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LAW UPDATE

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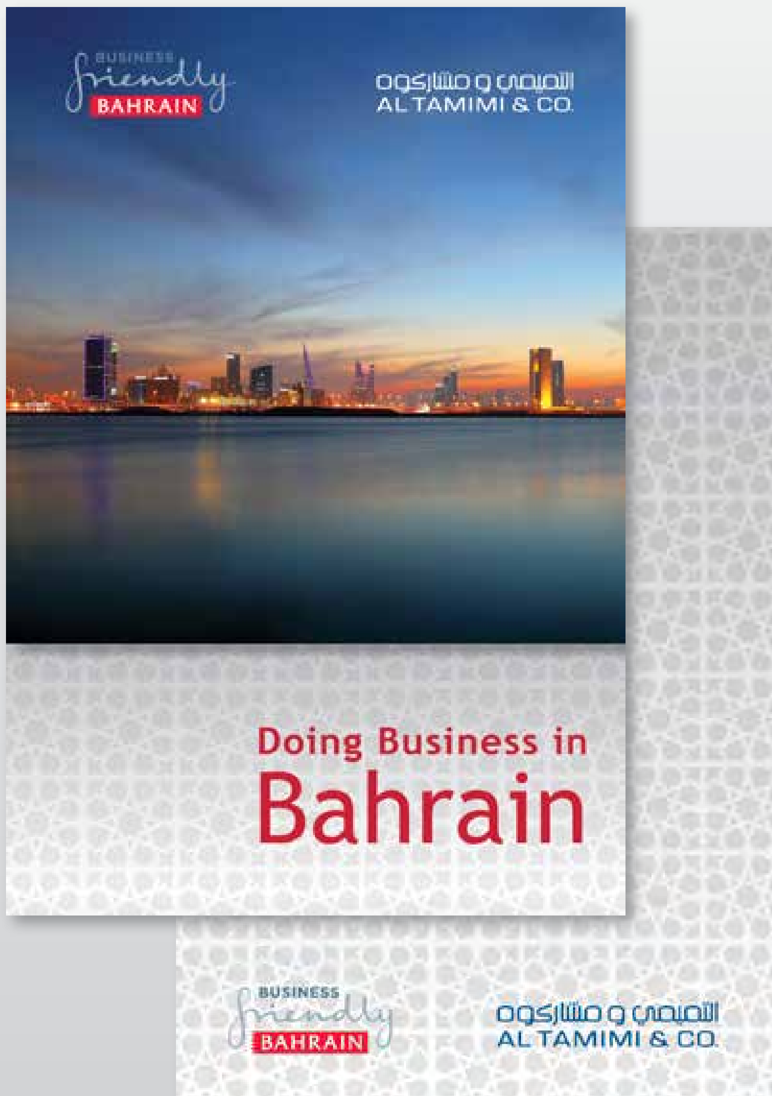
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In this Issue

Welcome to Law Update.

The year has started with much optimism which I hope will continue throughout 2017. May it be a very successful year for us all.

I am pleased to inform you that my Deputy and Co-Head of Litigation, Hassan Arab, recently completed his PhD in Arbitration with the University of Essex in London and was presented with his Doctorate earlier this month. I'd like to take this opportunity to congratulate him on this wonderful achievement which reinforces his expertise, knowledge and commitment to the profession. Dr. Hassan worked very hard to earn this and we are all very proud.

This edition of Law Update focuses on Intellectual Property. Our IP team has been a leader in IP policy work for many years. Aside from working with multinational and local companies and governments across the world, the team has strengthened their position through participation on various related boards including the GCC Brand Owners Protection Group, Dubai Government's IP Advisory Board, and active membership of the International Trademarks Association.

The featured articles relating to IP begin on page 42 with a summary of the key considerations in protecting your Trademark, through to leading R&D innovation on page 54.

Essam Al Tamimi this month looks at the new UAE Penal Code relating to Arbitrators. His article, which first featured in Global Arbitration Review, has been published for our clients in our newsletter and can be found on page 12. Essam provides a very interesting perspective.

As Donald Trump prepares to take office, it seems an opportune time to review the Justice Against Sponsors of Terror Act (JASTA) from a Middle East perspective. Our Financial Crime team put their views forward in an article that can be found on page 14.

We have some interesting news from Saudi Arabia this month which relates to the Vision 2030 that was announced in 2016. Two of the key sectors for the Kingdom are discussed where we look at developments in the Sports sector on page 59 and opportunities for the Healthcare sector on page 60.

As always, I do hope you find the information we've presented you of great interest. If you would like any further information or if you have any feedback, I invite you to contact me personally.

All the best

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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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Sale of Ships: The Enforceability of Article 121 of the UAE Maritime Commercial Law

This article is a review of the Dubai Court of First Instance's judgment regarding the sale of a ship via auction. This judgment's importance arises from the fact that the Dubai Court of First Instance has for the first time applied Article 121 of the UAE Maritime Commercial Law in its judgment. This Article was previously ignored by the Dubai Courts.

Background

On 24 June 2016, a ship owners and its subsidiary (the "Defendants") sent a purchase order to a bunkering company (the "Claimant") for the purchase of bunkers. The Defendants requested that the Claimant supply the ship with 150 cubic metres of marine gas oil ("MGO"). On the same day, the bunkering company supplied the ship with the required MGO and the bunker delivery notes were signed by the ship's captain and stamped with the ship's stamp confirming receipt of the MGO. On 4 July 2016, a commercial invoice for the MGO was sent by the bunkering company to the ship owners. However, the ship owners did not settle the price of the supplied MGO.

The Nature of the Claim

On 25 September 2016, the Claimant obtained an arrest order from Dubai Courts against the ship, which was at Rashid Port at the time. The Claimant based the arrest order request on the purchase order and the bunker delivery notes. On 11 October 2016, the Claimant then brought a substantive claim before the Court against the ship owners and its subsidiary seeking USD 65,750, being the value of the supplied MOG, validation of the arrest order against the ship, and legal interest at the rate of 12% from 4 July 2016 until the date of full payment.

The Court's Judgment

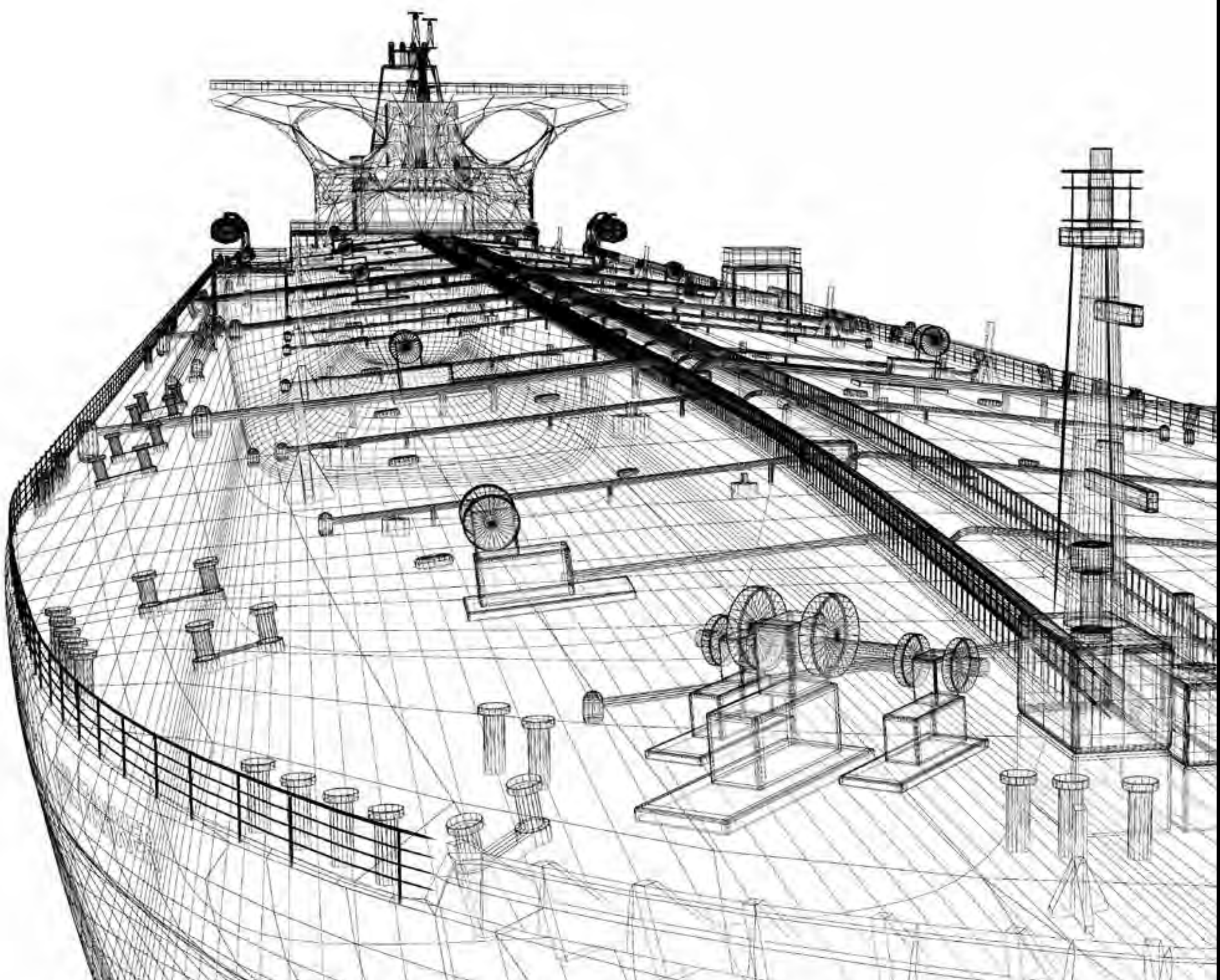
Although the Defendants had been served with the arrest order and the substantive claim legally via the ship's captain, they did not appear before Dubai Court of First Instance. On 14 November 2016, the Court handed down its judgment as follows:

1. In relation to the substantive claim, the Court held that the Defendants were jointly liable to pay the Claimant the sum of USD 65,750, plus legal interest at the rate of 9% accruing from 4 July 2016 until the date of full payment, plus all legal expenses.
2. In relation to validation of the arrest order, the Court decided to appoint a maritime expert to determine the specifications of the ship (i.e. the ship's exact location, the registration bureau, flag, capacity, identity of the captain, identify of the owners and their domicile, ownership certificate, nationality, arrestors and their domicile, if there were other arrest orders against the ship from other creditors and their respective values) and determine the starting price of the ship in order to sell the ship via a judicial auction.

Comment

This is because the Execution Court should not need to issue an order to sell the ships and/or appoint an expert to evaluate the ship's price in order to auction the ships during the enforcement proceedings, as the judgment itself will be include the order of sale, the starting price of the ship, and the conditions of the sale.

It should be noted that Article 121 of the Maritime Law specifies a deadline for appealing judgments, including validation of arrest orders over ships, of 15 days from the date the judgment is pronounced. However, the practice of the UAE Courts is to permit appeals filed within 30 days under Article 159 of the Civil Procedures Law. Accordingly, it could be argued that since the Dubai Courts have started applying Article 121, the deadline for appealing the above-mentioned judgments should be 15 days and not 30 days. The deadline set out in Article 121 is yet untested by the Dubai Courts, though we consider that the point is likely to be determined by the Dubai Courts in the near future.



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Abu Dhabi Court of Cassation gives Guidance on Omission Applications

It is settled law under Article 139 of the UAE Civil Procedure Law that the correct way to rectify an omission by the trial court making a determination on an application is to revert to the same court that passed the judgment, and not to appeal against it.

In Abu Dhabi Court of Cassation Omission Application Decision 1 of 2016 (issued on 17 November 2016), the court held that the essence of Article 139 is that the court must have, through its own mistake or inadvertence, completely omitted to determine a request for substantive relief, leaving the request to remain undecided (by an explicit or implicit ruling) and pending before the court. An omission application is not subject to any of the statutory time limits for appeal and can be availed at any time. In addition, the Applicant's acceptance of the partial judgment by proceeding to enforce the ruling made in its favour does not in itself indicate its acquiescence to the ruling and waiver of the requests for relief on which the Court made no ruling. Al Tamimi represented the Claimant in the appellate courts.

Background

By a standard contract for works between the Defendant and a consortium comprising the Claimant and a Turkish company, the consortium was commissioned to build and construct a mall. Errors between the Defendant and Consultant delayed the execution of the project until the Defendant arbitrarily terminated the contract without good cause and liquidated two performance bonds.

The Claimant brought Commercial Action No. 278-2011 against the Defendant seeking judgment against him for AED 300m. This amount represented the cost of works undertaken by the Claimant, additional expenses incurred, compensation for damage suffered as a result of termination of contract, unlawful deductions made from the Claimant's payments, payments the Claimant made to the Consultant and Subcontractors, interest, and compensation for loss and damage.

The Defendant filed a counterclaim to reserve his right to claim compensation for damages suffered.

Court of First Instance

The Court of First Instance appointed an expert committee for a specific mandate. After receiving the expert report, the Court of First Instance dismissed the main action on the basis of it being premature and dismissed the counterclaim.

Court of Appeal

The Claimant appealed in Appeal No. 867-2012, as did the Defendant in Appeal No. 891-2012. The Court of Appeal appointed a tripartite expert committee for a specific mandate.

After receiving the expert committee's report, the Court of Appeal upheld the Court of First Instance decision. The Court of Cassation overturned the Court of Appeal's ruling and sent the matter back for consideration by a differently constituted panel. The Court of Appeal (on remand) then quashed the Court of First Instance Decision with respect to the decision made on the main action (to dismiss the case as being premature) with remand to the Court of First Instance for further consideration.

Court of Cassation

The Claimant appealed in Commercial Appeal No. 424-2015, as did the Defendant in Commercial Appeal No. 483-2015 and, after joining the two appeals, the Court of Cassation, on 24 November 2015, dismissed the Defendant's appeal. With respect to the Claimant's appeal, the Court of Cassation overturned the Court of Appeal's ruling and quashed the Court of First Instance decision and ordered the Defendant to pay the Claimant a sum of AED 72m.

Omission Application

The Claimant filed an application stating that the Court of Cassation omitted to award the Applicant certain substantive relief in Cassation Appeal No. 424-2015, namely 12% interest on the sum awarded (AED 72m) from the date of withdrawal of the project and liquidation of the bonds until satisfaction had been made. The application further stated that the Court of Cassation omitted to award costs, bank interest and penalties arising from the liquidation of the bonds from the date of liquidation until satisfaction had been made, which, at the date of filing the Cassation Appeal stood at AED 15m. The application further noted that the Court of Cassation omitted to award AED 5.5m as moral damages in connection with the liquidation of the bonds.

The Defendant argued that the Claimant had forfeited its right to file the omission application by proceeding to enforce the ruling.

Court of Cassation's Decision

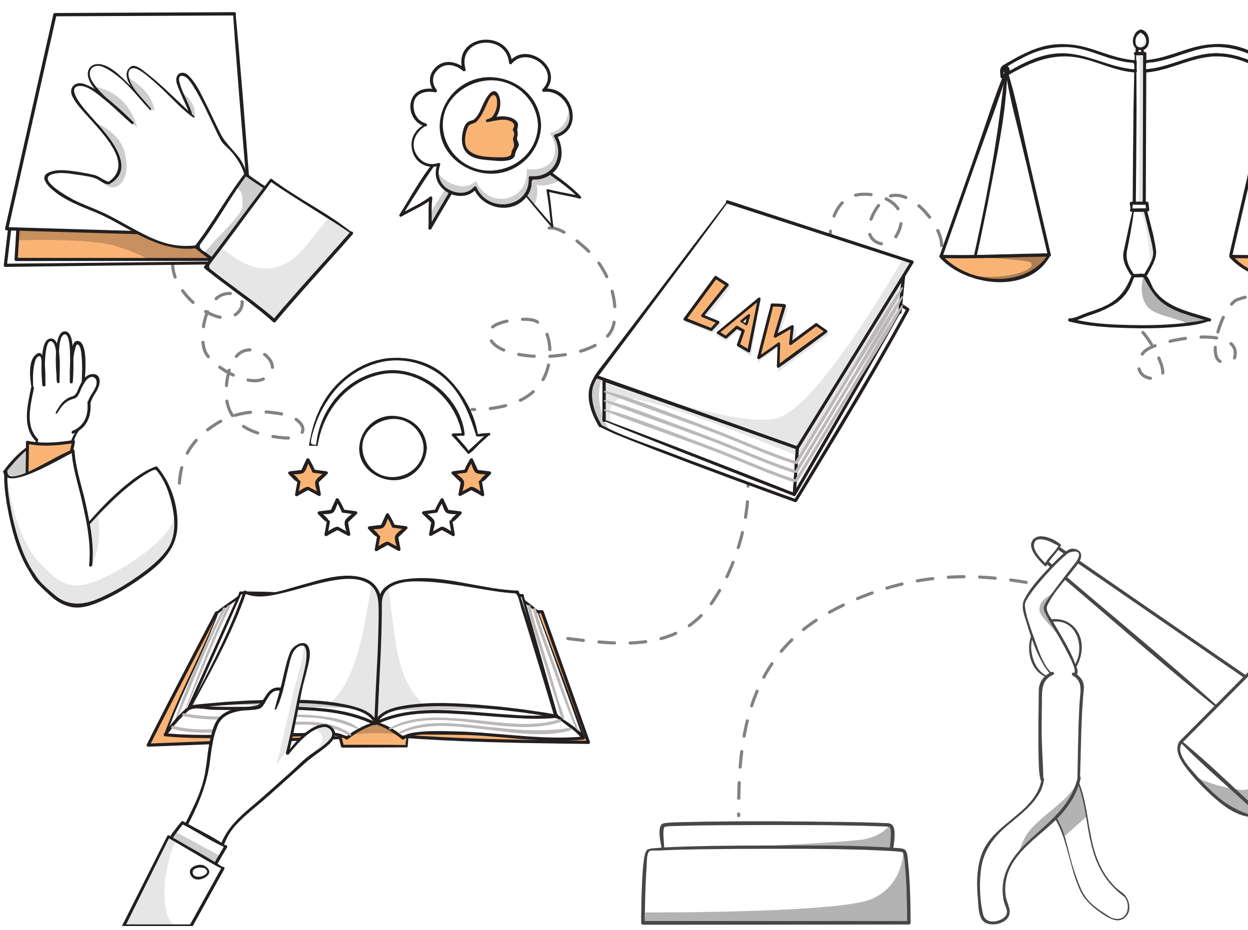
The Court of Cassation held that:

1. The Defendant's arguments were not well founded. An omission application is not subject to any of the statutory time limits for appeal and can be availed at any time. Omission means the claim for relief remains pending before the court. Acceptance which would bar an appeal must conclusively denote acquiescence to the ruling and waiver of the right of appeal. While acceptance barring appeal may be implicit, it must be conveyed by an act or step that plainly denotes acquiescence and the intent to waive the right of appeal beyond doubt or the possibility of interpretation. The Claimant's acceptance of the partial judgment by proceeding to enforce the ruling made in its favor does not of itself indicate its acquiescence to the ruling and waiver of the requests for relief on which the Court of Cassation made no ruling. Since the record is devoid of any indication that the Claimant has explicitly or implicitly accepted the Court's omission of certain requests for relief, the plea is baseless.
2. Article 139 of the Civil Procedure Law states: "*If the court omits to determine part of the substantive relief, it shall, upon request by a concerned party, consider and determine such relief after giving notice to the other side. The ruling shall be subject to the rules of appellate procedure which apply to the original ruling*". The essence of this provision is that, for Article 139 to apply, the court must have, through its own mistake or inadvertence, completely omitted to determine a request for substantive relief so as to cause the request to remain undecided (by an explicit or implicit ruling) and pending before the court. The court that failed to decide the request will be competent to decide the application to rule on the substantive relief that was overlooked. Such court may be a court of first instance, a court of appeal or a court of cassation. In the latter case, the rules of (cassation) appellate procedure shall be followed when filing the

application before the Court of Cassation. Furthermore, the overlooked relief must be substantive relief to which a right had been clearly and conclusively asserted before the court, either in the statement of claim or as an incidental claim. It is also necessary that the request for relief remain pending before the court until the issuance of a final ruling concluding the whole controversy since it is the final prayer for relief that must be taken into account.

3. In this case the Claimant did not clearly and conclusively assert, among the substantive relief sought at first instance, a right to costs, bank interest and penalties arising from the liquidation of the bonds from the date of liquidation until satisfaction has been made. Nor did the Claimant assert a right to recover moral damages in connection with the liquidation of the bonds. Moreover, the statement of appeal the Claimant filed in Appeal No. 867-2012 and the brief detailing its grounds for appeal did not include those two requests for relief. Accordingly, the Court of Cassation cannot be said to have omitted to rule on them, regardless of the Claimant's assertion in the statement of claim that the Defendant should be ordered to pay all the interest up to 31 December 2010. This request does not of itself conclusively indicate a request that the Defendant pay the costs and bank interest and penalties in connection with the liquidation of the bonds, particularly given that the amount in question is described in the statement of claim as being bank interest the Claimant received from banks to execute the contract works.

4. As for omitting to rule on the claim for arrears interest on the sum awarded, Articles 76, 88, 90 of the Commercial Transactions Law confirm that if a commercial obligation involves a sum of money of known value at the time the obligation arose and the debtor delays payment of it, the creditor shall be entitled to claim interest on the debt at the rate stated in the contract, up to a maximum of 12% interest, or, if no interest rate was agreed in the contract, at the market rate prevailing at the time of the transaction. Under Article 6(8) of the Commercial



Transactions Law, property-related activities for which the contractor undertakes to supply materials or manpower are considered commercial activities if practiced as a profession. Therefore, arrears interest on debt arising from the practice of such activities accrues from the due date pursuant to Article 90 of this law, if claimed by the contractor. The Claimant's final brief includes a claim for 12% interest on the claim amount from 31 December 2010 until the actual payment date. The Applicant maintained this claim until the date of issue of the ruling which concluded the controversy. The Court of Cassation ordered the Defendant pay a sum of AED 72m representing payments due to the Claimant under a contract for property-related work which does not state a rate of interest on arrears. Since the Claimant has not furnished proof of the market interest rate prevailing at the due date of the payments being claimed, the Court assess interest at 5% per annum on the judgment amount of AED 72,229,409 from the date of termination of the contract until satisfaction has been made.

As a result of the Omission Application, the Defendant was ordered to pay the Claimant approximately AED 18m in addition to the amount of the previous ruling.

Comment

This judgment highlights that in the event of an omission, it is always the claimant's right to make an omission application and it is never too late for the Court of Cassation to look into the merits of a case if a request was overlooked (provided the Court of First Instance had previously reviewed the case). The case also highlights the importance of properly pleading a case – although the Court acknowledged that the Claimant was entitled to claim interest, it only awarded interest from 31 December 2010 because the Claimant had neglected to claim for interest that had accrued prior to this date when filing its claim.

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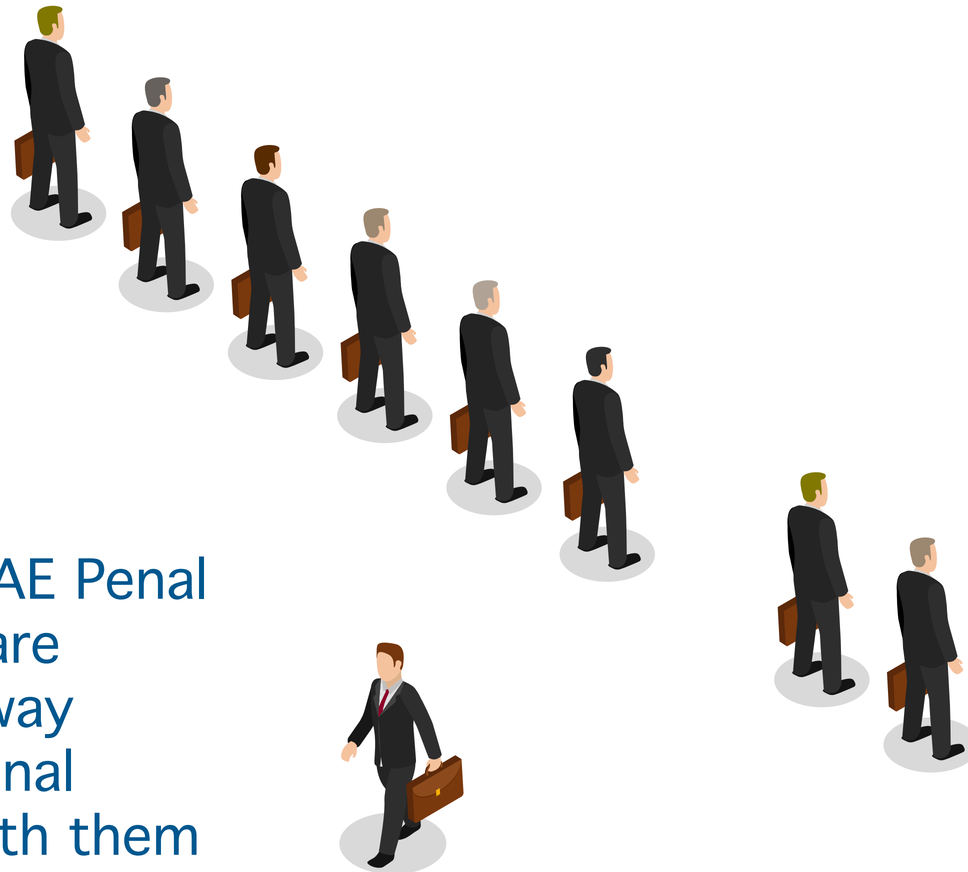

Changes to UAE Penal Code may Scare Arbitrators away and International Businesses with them

In the past 20 years, the United Arab Emirates has invested tremendously in international arbitration. The country has created state-of-the-art infrastructure and developed a wealth of arbitration centres including the Dubai International Arbitration Centre, Dubai International Financial Centre-London Court of International Arbitration, Abu Dhabi Commercial Conciliation and Arbitration Centre, Emirates Maritime Arbitration Centre and International Islamic Centre for Reconciliation and Arbitration.

The ICC UAE national committee has been active in promoting and training arbitrators, and the Chartered Institute of Arbitrators' branch in Dubai has grown to become the fourth largest worldwide and been extremely successful in training and developing arbitrators both in the UAE and the region.

It is no exaggeration to say that the UAE is the region's hub for arbitration and is taking its place among the acknowledged centres worldwide.

All of this is now under threat. International and UAE arbitrators have expressed their deepest concern about the amendment made by Federal Decree Law No. 7 of 2016 to Federal Penal Code No. 3 of 1987, which has recently come into force.

Article 257 of the Penal Code now reads as follows:

"Anyone who issues a decision, expresses an opinion, submits a report, presents a case or proves an incident in favour of or against a person, in contravention of the requirements of the duty of neutrality and integrity, while acting in his capacity as an arbitrator, expert, translator or fact finder appointed by an administrative or judicial authority or selected by the parties, shall be punished by temporary imprisonment [ie 3 – 15 years].

The aforesaid categories of persons shall be barred assuming once again the responsibilities with which they were tasked in the first instance, and shall be subject to the provisions of Article 255 of this law." [emphasis added]

Arbitrators and legal practitioners have responded to this article with alarm. They perceive it as a severe setback to the development of arbitration in the UAE and the progress it has made towards positioning itself as a global arbitration hub.

A number of arbitrators hearing cases seated in the UAE have already resigned from tribunals and expressed their reluctance to accept appointments in future cases (the law applies to all the emirates, including the Dubai International Financial Centre and Abu Dhabi Global Market freezones).

The arbitrators' concerns are simple: that they may be exposed to vexatious criminal proceedings under article 257.

It is true that in the past there have been parties who, having lost in arbitration, have taken the aggressive step of filing criminal proceedings against arbitrators in the UAE under various pretexts. However, before the recent amendment to article 257, there were no specific grounds to pursue criminal proceedings against an arbitrator who had rendered a decision based on their understanding of the case and the presentations made by each party.

All the cases that have been brought have been closed by UAE prosecutors on the basis that there was no case to answer. Had they proceeded to court, those accused would have found a judicial system very supportive of arbitration and arbitrators.

While I believe prosecutors and the courts will maintain the same attitude to arbitrators and arbitration in general, the new article 257 makes the landscape in the UAE appear very different. Arbitrators including myself and the legal community in general are concerned at the prospect of vexatious criminal complaints or threats of such complaints against tribunal members sitting in the UAE.

While arbitrators all over the world are obliged to act with neutrality and with integrity, virtually no other country has a provision like article 257, which could lead to arbitrators being jailed as criminals if they are shown to have acted unfairly or with bias. It is almost unheard of for arbitrators to be subjected to criminal proceedings for determining a case unless, of course, there is compelling evidence of fraud or bribery, which, worldwide, is incredibly rare.

In such cases, the UAE Penal Code provides relief to affected parties without the necessity of invoking article 257.

No doubt the changes to article 257 were well intentioned – no one disputes that arbitrators should not act unfairly or with bias. There are, however, two significant problems with it: the language is vague, and the mere possibility of criminal complaints being filed (even if they are subsequently dismissed) is enough to scare arbitrators away.

As regards to the language of the article, there is no pre-existing definition of the words “neutrality” and “integrity” in UAE criminal law and they would seem to have a wide subjective meaning. The words are commonly seen in laws and rules relating to arbitration and in the IBA Guidelines on Conflicts of Interest in International Arbitration, a soft law instrument.

However, to make a failure to show these characteristics a prosecutable offence for arbitrators will create vast scope for losing parties or parties wishing to derail an arbitration to bring or threaten criminal action. Since the definition of the crime is subjective and elastic, it is probable that, in most instances, police or prosecutors would feel obliged to start an investigation, most likely resulting in the suspension of the ongoing arbitration or any enforcement action.

Also noteworthy is that article 257 does not require evidence of positive intention of wrongdoing by the arbitrator – which I believe must have been an error of omission on the part of the draftsman. Compare this with article 22 of the Dubai International Financial Centre’s arbitration law, which states:

“*No arbitrator, employee or agent of an arbitrator, arbitral institution, officer of an arbitral institution or appointing authority shall be liable to any person for any act or omission in connection with an arbitration unless they are shown to have caused damage by conscious and deliberate wrongdoing. This article does not affect any liability incurred by an arbitrator by reason of his resigning.*” [emphasis added]

One can only imagine the stress and uncertainty arbitrators would suffer while battling to respond to a possibly vexatious allegation of bias that could lead to a three to 15 year jail sentence. Not only would they be subject to criminal investigation, they could also have their passport confiscated. And the mere fact that they were subject to a criminal investigation, however spurious or misconceived, could cause lasting damage to their reputation.

While UAE prosecutors and police are highly qualified and trained and unlikely to pursue a complaint that is not well founded, the mere prospect of arbitrators being subject to investigation is unacceptable to the arbitration community. The risks and consequential hassle – and the pressure it would place on arbitrators – are just too great.

As mentioned, this is why article 257 is already causing some arbitrators to resign from their appointments, refuse appointments, or insist that the seat of the arbitration be moved somewhere less risky.

For those considering resigning I have a further warning. Arbitrators in the UAE and elsewhere are viewed as judges, nominated by both parties to determine their dispute based on the procedures and law agreed by the parties and applying their best judgement to the case. They should not relinquish this role without first carefully considering their duty to act fairly, in the interests of justice and to avoid unnecessary expense and delay for the parties (which will inevitably occur upon resignation).

Moreover, their concern about the risk of prosecution under article 257 must be balanced against the risk of being held liable for compensation under article 207(2) of the UAE Federal Code of Civil Procedures. Under this article, parties to an arbitration can claim compensation from an arbitrator who resigns without a valid reason and in this context, the UAE courts would be unlikely to hold that the amendment to the penal code constituted a valid reason.

To sum up, article 257 means that the UAE can no longer be considered a desirable place to conduct arbitration and fewer and fewer arbitrators will agree to take up appointments here. Without a viable and effective arbitration system, international companies will feel less comfortable doing business and may go elsewhere. It seems that whoever drafted the amendments to the article – with the best of intentions – did not fully consider its consequences and the grave effect it may have on the UAE arbitration market.

In light of all this, a number of arbitrators and legal practitioners from the UAE, backed by renowned international arbitrators and institutions, have made a plea to the UAE Cabinet of Ministers to review article 257 with a view to swiftly amending or repealing it. It is within the federal government’s power to change the law to cure this problem and to restore the UAE to its rightful place among the top-ranking arbitral centres worldwide. In the strongest possible terms, we politely request them to do so.

This article first appeared in Global Arbitration Review on December 6, 2016.

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Wait, JASTA Second... What About Sovereign Immunity?

An Overview of the Controversial Justice Against Sponsors of Terror Act ("JASTA") from a Middle East Perspective

JASTA, the Justice Against Sponsors of Terror Act, is a controversial new federal law in the United States which allows American nationals to sue foreign states for acts of terrorism committed against them.

JASTA limits the applicability of "foreign sovereign immunity" under the federal judicial code, restricting its use in the US courts. Specifically, it gives federal courts jurisdiction over civil claims against a foreign state for physical injuries, death or damaged property that has occurred in the US on or after 11 September 2001 and which have been caused by:

1. an act of international terrorism in the United States, and
2. a tort committed anywhere by an official, agent, or employee of a foreign state acting within the scope of employment.

Furthermore, the law also allows claims to be filed against a Foreign State for loss and damage arising from acts of international terrorism committed by a designated terrorist organization. Section 4 of JASTA amends the federal criminal code to impose civil liability on a person who "*conspires to commit or aids and abets by knowingly providing substantial assistance*" for an act of international terrorism committed, planned, or authorized by a designated terrorist organization.

JASTA establishes exclusive jurisdiction to US federal courts over civil claims, but as per Section 5, it also authorizes "*the US Department of Justice ("DOJ") to intervene in these proceedings to seek a stay. A stay will be granted if the Department of State certifies that the US is engaged in good-faith discussions with the Foreign State to resolve the civil claims*".

JASTA had an unconventional route through the legislative stages. It was passed by the Senate unanimously in May 2016[1] and by the House of Representatives unanimously in September 2016[2]. President Obama vetoed the bill, however, on 23 September 2016[3]. The US Congress then overrode that presidential veto through a Congress resolution (i.e. a constitutional provision that permits Congress to override a presidential veto if it receives a two thirds majority vote in both houses). This was the first override of a presidential veto during the Obama presidency[4]. JASTA, consequently, became law on 28 September 2016[5].

So, what about sovereign immunity?

Sovereign Immunity (also referred to as State Immunity) is the principle in international customary law that protects a State from liability and enforcement of judgments made against it by another State. It is a principle that confirms the equality and independence of States.

The International Court of Justice described State Immunity as follows[6]:

"*The Court considers that the rule of State immunity occupies an important place in international law and international relations. It derives from the principle of sovereign equality of States, which, as Article 2, paragraph 1, of the Charter of the United Nations makes clear, is one of the fundamental principles of the international legal order. This principle has to be viewed together with the principle that each State possesses sovereignty over its own territory and that there flows from that sovereignty the jurisdiction of the State over events and persons within that territory. Exceptions to the immunity of the State represent a departure from the principle of sovereign equality. Immunity may represent a departure from the principle of territorial sovereignty and the jurisdiction which flows from it.*"

What is the effect of JASTA on sovereign immunity?

JASTA is considered by many to undermine and weaken the fundamental doctrine of sovereign immunity and there has been widespread criticism of JASTA, both within the US and internationally.

In exercising his veto powers[7], Barack Obama acknowledged that "*JASTA departs from longstanding standards and practice under our Foreign Sovereign Immunities Act and threatens to strip all foreign governments of immunity from judicial process in the United States based solely upon allegations by private litigants*"[8].

In November 2016, following the 10th Session of the Gulf Cooperation Council's Shoura, the UAE's Federal National Council's (FNC) speaker, Dr. Amal Al Qubaisi, expressed great concern with regards to JASTA, stating that: "*The law undermines the foundations of international relations*". Furthermore, she stressed the fact that all governmental and non-governmental entities need to cooperate in dealing with the challenges that JASTA imposes on the Nation, focusing primarily on the weakening of sovereign immunity.

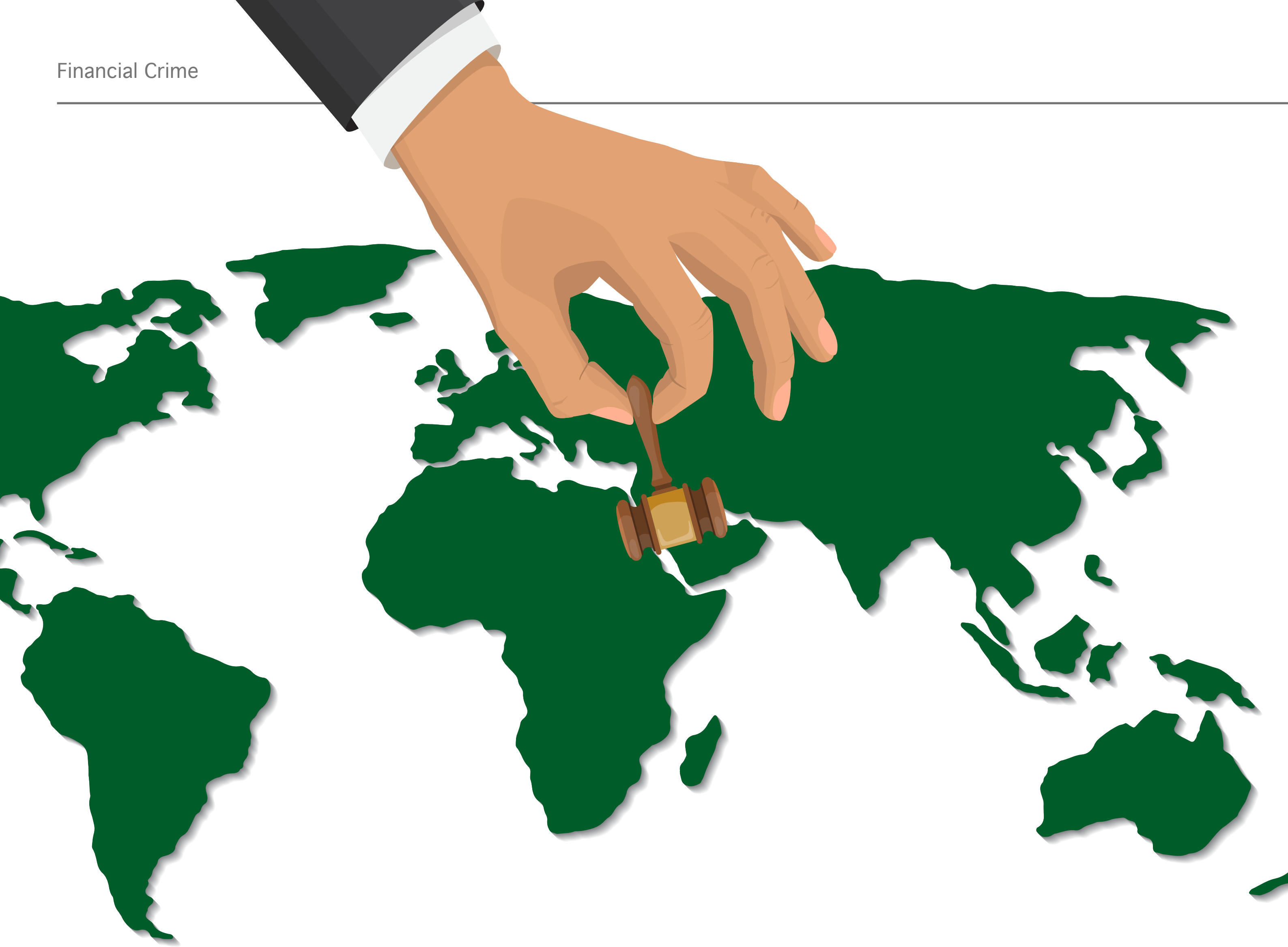
Fundamentally, the introduction of JASTA would most probably allow various actions against a foreign state's assets and interests within the US. Although JASTA makes no reference to enforcement, we are yet to see what powers this will confer in practice. This may include, but not be limited to, specific enforcement, pre-judgment attachment, injunctions, freezing orders and orders for discovery.

> Ironically however, the US may be the State most affected by this legislation. According to Barack Obama's presidential memoranda… "enactment of JASTA could encourage foreign governments to act reciprocally and allow their domestic courts to exercise jurisdiction over the United States or U.S. officials -- including our men and women in uniform -- for allegedly causing injuries overseas via U.S. support to third parties."

Just a law directed at Saudi Arabia or a more global dilemma?

The passing of a bill impacting sovereign immunity will have myriad implications but may have the most immediate impact upon Saudi Arabia. JASTA, inflammatorily referred to as the '9/11 Bill'[9] or 'Sue the Saudis Bill'[10], is perceived to provide the opportunity for economic redress in relation to the terrorist atrocities that occurred in New York. The Courts in the US have already received the first actions brought by plaintiffs against Saudi. The widow of a naval officer killed at the Pentagon on 9/11 filed the first action to apply JASTA in the District of Columbia, in which she alleges that Saudi provided material support to Osama bin Laden and Al Qaeda. A summons has been requested against the defendant, Saudi Arabia, to be served at the Ministry of Foreign Affairs in Riyadh. Latterly another action has been filed in New York by the daughters of a man killed in the World Trade Center, in which it is alleged that Saudi Arabia knowingly and willingly provided material support to Al Qaeda. In this case, the plaintiffs seek judgment in excess of USD $20 million and treble damages. Due to the timescales involved and most likely because of the need for service of the summons in Saudi, there has been no action taken on these cases to date[11].

On 22nd November 2016, His Excellency Abdulrahman S. Alahmed, Saudi's Ambassador to Belgium, Luxembourg and head of KSA's mission to the European Union, voiced Saudi



concern in relation to JASTA: "*We must ask ourselves whether we are willing to open up this Pandora's Box at the risk of destabilizing international cooperation in the fight against terrorism… It is our hope that wisdom will prevail and that Congress will take the necessary steps to correct this legislation to mitigate its scope and avoid the serious unintended consequences that may ensue*".

Prior to JASTA, tensions between both countries had increased following President Obama's nuclear deal with Iran despite KSA's objections to it and the restrictions that remain under the Joint Comprehensive Plan of Action ("JCPOA"). It must be noted, however, that the law does not specifically mention Saudi Arabia, it applies to all states.

At the Gulf Cooperation Council on 27th October 2016, US Treasury Department Secretary, Jacob J. Lew, stated that "(JASTA) would enact broad changes in long standing international law regarding sovereign immunity that, if applied globally, could have serious implications for (US/GCC) shared interests"[12]. Indeed, President-Elect Trump will have to assure all the GCC States that the United States will remain a safe zone for their investments.

Ironically however, the US may be the State most affected by this legislation. According to Barack Obama's presidential memoranda[13]: "enactment of JASTA could encourage foreign governments to act reciprocally and allow their domestic courts to exercise jurisdiction over the United States or U.S. officials -- including our men and women in uniform -- for allegedly causing injuries overseas via U.S. support to third parties".

Indeed, as reported in the press, Pierre Lellouche, a Member of the Foreign Affairs Committee in the French National Assembly stated that he would pursue legislation that would permit French citizens to sue the United States with cause should JASTA enter into force[14].

Reciprocal arrangement could lead to untold consequences for the US. Prior to the introduction of JASTA, Argentina had already made a successful application before the ICJ against the US for violating its sovereignty over decisions in the US courts over the restructuring of Argentine debt[15].

Any challenges caused by JASTA that the US government faces may influence the conduct of US foreign policy, including in the Middle East, as the spheres of politics, diplomacy, trade and domestic litigation become more entwined through the use of JASTA and any foreign parallel legislation. The most profound consequence may be that a US administration may lack confidence to act overseas when it otherwise would have done so.

This concern is not simply legal or political, it is also shared by US business interests internationally. It has been reported that the US-UAE Business Council sent a letter in November 2016, supported by numerous major US companies, to US senators, urging them to reconsider amending the act to avoid the destabilization of the global economy.

Within the US, their economy may also be destabilized as a result of foreign countries withdrawal of assets from fear of liability. According to statistics published by the US Treasury Department, Saudi Arabia had $116.8 billion in securities in the US in March 2016, but this has now been reduced to $96.7 billion in October 2016[16]. This may be the start of Saudi Arabia selling some of its large portfolio of US Treasury bills in volumes that could then impact the attraction of holding US government debt for other investors. This domino effect could then influence the ability of the US government to raise debt to fund its activities[17].

What Next?

The implementation of JASTA appears to be fraught with problems and unexpected consequences, irrespective of whether this law may be considered attractive on the face of it (in ensuring governments do not act by proxy to conduct terrorism).

Although we are starting to see the first cases filed, JASTA is still in its infancy and it is not possible to predict all the possible risks and scenarios associated with it. The future will provide answers to difficult questions that are raised by JASTA. Will countries retaliate to JASTA and introduce their own legislation to protect themselves? Will they introduce reciprocal legislation as threatened? Is it prudent to impose a law that can cause disruption to international relations (particularly between the US and KSA), as well as the global economy?

Whilst the best step may be for the US to repeal the legislation, JASTA must now also be considered in the context of a Trump presidency as highlighted above. The Trump administration will enter office knowing that the future of US-Saudi relations will almost inevitably be affected by JASTA.

As the JASTA lawsuits progress we will see whether this legislation can make America great again, or whether it is just another stumbling block to improved US-Middle East relations.

For any query or follow up on this significant topic, please contact Ibtissem Lassoued, Partner, Financial Crime, at i.lassoued@tamimi.com.

1. https://www.congress.gov/bill/114th-congress/senate-bill/2040/all-info
2. Ibid.
3. Ibid.
4. Article 1 Section 7 US Constitution. See also E Rybicki, 'Veto Override Procedure in the House and the Senate', Congressional Research Service http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%270DP%2BP%2CC%3E%23P%20%20%0A
5. https://www.congress.gov/bill/114th-congress/senate-bill/2040/all-info
6. Jurisdictional Immunities of the State (Germany v. Italy : Greece intervening), Judgment, I.C.J. Reports 2012, p. 123-124
7. Important note: Donald Trump will be inaugurated on 20 January 2017, this article was written end of December 2016.
8. https://www.whitehouse.gov/the-press-office/2016/09/23/veto-message-president-s2040
9. http://www.bbc.com/news/world-us-canada-37504158
10. https://www.rt.com/usa/360975-senate-overrides-veto-jasta/
11. Correct as of 28 December 2016
12. https://treasury/gov/press-center/press-releases/Pages/jl0597.aspx
13. https://www.whitehouse.gov/the-press-office/2016/09/23/veto-message-president-s2040
14. http://www.nytimes.com/2016/09/10/us/politics/house-911-victims-saudi-arabia.html?_r=0
15. http://www.icj-cij.org/presscom/files/4/18354.pdf
16. http://ticdata.treasury.gov/Publish/mfh.txt
17. New York Times article dated 19 April 2016 'Saudi Threat to Sell U.S. Assets Could Hurt, but Mostly the Saudis',http://www.nytimes.com/2016/04/20/business/international/saudi-threat-to-sell-us-assetscould-hurt-but-mostly-the-saudis.html?_r=0

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UAE Central Bank: Modernisation of Identification Procedures

This article considers the UAE's ongoing commitment in tackling money laundering and combating the financing of terrorism ('CFT'). The UAE Central Bank's Anti-Money Laundering and Suspicious Cases Unit has amended the wording of its Circular No. 24/2000 Regulation concerning Procedures for Anti-Money Laundering and its amendments (the 'Circular'), expanding its remit for customer identification requirements.

On 14 December 2016,t the UAE Central Bank issued a resolution (the 'Resolution') (*which, as of the date of writing was under process of being published in the Official Gazette*) utilising its increased powers of monitoring and regulation of financial institutions to strengthen anti-money laundering ('AML') regulations and reinforcing its objection to the use of fraudulent bank accounts.

In accordance with the Resolution, when opening a new bank account, a bank must ensure that it has obtained all the requisite information and necessary documentation to identify the beneficial owner. The protocol when opening an account is now to check either the passport or the UAE identity card whereas the Circular used to relate solely to passports. The requirements for banks are now as follows:

1. Obtain the full name of the account holder as it appears in the identification document;
2. Record the current residential address and place of work;
3. Physically examine the UAE ID card or the passport used to open the account; and
4. Maintain a copy of the identification document initialled by the account opening officer.

This Resolution is to be communicated to all those concerned with its implementation, namely; all banks, exchange houses/ moneychangers, investment and finance companies and other financial institutions. The amendment is to be published in the Official Gazette in both Arabic and English.

The amendment to the Circular typifies the Central Bank's initiatives to provide transparency and security in banking by modernising its procedures. The Circular maintains its position in protecting the UAE. against money laundering, re-confirming its commitment to ensuring accounts are not opened under fraudulent or assumed names or numbers.

The Central Bank has long been progressive in its approach to AML through the use of strict identification procedures. The mandatory identification requirements appeared in the original Circular. This is a contemporary but important approach that forms part of the FATF (Financial Action Task Force) Recommendations for the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation as published in October 2016 (the 'Recommendations'). The Recommendations provide an international standard and a framework of measures for countries to utilise in order to combat money laundering and terrorist financing. Relevantly, the Recommendations state:

'The principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means.

The CDD measures to be taken are as follows:

a. *Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.*
b. *Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.*
c. *Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.*
d. *Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer...*

...These requirements should apply to all new customers.'

The Resolution, by adding and updating the mandatory requirements, reinforces the integrity of the AML framework in the UAE. It obliges the banks to satisfy the criteria above and. as the account opening officer remains responsible to verify the information, confirms the transparency in banking and continues to provide a greater level of accountability and a deterrent to those seeking to subvert the banking laws in the U.A.E.

In our view the UAE Central Bank's Resolution satisfies all of the recommendations under the 'Preventative Measures of Customer Due Diligence ('CDD') and Record Keeping' of the Recommendations and evidences the leading role the UAE has long adopted in combating anti-money laundering and the financing of terrorism.

If you have any queries regarding AML, CFT, or any of the issues addressed above, please contact Ibtissem Lassoued, Partner, Financial Crime Department at: i.lassoued@tamimi.com (mailto:i.lassoued@tamimi.com) or Adam Wolstenholme, Associate, Financial Crime Department at: a.wolstenholme@tamimi.com (mailto:a.wolstenholme@tamimi.com).

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Consumer Privacy in the Smart Era

The following is a summary of notes from Nick O'Connell's presentation entitled 'Consumer Privacy in the Smart Era', delivered at the Telecoms Law and Regulation in the Middle East 2016 conference held in Dubai on 6 and 7 December 2016.

Privacy as a fundamental right?

Before considering the implications on consumer privacy in the smart era, it is important to briefly touch on how privacy is protected in the law. Commentators on data protection in the UAE sometimes claim that the right to privacy is enshrined in the Constitution of the United Arab Emirates, and this forms a basis for analysing data protection issues. This would seem to be something of an overstatement when it comes to the Constitution's treatment of privacy, where at Article 31 it simply says: 'Freedom of communication by post, telegraph or other means of communication and the secrecy thereof shall be guaranteed in accordance with law'. The protection of personal data in the manner in which it is understood in the digital age is not contemplated in the Constitution of the UAE, and privacy is mentioned only in the context of privacy of post and communications.

Certainly around the Gulf, and across the broader region, the approach taken in the UAE is not out of the ordinary. While the claim to a fundamental right to privacy enshrined in the Constitution would be an overstatement, privacy is clearly a relevant concern in the context of doing business in the Middle East. All countries in the region have criminal prohibitions that, in some way, penalise unauthorised use and disclosure of personal information, as well as prohibitions or regulations specific to certain types of information or certain contexts – such as health records and information disclosed to medical professionals, or (for present purposes) consumer information in a telecoms context. Using a very broad-brush approach, it is fair to say that in jurisdictions without a modern data protection regime, the best way to manage the processing of personal data is to do so on the basis of the consent of the data subject.

Telecoms sector considerations – customer data

In a telecoms context, and focussing on the regulation of telecoms licensees (rather than issues such as hacking and cyber crime), the approach taken to the protection of consumer data varies across the region. Ultimately, from many of the following examples, the protection of personal data relating to telecoms subscribers as handled by telecoms licensees can be seen as significantly more prescribed than the protection of personal data more generally under the law.

By way of example, Article 12 of the UAE Telecommunications Regulatory Authority's Consumer Protection Regulations (Version 1.2 of 24 December 2015) places a number of clear obligations on telecoms licensees when it comes to the handling of subscribers' information. Licensees have to take all reasonable and appropriate measures to prevent the unauthorised disclosure or the un-authorised use of subscriber information. They must take all reasonable measures to protect the privacy of subscriber information that they maintain in their files, and use reliable security measures against risks such as loss or unauthorised access, destruction, leakage, inappropriate use, modification and unauthorised disclosure. They must limit access to subscriber information to their trained and authorised personnel, who are bound to protect the licensee's confidential information from unauthorised use and disclosure under the terms of a written agreement, and ensure that personnel engaged in the handling of subscriber information are fully aware of, and adequately trained in the licensee's security and privacy protection practices. Licensees must obtain a subscriber's prior consent before sharing any subscriber information with their affiliates and other third parties not directly involved in the provision of the telecommunications services ordered by the subscriber. Where it is necessary to provide subscriber information to affiliates or other third parties who are directly involved in the supply of the telecommunications services ordered by subscribers, the third-parties are required to take all reasonable and appropriate measures to protect the confidentiality and security of the subscriber information and to use it only as required for the purposes of providing the telecommunication service. Licensees must ensure that the contract between them and any affiliate or other third party holds that third party responsible for the privacy and protection of the subscriber information. Licensees who have access to subscriber information as a result of interconnection are prohibited from using that information for any purposes other than interconnection, and use for marketing purposes is specifically prohibited.

The position in Qatar under Article 52 of the Qatar Telecommunications Law (and articles 91 and 92 of the associated by-law) is similarly detailed, and provides customers with a right to have their information corrected or removed, as well as obligations on service providers to use customer information only for the purposes for which it was collected (and not use it for any undisclosed or unauthorised purposes), and to ensure that customer information is accurate, complete and up-to-date for the purposes for which it is to be used.

In Oman, Resolution No.113 of 2009 issuing Regulations on Protection of the Confidentiality and Privacy of Beneficiary Data contains similar requirements, and includes a clear requirement to notify consumers in the event of data breaches that might affect them, as well as restrictions on sending consumer information abroad for the provision of subscribed telecommunications services without the approval of the Oman Telecommunications Regulatory Authority.

In Bahrain, the Privacy and Confidentiality section of the Bahrain TRA's Consumer Protection Guidelines imposes general obligations on licensees to take steps to protect the privacy of consumers regarding personal information and calling patterns, and notes that consumers should have an expectation of privacy, and protection from unauthorised use of their personal records and information, and protection from illegal, unsolicited, unwanted or offensive communications. The guidelines also state that licensees should only use information gathered from consumers for the purpose of providing the consumers with telecommunications services.

For Saudi Arabia, we were able to find only a very general reference in the KSA Telecoms Law, which at Article 3(8) simply places an obligation on telecommunications licensees to protect public interests and the interests of users and maintain confidentiality of communications and information security.

Kuwait, which is still in the process of establishing its telecoms regulator, is well-positioned to start with a blank page and draw from the experience of other countries.

Consumer data protection as a requirement for e-commerce take-up

With regard to e-commerce, a recent AT Kearney study ('Getting in on the GCC E-Commerce Game') identified consumer trust and awareness issues, along with embryonic government policies, amongst a number of key obstacles preventing the GCC e-commerce market from reaching its full potential. The report identified concerns about data security and fraud as compounding consumer trust issues. It suggested that consumers will only trust on-line channels if retailers focus on protecting customer privacy and data. The punchline is that when it comes to on-line commerce take-up, consumer concerns about privacy are a serious inhibitor.

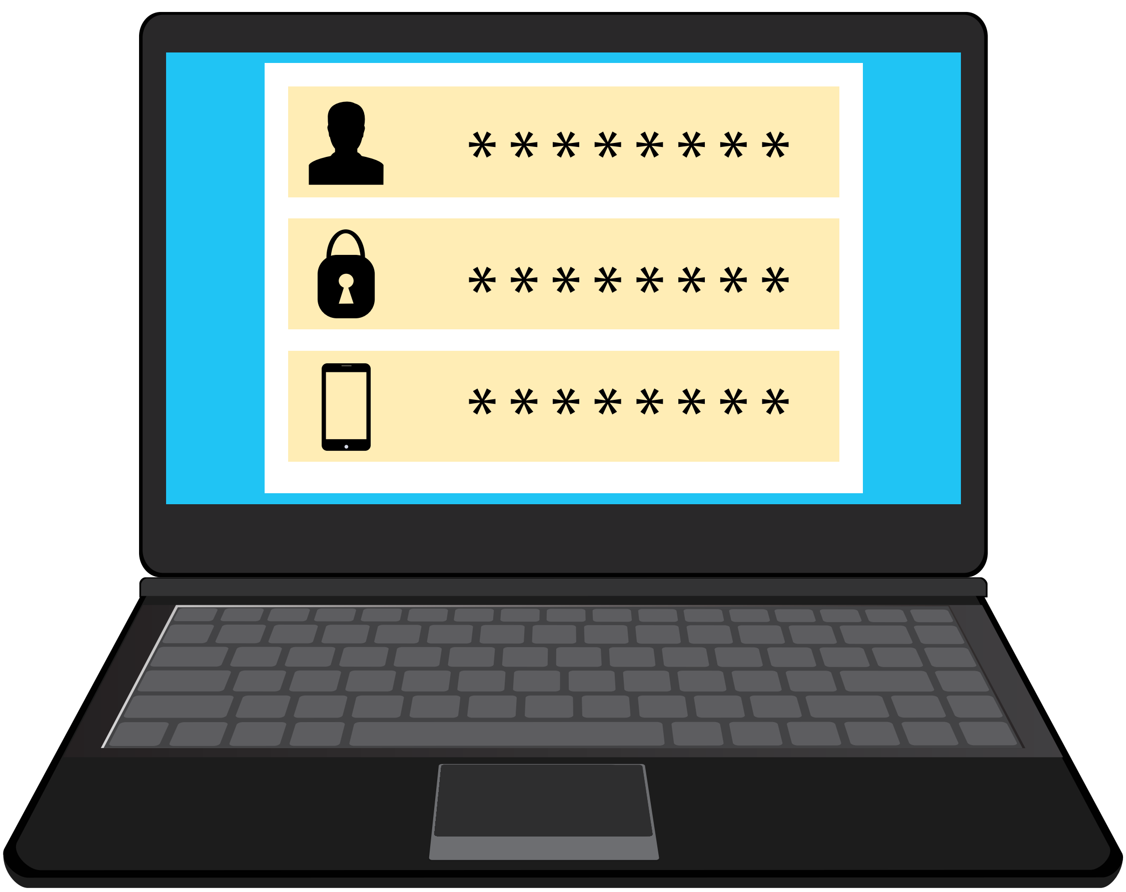
Consumer data protection as a consideration for IOT and smart cities

As for the Internet of Things (IoT) and Smart Cities, there are massive opportunities for all those involved – but there are also broad consumer privacy considerations that need to be considered and addressed at the outset.

The mass adoption of connected digital technologies and applications by consumers, businesses, and governments is having an unprecedented transformational impact on the telecommunications industry. It is a fundamental driver to the strategic and operational decision making of telecommunications players around the world, including in the Middle East. Data can be harnessed to create innovative offerings and generate new revenue streams, it can allow businesses and governments to develop a deeper understanding of users, improve user experience at every stage, get faster feedback, develop policy and customize services, and it allows organizations to take advantage of information in order to work intelligently and reduce costs. Connectivity and devices are increasingly ubiquitous, powerful and inexpensive. The Internet of Things will link all manner of items, from light bulbs to urban transport networks.

In this context, Dubai has issued Law No. 26 of 2015 regulating Data Dissemination and Exchange in the Emirate of Dubai. The "Dubai Data Law" has a number of objectives. It is aimed primarily at ensuring that data gathered by Dubai government entities is effectively shared amongst such entities and with the private sector, so as to maximise opportunities to capture the benefit of such data for the emirate's residents, visitors, and economy. The aims of the Dubai Data Law include managing data in conformity with international best practices, promoting transparency and establishing rules for data dissemination and exchange, increasing the efficiency of services provided by federal government entities and local government entities, and providing data necessary to non-governmental entities with a view to supporting the development of the Emirate of Dubai. Significantly, an expressed aim of the Dubai Data Law is to strike a balance between data dissemination and exchange and data confidentiality and privacy.

The IoT will have significant impacts on consumer privacy, and this is material to players in the telecoms space – whether they are device or app developers, or network operators providing the technical framework for processing big data and operating smart cities. Sensors embedded in millions upon millions of devices in as many locations, all processing an enormous amount of data - including personal data – at different locations, will make it hard for people to know exactly



If users do not know what information is being collected (or whether it is being collected at all), and the purposes for which it will be used, it will be difficult for them to provide meaningful consent.

who is using their personal information, and the purposes for which it is being used. Being able to cross-match data across different data pools/sources raises question as to whether anonymity is a relative term, and the ability to find secondary uses of data – which could be seen as a key benefit of big data - further raises questions about gathering data for one purpose, and then using it for other purposes. This potential lack of clarity raises issues from a consent perspective, as if users do not know what information is being collected (or whether it is being collected at all), and the purposes for which it will be used, it will be difficult for individuals to provide meaningful consent. Additionally, where devices gathering data may be more difficult to secure (e.g. due to limitations on encryption and wireless communication, and the fact that many devices may be outside a traditional IT infrastructure and thus not have security built-in), there is a greater risk of data loss, unauthorised access and infection by malware.

Telecoms operators have unrivalled expertise in providing high-quality, well-managed, and reliable networks. They have significant expertise in hosting, on-line security and identity authentication. A major part of the opportunity that lies in store for telecoms operators will be to monetize the large volumes of data that pass through these networks. In this context, a key duty of telecoms operators, particularly in the Middle East, will be to set the standards for safeguarding the personal information and commercial information shared by consumers, companies, and machines over these ubiquitous networks.

The types of products and technologies in which telecoms operators are likely to become involved in this context give rise to important privacy issues that cannot be addressed solely by reference to the regulatory landscape applicable to telecommunications operators. By way of example, the delivery of e-health and telemedicine solutions and associated data analytics, will also touch on concerns relating to medical confidentiality, patient health information and the location and retention period for storage of medical records. The adoption of an advertising-funded business model may use behavioural and demographic tracking to increase relevance. The provision of smart grid/metering solutions may raise privacy concerns that tie-in with pricing-related consumer rights considerations.

With the wide variety of services in which telecommunications service providers may become involved in the digitized age, the relevance of 'traditional' telecommunications-sector consumer protection regulations, particularly with regard to privacy, may need to be revisited. Those looking to participate in the IoT and big data space need to consider the consumer privacy implications of what they are doing at the earliest opportunity so as to incorporate sufficient privacy and security mechanisms at the outset - rather than having to 'retro-fit' them into devices, systems and processes as an afterthought.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on issues at the core of innovation, including issues to do with the development and regulation of new technologies and issues to do with consumer privacy. For further information please contact Nick O'Connell (n.oconnell@tamimi.com).

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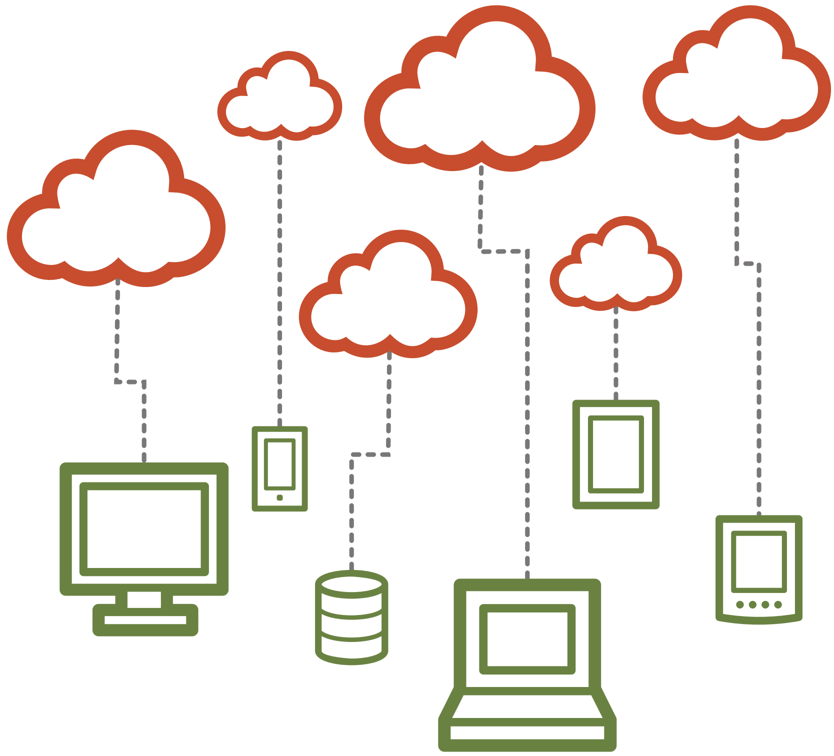

Forecast for Data Centres in the Region – Cloudy with a Chance of Regulation

Innovations in recent years have led to a major explosion in the consumption and processing of data.

Cloud computing is a particular innovation that is growing rapidly worldwide with more and more businesses, government entities, and consumers adopting cloud services.

As you are probably aware, cloud computing is a type of computing that relies on sharing computing resources through remote access and universal data storage, rather than having local servers or personal devices to handle applications.

If GCC countries are serious about positioning their major centres as strategic business hubs, they need more high specification data centres to store the increasing volume of data and to attract leading international cloud providers.

Customer Experience

From a consumer perspective, there are three main reasons why having more local data centres and internet exchange points are important to the overall customer experience for cloud services:

- local exchange of data or hosting reduces latency as data passes via a more direct local route;
- use of more direct route reduces packet loss, consequently increasing data transfer speeds; and
- local Internet Service Providers ('ISP') can reduce their upstream data transit download charges payable to offshore wholesale internet access suppliers.

Regional Snapshot

According to datacentermap.com there are currently 104 co-location data centres across 14 Middle East countries.

By comparison there are:

- 359 across 14 countries in Asia;
- 1088 across 23 countries in Europe; and
- 1,798 in North America.

There are 8 listed in the UAE. Malta and Lithuania also have 8. Cyprus has 12.

Cloud Readiness

Based on a scorecard system developed by BSA – The Software Alliance (www.bsa.org) to measure 'cloud readiness' of a country, there are some aspects in the current legal and regulatory regimes of GCC countries that may need to be addressed for the GCC to be assessed as a more favourable environment for cloud computing.

By way of example only, in the UAE context (which broadly represents a median for the regional regimes) the following are likely to be seen as potential issues:

- There is no express data breach notification law. Data breach notification laws are laws that require an entity that has been subject to a data breach to notify their customers and other parties about the breach, and take other steps to remediate injuries caused by the breach.
- ISPs are subject to mandatory filtering and censoring. For example, The UAE's Telecommunications Regulatory Authority ('TRA') has established the 'Internet Access Management' regulatory policy that regulates access to the content available on the Internet in the UAE. The policy includes a list of categories of prohibited content that contradicts with UAE's Islamic identity, culture, tradition, laws, and regulations. ISPs are obliged to block access to the websites and pages that contain content that fall within these prohibited categories.
- There are no safe-harbour provisions which protect ISPs. *Federal Law No. (7) of 2002 Pertaining to Copyrights and Neighbouring Rights* ("Copyright Law") contains no "safe harbour" provisions designed to immunise intermediaries from liability for copyright damages. The Copyright Law contains no provision dealing expressly with secondary liability at all.

There is also an aspect of the UAE legal system that could potentially be misconstrued as a regulatory hurdle. The UAE uses the inquisitorial system, which is a legal system where the court or a part of the court is actively involved in investigating the facts of the case, as opposed to an adversarial system where the role of the court is primarily that of an impartial referee between the prosecution and the defence. Under the inquisitorial system, which is tied to common Civil Law, the truth is uncovered through questioning those most familiar with the dispute by a judicial authority. It's up to an 'independent' prosecutor or investigating magistrate to distinguish between reliable and unreliable evidence. Accordingly, under *Federal Law No. 35 Concerning the Penal Procedures Law*, the Public Prosecution (not the police) , in proceeding with an investigation, can order a person in possession of something which the Public Prosecution deems should be seized or perused, to submit it (see Article 78). This could include data held by data hosting providers.

Those more used to an adversarial system, where judges focus on the issues of law and procedure and act as a referee in the contest between the defence and the prosecutor, are often uncomfortable with the investigative powers of the public prosecution. However, the inquisitorial system is not unique to the Middle East. If the cloud related aspects of a business are in France, Germany, or Japan the public prosecutions will have similar powers.

Proposed Cloud Regulation in KSA

To address objectives that include encouraging investment in a local cloud industry Saudi Arabia's Communications and Information Technology Commission ('CITC') has recently undertaken public consultation on the proposed regulation of cloud computing.

The CITC is proposing a Cloud Infrastructure and Services License ('CISL') for Cloud Service Providers ('CSPs') with data centres, or other key cloud infrastructure, in the Kingdom and those processing or storing sensitive user content.

The proposed regulations seek to address many of the gaps outlined above. For example:

- The draft regulations provide that a CSP will not incur liability based only on the fact that unlawful content or user content stored or processed by the CSP's cloud system infringes a third party's intellectual property rights. Nor will the CSP have an obligation to actively monitor their cloud system for content that infringes a third party's intellectual property rights. However, a CSP must remove or render inaccessible content on their cloud system that infringes a third party's intellectual property rights if they are ordered to do so by the CITC or any other authorised entity in the Kingdom.
- Further, CSPs must inform cloud users and the CITC, without undue delay, of security breaches or information leakages, depending on the affect or likely affect of such breaches or leakages.

There are some aspects of the proposed regulation that do require careful consideration. It is proposed that no 'Level 3' user content can be transferred outside Saudi Arabia. While the higher Level 4 classifies concerns highly sensitive or secret content belonging to concerned governmental agencies or institutions (and it is understandable that there may be a reason to localise such content), the 'Level 3' classification in the proposed regulations is much broader and includes 'sensitive' user content of private sector companies or organisations. What is 'sensitive' is not defined.

However, overall, the CITC's proposed cloud-specific regulations should be welcomed as a positive move to benefit users of cloud services and for the development of the cloud industry in Saudi Arabia, and will hopefully act as a prompt for appropriate cloud-specific regulation in other GCC jurisdictions.

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An Overview of the New Governance Rules in the UAE: Part III

The Chairman of the Securities and Commodities Authority of the United Arab Emirates ('SCA') issued, on 28 April 2016, the Resolution on Corporate Discipline and Governance Standards of Public Joint Stock Companies (Resolution No. 7 R.M. of 2016) ('New Governance Rules') in order to:

- list a set of new corporate governance rules in accordance with, and to adhere to, the Commercial Companies (Federal Law No. 2 of 2015) ('CCL'); and
- repeal the UAE Ministerial Resolution on Governance Rules and Corporate Discipline Standards (Ministerial Resolution No. 518 of 2009) ('Repealed Governance Rules').

The purpose of this article is to compare the New and Repealed Governance Rules and highlight some of the provisions that are related to 'Related Parties', 'Insiders' and 'Conflict of Interest' that we consider would benefit from clarification from SCA.

It is worth mentioning that any capitalised terms used in this article have the same meaning to those mentioned in the New Governance Rules, unless provided otherwise in this article.

Definitions

For the purposes of this article, it is important to refer to the following definition under the New Governance Rules:

'**Deals**: Transactions, contracts or agreements entered into by a public joint stock company that is listed in the market and do not fall under the main activity of such company or by way of including preferential terms that are not usually granted by the company to its clients, in addition to any other deals to be specified by SCA from time to time by virtue of a resolution, instruction or circulation issued thereby.'

Related Parties

The new definition of the term 'Related Party' (which is now exactly the same as the definition provided in the CCL) was amended under the New Governance Rules to limit the Related Parties to the Chairman, Board Members, members of the Senior Executive Management, and the employees of the Company, in addition to the companies to which any of such persons own at least 30 per cent of their share capital, as well as Sister and Allied companies and Subsidiaries.

The reason for such limitation can be regarded to the fact that these are the only persons that hold an obligation to disclose any dealings they have or intend to have with the Company. Expanding the scope of the definition to include parties who have no direct relation with the Company, such as Relatives, is impractical and it makes no sense to burden such parties with disclosure obligations toward the Company, thereby making it impossible to implement in reality.

Another major difference between the old and new definition with regards to Related Parties is that the new definition considers companies where at least 30 per cent of its shares are owned by the Chairman, Board Members, members of the Senior Executive Management, or the employees of a publicly listed company to be a Related Party while the old definition considered Related Parties to be companies controlled by such persons, which is no longer the case. The issue of whether owning 30 per cent of the shares has to be directly or indirectly is raised again since the New Governance Rules is silent in this regard. In our opinion, the 30 per cent shareholding can be either direct or indirect since, again, indirect owners have the same benefits as direct owners.

With regard to the Deals concluded with Related Parties, the main difference between the two rules is that the New Governance Rules have set an obligation, in accordance with Article 152 of the CCL, that any Deals between the Company and a Related Party has to be approved by the Board of Directors, if the value of the Deal is 5 per cent or less than the Company's capital, and the approval of the Company's general assembly, if such value exceeds 5 per cent. The Repealed Governance Rules, on the other hand, only required the approval of both the Board of Directors and general assembly if the Deals' value is 10 per cent or more of the Company's total assets.

Another difference is that the New Governance Rules further stipulate that any Deals which value exceeds 5 per cent of the Company's capital has to be evaluated by a valuator that is accredited by SCA before obtaining the approval of the Company's general assembly, in order for such Deal to be concluded. Such obligation did not exist in the Repealed Governance Rules.

However, the main issue that rises in this regard is whether the value of the Deals should be aggregated or if the calculation is per each Deal per se (i.e. whether the obligation to obtain the approval of the general assembly for Related Party Deals that exceeds 5 per cent of the Company's capital is required for the accumulative value of Deals concluded between the Company and a specific Related Party or is it calculated per each Deal only, irrelevant to whether it is the same Related Party in each Deal or not). The problem is that the wording of 'Deals' in Article 15 of the New Governance Rules (which is the same as Article 152 of the CCL) comes in the context of a plural, which may mean that if the value of the total Deals concluded with a certain Related Party, whether all Deals are to be concluded at the same time or on different occasions throughout the year for example, exceeds 5 per cent of the Company's capital, then the approval of the general assembly will be required.

The problem is that the New Governance Rules were issued recently and, therefore, have not been put into practice, which creates substantive confusion in this regard. Our interpretation is that, even if there are several Deals with a single Related Party, whether they are all at the same time or on different occasions, each Deal will still require a separate evaluation as long as such Deals are not related to each other. This can be based on the following:

i. From a practical perspective, it will create many practical issues to have to wait till the aggregate value of the Deals concluded with a certain Related Party exceeds 5 per cent of the Company's capital and then evaluate such Deals, since some Deals may have already been carried out or finalised, or the valuation of certain Deals at the time of concluding it with the Company may be different from the time on which it will be evaluated once the aggregated value of Deals concluded with Related Party has exceeded 5 per cent of the Company's capital;

ii. If the New Governance Rules do mean the aggregate value of the Deals concluded with a certain Related Party, then it should have mentioned a time frame for such Deals (i.e. Deals concluded, for example, in the last six or twelve months, since not all Deals have to be concluded at the same time; and

iii. The definition of 'Deals' is already mentioned in the plural context in Article 1 of the New Governance Rules; therefore, it can mean a single or more than one Deal.

Having said this, we do not believe that this should mean that the Company has the right to break down a Deals' value that exceeds 5 per cent of the Company's capital to more than one transaction, whereby the value of each transaction is less than 5 per cent of the Company's capital. In this case, the Company still has an obligation to evaluate the aggregate value of such Deal and obtain the approval of the general assembly.

Bearing in mind the definition of 'Deals' mentioned above, it is further worth mentioning that Article 15 of the New Governance Rules may seem to contradict with Article 152 of the CCL in terms of whether the valuation of Deals whose value are less than 5 per cent of the Company's capital is required or not. The wordings of Article 152 of the CCL appear to mean that such evaluation is required, while the New Governance Rules explicitly mentions that it is not. Taking into consideration that the New Governance Rules are enacted by SCA, which is the regulatory body whose objectives include ensuring the compliance of publicly listed companies with the CCL, it is therefore understood from the New Governance Rules that SCA's interpretation of Article 152 of the CCL is reflected in Article 15 of the New Governance Rules. This means that the valuation of Deals, whose values are less than 5 per cent of the Company's capital, is not required.

As for disclosure by Related Parties, the main difference between the two rules is that the New Governance Rules have set an obligation that any Deals between a Related Party, on one side, and the Company, a Subsidiary, or a Sister Company, on the other side, has to be disclosed to the Board of Directors, whatever is the value of the Deal. The Repealed Governance Rules, on the other hand, only required the disclosure if the Deals' value is 10 per cent or more of the Company's total assets. The New Governance Rules further introduced a new obligation on the Company, under Article 16, to maintain a register for Related Parties, where the names of such parties are to be recorded together with their Deals, in detail, and actions taken in relation thereto. The Company (i.e. the Board of Directors) also has an obligation under the same article to provide documents and information of the Deals with Related Parties and the nature, size, and details of each Deal to the general assembly.

In all events, Deals with Related Parties have to be disclosed to SCA, as per Article 17 of the New Governance Rules, as was also stipulated under the Repealed Governance Rules, by way of notice sent by the Company's Chairman. Such notice is to include the data and information of the Related Party, the details of the Deal, the nature and the benefit of the involvement of the Related Party in the Deal, together with a written confirmation that the terms of the Deal with the Related Party are fair, reasonable, and in favor of the Company's shareholders.

The main issue here is whether or not there is an obligation to obtain the approval of the Board of Directors or the general assembly (whichever is applicable in accordance with Article 15 of the New Governance Rules) if the Deals are concluded between the Related Parties themselves, without having the Company as a party to such Deal, such as having a Deal concluded between a Board Member and a Subsidiary. Unfortunately, the New Governance Rules are silent in this regard; therefore, it is indirectly interpreted that no approval is required since the definition of the Company does not include Subsidiaries or Sister or Allied companies. On the other hand, the 'Related Party' provisions are applicable only if the Company is entering into a transaction with a Related Party. In all events, such a Deal has to be disclosed to the Board of Directors, as per Article 18 of the New Governance Rules, and the Board of Directors will then have the right to discuss the matter and decide the best course of action to be taken that serves the best interest of the Company. Such Deals will have to also be disclosed to SCA and the Market. Additionally, the details and conditions of the said Deals and the conflict of interest of the Related Party are to be included in the annual financial statements of the Company presented to the general assembly meeting, in addition to publishing such details on the websites of both the Market and the Company.

The Repealed Governance Rules stipulated, however, that if the concerned Related Party fails to disclose the Deal with the Company, Subsidiary, or Sister Company, the Board of Directors, or any shareholder holding 5 per cent or more of the Company's shares, may bring a claim against the Related Party before a competent court requesting to suspend such Deal and compel the said Related Party to pay the Company any profits or benefits gained. Such clause exists in Article 19 of the New Governance Rules giving such right only to the shareholders holding 5 per cent or more of the Company's shares but, it is silent on whether or not the Board of Directors shall have the same right. We believe that the Board of Directors may still bring such a claim against the relevant Related Party as a penalty for failing to disclose since the Board of Directors holds the obligation to take any and all actions that serves the best interest of the Company.

In terms of shareholders' access to Deals concluded with Related Parties, there is no material difference between both rules except that the wordings of the Repealed Governance Rules are very comprehensive on the course of action to be taken by a shareholder holding 5 per cent or more of the Company's shares against the parties of a Related Party Deal by way of referring to the exact articles of the Evidence Law and the Civil Procedure Law. Article 2 of the New Governance Rules, on the other hand, has made a general reference that the said rules are subject to the Evidence Law and the Civil Procedure Law; therefore, a shareholder holding 5 per cent or more of the Company's shares may file the lawsuit in accordance with the said laws that are applicable, in the event a shareholder decides to opt to the court to file a claim against the Board Member, the Board of Directors, or the Company.

Insiders

The New Governance Rules introduced new provisions for 'Insiders' (Article 12) and 'Confidentiality' (Article 13) that did not exist under the Repealed Governance Rules. Unfortunately, the New Governance Rules do not define an 'Insider'; therefore, it is difficult to determine who qualifies to be, or not to be, an insider. We assume that it is up to SCA's sole discretion to determine who qualifies to be an insider on a case-by-case basis. It can be, however, assumed from Article 12 that 'insiders' are defined to be any of the Company's Related Parties, their Relatives, and persons who could be considered as insiders on a temporary basis and are entitled to or have access to inside information of the Company prior to publication, such as advisors and consultants retained to advise on a certain Deal. The question is whether relatives of persons with temporary access to inside information of the Company are considered to be insiders or not. We believe that the answer is not to consider such relatives to be insiders unless they also have access to such information. In all events, persons with temporary access to inside information of the Company hold the same liability as the Board of Directors if they tip-off or whistle-blow any inside information before its publication, whether to their relatives, friends, or any third party, and whether or not such tip-off or whistle-blow is of consideration.

Article 12 further requires the Board of Directors to set written rules for the Company's Board of Directors and employees regarding trading in the securities of the Company or its Parent, Subsidiary, or Sister Companies. Another obligation on the Company is to have a register for permanent and temporary insiders, and to also include in it the prior and subsequent disclosures of the insiders.

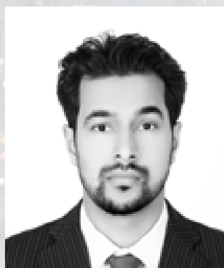
Moreover, it is worth mentioning that Article 13 of the New Governance Rules provides that the Board of Directors shall (i) take all measures to accurately maintain strict confidentiality of the Company's data and information in a way that ensures it is not exploited; (ii) develop effective contractual arrangements that require the other parties who have access to internal data and information related to the Company and its customers to maintain the confidentiality of such data and information, and not misuse or transfer it, or cause it to be transferred directly or indirectly to other parties; and (iii) ensure that each insider signs formal declarations to confirm his/her knowledge of his/her possession of internal data and information regarding the Company and its customers, and that he/she shall bear all the legal consequences in case of leaking such information or data, or giving advice on the basis of the information in his/her possession, in addition to his/her commitment to notify the Company of any trade carried out on the securities of the Company or its Parent, Subsidiary, or Sister Companies before and after those trades.

Conflict of Interest

Another new provision that did not exist under the Repealed Governance Rules is Article 14 concerning 'Conflict of Interests', which mirrors the same obligations under Article 150 of the CCL. Such article simply provides that if a member of the Board of Directors has a joint interest or a conflict of interest with the Company in a Deal presented to the Board of Directors to take a decision in relation to such Deal, such member must inform the Board of Directors of the conflict of interest and record it in the minutes of the board meeting. Furthermore, such member shall not participate in the voting on the decision relating to the said Deal. This includes representatives of corporate or governmental bodies, and such disclosure extends to reach interests with the bodies that such member represents.

If the member of the Board of Directors fails to inform the Board of such joint interest or conflict of interest, the Company or any of its shareholders may resort to the competent court to invalidate the Deal or order such member who acted in contravention of such provision to return to the Company any profit or benefit obtained as a result of entering into this Deal.

The only addition introduced by Article 14 is that the Company shall maintain a special register for conflicts of interests in which such conflicts are recorded in detail, together with the measures taken in this regard. Even though the New Governance Rules are silent on this matter, we believe that the same provisions of the New Governance Rules that apply to both the Related Parties' register and the insiders' register also apply to the conflict of interests' register, including the disclosure of its content to SCA, the Market and the shareholders of the Company.



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The Life Cycle of a Lease in Dubai and the DIFC

The leasing of premises in the Emirate of Dubai is generally regulated by Law No. 26 of 2007 (as amended by Law No. 33 of 2008) (the "Dubai Tenancy Law"). However, the leasing of premises located within the Dubai International Financial Centre ("DIFC") is governed by the DIFC Real Property Law No. 4 of 2007 (the "DIFC Tenancy Law"), which is based on common law principles. Both Dubai Tenancy Law and DIFC Tenancy Law apply to residential, commercial, industrial and retail premises. This article focuses on the material differences between the two laws.

When entering into, renewing or terminating tenancy agreements, it is important to consider the provisions of the relevant law and what rights or obligations may apply.

Registration

Article 4(a) of the Dubai Tenancy Law prescribes registration of all tenancy agreements with the Real Estate Regulatory Agency ("RERA") in the Ejari system. Whilst there are no penalties for non-registration stated in the Dubai Tenancy Law, a tenant who fails to register is likely to face practical problems, when, for example, renewing trade licenses, visa sponsorships and utility connections. The Ejari registration fee is currently set at AED 215 and upon successful registration, the tenant obtains an Ejari registration certificate evidencing registration of its tenancy agreement with RERA.

This differs from the position under Article 54 of DIFC Tenancy Law, under which the landlord is obliged to register tenancy agreements with a term exceeding one year, with the Registrar of Real Property (the "Registrar"), within 28 days from the date of the contract, failing which the landlord can be subject to a fine of USD 1,000. For all tenancy agreements with a term of one year or less, registration with Registrar is optional. The landlord can complete the registration of DIFC tenancy agreements, online through the DIFC client portal and the registration fee is currently set at AED 367.50.

Terms of the lease

Whilst the terms and conditions of the signed tenancy agreement regulate the relationship of landlord and tenant (so long as it is not against public policy), if the contract is silent on a matter, the parties may rely upon the provisions of Dubai Tenancy Law on that particular issue.

Under the DIFC Tenancy Law, the parties have the freedom to contract and the terms of the tenancy agreement will generally govern their relationship. This approach is driven by the fact that the DIFC Tenancy Law does not elaborate on the rights and obligations of the two parties and focuses only on issues such as registration, effects of termination, effects of the surrender of a lease and the implied powers of the landlord.

Renewal and Renewal Rent

The renewal rent in Dubai is governed by Decree No. 43 of 2013 which determines the permitted increase in rent in Dubai upon renewal of a tenancy agreement ("Decree 43"). Therefore, any increase of rent upon renewal by the landlord must comply with Decree 43. The parties to the contract can access the rental increase calculator managed by RERA at the DLD website (http://www.dubailand.gov.ae/English/Pages/rental-increase-calculator.aspx), which determines the permissible increase in the rent upon renewal of the tenancy agreement.

The tenant has a right to notify the landlord whether it intends to renew the tenancy agreement upon expiry, subject to compliance with the terms of the tenancy agreement. If the tenancy contract is silent about the renewal notification, then Article 14 of Dubai Tenancy Law applies and requires either party to the contract to serve a minimum of 90 days' written notice prior to the expiry date, notifying the other party of any amendment to the terms of the tenancy contract (including renewal for a successive term). The landlord does not have the right to terminate the tenancy agreement upon expiry except on four limited grounds, which are set out in Article 25 (2) of Dubai Tenancy Law. The four grounds are:

i. personal use of the property by the landlord or for use by his first degree relatives;
ii. sale of the property;
iii. demolition of the property; or
iv. comprehensive maintenance of the property.

The crucial pre-condition for the landlord to seek eviction of the tenant is a prior 12 months' notice (served by the Notary Public or registered mail) on the tenant and providing its reason for termination and the proposed eviction date.

In the event that there is no discussion of renewal between the parties, and the tenant continues to occupy the leased premises upon expiry of the tenancy agreement without any objection from the landlord, the tenancy agreement is renewed for the same term or for a period of one year (whichever is shorter) on the same terms as the original tenancy agreement.

The DIFC Tenancy Law does not provide an automatic right of renewal for tenants and any right to renew for a successive term must be included in the tenancy agreement. Without such express terms to renew, the tenant will be required to vacate upon expiry of the tenancy agreement. It is important to note that Decree 43 also applies to the DIFC and therefore the landlord must comply with the permissible rent increase limits upon renewal. From a practical point of view, Decree 43 is often difficult to implement in cases where the tenancy agreement does not contain an automatic right of renewal and if discussions between the landlord and tenant on renewal fail. In such cases, the tenant will be forced to vacate the leased premises upon the expiry of the tenancy agreement. On the other hand, if the tenancy agreement does contain an automatic right of renewal, then upon the expiry date, the tenancy agreement shall be deemed to be automatically renewed and if the landlord and tenant fail to agree upon the renewal rent (which is in compliance with Decree 43), then the matter can be referred to the DIFC Small Claims Tribunal for resolution.

Dispute Resolution

The Rental Disputes Settlement Centre ("RDSC") has exclusive jurisdiction over the tenancy disputes in Dubai (excluding tenancy disputes within the DIFC), rent disputes arising out of a lease finance contract, and disputes arising out of long term lease contracts. The RDSC is made up of two levels of litigation. The first level is the First Instance Circuit which consists of a judge and two real estate experts. Some of the judgments issued by the First Instance Circuit may be appealed within 15 days to the Appeal Circuit. The Appeal Circuit's decisions are final and may not be appealed further.

The filing fee for an eviction claim is 3.5% of the annual rent with a minimum of AED 500 and a maximum of AED 20,000. If any outstanding amounts are owed, the fee is 3.5% of the claim amount with a minimum of AED 500 and a maximum of AED 15,000. Once the claim has been filed and served, there will be a series of hearings approximately two weeks apart during which parties formally appear and file memoranda (or pleadings) which set out the claim, defence and all other evidence upon which the parties rely. Normally all arguments, pleadings and documents submitted to the RDSC are made by written submissions. The number of hearings (and hence the time it will take to set the matter down for judgment) will depend on the length of time taken to serve the defendants, which is required at all stages of the proceedings, and the complexity of the issues and memoranda that are filed. The execution stage is handled by the RDSC to increase efficiency. The execution fee for eviction claims is 1% of the annual rent with a maximum of AED 5,000, while the execution fee for a monetary claim is AED 135.

The DIFC Small Claims Tribunal has exclusive jurisdiction over tenancy disputes in the DIFC, where the claim amount does not exceed AED 500,000. The filing fee is 5% of the value of the claim, with a minimum of USD 100. Upon the filing and serving of a claim form, the Defendant has 7 days to admit the claim, defend the claim, or challenge the Tribunal's jurisdiction. If the claim is admitted, the Tribunal will issue a judgment on the claim. If the claim is defended, the Tribunal will schedule a consultation hearing, at which the parties will attempt to settle their dispute amicably. If a settlement is reached, the Tribunal will issue a consent order recording the terms of the settlement. If no settlement is reached, the Tribunal will either schedule a further consultation or make arrangements for the hearing of the claim. The hearing of the claim is relatively informal, with both parties ordinarily being unrepresented and the hearing being held in private. A winning party's recovery of its costs is usually limited to the Court or Tribunal fees that it has paid, unless the other party has acted unreasonably. The Tribunal's order is enforceable in the same way as a Court of First Instance order and appeals from the Tribunal are to the Court of First Instance.

Termination of Tenancy Agreement

Article 25(1) of the Dubai Tenancy Law set out the following events of default which permit the landlord to seek early termination of the tenancy agreement:

i. failure to pay outstanding rent despite receipt of 30 days' notice from the landlord (or a shorter notice period agreed in the tenancy agreement);
ii. subletting the leased premises without prior written consent of the landlord;
iii. illegal or immoral use of the leased premises which is not in accordance with public order;
iv. abandoning commercial leased premises without reason for 30 consecutive days or 90 non-consecutive days within a year, unless agreed otherwise between the parties;
v. any change caused to the leased premises rendering it unsafe for use or damages its original state;
vi. unauthorised use of the leased premises or use which is in violation of planning, construction and use of land regulations in force in Dubai;
vii. condemnation of the leased premises as evidenced by a technical report issued/ approved by Dubai Municipality;
viii. breach of the tenant's obligations as stated in the tenancy agreement or applicable laws despite receipt of 30 days' notice period from the landlord; or
ix. requirements to demolish or reconstruct the leased premises upon receipt of request to do so from the competent government authorities.

Should the landlord wish to terminate the tenancy agreement prior to its expiry pursuant to an event of default, a prior written notice of default to the tenant with a 30 days' notice period should be served through the Notary Public or by registered mail.

We often receive queries from our clients on the position of unilateral termination or early termination of a lease due to a change in the financial circumstances of the tenant. UAE law does not recognise the right of unilateral termination (without a court order) or early termination at the option of either party. Therefore, any commercial understanding between parties agreeing to such termination rights must be recorded in writing.

Article 62(4) of the DIFC Tenancy Law allows the landlord to terminate and re-enter the leased premises upon the occurring of any of the following events of default:

i. Outstanding rent which is more than 30 days overdue (there is no requirement to serve a default notice on the tenant).
ii. Breach of any term of the tenancy agreement (either express or implied) and the tenant's failure to remedy the breach, despite having received a default notice from the landlord providing 30 days to remedy the breach. The parties to the tenancy agreement may choose to increase the prescribed 30 days' notice period but cannot reduce this period.

Upon termination of a tenancy agreement due to tenant's default, Article 60 of the DIFC Tenancy Law requires the Registrar to record the termination in the register.

Conclusion

Tenancy laws in Dubai are the same for residential, commercial and industrial leases. With a maturing real estate sector in Dubai, there is a need for introduction of a new specialised law which is equipped to regulate the different needs for each sector. We are aware that the DLD and RDSC are currently working to introduce a new tenancy law(s) and we are of view that such new law will improve the leasing sector and thereby elevate the overall real estate market in Dubai.

The tenancy law in the DIFC similarly applies to residential, commercial and industrial leases. It generally upholds the parties' freedom to contract, though the rent caps in Decree 43 are applicable to premises in the DIFC despite any terms that expressly permit the landlord to increase rent in a manner contrary to Decree 43. However, practically, Decree 43 offers limited protection to tenants in the DIFC. This is because there is no automatic renewal of tenancies on the same terms and the DIFC Courts will uphold clauses permitting landlords to terminate at will if the tenant is unwilling to pay an excessive rent.

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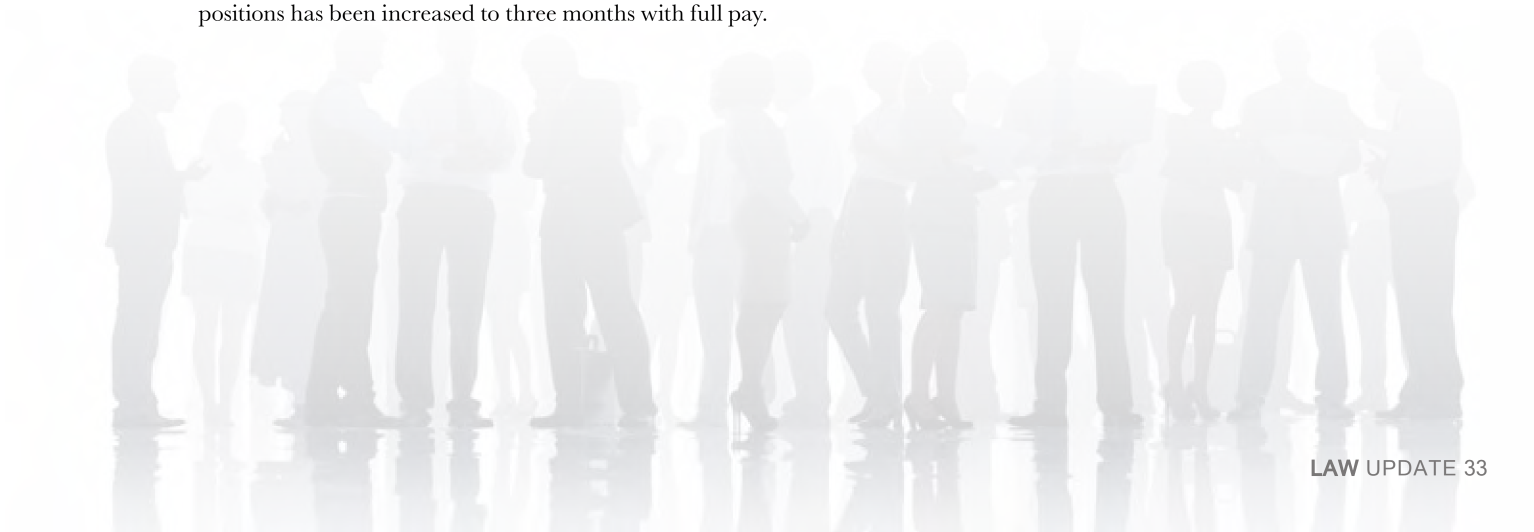
Outline of Key Changes Introduced on Human Resources in the Federal Government

This is a brief outline of the key changes introduced by Federal Decree Law No. 17 of 2016 to Federal Decree Law No. 11 of 2008 on Human Resources in the Federal Government:

- The word “Ministry” has been replaced by the expression “Federal Authority and the word “Minister” by the expression “Head of the Federal Authority”.
- UAE national employees shall be hired on a renewable three year fixed-term contract, with the exception of those employees on temporary and special contracts.
- The probation period for new hires has been increased to six months and can be extended by a further three months.
- The Decree provides that employees who join the national service shall take the balance of their leave entitlement by 31 December of the year following the year in which their service terminated or opt to receive pay for leave not taken, as specified by the implementing regulations.
- Employees with chronic medical conditions can now apply for extended sick leave with full pay to be granted at the discretion of the medical committee.
- Maternity leave for women employed in permanent job positions has been increased to three months with full pay.
- The sabbatical leave entitlement is now one month.
- Special leave to accompany a second degree relative for overseas treatment has been reduced to one month with full pay for the first fifteen days, with an option to extend for one month.
- Special leave to accompany a first degree relative for local treatment has been reduced to one month with full pay for the first fifteen days, without an option to extend.
- The additional leave available to employees enrolled at accredited institutes and schools is one day to sit an exam overseas and may not exceed fifteen days per year.
- The written investigation requirement for imposing administrative penalties has been cancelled.
- Employees that violate policy could potentially be subject to an additional penalty of demotion to a position in the next lower pay grade.
- Gratuity is to be calculated as follows:
  - on one month’s base pay for each year of the first five years of service, using the average pay for the last five years; and
  - on one and a half months’ base pay for each additional year, using the average pay for the last five years.



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Innovation and Islamic Finance: Is it Time to Standardise the Islamic Finance Industry in the United Arab Emirates?

Shari'ah financing is a relatively new field in the banking arena; yet, it has, so far, withstood the rigorous tests of the global financial crisis and continues to grow in the UAE, in spite of competitors from conventional finance.

One of the key challenges of any Shari'ah compliant product is to structure products that commercially mirror or duplicate the commercial terms of those offered in the conventional market, while at the same time meet the relevant Shari'ah requirements.

Al Tamimi & Company has assisted several banks in Dubai and Abu Dhabi to develop their Islamic retail and wholesale products for financing across the spectrum, from property financing to Islamic overdrafts. For each new product, the process from conceptualisation to the realisation is a rigorous one. We normally work hand in hand with the banks to ensure that their commercial needs are satisfied and that the structures comply with the stringent requirements imposed by the relevant bank's Shari'ah board. In the UAE, due to the conservative standards imposed by the various Shari'ah boards, each product is keenly scrutinised to ensure that the integrity of the product, and, as an extension, the reputation of Shari'ah compliant products in the UAE, is preserved.

The following Shari'ah requirements must be observed generally:

1. the charging of interest, including default interest, is prohibited;
2. each financing structure must be based on a genuine underlying transaction; and
3. speculation and uncertainty are forbidden.

The above guidelines, together with other Shari'ah regulations, have necessitated innovation by the key players in the market. This is how financing products, such as *ijarah* (lease financing) and *murabaha* (financing underlined by a sale and purchase of goods), came into being. From these basic building blocks, various spin-off products have also been developed, for example, forward *ijarah*, for properties under construction, and commodity *murabaha*, to cater to the working capital needs of a corporate borrower.

Of late, many banks are developing new Islamic products even further in order to compete with the products offered by conventional banks. For example, some banks have recently introduced credit card and overdraft structures that replicate those offered by the conventional banks. This is achieved by a combination of multiple products (such as a commodity murabaha coupled with a *wakala*) that form a cohesive new product capable of matching the terms offered by the conventional market. One such example of this is in relation to calculating profit on a daily rest basis.

Innovation is a crucial aspect in the development of new Shari'ah products. The rolling out of a brand new Shari'ah product requires a sound understanding of banking and Shari'ah requirements.

Is it time for consistent Shari'ah standards?

Many concerns have been raised by the lack of consistent standards in Islamic Finance. Some of are the view that it would be better to allow market forces to evolve naturally and correct any deficiencies. However, it is widely agreed that there is a strong need for a basic set of agreed minimum standards for Shari'ah financing, not least because of the international shortage of qualified scholars, which in turn leads to an adverse impact on costs and timelines. For example, additional time is usually spent to obtain Shari'ah approval for both products and financing documentation, and the impact of this is especially felt in a syndicated financing transaction where Shari'ah approvals are required by all the participating banks.

Inconsistent Shari'ah pronouncements (*fatwa*) can be issued by different scholars, which result in divergent approaches on issues such as selling down in the secondary market and cross border financing. The lack of unified standards also impacts on other matters, such as financing structures, legal documentation, corporate governance, and ancillary Shari'ah services, such as trading platforms and accounting and tax treatments.

Hence, the formulation of binding Shari'ah standards should prevent standard structural and contractual provisions from requiring approval at each transaction. A further advantage would be the ensuring of defined parameters in the formulation of any new Shari'ah product so that there is a common starting platform for all banks. An objective set of Shari'ah standards would also lend predictability, credibility, and consistency.

The Accounting and Auditing Organization for Islamic Financial Institutions ('AAOIFI'), has formulated accounting, auditing, governance, and Shari'ah standards for Islamic financial institutions ('AAOIFI Standards'). The AAOIFI Standards have, over time, become a resource for many Shari'ah bankers and advisors alike. The appeal of such standards is that they set out the most common Shari'ah structures, together with the minimum expected standards, and the Shari'ah justifications behind these structures. To some extent, the AOOFI Standards have narrowed the divergent approaches in many of the key issues previously debated by the scholars. However, being merely accounting standards, they are not legally binding and have no force of law in the UAE.

There are currently plans to create a Shari'ah board at the federal level within the UAE, with the aim of unifying the Shari'ah standards within the country, bringing the UAE in line with other jurisdictions, like Malaysia, that have similar systems in place.

Innovation v Standardisation

Standardisation of basic Shari'ah standards is the next natural step in the evolution of Islamic finance in the UAE. The market has already come a long way. For example, many transactional structures now adopt the Loan Market Association ('LMA') style of documentation, although the LMA has yet to develop a complete Shari'ah compliant documentation suite. In terms of structures, the divergence from bank to bank is narrowing. Documentation is becoming more streamlined and sophisticated. However, there is still some way to go before complete standardisation is achieved.

The implementation of national and global Shari'ah standards is not without its challenges. Given that there is no legal requirement for Islamic financing documents to be Shari'ah compliant, any formulated standards should also be consistent with the laws of a jurisdiction in order to be legally effective from the outset.

It would be ideal if standardisation could achieve: 1) a clear minimum position on the common legal issues in Islamic banking documentation; 2) an agreed position or alternative where the products are not fully compliant with local laws (for example, where the structure involved beneficial ownership or trust arrangements); and 3) common standards which apply to all banks in order to ease selling down, restructuring, and refinancing.

With the above minimum framework in place, the industry participants would be able to work within a defined set of parameters, which removes the need to constantly revisit the same issues. This in turn, will allow new products and structures to be developed, but within a more controlled and standardised infrastructure.

Conclusion

Many UAE banks offer Shari'ah compliant products or are Islamic-only financial institutions. Competition is strong for each bank to differentiate themselves from their rivals, including by being the first in the market to offer a new Islamic financing product.

The development of new products is still very much left to self regulation by the banks involved, and efforts to standardise this industry should strike a balance between providing a predictable Shari'ah infrastructure and allowing innovation to create new products and structures.

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New Guidance on Construction Delays and Disruption

The recently released draft of the revised SCL Protocol (Draft) has many new features that should assist with resolving disputes involving delay or disruption.

The SCL Protocol ('the Protocol') provides guidance for the management and determination of delay and disruption. Although it is advisory only (having no force of law unless by agreement) it is extremely useful for avoiding or managing delay claims.

Delay Analysis

The Protocol advocates the use of time-impact delay analysis both for prospective and retrospective analysis. This method involves introducing delay events into the most contemporaneous programme and updating the programme with the assumed most likely effect of the delay.

In the Draft it is now stated that the use of time-impact delay analysis '*can sometimes lead to unrealistic results if it subsequently transpires that the EOT [Extension of Time] is significantly more than the delay attributable to the Employer*'.

Determinations which awarded potentially inaccurate EOT entitlements would cause disputes, particularly in circumstances where it is arguable that other methods of delay analysis may be more appropriate.

In the Draft, the time-impact delay analysis method is still recommended for contemporaneous submission and assessment of an EOT claim. A contemporaneous evaluation has also been elevated to a core principle, rather than a 'wait and see approach' as this allows appropriate mitigation measures to be considered to limit the impact of the delay event.

However, where the analysis is carried out some time after the delay event, the Draft does not recommend one form of

delay analysis but sets out a range of methods currently in use and the factors to be taken into account when selecting the right method to use.

The main emphasis is that the method to be used must be sound from a common sense perspective in light of the facts that actually transpired on the project. This approach is to encourage more reliable outcomes, and is an approach which has been endorsed by English courts.

Consideration of the Protocol's and the Draft's guidance on delay during contract negotiation, and inclusion of its principles when drafting, will minimize the prospect of dispute.

Disruption Analysis

A key new feature of the Draft is the separate categorization of disruption and extended guidance on its analysis.

Often the terms "delay" and "disruption" are mistakenly used as if they are the same thing. During disputes, a disruption claim may be used as an alternative and additional cause of action to a delay claim.

Most standard forms of contract, while addressing delay, do not expressly address disruption, and it is left to being a claim based on a breach of the contract. The Draft sets out guidance on the difference and how to advance and assess disruption claims.

The Draft states that '*The starting point of a disruption analysis is a review of productivity in carrying out the works over time in order to determine when lower productivity was achieved and what activities were impacted".*

The Draft sets out two categories of disruption analysis. Productivity-based methods (being those based on actual or theoretical measurements of comparative productivity) and Cost-based methods (being those which rely on analysis of planned and actual expenditure of resources or costs).

The Draft allows parties to be better placed to address any eventualities relating to disruption.

Concurrent Delay

The treatment of concurrent delay is often a cause of dispute.

The Draft defines concurrent delay as a 'situation where two or more delay events arise at different times, but the effect of which are felt at the same time'. It also states that '*For concurrent delay to exist, each of the Employer Risk Event and the Contractor Risk Event must be an effective cause of Delay to Completion (not merely incidental to the Delay to Completion)*'.

A main issue with concurrent delay is whether an Employer delay is an effective cause of Delay to Completion where it occurs after the commencement of the Contractor Delay to Completion but continues in parallel with the Contractor Delay. The Draft notes the narrow approach to this issue taken by English courts, which is that that situation would not be considered as concurrent delay as '*The Employer Delay will not result in the works being completed later than would otherwise have been [where] the works were already going to be delayed by a greater period because of the Contractor Delay to Completion*'.

This standpoint has been criticized as giving employer's a 'blank check' on variations during a period of Contractor delay which amounts to a windfall that does not respond to any consideration of fairness or reasonableness.

A UAE Law perspective

Where concurrent delay has been established, the Draft recommends a position in line with UAE law being that '*the Contractor should be entitled to an EOT for the Employer Delay to Completion… The Contractor delay should not reduce the amount of EOT due to the Contractor as a result of the Employer Delay*'.

There is no express UAE law on the entitlement to an extension of time or the management of concurrent delay. It is likely however that the Courts would have regard to the intention of the parties in absence of a clear agreement. When dealing with concurrent delay there are principles of the UAE Civil Code which may also be applied. For example Article 246(1), which states that '*the Contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith*'.

In the case of concurrent delay UAE courts may also apportion liquidated damages under Article 290 of the Civil Code which considers if '*The person suffering harm participated by his own act in bringing about or aggravating the damage*'.

Conclusion

The Draft adds to the guidance given by the Protocol on the best way to maintain adequate and complete records, how to deal with global claims, mitigation measures and acceleration. Though controversial in some areas, the Draft is detailed and wide-ranging and its guidance will prove invaluable during contract negotiation, drafting and administration to minimize disputes.

Extension of time claims are the basis for the vast majority of construction disputes and many contracts, including the FIDIC templates, have no specific provisions to deal with the issue of concurrency.

A full understanding of the Drafts' guidance on how to prepare for and deal with concurrency and= including appropriate clauses in your contract allows for the protection of both Employers and Contractors and the minimization of disputes.

If you want assistance with your contracts, managing contract administration and record keeping or compliance with or use of the Draft or the Protocol please Scott Lambert on s.lambert@tamimi.com.

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The Rise of the Gig Economy: UAE Employment Considerations

The "gig economy" – what is it?

Uber, Lyft and Airbnb are classic disruptive technology companies in that they have utterly transformed their market sectors and heralded new individual working practices and arrangements—resulting, most notably, in the rapid rise of the "gig economy". This is a term used to describe casual work undertaken on a piecemeal basis. Some workers prefer to operate within the gig economy whilst for others it is a matter of simple economic necessity.

From a general employer-employee perspective, Uber's model in Western jurisdictions has brought about a marked shift from the traditional working model of employment with a fixed employer and on a permanent status basis to a more loose arrangement focused on flexibility, autonomy and self-control over working schedules, hours and activities. Uber's model has in effect operated on the basis that it is a technology platform, as opposed to a transport provider, and that its drivers are therefore self-employed workers offering their services to passengers via the online Uber app. A self-employed contractor does not have the same rights, benefits and protections as an "employee" – great for the gig economy company, but not so for the worker. This has led to some soul searching in various jurisdictions as to the desirability of this model.

An employment tribunal in the UK most recently held that drivers engaged by Uber are not self-employed or independent contractors, but fall within the definition of 'worker' (under applicable UK employment legislation) with the consequence that they are legally entitled to the national minimum wage, paid annual leave, and whistleblower protection etc. In the tribunal's view, any driver who has the app switched on; is operating within the territory in which he or she is authorised to work; and is both able and willing to accept assignments; is working for Uber under a contract of employment. The judgment, which is subject to appeal (not least because it threatens the whole working model concept), serves as a salutary warning of the issues inherent with such novel working practices and models, particularly against the backdrop of an increasingly developing digital age.

The gig economy & the UAE

The increasing evolution of technology has opened the doors in many jurisdictions across the globe to new individual working practices and arrangements—resulting, most notably, in the rapid rise of the "gig economy"

The employment landscape in the UAE does not naturally lend itself to such flexible working models: all expatriates, in order to lawfully reside and work in the UAE, must be sponsored by a locally licensed and registered entity for UAE work permit and residency visa purposes. Such sponsorship is both employer and location specific, entitling the employee to work only for their sponsoring employer and at the premises under which their visa has been obtained. Whilst Uber and (the Middle East equivalent) Careem operate in the UAE, the set-up is markedly different to their Western model. Typically, the model in the UAE works, broadly, as follows:

a. booking platform operator enters into a commercial services contract or agreement with a locally licensed and registered limousine company in order to avail of its limousines and drivers;
b. its pricing of services must be in line with the limousine services and cannot compete directly with the city's regular taxi companies; and
c. it does not engage the drivers directly (which is the model in other Western jurisdictions) given the regulatory and licensing regime in the UAE. This therefore means that the drivers remain employees of the limousine company throughout – not of the booking platform operator.

From an employment perspective, then, the model is still very much the classic employer-employee one, with the employees of the limousine companies still falling within the folds of the UAE Labour Law and entitled to basic standards and protections (including, as applicable, maximum working hours, sick leave and pay, the right not to be unfairly terminated and end-of-service gratuity). Their employment relationship is very much specific to the limousine company only. It is a similar model throughout the GCC. The fact that the licensing regime in the UAE does not permit a driver (in this instance) to be engaged directly by such booking platforms adds another interesting and unique layer to the mix – which is not generally a matter of consideration in other countries in which Uber-esq models operate.

Future developments...

Is there scope for a genuine gig economy in the UAE? Could the concept of atypical working be adapted across other industries in the UAE? Yes, but it will require legislative change.

The UAE's employment regime is inextricably linked to the immigration regime which itself is fairly static (very limited exceptions apply). However, the UAE does recognise the concept of "the freelancer" or "independent worker" – but not in the same manner as other Western jurisdictions (and certainly not in the same manner as Uber-esq models). Freelancers/contractors can set up their own businesses (ordinarily in the various free zones) and, subject to the terms of their licenses, can render services to other companies but usually within the confines of the free zone in which it operates. Work outside the free zone is generally not permitted. To that end, it remains to be seen whether a special flexible model of work (similar to the Western concept of independent contractor) will be developed or created in the UAE and across certain industry sectors, with the aim of creating greater flexibility. This would entail careful consideration, to ensure that appropriate frameworks are in place to accommodate the needs and requirements of both companies and individuals operating under such a model, whilst maintaining a differing approach to such a set-up from an employment law perspective. One would imagine that the appetite to introduce any such change would be limited to top end sectors/workers and not across the board generally as that would represent a paradigm shift in the entire fabric of the UAE visa/employment regime.

Technology has certainly made connecting workers and customers easier than ever before. This has enabled the rise of the rapidly growing gig economy. However, there has in other jurisdictions been an increasing trend of attempting to re-characterise gig-economy companies as employers of the independent contractors/workers. Such a re-classification, it has been argued, hinders the growth of gig economies. It remains to be seen to what extent a new flexible model – creating a genuine self-employed relationship of the kind envisaged by gig economy firms – can be adapted in the UAE.

A Focus on Intellectual Property

This month's special feature of Law Update we focus on Intellectual Property (IP) rights, trademark protection, patent and innovation. IP covers everything relating to intangible assets of entities and individuals, and is a significant element in the evaluation of companies. The Intellectual Property practice provides a wide-range of services on all aspects of IP law, including prosecution, advisory, transactional, IP litigation, IP audit and due diligences, domain name conflicts, strategic projects, profiling and governmental regulatory affairs. The IP practice was selected as the winner for the prestigious 'IP Middle East Firm' award by "The Oath" in November 2016.

Despite the gloomy economic outlook, the private sector recognizes the importance of brand protection, clearance and going through all the fundamental process of protection. Public funding on innovation has also increased, especially in emerging economies and those old exporting countries where the government supports progress in the innovative industry. Trademarks are valuable. According to recent reports, the value of Apple's trademark is estimated to reach USD 178 billion, which would make it the most valued brand in the world. We also see from reports that "Emirates" (the airline) is being ranked as the most valuable brand in the Arab world, with a total estimated value of USD 7.7 billion. We therefore see in this edition a helpful article aimed at business and marketing teams on how to protect your brand by following simple and clear steps when undertaking the branding exercise. This involves using the acronym SCREM, which stands for Selection, Clearance, Registration, Enforcement and Monitoring.

On the patent and innovation side, we have seen that Research & Development ('R&D') has become a vital issue in the region. Innovation through R&D is a focus in most developed, as well as developing, nations to improve environmental and other socioeconomic conditions. This has also been of interest to SMEs and large corporations, but still more education on the benefits of this path is needed. Countries like Bahrain still lead the way. Although a small country, it has some of the oldest educational institutions in the Gulf, and allows 100% foreign investment in education. This makes it a very distinctive and attractive venue for investing in education, innovation and R&D protection.

Oil & gas is still a very important source of revenue in the region, and the protection of IP and innovations in the field remains paramount. Securing and carefully monitoring IP assets attracts investors, and helps ensure future profitability and a healthy forecast of revenue in the era of reduced oil prices.

We hope you find this supplement interesting and informative. Please contact us for any queries relating to Intellectual Property matters.

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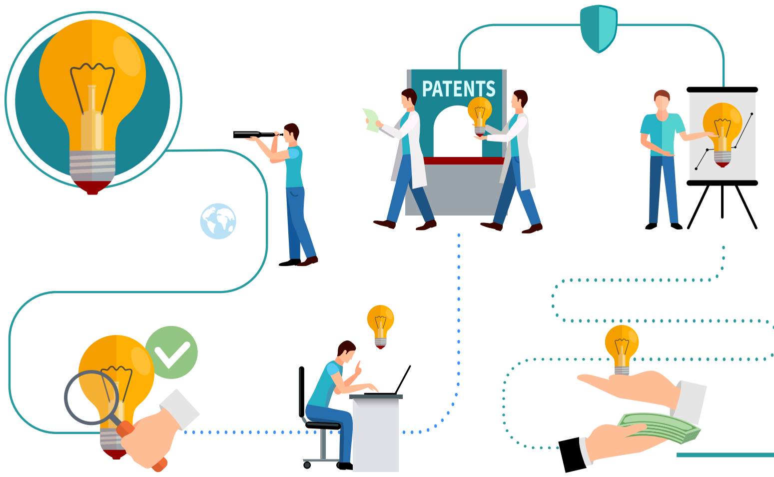

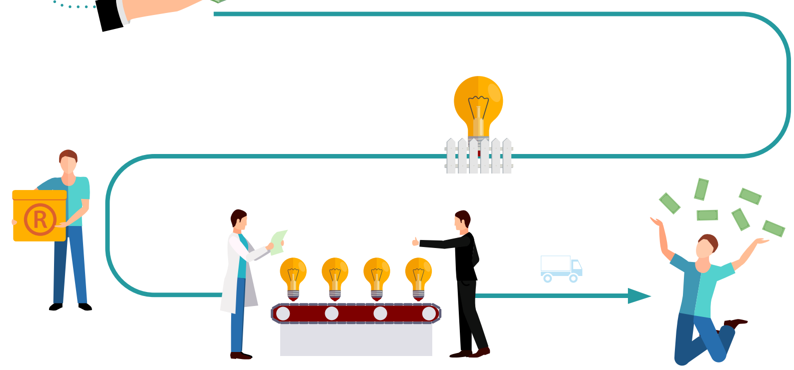

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Trademark Protection: Key Considerations

In today's information-based economy, intellectual property rights, and trademark rights in particular have received more media attention than ever before in the Middle East. Yet little has been said about trademark protection in a simply read format for the business community including branding personnel.

Trademark is a distinctive sign which identifies certain goods or services being produced or provided by a specific person or enterprise. Over the years these marks have evolved into today's system of trademark registration and protection. The system helps consumers to identify and purchase a product or service because of its nature and quality, indicated by its unique trademark which meets their needs. A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. The period of protection varies, but a trademark can be renewed indefinitely beyond the initial time limit upon payment of additional fees. Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement.

In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

In light of the above, we consider the key standard procedures that trademark owners and marketing teams need to observe can be neatly categorised as "Select, Clear, Register, Enforce and Monitor" (SCREM). Adhering to SCREM (more fully explored below) will assist trademark owners and marketing teams to obtain rights, use and own their trademarks safely. We consider the components more fully below:

1. **Select:** Trademark should be carefully selected to represent fancy, arbitrary or suggestive terms. Always try to avoid selecting generic terms. It is not recommended to select overly descriptive terms as this will require tremendous effort from the owner to enjoy exclusivity and build its goodwill. We therefore advise brand owners to choose a distinctive mark using fancy, arbitrary or suggestive terms as it has a greater level of legal protection. Generic or descriptive marks on the other hand may not acquire proper trademark protection. For example, generic terms can not be exclusively owned by brand owners or trademark users and any investment in using generic terms will ultimately be a very risky one for brand owners. Descriptive marks are arguably capable of protection only after acquiring of secondary meaning and we consider such marks as constituting a risky investment for brand owners on the basis that acquiring secondary meaning requires substantial investment.
2. **Clear**: It is important to conduct a trademark search prior to launching a new brand. Trademark search helps eliminate conflicts with prior applications / registrations. The clearance should be ideally done in public records by conducting official searches at the trademark registry in addition to search for prior use rights. It is recommended also to clear the mark with pre-existing trade names at with applicable companies' registries. Its noted that companies' registries are not linked or cross checked with the applicable trademark registry which can cause practical difficulties.
3. **Register**: Once the clearance is completed, the registration process should be completed to prove and obtain ownership. The trademark registry should examine the trademark application and issue a decision of acceptance if the mark is found eligible for registration and does not contradict with pre-existing rights. Valid registration should be acquired and maintained by renewing the trademarks on a timely basis.
4. **Enforce**: Publications of trademarks should be monitored in applicable trademark journals, domain names and websites as any infringement by third party should not be tolerated. Enforcement measures should be taken with law enforcement agencies or via court proceedings which will ensure continuity of ownership, maintain the trademark legal and economical equity, protect consumers' interest and most importantly strengthen the trust in the quality of goods and/or services for which the trademark is being used.

"Consider the key standard procedures that trademark owners and marketing teams need to observe can be neatly categorised as "Select, Clear, Register, Enforce and Monitor" (SCREM)."

5. **Monitor**: It is prudent to deploy designated market research personnel who are responsible for monitoring the market, advertising and marketing activities. It is essential to keep monitoring the market and spot any attempts by third party who intend to capitalize or free ride on the trademark. This can be accomplished by participating in well regarded watch services programs which spot and report any conflicting usage of trademark and take necessary measures to screen the existing and potential markets for the trademark owner.

In nutshell, in our view SCREM procedures should always be considered and adhered by trademark to ensure the investment made in this important equity and intangible asset is properly built, protected and ultimately owned with mitigated risk.

Al Tamimi & Company's Intellectual Property practice regularly advises companies on their IP requirements practices in the region. For further information please contact Munir Suboh (m.suboh@tamimi.com).



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R&D and Innovations in the GCC Countries: Recent Updates

Innovation through research and development (R&D) is a focus in most developed, as well as developing, nations wishing to improve environmental and other socio-economic conditions. To account for the upsurge and growth of technological developments and innovations, countless approaches in the form of policies and strategies have been adopted by governments and policy makers. Small and medium enterprises (SMEs) are often considered to be the engine of the economy and are generally positioned at the centre of attention by policy makers desiring to foster technological developments and innovations and to sustain an economy based on innovation and knowledge.

The GCC countries have had the vision and objective of transforming their economies traditionally based on petrochemicals to more diversified and sustainable economies with an important component based on R&D, technology, knowledge and innovation. An important part of this vision has been attracting and supporting SMEs who focus on R&D and innovation in the various industrial sectors.

This has unfastened a wide arena for investments and technological developments within the region which we explore in further detail below.

Innovation Updates: UAE

The UAE has adopted Vision 2021 with an aim to enlarge socio-economic development. It seeks transformation to a diversified and knowledge based economy by 2021 and the recognition that goes with that status. Vision 2021 is based on four principles, namely; United in Responsibility, United in Destiny, United in Knowledge and United in Prosperity. The vision focused upon improvisation in the fields of cohesive society and preserved identity, competitive knowledge economy, world-class healthcare, first-rate education system, sustainable environment and infrastructure, safe public and fair judiciary.

An important consideration of Vision 2021 is the attraction and thereafter support of start-ups and SMEs to ripen the seeds of science and technology with the objective of achieving technological advancements. In order to facilitate this Vision 2021 objective, the UAE government has recently announced a $82 billion funding injection for innovations in the field of technology, with a view to transform UAE into a universal innovation hub.

Statistics published in 2016 show that the fundamental business and socio-economic growth of the Dubai is contemplated via technological start-ups and SMEs representing 95% of the business sector, accounting for 86% of the workforce and contributing around 60% to the non-oil GDP. All this is driven successfully by the combined efforts of the government and the private players whereby technology based SMEs and start-ups are expected to play a significant role in developing innovation and strengthening the economy of the UAE.

Among the strategies adopted by the UAE to enhance in the development of innovation is the endorsement of public-private partnerships across the UAE.

A large number of initiatives have been adopted in this respect, mainly in Dubai and Abu Dhabi, namely through research centres such as Khalifa Innovation Centre established by Khalifa University of Science & Technology (KUSTAR) and the UAEU Science & Innovation Park established by the United Arab Emirates University.

A number of innovation incubators and accelerators have also been established and initiated throughout the UAE. For example, the Dubai Future Accelerators program (the "Program") which aims to attract and support entrepreneurs and start-up companies from across the globe and link them to local sponsors, mainly governmental entities, in various industrial fields with the objective of developing innovative technologies. The Program is for a three month duration per round receiving around 30 entrepreneurs each round most of whom come from outside the country. The first round which took place between September - December 2016 brought around 130 million dirhams of contract values to these entrepreneurs.

Certain government-initiated innovation incubation and acceleration programs such as the Program are open to international entrepreneurs and companies. These international entities are provided with the opportunity to connect and work with local entities on projects of common interest which can then lead to business opportunities whilst giving entrepreneurs the opportunity to develop, test and deploy their innovations inside the UAE.

International companies continually show interest in opportunities inside the UAE due to its potential to become a regional and international innovation hub. However, certain government-initiated innovation incubation and acceleration programs are open only for UAE and/or GCC nationals. International companies can visit and review the eligibility conditions of the different governmental programs that are available.

Private innovation incubators and accelerators also exist and are increasingly present in the UAE. These are normally open to foreign entrepreneurs and can offer a good starting point for business support and networking in the UAE. In addition, there are a number of corporate incubators established which provide physical environments and infrastructure for the establishment of companies in UAE free zone with 100% ownership rights including Dubai Science Park, Dubai Techno Park, Dubai Silicon Oasis, D3, Masdar City, Dubai Internet City, Dubai Biotechnology & Research Park (DuBiotech), just to name a few.

Another example is Dubai SME which has instituted innovation incubation programs through its innovation arm Hamdan Innovation Incubator with the objective of backing entrepreneurs in the development, protection and commercialization of their innovations.

In Abu Dhabi, *the Takamul program* deployed by the Abu Dhabi Department of Economic Development supports and funds Emirati inventors, universities and companies in the protection and commercialization of their innovations.

The importance of Vision 2021 is also evidenced by the launch of the *Science, Technology and Innovation* (STI) policy in the year 2015 by the UAE Government which aims to prepare the UAE for the post oil world. The STI policy is an exclusive policy which identifies the requirements and challenges faced by exceptional researchers and scholars of Universities and also technical entrepreneurs. These challenges include the limitations to access to advanced and specialized R&D, R&D infrastructure, high laboratory costs and prototyping facilities to name a few. The STI aims to support start-ups by not only funding the innovations but ensuring the availability of R&D facilities for advanced research. It also aims to enhance the world class innovation ecosystem and offers availability of technology transfer and incubating innovation. To work on its implementation, the government established a committee known as the National Science, Technology and Innovation Committee policy in order to make the UAE amongst the most innovative countries in the world, owing to advanced and innovative talent, resources, legislations and infrastructure.

In view of spreading a culture of innovation, since 2015 the UAE government has assigned a week in the month of November as innovation week taking. The objective of innovation week is for educating and encouraging the public as well as private entities to take initiatives in fostering and developing innovations with a number of programs to accolade innovators for their initiatives.

Innovation Updates: Saudi Arabia

In a recent survey conducted in Saudi Arabia it was determined that young entrepreneurship and innovations in the field of science and technology are the next most economically effective forces after the oil industry. The Government is working towards implementing **Vision 2030** which was released in April of 2016 and which includes 80 projects costing up to $3.7 million and other implementation costs of $20 million. Vision 2030 is implemented with various objectives and targets sustainable development. It includes the following objectives:

- increase the non-oil revenue;
- developing a vibrant society with fulfilling lives;
- achieving environmental sustainability;
- raising the global ranking in the Logistics Performance Index (LPI) from 49 to 25 and to ensure that the Kingdom is a regional leader;
- improving social capital index from the current rank of #26 to rank #15;
- introduction of green cards:
- enhancement of tourism; and
- developing and facilitating SMEs and technology start-ups.

It has been slightly more than a decade since Saudi Arabia launched its most productive scheme for promoting the SMEs and start-ups. The SME Loan Guarantee Programme (KAFALAH), established in 2006 through the Saudi Industrial Development Fund, acts as a guarantor to commercial banks providing credit to SMEs. Another similar program known as the BADIR program for technology incubators commenced in 2008 with an aim to become the national incubation program.

Further, in 2012 Saudi Arabia announced its National Strategy which sets to transform the Kingdom into a knowledge based economy by 2030. Whilst, in 2015 Saudi Arabia triggered the development of SMEs by forming the Council of Economic Affairs and Development and the SME Authority in order to regulate entrepreneurial culture across the country.

Moreover, establishment of the National Science, Technology and Innovation Plan (NSTIP) in 2007 is a proof of the long term Saudi vision to progress in innovations and developments of technology. It encompasses eight major programs which are as follows:

- Strategic and advanced technologies;
- Scientific research and technical development capabilities;
- Transfer, development, and localization of technology;
- Science, technology, and society;
- Scientific and technical human resources;
- Diversifying financial support resources;
- Science, technology, and innovation systems; and
- Institutional structures for science, technology, and innovation.

The implementation of NSTIP is divided into 4 phases which is expected to complete by 2030. Dr. Alabdakadir, the NSTIP Secretary General, elaborated that "*the NSTIP has its strategic goals and an ambitious long-term vision to transform the economy and society of the Kingdom into knowledge based economy and society through a globally competitive national array*". Since the establishment of NSTIP, the Kingdom has marked the growth of scientific publications and there is a sharp rise in patent filings both nationally and internationally through the Patent Cooperation Treaty (PCT) which KSA accessed on 3 August 2013.

The Saudi Government has funded various projects under the banner of NSTIP in various fields of science. This also includes the annual IP forums to promote discussion and improve understanding of IP issues within the academic and business communities and a series of IP awareness workshops targeting universities, research centers, and the industrial sector, with the support of World Intellectual Property Organization (WIPO).

The NSTIP has specialized programs such as the Technology Transfer and Localization Program which runs exclusively for SMEs and start-ups and is aimed to develop and implement strategies supporting innovation and technology development and identifying research centers for the research and development of advanced industrial technologies. It asserts promotes the formation of SMEs development center; five technology incubators; and a development and localization city to provide infrastructure for technical industry.

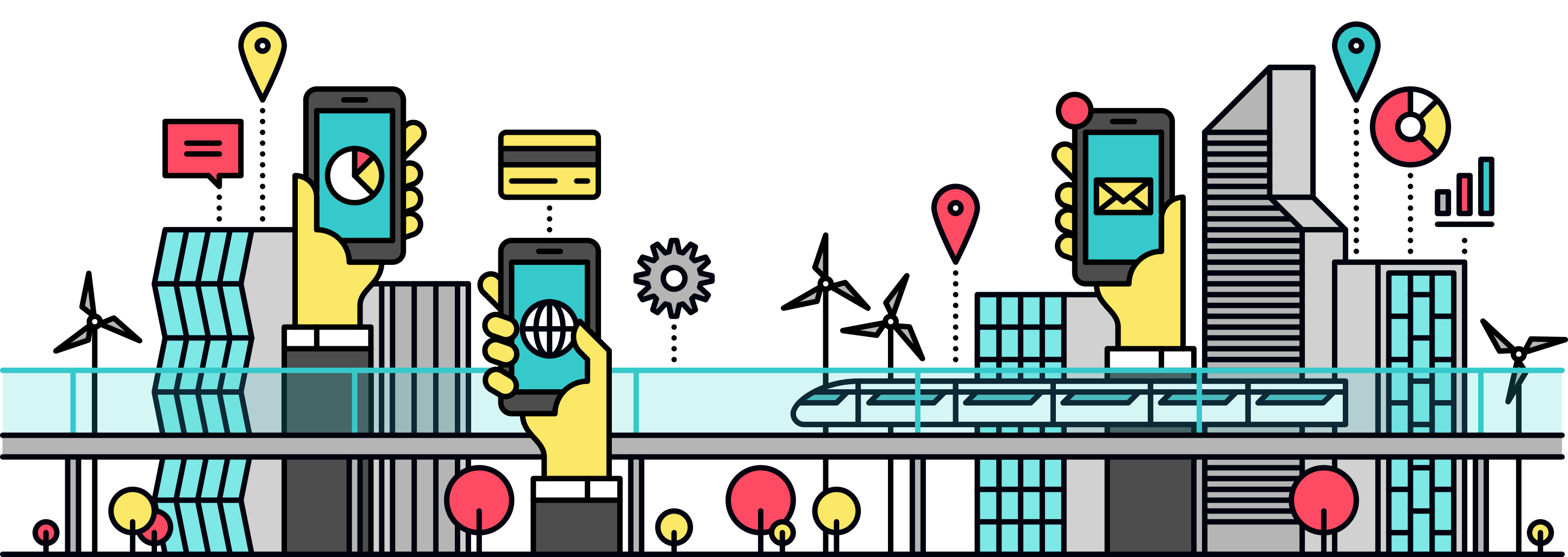
A number of academic institutions have also taken action to support entrepreneurship including King Abdulaziz City for Science and Technology (KACST), a scientific government institution that supports and enhances scientific applied research. KACST established various institutions to benefit the technology start-ups such as the Centre of Excellence in Astronautics and Aeronautics (CEAA) which has the aim of promoting start-ups in the field of aeronautical science.

In terms of the objective of diversifying its economy into a knowledge based economy, Saudi Arabia is also working densely on public-private partnerships focusing on innovation developments. As an example of public-private institution, Saudi Arabia Advanced Research Alliance (SAARI) is working in collaboration with the King Abdullah University of Science and Technology (KAUST) to progress innovation and economic development.

One prominent technology based start-up funded by KAUST is a technology created by the company FalconViz. The technology consists of a 3D aerial scanning and modelling system that is adopted to multi-rotor copters and fixed wing unmanned aerial vehicles (UAVs). In addition, during the past year, huge funds were issued by the KAUST to Saudi Arabia based start-up NOMADD Desert Solar Solutions to support innovation in the field of the solar technology. Patent protection has been sought for the invention NOMADD (NO-water Mechanical Automated Dusting Device) pertaining to technology for cleaning dust from the surface of solar panels without using water and damaging the panels.

Innovation Updates: Qatar

To indulge young entrepreneurs in science and technology and to lead the nation forward economically, the Qatar government has linked its services towards the development of science. Evidently, Qatar has



brought transformation in the education system and has strengthened the human and capital resources required to achieve its goal. The Government has also made major investments in developing an advanced academic and research environment to conduct high level scientific experiments and research.

In November 2016, the Qatar Foundation (QF) signed a Memorandum of Understanding ("MOU") with almost 500 start-ups with global venture capital provided start-up funds and accelerators to stimulate and advance innovation in the MENA region. Through partnership, participating organizations will provide start-up funding, training and mentorship to start-ups across the MENA region over the next five years. It is apparent that this initiative will trigger start-ups to operate at an upgraded level by linking them to high tech companies. It has been reported that these high tech companies are major Silicon Valley players, such as Facebook, Salesforce and others.

The QF has a prominent funding role and it will become be an anchor investor in the MENA region to organize the annual world-class 500 Distro Dojo growth marketing accelerator program.

Moreover, the QF is a major funding unit in establishing R&D centers across Qatar and it works as a custodian of the national research strategy and direct funding for research through the national research fund. In our view, the most important establishments of QF are: Qatar Biomedical Research Institute (QBRI), Qatar Environment and Energy Research Institute (QEERI), and Qatar Computing Research Institute (QCRI). It further includes the supervision of the Qatar Science and Technology Park (QSTP) and QF's flagship $7.9bn Sidra Medical and Research Centre which is destined to be a major centre for research in the health sector. The University level research is conducted by the Qatar University and Hamad bin Khalifa University which is the major contributors in upgrading the country to the knowledge based economy.

Qatar also affords start-ups and SMEs some latitude in setting up new businesses with the help of the QSTB incubator which extends support. It aims to support the launch, establishment and growth of promising start-ups, spin-offs and SMEs through mentoring, coaching, business facilitation, access to funding, subsidized office space in QSTP and other support business services. It offers two year subsidized rent to reduce overheads, expedite liquidation proceedings in the event the business gets shut down and reduce minimum capital requirements to assist the incorporation of a business.

Innovation Updates: Jordan

Innovation has grown more and more relevant to economic development. The importance of transferring knowledge from public research organizations to marketplaces, leading to establishment of efficient regulatory structures harnessing the abilities of multiple sectors has certainly increased. In Jordan, there is a considerable number of organizations on all levels highly engaged in innovation processes including the development of science and technology which has provided major opportunities for institutional enhancement. Jordan has actively sought to develop the national science and technology system and the key players in a national innovation concept in Jordan include; Incubators / accelerators; Science Parks / technology Parks / Business parks; Entrepreneurship and Innovation support initiatives/centers/programs; Technology transfer offices; and Clusters.

In Jordan SMEs comprise 98.5% of the total amount of registered companies,60% of formal jobs and contribute around 50% of the GDP. Jordan is very supportive of innovation development SMEs working in the ICT sector to the extent that Jordan has now become a hub for such activity.

Part of Jordan's 2020 vision is to enhance its knowledge based economy. With its clear ICT component, this offering makes Jordan one of the few countries to have actually measured ICT benefits with an ongoing implementation plan. he sector represents between 10-14 per cent of the Jordanian annual GDP, making it stand among the largest independent contributors to the economy with around 90,000 new positions being created between 1999 (since the establishment of the REACH initiative - JD's first ICT national strategy) and 2016. To enhance the research and market in the ICT, the government aimed to initiate the integration of ICT in other fields to spread ICT knowledge for the purposes of improving revenues and innovation development. Adapting the use of E-content and e-commerce are clear positive instances of ICT development.

In 2014, to keep pace with the rise in the competition and innovation development, Jordan announced its four-year national innovation strategy. The strategy takes into account a total investment of around JD 14.5 million. This strategy is adopted to meet the rising concerns of unemployment; it aims to facilitate young entrepreneurs in innovation and development. Realizing the importance of innovation and to encourage robust implementation of the an innovation development policy, the Jordanian government reactivated the National Council for Competitiveness and Innovation in early 2014 to define the challenges faced while traversing to the knowledge based economy. Furthermore, recently the Jordanian Council of Ministers, approved the accession of Jordan to the Patent Cooperation Treaty (PCT). This is an important step for SMEs and inventors in the Jordanian market as Jordan's accession to the PCT will benefit both local and foreign applicants, and we can expect to see a surge of patent applications in Jordan.

Recently, in December 2016, the Jordan Ministry of Industry and Trade signed a project agreement with the World Intellectual Property Organization (WIPO) for the establishment of technology and innovation support centers (TISCs) across the country in collaboration with a number of private and public entities. The project aims to support innovations and technology transfer through local innovators as a long term vision for strengthening the local industrial development and economy.

Innovation Updates: Bahrain

One of the leading entities in fostering innovation in the Kingdom of Bahrain is *Tamkeen*, a national authority established in August 2006, tasked with developing Bahrain's private sector as part of Bahrain's economic vision. In 2008, Vision 2030 for the economic development of the country was initiated and involved participation by government and the private sector. Vision 2030 is based on three principles: sustainability, fairness and competitiveness.

Tamkeen has two primary objectives; fostering the creation and development of enterprises and providing support to enhance the productivity and growth of enterprises and individuals. To achieve these objectives, *Tamkeen* provides a number of programmes including training, consulting, financing and entrepreneurship support.

Tamkeen launched "Mashroo3i" youth business awards, which gives youth a chance to build their own businesses, bearing all expenses related to the Business Plan and Prototype creation through the competition phases, without imposing any registration fees.

Another significant step supporting start-up and technopreneurs is the introduction of the virtual commercial registrations by the Ministry of Industry and Commerce, which allows a registration of a company without the requirement of a physical premises.

This type of commercial registration is allowed for 39 commercial activities including computer programming activities, graphic design, interior design consulting, photographic activities, software publishing, sound recording and music publishing activities, motion picture and video and television program activities.

Innovation Updates: Kuwait

As with other Gulf countries, Kuwait has a higher oil revenue c as compared to other alternative sources of revenue generation. Given the regional focus upon diversification of the economy, the Kuwait government has begun pushing funds for starts-ups, SMEs and technopreneurs. The latest World Bank statistics demonstrate that SMEs contributes only to 3% to Kuwait's GDP, compared to an average of 50% in high-income economies. Furthermore, SMEs only account for roughly 23% of Kuwait's workforce, about half of the average in high-income and emerging economies.

The Kuwait Government took the initiative to promote SMEs development by allotting a National Fund in 2013. Moreover, in 2016 an MOU was signed with the Kuwait Foundation for the Advancement of Science (KFAS) to partially or fully fund 250 backlogged patent applications. Furthermore, Kuwait took steps to strengthen its intellectual property laws by implementing the GCC wide trademark law in December 2015.

In another important initiative, the Kuwaiti government has adopted a new decree (No 29 of 2016) for the establishment of the Kuwaiti Association for the Support of Inventors. According to the announcement, the purpose of the association is to provide support for Kuwaiti inventors to enable them to excel and develop more inventions and to increase the volume of Kuwaiti inventors within the innovation sector. The decree provides for a number of missions and visions to be implemented by the association.

Ahmad Saleh regularly advises governments, companies, universities and other entities on R&D and innovations and best practices for deployment of R&D and innovation projects as well as on protection, commercialization and enforcement of IPR's. For further information please contact Ahmad Saleh (a.saleh@tamimi.com)

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Oil & Gas: Innovation and IP Protection to Combat an Uncertain Future

Current issues faced by the oil and gas industry

The recent slump in oil prices coupled with a depletion of existing reserves has caused the energy marketplace to focus upon diversification strategies and a movement toward innovation driven alternatives. The major players in the oil and gas industry are realising that, in the new age of innovation and technological advancement, those who can adapt and develop new technologies are better able to control and influence the market.

In the summer of 2014 a barrel of crude oil cost over US$100 and in 2016 the price had dropped by nearly half. This trend was caused by various factors, including an increased supply along with a decreasing demand.

The volatility of the market has adversely affected Gulf countries that depend heavily on oil revenues and stability within the sector.

Accordingly, countries such as the UAE, Saudi Arabia and Qatar have increasingly focused upon innovation efforts and are recognizing the value of diversification of intellectual property (IP) assets. In this article, we examine the innovation and diversification efforts of various national oil and gas companies (NOCs) in the Gulf region, and examine how structured strategies for diversification of IP protection (namely patents), can aid oil producers to fend off detrimental volatility and the uncertainty it causes.

How innovation impacts the oil and gas industry

It is indisputable that in the last decade innovation has played a fundamental role for the oil and gas industry. The industry has been steadily redefining production possibilities, largely due to technological advances which have allowed extraction of fossil fuels that were not previously possible.

The protection of IP has had a direct impact on these advances. Statistics provided by the United States Patent and Trademark Office (USPTO) show that the number of patents granted in the oil and gas sector has grown at a double-digit rate in the years following the 2008 recession.

The leading innovators have typically been service and equipment providers, resulting from their increasing investments in R&D. For example, in 2013 alone, Halliburton invested US$588 million in R&D, an increase of more than $100 million on its 2012 investment. The increase in R&D has had a direct correlation to large patent portfolios.

Unlike oil and gas service companies, NOCs have historically lagged behind in recognising the value of innovation and in seeking IP protection, although this trend is changing.

In particular, NOCs are recognising that if new innovations are adequately protected, it enables them to maximise the benefit of those innovations. This includes harnessing the potential for income generation through licensing, preventing others from entering the market through patenting, procuring a competitive advantage from innovative technologies, and gaining access to other technologies through favourable cross-licensing arrangements.

United Arab Emirates

In the UAE each emirate controls its own oil production and resource development. The majority of UAE's oil production comes from the emirate of Abu Dhabi, which accounts for around 95% of the country's oil and gas. The Abu Dhabi National Oil Company (ADNOC) accounts for more than half of Abu Dhabi's oil production. With 21 subsidiary companies, and operations covering all aspects of upstream and downstream processes in the energy industry, ADNOC is currently the world's 12th largest oil producer.

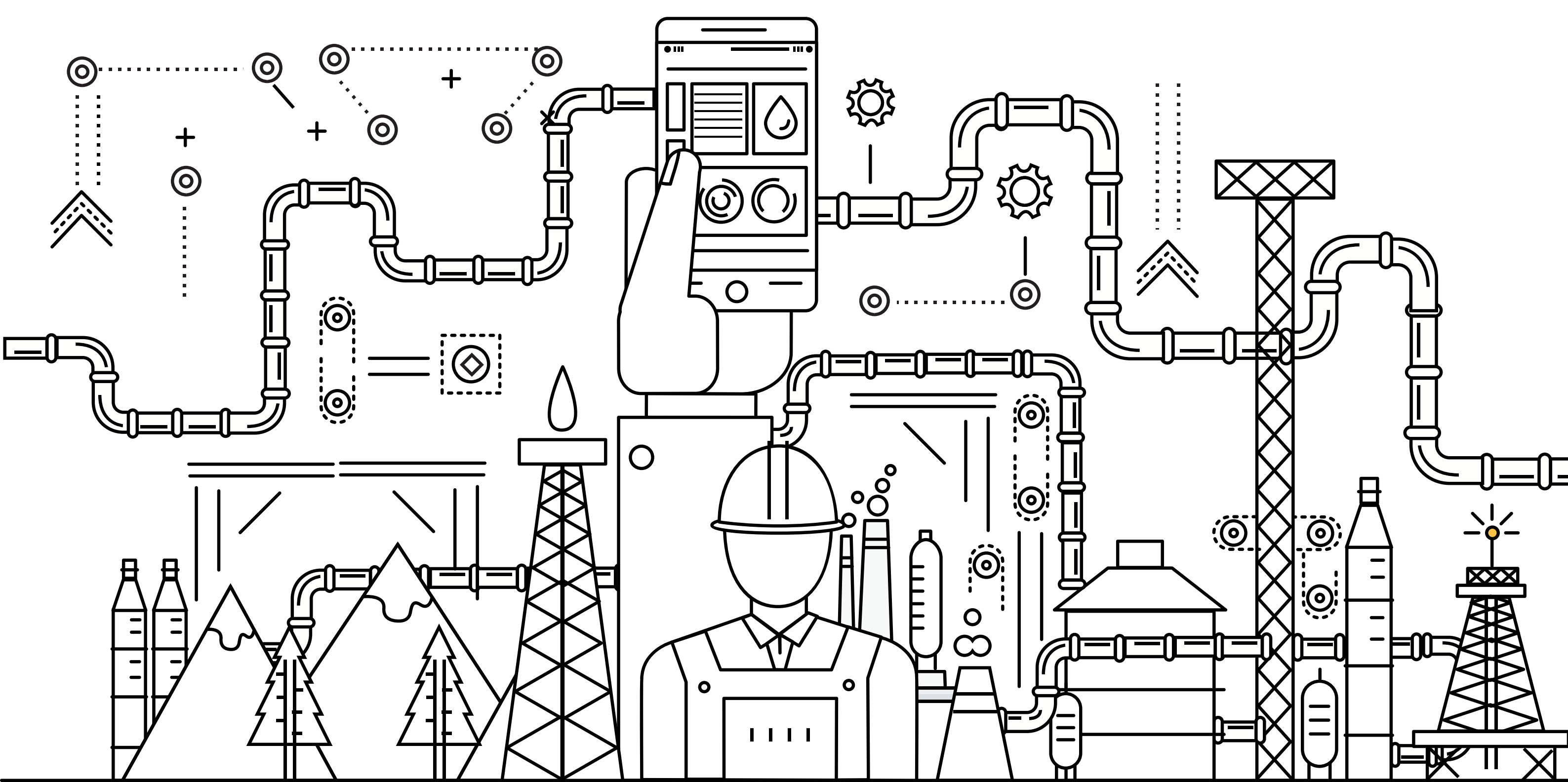
In recent years, ADNOC has made a focused push to increase innovation efforts through R&D investment. An example is the funding and establishment of the Petroleum Institute University and Research Center (PI). PI is not only a teaching university but also acts as ADNOC's R&D arm. In further efforts, ADNOC has also partnered with Abu Dhabi's Technology Development Committee for centralised and focused IP management services, which includes the management of ADNOC's patent portfolio.

This increased focus on IP protection and diversification has successfully led ADNOC to leverage proprietary technologies through commercialisation. As an example, ADNOC recently entered into an agreement with Schlumberger, a world leader in drilling technology, to license ADNOC's proprietary offshore drilling technology for use in Schlumberger's portfolio of drilling services. The technology greatly improves offshore drilling operations by improving borehole stability and reducing drill times, with significant potential savings for operating companies.

ADNOC has further diversified by investing in the petrochemicals industry. Petrochemicals are chemical products derived from petroleum, such as plastics. ADNOC entered into a joint venture with Austrian based Borealis, to form Borouge (based in Abu Dhabi), a leading provider of innovative polyolefin plastics solutions. Borouge has its own R&D facility which serves as the focal point of innovation and research in the field of polymer development and technology. Since the inception of the research and development operations a few years ago, Borouge has filed over 200 patents, which accounts for about 30% of all patents filed by UAE applicants and registered in the World Intellectual Property Organisation (WIPO) database.

Saudi Arabia

Saudi Arabia has recently resumed the position of the world's top oil producer from the U.S., according to the International Energy Agency. The country's national oil company, Saudi Aramco retains the most proven reserves and production of hydrocarbons worldwide. The Kingdom has reserves of 266 billion barrels, according to government estimates submitted to the Organisation of the Petroleum Exporting Countries.



Saudi Aramco has notable assets, including some of the world's largest crude oil reserves, one of the largest daily producers of oil, and owner of the Ghawar field, the world's largest oil field.

The company strives to foster a culture of innovation and exploration. Saudi Aramco's R&D activities are focused on innovative ideas to make its resources more accessible, useful, sustainable and competitive. It is apparent that the company recognises that achieving innovation success requires consistent and diversified efforts with respect to R&D.

One aspect of Saudi Aramco's innovation strategy for diversification of its IP assets has been to create a global research network with the establishment of research facilities in targeted innovation hubs in the US, Europe and Asia. This has provided the company with a large pool of research talent globally. Its current research hubs include the King Abdullah University of Science and Technology (KAUST), and research centers in Boston, Houston, Paris, and Aberdeen, all focusing on a variety of specific technologies. These facilities are aligned and integrated with Saudi Aramco's central R&D organisations and its core businesses goals.

This focus on R&D has allowed Saudi Aramco to build a diverse IP portfolio, which it leverages by commercialisation and collaboration with other industry leaders. The company's patent procurement strategy has primarily focused on areas where IP protection provides a competitive advantage, global recognition and product differentiation. In 2014, Saudi Aramco was granted 99 patents by the U.S. Patent and Trademark Office, the most in a single year in its history, and 154 new patent applications were filed.

The company's efforts to pursue and diversify its IP assets ranks it first among Arab countries in globally registered patents, holding around 45% of the total number of registrations.

Further diversification includes research areas in catalyst development, materials science, nanotechnology, robotics and solar energy materials.

Qatar

Qatar Petroleum (QP) is the state-owned public corporation responsible for the Qatar's oil and gas business, both domestically and internationally.

QP has invested in a diversified portfolio of companies and activities including the exploration, production and sale of crude oil, natural gas and gas liquids, refined products, synthetic fuels, petrochemicals, fuel additives, fertilizers, liquefied natural gas, steel and aluminum.

In 2009, QP set up the Qatar Petroleum Research & Technology Department which was tasked with planning and executing its R&D needs for existing and new technologies, in an effort to broaden and diversify its business opportunities.

In just over two decades, Qatar has managed to transform itself from a small oil producer to a global supplier of energy. Today, the country is the world's largest liquefied natural gas (LNG) producer with a production capacity of 77 million tonnes per annum (MTA). This significant achievement was possible due to QP's long standing relationships with international partners including ExxonMobil, as well as through fostering an investor-friendly atmosphere which focused on innovation.

In 2015 Qatar reported LNG exports of 77.8 MTA, which allowed it to maintain its status as the largest LNG exporter, a title it has now held for a decade. The country accounts for just shy of a third of the global LNG supply.

Innovation is the major factor that has enabled Qatar's LNG industry to flourish, and this has in turn significantly shielded QP from the volatility of crude oil prices. At the Qatar Science and Technology Park in Doha, international partners like ExxonMobil partner in R&D efforts, new ideas and technological developments which are focused on environmental management and LNG safety. Through seeking and fostering international partnerships, QP has been able to bring important technologies to Qatar, which has resulted in milestones, such as deeper production wells which produce gas at higher flow rates than wells in other places such as the Gulf of Mexico and the North Sea.

Recommendations for IP strategies

The view of IP, particularly patents, has shifted in the industry from merely being a legal instrument to an important financial asset and weapon. As discussed above, IP assets rather than physical assets have become more and more important to corporate wealth and to keeping a competitive advantage.

In the oil and gas industry, IP is generally protected under either a trade secret or through patenting. Trade secrets, however, do not allow the company to exclude others from using a particular technology if they have themselves independently developed it, whereas a patent gives the owner the exclusive right to practice the invention, the right to license it, and the right to exclude others from using the technology, which ultimately results in a competitive market advantage.

There are additional risks involved with trade secrets, such as reverse engineering of processes or products. Particularly in the GCC region, trade secret laws are weak and not well established, thus making the enforceability of rights a difficult exercise. The foregoing are notable considerations when companies are evaluating their technologies for protection under trade secrets versus patenting. On the other hand, patenting allows oil and gas producers to generate licensing revenues, ensures them freedom to operate, and provides bargaining chips to be cross-licensed or leveraged with other industry leaders.

A well designed patent strategy identifies the key business goals of the company, identifies the key players and competitors in that the particular technological field, and determines the focus of the patent portfolio, whether defensive or offensive. Defensive patents are those designed with the primary intention of defending a company against patent infringement lawsuits, whereas offensive patents are sought to protect and monopolise the invention by excluding others or by commercialising through licensing. An effective patent strategy is to diversify the patent portfolios to include both defensive and offensive patents, which allows a company to use its IP portfolio as both a sword and a shield.

Once an invention has been identified and selected for a patent application, several factors should be considered to determine the protection strategy, including territorial coverage and patent filing routes. The determinative factors include potential markets for the exploitation of the invention, cost, timing, the expected importance or commercial viability of the technology and how the technology aligns with the company's core business plans.

A typical patent filing strategy in the oil and gas industry involves filing a first patent application (which can be in the home country), followed by a PCT International Application (Patent Cooperation Treaty), which allows applicants to simultaneously pursue individual patent applications in a large number of countries that are party to the PCT, up to 30 or 31 months from the first filing date. This provides applicants with a chance to determine the commercial viability of the invention and allows them ample time to determine which individual countries would be of interest in terms of protection. The national filings based on a PCT application can be done at any time within the 30 or 31 months time frame, depending on commercial and legal needs which are assessed on a case by case basis. Where potential markets include non-PCT contracting states, such as Iraq, a complementary protection strategy should be adopted early in the process, including a convention filing under the Paris Convention within the 12 months period from the filing date of the first application.

For protection in the Gulf region, applicants have a first choice of filing a single GCC application which covers all the GCC states, within 12 months of the first filed application, or pursue an application in each individual country after 30 months via the international PCT route. The GCC is not a signatory to the PCT, therefore a single GCC application cannot be filed via the PCT route. Usually a single GCC application filed in parallel to an international PCT application is the most cost-effective means of obtaining patent protection in the GCC region, particularly because a GCC patent is the only effective way to seek patent protection in certain countries such as Kuwait. National Kuwait patent applications are not currently examined and granted since the implementing regulations of the Kuwait patent law have not yet been adopted. A GCC patent application can also co-exist with national patent applications in the GCC countries which can also be considered, depending on the filing and protection strategy.

Once patent protection has been granted, it is important for each company to evaluate how to best commercialise the technology. This can include self use and/or technology transfer. Technology transfer can entail a lump sale of patent rights, or different licensing agreements, including exclusive or non-exclusive license rights to various third parties in the industry. Commercialisation or successful proprietary self use provides the company with means to exploit the financial advantages provided by the patent.

Conclusion

The general consensus among oil and gas companies is that the industry is at a critical juncture and it is imperative that NOCs in the Gulf region go beyond merely acknowledging the necessity to innovate and start executing upon this vision in a systematic way to ensure their long-term survival in a volatile market. Investing in R&D and developing targeted IP strategies are paramount to achieving this vision.

The global upstream oil and gas industry is projected to spend in excess of $1.6 trillion by the end of 2016. A considerable part of the upstream spend is in the development and introduction of new technology and ideas. Innovation is not simply down to the traditional measure of dollars spent, but also how that investment is implemented and administered. NOCs need to develop and foster innovation strategies that take into account factors such as geography, service models and their own production challenges, as there is no single solution that fits all company models.

Even in a growing market, companies face market volatility and ever-changing technical challenges, which can have a major impact on their ability to find and produce oil competitively. Increased focus on R&D and strategic processes for recognising, protecting and commercialising IP can provide a buffer from market downturns and help companies, and particularly NOCs, to become industry leaders and compete on an international level.

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Leading an R&D Innovation SME: Are you on the right track?

Small and medium enterprises ('SMEs'), including start-ups, are considered to be the engine of the economy and have always been positioned at the centre of attention by governments and policy makers desiring to foster technological developments and innovations, and to sustain an economy based on innovation and knowledge. The GCC countries are taking initiatives for the accomplishment of technological advancements with the vision of expanding in the fields of science and technology, in the objective of transforming their economies traditionally based on petrochemicals to more diversified and sustainable economies with an important component based on research and development ('R&D'), technology, knowledge and innovation. Having realised that the achievement of such a vision passes necessarily through SMEs, an important part of the governmental initiatives are directed to attracting and supporting SMEs focusing on R&D and innovations in the different industrial sectors. This has unfastened a wide arena for business developments and investments in the region in technology based SMEs, including start-ups focusing on R&D and the development of innovative technologies in different technical fields. The main assets of these SMEs being innovations, it is crucial for them to adopt appropriate commercial and legal routes for the development, commercialization, and legal protection of these innovations in order to protect their investments and secure their sustainability and competitive edge.

It is also important for investors investing in SMEs to conduct their own due diligences in order to manage their investment risks and business expectations, including appropriately assessing the actual value as well as business potential of these companies, essentially, based on the actual and prospective value of innovations and other valuable intangibles developed or under development by these companies.

Guiding R&D and Innovations

SMEs should focus their efforts in developing innovative technologies which are novel, inventive and useful in addition to being commercially viable with a commercial advantage with respect to existing technologies in the field. Innovative technologies can be pioneer technologies (not seen before) or can consist of improvements over existing technologies. Most of the innovations taking place are improvements over existing technologies, and they are used, in their turn, as a benchmark basis for future technological advancements by the same R&D team or by others if they become part of the public domain.

For technology based SMEs, innovation is generally the main or only asset on which they rely to attract investments, fund the operations of the company, and generate revenues. It is difficult for technology based companies nowadays to have a successful and sustainable business model without developing and commercialising innovative technologies. It takes on average between one to three years for SMEs to complete the research stage and to develop a first version of a product before they start the commercialisation stage and start generating money. This period may extend longer in case of life sciences based companies, such as chemical and pharmaceutical companies. During this period, entrepreneurs and start-ups normally rely heavily on capital investments, including their own savings as well as on a limited number of investors.

Therefore, it is crucial for SME's to appropriately guide their R&D projects in order to develop an innovative product worth the investment made. Otherwise, they would spend human capital, time, and money in working on a technology already existing in the field. This is a common issue faced by inexperienced entrepreneurs and SMEs. Focusing efforts and money on developing a technology which turns out to be existing in the technical art or which falls short of providing a technical/commercial edge over existing technologies can have heavy business consequences. This can lead to bankruptcy or the cease of operations, especially in case of entrepreneurs and start-ups which normally have limited fund sourcing and their business continuity relies on the success or failure of a single or few technical projects.

Not only it is important for the innovative project to be new and inexistent as a commercial product in the market, but also to reflect an innovative concept not known in the technical field that is eligible for protection from the intellectual property perspective. It is intellectual property, particularly patents and industrial designs, at the end of the day, that provides proprietary rights on developed innovative technologies, prohibiting others from using the technology without authorisation, and, therefore, boosting the commercial value of these technologies and of the companies.

It is, therefore, recommended for R&D and innovation based companies to conduct state of the art landscape searches as early as possible in the R&D process in order to determine the state of the technical art and to calibrate and guide the R&D project. As a result, efforts can be focused towards the development of an innovative technology that is commercially viable and eligible for intellectual property protection, with inventive technical contributions and improvements over existing and competing technologies. Companies can seek assistance and training by specialised professionals, including patent professionals, to conduct these state of the art landscape searches and for reading through, analysing and applying the results to realign their R&D projects. These searches are normally conducted iteratively throughout the R&D process.

Funding R&D and Innovations

Seeking and managing an initial funding is crucial for the R&D stage. Initial funding generally come from personal savings of the founders, personal loans, or from capital funding, which is more difficult and more costly to obtain when companies are in the early stage of their R&D project and absent proof of concept.

Seeking and selecting capital fund investors is a business decision that should be considered carefully and wisely based on the commercial and financial needs to fund the development of these innovations during the R&D and commercialisation stages. Capital share investors look to secure a portion in the capital share of the company as a counterpart to their investments, and, in some cases, participation in the management of the company. Active investors (with participation rights in the business management) should be considered and selected carefully based on the profile of the investors and the company's business needs in such a manner as to fulfill certain expertise required by the companies for the success advancement of their projects. Active investors would act as business partners; thus, the importance for the companies of selecting these partners diligently is to ensure business vision alignment and the smooth management of the operations.

Amount, timing, and equity tradeoffs for these investments should also be considered wisely so as not to dilute the founders share portions unnecessarily, in case these investments are not required. Normally, the earliest investment is sought, the higher the risk is for investors, and the more they would require in equity counterpart to their investments. The risk would be reduced substantially after intellectual property protection is sought and a technical and commercially viable prototype is developed. It is, therefore, generally advantageous for start-ups to limit and reduce the calling for funds from capital fund investors, where practically possible, until securing intellectual property protection and developing a first viable prototype. The negotiation position would substantially increase for companies once these are secured. Using these funds wisely is also extremely important. The first funds are normally used to fund the R&D operations, secure the first intellectual property rights, and build a viable prototype. Unnecessary spending on other secondary matters is to be avoided during the first R&D stage, absent specific valuable reasons justifying such spending.

Protecting R&D and Innovations

Intellectual property protection improves the business position of R&D and innovation based companies by securing proprietary rights to their innovations and monopoly for the commercialisation of these. Some types of R&D and innovations are more sensitive to intellectual property protection than others, which means that a higher focus on intellectual property protection would secure a more substantial return on investment than others. This would reflect in a substantially better business position and in leading to more commercial and financial returns for the company compared to the investments made. This is particularly the case for innovations with a reasonably medium to high life expectancy before they become obsolete and outrun by the advancement of other competing technologies or by the needs of the market. The life expectancy may be assessed by, among others, the period of time required for the competition to develop a competing technology with a better competitive edge over the developed one and by the needs of the market to continue using the innovation. Life expectancy is particularly high for information and communication technologies ('ICT'), transport, aerospace and defence, healthcare and biomedical, clean energy, integrated circuits ('IC'), and pharmaceutical and chemical related technologies.

The main intellectual property rights involved in the protection of innovations are patents and industrial designs. Patents are related to the protection of the structural and functional aspects of innovations where industrial designs are related to the protection of the visual and ornamental features of these. There are other types of intellectual property rights, including copyright, plant varieties, and trade secrets, which may also be relevant depending on the nature of the innovation. Trade marks, another form of intellectual property, should also be considered to protect the brand of the product when it reaches the commercialisation stage.

There is an advantage to considering patent and industrial design protection very early in the R&D stage. Such consideration should be made as soon as the innovative concept is conceived and is theoretically workable. It is not necessary to wait for the development of a working prototype. The earlier patent/design protection is sought, the earlier proprietary rights for

the invention are allocated to its owners, which would provide them a priority over others on the property of the innovation. Also, the quicker a patent/industrial design is granted, the quicker the company can use the legal remedies available under the applicable patent/industrial design law to enforce their monopoly rights in the innovation against competition and exploit their rights to licence the patented innovation and benefit from royalties.

Patent/industrial design protection should be sought even before reaching out to investors, where practically and financially possible. If there are restrictions in time/budget, provisional protection may be sought quickly and inexpensively, before disclosure is made, to preserve patent rights in the invention for a given period of time. At a strict minimum, a confidentiality agreement (also called a non-disclosure agreement) must be put in place between the disclosing and receiving parties. Confidentiality agreements, however, have their limitations in case of breach. Also, intellectual property protection boosts the financial value of an innovation and of the developing company, thereby, providing better commercial leverage while seeking investors or commercial partners.

In all cases, it is imperative to seek patent/industrial design of an innovation while it is still at the confidential stage and before any public disclosure thereof, as such disclosure may irrevocably compromise protection of the innovation.

An appropriate intellectual property protection strategy, including patents and designs, should be adopted with the help of intellectual property professionals on a case by case basis based on the nature of the innovation, the commercial objectives, the potential markets and budget. An effective intellectual property strategy would also address protection of an innovation from different angles and using the different legal vehicles available in order to make it more difficult for competition to design around or benefit from unprotected aspects of the innovation.

Consideration for Investors: Conducting Due diligence and IP Valuation

Investing in R&D and innovation startups presents as much risks as opportunities. There are no strict rules to which to adhere for the investors before planning to invest in startups, however, as a matter of guidance, it is advisable to appropriately conduct a due diligence. Such due diligence should include the assessment and valuation of intellectual property rights, particularly patents and industrial designs, associated to the R&D and innovations developed or under development by the company as this would provide a better visibility on the prospects to succeed in the market. A startup with weak, or without, intellectual property assets has lower prospects of success in the market than a startup with a strong intellectual property portfolio. Without intellectual property protection, there is no exclusivity for the exploitation of an innovation and competition is free to adopt and commercialise the same without restrictions. This puts the company at high risk for competition and can largely affect commercial success and financial returns of the business.

Assessment of intellectual property should account, among others, for current and/or prospective territorial coverage, temporal scope, and competitive scope secured by the protection. A patent application means little if not appropriately assessed as to the competitive scope and edge provided by the inventive subject matter. By such prospect, a patent application translates into a granted patent as an industrial design or other form of intellectual property rights. Due diligence should also extend to assess any risks of infringing third parties' rights by the commercial exploitation of the innovation, in case the latter, at least partially, incorporates or builds on components subject to intellectual property rights owned by others.

In this respect, a due diligence should account for any intellectual property litigations or infringement notices against the company, for the registration status of intellectual property rights and for the prospects of registering any unregistered intellectual property rights, including projects still at the research stage. A valuation of intellectual property would also be recommended once these rights are appropriately determined and assessed, which would provide investors with an indication on the current and/or potential value of the innovation. This value can then be considered in making the investment decision.

Conclusion

Business success of innovation based businesses is highly sensitive to the management of the business from the early stages, including appropriately obtaining and managing R&D funds, guiding the R&D projects, seeking intellectual property protection, and appropriately and wisely seeking and selecting the right investors.

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Developments in Saudi Sports following Saudi Vision 2030

In the past, there has generally been limited encouragement and focus in Saudi Arabia on sports, participation in sports, and development of sports infrastructure (with the limited exception of Saudi's soccer clubs). Participation at major sports events, such as the Olympics, has also been very limited. Women's participation in sports has been particularly limited.

Saudi Professional League's soccer clubs have historically been government owned and heavily subsidised. There has been talk for several years of privatisation but without progress.

There are encouraging signs that this may be changing following the announcement of Saudi Vision 2030 and subsequent announcements and developments.

Sports and Saudi Vision 2030

Saudi Vision 2030 was announced in April 2016 and represents Saudi Arabia's plan not only to diversify its economy and address the challenges brought by low global energy prices but also to implement far reaching social and life style changes.

One of the goals of Saudi Vision 2030 is 'creating a vibrant society with fulfilling lives' through amongst other things 'the promotion of physical and social wellbeing and healthy lifestyle'.

Saudi Vision 2030 acknowledges that opportunities for playing sports in Saudi Arabia have previously been limited and recognises the importance of sports as part of a healthy lifestyle. Saudi Vision 2030 includes the aim of 'encouraging widespread and regular participation in sports and athletic activities, working in partnership with the private sector to establish additional dedicated facilities and programmes . . . we aspire to excel in sports and be among the leaders in selected sports regionally and globally'.

Grassroots development of sports and sporting infrastructure

In June 2016, the National Transformation Program 2020 ('NTP') was launched by the Saudi Government as the first stage of the implementation of the Saudi Vision 2030 with the aim of meeting interim targets by 2020 through various strategic initiatives across 24 Saudi governmental bodies including the General Authority for Sports (previously called the General Presidency of Youth Welfare).

The NTP contains a list of 22 initiatives based around the following main strategic objectives:

- the promotion of sports and physical activities;
- improved return on investment in sports clubs and facilities; and
- enabling Saudi elite athletes to achieve high performance on a sustainable basis in different sports.

As well as targeting significantly improved performance at international sporting games, there is a heavy emphasis in the NTP initiatives on improving sports infrastructure and facilities at the grassroots level, for example, in schools, through the addition of women's sports facilities, and through local communities, where previously investment has generally been very limited.

Saudi Vision 2030 and the NTP target increasing the scale of community participation in sports from 13 per cent to 40 per cent by 2030.

Subsequent Developments

In May 2016, the General Presidency for Youth Welfare was renamed the General Authority for Sports with enlarged responsibilities for licensing sports and sports clubs, and with responsibilities for the construction of sports facilities for clubs and the public.

Women's Sports

In August, Saudi Arabia's Cabinet announced the appointment of Princess Reema Bint Bandar Al Saud, a prominent Saudi Princess, as head of a new Department for Women's Affairs at the General Authority for Sports. This has been widely seen as signalling potential greater female access to sports in the Kingdom, a country where women's participation in sports has been relatively rare.

Following the appointment of Princess Reema in November 2016, the General Authority for Sports and the prestigious Princess Nora University in Riyadh, the largest women's university, signed a memorandum of cooperation for the promotion of sports facilities with a view to the promotion of healthy lifestyles.

Somewhat controversially, given the Kingdom's conservatism in some quarters, further plans in relation to women's sports include:

- the licensing for the first time of women's gyms; and
- modifying outdoor areas to allow women to work out without being seen by men.

Privatisation and promotion of soccer and other sports clubs

In a further major development, in November, the Council of Economic and Development Affairs ('CEDA') directed the General Authority for Sports to establish a Sports Development Fund within three months to support and invest in different sports and to establish and fund amateur sports programmes.

The objectives of this fund include providing loans for sports clubs, promoting sports events, helping privatise sports clubs, and setting up and funding sports incubators, with a view to the creation of up to 40,000 jobs. The fund is targeted to be at least US$ 650 million.

At the same time CEDA also approved the formation of a committee (headed by the Chairman of the General Authority for Sports and including representatives of the Saudi Arabian Football Federation and the Saudi Professional League) to supervise implementation and completion of the procedures for the privatisation of the Saudi Professional League's soccer clubs. The privatisation of the soccer clubs is intended to help provide the funding for the development of other sports and sporting programmes.

Details as to how such privatisation will be achieved are not yet available.

Trademarks and logos

In a further sign that the Saudi authorities are now focusing on protecting value in sports clubs, in July 2016, the General Authority for Sports and the Ministry of Commerce and Investment organised a campaign to raise awareness amongst soccer, and other sports clubs of the importance of registering trademarks to protect the value of their merchandise and services (such as replica soccer kits). As part of this campaign the authorities are targeting areas to combat the display and sale of counterfeit merchandise.

Watch this space

It is relatively early following the launch of Saudi Vision 2030 but there is a clear impetus to move the plans forward quickly, but in a financially balanced way.

The general move to promote sporting activities and sports facilities, both at the community and national level, and developments such as the launch of the new sports fund and the apparently aligned privatisation of the Saudi Professional League soccer clubs, are major developments which should give rise to significant opportunities for foreign companies involved in the sports sector.

As a minimum such opportunities might include:

- increased demand for sports equipment and sports services; and
- increased demand for services related to the supply, management and operation of sports facilities.

All those involved in the sports sector should keep a close eye over the coming months and years on developments in this sector in Saudi Arabia.

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Vision 2030 and the Opportunities it Represents in Healthcare in Saudi Arabia

On 25 April 2016 Saudi Arabia unveiled an ambitious plan called Saudi Vision 2030 ("Vision 2030") to transform its economy and diversify the country's sources of income away from its current dependence on oil. In addition to this the National Transformation Program 2020 ("NTP") was approved in June 2016 by the Saudi Cabinet as the interim medium for realising the goals laid down in Saudi Vision 2030.

Healthcare is one of the main focus areas of Vision 2030 and this article considers what is envisaged and what this could entail for the sector and for the foreign investor.

Vision 2030

Vision 2030 is a comprehensive plan for reform of the entire economic structure of Saudi Arabia. The main goals are to develop other industries and sectors to ensure that the economy is no longer as dependent on oil as a source of income and to decrease public spending with a greater emphasis and participation from the private sector. In order to ensure that these goals are met and the vision of Vision 2030 becomes a reality the following targets have been set:

- Reduction of the dependence of the economy on oil through the development of other industries and sectors;
- Reduction of public spending through more efficient use of current resources;
- Greater participation of the private sector and an increase in its contribution to GDP;
- Creation of an attractive environment for both local and foreign investors; and
- Increased employment and participation of Saudi nationals in the workforce.

The targets are ambitious and require a comprehensive course of action to meet the targets laid down in Vision 2030. To achieve this, the following initiatives have been proposed:

- Entering into partnerships and joint ventures with large international companies;
- Encouragement of public-private partnerships to facilitate the flow of private investment;
- Enterprises to encourage privates sector investment in healthcare, municipal services, housing, finance, energy and education;

- The facilitation of foreign access to investing and trading in Saudi Arabia's stock markets (this will include the listing of private companies and state owned enterprises such as Aramco);
- Support and promotion of leading national companies;
- Regulatory reform with the strict adherence to international and commercial regulations;
- Facilitation of the movement of people and goods through streamlined licensing and customs procedures;
- Improved education and training initiatives for Saudi nationals.

The NTP is the interim action and development plan for Vision 2030 which sets out strategic objectives to be met by a number of government bodies by 2020. It has identified common national priorities and goals to be achieved through the following:

- Contributing to Job Creation
- Strengthening Partnerships with the Private Sector
- Maximising Local Content
- Digital Transformation

The following strategic objectives have been identified for the Saudi Arabian General Investment Authority ("SAGIA") to achieve:

- Improve administrative and procedural environment to enable significant investments;
- Improve infrastructure needed to ensure ease of doing business;
- Excel in investor services and improve their level of satisfaction.

These objectives are based on the targets laid down in Vision 2030. The main aim being the creation of an attractive environment for both local and international investors to enhance their confidence in the Saudi economy.

The strategic objectives identified for the Ministry of Health and the Saudi Food & Drug Authority (the regulatory authority for pharmaceuticals and medical devices) are discussed in more detail below.

Focus on Healthcare

A target of Vision 2030 is greater participation of the private sector within the economy and this is especially so of healthcare. There is a definite move towards privatisation with a stated objective in the NTP of increasing private healthcare expenditure from the current 25 per cent to 35 per cent of total expenditure by 2020. This represents a projected increase in revenue generated from 3 Billion SAR to 4 Billion SAR. In addition to this, the Ministry of Health plans to spend over 23 Billion SAR on new initiatives over the next 5 years.

"The potential effect of Vision 2030 is far reaching and if achieved will bring enormous benefit to the economy of Saudi Arabia."

The NTP has identified the following strategic objectives for the Ministry of Health and the Saudi Food & Drug Authority ('SFDA'):

Ministry of Health

- Increase private sector share of spending through alternative financing methods and service providers;
- Increase the efficient utilisation of available resources;
- Improve the efficiency and effectiveness of the healthcare sector through the use of information technology and digital transformation;
- Increase training and development both locally and internationally;
- Increase the attractiveness of nursing and medical support staff as a preferred career path;
- Improve healthcare provision before hospitalisation and in the main hospitals (ER & ICU);
- Improve integration and continuity in service provision by developing the primary care;
- Improve the infrastructure, facility management and safety standards in healthcare facilities;
- Attain acceptable waiting times across all stages of service delivery;
- Improve governance in the health system in order to enhance accountability with regards to quality issues and patient safety;
- Adopt a national plan for emergency response to public threats in line with international standards;
- Identify additional sources of revenues;
- Improve public health services with focus on obesity and smoking;
- Improve the quality of life and healthcare service provided to patients outside hospitals;
- Improve quality and safety principles as well as skills of service providers.

SFDA

- Ensure sufficient supply of basic medicines.

These objectives are based on the targets laid down in Vision 2030. The main aims being the improvement of the quality of healthcare services, the expansion of the privatisation of government services and finally the creation of an attractive environment for both local and international investors.

The strategic objectives stated for healthcare in the NTP are extensive and in order to successfully meet them the initiatives will be launched this year at the following ministries and authorities:

Ministry of Health

- Reform and restructuring of primary health care;
- Encouraging the pursuit of nursing and clinical health professions through amendment of some policies and the participation of such by all community segments;
- Private-public partnership through the privatisation of one of the medical cities and localisation of the pharmaceutical industry;
- Increasing the capacity and quality of healthcare education (through partnership with the Ministry of Education);
- Health Insurance & medical services purchase schemes;
- Increasing the number of trained health practitioners and improving their training

SAGIA

- Development and execution of a plan for localising the healthcare industry and services sector

SFDA

- Establishment of a Centre for Standardisation of Medical Products and Equipment
- Establishment of a Unified Electronic System

Opportunities for the Foreign Investor

Vision 2030 offers many opportunities in healthcare for the foreign investor in key areas which can be identified in the NTP as follows:

- Additional private medical facilities;
- Increased medical insurance;
- Increased use of information technology;
- Healthcare Education;
- Provision of improved training facilities;
- Enhanced professional development;
- Local manufacture of pharmaceuticals.

Foreigners are able to own and manage hospitals in Saudi Arabia but are unable to own or manage other healthcare institutions. It is envisaged that foreign participation and investment in new hospitals will take place through public-private partnerships and joint ventures with Saudi owned entities.

Medical insurance is already compulsory for expatriates and Saudi nationals (and their dependents) working within the private sector. Citizens working within the public sector currently receive free coverage in government health care centres and public hospitals. It is not known at this stage how medical insurance will develop however as more public services are privatised and public-private partnerships are entered into the provision of healthcare will naturally transfer to the private sector. In anticipation of this, we understand that current medical insurance providers are developing products that cater for public sector employees to meet future requirements.

Digital healthcare innovations are key for supporting Vision 2030 as the Ministry of Health is aiming for at least 70 percent of Saudi citizens to have unified digital records by 2020. In addition information technology solutions will improve the performance and productivity of healthcare providers and will enable a better quality of service to be provided. Software that assists with the treatment of medical issues such as the diagnostic process is considered a medical device whereas other software used with the healthcare sector is not. We have assisted a number of healthcare technology providers looking to carry out business in Saudi Arabia either directly or through a distributor and expect this to continue as the opportunities for investment here are recognised more and more. In addition, we are seeing an increasing interest in telemedicine which enables providers to offer services within the country under the supervision of locally registered physicians on a consultancy basis.

The NTP places a great deal of emphasis on healthcare education and training. There is a recognised need for qualified Saudi healthcare practitioners and support staff as healthcare requirements increase and currently the sector is mostly supported by expatriate workers. The increased education and training needs will be catered for domestically and internationally potentially with links to world renowned institutions and public-private partnerships. Furthermore, this increased need could also be catered for through management and operational arrangements with internationally recognised service providers.

Saudi Arabia is mostly dependent on imports for its pharmaceutical requirements and there is a desired need for pharmaceuticals to be manufactured locally to ensure an adequate supply of medicines. Foreign pharmaceutical manufacturers are being actively encouraged to establish plants in Saudi Arabia through public-private partnerships and joint ventures with national entities. Incentives are being offered in the form of preferential treatment in future volume tenders. As an additional incentive, foreign owned manufacturers within Saudi Arabia are able to distribute and sell pharmaceuticals within the country whereas all imported pharmaceuticals can only be distributed through a Saudi distributor.

The SAGIA website lists the manufacture of medical devices and equipment as an investment opportunity for foreign investors. Currently the majority of medical devices and equipment are manufactured abroad and are imported into the country. The Ministry of Health is supporting local manufactures by partnering multinationals with Saudi companies with the incentive of guaranteed volumes for Ministry of Health purchases and preferential treatment in future volume tenders. Furthermore, foreign owned manufacturers within Saudi Arabia have the additional benefit of being able to distribute and sell medical devices within the country without the need of a local distributor.

Conclusion

The potential effect of Vision 2030 is far reaching and if achieved will bring enormous benefit to the economy of Saudi Arabia. There is a huge possibility for foreign investment albeit in limited areas. It is clear that foreign investment is being guided in a carefully controlled direction with activities such as the distribution of imported pharmaceuticals and medical devices being reserved for Saudi entities and citizens. Furthermore, most healthcare institutions will remain within the ownership and control of Saudis. All foreign investors must have something to offer the country and must demonstrate a commitment to assisting Saudi Arabia in reaching the goals laid down in Vision 2030. For the investors willing to do so the possibilities are endless.

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The Pharmaceutical Sector in Jordan: What is Involved in Changing a Marketing Authorisation Holder?

The pharmaceutical industry in Jordan is regulated by the Ministry of Health ('MoH'), and supervised by the Jordanian Food and Drug Association ('JFDA'). Under the auspices of the MoH and the JFDA, a myriad of local laws regulate the pharmaceutical sector, including those governing the import of medical products and registration requirements. In this article, we examine the impact of transferring the marketing authorisation holder ('MAH') status to a new legal entity.

The process for transferring or changing the MAH begins with the submission of an application to the JFDA, together with all the required documents explaining the justification and scientific basis for the change.

The detailed requirements for the submission of documents are beyond the scope of this article, accordingly, we focus on the overall process and key points of interest only.

Change of MAH

When there is an MAH change, the JFDA requires a separate application for each product affected. The JFDA begins the process by first accepting a general application. Once approved, the application and all the required documents are submitted along with the fees, and then transferred to the related committee. The file is then evaluated, and upon acceptance, the current MAH will be cancelled and the new MAH will be recorded for each product.

The JFDA regulations require that the application, along with the required supporting documents, are submitted by a pharmacist in charge on behalf of the supplier (Agent), or the technical manager for the factory to avoid the involvement of lay persons.

It is important to note that the requirements mentioned below are only related to changing the MAH (transferring the legal entity) - there must be no change of any kind to the product itself, to the approved method, or the site of manufacture - since such changes are likely to trigger other reporting obligations.

Change in the name or address of the MAH

As mentioned above, specific details are important to the JFDA. For instance, if the MAH change relates to a change of address, the application should differentiate between a change of address within the same country, and a change of address to a different country.

Government fees

Currently, there is a fee schedule detailing the fees associated with the change of MAH. Specifically, Regulation No.19 of 2015 imposes administrative fees for a change in the MAH or product license. These fee schedules are amended from time to time and should be ascertained before the submission of the application.

Missing documents

It should be noted that if any of the required supporting documents are not submitted along with the application, the JFDA requires the applicant to submit a justification and the scientific basis for not submitting a document.

However, If a document is simply 'missing' or the applicant cannot produce a required document, it is unlikely that this will be acceptable to the reviewer, with the likely consequence being that the application will be put on hold or possibly rejected.

Consequential impacts

Once the MAH has been changed, the product label must be updated to reflect the new MAH details. The amended details must be included on the internal leaflet, and on the product packaging.

It is worth noting that the Medicine and Pharmacy Law No. 12 of 2013 does not permit any tampering of product labelling thus, over-labelling is not permitted. Notably, this is a stricter approach compared to any other Gulf states, where over-labelling, or the application of a non-removable sticker with the new MAH details are permitted, and where the new labelling solutions are approved by the regulator.

Inventory already within the market

One major worry for a pharmaceutical company undertaking this process is the current inventory within the market. In Jordan, following the change to the new MAH, the JFDA will typically allow existing stock to remain on the market for a 'grace' period of one year, except in circumstances where any change may affect the safety and efficacy of the product.

However, in practice, the JFDA may apply its discretion to grant a longer 'grace' period of up to two years.

Voluntary withdrawal of the MAH

Where the MAH wishes to voluntarily withdraw its marketing authorisation, this constitutes a 'cancellation'. As a result of this cancellation, the product will be withdrawn from the market. It is also possible for the product registration will be cancelled. Hence, cancellation of the marketing authorisation and the withdrawal from the market always occur at the same time.

In such situations, the JFDA must be notified of the reason for the withdrawal. This is especially so if the withdrawal is related to efficacy, safety, quality and/or compliance issues. Additional measures may be required if the withdrawal/cancellation is due to such issues as safety, which is beyond the scope of this article.

The length of time it takes to cancel or withdraw a marketing authorisation varies depending on the reasons stated by the applicant. Generally, the JFDA is not favourable to removing products registered in Jordan, since this may result in limiting the range of products available to healthcare providers and/or consumers. However, if there are any safety or pharmacovigilance concerns the JFDA will generally react decisively and handle the cancelation or withdrawal differently.

As we can see from the above, we consider that the JFDA has developed specific regulations for the change of MAH which aim to protect the interests of pharmaceutical companies in the jurisdiction, while at the same time maintaining the highest standards of pharmacovigilance within the MENA region.

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Recent updates on Jordan's Foreign Investment Regulation

Over the past few years, Jordan has been introducing several investment laws and regulations in the hope of creating a sustainable and fertile investment environment for foreign investors, while also ensuring that the proper and necessary incentives required to attract those investors are adequately accommodated.

In a recent attempt to rejuvenate the declining economic environment, a new regulation concerned with regulating foreign investments has been passed. The Regulation for Organising Non-Jordanian Investments No.77 of 2016 (the "New Regulation") replaces the previous regulation No.47 of 2000 (the "Old Regulation").

The purpose of the New Regulation is to specifically layout the framework governing economic activities that non-Jordanians are allowed to undertake, whether independently or in partnership with Jordanians. It also identifies the activities that the non-Jordanian investor is not allowed to participate in.

This article provides an outline of the key changes that have been made to the Old Regulation in the New Regulation.

Activities that Require 50% Local Ownership

Article 4 of the New Regulation which lists the activities that non-Jordanian investors are permitted to participate in with a shareholding of no more than 50%. The New Regulation also adds new activities to the previous list, including Maritime Maintenance and Maritime Health Services. Such additions broaden the scope of activities foreign investors can participate in creating a more engaging investment climate.

Activities that Require 51% Local Ownership

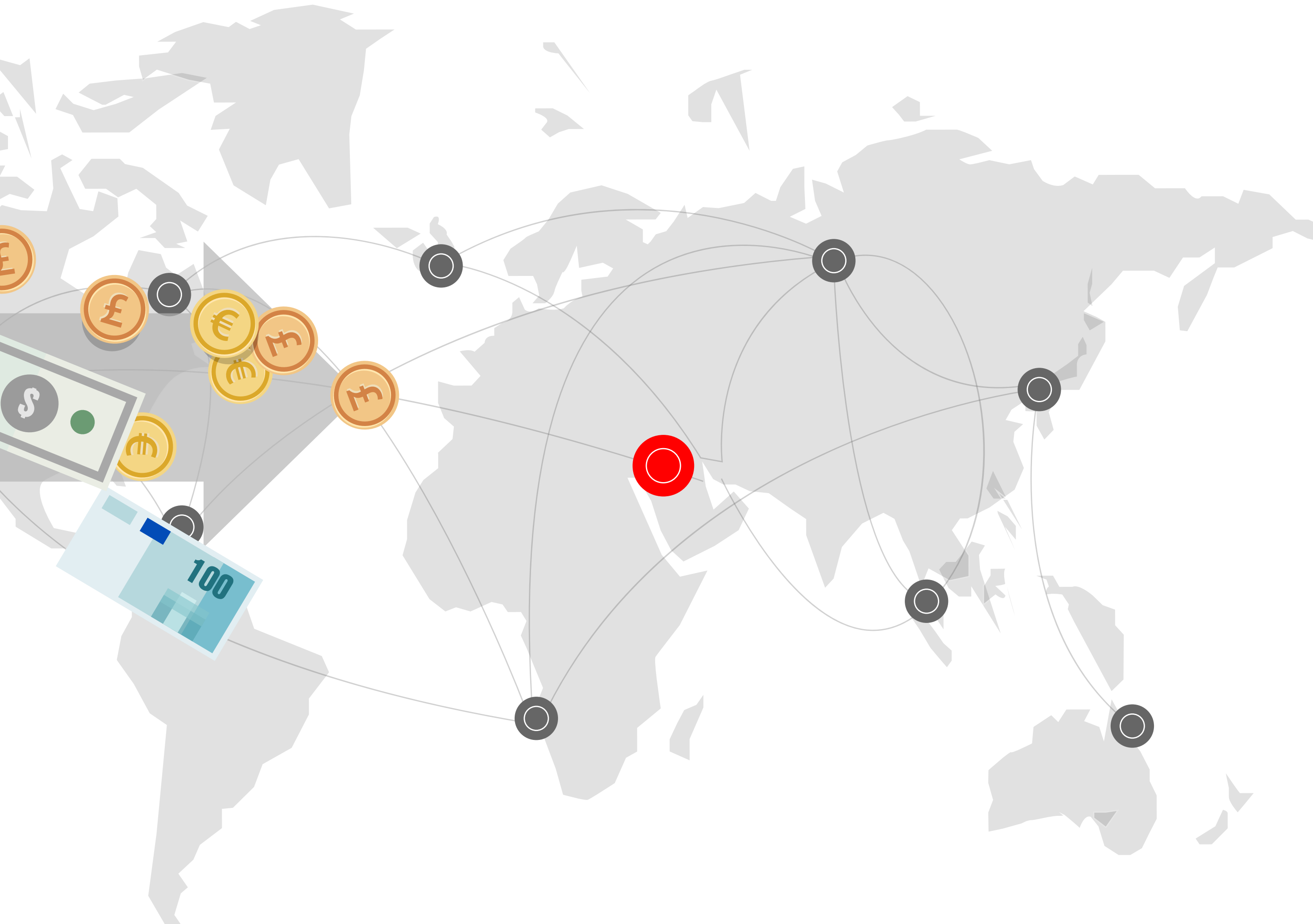
Another amendment found in the New Regulation is in Article 5, under which the percentage of foreign ownership of companies engaged in certain economic activities has been lowered to 49%, in contrast to 50% under the Old Regulation. Such activities include maintenance of transmitters, television broadcasting and the purchase of land for the purpose of building residential apartments and selling and leasing such apartments.

Restricted Activities

Article 6 on the other hand, sets out the activities that non-Jordanians are prohibited from participating in, such as the selling, importing and maintenance of weapons, and the trading and importing of fireworks. Furthermore, in sub-clause 6 (B), it is stated that the Investment Commission is to release regulations that govern the crafting and handcrafting professions, which are exclusive to Jordanians.

Proof of Indirect Jordanian Ownership Allowed

New amendments in Article 7 allow foreign private companies that are owned by Jordanian individuals by no less than 50% to participate in any economic activity, provided the companies do not engage in activities restricted to Jordanians and there are no restrictions set out in any other legislation.



Deviations from the Maximum Percentage of Ownership in Special Circumstances

Article 9 of the New Regulation entitles the Council of Ministers to increase the permitted percentage of foreign ownership of companies so long as these companies engage in activities that relate to large economic development projects, subject to special conditions and procedures, that have been recommended by the Head of the Investment Commission.

Minimum Capital Required No Longer Required

A major change in the New Regulation is the removal of the minimum capital requirement for non-Jordanian investors. The previous article required non-Jordanian investors to have a minimum capital of JOD 50,000 in order to be able to participate in any economic activity which was available to foreign investors. The New Regulation abolishes this minimum capital requirement and thereby paves the way for foreign investors to invest any amount they see fit.

Endorsement of International Treaties

Finally, Article 11 of the New Regulation emphasises the importance to adhere to international treaties and investment promotion and protection agreements that Jordan is a party to in the implementation of the provisions of the New Regulation.

Conclusion

A number of noteworthy amendments have been implemented as a result of the New Regulation, including the removal of JOD 50,000 minimum capital requirement for foreign investment and the expansion of the activities that foreign investors may participate in. These changes have been introduced in an attempt to encourage investment and it is hoped that they will achieve this objective.

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Security Concerns in Iraq Increase Media Regulation

Iraq witnessed great change in its media and communication industry over the last two decades. Services like the internet, cell phone coverage, and satellite TV were not available before 2003 but are common today. However, wide public access to information with minimal restriction and a continued struggle with extremist ideologies create a difficult mix for regulators who must balance multiple, sometimes seemingly irreconcilable, interests. This article aims to provide an accurate report of the status quo and the reasons behind current trends in government regulation. I will start with an overview of the law, and then move to the special challenges faced by Iraqi regulators and their response.

A. The legal framework for media in Iraq.

Article 38 of the current Iraqi constitution guarantees 'freedom of expression' and 'freedom of press'. However, as necessary in constitutional language, public order and morality limit this protection. The current constitution marked a shift in policy for Iraq and real change followed with many publishers and broadcasters operating in Iraq today. Nevertheless, we need to cover scattered pieces of Iraqi legislation to give an accurate picture of media regulations. Limitations on freedom of expression exist in both legacy laws and in new measures introduced after

2003. For instance, the Iraqi Penal Code (Law No. 111 of 1969) contains a number of sanctions, which, even though likely to find support from the public in Iraq, can be abused to improperly restrict freedom of expression. I will cover two groups of sanctions: for defamation and for preservation of public order.

Criminal sanctions for defamation

- Insult the Arab community, the Iraqi people (including any part of the population), the national flag or any state emblem (Article 202);
- publicly insult any public institution or official (Article 226);
- publicly insult a foreign country, flag, or national emblem, or international organization with an office in Iraq (Article 227);
- insult a public servant or body in the course of its work (Article 229);
- attack the creed of a religious minority, or insult a symbol or person which /who is an object of sanctification, worship, or reverence (Articles 372(1) and (5));
- defame another, and if the defamation is published in the media it is considered an aggravating offence (Article 433);
- insult another, including directing abuse, which compromises their honor or status, or offends them. Publication of such abuse in the media is an aggravating circumstance (Article 434);
- insult a person in a personal meeting, telephone conversation, or private letter (Article 435).

Criminal sanctions for preserving public order

- promote Zionist or Masonic ideologies, including by joining related institutions, or by promoting these ideologies morally or in any other way (Article 201);
- shout or sing in a manner that provokes dissent (Article 214);
- possess (with the aim of publication, trade, or distribution) materials that disturb public security or tarnish the country's reputation (Article 215).

The sanctions listed above can cause problems for freedom of expression because they contain language that is too broad for criminal law. This is because criminal law carries with it penalties that make it too strong of a tool, and, thus, is inappropriate to achieve certain legitimate policy objectives, like protecting reputation or preserving public order, as it can be used to threaten or intimidate dissenting voices. Luckily, Iraqi courts are not overly enthusiastic in applying said criminal sanctions and a reading of the case law shows that civil treatment is more prevalent. In 2011, the Iraqi parliament passed Law No. 61 to protect journalists' rights. The law provided for some benefits but did not address criminal sanctions that intersect with freedom of expression. In 2014, the then new Prime Minister Haider al-Abadi issued an order withdrawing all pending government cases against journalists and other media outlets. However, government entities initiated a number of new cases in 2015, and, currently, Penal Code sanctions remain on the books with varied degrees of application.

B. Media regulation by the Communication and Media Commission

The body responsible for regulating the media in Iraq is the Communication and Media Commission ('CMC'), an independent government entity established by the Coalition Provisional Authority ('CPA') under Order No 65. The CMC is responsible for granting licences to media broadcasters, such as TV and radio, as well as other communication service providers, such as cell phone operators and Internet service providers.

The CMC released a new code of professional practice in 2014; the applicable code of professional conduct is 22 pages long and covers the following areas, in the proportions below:

1. Incitement to violence or hatred (4 pages);
2. Morals and public policy (2 pages);
3. False material (2 pages);
4. Accuracy, integrity and transparency in reporting information (4 pages);
5. Privacy (2 pages);
6. Religious programs (1 page);
7. Defamation (0.5 pages); and
8. Commercials (0.5 pages).

Increased activity by the CMC due to concerns over national security and civil peace

While the CMC is structurally independent, it does echo broader government policy. The current atmosphere in Iraq caused the CMC to step up its regulation of broadcast media in response to deteriorating security. Terrorist organizations rely heavily on media coverage to spread their ideologies; this creates a critical tension between security concerns and protecting freedom of expression. For example, the CMC used the code of professional conduct to revoke broadcast licences of notable TV channels broadcasting in Iraq in 2014, prior to ISIS takeover of Mosul, for their critical coverage of the unrest that proceeded the collapse of the security forces. The current CMC attitude is expected to continue at least until it is satisfied that enough stability is reached post insurgency to relax its regulation.

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Managing Political Risk in Iraq: The Legal Framework

This article aims to provide a legal assessment of the current Iraqi investment climate. I will start by addressing the available legal protection from political risk in Iraq. Then, I will survey Iraq's international investment commitments.

A. Mitigating Political Risk

It is no secret that armed conflict, turbulent government policy and political unrest paints Iraq as an unlikely place to invest. However, there are ways to deal with such risks and Iraq has taken steps to address those concerns. By passing ratification laws No.64 of 2012 and No.29 of 2007, Iraq is now listed as a member of the International Center for the Settlement of Investment Disputes (ICSID) and the Multinational Investment Guarantee Agency (MIGA). Being able to use those two World Bank organizations in Iraq can make a significant difference in Iraq's investment climate and give measure of confidence to prospective investors.

Iraq had ratified the Convention Establishing the Multilateral Investment Guarantee Agency back in 2007 but was late in completing the necessary steps to commence insurance operations. Better late than never, MIGA membership means that investments in Iraq are now eligible for political risk insurance. According to the World Bank's website MIGA's outstanding gross exposure in Iraq stood at US$8 million as of September 2016. The second, more recent and exciting development, is Iraq's accession to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 2012. ICSID provides private investors a unique enforcement mechanism for investment contracts and treaties through arbitration awards that cannot be appealed locally.

To understand the usefulness of ICSID and MIGA to investors eying Iraqi markets, it is important to explain what the two World Bank arms do not accomplish. Article 11 of the MIGA Convention covers risks such as imposition of currency transfer restrictions, expropriation by the host state, breach of contract where there is no effective remedy in a judicial or arbitral forum, and war or armed conflict. Because Iraqi markets are largely untapped, the commercial balance is favourable for Iraq leaving political risk as the main nuisance for investors. This is where MIGA comes in as it only underwrites to protect from non-commercial risks.

ICSID serves a similar function in addressing political risk. Although the Washington Convention of 1965, which created ICSID, does not have an article similar to Article 11 of the MIGA Convention, a number of factors have shaped the arbitration center to become a forum more suitable to address claims that state action is unfair to foreign parties as opposed to normal commercial claims. Such factors include the relatively higher cost of ICSID proceedings compared to commercial arbitration, the requirement to exhaust other local remedies before recourse to ICSID, and the frequent reliance on investment treaties to raise discrimination claims.

While ICSID is not without its flaws, ICSID provides less predictability than courts because its tribunals are ad hoc and lack a consistent supervising authority, through prohibiting recourse to diplomatic channels and transferring decision making power to international actors, ICSID remains a good solution to depoliticize investment disputes and move them to a judicial setting. This protects foreign investors from certain risks such as expropriation, and to some extent, over regulation by the host state.

Iraq's accession to ICSID may be surprising in light of the fact that Iraq is still not a member of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Unlike the New York Convention which allows courts to refuse enforcement of awards relying on a list of exclusive grounds that includes public policy, the Washington Convention considers ICSID awards to be final judgments from national courts. Further, unlike normal arbitration awards the only recourse against an ICSID award that is sought to be enforced with pressure from the World Bank is a request for annulment before another ICSID tribunal, which has rarely been successful throughout ICSID's history.

Accession to the New York Convention was presented before the Iraqi council of representatives in July 2007. At the time, most objections harked back to the days when Iraq was isolated because of economic sanctions and did not comply with arbitration awards. The only objection of legal substance was fear of retroactive application to allegedly large awards against Iraq. However, out of the 156 contracting states to the New York Convention, only six had the same concerns and opted to issue a reservation on temporal scope of application without any recorded diplomatic rebuke from the rest. However, unfortunately this did not prevent the proposal being blocked. In contrast, the Washington Convention was introduced with an empty political slate and was backed by the National Investment Commission (NIC) arguing that investment in Iraq was deteriorating sharply.

B. Iraq's International Investment Commitments

Neither ICSID nor MIGA determine investment treatment or provide substantive rights to investors, they work as an enforcement mechanism and an insurance provider respectively. As such it is necessary to look to contracts and investment treaties for an understanding of Iraq's commitments. Noting that contracts add another layer of rights on top of treaties, and because they are too varied to cover in this article, we will only address Iraq's International Investment Agreements (IIAs).

Iraq has signed and ratified five Bilateral Investment Treaties (BITs), titled investment promotion and protection treaties in the Arabic Iraqi gazette, with Japan, Kuwait, Jordan, Belarus, and Germany. All of Iraq's BITs came after the new investment law was passed, and it was the NIC who negotiated and signed them. Prior to the investment law, and in some cases even after it was passed, Iraq signed "Cooperation", "Partnership", and "Trade Exchange" agreements. Such treaties do not provide adequate protections because:

- They often contain language that is too broad to be useful or contain too many exceptions and loopholes;
- They often do not contain an investment treatment clause, i.e. Most Favoured Nation (MFN) or National Treatment;
- They often lack a definition for what is considered an investment; and
- Old treaties are typically of narrow scope, usually trade in specific goods, and are short term making them unlikely to have been renewed long enough to still be relevant today.

As things stand at the time of writing, Iraq does not have many noteworthy BITs other than the five recent ones mentioned above. This does not mean there is a complete vacuum in investment law, but rather that contracts, national law, and customary international law will be called upon to fill in the gap.

In conclusion, the Iraqi offering to foreign investors largely depends on the specific contract and applicable treaty(s) if any. However, through availability of ICSID arbitration clauses and MIGA insurance policies Iraq now at least offers a measure of protection from political risk.

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Why the Introduction of Protected Cell Companies and Investment Limited Partnerships is Good News for Bahrain's Banking and Finance Sector

Bahrain leads the Middle East in a range of sectors including Islamic finance, insurance, and asset management. Banking forms the biggest part of Bahrain's financial services sector, with total banking assets of USD 192.7 billion as at September 2016, according to the Central Bank of Bahrain ('CBB'), which is the sole regulator of the financial services sector in Bahrain.

While the role of the financial services sector in promoting growth in Bahrain may have been contested in the past, it is now widely recognised. A large and competitive financial services sector, together with liquid and active equity and debt capital markets that operate according to market principles and intermediating savings (domestic and foreign) for market-based investments, are strongly associated with higher growth rates.

This trend is being further encouraged by the series of reforms implemented by Bahrain in relation to its companies' law framework. A series of new laws and amendments to existing laws have been implemented over the past 12 months or so with the principal aim of promoting business in Bahrain and encouraging investors to choose Bahrain as their destination of choice when doing business in the Middle East. The most recent of these changes include the introduction of investment limited partnerships and protected cell companies.

This article provides an overview of these new types of legal entities, explains how they operate, and outlines the commercial advantages of these entities in relation to banking and finance services and products.

Protected Cell Companies ('PCC')

The Protected Cell Companies Law (Law No. 22 of 2016) ('PCC Law') was implemented on 13 October 2016 and introduced PCCs in Bahrain. This was a significant development in the area of corporate finance in Bahrain.

What is a PCC?

A PCC is a single legal entity made up of a core and one or more parts called 'cells'. Once incorporated a PCC can have unlimited cells. The cells do not have their own legal personality but do offer ring-fencing of assets and liabilities as described below. Accordingly, a PCC has one board of directors that manage the affairs of the PCC as a whole. PCCs are regulated by the CBB.

Purpose of a PCC

The purpose of a PCC is to provide a vehicle which can create cells, separate parts within which assets and liabilities can be segregated. This concept of 'ring-fencing' is fundamental to PCCs. The key principle is that the assets of a cell are only available to the creditors and shareholders of that particular cell. However, the PCC Law provides that the PCC shall be entitled to conclude an agreement with a third party whereby the third party has the right of recourse to the assets of the core for any liability that may arise from its transaction with any of the PCC's cells, in addition to the assets of the cell in question. As the PCC Law is very recent, this provision is untested and its practical impact is unclear. Please see the diagram below for an illustration of how a PCC is structured.

Setting up a PCC

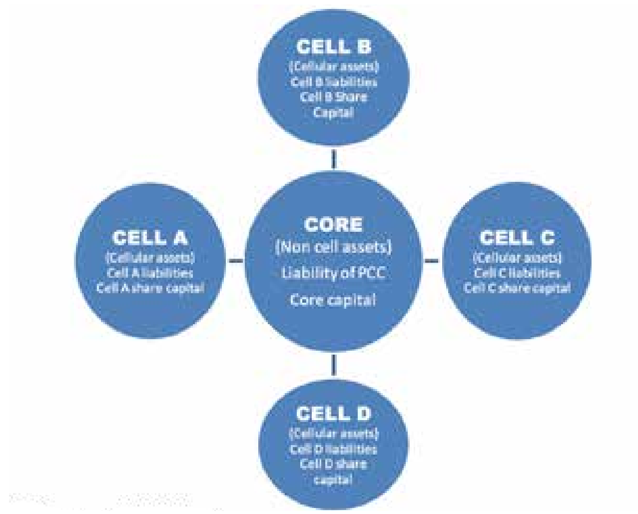
PCCs can either be a newly incorporated entity, or alternatively, an existing company can be converted to a PCC subject to CBB's approval. Since the PCC Law is fairly recent, it is unclear how efficient and straightforward the conversion option is and whether it is an attractive option where there is already an established company in Bahrain. There is no minimum capital requirement for the core or any cell; however, the CBB will determine the minimum capital requirement in each case.

Permitted activities for PCCs

PCCs cannot be used for ordinary trading activities. A PCC (and an investment limited partnership) may only undertake the following activities, namely:

1. A private investment undertaking ('PIU'). A PIU is defined by the CBB as investment undertakings/funds that are registered with the CBB, and may be initiated by or offered to high net worth individuals or institutional investors, and impose a minimum initial investment/ participatory interest of USD 3 million (or equivalent in any other currency);
2. A collective investment undertaking ('CIU'). A CIU is defined by the CBB as undertakings
    a. the sole object of which is the collective investment of capital raised from the public through private placement, including investments seeded by the operator in financial instruments, and other assets, and which operates on the basis of risk-spreading as appropriate; and
    a. the holdings of which may be re-purchased or redeemed out of those undertakings' assets as appropriate;
3. Securitisation. This is the process of taking an illiquid asset, or group of assets, and, through financial engineering, transforming them into security. An example of this is mortgage backed security;
4. Insurance captives. A captive insurer is generally defined as an insurance company that is wholly owned and controlled by its insureds. Its primary purpose is to insure the risks of its owners, and its insureds benefit from the captive insurer's underwriting profits; and
5. Any additional activities that may be later identified and added into the regulation by the CBB (collectively referred to as the 'Permitted Activities').

Illustration of a PCC's structure



Potential practical applications of PCCs

1. Side by side portfolios

Herein, we examine a hypothetical where Bahrain Company A wishes to offer three distinct strategies (e.g., fixed Income, equity, and real estate) to investors. Each strategy entails a different level of risk. Bahrain Company A has two structuring possibilities, namely:

Option A: set up three separate funds. One fund dedicated for each strategy; or

Option B: set up a PCC in Bahrain – Bahrain Company Fund PCC.

The share capital of Bahrain Company Fund PCC is made up of shares of the following cells:

Cell	To Whom the Shares are Issued	Type of Investor
Core Cell	Investment Manager	Not Applicable
Fixed Income Cell	Risk Averse Investors	Fixed Income Instruments
Long Equity Cell	Medium Risk Taking Investors	Listed Equities
Long Short Cell	High Risk Taking Investors	Equities and Derivates

The potential comparative advantage between the two options are as follows:

i. Option A clearly segregates the risks of each strategy. For example, it is not possible for any adverse exposure on the long short cell to affect investors of the fixed income cell.

ii. Option B is a cost efficient solution compared to option A as it avoids setting up and administering three separate entities. At the same time, it offers the same level of risk segregation as option A due to the ring fencing features of a PCC. As such, option B would likely be preferable.

2. Cost efficient asset holding

By way of another hypothetical, Middle East Asset Management Company ('MEAMC') advises a number of clients. From time to time, each client requires an investment holding company to hold specific assets and/or investments. In such a situation MEAMC has two options, namely:

i. incorporate one investment holding company for each client and/or for each asset and/or investment; or

ii. incorporate a PCC where MEAMC holds the core cell's shares and each client is offered a cell to hold its assets and/or investments. Some clients may wish to have more than one cell to internally segregate the risk of each asset and/or investment.

Advantages of PCCs

Advantages of PCCs include cost savings and efficiency of managing certain risks. Permitted Activities (defined above) are particularly suited to the PCC structure because the vehicles required to undertake such activities (generally to set up a fund in Bahrain, (subject to CBB's approval), a corporate entity or a trust must be incorporated in Bahrain) tend to be costly to establish and operate, and so the benefit of replicating a structure through the PCC provides a clear commercial advantage.

The administrative benefits of a PCC are significant. Once a PCC structure is in place, repeat transactions can be established in a shorter timeframe. This is particularly attractive in projects such as CIU funds, where negotiating transaction documents can be a complex and lengthy process and where a successful initial structure will often lead to a demand for further, similar structures using the same key participants.

Such activities tend to have financially sophisticated creditors who are likely to understand the principles of ring fencing. In the case of investment funds, investors often want the ability to invest in a range of sub funds in the same umbrella structure or to switch their investment between sub funds.

Potentially a framework could be established that includes all of the participants in the structure, such as administrators, managers, investment managers, and custodians, and model agreements entered into governing the contractual roles of these participants. CBB approval is likely to be required in advance for the structure, and subsequently as new cells are added. The subsequent formalities may be reduced because the fundamental structure has already been agreed.

Where particular transactions are envisaged, for example, adding a fund to invest in a specific country or sector, or a new vehicle to acquire receivables in the course of a securitisation

a cell may be created specifically to act in that defined role. In theory, if the functionary agreements are in agreed form and CBB approvals have been obtained with respect to the form of the transaction, a new cell can be added at lower costs and shorter time than would be required if the structure was to be established from scratch.

Disadvantages of PCCs

A potential disadvantage of PCCs is the limited pool of assets which is accessible for recourse to the creditors of a particular cell. Also, given that the PCC Law has recently been implemented and involves a relatively complicated concept of a new corporate entity (i.e. separate assets and liabilities), it is imperative that all parties involved understand how a PCC operates. More importantly, according to the PCC Law, prior to entering into a transaction with any party, the PCC must disclose to the other party that it is a PCC and the cell activity in relation to the transaction. If the PCC fails to make such disclosure, the transaction in question may be annulled at the request of the said party.

Investment Limited Partnerships ('ILP')

Partnerships under the Companies Law

Under the Commercial Companies Law, as amended by Law No. 50 of 2014 and Law No. 28 of 2015, ('Companies Law') two types of partnerships can be established, namely:

1. General partnership company; and
2. Limited partnership company.

The difference between the two types of partnerships is the liability of the partners.

In a general partnership company, the partners have unlimited liability for the debts of the company.

In a limited partnership company, the partners are divided into general and sleeping partners. General partners have unlimited liability, whereas the sleeping partners' liability is limited to the principal value of their shares. The general partners are responsible for the management of the company. The sleeping partners are prohibited from being involved in the management of the partnerships. If a sleeping partner breaches this provision, he/she may lose his/her limited liability and have unlimited liability for the debts of the partnership.

There are no restrictions on the activities that can be undertaken by these two types of partnership companies under the Companies Law.

ILP

The Law on Investment Limited Partnerships (Law No. 18 of 2016) was implemented on 4 August 2016 ('ILP Law'). An ILP can only undertake the Permitted Activities (which are exactly the same activities a PCC can undertake). An ILP is similar to a limited partnership company in that a general (defined as an 'Active Partner' in the ILP Law) partner's liability is unlimited and a sleeping (defined as a 'Dormant Partner' in the ILP Law) partner's liability is unlimited. ILPs are regulated by the CBB.

With partnership laws being well established in common law jurisdictions, such as London, New York, and Singapore, the ILP Law allows firms in and/or from such jurisdictions to operate in Bahrain within a legal framework with which they are familiar. The ILP Law also supports investment companies in establishing financial investment funds, and enables them to access new funding mechanisms.

Conclusion

The introduction of PCCs and ILPs are likely to enhance Bahrain's competitiveness in the financial services sector by making it easier to structure investment activities. It is hoped and anticipated that the flexibility under Bahrain law will allow continued innovation in relation to the use of PCCs. We hope that these changes boost Bahrain's position as a financial hub.

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Kuwait Paves the Road to Fighting Corruption

Corruption is generally deemed one of the most eminent enemies of international trade. Where corruption runs unbridled, fair players are often prevented from accessing the market, leading to a diminished business climate, risking public trust and in expelling performance and quality. The international community has prioritised the focus on corruption in attempts to tackle this problem since the mid-1990s. Numerous policies have proliferated from the movement since, establishing 'anti-corruption' as a new, independent branch of law. At the summit of this composite regime are numerous international conventions that have been ratified by many of the world's leading industrial nations in a bid to 'combatting corruption'.

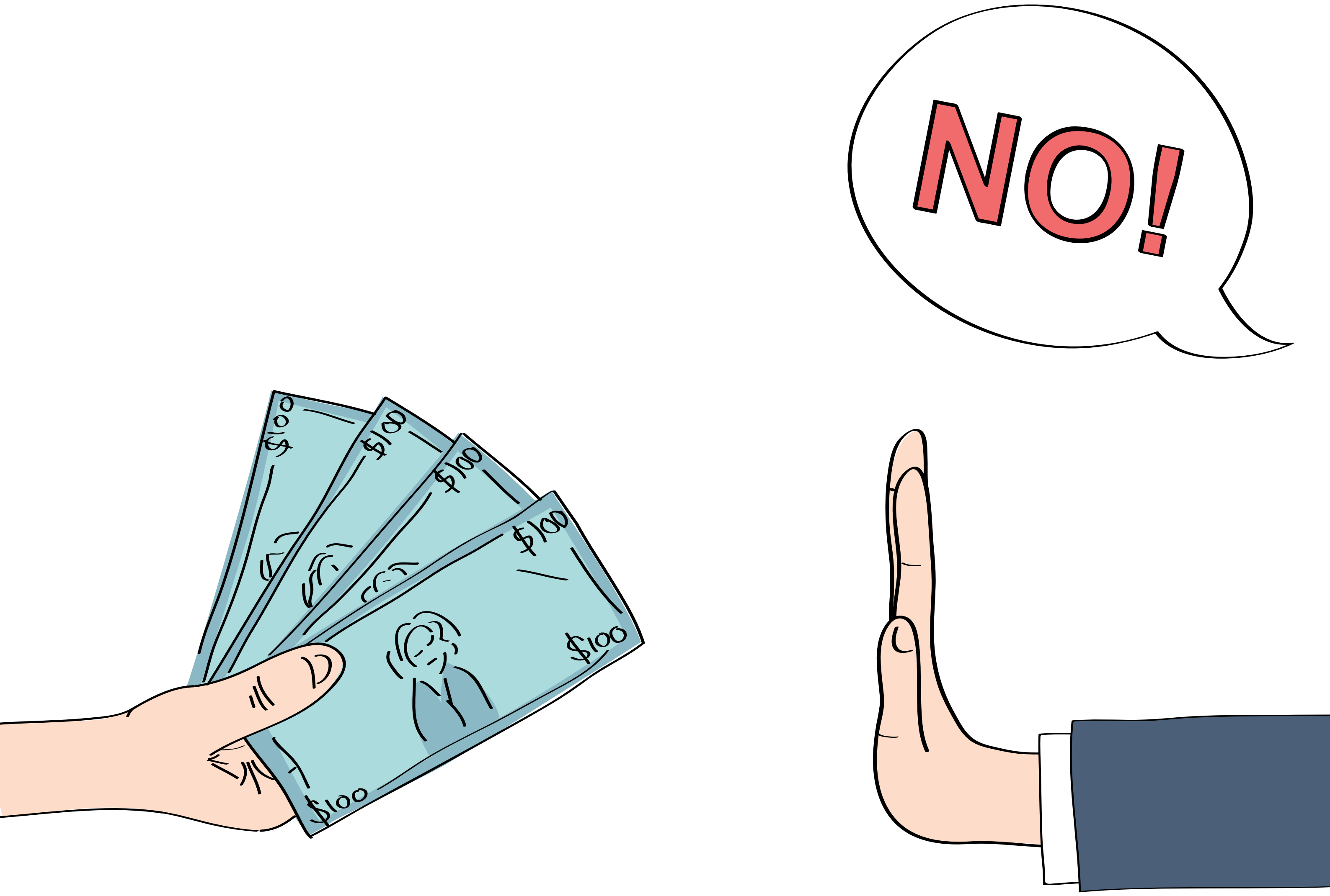
The World Economic Forum (WEF) released an annual corruption index as part of its Global Competitiveness Report . The findings are based on a WEF survey that interviewed nearly 15,000 business leaders from 141 economies from February to June. With an overall average of 4.6), Kuwait falls noticeably short in its financial market development, scoring 3.8; with low scores in both efficiency and market confidence. Corruption together with inefficient government bureaucracy were identified as the more problematic factors for doing business in Kuwait. Corruption has been a perpetual hindrance for businesses investing in the region, reducing market credibility and subsequently posing as a deterrent for investors. Informal monopolies and oligopolies exist; connections between the administration and private companies have often resulted in uneven market competition, not mentioning increasing inflation as a result of 'cover ups' and weakening economic development. It has been a lingering hope; particularly so, since the emergence of The Kuwait Direct Investment Promotion Authority (KDIPA) established in accordance with Law No. 116 of 2013, amongst the ever increasing foreign investment objectives dawning in the region, a more contemporary anti-corruption system has been almost imminent in Kuwait.

Public sector corruption in Kuwait has relapsed in the last year; according to Transparency International (the Berlin-based 'corruption watchdog'), Kuwait ranked 55 out of 167 countries in 2016, dropping it six places from last year's position at 49. A significant decline, in view of the fact that neighbouring Qatar and UAE saw remarkable improvements in this category.

Kuwaiti law has effectively criminalized identifiable corruption offences, but bribery, facilitation payments and giving and receiving gifts continue to be widespread in Kuwait despite being illegal.

Criminal sanctions have often been the chief weapon of choice employed in combating corruption, with the majority of international regulations containing central obligations for member states to punish payment of bribes and related crimes. The framework for anti-corruption law in Kuwait subsists mainly in the Penal Law 31/1970. This criminalizes passive and active bribery, attempted corruption, extortion, money laundering and abuse of office. The Law does not criminalize bribing a foreign official. The Anti-corruption and Wealth Disclosure Decree criminalizes the manipulation of public tenders and auctions, bribery, counterfeiting, forgery and graft. This decree incorporates articles on financial disclosure and money laundering, resulting in criminal penalties of up to seven years imprisonment for such dishonest practices. Under the Anti-Money Laundering and Combating the Financing of Terrorism Law, organized criminal groups and non-governmental organizations convicted of money-laundering can be imprisoned for up to 20 years.

However criminal law is not in itself enough. Last year saw the introduction of Kuwait Law No. 2/2016 concerning the establishment of a public authority for combating corruption, namely, The Kuwait Anti-Corruption Authority. The primary function of this Authority is in establishing the principles of 'transparency' and 'integrity' in the application of the UN Convention for combating Corruption, approved by Law No.



47/2006. The Authority seeks to regulate and more efficiently manage domestic strategy in this field, and the Authority is empowered to enforce financial and asset disclosures. This is a positive step toward fighting corruption.

Supplementary to the developments in administering financial disclosures, the 2016 law also aims to create a protection programme for whistleblowers, and to raise awareness and knowledge of corruption and its effects. This is challenging given that certain customs adopted within the region are not considered as overtly 'corrupt', but part of traditional practice (such as elaborate gift giving).

The Authority aims to implement principles of transparency in two phases. Both short-term and long-term mechanisms elaborated by means of compliance criterions specifically aimed at providing programmed training and support, devising effective systems for internal review, by recommending the establishment of appropriate purchase systems and developing disciplinary procedures against violations.

The release of the implementing regulations of the Authority under Decree No. 77/ 2015 will serve as a starting point for the Authority to begin carrying out its mandated tasks. A key part of its task will be issuing guidelines for businesses, civil society organisations, educational institutions, the media and places of worship. The government is optimistic that by allowing the Authority to tackle acts of public corruption, it will effectively decrease the growing prevalence of bribery and corruption at government ministries and institutions, and work in conjunction with public organizations to enhance Kuwait's ranking on the Global Corruption Perception Index (CPI). In the critical stage of its macro-economic evolution, anti-corruption reforms may be considered somewhat peripheral to the more larger concerns in Kuwait; however, one must take an objective step back in an bid to grasp the widespread benefits of the anti-corruption movement- paving the road to transformation in all sectors within the region.

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Data Protection and Privacy Law in Qatar

The State of Qatar has issued a new law concerning the Privacy and Protection of Personal Data being Law No. 13 of 2016 (the "Data Protection Law"). Whilst the law is not currently in force it is anticipated that the law will be published in the official gazette soon and will come in to effect after 6 months of such publication.

This law aims to establish a certain degree of protection for, and prescribes the guidelines for the processing of, personal data within Qatar.

This article aims to highlight the salient features of the Data Protection Law and analyse its likely effect from the perspective of banks and financial institutions licensed to operate in Qatar.

Salient Features:

The scope of the Data Protection Law extends to personal data which is processed electronically or obtained, collected and extracted for electronic processing or processed through a combination of traditional and electronic processing methods. However, the Data Protection Law does not extend protection to private processing of personal data or data collected for the purposes of attaining official statistics.

The Data Protection Law grants certain rights to individuals which include the right to give or withdraw consent to any processing of their personal data. An individual also has the right to review any of their personal data being stored,and to request any modifications or corrections where the information is inaccurate.

To protect these rights, the Data Protection Law places a heavy burden on the data controllers (i.e. individuals or companies who determine the data processing method and purpose) and processors to ensure that the personal data is handled with care and is duly protected from any leakage or loss or unauthorized disclosure of data. It directs the controllers to have in place adequate measures and procedures to ensure the safe custody of personal data. Some of the directions given to the controllers are as follows:

- Review the data privacy procedures;
- Determine the processors responsible for personal data privacy protection;
- Train and raise awareness amongst processors;
- Develop sound internal systems for receiving and considering complaints and for the effective management of personal data;
- Use proper technology;
- Carry out comprehensive audit to determine the level of compliance; and
- Verify the processor's compliance with the instructions given.

Added protection is afforded to personal data of a private nature, namely; information relating to race, religious beliefs, children, health, relationships and criminal records which may only be processed after obtaining permission of the relevant department of the Ministry of Transport and Communications. Children are also protected under Data Protection Law from owners and operators of websites for children who are obligated to make adequate disclosures on their websites and obtain permission from the child's parents before their information can be processed.

A prohibition has been imposed on direct marketing through electronic communication to individuals without obtaining their prior consent.

Notwithstanding the above, there are exemptions given under the Data Protection Law which allow the competent authority or the controllers to process personal data without compliance with certain provisions. These exceptions are as follows:

- Protection of national and public security;
- Protection of international relations of the State;
- Protection of economic or financial interests of the State;

- Prevention, collection of data on or investigation of a crime;
- Execution of a task related to public interest in accordance with the law;
- Execution of an obligation under the law or an order from the court of competent jurisdiction;
- Protection of vital individual interests;
- For purposes of scientific research carried out for the public interest; and
- Collection of the information needed for investigating a criminal offense, upon an official request from the investigation authorities.

The Data Protection Law prescribes high financial penalties for non-compliance or legislative breaches. The penalties will range from QAR 1,000,000 to QAR 5,000,000. However, it is notable that the penalties are financial only and imprisonment is not a prescribed sanction under this law.

Impact on the Qatari Financial Sector:

Banks in the Qatar are regulated by the Qatar Central Bank ("QCB") save for banks who operate within the Qatar Financial Center ("QFC"). QFC banks are excluded from the scope of this article as the QFC promulgated its own Data Protection Rules and Data Protection Regulations back in 2005 which apply to all companies operating in the QFC including banks.

The QCB has issued instructions to the banks to establish mechanisms and procedures which will safeguard the personal information and data of their customers. These banks are required to follow stringent guidelines to ensure that their computer systems/networks are well protected and proper encryption methods and information monitoring are in place.

The enactment of Data Protection Law may cause some practical difficulties for the banks either due to lack of clarity or the subjective nature of the law. To identify a couple of examples - under the Instructions to the Banks issued by the QCB, banks are directed to retain customers' information for at least 15 years. However, the Data Protection Law grants a right to the individual to demand deletion of their personal information once the purpose for which the information was collected has been fulfilled, which may result in non-compliance with the aforementioned retention period. Another example relates to the 'Know Your Client' (KYC) process that the banks are required to undertake. During this process certain personal data of a private nature (as defined in the Data Protection Law) may be gathered by the bank. However, according to the Data Protection Law, such information may only be processed after obtaining permission of the relevant department of the Ministry of Transport and Communications. It is not clear whether the banks would need a blanket approval from the Ministry of Transport and Communications in this regard or would such permission differ from case to case. This may be a cumbersome process for the banks.

Moreover, the banks in Qatar are currently allowed to outsource certain non-core functions to service providers for the purposes of cost reduction, service improvement, or saving time for main services provided that they ensure that adequate controls and guidelines for risk mitigation are in place. However, it seems that the Data Protection Law places an additional obligation on the banks, as opposed to the processors, to ensure that the data obtained meets the lawful purposes and is processed in accordance with the law.

Furthermore, banks may have to revisit their marketing and promotional activities whereby currently their customers are being directly approached through electronic communication to market their products and services. Activities such as email updates or SMS marketing may not be possible under the Data Protection Law. However, the practical risks remain unclear at present as the relevant section in the Data Protection Law remain open to interpretation due to its broad connotation.

Recommendations for the Banks:

As mentioned above, the Data Protection Law comes into effect only 6 months (which may be extended by a decision by the Cabinet) from the date of its publication in the official gazette. In order for the banks to be compliant with the law on its effective date, banks operating in Qatar should consider taking some precautionary steps some of which we have highlighted below:.

- raise awareness internally and amongst its service providers;
- review internal documents, agreements, policies, disclaimers, consents etc. from the perspective of complying with the Data Protection Law and also identify matters which need to be addressed;
- conduct internal training for the relevant departments such as IT, Legal, Marketing, technical support etc. to address any questions or concerns that the customers may have in relation to the Data Protection Law and their rights thereunder;
- conduct training for service providers responsible for processing the data, revisit internal risk assessments and mitigation plans;
- broadly identify potential issues, consult internally and take steps to rectify those issues or where the risk is still unclear, put in place appropriate holding measures; and
- revisit all security measures implemented by the bank and the service providers and assess whether any further steps can be taken or investments be made to protect customer data.

News & Events

Congratulations

We are pleased to congratulate Dr. Hassan Arab, Partner, Deputy Managing Partner & Co-Head of Litigation Al Tamimi & Company who recently completed his PhD in Arbitration with the University of Essex in London. Hassan has been working very hard in recent months to complete his dissertation, on behalf of everyone at Al Tamimi & Company, we applaud him on this outstanding personal achievement!

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DIFC and Ras Al Khaimah Memoranda

A comprehensive set of agreements and memoranda between the authorities of the Dubai International Financial Centre (DIFC) and the Emirate of Ras Al Khaimah was recently announced, with the aim of enhancing the reputation and utility of both places as developed jurisdictions and preferred business destinations. The intended and anticipated effect of these two agreements is that investors doing business in Ras Al Khaimah, including with Ras Al Khaimah governmental institutions, are able to decide in advance, and with confidence, to submit any dispute they may encounter to a relatively familiar, internationally-recognised and English-language forum.

More to follow in the next edition.

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8 NOV

Law Today Launch Event

Al Tamimi & Company's Egypt Office were proud sponsors of The Law Today launch event held at the Ritz Carlton hotel on Tuesday, 8th November 2016.

The Law Today Magazine is a British licensed magazine that offers a balanced view on issues relating to the legal, commercial and other industries by providing in-depth coverage of legal news and developments relevant to Egypt and the broader MENA region.

The launch event was a great success and well attended by a number of key multinationals, law firms, academic institutions and embassies.

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Khaled Saqqaf
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9 - 11 NOV

International Technology Law Association, Madrid

Al Tamimi & Company were proud sponsors of the International Technology Law Association (ITechLaw) Conference held in Madrid on the 9th – 11th of November. The ITechLaw conference is highly recognised and seeks to inform and educate lawyers about the unique legal issues arising from the evolution, production, marketing, acquisition and use of information.

Our Technology, Media & Telecommunication lawyers, Nick O'Connell, Partner and Sana Saleem, Associate attended the conference. The event was the perfect platform to network with key influencers and help facilitate the international exchange of information relating to technology law. The conference was well attended by specialist technology lawyers from all over Europe, and further afield, including Australia, Singapore and the United States.

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NOV

ArbitralWomen Breakfast and Speednet Event

On Monday the 14th of November Al Tamimi & Company sponsored and hosted a successful ArbitralWomen Breakfast and Speednet event. This event was very timely as it was held during the Dubai Arbitration Week, where practitioners from around the world convene to discuss hot and current topics relating to diversity.

With the quest for promoting women the event was a great opportunity for female arbitration practitioners to connect and network with their peers in an informal setting. Essam Al Tamimi, Founder and Senior Partner, Al Tamimi & Company welcomed the attendees and highlighted the importance of building a strong network and the value of female practitioners.

We were fortunate enough to have Judge Rabab Yasseen, Partner MENTHA (Geneva) speak and share some useful tips on how to advance in your career as an arbitrator. Mina Liccione, an award-winning performing artist nominated for the Emirates Woman of the Year Award was our host and brought a lot of laughter and energy to the speed networking session.

In her concluding remarks, Laila El Shentenawi, Senior Associate, Arbitration Al Tamimi & Company shared an encouraging quote by H.H. Sheikh Mohamed bin Rashed Al Maktoum "I have said it loud and clear: Beware, men, lest women deprive you of all the leadership positions in the country"----"and the world" she added!

It was encouraging to see a room full of female arbitration practitioners which is also a strong indication on how the female arbitration community is growing! The event was well attended and brought together over 50 female arbitration practitioners. To find out more about ArbitralWomen visit www.arbitralwomen.org








14 - 15
NOV

The Rail Revenue World Congress

On the 14th and 15th of November, Al Tamimi & Company co-sponsored the Rail Revenue World Congress in Amsterdam.

Foutoun Hajjer, Head of Office Bahrain, Al Tamimi & Company and Euan Lloyd, Senior Associate Al Tamimi & Company hosted two round table sessions which focused on the significant opportunities presented by the various high value and key rail projects which are being undertaken in the Middle East.

The sessions also addressed challenges which are frequently encountered by participants in Middle East rail projects as well as ways of mitigating these risks.

The prestigious annual event was attended by major international players from all sectors of the rail industry, including multinational IT companies, operators and providers of rolling stock.

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20 - 21
NOV

Al Tamimi & Company participates at Qatar University's 'Law Career Day' hosted by the College of Law

Al Tamimi & Company were proud to participate in the 'Law Career Day' hosted by the College of Law at Qatar University on 20 - 21 November. Roy Georgiades and Ahmed Eljaily of the Qatar office spoke to young aspiring lawyers in relation to Al Tamimi's position in the Gulf as the leading Law firm.

The two-day event saw various international and local law firms participate, in addition to the Qatar Chamber of Commerce, the QICDRC, and in-house legal counsel including Nakilat (QatarGas), and various other semi governmental entities.

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22 NOV

Sharjah Office Launch Reception

On Tuesday, 22 November we held a successful Sharjah office welcome reception to celebrate our success and new office space.

The launch was a great opportunity for a number of clients and friends of the firm to view the new office, re-connect and re-cap on the year.

During the reception Zafer Oghli, Partner, Head of Office - Sharjah gave a speech where he reflected on the journey of the office and highlighted the key achievements over the 27 years.

The launch was well attended by a number of our lawyers and senior public figures such as Major Rashed Al Ketbi of Sharjah Police, Mr. Amged Badr Kamel Shurrab, Managing Director of the Creative City Free Zone Authority – Fujairah and Mr. Rashed Bin Saadan, Ministry of Justice.

As we enter into the new year, we look forward to continual growth and another successful year for our Sharjah team.

Zafer Oghli
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22
NOV

Education Sector Group Dinner

On the 22nd of November Al Tamimi & Company's Education Sector Group hosted a private dinner which was attended by education providers and industry experts. With the growing importance of education in the region, the dinner was a great opportunity to discuss some of the latest sector developments and re-cap on the year.

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22 - 23
NOV

MEED Kuwait Projects

Al Tamimi & Company's Kuwait office sponsored the annual MEED Kuwait Projects conference on the 22nd – 23rd November. This event brings together companies from around the globe that are directly or indirectly involved with the privatisation projects being tendered in Kuwait.

Given Al Tamimi's involvement in a majority of the major infrastructure projects, the conference was a great opportunity to discuss some of the latest projects and the economic factors influencing project growth.

Partner & Co-head of Kuwait office, Philip Kotsis moderated once of the panel sessions which discussed the role of the public sector in stabilising project delivery timelines & enhancing overall project delivery.

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Philip Kotsis
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6
DEC

Construction and Infrastructure Seminar Series – Your dispute – where to take it!

During November and December our construction and infrastructure team held an interactive panel discussion in Dubai and Abu Dhabi entitled Your dispute – where to take it! The sessions addressed local courts, ADGM / DIFC courts and arbitration.

Our seminars cover topical issues surrounding the legal aspects of construction in the region. For more information on upcoming Construction and Infrastructure breakfast seminars, please contact events@tamimi.com.

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6 - 7
DEC

Telecoms Law and Regulation in the Middle East 2016 Conference

Al Tamimi & Company sponsored the Telecoms Law and Regulation in the Middle East 2016 conference held in Dubai on the 6^{th} – 7^{th} of December.

The Technology, Media & Telecommunications team was well-represented by Nick O'Connell, Partner, Andrew Fawcett, Senior Associate, Fiona Robertson, Senior Associate and Sana Saleem, Associate. Nick O'Connell delivered a presentation on the theme of Consumer Privacy in the Smart Era: Regulation and Reality, and Andrew Fawcett spoke on Data Centre Usage and Cloud Regulation.

The conference was a great opportunity to take part in discussions at the forefront of regional developments in the broader digital economy, and provided a fantastic opportunity to meet policy makers and regulators in the sector.

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7 DEC

Healthcare breakfast briefing - New Medical Liability Law

On the 7th of December Al Tamimi's Healthcare Sector Group held the second series of their breakfast briefings which examined the New Medical Liability Law in the UAE and Dubai Health Authority's investigation process.

Dr. Ahmad Sulaiman, Director of Legal Affairs Department, Dubai Health Authority gave a keynote address on Dubai Health Authority's investigation process. Al Tamimi & Company's medical malpractice specialists; Ahmed Allouz, Head of Litigation Dubai and Head of the Medical Malpractice Team, Hiam Abdullah Al Muhtadi Associate, Litigation Department, Al Misbah Sabiel Senior Associate, Litigation Department held a panel discussion which addressed the impact of the new law and anticipated regulations.

The second session explored the Dubai Health Strategy 2021 and we were fortunate to have Dr. Mazin A. Gadir, Senior Specialist, Executive Office for Organizational Transformation, Dubai Health Authority present the strategy and future plans.

To conclude the event, Al Tamimi's Christina Sochacki, Associate Healthcare Sector Group held an engaging interview with Dr. Mohammad Al Redha, Director of Health Data and Information Analysis Department, Dubai Health Authority which covered the future of healthcare in the UAE, Dubai Health Authority's 2017 strategy and the use of health data to improve the Emirate's healthcare system.

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14 DEC

Private Sports Law Dinner

On the 14th of December, Steve Bainbridge Regional Head of Sports Law & Events Management hosted a private dinner, which was attended by key sports law clients. The dinner was a great opportunity to network and discuss the latest sports law developments within the Middle East.

Steve Bainbridge
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United Arab Emirates
Ministry of Justice

46th Year
Issue No. 605
8 Muharram 1438 AH
9 October 2016

FEDERAL DECREE-LAWS

14 of 2016	Amending Federal Law No. (1) of 1972 on the functions of the ministries and the powers of the ministers.
15 of 2016	On the establishment of the Emirates Educational Establishment.
16 of 2016	On the establishment of the Emirates Health Services Establishment.
17 of 2016	Amending Federal Law No. (11) of 2008 on human resources in the Federal Government.
18 of 2016	On reading.

MINISTERIAL DECISIONS

- From the Ministry of Human Resources and Emiratisation:

740 of 2016	Amending Minister of Labor Decision No. (1187) of 2010 regarding the criteria and standards for classification of establishments.

- From the Ministry of Economy:

465 of 2016	Announcement regarding revision of the Articles of Association of Barakah One Holding Company PSC.
468 of 2016	Announcement regarding revision of the Articles of Association of Nawah Energy Holding Company PSC.
469 of 2016	Announcement regarding revision of the Articles of Association of Barakah One Company PSC.
499 of 2016	Announcement regarding merger between Al Safwa Islamic Financial Services Company PSC and Mubasher Financial Services Company LLC.

ADMINISTRATIVE DECISIONS

- From the General Pensions & Social Security Authority:

20 of 2016	Amending the GPSSA's staff regulations.

- From the Insurance Authority:

25 of 2016	Promulgating the unified regulation for motor insurance policies.
74 of 2016	On deleting certain surveyors and loss adjustors from the Insurance Authority's registers and canceling their licenses.

- From the Emirates Standardization and Metrology Authority:

96 of 2016	Amending Schedule 2 to Cabinet Decision No. (6) of 2016 concerning the UAE Regulation on the Control of Paints and Varnishes.

97 of 2016	Amending the Regulation on the National Mark "Halal" and the Requirements for Obtaining a License to Use the Mark issued pursuant to Board of Directors Resolution No. 36 of 2014.

- From the Securities & Commodities Authority:

    - Certificate of approval of amendment of the Articles of Association of Abu Dhabi National Takaful Company PJSC.
    - Certificate of approval of amendment of the Articles of Association of National Marine Dredging Company PJSC.
    - Certificate of approval of amendment of the Articles of Association of Orient Insurance PJSC.
    - Certificate of approval of amendment of the Articles of Association of Union Properties PJSC.
    - Certificate of approval of amendment of the Articles of Association of Takaful Emarat PJSC.

United Arab Emirates
Ministry of Justice

46th Year
Issue No. 606
29 Muharram 1438 AH
30 October 2016

FEDERAL LAWS

14 of 2016	On the Federal Government's administrative penalties for violations.
15 of 2016	On the establishment of the Emirates Diplomatic Academy.
16 of 2016	On the establishment of the Emirates Sports Arbitration Center.
17 of 2016	On the establishment of centers for conciliation and settlement of civil and commercial disputes.

FEDERAL DECREES

131 of 2016	On the transfer of a UAE ambassador to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
132 of 2016	On performing the duties of the UAE Ambassador to the Republic of Korea.
134 of 2016	On appointing the Director of the Office of the Deputy Minister of Presidential Affairs.
135 of 2016	On the ratification of the Agreement between the UAE and the Republic of Thailand on the Promotion and Protection of Investments.
136 of 2016	On the ratification of the Agreement between the UAE and the Republic of Mauritius on the Reciprocal Promotion and Protection of Investments.
137 of 2016	On the ratification of the Agreement for the Avoidance of Double Taxation and Prevention of Tax Evasion with Respect to Taxes on Income between the UAE and Romania.

138 of 2016	On the ratification of the Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income between the UAE and the Republic of Senegal.
139 of 2016	On the ratification of the Agreement between the UAE and the Federal Republic of the Comoros on the Promotion and Protection of Investments.
140 of 2016	On the ratification of the Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital between the UAE and Bermuda.
141 of 2016	On the ratification of the Agreement between the UAE and the Islamic Republic of Mauritania on the Reciprocal Promotion and Protection of Investments.
142 of 2016	On the ratification of the Seat Agreement to Establish the Headquarters of the GCC Police Force between the UAE Government and the Secretariat General of the Gulf Cooperation Council.
143 of 2016	On the ratification of the Seat Agreement between the UAE Government and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM).
144 of 2016	On the ratification of the Agreement on Reciprocal Waiver of the Visa Requirement for Holders of Diplomatic Passports between the UAE and Romania.
145 of 2016	On the ratification of the Agreement for Economic and Technical Cooperation between the UAE and the Republic of Slovenia.
146 of 2016	On the ratification of the Protocol Amending the TRIPS Agreement.
147 of 2016	On the ratification of the Agreement for Economic Cooperation between the UAE and the Republic of Kosovo.
148 of 2016	On the ratification of the Agreement for Economic and Technical Cooperation between the UAE and the Republic of Angola.
149 of 2016	On the ratification of the Agreement between the UAE and the Republic of Chad Concerning Aviation Services Between and Beyond their Respective Territories.
150 of 2016	On the ratification of the Agreement between the UAE and the Republic of Togo Concerning Aviation Services Between and Beyond their Respective Territories.
151 of 2016	On the ratification of the Agreement between the UAE and the Republic of Sierra Leone Concerning Aviation Services Between and Beyond their Respective Territories.
152 of 2016	On the ratification of the Agreement between the UAE and the Republic of Lithuania Concerning Aviation Services Between and Beyond their Respective Territories.
153 of 2016	On the ratification of the Agreement between the UAE and the Dominican Republic Concerning Aviation Services Between and Beyond their Respective Territories.
154 of 2016	On the ratification of the Agreement between the UAE and the Federal Republic of Somalia Concerning Aviation Services Between and Beyond their Respective Territories.
155 of 2016	On appointing a judge in the Federal Supreme Court.
156 of 2016	On appointing the Deputy VC for Student Affairs and Enrollment at United Arab Emirates University.
157 of 2016	On the retirement of the Attorney General of the Federation who has reached the legal retirement age.
158 of 2016	On appointing an attorney general for the Federation.
159 of 2016	On terminating the tenure of a UAE ambassador.

160 of 2016	On the transfer of a UAE ambassador to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
161of 2016	On the transfer of a UAE Consul General to the Headquarters of the Ministry of Foreign Affairs and International Cooperation.
162 of 2016	On appointing a UAE non-resident ambassador to the Republic of Nicaragua.
163 of 2016	On appointing a UAE consul general to the Italian Republic in Milan.

REGULATORY DECISIONS OF THE CABINET

39 of 2016	On the fees for media services in the free zones.
40 of 2016	On abolishing the National Committee on Climate Change.
41 of 2016	On the fees for translator-related services provided by the Ministry of Justice.
42 of 2016	On the fees for expert-related services provided by the Ministry of Justice.

MINISTERIAL DECISIONS

- From the Ministry of Health and Prevention:

872 of 2016	On strategic medical stock.

ADMINISTRATIVE DECISIONS

- From the Securities & Commodities Authority:

-	Certificate of approval of amendment of the Articles of Association of National Takaful Company (Watania) PJSC.

About Us

Al Tamimi & Company is the largest law firm in the Middle East with 17 offices across 9 countries. The firm has unrivalled experience, having operated in the region for over 25 years. Our lawyers combine international experience and qualifications with expert regional knowledge and understanding.

We are a full-service firm, specialising in advising and supporting major international corporations, banks and financial institutions, government organisations and local, regional and international companies. Our main areas of expertise include arbitration & litigation, banking & finance, corporate & commercial, intellectual property, real estate, construction & infrastructure, and technology, media & telecommunications. Our lawyers provide quality legal advice and support to clients across all of our practice areas.

Our business and regional footprint continues to grow, and we seek to expand further in line with our commitment to meet the needs of clients doing business across the Middle East.

17 offices

9 countries

57 partners

330 lawyers

670 staff

45 nationalities

Our Accolades

Our Practices

- Arbitration
- Banking & Finance
- Capital Markets
- Commercial
- Construction & Infrastructure
- Corporate
- Corporate Structuring
- Education
- Employment
- Family Business & Governance
- Financial Crime & Sanctions
- Financial Services Regulation & Enforcement
- Healthcare
- Hospitality
- Insurance
- Intellectual Property
- Litigation
- Mergers & Acquisitions
- Projects
- Real Estate
- Regulatory
- Sports & Events Management
- Technology, Media & Telecommunications
- Transport

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- Contrasting perspectives between external and in-house counsel

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