principles generally accepted and applied in licensed medical practice, provided they are performed with consent of the patient or in emergency cases.

MEDICAL EXPERT EVIDENCE
The Judicial Authorities in the UAE rely heavily on medical expert evidence when assessing whether or not a patient is a victim of medical malpractice. Cases are normally referred to the Healthcare Authorities in the UAE or the Supreme Committee to determine whether or not a doctor committed medical errors in a surgical procedure, diagnosis or treatment of a patient and the causal link between the error and damage suffered due to the actions or inactions of a healthcare professional.

Patient medical records are often of paramount importance because they detail the medical history of the patient and the care provided. It is essential and necessary for all healthcare institutions and professionals to document patients' medical records (particularly consent forms for surgical procedures as this has been a common issue in most cases), not least because they will assist in defending medical malpractice claims before the Judicial Authorities. The Judicial Authorities have dismissed several malpractice claims for lack of evidence even though patients have supported their complaints with investigation reports from the Healthcare Authorities.

## EXPERT EVIDENCE IN PRACTICE

Al Tamimi & Company recently represented a healthcare professional in a case which demonstrates the importance of expert medical evidence and how they are used in criminal cases.

## BACKGROUND

The patient visited a physician specializing in infectious diseases in October 2010 with minor cold symptoms. During this visit, the physician's examination of the patient's chest revealed mild wheezing only. No fever was present and the patient did not report any symptoms.

The patient's temperature, heartbeat, blood pressure and all other vital signs were normal and stable. The physician therefore prescribed medication to treat the patient's cold symptoms.

About 12 hours after the visit, the patient's condition significantly deteriorated with increasing respiratory symptoms. She was admitted to the emergency department of the hospital where the physician was employed, and diagnosed with pneumonia following medical tests carried out in the emergency department. The patient was subsequently admitted to the Intensive Care Unit ("ICU") of the hospital and was treated by the medical staff in the ICU for one month. The patient was discharged from the hospital in November 2010 at her own request since she was recovering.

## MEDICAL COMPLAINT BEFORE HEALTH AUTHORITY

A year following the patient's discharge from the hospital, a medical complaint was filed before the Dubai Healthcare City Authority (the "DHCA") against the hospital and the treating physician for conducting a poor assessment of the patient's condition in October 2010. The DHCA found the physician negligent for failing to perform an appropriate assessment of the patient's clinical condition.

The physician filed an appeal against the decision issued by the DHCA before the appeals committee of the Authority and pleaded that the assessment of the patient's condition at the time was appropriate and in accordance with international medical standards. The DHCA nonetheless sustained its previous decision against the physician.

## CRIMINAL COMPLAINT

The patient subsequently filed a criminal complaint before the Dubai police against the physician for professional negligence and the police transferred the case to the public prosecutor.

Since the case contained technical aspects that require expert assessment, the Prosecutor decided to refer the case to the Dubai Health Authority.

The Dubai Health Authority reviewed the case and also found the physician negligent for failing to appropriately diagnose the patient's condition.

## DEFENCE BEFORE THE PUBLIC PROSECUTOR

The physician, represented by Al Tamimi & Company filed a defence before the prosecutor supported by an opinion from an independent medical specialist which explained that pneumonia cannot be predicted as it can progress rapidly, and could not have been diagnosed at the time of patient's visit. Evidence of the patient's condition at the time of the visit and subsequently was set out in her medical file which was also attached to the defence memorandum.

The physician argued that the findings of negligence from both Healthcare Authorities (DHA and DHCA) with respect to the physician's assessment of the patient's condition were false and provided no clarification on the necessity or mandatory obligation on the physician to perform additional examinations and tests. The patient did not have a fever, any chest pains or any abnormality in her vital signs which required the physician to carry out additional tests or refer the patient for x-ray. The earlier admission to the hospital was unlikely to change the course of the illness or affect the eventual outcome due to the aggressive nature of the infection.

In addition, the Healthcare Authorities' findings of negligence on the part of the physician did not indicate how the physician's management affected the outcome, which further demonstrated that the outcome of both Healthcare Authorities' investigations were not substantiated by any credible evidence.

## THE HIGHER COMMITTEE

The physician requested that the matter be referred to the Higher Committee for Medical Liability to review the case and determine whether any medical negligence was committed by the physician. The Prosecution accordingly transferred the case to the Higher Committee.

The Higher Committee investigated the case and found that the patient did not suffer from any respiratory distress or fever at the time of the visit, and the physician gave the appropriate treatment according to the patient's existing symptoms. The Higher Committee concluded that the physician treated the patient in accordance with generally recognized medical norms with no default or negligence.

The Prosecution rendered a decision based on the Higher Committee's findings and dismissed the case for lack of evidence.

## CONCLUSION

The use of medical expert evidence is usually fundamental in the conduct of medical negligence claims in the UAE. Healthcare professionals and institutions will not necessarily be held liable for malpractice even if there are reports from Healthcare Authorities or medical specialists that prove the contrary, provided that the healthcare professional can demonstrate that he performed his duties in accordance with acceptable medical principles.

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# THE UK BRIBERY ACT: ARE YOU SAFE IN THE UAE?

## INTRODUCTION

Bribery is bad for legitimate business, tarnishing the names of companies that are known to be associated with it. Such reputational damage is an additional consideration to the legal consequences of permitting or failing to prevent corrupt practices, whether corporately or by rogue representatives acting against the company's policies and procedures. Bribery also creates problems for governments that are trying to tackle corruption and to encourage foreign investment, as a level playing field is obviously desirable for the honest majority.

In addition to international legal provisions to combat corruption (for example, the United Nations Convention Against Corruption[1]) that lead to domestic anti-bribery legislation, the international business community also recognises the need to do away with corruption, as opposed to well-intended and legitimate marketing practices. This has resulted in, for example, the recent publication by the International Chamber of Commerce ("ICC"), in June 2014, of Guidelines on Gifts and Hospitality[2], which make reference to various international legislative provisions.

The United Arab Emirates ("UAE"), along with most of the international community, is keen to minimise instances of bribery, to bring perpetrators to justice and to deter others from employing corrupt methods of doing business.

This article sets out brief summaries of the UAE and UK anti-bribery provisions and then underscores the importance, to persons and businesses in the UAE, of conducting themselves in compliance with the UK Bribery Act 2010 ("UKBA")[3] in addition to the relevant UAE anti-bribery provisions.

## UAE ANTI-BRIBERY PROVISIONS

A detailed analysis of the UAE anti-bribery provisions is beyond the scope of this article. In brief, however, bribery is primarily[4]

*1- The UAE ratified UNCAC on 22 February 2006.*

*2- ICC Guidelines on Gifts and Hospitality, Policy Document, prepared by the ICC Commission on Corporate Responsibility and Anti-corruption, 26 June 2014.*

*3- Other foreign laws, such as the US Foreign Corrupt Practices Act, have extra-territorial effect and may also be relevant but are beyond the scope of this article.*

*4- There are also anti-corruption provisions relating specifically to public sector employees in various subject-specific legislation.*

criminalised and prohibited in the UAE by the UAE Federal Law no. 3 of 1987 as amended ("Penal Code").

The Penal Code specifically prohibits passive bribery (receiving or requesting a bribe) in both the public and private sectors and active bribery (giving or offering a bribe) in the public sector. However, active bribery in the private sector is not specifically prohibited. A person who gives or offers a bribe to a person in the private sector would need to be prosecuted as an accomplice to the recipient of the offer or bribe.

SUMMARY OF THE UNITED KINGDOM BRIBERY ACT

The UKBA came into force on 1 July 2011, replacing several legislative provisions that dealt with corruption and had been in place from as early as 1889. Offences under the UKBA are:

1. Bribing a person (active bribery) (s.1);
2. Being bribed (passive bribery) (s.2);
3. Bribing a foreign public official (s.6); and
4. Failing to prevent bribery by associated persons (applicable to commercial organisations) (s.7).

The first three offences are punishable by a maximum sentence of 10 years' imprisonment, an unlimited fine, or both. The offence of failure to prevent bribery is punishable by an unlimited fine.

APPLICABILITY OF THE UKBA OUTSIDE THE UK

Section 12 of the UKBA details the provisions of the act that relate to territorial application. The UKBA expressly provides jurisdiction for criminal proceedings to be taken in the UK for the four offences listed above, although there is a distinction between the first three ('personal') offences and the fourth ('corporate') offence in this regard.

In respect of the first three offences, the effect of s.12 of the UKBA is that the offence is deemed to have taken place in the UK (and to therefore be subject to UK jurisdiction) if:

- any act or omission which forms part of the offence took place in the UK; or
- a person acts or omits to act outside the UK in a way that would form part of an offence if performed in the UK and that person has a close connection to the UK.

An exhaustive list of ways in which a person may have a close connection to the UK is set out in s.12(4). The person must have been, at the time of the act or omission, one of the following:

- a British citizen,
- a British overseas territories citizen,
- a British National (Overseas),
- a British Overseas citizen,
- a person who under the British Nationality Act 1981 was a British subject,
- a British protected person within the meaning of that Act,
- an individual ordinarily resident in the UK,
- a body incorporated under the law of any part of the UK,
- a Scottish partnership.

In respect of the fourth offence listed above (failure by a corporate body to prevent bribery), s.12(5) states that it does not matter whether the acts or omissions which form part of the offence took place in the UK or elsewhere. The company is subject to the UKBA if it is incorporated in the UK or, if not, if it carries on business in the UK. For the company to be guilty of failing to prevent bribery committed by a person, that person must have committed (i) bribery of a person or (ii) bribery of a foreign public official (but need not be actually prosecuted for either offence). In either case, the bribery may have taken place inside or outside the UK. Where it took place outside the UK, there is no need for the person committing bribery to have a close connection with the UK.

**GUIDANCE ON THE UK BRIBERY ACT**

FACILITATION PAYMENTS

UAE businesses may be particularly interested in the area of facilitation payments. Unlike the FCPA (in certain circumstances), the UKBA does not permit facilitation payments, which are unofficial payments made to public officials in order to secure or expedite the performance of a routine or necessary action. They are sometimes referred to as 'speed' or 'grease' payments. The payer of the facilitation payment usually already has a legal or other entitlement to the relevant action.

In an open letter dated 6 December 2012, the Director of the Serious Fraud Office ("SFO") made it clear that the UK Government and the SFO are committed to stamping out bribery and upholding the rule of law, that facilitation payments are not permitted under the UKBA (and were not permitted under the previous UK anti-bribery laws), and encouraged UK individuals or companies who are asked to make a facilitation payment in the course of business overseas to report such requests to the local embassy, high commission or consulate.

HOSPITALITY AND PROMOTIONAL EXPENDITURE

The joint prosecution guidance to the UKBA, published by the Director of the SFO and the Director of Public Prosecutions ("DPP") in March 2011, makes it clear that hospitality or promotional expenditure which is reasonable, proportionate and made in good faith is an established and important part of doing business and the UKBA does not seek to penalise such activity.

In the right (or wrong) circumstances, however, hospitality and promotional expenditure could form the basis of the offences of bribing another person or bribing a foreign official and could be a bribe for the purposes of the failure to prevent bribery offence. Each case will depend on the facts, all of which will need to be considered by the prosecutor before making a decision to prosecute.

FAILURE OF COMMERCIAL ORGANISATIONS TO PREVENT BRIBERY – DEFENCE OF ADEQUATE PROCEDURES

A commercial organisation will have a defence to a charge under s.7 if it can show that it had adequate procedures in place to prevent persons associated with it from bribing. The standard of proof required is the balance of probabilities i.e. "is it more likely than not that the procedures were adequate?" This will be a matter for the courts to decide on a case by case basis and will be a factor to be considered by the prosecutor in deciding whether to prosecute. Prosecutors must also, when considering whether the procedures put in place are adequate, take into account the 43-page guidance document published by the Ministry of Justice on procedures that commercial organisations can put in place to prevent bribery by persons associated with them.

EXAMPLES RELATED TO THE UAE

There are recent examples (July and October 2014) of investigations by the UK SFO into allegations of corrupt practices conducted in the UAE by employees or representatives of UK entities. These investigations are in relatively early stages and, although their outcome cannot be predicted, they serve as a reminder that commercial operations in the UAE will not escape the attention of the UK authorities when there is reason to investigate.

CONCLUSION

From a legal perspective, persons in the UAE could be liable to prosecution under the UKBA in the UK if they (i) have the required connection to the UK (for example, by being a UK citizen, a UK-incorporated company, a company carrying on business in the UK or if they travel to the UK and commit a relevant act while there) or (ii) if they engage in a conspiracy with a person who is in the UK, to commit bribery, even if they have no connection to the UK.

Of course, quite apart from the threat of prosecution under the UKBA is the distinct possibility of action by the UAE authorities under the anti-bribery provisions of the Penal Code (or other applicable legislation).

In the end, however, good business practice should be about making the right ethical decisions, not merely complying with the law for fear of prosecution. Compliance with the UKBA (and any other anti-corruption legislation) ought really to be taken by companies as an opportunity to focus on honing their due diligence to ensure the honest and profitable conduct of business, in an international market where high standards of anti-corruption practice are increasingly the desirable norm.

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# WORKFORCE FLEXIBILITY WITHIN THE UAE HEALTHCARE SECTOR

The success of any patient care provider within the UAE Healthcare sector is dependent upon maintaining its reputation for employing skilled hospital-based specialists.

We consider how far the UAE employment system not only protects but also advances the interests of employers within the Healthcare sector, whilst also recognising some limitations inherent in the current sponsorship system. The intention to develop the UAE as a hub of medical tourism adds an extra dimension to this complex area.

## RESTRICTION OF ACTIVITIES DURING EMPLOYMENT

An employer within the Healthcare sector can comfortably rely upon the UAE employment and immigration framework to guarantee that its staff will be dedicated to providing their services to that single employer. Unlike other legal systems which may recognise an individual's freedom to contract with more than one "employer", the employment framework within the UAE requires that an employee shall work only for the sponsoring entity.

The nature of the employment relationship in the UAE is essentially "static". As addressed in a previous edition (Law Update February 2014), the UAE immigration process strictly controls the manner in which individuals can perform their "work" on a daily basis.

An individual must be directly engaged (i.e. "employed") by a locally licensed and registered employing entity in order to work lawfully in the UAE. There is no recognised concept of self-employment or other atypical working status, which may be commonplace in other jurisdictions. As a general principle, a non-national seeking to live and work in the UAE must either enter into a Ministry of Labour ("MOL") standard form contract (where employment is onshore) or a similar standard contract provided by the applicable free zone. This applies equally to those employed in the Healthcare sector.

For example, as a general principle, a Hospital-Based Specialist working for hospital X in the Dubai Healthcare City ("DHCC") free zone may not work for other entities. There may be a possibility for permission to be granted to work for another entity within that free zone and we are aware of such practices within DHCC. However, this would be subject to various conditions, not least the existing sponsor confirming that it did not object to such a situation and the arrangement would have to be carefully managed in order to preserve the employer's business interests (i.e. its ability to provide specialist services to its patients).

The limitation on mobility of employees has some undoubted advantages for private sector hospitals/clinics in terms of ensuring that their Hospital-Based Specialists are restricted to only providing services to them and not to other employers. That preservation of a stable trained workforce within the single licensed entity is a key factor for any business, but particularly one which relies upon the consumer perception of high quality patient care.

## RESTRICTING ACTIVITIES POST-EMPLOYMENT VIA RESTRICTIVE COVENANTS

An employer's ability to protect its business interests during employment is largely uncomplicated. However, the position is less straightforward after termination of employment.

In addition to the restrictions which arise during employment in the UAE, an employer may also choose to impose contractual restraints upon its employees as a means of regulating their activities following termination of employment. Given the basic nature of both the MOL contract and standard form free zone contracts, most employers will include post termination restrictions within separate supplementary employment contracts or on a stand alone basis. Typical covenants include restrictions against competition, solicitation and dealing with customers/clients and the solicitation and employment of staff of the former employer.

LEGAL POSITION

Article 127 of Federal Law No. 8 of 1980 (as amended) (the "Labour Law") expressly states that where an employee performs a role which allows him to become acquainted with confidential information, the employer may require the employee to agree to a contractual provision preventing him from working with a competing business after termination.

Whilst the Labour Law is silent as to the circumstances in which a restriction will be regarded as valid, guidance is provided in Articles 909 and 910 of the Civil Code. A non-competition provision must be reasonable. It must therefore be limited in its scope; specifically its duration, area/geographical scope and relevance to the ex-employer's business interests. The former employer relying upon the covenant must demonstrate that any restrictions are reasonably necessary to protect a legitimate business interest (for example, a client connection or confidential information) and that the restrictions are not being used simply to prevent legitimate competition.

Whilst a covenant may be regarded as "reasonable" when applying the standards referred to in the Civil Code (above), that only takes matters so far. That alone does not necessarily provide an employer with a meaningful remedy in the absence of clear consequential financial harm arising from the breach of the covenant.

EFFECTIVE ENFORCEMENT OF A RESTRICTIVE COVENANT

By contrast with a number of other jurisdictions, the UAE (with the exception of the Dubai International Financial Centre) does not recognise the concept of an injunction to actually prevent the financial harm, but insists upon clear evidence of such harm which may then lead to an award of damages (provided that the other tests as to reasonableness etc have been satisfied). This alone does not provide a significant deterrent to a former employee intent on breaching his covenants and (for example) seeking to divert customers (or clinic patients) from the previous employer.

To mitigate the unavailability of injunctive relief, the commonly adopted approach is to bolster the restrictive covenants by including a "liquidated damages" clause in the supplemental contract of employment. This is a separate contractual undertaking between the employer and employee and the onus is on the former employee to demonstrate that the sums sought are not a genuine pre-estimate of loss suffered by the employer. This is important because it runs contrary to the more usual scenario where a party claiming damages has to prove actual loss.

RELEVANCE TO THE HEALTHCARE SECTOR

Given that post-termination restrictions must be focused on the protection of a legitimate business interest, it follows that non-competition covenants must be used carefully and target only those employees who are genuinely a potential risk to the business. A Hospital-Based Specialist in a patient-facing role who has a developed relationship with patients (including knowledge of sensitive patient information) is a key "asset" of the business. Providing at least some degree of deterrent against competition is likely to be an important consideration for the employing hospital.

It should be noted that the misuse of confidential information (such as patient records) to compete at a different establishment would potentially be susceptible to criminal sanction.

However, the positive assistance in restricting employees' activities to their immediate sponsoring entity also imposes certain practical restraints on the employer which may be more than a mere operational inconvenience. For an employer operating more than one site, potentially in different Emirates, the current constraint upon employee mobility does not readily facilitate free movement of employees between sites. The new unified approach to licensing (below) may be the first step towards recognising the practical benefits of greater mobility within the Healthcare sector.

UNIFIED LICENSING

In line with its intention to become a hub of high quality medical care and a centre of medical tourism, on 12 October 2014, a new licensing regime for Healthcare professionals came into effect in the UAE.

This has introduced a pragmatic approach to licensing of healthcare professionals within the UAE. The agreement between respective licensing bodies, the Ministry of Health (covering the northern Emirates), Dubai Health Authority (DHA) and the Health Authority of Abu Dhabi (HAAD) introduces a consistent approach to licensing. The new arrangement provides a single recognised licensing process as opposed to a process applied on an Emirate specific basis.

DHA Director-General Essa Al Maidoor stated recently that, "The agreement paves way for medical professionals to work across the UAE and is important as it unifies as well as streamlines the professional medical licensure process."

At first sight that might seem to open the door to a relaxation of the process for working between Emirates and also between facilities. However, at this stage, the unified approach to licensing appears to be more focused on streamlining the recognition of qualifications within the UAE rather than wholesale relaxation of employment and immigration framework within the Healthcare Sector.

The cooperation between Emirates to recognise respective licensing does not alter the fundamentally static nature of the employment relationship. Licensing (for example, via DNA or HAAD) is entirely separate from immigration and/or Labour Law requirements. The employee can still only work for the employer who provides sponsorship at the stated place of business subject to the exceptions mentioned above. As such, an employee who is licensed in Dubai may indeed have his registration recognised in Abu Dhabi or elsewhere; however, that does not thereby permit him to actively work for an entity other than his immediate sponsor.

CONCLUSION

It remains to be seen how far the aim to development the UAE as a centre for medical tourism ultimately also leads to a greater freedom for medical professionals to be transferred more readily between facilities, whilst preserving the employer's commercial interests. At this stage, the employer continues to benefit from certain restrictions upon the activities of its workforce, but is constrained by established sponsoring formalities from fully exploiting the rapidly developing marketplace.

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# PROTECTED OR NOT?
## CRIMINAL LIABILITY OF MANAGERS IN QATAR

Recently, accidents such as fires, building collapses and gas tank explosions occurring in places of business and retail outlets, have made headlines in the local news in Qatar. One significant concern arising from recent events is which parties may be held liable for damages, injuries and casualties that may result from such accidents. More specifically, a considerable concern has arisen as to whether a manager of a place of business or retail outlet may bear liability for the consequences arising from accidents occurring on the premises of the business or retail outlet, which liability could include imprisonment, fines and/or the imposition of travel bans.

In determining the possible liability of a manager, several factors must be considered including the nature of the accident that has occurred, the type of company involved (shareholding company, limited liability company, partnership, etc.) and whether or not the manager's name is listed on the company's commercial registration ("CR"). While the liability of managers should be determined on a case-by-case basis and would be dependent on the structure of the company as well as factors related to the accident or incident such as the damage, injuries and/or casualties caused, some general considerations apply in all cases. Broadly speaking, two types of liabilities affecting the manager may arise from an accident or incident occurring in connection with a business or retail outlet: civil liability and criminal liability. The focus in this article is on the possibility or extent of criminal liability faced by the manager of a business or retail outlet arising from an accident that has occurred in connection with or on the premises of the business or retail outlet.

A manager may feel insulated from criminal liability with regard to acts or omissions made on behalf of the company and undertaken in his or her capacity as manager. However, this assumption is not entirely correct. In accordance with the Qatar Law No. 11 of 2004 ("Qatar Penal Code"), managers may face criminal liability if their acts on behalf of the company would lead to consequences that would be considered criminal under the penal law. A manager may also face criminal liability for committing a private act that violates other laws in Qatar and results in the imposition of criminal penalties. Some relevant examples of laws under which criminal liability managers may arise include:

COMMERCIAL AND INDUSTRIAL OUTLETS LAW (NO. 3 OF 1975)

Under Article 17, managers/supervisors are held jointly liable with the employer for breaching the law. Article 20 goes on to provide that the manager/supervisor may be punished by imprisonment and fined for such violation.

CONSUMER PROTECTION LAW (LAW NO. 8 OF 2008)

Article 18 provides, "Without prejudice to any more severe sanctions provided for under any other law, the person who violates any of the provisions stipulated in the Articles of Chapter Three of the present law shall be sentenced to imprisonment for a period not exceeding two years and fined a sum . . . or sanctioned with one of the aforesaid sanctions."

USAGE OF CAMERAS AND SECURITY SURVEILLANCE EQUIPMENT LAW (LAW NO. 9 OF 2011)

In accordance with Article 2, "Owners of the facilities and those responsible for the management, must install cameras and monitor security equipment which is operated around the clock, from a control room". Article 11 further states, ". . .each person

who violates the provisions of Articles 2, 3(1), 4(2), 5 and 6 of this law, shall be punished by imprisonment for a term not exceeding more than one year and a fine of not more than 10,000 Riyals, or either of these penalties."

CIVIL DEFENSE LAW (LAW NO. 13 OF 1997)

Article 14 stipulates, "Persons in charge at the Public Utilities and Vital establishments, along with the owners of properties and owners of commercial and industrial activities shall carry out the measures of Civil Defense which are determined by the Directorate of Civil Defense on the respective expense and on the dates defined by the directorate." Article 20 further provides, "Whoever violates any of the provisions of this Law or the Resolutions issued in execution thereof, shall be punished by imprisonment for a period not exceeding three years and shall be fined … or shall be punished by either of these two punishments".

With respect to corporate criminal liability, Article 37 of the Qatar Penal Code, is the general "catch-all" provision giving rise to the criminal liability of commercial entities. Under Article 37, with the exception of Ministries, governmental bodies, organisations and institutions, a Company is liable for the crimes committed by its representatives, managers and agents acting on its behalf. Therefore, the company will also be subject to the imposition of fines and other appropriate sub-penalties under the law. If the original penalty for the crime as determined by law differs from the imposition of fines, then the penalty will be limited to a fine not exceeding 500,000 Riyals. However, Article 37 goes on to provide, "This does not prevent punishment of the perpetrator by the penalty decided by law." Under this general provision, managers may potentially be found criminally liable in addition to the company.

No clear standards or parameters establish when Article 37 will be applicable. In addition, no definition of "managers" has been provided in the said law. However, amongst other considerations, a manager would likely be implicated if his or her name appears on the company's CR as an authorised signatory of the company. Managers may take certain steps to potentially mitigate the risk of liability:

1. The employment contract of the manager must precisely list the manager's responsibilities and extent of liability.

2. The listing of the manager's name on the CR must be seriously considered as such listing may lead to the imposition of criminal liability, which could include the imposition of a travel ban on the manager in the event of an accident.

3. Where an accident has occurred, a manager should consider contacting the company's legal department or a lawyer prior to giving any statements or other evidence to public authorities.

4. Ignorance of the law is not a defence. Managers must take all steps necessary to understand and adhere to the applicable laws.

While this list provides some general guidelines, the criminal liability of a manager in a given situation can be comprehensively determined only on a case-by-case basis after consideration of all relevant factors. Accordingly, obtaining advice from legal professionals is highly recommended following, or ideally before, the occurrence of an accident.

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# CHOOSING SUITABLE PREMISES FOR YOUR HOSPITAL OR HEALTHCARE CENTRE IN DUBAI AND ABU DHABI

DHA and HAAD

While hospitals and healthcare centres outside free zones are governed by different authorities in Dubai and Abu Dhabi (the Dubai Health Authority ("DHA") and the Health Authority–Abu Dhabi ("HAAD") respectively), the regulations in relation to the location and building type for a hospital or healthcare centre are quite similar in both Emirates.

By way of background, the difference between a hospital and a healthcare centre, in both Dubai and Abu Dhabi, is determined on the services that will be provided. Generally, if inpatient services are provided, the operator must apply for a hospital licence; if not, then the operator must apply for a licence in their specialist area or areas.

## DUBAI

The DHA Regulations stipulate the types of buildings that must be used for hospitals and healthcare centres, and lay down the location for these buildings.

### Hospitals

The DHA Regulations specifically provide that a hospital must be located in an independent, standalone building, located on a main road with easy and convenient access for people using both public and private transport. As part of the licencing process the DHA will consider the plans for the premises and will also inspect the premises. If the premises do not meet the criteria set out in the DHA Regulations then the licence to operate will not be granted. A healthcare operator that is licensed as a hospital cannot use a villa for its premises regardless of whether the villa has been designated for commercial use. In practice the DHA will expect the building to have been created specifically for the purpose of being a hospital.

### Healthcare Centres

Unlike a hospital, a healthcare centre can have its premises at either an independent facility (such as a villa if it has been designated for commercial use), or in a mixed-use commercial building.

## ABU DHABI

Guidelines issued by HAAD (the "HAAD Guidelines") provide detailed information as to how different healthcare facilities are to be licenced. The HAAD Guidelines also provide information as to how the hospital or healthcare centre should be designed and fitted-out. When applying to HAAD for a healthcare licence part of the application process involves an examination by HAAD inspectors of the plans and drawings for the hospital or healthcare centre. The HAAD inspectors will assess the building and consider the fit-out design. Finally the HAAD inspectors will inspect the premises to ensure that the premises meets all the standards set out in the HAAD Guidelines.

### Hospitals

Similarly to the position in Dubai, a hospital in Abu Dhabi must have its premises in an independent building. Previously in Abu Dhabi it was possible for a hospital to be located in a mixed-use building. Frequently such mixed-use buildings contained residential apartments or commercial offices in addition to hospitals. HAAD has now prohibited this.

### Healthcare Centres

Similar to the position in Dubai, a healthcare centre may use a villa as its premises, provided the villa has been granted permission to be converted from a residential villa to a villa allocated for commercial use. For such conversion to commercial use, it is necessary to obtain approval from the relevant local Municipality (there are three operating in Abu Dhabi: Abu Dhabi Municipality, Al Ain Municipality and the Western Region Municipality (the "Municipalities")). Following the implementation in Abu Dhabi of Administrative Resolution No.32 of 2011 (which deals with privacy protection in residential areas), the Municipalities generally do not allow conversion of residential villas to commercial uses. Exceptions are however sometimes permitted if the villa is to be used as a healthcare centre, rehabilitation centre for those with special needs, or a care centre for the elderly.


NAMING A HEALTHCARE COMPANY

HAAD will not allow a company with the word 'hospital' in its name to apply to use a villa as its premises, irrespective of the fact that the company will not be using the premises as a hospital. This may mean that before applying a company may need to change its name. As the Department of Economic Development in both Abu Dhabi and Dubai have regulations in place which state that the name of the company should reflect the activity it is undertaking, it would be prudent for companies is Dubai to consider this as well.

CONCLUSION

In both Dubai and Abu Dhabi, if a healthcare company wishes to establish a hospital, it must ensure that its premises are in an independent building. A healthcare centre however can be located in either an independent building or a villa; however, if a villa is to be used it must be converted from residential to commercial use.

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# THE REAL ESTATE DEVELOPMENT LAW NO. 28 OF 2014: BALANCING THE INTERESTS OF DEVELOPERS AND BUYERS

## INTRODUCTION

Bahrain recently enacted a long awaited and much debated new real estate development law, the Real Estate Development Law No. 28 of 2014 (the "New Law"). It is widely hoped that the New Law will help to strengthen the real estate sector and promote investor confidence in a market which has recently suffered with the indefinite stalling of several major development projects such as the Marina West project. The sudden stalling of such projects in the middle of the development cycle may be partially attributable to an insufficient legal and regulatory framework which left both developers and buyers exposed when funds simply ran out and development stopped.

This article analyses the implications of the New Law for developers and its significance in protecting buyers. The New Law attempts to regulate the activities of developers which were generally seen to be a major contributing factor to the lack of confidence in Bahrain's real estate sector and which often left buyers with no money, real estate or investment returns.

## SCOPE OF APPLICATION

The New Law defines "Real Estate Development Project" in Article 1(5) as any work or real estate development project in any nature (infrastructure or construction) for any purpose (commercial, residential, industrial or public) whatever finance method adopted (sale of off-plan units, Musataha, etc.) by any legal entity. This definition widens the scope of the New Law's application to arguably include most development projects in Bahrain. In practical terms the wide definition may protect buyers by encouraging them to invest in all types of real estate development which would most likely fall within the parameters of the New Law. "Developers" are defined as any legal person licensed to practice Real Estate Development Projects such as construction or off-plan unit sales.

Moreover, the New Law is applied retrospectively to all Real Estate Development Projects that commenced before its enactment. Furthermore, although the New Law came into effect on 7 August 2014, developers of existing projects have a six-month period within which to comply with it, i.e.: until 7 February 2015.

NEW CONCEPTS INTRODUCED

The New Law introduces several concepts to regulate the market and protect buyers throughout the life cycle of a development, and provides for the establishment of a regulatory authority to regulate both Developers and buyers (the "Concerned Authority" or "Authority"). The "Concerned Authority" has not yet been nominated, but is expected to be established by Royal Decree pursuant to the enactment of the New Law's implementing regulations.

One such concept guards buyers' interests by regulating the sale of off-plan units - a sales method which gained significant popularity across the region during the real estate boom years - whereby units may be sold before their completion (Article 1(9)). Buyers who traditionally bought off-plan from Developers exposed themselves to the risk of unregistered sale transactions - often paying a percentage of the total cost of the unit upfront - without actually gaining any legal title to or interest in the unit. The sale of units off-plan has, for the first time been introduced as a legal concept in Bahrain to address this issue.

The New Law prohibits any attempted sales off-plan without prior authorisation and licensing. A real estate record to register all off-plan sales (an "Off-Plan Register") shall be established and maintained by the Survey and Land Registration Bureau 'SLRB'. Under Article 11, the Off-Plan Register shall contain the following information:

- the real estate Development Licence;
- the units which the Development Licence relates to;
- the units' sale agreements and all disposals affecting them;
- details of any entry which is required to be included in the SLRB Property newsletter by Law; and
- any other information which may be determined by a resolution from the SLRB.

It is the Developer's responsibility to provide the SLRB with the above information. Significantly, any sale agreement which has not been submitted to the SLRB in accordance with the above will be deemed null and void.

Under the New Law, Developers must obtain a Development License from the Concerned Authority before commencing a project and submit details of the relevant units in the Off-Plan Register including prior to undertaking any promotional or marketing activities in relation to the project either inside or outside Bahrain. This provision protects buyers from misleading or fraudulent advertisements and ensures that publications in the media represent credible Real Estate Development Projects.

Article 6 of the New Law introduces a further significant concept in requiring Developers to open an escrow account (the "Escrow Account") to hold any buyers' contributions and all other related development funds with a Bank or financial institution licensed by the CBB (the "Escrow Bank"). The purpose of the Escrow Account is to manage the financial, administrative and legal aspects of the Development. The Developer shall provide the Concerned Authority a copy of its escrow agreement with the Escrow Bank. The Escrow Bank must provide the Concerned Authority with financial statements related to the Development, and the Authority may request further information or appoint an auditor to assist it if required.

Further, to ensure greater protection for buyers in case of a Developer's bankruptcy or insolvency, the New Law ring-fences buyers' deposits in the Escrow Account from the funds of creditors or other depositors. Buyers' deposits cannot be the subject of any freezing orders under the New Law (Article 7). The Escrow Bank is entitled to maintain 5% of the value of the Development which may only be released a year after buyers receive their properties. This measure is intended to act as a guarantee and provides a window for buyers to file any complaints or take actions against Developers, as well as ensuring the continued availability of funds.

The New Law (Article 26) establishes a committee to resolve any Real Estate Development Project disputes ("Real Estate Development Disputes Committee"). The Real Estate Development Disputes Committee shall be made up of two High Court judges and an expert in real estate affairs (who shall be nominated by the Minister), and is empowered to adjudge on all disputes arising from or related to Real Estate Development Projects. Under Article 28, an aggrieved party may appeal a decision of the Committee to the High Civil Court within 15 days of the date the judgment is made, The establishment of this Disputes Committee is an attempt to shift the responsibility from the courts to a specialised panel of experts with the specific knowledge of the real estate sector in the hope that this will result in disputes being resolved faster and more consistently.

THE MAIN OBLIGATIONS IMPOSED ON DEVELOPERS

Developers can no longer start work on a development project unless they hold a licence from the Authority (the "Licence"). The granting of the Licence is subject to the Developer submitting the completed master plan to the Authority together with a list of documents as mentioned in Article 4(A) establishing that it has:

- either ownership of the Development or a right to develop it by way of approval from the title owner;
- approval of the master plan and building permits;
- a draft of the template sale agreement drafted in accordance with the provisions of the New Law;
- written confirmation from a consultant engineer providing an estimate value of the Development must be approved by the Committee of Professional Engineering Practice in Bahrain (COEPP);
- written confirmation from the Development's escrow agent that a deposit of 20% of the Development's estimated value has been made in the Escrow Account (the value of the land may be included in the calculation of the deposit);
- an undertaking from both the Developer and sub-developer that development works will commence within the time stated in the building permit;
- an undertaking from the Developer to maintain ownership of the common areas;

- if reclamation of land is relevant - the prior approval to reclaim the area on which the proposed Development will be built; and
- other requirements as may be stipulated by the implementing regulations so as to verify the requisite experience of both the Developer and sub-developer.

To ensure effective monitoring of Developers' activities and their compliance, the Licence granted by the Authority shall not exceed three years, and the form of the legal entity of Developers may not be altered unless and until the Real Estate Development Project is complete (Article 9).

Additionally, Developers are prohibited from varying the Real Estate Development Project except in cases of emergency and only with the prior approval of the Authority. If the Developer is late in handing over units beyond the period agreed in the contract without reasonable justification, the contract may be voidable after ninety days from the date that the delay commenced. Thus, the New Law provides buyers with a period to get their properties back on time and aims to prevent any unnecessary delays. For Developers, the New Law encourages them to have a structured well-organised plan for completion that was seen to be lacking in the previous unregulated regime. Furthermore, to ensure certainty in completion, the Authority may order specific performance from Developers to complete projects if they suspend work either temporarily or permanently. To ensure the highest standard if work from Developers, the New Law (Article 19) requires them to undertake maintenance services for the Real Estate Development Projects for two consecutive years after the completion date.

The New Law seeks to create a balance between all concerned parties by granting Developers reciprocal termination rights in relation to terminating a sale contract in cases where buyers do not perform their obligations. Article 17 (a) stipulates that in the event a buyer breaches his obligations without justifiable cause, the Developer may serve a notice on the buyer giving him ninety days within which to rectify the position. In the event that upon the lapse of the notice period, the buyer remains in breach, the Developer may then apply to the Disputes Committee to terminate the sale agreement, after which it may sell the unit to another buyer. Upon termination of the sale agreement, without prejudice to the Developer's right to claim compensation for any damages suffered, the Developer may retain up to 10% of the purchase price of the unit and refund the remainder of what may have been paid to the buyer.

THE CONSEQUENCES OF BREACHES IN THE NEW LAW

Heavy penalties are imposed on Developers depending on the type of breach. They may be subject to a custodial sentence of one year or a fine not exceeding BD 10,000 or both for selling off-plan units without a Licence or delaying handing over completed units beyond the period agreed in the contract. Other offences under the New Law are punishable by a custodial sentence of one to five years, and a fine of BD 10,000 to BD 30,000 for providing false information to the Authority. The New Law addresses the entire lifecycle of Real Estate Development Projects from beginning to end. It outlines the consequences of not executing work within six months of the date of the Licence and extends criminal liability (including vicarious liability) to all legal entities that may be defined as Developers.

CONCLUSION

Before we may asses the practical impact that the New Law has on the Kingdom's development projects specifically, and the real estate sector generally, there are a number of related laws and regulations that need to be implemented (including the Implementing Regulations) and the Concerned Authority will need to be established to act as the sector's regulator.

Many have criticised the New Law as inadequate in addressing the issue of existing stalled projects. Whilst this may be so, the Cabinet has recently approved a draft law on the settlement of stalled real estate development projects, which aims to address the issue. Despite any criticism or ambiguities surrounding this legislation, the New Law must be considered as an important and positive step towards delineating the interests and responsibilities of both developers and buyers. As a response to the demand for a structured and regulated real estate sector in the Kingdom of Bahrain, the New Law introduces the framework for a sophisticated regulated regime which seeks to balance the interests of all concerned parties and attract further investment in the Kingdom's real estate development projects.

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# IMPROVING THE QUALITY OF LIFE - THE FUTURE OF UNITED ARAB EMIRATES

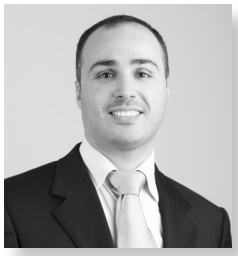
On 2 December 2014 the United Arab Emirates will be celebrating its 43rd National Day. In 1971, when the country was founded, few people would have believed that the UAE would look the way it now does. Oil had only just begun contributing to the UAE economy, which had previously been dependent on fishing and the pearl industry. At this time the UAE had hardly any economic strength, however it did have determination and strong leadership. Since then, the UAE has emerged as the most stable and secure country in the Middle Eastern region, attracting foreign investment and human talent.

The UAE government has long recognized the importance of investing and having a firm strategy for improving its citizen's welfare through education, healthcare, security and training. This, together with the UAE leadership's determination to make the UAE an active member of the international community, has enabled the UAE to enjoy prosperity, growth and friendly relationships with almost the entire world.

A simple review of the progress of the UAE over the past 43 years, including the huge investment currently taking place, shows how much attention the UAE has given to improving the quality of life in the country, and the fact that the government recognises the need to constantly improve and progress public services to create a better UAE. The UAE has made tremendous efforts in establishing and investing in schools, hospitals, transport, training of the judicial system, separation of powers, training across public and private sectors, and zero tolerance on corruption, crime, and terrorism. This has not only improved the quality of life in the UAE and created a new well-educated, well-trained generation, but it has also made the UAE one of the safest and most desirable countries to live in amongst the region and internationally. Most importantly perhaps, the trust and stability that the UAE has within its government and leadership provides the local and international community with confidence in the country's long-term future and its ability to deliver on its ever more ambitious plans. The UAE's current leadership provides a wonderful formula for future growth.

The UAE has succeeded where unfortunately others have failed, in investing in the creation and the existence of a well-rounded and functioning human society. It has done this by recognizing that it is important to invest in the basics to establish the fundamentals of any society. Having recognized the importance of investing in its people from day one, the UAE has consistently and gradually increased investment throughout its 43 years, creating the UAE we know today. These principles are not new or alien to other peoples. They are principles that contributed to the success and growth of old or modern societies, and formed a fundamental part of the Islamic religion. However wherever in the world you look, it is recognised that security, education, health, training, rule of law, are needs of any society. Fortunately the UAE, through its inspired leaders, has been able to implement these principles and achieve more than anyone could have imagined 43 years ago. The determination of the current government will allow the UAE to continue advancing and leading the region for many more years to come.

# GSO REGULATES PERMISSIBLE TOBACCO ADDITIVES



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The Gulf Standardization Organization ("GSO") has recently published a technical regulation that regulates the permissible tobacco additives. The new regulation is in an attempt to control the content of tobacco products in the GCC market.

In the past, given that specific legislation on the topic was lacking, tobacco manufacturers had the option of using a wide range of additivesin tobacco products. In recent times, the GSO board of directors has decided to take the initiative to regulate the market in order to address this issue. In this regard, the GOS approved technical standard number GSO 2390/2014 in their meeting no. 19 on 14 May, 2014. The technical regulation was initially drafted by the State of Qatar and is largely based on national and international standards and references.

The objective of this new technical regulation is to maintain quality of tobacco product, consumer protection and safety. The new technical regulation contains a list of permissible tobacco additives and a list of impermissible tobacco additives. The permissible list includesadditives such as:

1. Fruits, and dried fruits
2. Spices
3. Liquorice extract
4. Coffee extract
5. Tea and tea-like products
6. Cocoa, and cocoa products
7. Honey
8. Maple syrup
9. Sugars suitable for human consumption
10. Menthol
11. Molasses
12. Water
13. Cellulose
14. Arabic Gum
15. Citric acid
16. Caramel

The impermissible additives list includes:

1. Camphor
2. Camphor oil
3. Camphor wood
4. Vanilla roots
5. Poley mint (HerbaPulegii).

The permissible tobacco additives are allowed to be used for specific purposes. For example, Glycerol is permissible as humectants for loose tobacco, cigar, cigarettes and reconstituted tobacco. Arabic Gum is permissible for use as glues, adhesives, and thickening agents and binders for cigars, cigarettes and loose tobacco including black tobacco. On the other hand, the impermissible tobacco additives are prohibited from use for some specific purposes. For example, the use of Camphor is prohibited in odorants or flavorings. Similarly, odorants or flavorings produced from Vanilla Roots are also prohibited.

Despite the GSO's initiatives to maintain good quality tobacco products, there are questions as to the additives that have not been mentioned in the regulation. The debate over this issue is whether the unnamed additives are permissible or impermissible. This is a grey area in the absence of clear answers from the GSO and requires further consideration from the GSO or the local standardization authorities such as Saudi Standards, Metrology and Quality Organization (SASO) or Emirate Standardization and Metrology Authority (ESMA). The GCC states have yet to implement this technical regulation; it is expected to be implemented by the each individual State within the coming months as it needs to pass the legislation process of each country.

# KUWAIT HAS RECENTLY RATIFIED THE JOINING OF BERNE & PARIS CONVENTIONS

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On 11 May 2014, two new laws nos. 35 & 36 for the year 2014 were published in the official gazette no. 1183 ratifying the joining of the State of Kuwait to the Berne Convention for the Protection of Literary and Artistic Works, and to the Paris Convention for the Protection of Industrial Property, respectively.

The Berne Convention requires its signatories to recognize the copyright of works of authors from other signatory countries (members of the Berne Union) in the same way as it recognizes the copyright of its own nationals. Article 3 of the Convention covers the criteria of eligibility for protection which stipulates:

1. The protection of this Convention shall apply to:

- authors who are nationals of one of the countries of the Union, for their works, whether published or not;

- authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

2. Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

3. The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

4. A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

5. The key points of the Paris Convention are: National treatment which is tackled by Articles 2 & 3, and Priority right which is tackled by Article 4 to this treaty.

National treatment means that juristic and natural persons who are either nationals of or domiciled in a state that is a party to the Convention shall, as regards the protection of industrial property, enjoy in all the other countries of the Union, the advantages that their respective laws grant to nationals.

Articles 2 & 3 of the treaty stipulate:

1. Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention.

   Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

2. However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

3. The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

Whereby Article 3 stipulates:

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Priority right means that an applicant from one contracting State shall be able to use its first filing date (in one of the contracting States) as the effective filing date in another contracting State, provided that the applicant files a subsequent application within 6 months (for industrial designs and trademarks) or 12 months (for patents and utility models) from the first filing.

As of September 2013, the Paris Convention had 175 contracting member countries, which makes it one of the most widely adopted treaties worldwide, and making the State of Kuwait the 176th member.




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# UPDATE ON QATAR'S NATIONAL HEALTH INSURANCE SCHEME

Qatar is in the middle of rolling out its ambitious National Health Strategy. This article looks at a key part of the strategy, the National Health Insurance Scheme and examines what the regime means for participants and employees alike.

## BACKGROUND

Launched in July 2013, Qatar's health insurance scheme, Seha, is an integral part of the National Health Strategy. The health insurance scheme is being rolled out in five stages with coverage initially applying to Qatari females aged 12 and above for gynecology, obstetrics, maternity and related women's health conditions. The second and third stages allow for the roll out of comprehensive insurance coverage to all Qatari nationals for their basic health care needs. Finally, stages four and five will provide cover for all white and blue collar expatriates as well as visitors to Qatar.

## LEGAL BASIS

The health insurance scheme was put in place pursuant to Law No. 7 of 2013 on the Social Health Insurance System (Law) which was followed by the release of the Resolution of Minister of Public Health No. 22 of 2013 Regarding Issuing Executive Regulations of Law No. (7) of 2013 (Regulations). The Law and Regulations set out the role of the Supreme Council of Health, the concepts of basic and additional health services, the licensing of participants, the responsibilities for premium payment, the establishment of the National Company for Health Insurance (NCHI) and the applicable penalties regime for non-compliance.

## BODIES RESPONSIBLE FOR OVERSIGHT AND MANAGEMENT OF THE SCHEME

The health insurance scheme is to be implemented and managed by several bodies. The Supreme Council of Health is the Qatari government body with overall responsibility for the rollout of the scheme. It will also be responsible for the supervision and licensing of all regulated participants. As part of this role, the Supreme Council of Health will act as a repository of all health-related information, including patients' medical records (Article 4 of the Law).

The Government has established the NCHI to be responsible for the actual management of the health insurance scheme including contracting with and supervising health care providers, promulgating patient care standards, managing the collection of premium and payment of fees for service providers and ensuring adequate data protection regulations are in place in respect of health information (Articles 19 and 20 of the Law).

Importantly, the NCHI is solely responsible for issuing the basic health insurance benefits in Qatar with private insurers only

being allowed to participate by offering prescribed additional benefits (Article 28 of the Regulations).

To act as its third party administrator for the health insurance scheme, the NCHI has appointed Qatari insurance company, Al Khaleej Takaful. Al Khaleej will be responsible for all essential administrative functions of the NCHI and in turn has appointed two sub-contractors, Aetna and GlobeMed. Aetna will provide health management services and GlobeMed will undertake enrolment, claims administration and call center capabilities.

LICENSING AND REQUIREMENTS OF SCHEME PARTICIPANTS

The Regulations prescribe the licensing requirements for health care providers wishing to contract with the NCHI. In particular, healthcare providers need to have an existing licence authorising them to operate a medical facility and/or offer health care services in Qatar.

Providers also need to evidence that their information systems will meet the standards of the Supreme Council of Health so as to allow the transmission of health information to the Supreme Council of Health and the NCHI. The Regulations also prescribe a range of terms that must be included in the agreement between the healthcare provider and the NCHI (Chapter III of the Regulations).

Insurers wishing to offer the prescribed additional insurance benefits must also apply for and receive a licence before they can participate in the health insurance scheme. Insurers must again already be licensed to practice health insurance in Qatar and cannot own or manage any health care provider. As insurers can only be licensed to provide 'additional health care benefits' they must cease offering any other benefits by 30 April 2015. This requirement is pursuant to Supreme Council of Health Circular MA/5/2014 which allowed for a one year grace period from the original 1 April 2014 deadline. The Regulations prescribe a number of terms that must be included in the insurer's policy for provision of the additional benefits, including details of the limitations of the additional benefits, the claims and complaints processes, the applicable healthcare providers and the use and protection of policy holder information (Chapter IV of the Regulations).

COVERAGE AND PAYMENT OF PREMIUM

The health insurance scheme distinguishes between basic health benefits and additional health benefits. The Regulations itemise the basic health benefits that apply for Qatari nationals and non-Qataris under the scheme as set out in Table 1 below.

There is compulsory coverage for Qatari nationals, GCC nationals, residents and visitors (Article 2 of the Law). Visitors are defined under the Law and Regulations as 'each non-citizen who enters the State or resides in the same, on a temporary basis, for purposes other than residence or work.'

The Minister of Health of Public Health, following the approval of the Supreme Council of Health, will set the premium amount for the basic health benefits based on generally accepted actuarial rules (Article 12 of the Law and Article 2 of the Regulations).

Employers will be liable for the payment of premiums for their non-Qatari employees and employees' families (Article 4 of the Regulations). Sponsors will then be responsible for payment of premiums for non-Qatari residents to the extent any employer is not required to pay their premium in accordance with the Regulations (Article 5 of the Regulations). Visitors to Qatar are responsible for payment of their own premium with the issue of temporary visas being subject to proof of payment of premiums (Article 7 of the Regulations). Finally, the Qatari Government will be responsible for the payment of premium for all Qatari nationals under the scheme (Article 13 of the Law).

CONCLUSION

Qatar's health insurance scheme is arguably the most fully formed of the recently arrived compulsory health insurance regimes in the GCC. The five stage roll out has allowed an incremental on-boarding of information systems and has provided that the capability build-up was able to take place without undue pressure. However, given the population of Qatar is heavily weighted towards its ex-pat community, the real test of the scheme is still to come with stages four and five yet to be implemented.

**Basic Health Services covered by the Health Insurance Scheme**

Qatari Nationals

1. General Medicine Services
2. Preventive Care Services
3. Emergency and Accidents Services
4. Inpatient and Outpatient Hospital Services
5. Lab, Radiology and Medical Analysis Services
6. Maternity and Gynecology Services
7. Pharmaceutical Services
8. Basic Dental Services and Eye Services
9. Neurological Diseases Treatment
10. Home Heath and Home Nursing.
11. Speech Therapy and Treatment of Vocational Diseases and Palliative Treatment
12. Organs Transplantation
13. End of Life Care
14. Durable Medical Equipment
15. Infertility Treatment and Family Planning

Non-Qatari Nationals

1. General Medicine Services
2. Preventive Care Services
3. Emergency and Accidents Services
4. Inpatient and Outpatient Hospital Services
5. Lab, Radiology and Medical Analysis Services
6. Maternity and Gynecology Services


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# TRUST RECEIPTS - LAW AND PRACTICE IN QATAR

Trust receipts are instruments commonly used in trade finance in Qatar. This article explains why they are used in Qatar and the legal framework relating to them.

## THE USE OF TRUST RECEIPTS

Trust receipts assist importers in refinancing their payment obligations upon the maturity of a letter of credit ("LC"). Following payment of the purchase price by the LC issuing bank (or after an agreed period), the importer is required to reimburse the issuing bank. Until such time as the importer reimburses the LC issuing bank, the documents of title relating to the goods imported (e.g. bills of lading) are retained by the bank and this will prevent the importer from on-selling the goods. Law No 27 of 2006 (the "Commercial Code") states that the LC issuing bank has a lien over the bills of lading until such time as the importer (being the LC issuing bank's customer) reimburses the LC issuing bank for payments made towards purchase of the goods that have been imported.

The key issue here is one of cash flow management for the importer. The importer will prefer to first sell the goods imported before settling its payment obligations to the LC issuing bank. The trust receipt arrangement allows the LC issuing bank to release the documents of title relating to the imported goods to the importer while retaining its ownership interest in the said goods.

## TRUST RECEIPTS GENERALLY

The trust receipt arrangement provides the bank with a form of quasi-security by virtue of the bills of lading relating to the imported goods being made to the order of the bank. The bank releases the bills of lading to the importer and permits the importer to sell the goods on the condition that the proceeds of sale are used to repay the bank.

The following are the typical steps in a trust receipt transaction:

1. The LC issuing bank (the "Bank") issues an LC to the exporter at the request of the importer (i.e. the customer of the Bank (the "Customer")).

2. The exporter will provide shipping documents including a bill of lading to the order of the Bank to comply with the terms of the LC.

3. Once the complying documents under the LC are provided to the Bank, the Bank makes payment to the exporter and the Customer is required to reimburse the Bank for the payments made to the exporter (the "LC Reimbursement Amount").

4. At this stage, the LC Reimbursement Amount will be treated as a short-term loan from the Bank to the Customer.

5. The bills of lading will be released to the Customer after the Customer signs a Trust Receipt.

Under the trust receipt, the bank is the owner of the goods and the Customer undertakes to deal with the goods represented by the bills of lading as the agent of the Bank. The proceeds of the sale of such goods are to be deposited by the Customer with the Bank and used to repay the LC Reimbursement Amount. The trust receipt ensures that the Bank retains its title in the goods while releasing the right to deal in the goods to the Customer.

## TRUST RECEIPTS UNDER QATAR LAW

Trust receipts are not defined under the laws of Qatar, however they are used in Qatar as a method of import financing.

At the outset it is pertinent to consider the status of a bill of lading under Law No 15 of 1980 (the "Maritime Code"). Under Article 146 of the Maritime Code a bill of lading can be negotiated by endorsement (unless the bill of lading restricts negotiation). The holder of a bill of lading is entitled to take possession of the goods represented by the bill of lading. Further, Article 970 of the Civil Code (Law No 22 of 2004) states that possession of a moveable object or a negotiable instrument representing the movable object creates a presumption of ownership.

Under trust receipt arrangements, the bill of lading is either endorsed to the Bank or made to the order of the Bank. Therefore, there is a presumption of ownership of the goods (underlying the bill of lading) in favour of the Bank. The Bank can then deal with the goods by appointing the Customer as its agent to sell the goods on its behalf.

Under the trust receipt, the relationship of the Customer and the Bank is one of principal and agent. Article 716 of the Civil Code defines an agency as a contract by which an agent undertakes to perform a legal action for the principal. The agent should not exceed the limits of the scope of the agency unless it is impossible to obtain the consent of the principal for the overreaching of the scope (Article 722).

Article 362 of the Penal Code states that with respect to breach of trust "a penalty of not more than three years in prison and a fine of not more than ten thousand Riyals [USD 2,800] shall apply to a person who misappropriates, uses, or misuses amounts of money, bonds or any other movable properties to harm the holders or the possessors whenever delivered under a contract of trust, rent, mortgage or a proxy".

The Qatari Court of Cassation, in judgment No. 70 of 2005, also confirmed that there are five types of "trust" or "Amana" contracts in light of Article 362 of the Penal Code. These are:

1. Trust;
2. Lease;
3. Use without consideration "E'ara"'
4. Pledge; and
5. Agency.

Therefore, the breach of any of the trust receipt arrangements (being a form of agency) would constitute a breach of trust which is subject to a penalty under Article 362 of the Penal Code.

RE-CHARACTERIZATION RISK

Under other GCC laws (such as the UAE Commercial Code) there is a clear reference to the trust receipt structure described above. However, in Qatar while there is a legal basis to establish the trust receipt arrangement, there are no specific provisions in the Commercial Code governing the same. There is therefore a risk that a Qatari court may treat the trust receipt arrangement as a simple loan and security arrangement and not accept the presumption of ownership in favour of the Bank.

To counter this, in addition to endorsement of the bill of lading in favour of the Bank, the rights under the sale contract or invoice relating to ownership of the goods should also be transferred to the Bank. The court may then construe this as a security under Article 234 of the Commercial Code where possession of the goods has been transferred to the Bank as security such that the ownership of the goods is vested in the Bank and not the Customer.

TRACING AND COMPARISON WITH POSITION IN THE UAE

From the Bank's perspective, if the Customer fails to deposit the sale proceeds from the goods with the Bank, the Bank will want recourse to such proceeds. The Commercial Code in Qatar does not have a specific provision that gives the Bank recourse to the proceeds of sale. The position in other GCC states is different. In the UAE the situation is covered by Article 439(5) of the UAE Commercial Transactions Law (UAE Law No 18 of 1993), which states that the Bank will have recourse to the goods as well as the proceeds of sale of the goods under a trust receipt arrangement. In Qatar, the Bank will rely upon the rules of agency to have such recourse. That said, there are some inherent practical difficulties with this arrangement as the control over the goods will ultimately remain with the Customer.

CONCLUSION

Although Qatar does not have a specific law addressing the use of trust receipts, their use remains common and is likely to remain so. Nonetheless, it would give users of trust receipts more confidence and clarify a number of issues if Qatar adopted the legislative measures taken in other GCC states, in particular the UAE.

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# FATCA IN THE UAE

## AN OVERVIEW

The Foreign Account Tax Compliance Act ("FATCA") is a United States ("US") federal law with global reach aimed at curbing offshore tax evasion by US persons. FATCA draws its roots from Chapter 4 of the US Internal Revenue Code, enacted by the Hiring Incentives to Restore Employment Act 2010. The legislation aims to obtain information in connection with offshore accounts and investments directly or beneficially owned by US persons either by voluntary disclosure of accounts by such persons or by disclosure to the Internal Revenue Service ("IRS") by the foreign financial institutions ("FFIs") holding such accounts/investments. Failure of the FFIs to disclose or comply with the reporting requirements laid down under FATCA may lead to the IRS imposing a 30 percent withholding charge on the FFIs' source investment income and proceeds from sale generated within the US. The criteria to apply such withholding tax is wide and may be charged by the IRS against any financial instrument/assets including bank accounts, trading in money market institutions, bills, certificates of deposit, derivatives, transferable securities, commodity futures trading, individual and collective portfolio management and other financial assets, interest, dividends and rents having their source in the US.

Whilst to some this might look as an attempt by the US to collect tax from foreign entities through the proposed withholding regime, FATCA's primary focus is to detect, deter, and discourage offshore tax abuses through increased transparency, enhanced reporting, and strong sanctions. To date, more than 80 nations, including China and Russia, have taken steps to enable their financial institutions to comply with FATCA.

## INTER-GOVERNMENTAL AGREEMENTS

The obligations imposed by the FATCA regime do not take into account domestic laws (for example, data protection rules and confidentiality issues) which prohibit the sharing of the information sought by the IRS. As a result, even if an FFI is willing to share information, it may be in violation of local laws and be exposed to regulatory sanctions and potential lawsuits in the jurisdiction they operate. In light of the global reach of the FATCA regime and to manage the potential conflict with domestic laws, the US Treasury proposed the creation of an intergovernmental framework to enable compliance and reporting via intergovernmental agreements ("IGAs"). The IGAs have been modeled in two forms: Model 1 and Model 2. The two forms are primarily distinguished from each other on the basis of the reciprocity and reporting requirements. Model 1A requires a reciprocal relationship between the US and the partner jurisdiction under which FFIs in that partner jurisdiction would be required to report to their respective regulators which would in turn report to the IRS and vice versa. Model 1B does not require a reciprocal relationship between the US and the partner jurisdiction. Model 2 on the other hand requires FFIs intending to comply with FATCA requirements to directly report to the IRS in accordance with the requirements of FATCA.

With a commitment to strengthening financial stability and supporting banks and financial institutions by reducing the burden of compliance with FATCA for individual FFIs, many partner jurisdictions have commenced or completed IGA negotiation with the US. The United Arab Emirates ("UAE") and the US reached an agreement in substance in May 2014 to include the UAE on the list of jurisdictions to be treated as having an IGA in effect. The UAE has agreed to adopt Model

1B. The result of this decision is that FFIs within the UAE have to comply with the requirements of the IGA with effect from 1 July 2014. At present, the final form of the IGA has yet to be concluded but it is understood this should happen before the end of 2014.

OBLIGATIONS UNDER THE MODEL 1B IGA ("UAE IGA")

Requirements under the UAE IGA can be divided into the following categories:

a. Classification Requirements: In order to meet the requirements under FATCA, an FFI within the UAE will inter alia need to:

1. Determine whether it is an entity within the scope of FATCA. If an FFI is within the scope of FATCA, the FFI will have to register as an FFI under the applicable category on the FATCA registration system hosted on the website of the IRS by 31 December 2014.

2. Identify the products and services it offers which fall within the purview of FATCA.

3. Obtain such information regarding each of its account holders (individuals/ entities) and counterparties as is necessary to determine which accounts have affiliation to the US. As a first step, FFIs must identify and document account holders (new and existing) with US indicia. US indicia for individuals includes such factors as US citizenship (passport or green card holder) or US residency, US place of birth and, for entities, factors such as incorporation in the US, establishment in the US for tax purposes and a US tax identification number.

4. Obtain relevant self certification of status for account holders as to its US tax status (or documentary evidence, if permitted) and waivers, if required.

b. Reporting Requirements: Once information on account holders is collected, the FFIs will need to make necessary disclosures and share information with their regulator to enable the transfer of such information to the IRS. For instance, onshore banks in the UAE would need to liaise with the UAE Central Bank, collective investment funds would liaise with the UAE's Securities and Commodities Authority and entities incorporated within the DIFC and regulated by the Dubai Financial Services Authority ("DFSA") would need to liaise with the DFSA. Such disclosures are to be made on an annual basis and are to commence in 2015. Account holder information to be provided to the IRS inter alia includes:

   1. the name, address and taxpayer identification number or social security number of each US affiliated account holder;

   2. the account number of such person or entity;

   3. the account balance or value;

   4. other information regarding income and transactions.

c. Withholding Requirements: FFIs in the UAE will benefit from the UAE IGA between the UAE and the US since FATCA's withholding requirements will not apply to such FFIs provided they are in compliance with the UAE IGA. As a penalty for non-compliance of the requirements under the FATCA, FFIs would be required to withhold 30 percent from US source payments made to non-participating/non-complying financial institutions or non-complying account holders. Other compliant partner jurisdictions' FFIs, which act as intermediaries with respect to withholdable payments, are required to provide information to the paying entity about applicable payments for withholding and reporting purposes.


IMPACT OF FATCA

With the large number of US tax obligors living in or otherwise having financial accounts in the UAE, FATCA compliance is important to both UAE financial institutions and to US individuals and entities holding accounts with such institutions. All customers of FFIs within the UAE should be aware that they are likely to be asked if they have any US indicia and to make declarations in respect of the existence of such indicia. US persons should expect greater due diligence requirements from FFIs when opening accounts and a more rigorous on-boarding process. FFIs have the largest burden of having to first determine if FATCA applies to them and then ensure their systems are capable of collecting the necessary information. Additionally, FFIs must be aware of their counterparties' FATCA compliance and ensure their terms and conditions do not inhibit compliance with FATCA. This includes having in place mechanisms for monitoring account balances and changes in status of accounts and account holders to stay in line with FATCA. Finally, FFIs within the UAE must be mindful of the relevant time frames in order to avoid being in contravention of FATCA requirements and exposing itself to any form of withholding charge.

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# INCENTIVE PAYMENTS IN THE HEALTHCARE SECTOR: A REGIONAL AND UAE OVERVIEW

Gulf Cooperation Council (GCC) spending in the healthcare sector is predicted to reach US$ 70 billion by 2018. Some governments have provided assistance to private providers, primarily by engaging them to manage public facilities and reimbursing them for treating government-funded or insured patients. Generous cash incentives and a guaranteed supply of patients have been offered to top-rated international teaching hospitals, the aim of which is to ensure that reputable and well recognised provider brands will create competition and raise standards of care throughout the region.

Competition in the healthcare market must be properly regulated to ensure that public or insurer funds are appropriately spent and that the opportunity for corrupt practices is extinguished. It is impractical, for example, to guarantee a certain volume of patients for all private providers, as such guarantees are costly and reduce the incentive for providers to raise their quality and compete for patients. Since most private providers compete with public facilities to attract patients, governments must create a fair system in which both public and private healthcare providers issue claims and receive appropriate reimbursement for their services.

## INCENTIVE PAYMENTS FOR HEALTHCARE SERVICES

It is reported that a practice has evolved across the region in which, following reimbursement by an insurer to a laboratory or diagnostic imaging center, the service provider pays a percentage of its fee back to the hospital or clinic requesting the service. Such payments are typically described as a referral fee, or commission fee, or 'kickback'.

The practice of paying kickbacks is incompatible with the laws of most established international jurisdictions. For example in the United States, federal anti-kickback laws and the 'Stark' laws have curtailed the practice of commission payments and self-referral, where the referring physician is found to be referring patients to another facility in which that physician has a personal financial interest. In the UK, the government is consulting with the healthcare sector with a view to introducing the 'NHS National Tariff Payment System' which will regulate how hospitals and providers are paid. Private providers must sign-up for the scheme, agree to be regulated, and provide undertakings.

In the UAE, the Emirates of Abu Dhabi and Dubai have introduced mandatory insurance schemes to fund healthcare services (Abu Dhabi Law No.23 of 2005 and Dubai Health Insurance Law No.11 of 2013, respectively). Reimbursement controls are in place. In Abu Dhabi, the Health Authority-Abu Dhabi (HAAD) has introduced a policy on health insurance fraud and abuse which states that kickbacks are to be regarded as health insurance fraud. In addition, HAAD has introduced a standard provider contract requiring all contracts between insurers and providers to meet minimum standard terms and conditions. It is a condition of such contracts that reimbursement of healthcare fees are made in accordance with a mandatory tariff, which dictates the price paid for basic services. Together these measures should stop the practice of insurance payments being used to pay commissions or kickbacks between providers.

In an attempt to curb such practices, HAAD issued Circular (DG 16/14) on 1 May 2014 relating to 'Kickbacks in Medical Laboratory Services' requiring compliance with mandatory local

insurance laws, and Federal Law No. 10 of 2008 concerning Medical Liability, and prohibiting the payment of "commissions and financial incentives or making illegal profits" when referring patients for medical tests. This was quickly followed by a local insurer requiring that providers sign an 'Anti-Incentives Undertaking Letter' that they will ensure strict compliance with the contractual requirements of the contract together with an undertaking that no volume incentives or commissions are being paid for ordering services. Violation of the undertaking will constitute a material breach of the contract in respect of which the insurer will take any necessary legal action, including termination of the contract and reporting of the facility to HAAD. If this approach is successful, other healthcare insurers across the region are likely to require providers in their locality to give similar undertakings.

Efforts to curb kickback payments are likely to have the most significant impact on the smaller secondary care private providers, such as those providing medical laboratory services or specialist diagnostic imaging centers, which generate much of their revenue from the larger hospitals or clinics proving primary care services and rely on receiving a certain volume of business from those primary providers. One way of securing referrals is to pay kickbacks, so if this practice is no longer permitted providers will need to compete for business by being more creative, and offering commercially attractive reasons for using their services, developing closer business relationships with primary care providers, and entering into service contracts securing exclusivity of referrals.

INCENTIVE PAYMENTS IN THE PHARMACEUTICAL SECTOR

The pharmaceutical industry has recently come under scrutiny once again for the practice of offering bribes. GlaxoSmithKline was recently fined $489 million for corruption in China and is now looking into allegations of corruption in the United Arab Emirates.

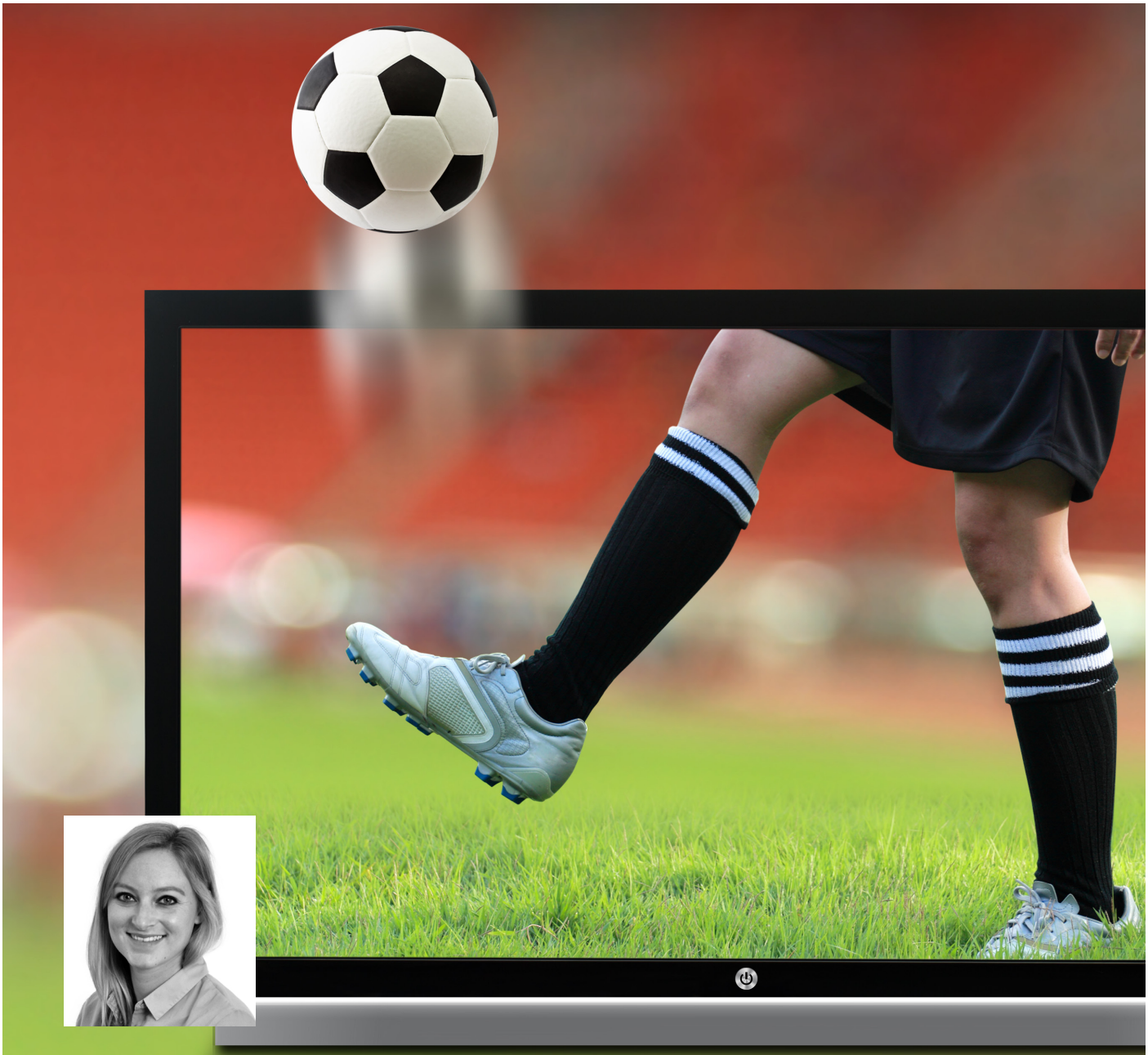
New entrants to the GCC pharmaceutical market should familiarise themselves with high-level policy initiatives currently under discussion at the Council of Ministers of Health at the GCC which will control the prices and discounts which may be offered on medicines. A mechanism to standardise medicine prices in member countries of the GCC is expected to be implemented in stages over the next four years, and which will be aimed at reducing and maintaining uniform prices of medicines and profit margins.

The UAE was one of the first GCC countries to introduce price controls for medicines. Article 64 of Federal Law No. 4 of 1983 concerning the Profession of Pharmacy and Pharmaceutical Institutions, prescribes controls over the price of medicines and pharmaceutical preparations, and regulates the payment process between all parts of the payment chain, from distributor through to patient. Ministerial Resolution No. 834 of 2008 clarified how to calculate drug prices, and Ministerial Resolution No. 171 of 2011 regulates the profit margins of distributors and pharmacies, and prohibits the offer of bonuses or discounts other than in accordance with the fixed margins. All commissions, incentives or any offer of a financial benefit are subject to these regulations, which are strictly enforced.

CONCLUSION

The region's population is expected to exceed 50 million by 2020, which will increase consumption of healthcare services. The GCC healthcare market is expected to grow at the rate of 12% per annum to meet the demand, with outpatient markets expected to account for 79% of overall market-share. The demand for healthcare services will create scope for increased insurance penetration, and in order that costs remain affordable, extinguishing corrupt claims and reimbursement practices will become a priority. The GCC countries are tackling the regional issue of corruption, having all become signatories to the United Nations Convention against Corruption (UNCAC).

In the UAE, Federal Decree No. 8 of 2006 implements UNCAC, and a new federal anti-corruption law aimed at curbing misappropriation of public money is currently awaiting implementation. Bribery is governed by Federal Law No. 3 of 1987 (the Penal Code), and in Dubai, local laws have been introduced governing the recovery of public and private monies obtained illegally. The combination of regional pressure, coupled with local law and health policy, has created a barrier to corrupt practices in general, and the practice of paying kickbacks specifically, and requires that providers act in accordance with sound legal and ethical principles when competing for their share of the healthcare market.





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# SPOTLIGHT ON ILLEGAL SPORTS STREAMING

Television piracy, and in particular the illegal streaming of sports programming, is a hot topic of discussion in the regional broadcast sector. Over the past year, beIN Sports has been the subject of significant press attention as a result of repeated 'black outs' in its coverage of English Premier League football matches due to online piracy of its live transmissions. This article gives an overview of illegal sports streaming and also highlights some of the key issues faced by broadcasters in the Middle East in their battle against piracy.

beIN SPORTS EXAMPLE

beIN Sports, the Qatar-based channel group, has exclusive live rights to English Premier League matches across multiple countries within the MENA region. The network is the subject of ongoing press attention because over the course of the last year it has blocked a number of games to which it has the live rights. This has resulted in complaints from disgruntled fans who have paid subscriptions to access channels in good faith, in the expectation that certain matches will be made available.

Reportedly, the key issue behind beIN Sports blocking such matches is that broadcasts were being illegally re-broadcast into other territories, such as the UK, where beIN Sports does not hold the rights. The Saturday 3pm English Premier League games are particularly popular for illegal re-distribution because Sky and BT in the UK are restricted from broadcasting those matches domestically (a historical decision taken to preserve ground attendance at lower league fixtures).

THE SCALE OF THE PROBLEM

The beIN Sports case is merely one example of a much broader problem. A large number of popular peer-to-peer and unicast website services enable users to view pirated streams of live sports, including football, for free. To give a sense of the scale of the problem, it has been reported that the English Premier League has detected and removed more than 45,000 illegal internet streams of its matches during the 2013 - 2014 football season. Following a recent arrest in the UK, it was estimated that the series of offending sites contributed to a loss across the relevant subscription services of more than £10 million.

The film and music industries experience similar problems with illegal file downloads. However, unlike downloading, when you stream the information is essentially broken down into packets of data that are then sent across the internet and reassembled on receipt. This means that live streams play near-instantly. Illegal streaming of sports therefore significantly undermines the economic value of broadcasting rights in the live coverage. If live coverage is available via the internet for free, then the rights holder will not be able to generate as much revenue from selling the live broadcast rights on an exclusive basis.

Arguably the effect of such economic loss is not just felt by the rights holder and licensees. The football industry is a good example of where revenue generated from the sale of broadcast rights is, in part, put back into the clubs.

With the wide availability of fast internet connections in the Middle East and a multi-cultural population with varied sports interests, these sites are popular. It is unfortunate that the disruption to beIN Sport's football coverage (as a result of illegal viewing overseas) is reportedly driving usage of such sites by consumers in the region in order to access those matches that are deliberately not being shown.

BROADER TELEVISION PIRACY ISSUES IN THE MIDDLE EAST

Whilst illegal file sharing of premium movies, television series and sports content remains a serious problem in the region, broadcasters tend to be focused on the fight against satellite piracy. In particular, broadcasters are clamping down on (i) pirate satellite channels (airing premium content without licences from the content owners) and (ii) the importation of set-top boxes and other hardware components from overseas, which can be utilised to give customers access to hundreds of legitimate channels at a lower price point than the incumbent offerings. It has been reported that in excess of one million set-top boxes capable of allowing illegal access to pay TV channels are imported into the GCC every year.

Although copyright legislation exists across the region, illegitimate services seek to exploit the difficulties of enforcement in particular jurisdictions. UAE copyright law, for example, states that a "broadcast authority" has the "Right to cease any communication of its records or programmes to the public in any manner, without [its] authorisation". The provision goes on to clarify that "Recording, copying, reproducing, renting out, broadcasting or re-broadcasting or presenting the same to the public in any medium shall be deemed as illegal exploitation". A "broadcast authority" means any authority which "carries out any radio audio, visual or audio-visual transmission". This therefore gives UAE broadcasters a degree of legislative protection. However, in practice it can be very difficult to identify the companies that are responsible for infringing the broadcasters' rights. Infringing entities may hide behind shell companies and broadcast into the UAE from other jurisdictions or via the internet.

The cost and difficulty of taking legal action (which is a common theme across many jurisdictions) is leading stakeholders to consider other options. For instance, when it comes to addressing online piracy (whether through illegal streaming or downloading), some governments are working directly with the ISPs to restrict access to offending sites. Another option is to target advertisers and agencies in an attempt to cut a key source of funding for such websites. For example, the City of London specialist intellectual property unit has created a list of illegal websites which advertisers and agencies can reference to ensure their clients' brands do not appear on those sites. The police and other regulatory authorities have a key role to play when it comes to enforcement in the context of satellite piracy.

Other options include pay-TV companies making value-for-money services more easily available. Increasingly we are seeing regional broadcasters buying the rights to make premium television series available on or shortly after the date the shows are broadcast in their countries of origin and video-on-demand offerings are ever improving. Another tack is to invest in monitoring systems, improved encryption and set-top box technology.

Education of consumers is also key. It is important for consumers to understand that ultimately, piracy affects consumers because it damages the industries that create the content they enjoy. The case in point of beIN Sports is evidence of piracy having a direct negative effect on fans.

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# TELEMEDICINE: HOW APPLE AND OTHERS MAY KEEP THE DOCTOR AWAY

With companies such as Apple and Samsung moving into the health data business, a significant shift in how the health industry interacts with patients using telemedicine is being predicted. It is timely that the Health Authority - Abu Dhabi has recently introduced regulations to define minimum standards for telemedicine as a means to provide healthcare services to patients in the Emirate of Abu Dhabi.

WHAT IS TELEMEDICINE?

The term "Telemedicine" generally refers to the use of information and communications technology to transfer medical information from one site to another to improve a patient's clinical health status.

Remote diagnosis and consultation through the application of telecommunications is not a new phenomenon. For example, back in the 1930s pioneers living in remote areas of Australia used two-way radios to communicate with the Royal Flying Doctor Service.

However advances in technology together with the growing availability of broadband on ultra fast fiber and 4G mobile networks means that right now telemedicine is rapidly evolving to cover a variety of applications using voice, video or image data.

Patient consultations via video conferencing, transmission of medical images, remote patient monitoring, e-health patient portals and continuing medical education are all now part of telemedicine.

Although most medical specialities lend themselves, at least in part, to having evaluations performed using telemedicine, specialities that require less direct patient contact, such radiology or pathology, have to date tended to be the best candidates for telemedicine.

Now mobile telemedicine is posed for significant innovation. While there are already many consumer focused telemedicine apps available, with big brands like Apple and Samsung making significant pushes into the area, telemedicine could soon become a mainstream proposition.

Apple recently unveiled its new Health app for health and fitness data and a cloud-based information platform known as "HealthKit" that can integrate data from across different providers and which is open to developers. HealthKit has been included by Apple in iOS8 the iPhone's new operating system that has just been released in conjunction with the iPhone 6.

Apple has also announced "partnerships" with a number of large healthcare institutions for developing consumer facing healthcare apps. These partners include Epic Systems, one of the largest suppliers of electronic medical record systems in the United States.

Samsung has unveiled a new hardware reference design called Simband for developers building devices or applications that leverage data captured through wrist worn sensors (either Samsung's or other manufacturers). The Simband connects to Samsung's new, open source SAMI platform, which uses a mix of hardware and a cloud backend for sensor data. Samsung

hopes its new software platform will bring together data from various sources to provide more helpful health data analysis

BENEFITS

The principle benefits of telemedicine include:

Improved access – Telemedicine allows patients living in remote areas to receive clinical care from doctors or specialists at a distance. Similarly, it allows the specialists and health facilities to expand their reach beyond their physical premises.

Convenience – Rather than have to visit a doctor's surgery for a consult, patients can do so from the comfort of their own home without exposing them to other sickly patients. This reduces travel time and stress for the patient and possible transmission of infectious illnesses.

Cost Efficiencies – Telemedicine can reduce the cost of healthcare and increase efficiency by better management of chronic diseases, sharing of professional staffing, reduced travel and fewer or shorter hospital stays.

By contrast, one of the main disadvantages with telemedicine is the perceived risk that personal health information may be compromised by transmission and offsite storage.

Regulators around the world have sought to set standards that balance enhancing the portability of personal health information for the better integration of health services, while at the same time improving accountability to protect the confidentiality of that shared information.

For example, in the US the Health Insurance Portability and Accountability Act 1996 sets out privacy and security standards for the use and distribution of health care information. The privacy rules regulate the use and disclosure of personal health information, while the security rules impose administrative, physical and technical security safeguards for electronic personal health information.

HAAD TELEMEDICINE REGULATIONS FOR THE EMIRATE OF ABU DHABi

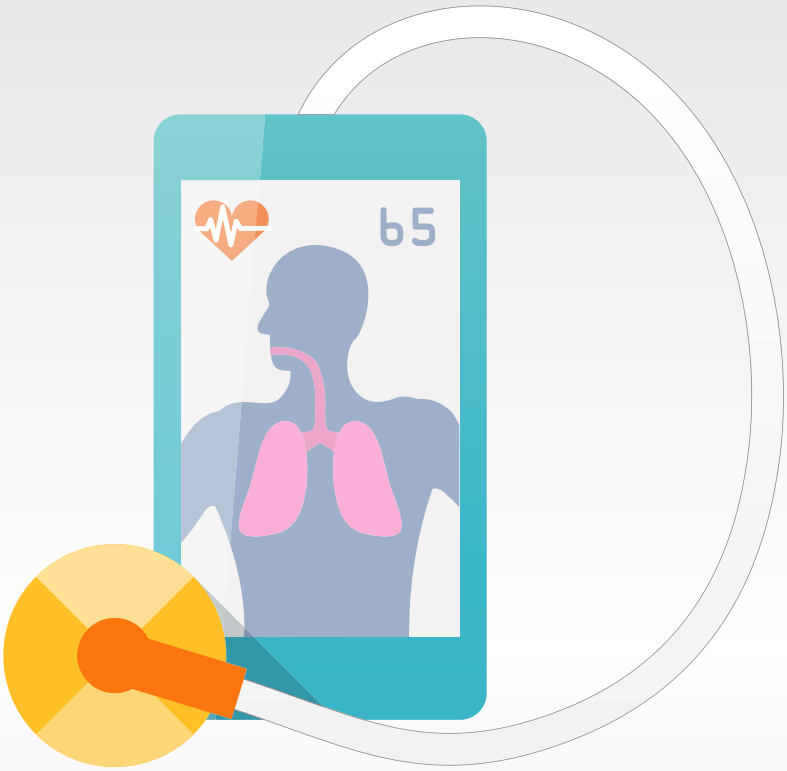
Consistent with the Abu Dhabi Economic Vision 2030 to develop a robust, world-class healthcare sector in the Emirate, in recent months the Health Authority - Abu Dhabi ("HAAD") has introduced regulations to define minimum standards for telemedicine as a means to provide healthcare services to patients in the Emirate of Abu Dhabi.

The HAAD Service Standards for Tele-counseling in the Emirate of Abu Dhabi, which came into effect on 25 November 2013 ("Tele-counseling Standard"), defines minimum standards for the use of tele-counseling and aims ensure the integrity of physician – to - physician counseling conducted via telemedicine interfaces.

The HAAD Standards for Tele-consultation in the Emirate of Abu Dhabi, which came into effect on 20 March 2013 ("Tele-consultation Standard"), defines minimum standards for the use of tele-consultation and aims to ensure the quality and safety of physician – to – patient telemedicine services.

Important features of the Tele-consultation Standard are, amongst other things:

- It defines the services that may be offered through tele-consultation services. Invasive clinical interventions are excluded.
- Outlines the principles of patient consent that have to be upheld.




- Requires that healthcare facilities wishing to provide tele-consultation services must be a HAAD licensed healthcare facility specifically licensed to provide tele-consultation or an existing HAAD licensed facility that is authorized by HAAD to provide tele-consultation.
- HAAD regulates healthcare professional's use of tele-consultation under the existing professionals licensing requirements (i.e. no tele-medicine licence will be required or issued for healthcare professionals wishing to provide tele-consultation services).

Key features of the Tele-counseling Standard are:

- It is the responsibility of the originating HAAD licensed healthcare facility/provider/professional to ensure that tele-counseling services are only sought from providers authorised by HAAD (where the provider is located in Abu Dhabi) or licensed by the relevant country regulator where the professionals/providers are located outside of Abu Dhabi. The primary responsibility for the clinical and medical healthcare with the HAAD licensed local facility, where the local facility raises the tele-counseling request.

- The local facility that uses tele-counseling must have policies and procedures that govern the use of tele-counseling.

- It outlines the requirements for the arrangements (i.e. written agreements, memoranda of understanding and contracts) between HAAD licensed healthcare providers and tele-counseling service providers.

Under each of the Tele-counseling Standard and the Tele-consultation Standard the HAAD licensed healthcare professionals and providers using telemedicine to provide services have the broad duty to develop and implement clinical and quality governance systems to protect the privacy concerns of the patient and the confidentiality and security of their medical information and records at the relevant healthcare provider's site and during transmission. In particular, confidentiality, privacy and security of health data and records must comply with the requirements prescribed by the following other HAAD regulations:

- The data management policy in the HAAD Healthcare Regulator Policy Manual;

- HAAD Medical Record/Health Information Retention and Disposal Policy; and

- The HAAD Data Standards.

Under the Tele-counseling Standard and the Tele-consultation Standard the healthcare facilities and the healthcare providers respectively have to ensure that the telemedicine services meet certain technical standards, including:

- The equipment and devices is appropriate to support the telemedicine services.

- The equipment and devices are compatible with that of the distant site used to access the telemedicine services.

- Having appropriate systems in place to ensure sufficient availability of the network for critical connectivity.

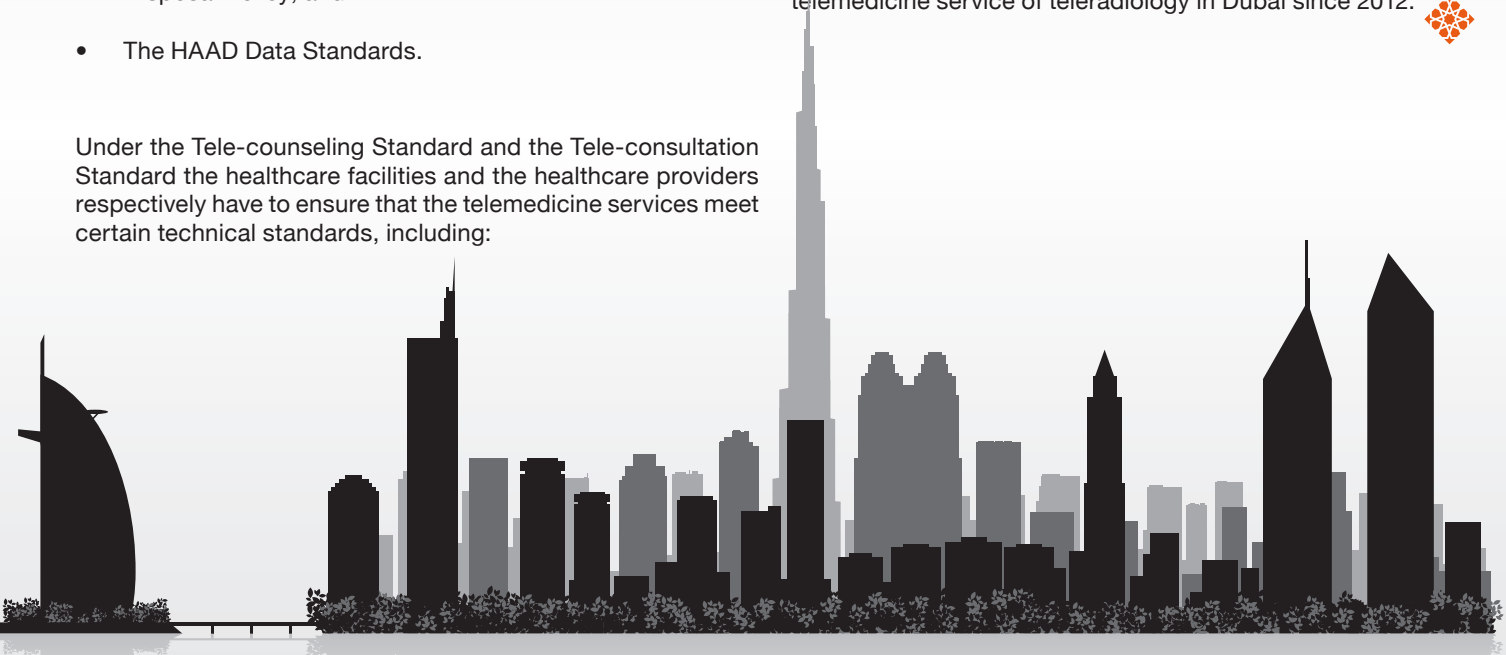
TELERADIOLOGY SERVICES IN DUBAI

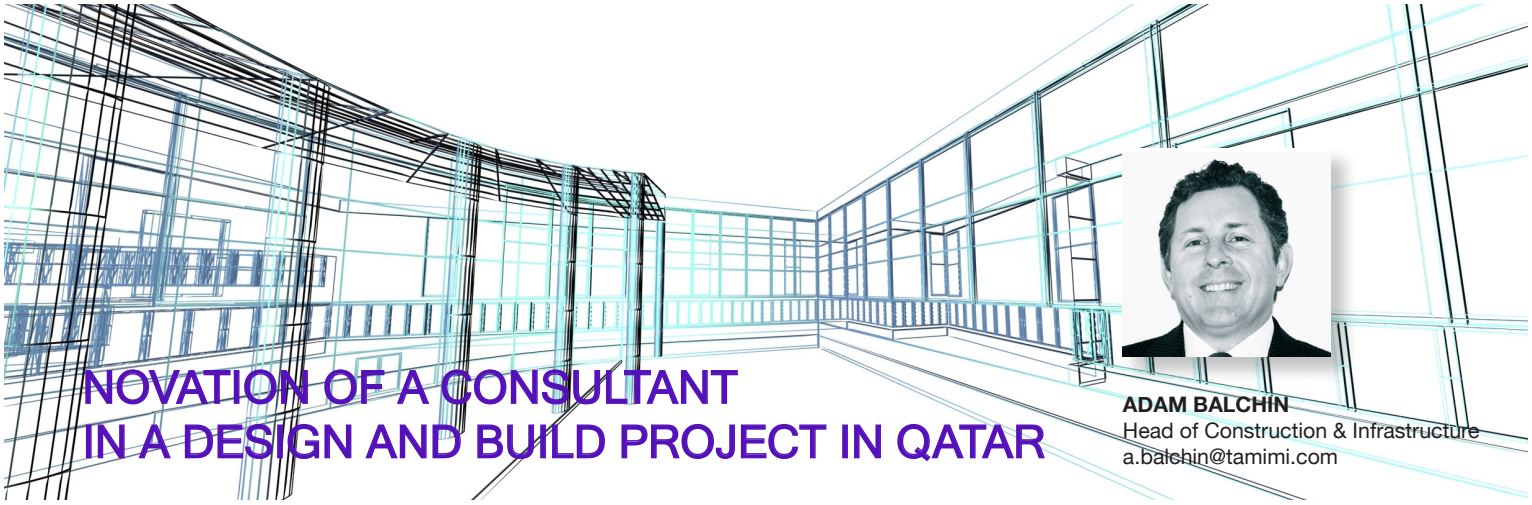
Since 2012 the Dubai Health Authority ("DHA") has regulated the use of the specific telemedicine service of "teleradiology" in Dubai under the DHA Diagnostic Imaging Services Regulation. "Teleradiology" is defined in the DHA regulation as the transmission of diagnostic images and related data from one location to another for the purposes of interpretation or consultation.

Amongst other things, the DHA's teleradiology standards have express requirements as to the personnel at the transmitting site and the receiving site. The transmitting site should comprise of at least one full time radiologist, one radiographer and a system manager with informatics certification, whereas the receiving site should employ a radiologist licensed in the country the service is provided.

NEED HELP?

Telemedicine is emerging as a significant service delivery mechanism for healthcare in the 21st century. Telemedicine's growing potential also raises a number of legal, clinical and technical questions for regulators. HAAD has recently responded by setting minimum standards for telemedicine as a means to provide healthcare services to patients in the Emirate of Abu Dhabi. The DHA has regulated the use of the specific telemedicine service of teleradiology in Dubai since 2012.





# NOVATION OF A CONSULTANT IN A DESIGN AND BUILD PROJECT IN QATAR



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Novation of a design consultant to a main contractor is often seen in a turnkey project and offers potential benefits to project participants. A novation needs to be properly documented and, if possible, the employer's initial agreement with the consultant and the contractor should require them to enter into a novation agreement if the employer later so elects.

HOW DOES IT WORK?

A design consultant novation occurs when a consultancy agreement signed between an employer and consultant for initial design services, is replaced with a new contract on (usually) the same terms, under which the contractor engages the consultant as if the contractor had originally contracted with the consultant. A novation agreement documents this relationship change between the parties.

In a design and build procurement, it is common for an employer to appoint a consultant to prepare a design brief or concept design and then break ties with the consultant, and transfer the design and responsibility for the design to the main contractor by novation. The main contractor will be best placed to develop the design and the buildability of the design will become a natural consequence of this risk transfer.

Novation of a design consultant is often a desirable strategy for an employer, given that:

- the employer has control of the early design and choice in the design consultant;
- the contractor will assume a single point of contractual responsibility for construction as well as design; and
- the transfer to the contractor of the responsibility for the design should promote a more buildable design, without undesirable document discrepancy risk being retained by the employer.

At the same time, the contractor will have the comfort that as the novation assumes that the contractor and consultant had entered into the novated consultancy agreement before any design had commenced, the contractor would have recourse against the consultant if it turned out that the consultant had made any errors in the design prepared before its engagement with the contractor.

DOCUMENTING THE NOVATION

In an ideal world the form of the novation agreement, including the agreement of the consultant (and the contractor) to any novation at the employer's discretion, will be included as an appendix to the initial agreement which appoints the consultant and the construction contract which appoints the contractor.

Articles 381 to 386 of the Qatari Civil Code deal with novation and require express approval of the parties prior to a novation taking effect. Thus, the consent of all parties is required to effect a novation of the design consultant in the scenario discussed above. The novation agreement achieves this purpose. A clause inserted in the original consultancy agreement and construction contract that requires the consultant and contractor to enter into a novation agreement, if the employer decides to pursue the novation option, will go a long way to facilitating any novation to occur in the smoothest manner possible.

If an employer does not obtain agreement to a potential novation from the consultant and contractor as part of their original agreements with the employer, there is no pre-agreement by these parties to the novation at a later stage. Ensuring that parties are 'on board' with the possibility of such a novation when they are originally engaged, will minimise the hardship that is likely to be encountered if the employer attempts to force a novation.

The drafting of the novation agreement should ensure that:

- care is taken to avoid creating unnecessary conflicts of interest between the parties;
- separate lists of services that the consultant will perform for the employer and the contractor are incorporated; and
- the contractor and the employer are granted a suitable warranty by the consultant for any losses arising out of services performed pre-novation.

For an employer seeking to prepare and enter into a novation agreement, it is critical that the agreement is drafted in clear terms, as omitting obligations on the consultant or the contractor may defeat the point of the employer's intended transfer of obligations. It is also important that the novation agreement imposes only specific acceptable obligations and liabilities on the consultant and the contractor, without seeking to impose illogical duties on these parties. A clear and simple agreement will give the employer the best chance of having the agreement signed by the parties, if that is what the employer wants once the project is up and running. *This article first appeared in Qatar Construction News October edition.*

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# THE NEW IRAQ ELECTRONIC PAYMENT REGULATION

At the beginning of April 2014, and according to Article 27 of the Electronic Signature & Electronic Transactions Law No. 78 of 2012, which stated that the electronic transfers of money should be regulated by a regulation that to be suggested by the Central Bank of Iraq (CBI), the Iraqi Council of Ministers issued Regulation No. 3 of 2014 regarding the Electronic Payment Services of Money (The "Regulation"). This Regulation covers all the electronic payment activities including issuing the electronic payment tools, managing the deposits and cash withdrawals through ATMs and selling points, implementing of electronic payment processes (payable and receivable) that their money be guaranteed by the credit of the services user or by any means of digital communications or information technology, and implementing of electronic payment processes in accordance with the overall settlement system or the clearing mechanism system.

THE PROVIDER OF THE ELECTRONIC PAYMENT SERVICES (THE "PROVIDER"):

The Provider of such services should be licensed by the CBI. The license is valid for 5 years, and can be renewal based on a written request submitted by the Provider to the CBI within 90 days before the license expiry date. The Provider should be a legal entity, has the technical and organisational skills to operate the required mechanism, taking all measures to secure and protect the electronic transactions, ensures that the CBI can enter into the used system at any time for the supervision and control purposes, and has submitted an economic feasibility study to the CBI in this regard. The Provider is able to appoint an agent/s and authorise him to provide the electronic payment services. The Provider should submit to the CBI all the agent information including name, address, the internal control mechanisms used by the agent, description to the provided services by the agent, and any additional information considered necessary by the CBI. The agent name will be recorded in a record that can be seen by the public at the CBI, and the Provider is obliged to inform the CBI with any changes related to the agent to be amended in the above mentioned record. Article 16 of the Regulation listed the Provider obligations as following:

1. Implementing the settlement processes through the immediate overall settlement system.
2. Providing interoperable systems according to the technical standards set by the CBI.
3. Providing the CBI with the required measures and procedures according to the Money Anti-Laundry Laws.
4. Providing appropriate measures to protect the security and confidentiality of information from any intrusion and to protect customers' records and information based on the laws and international best practices, which shall be reviewed periodically.
5. Determining the procedures that regulate the agents' work and the selling points.
6. Operating a payment system which is able to contribute to the effective and stable performance in the financial system, in line with the best international practices and standards related to the electronic payment systems, including the infrastructure principles of the financial market issued by the Bank for International Settlements.
7. Providing electronic payment services which comply with the standards and instructions issued by the CBI.
8. Adopting appropriate regulatory measures in order to reduce the risk of loss or lack of related funds or assets.
9. Sending the electronic payment accounts data to the CBI separately from the consolidated balance sheet attached with it, in case that the Provider provides other activities than the electronic payment services.
10. Providing the CBI with the required data and information related to the provided electronic payment services, and the compliance to the conditions imposed by the CBI.
11. Determining the appropriate means which enable the CBI to directly enter into the used electronic system by the Provider for the supervision and control purposes.
12. Preparing database to the customers.
13. In addition to the above obligations, and if the Provider providing the electronic payment services through the

mobile phone, he is obliged to:

14. Sign written agreements with mobile operators, and provide the CBI with copies of the same.
15. The payment process to be inside Iraq, and by national currency.
16. Settlement of accounts through the immediate overall settlement system, or doing the same through a guarantor bank in the absence of a settlement bank account.

HOW TO DO THE ELECTRONIC PAYMENT PROCESS? AND WHAT IS THE SERVICE CONTRACT IN SUCH PROCESS?

According to the Regulation, the electronic payment process can be done when the Provider informs the customer (in advance) by the maximum time to proceed with the payment process, in addition to provide the payee with the other necessary information such as the Identification Number, payer information, the paid amount (in the currency that used in electronic payment account where the amount deposited), exchange rate adopted by the Provider, Provider fees, and the amount entitlement date.

The electronic payment command considered as delivered to the Provider at the time when the latter received the payment directly or indirectly from the payer, and if the delivery time was in a day which is not within the Provider's working days, so the command considered delivered to the Provider as the first command in the next working day. In case that the Provider refused to proceed with the electronic payment process, he shall inform the customer with the reasons for rejection, and the corrective measures for the mistakes that led to the rejection. The customer cannot withdraw the electronic payment command after the same delivered to the Provider. The Provider fees should be deducted from the customer as soon as the money transfer process completed unless there is an agreement between the payer and the Provider that the latter fees can be deducted from the transferred amount before recording the same in the payee account provided that the total amount and the fees amount should both be clearly mentioned in the information provided to the payer.

The contracts of the electronic payment services are divided to "continuous service contracts" (contracts that organising continuous payment services to customers) and "single service contracts" (contracts that organising the use of the electronic payment service once). Continuous service contracts should include the following:

1. The Provider name.
2. The address and contact details of the Provider's headquarter (main office), or the agent in case that the service done thorough a Provider's agent.
3. The Provider's official information including the CBI license number and date.
4. Description of the key features of the electronic payment service that is going to be served.
5. The Provider fees.
6. The information that to be provided by the customer.

7. Information about protection measures and correction mechanisms in the event of an error.
8. The contract duration.
9. The maximum duration to implement the electronic payment services.
10. Calculating methods of the interest, and the possible changes in the same
11. Means of communication, which have been agreed upon between the parties, for the purpose of delivering the information or notices.
12. Guarantees for any improper use of the service.

Single service contracts should include the following:

1. Information about the payer, payee, paid amount, date, and time, and all should be recorded in the electronic payment special form.
2. The maximum period of time to complete the process.
3. The Provider fees.
4. The exchange rate adopted by the Provider.
5. The customer rights:

The customer has the right to know all of his rights and obligations. The Provider shall inform the customer in this regard, including placing a bulletin board at the entrance of the Provider's workplace. The customer has the right to be financially compensated in the case of delayed money transfers for the agreed period, and in the case of loss or lack of his money as a result of negligence or mismanagement.

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# MICRO STEPS, GIANT LEAPS

## INTRODUCTION

One of the lesser known facts about Jordan is its highly developed microfinance market, which competes with other similar markets on an international scale. Microfinance is a relatively recent concept invented in the 1970s, that refers to the provision of banking services to financially underprivileged people by providing small loans, otherwise known as microcredit. Jordan has several active microfinance institutions ("MFIs") operating within the country, and it has been said that the microfinance market is nearing saturation despite having penetrated Jordan only within the last two decades, a testament to its enormous popularity and demand. This financial instrument is also reputed to economically empower women, the majority of subscribers, with one statistic suggesting they constitute 75% of the market. Given its success it is no surprise that the Jordanian government is keen on developing the regulatory infrastructure further. This article will discuss two salient points in light of such developments: first, the new proposed legislation seeking to support and enhance the microfinance market and second, the issue of the prohibition of MFIs accepting deposits.

## THE CURRENT SITUATION

Currently there is no legal requirement to have a governmental licence in order to generally lend money, and, provided certain basic requirements are met, any permissible legal entity may engage in lending. Except for the fact that one must be a fully-regulated bank in order to accept deposits, the regulatory environment is relatively relaxed in this area, with several regulatory bodies used to govern the lending entities depending on the legal structure such entities assume. Accordingly, the nature of the legislation regulating this market is somewhat ad hoc and dispersed. The majority of MFIs are non-profit organisations and are regulated by the Ministry of Social Development, whilst profit-seeking MFIs are governed by the Companies Control Department at the Ministry of Industry and Trade. Furthermore, where the entity is a commercial bank, the Central Bank of Jordan ("CBJ") itself steps in to oversee its microlending activities. The Ministry of Planning and International Cooperation ("MOPIC") plays an important role in supporting the industry and requests MFIs to report certain indicators on a quarterly basis; however, MOPIC is not formally responsible for any kind of supervisory or regulatory activities. Thus, the problem with the current regime becomes apparent when trying to standardise all microfinancing activities under a consistent regulatory framework. There is no streamlined process for handling company registrations or treating tax, and financial reporting standards are not always adhered to by all MFIs. This is exacerbated by the fact that the market is fragmented by the various authoritative bodies which MFIs must report to according to their differing goals.

It is in light of the above issues that a proposed new bill, the Microfinance for Companies Regulation of 2014 (the "Regulation"), has been prepared. Once enacted, the Regulation will be the first legislation introduced into Jordan which directly and specifically governs microfinancing activities, and will hopefully bring all such activities within the ambit of a unified regulatory framework, spearheaded by the CBJ.

## THE PROPOSED LEGISLATION

The first major change in the new Regulation involves regulating the activity of lending from an MFI perspective. An an example, Article 3 of the Regulation specifies that no one is permitted to practise the activity of microfinancing unless licensed by the CBJ, and all companies engaged in such an activity must have the phrase 'microfinance' included in their trade name. As mentioned, it was previously the case that after having met some basic conditions, any permissible legal entity could lend money without needing to be licensed.

The new proposed legislation maintains the prohibition of MFIs taking deposits from its clients, pursuant to Article 10(b), in sharp contrast to several other microfinance markets which allow MFIs to accept deposits. This raises a serious question as to how commercial MFIs fund their operations

and generate profit, or how non-governmental organisations ("NGOs") survive without being able to use deposits to give out credit. As a result, the overwhelming majority of MFIs in Jordan currently depend on foreign subsidies, either in the form of direct loans or credit lines extended to MFIs, from a variety of donor agencies including the World Bank and USAID. Such funds are channelled through the CBJ itself. It seems that this will continue until a defined period when the CBJ feels that MFIs are meeting its required benchmarks. To a limited extent there is some equity funding being provided by local banks and international microfinance investment vehicles.

Although it is still prohibited to accept deposits, the Regulation permits MFIs to engage in a range of other activities which were previously left undefined. Article 10 of the Regulation specifies that all MFIs will be allowed to conduct the following:

- Grant loans;
- Provide finance in accordance with the Islamic Sharia, i.e. without interest (with further additional rules outlined in the Regulation);
- Act as an insurance agent;
- Act as an agent for mobile-payment services; and
- Any other activity the CBJ approves of.


The Regulation also specifies which types of companies are allowed to practise the above activities, and they must be either a limited liability company, a private shareholding company or a branch of a foreign company which is already providing microfinance services (subject to the requirements of the CBJ). The minimum start-up capital for any MFI company is at least 2 million JOD, and Article 4 clarifies that such a company may choose to be either a profit-making or a non profit-making entity.

All companies seeking a licence to provide microfinancing services must submit the following documents and information to the CBJ:

- Name of the company, memorandum and articles of association, address and number of branches;
- Founders' names and nationality and the nature of their work, start-up capital amount, and proof of their financial solvency;
- Authorised share capital;
- Organisational structure and an undertaking signed by the founders to abide by the specific conditions and criteria set out in this Regulation which concern senior management;
- Estimated budgets for the first three years;
- Audited financial statements signed by a chartered accountant for every legal founder for the past 2 years, if available;
- Details of the activities and services of the company; and
- Any other condition, demand or document the CBJ may request or stipulate.

If successful, the applying candidate will be granted a non-transferable licence of unlimited duration.

THE NEED FOR MFIS TO ACCEPT DEPOSITS

It is imperative that as the next milestone the CBJ focuses on adapting the Regulation to allow MFIs to accept deposits. This will ensure that all MFIs are provided with a vital source of stable income and facilitate the process of making them independently subsisting entities. It should also stimulate even greater interest in the microfinance market, by offering a variety of previously-unavailable products to potential customers. Thus, the enactment of the above Regulation is a conscientious step sure to be welcomed by all practitioners of the microfinancing industry. The next step should be the CBJ granting permission for MFIs to accept and, therefore, make use of deposits.

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# HEALTH PLANNING AND CONSULTANCIES IN DUBAI

A sector that has remained largely immune to economic fluctuation in Dubai has been the health sector, which, given the government of Dubai's objective to make the Emirate a preferred destination for medical tourism, continues to experience robust growth. Concurrent with this growth, activities supporting the healthcare sector have been on the rise. One such supporting activity is providing consultancy services to the health sector.

Under the Department of Economic Development's classification list, this activity is codified as 851909 and described as health planning and consultancies. Under this activity, corporate entities can provide consultation and feasibility studies to health facilities, including hospitals and clinics, to determine requirements of medical equipment and supplies, technical staff qualification, as well as providing suggestions on health facility engineering layout and setting up health quality assurance program to promote the service level of these health facilities.

This article discusses certain regulatory considerations being faced by investors wishing to provide Health Planning Consultancies in Dubai.

In mainland Dubai, the activity of Health Planning Consultancies can be licensed, but under the current policy of Department of Economic Development, issuance of such licence is restricted to sole establishments, civil partnership companies and branches of foreign companies set up under Federal Law No. 8 of 1984 Concerning Commercial Companies. A limited liability company, which is generally the preferred form of corporate entity, cannot currently be licensed to conduct the activity of Health Planning Consultancies.

This restriction poses a challenge for an investor who wishes to conduct the activity of Health Planning Consultancies in the UAE through a limited liability company. To add to this complexity, none of the free zones, other than Dubai Healthcare City, license an activity as wide as activity number 851909. Therefore, as the current regulatory practices stand, there are no other options available for a prospective investor who wishes to provide the services under Health Planning Consultancies. Practical considerations such as lack of office space or preference for another free zone can make provision of Health Planning Consultancies through a limited liability company virtually impossible.

Recently, a party approached Dubai Silicon Oasis, a free zone in Dubai, with a proposal to allow the licensing of Health Planning Consultancies as described as activity number 851909. Dubai Silicon Oasis agreed to license this activity, subject to an approval from the Dubai Health Authority. Given the nature of the activity of Health Planning Consultancies, the premise of the proposal was that an approval from Dubai Health Authority would not be required, as under this activity a corporate entity does not provide any medical or health services.

Dubai Silicon Oasis and the Dubai Health Authority, initially showed reluctance, however, in successive deliberations, both Dubai Silicon Oasis and Dubai Health Authority accepted the

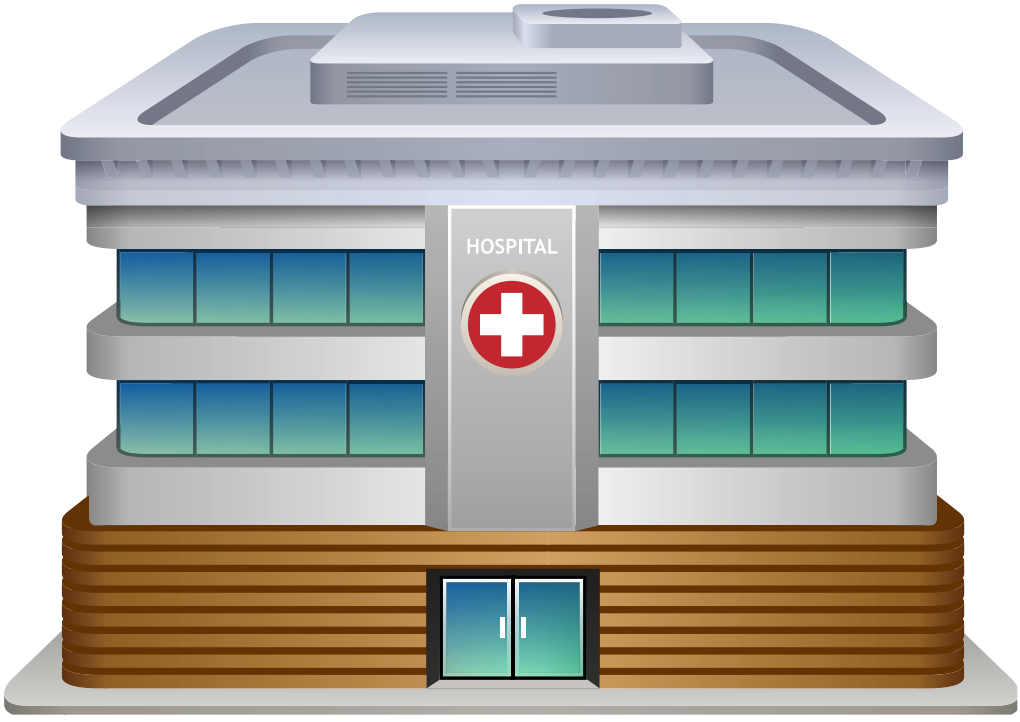
view that no such approval from the Dubai Health Authority would be required for setting up a free zone limited liability company in Dubai with Silicon Oasis to conduct the activity of health planning and consultancies.

Based on this, a corporate entity can now be set up in the free zone of Dubai Silicon Oasis as a free zone limited liability company with the licensed activity of Health Planning Consultancies, without the approval of the Dubai Health Authority. The advantages of setting up in Dubai Silicon Oasis are as follows:

- The activity of health planning and consultancies can now be licensed;
- Permitted 100% ownership of the free zone company by a foreign investor;
- Dubai Silicon Oasis is relatively inexpensive compared to other free zones in Dubai; and
- Dubai Silicon Oasis, like other free zones in the United Arab Emirates, provides certain benefits to the investors, including:
    - No requirement for a UAE national sponsor / partner;
    - No imposition of corporate tax;
    - Import / export duties exemptions;
    - No restriction on repatriation of capital or profits.

To ensure that the free zone company in Dubai Silicon Oasis can be set up for the activity of health planning consultancies and expand into mainland Dubai (so that it can bid for government projects, etc.), the free zone company will be able to set up a branch office in mainland Dubai. In this regard, discussions with the Department of Economic Development have confirmed that it will have no objection to licensing such a branch as long as a no-objection letter from Dubai Silicon Oasis is obtained. A benefit of this structure is that it will facilitate setting up branches and subsidiaries in mainland Dubai and outside of the UAE, subject to the laws of the local jurisdiction.

This structure should support the objective of Dubai government to make the Emirate a destination of choice for health related services by facilitating experts providing health related services and services supporting the health sector to set up a limited liability company in Dubai which is 100% owned by foreign investors.



# NEWS AND EVENTS

## AHMAD SALEH DELIVERS PRESENTATIONS ON PATENTS CONSIDERATIONS IN COMMERCIAL TRANSACTIONS AND INTELLECTUAL PROPERTY

On 20 October 2014, Regional Head of Patents & Designs from the Intellectual Property department, Ahmad Saleh, hosted an informative breakfast seminar in Abu Dhabi about patents considerations in commercial transactions. The seminar was well attended and well received by the attendees who interacted extensively with Ahmad regarding their queries and expressed a lot of interest on patents and innovations. Ahmad had also invited two startup entrepreneurs to share their experience about a successful startup company that launched recently in the GCC in the field of e-commerce.

Ahmad also presented at a workshop on intellectual property, protection and commercialisation at the Khalifa University on 27 October 2014. Ahmad spoke first about the innovation ecosystem and the patent system in the GCC region, and then joined a panel to respond to the audience queries about innovations and patents in the region and worldwide. The conference was attended by key players from both the private and public levels. Ahmad's presentations had a lot of positive influence on attendees and received the attention of the press which lead to the publishing of an article covering Ahmad's presentation in the Khaleej Times.

Additionally, Ahmad presented at Heriott Watt University on research, innovations and patents where he had a very interactive session with science students and faculty members attended.


## AL TAMIMI & COMPANY INVITED TO PARTICIPATE IN MAJOR SPORTS AND EVENTS CONFERENCE IN DURBAN, SOUTH AFRICA

Regional Head of Sports Law and Events Management at Al Tamimi & Company, Steve Bainbridge was recently invited to South Africa to participate in the Sports and Events Tourism Exchange (SETE) conference which took place from 28 to 30 October 2014 in Durban. Steve was selected to moderate a panel session entitled 'The Role of Media in Supporting Sports Events' which included strategic business people involved in organisation and implementation of numerous high-level sporting and leisure events in South Africa. The SETE Conference aims to provide a platform to exchange ideas that contribute to building and enhancing the sport tourism and event industries in South Africa and Africa as a whole.

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## AL TAMIMI ENSURES THAT FRANCHISES ARE "MIDDLE EAST READY"

Partner of Commercial Advisory practice, Marcus Wallman, presented at the Middle East Franchise Expo on the practical issues that both franchisors and franchisees need to be aware of to ensure that their franchise agreements are "Middle East ready". Marcus drew on his 10 years of experience with dealing with franchise arrangements in the Middle East to give attendees practical tips on ensuring that their documentation regarding franchising arrangements take into account matters that are specific to the region. These include franchisees ensuring that any agreement allows them to establish appropriately licensed group entities in countries covered by a franchised territory and being allowed to tailor concepts to take account of local cultural and religious sensitivities and franchisors ensuring their trademarks and other IP are appropriately protected.

The Middle East Franchise Expo, held at the Jumeirah Beach Hotel Convention Centre on 21-22 October 2014, is run in conjunction with the Middle East and North Africa Franchise Association and this year showcased the latest national and international brands, products and services of over 70 companies.

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## AL TAMIMI LAUNCHES LITIGATION CLINIC

On the 29 October 2014, the Abu Dhabi saw the launch of its first Litigation Clinic. This new initiative identified common and important litigation issues and shed some light on the concerns faced during the litigation process and the court's application of the law; and most importantly, how litigation works. In particular, the presenters Partner El-Ameir Noor, Senior Associate Ayen Biar and Associate Abobakr Dafalla addressed the topics of liquidated damages and the UAE Court's application of the liquidated damages. The interactive seminar was both well attended and well received by our clients.

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## AL TAMIMI PROUDLY SPONSORS INDIA SHIPPING SUMMIT

Al Tamimi sponsored the India Shipping Summit, which took place from 13 to15 October 2014 in Mumbai, India. This summit was in its 10th edition and is annually supported by the Indian Government and the Ministry of Shipping. Partner Omar Omar and Senior Associates Janci Karri and Zeina Wakim from the Transport team were in attendance. The summit looked at the past, present and future developments of the shipping industry in India. Current issues were debated, along with the highs and lows of the sector over the past decade.

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## SHARJAH ECONOMIC DEVELOPMENT DEPARTMENT VISIT AL TAMIMI'S HEAD OFFICE

On 30 September 2014, senior delegates from the Sharjah Economic Development Department (SDED) visited Al Tamimi & Company's head office in Dubai.

The visit comes in sequence of initiatives to show the strength of cooperation and relationship between the IP practice and local government agencies. During the visit, parties were able to discuss the opportunities of cooperation and preliminary brainstorming of future governmental local events that aim to increase the awareness of Intellectual property rights.

Mr. Ali Fadil, Head of SDED's IP Department and Commercial Protection Division, valued the role played by Al Tamimi in its support to governmental agencies in anti-counterfeiting efforts. On other hand, Mr. Ahmed Al Suradi, who oversees the International Relations division, emphasised the necessity to cooperate with local companies to support the business and economy growth that the emirate of Sharjah is aiming to achieve.

Partner Munir Suboh, welcomed the delegates in Al Tamimi's head office located in Dubai International Financial Centre and conveyed the firm's appreciation of the key role that SDED plays within the emirate of Sharjah to ensure consumers protection. Parties have agreed to continue the improvement of cooperation level in the field of commercial protection and enforcement of intellectual property rights in the emirate of Sharjah in order to reduce the challenges and obstacles that brand owners face when initiating anti-counterfeiting and commercial protection campaigns.

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## AL TAMIMI & COMPANY HOSTS TRADEMARK BREAKFAST SEMINAR IN KUWAIT

On 20 October 2014, Partner and Regional Head of Intellectual Property, Omar Obeidat, Senior Associate Rasha Al Ardah and Associate Tarek Abu Mariam presented a Trademark Seminar at Holiday Inn downtown Kuwait. The breakfast seminar consisted of attendees from mainly Kuwaiti based businesses, including airlines, banks, insurance companies, fashion and media. The lawyers spoke on principles of brand clearances, and how to choose and launch brands safely and ensure the brand is sustainable and capable of protection. The speakers then addressed the proper measures to protect trademarks in the region and also examined the avenues. The speakers concluded by giving recommendations for brands destined to becoming global.

This series of Intellectual Property seminars offered to local based clients has already began its way through seminars offered to clients in Dubai, Abu Dhabi and Kuwait, with Riyadh targeted for 2015.

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# IBA Tokyo 2014

Al Tamimi & Company would like to congratulate the IBA on yet another successful annual conference. Captured above are the delegates from Al Tamimi & Company that were in attendance including:

- Essam Al Tamimi (Senior Partner)
- Samer Qudah (Partner & Regional Head of Corporate Structuring)
- Ibtissam Lassoued (Partner, Financial Crime)
- Steve Bainbridge (Regional Head of Sports Law)
- Nick O'Connell (Senior Associate, TMT)
- Laila El Shentenawi (Associate, Arbitration)

United Arab Emirates
Ministry of Justice

44th Year
Issue No. 570
6 Dhu al-Hijjah 1435 AH
30 September 2014

## FEDERAL DECREES

92 of 2014 Appointing the Deputy VC for Student Affairs and Enrollment, United Arab Emirates University.

94 of 2014 Terminating an appointment for special tasks at the Ministry of Foreign Affairs.

95 of 2014 Reshuffling the Board of Directors of the UAE Central Bank.

96 of 2014 Appointing the Head of the General Authority of Islamic Affairs & Endowments.

## REGULATORY DECISIONS OF THE CABINET

31 of 2014 UAE Regulation on Monitoring Electric Elevators in Buildings and Establishments.

32 of 2014 Regulation on Procurement & Warehousing in the Federal Government.

## MINISTERIAL DECISIONS

- From the Ministry of Labor:

797 of 2014 Minister of Labor decision to cease granting work permits to establishments that fail to satisfy final judgments delivered in labor cases.

- From the Ministry of Environment & Water:

567 of 2014 Minister of Environment & Water decision promulgating the regulation on planning, operation and execution of works of establishments engaged in crushing and quarrying.

- From the Ministry of Economy:

6 of 2014 Minister of Economy decision revising the articles of association of Gulf Finance Corporation PJSC.

262 of 2014 Minister of Economy decision revising the articles of association of Abu Dhabi Islamic Bank PJSC.

476 of 2014 Minister of Economy decision announcing the incorporation of Al Mirfa Power Holding Company PJSC.

478 of 2014 Minister of Economy decision announcing a revision of the articles of association of Gulf Finance Corporation PJSC.

514 of 2014 Minister of Economy decision announcing a revision of the articles of association of Al Maarifa International Private School PJSC.

| | |
|---|---|
| 539 of 2014 | Minister of Economy decision announcing a revision of the articles of association of Al Benaa Real Estate Investment Company PJSC. |
| 564 of 2014 | Minister of Economy decision revising the articles of association of Union Properties PJSC. |
| 586 of 2014 | Minister of Economy decision announcing a revision of the articles of association of Injaz Mena Investment Company PSC. |

## ADMINISTRATIVE DECISIONS

- From the Department of Economic Development:

| | |
|---|---|
| 295 of 2014 | Decision of the competent authority in the Emirate of Dubai approving the incorporation of Amanat Holdings PJSC. |

14 Offices

8 Countries

49 Partners

290 Lawyers

540 Staff

45 Nationalities

- Arbitration
- Banking & Finance
- Commercial Advisory
- Construction & Infrastructure
- Corporate Governance
- Corporate Structuring
- Employment
- Equity Capital Markets
- Family Business
- Financial Crime
- Financial Services Regulation & Enforcement
- Healthcare
- Hospitality
- Insurance
- Intellectual Property
- Legislation & Drafting
- Litigation
- Mergers & Acquisitions
- Property
- Regulatory
- Sports Law
- Technology, Media & Telecommunications
- Transport

## About Al Tamimi & Company

As the largest law firm in the Middle East, Al Tamimi & Company knows more than just the law. We pride ourselves on understanding the business environment in which we operate ultimately benefiting the clients we work with.

Established in Dubai in 1989, we have offices in Bahrain, Iraq, Jordan, Kuwait, Qatar, Oman, Saudi Arabia and the United Arab Emirates with more than 290 lawyers and over 540 staff. We are proud of where we have come from and excited about where we are heading.

As a full service law firm, we specialise in a range of practice areas - each being a genuine strength. We provide not only professional expertise but superior client service and quality strategic advice. We combine internationally qualified and experienced lawyers with lawyers who have deep local roots. Along with this, the ability to practice local law in each of the jurisdictions we are present, rights of audience before local courts, and licensed litigators in each of our offices, really sets us apart.

We have advised on some of the most complex legal issues and continue to be at the forefront of business and legal challenges facing our clients.

> *"This leading firm is noted for its significant presence in the market and its depth of knowledge and experience."*
>
> Chambers, 2013

# Our Regional Footprint

With a focus on the Middle East, we have a strong understanding of the business environment that our clients operate in. This, combined with our full range capabilities, ensures that clients receive sound, strategic legal advice.

With lawyers in 14 offices across 8 countries in the region who are dedicated to working together interactively, we can respond knowledgeably and efficiently on any legal aspect across the region.

- **UAE**
  - Abu Dhabi
  - Dubai, DIFC
  - Dubai Internet City
  - Dubai, The MAZE Tower
  - Ras Al Khaimah
  - Sharjah
- **BAHRAIN** (Manama)
- **IRAQ**
  - Baghdad
  - Erbil
- **JORDAN** (Amman)
- **KSA** (Riyadh)
- **KUWAIT** (Kuwait City)
- **OMAN** (Muscat)
- **QATAR** (Doha)

Our unified approach illustrates our ability to work together with our clients, address their issues and identify reasonable commercial solutions by building close relationships with them. We recognise the importance of being easily accessible, commercially aware and at the leading forefront of market developments.

We employ a diverse group of talented individuals from varied backgrounds and with differing perspectives. They are each familiar with international and local business customs and are capable of addressing issues in a collaborative manner. By having the ability to look at matters from every angle, we can apply our expertise confidently and decisively – providing integrated solutions to legal and commercial issues in the Middle East.

# Accolades

– An –
IN-HOUSE COMMUNITY
ASIAN-MENA COUNSEL
Firm of the Year
2013

CORPORATE COUNSEL MIDDLE EAST AWARDS 2013
WINNER MIDDLE EAST LAW FIRM OF THE YEAR

TRADE and EXPORT
EXCELLENCE AWARDS 2013

IFLR
INTERNATIONAL FINANCIAL LAW REVIEW
WINNER
MIDDLE EAST AWARDS
2013

# Publications

Available at www.tamimi.com


Our monthly magazine, Law Update, has been in publication for 20 years with over 275 editions published.


*"This regional heavyweight has developed a strong reputation for advising on local law matters from an international perspective."*

Chambers, 2013

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# Construction Law, Arbitration and Dispute Resolution in the UAE

**Monday, 26 January 2015 | 9:00am to 6:00pm | Dubai, UAE**

**Al Tamimi's Arbitration Team, along with special guests, will be presenting an all-day conference on topical issues and practical guidance on matters relating to construction disputes and arbitration in the UAE.**

**The session will cover the following topics:**

- Regulatory Process
- Construction Law in the UAE
- Pros and Cons of Arbitration
- Preparing for the Hearing
- Tips on Pleadings, Evidence and Advocacy
- Shared Experiences of Construction Disputes
- Topical Issues of Arbitration in the UAE
- Construction Disputes in the UAE Courts
- Dispute Adjudication Boards
- Mediation
- Survey Results and Questions to Panel

**Keynote Speakers:**

**Essam Al Tamimi** *Al Tamimi & Company*

**Dean O'Leary** *Al Tamimi & Company*

**Faisal Attia** *Al Tamimi & Company*

**Rachel Ansell QC** *4 Pump Court*

**Nick Husteiner** *Architect/Expert*

**Christopher Miers** *Architect/Expert*

For more information on this event and a detailed agenda, please contact *events@tamimi.com*